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## Testimony of the National Center for Transgender Equality

### Pennsylvania Senate Democratic Policy Committee

#### Removing Barriers for Pennsylvania’s Transgender Community – June 29, 2021

In the United States, one of the most pervasive and enduring barriers facing transgender and non-binary individuals is access to identity documents that accurately reflect their chosen name and correct gender marker. Not having accurate identification can result in transgender and non-binary people being denied access to government services and benefits, adequate health insurance and health care, banking and credit, and common commercial transactions like buying alcohol and other age-restricted products.

Presenting an identity document that does not carry one’s correct name and gender marker can also very easily “out” a transgender person, exposing them to further discrimination, harassment, and even violence. While the Commonwealth of Pennsylvania has recently taken steps to make it easier for transgender and non-binary people to access identity documents with a corrected gender marker, the statutory name change process still proves an obstacle to many Pennsylvanians who seek identification that displays their preferred name and will not out them in their interactions with businesses and government officials.

Founded in 2003, the National Center for Transgender Equality advocates to change policies and society to increase understanding and acceptance of transgender people. NCTE works to replace disrespect, discrimination, and violence with empathy, opportunity, and justice. NCTE has worked with policymakers and advocates at the national, state, and local levels to implement effective policies regarding name and gender marker changes on identity documents. In 2015, NCTE conducted the U.S. Transgender Survey (USTS), a comprehensive survey of nearly 28,000 transgender adults in all states and U.S. territories and military bases overseas, which provides evidence of the need for transgender and non-binary people to have access to identity document that correctly reflect who they are and how they live their lives.

#### Who Transgender People Are

Transgender people—people who know themselves to be a gender that is different from the one they were thought to be at birth—live in every region of our country. It is estimated that 1.4 million adults and 150,000 youth between the ages of 13 and 18 identify as transgender.<sup>1</sup> In all, nearly two million

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<sup>1</sup> Andrew R. Flores et al., *How Many Adults Identify as Transgender in the United States?* (2016), found at:

Americans are transgender. The geographic distribution of transgender people in the United States is similar to that of the U.S. population overall.<sup>2</sup> Transgender people are of every age,<sup>3</sup> every faith, every race and ethnicity,<sup>4</sup> and come from every walk of life. It is estimated that 43,800 adult Pennsylvanians and 5,250 Pennsylvanians ages 13 to 17 are transgender.<sup>5</sup>

## **Transgender Americans Face Widespread and Pervasive Discrimination**

Transgender people have always been a part of American society. Over recent years, the national conversation about transgender people has grown dramatically, giving an increasing number of Americans the chance to get to know who the transgender people in their communities are. Americans have come to know transgender people as their coworkers, classmates, and friends, and many Americans have learned to embrace their transgender children and parents, grandparents and grandchildren, siblings, and other loved ones. This growing understanding—and with it, growing acceptance—has allowed more and more transgender people to flourish and fully participate in their communities with the support of their families and communities.

Despite this unmistakable progress, transgender people continue to face widespread and pervasive mistreatment and discrimination when it comes to the most basic elements of public life—finding a job, having a place to live, going to school, accessing medical care, visiting restaurants and shopping malls, and using public transportation. This reality is reflected in a wide body of research over the last two decades,<sup>6</sup> including several key federal surveys.<sup>7</sup> The most comprehensive survey to date of transgender Americans, the 2015 U.S. Transgender Survey, surveyed nearly 28,000 transgender adults nationwide.<sup>8</sup> The USTS revealed mistreatment, harassment, and violence in every aspect of life and startling disparities between transgender respondents and the general population. Much of this mistreatment can be attributed to lack of access to proper identity documentation.

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<http://williamsinstitute.law.ucla.edu/wp-content/uploads/How-Many-Adults-Identify-as-Transgender-in-the-United-States.pdf> (estimating that 0.6% of adults in the United States identify as transgender); Jody L. Herman et al., *Age of Individuals who Identify as Transgender in the United States* (2017), found at:

<https://williamsinstitute.law.ucla.edu/wp-content/uploads/TransAgeReport.pdf> (estimating that 0.7% of people in the United States between the ages of 13 and 17, or 150,000 adolescents, are transgender).

<sup>2</sup> Flores et al., *supra* note 1, at 3-4.

<sup>3</sup> Herman et al., *supra* note 1, at 3.

<sup>4</sup> Andrew R. Flores, Taylor N. T. Brown, & Jody L. Herman. *Race and Ethnicity of Adults Who Identify as Transgender in the United States* (2016), found at:

<https://williamsinstitute.law.ucla.edu/wp-content/uploads/Race-and-Ethnicity-of-Transgender-Identified-Adults-in-the-US.pdf>.

<sup>5</sup> Herman et al., *supra* note 1, at 5.

<sup>6</sup> See, e.g., Institute of Medicine. *The Health of Lesbian, Gay, Bisexual, and Transgender People: Building a Foundation for Better Understanding* (2011) (summarizing earlier research).

<sup>7</sup> See, e.g., Michelle Johns et al., *Transgender Identity and Experiences of Violence Victimization, Substance Use, Suicide Risk, and Sexual Risk Behaviors Among High School Students — 19 States and Large Urban School Districts*, 2017, 68 MMWR 67–71 (2019) (reporting data from the CDC’s Youth Risk Behavior Survey demonstrating high rates of violence and harassment against transgender youth).

<sup>8</sup> Sandy E. James et al., *The Report of the 2015 U.S. Transgender Survey* (2016), found at: <https://www.ustranssurvey.org/reports>.

Carrying current and accurate identity documents is vital to participate in many parts of American society. As part of the transition process, many transgender individuals obtain a court order to change their name, which they then use to update their identification documents and official records, such as driver's licenses, passports, birth certificates, and Social Security cards.<sup>9</sup> Respondents in the 2015 U.S. Transgender Survey from Pennsylvania<sup>10</sup> reported difficulty in obtaining these corrected identification documents, and experiencing extensive discrimination and harassment as a result:

- **69% reported that none of their IDs had the name and gender marker they preferred, while only 9% had their preferred name and gender marker on all ID documents and records.**
- **35% of those who have not changed their legal name** reported that they had not done so because they **could not afford it.**
- **30% who have shown an ID with a name or gender marker that did not match their gender presentation were verbally harassed, denied benefits or service, asked to leave, or assaulted.**

The discrimination, harassment, mistreatment, and violence experienced by transgender individuals was described by respondents to the 2015 U.S. Transgender Survey. Several of its findings are highlighted below.

### *Workplace Discrimination*

As the American Psychiatric Association states in adopting a policy in favor of inclusive nondiscrimination protections in 2012 (which it reaffirmed in 2018), “Being transgender or gender diverse implies no impairment in judgment, stability, reliability, or general social or vocational capabilities; however, these individuals often experience discrimination due to a lack of civil rights protections for their gender identity or expression.”<sup>11</sup> Respondents in the 2015 U.S. Transgender Survey reported widespread discrimination in the workplace and job market:

- **One in eight (13%) have lost a job because of being transgender** in their lifetime.
- **In the previous year, 27%** of those who held or applied for a job during that year—or 19% of all respondents—**were fired, denied a promotion, or denied a job because of being transgender.**

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<sup>9</sup> See, e.g., NCTE, *ID Documents Center*, found at: <https://transequality.org/documents>.

<sup>10</sup> Sandy E. James et al., *2015 U.S. Transgender Survey: Pennsylvania State Report* (2016), found at: <https://www.ustranssurvey.org/reports>.

<sup>11</sup> American Psychiatric Association, “Position Statement on Discrimination Against Transgender and Gender Diverse Individuals” (approved 2012; updated 2018), found at: <https://www.psychiatry.org/File%20Library/About-APA/Organization-Documents-Policies/Policies/Position-2018-Discrimination-Against-Transgender-and-Gender-Diverse-Individuals.pdf>.

- **Fifteen percent (15%) of those who had a job in the previous year were verbally harassed, physically attacked, or sexually assaulted** at work because of being transgender.
- **Nearly one-quarter (23%) of those who had a job in the previous year reported other forms of mistreatment during that year** because of being transgender, such as being told to present in the wrong gender in order to keep their job, being forced to use the wrong restroom, or having a boss or coworker share private information about their transgender status without their permission.
- **Overall, 30% of respondents who had a job in the previous year were fired, denied a promotion, or experienced some other form of mistreatment related to being transgender.**

### *Experiences in Schools*

The USTS surveyed transgender adults regarding their past experiences in K–12 schools, as well as their experiences in postsecondary education. Here, too, respondents reported widespread and severe discrimination that limited their educational opportunities and achievements.

- **More than three-quarters (77%)** of those who were out or perceived as transgender at some point between Kindergarten and Grade 12 (K–12) **experienced some form of mistreatment**, such as being verbally harassed, prohibited from dressing according to their gender identity, or physically or sexually assaulted because people thought they were transgender.
- This includes **more than half (54%)** who were **verbally harassed**, **nearly one-quarter (24%)** who were **physically attacked**, and **one in eight (13%)** who were **sexually assaulted** in K–12 because of being transgender.
- Out of all respondents who were out or perceived as transgender in K–12, **nearly one in five (17%)** **faced such severe mistreatment that they left a K–12 school.**
- Mistreatment followed transgender people into postsecondary school. Of those who were out or perceived as transgender **in college or vocational school, nearly one-quarter (24%)** **were verbally, physically, or sexually harassed.**

The retrospective reports of transgender adults in the USTS are consistent with recent surveys of transgender middle and high school students, including in the CDC Youth Risk Behavior Survey and the 2019 National School Climate Survey.<sup>12</sup> Almost a third of LGBTQ students are prevented by

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<sup>12</sup> Johns et al., *supra* note 6; Kosciw, J. G., Clark, C. M., Truong, N. L., & Zongrone, A. D. (2020). *The 2019 National School Climate Survey: The experiences of lesbian, gay, bisexual, transgender, and queer youth in our nation's schools*. New York: GLSEN.

school policy from using restrooms aligned with their gender identity.<sup>13</sup> Trans students avoid restrooms because they feel unsafe or uncomfortable, and that's because they are the ones being bullied, not bullying others. For these same reasons, transgender students may avoid locker rooms, and may miss opportunities to participate in school athletics, and thereby miss the resulting benefits of higher self-esteem, grades, and sense of belonging in school.<sup>14</sup>

### *Housing*

USTS respondents also reported far-reaching discrimination in the rental and real estate markets, as well as in accessing emergency shelter:

- **Nearly one-quarter (23%) of respondents experienced some form of housing discrimination in the previous year**, such as being evicted from their home or denied a home or apartment because of being transgender.
- **Nearly one-third (30%) of respondents have experienced homelessness** at some point in their lives, and **one in eight (12%) experienced homelessness in the previous year** as a result of anti-transgender discrimination.
- For many transgender people, homeless shelters provide little recourse. In the previous year, **seven out of ten (70%) of those who stayed in a shelter faced mistreatment**, including being harassed, sexually or physically assaulted, or kicked out because of being transgender. **More than one-quarter (26%) of those who experienced homelessness in the previous year avoided staying in a shelter** because they feared being mistreated for being transgender.

Barriers to housing and even to emergency shelter subject transgender people and their families to tremendous instability in their lives, put them at risk of greater violence and poor health outcomes, and prevent many from productively participating in the workforce and in public life.

### *Public Services and Spaces*

Transgender respondents in the USTS also reported pervasive discrimination when accessing the many public spaces and services Americans avail themselves of every day, from courthouses and government offices to retail stores, movie theaters, and hotels. Respondents reported the following experiences from the previous year:

- Out of respondents who visited a place of public accommodation where they were perceived to be transgender, **nearly one-third (31%) experienced mistreatment**.

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<sup>13</sup> Kosciw, et al., *supra* note 9.

<sup>14</sup> See, e.g., GLSEN's report on Gender-Affirming and Inclusive Athletics Participation (Sep. 2020), found at: <https://www.glsen.org/sites/default/files/2020-09/GENDER-AFFIRMING-INCLUSIVE-ATHLETICS-PARTICIPATION-SEP-2020.pdf>.

- This included **14%** who were **denied equal treatment or service**, **24%** who were **verbally harassed**, and **2%** who were **physically attacked** at a public accommodation because of being transgender.
- Of respondents who visited **courthouses** in the previous year and believed judges or court staff knew or thought they were transgender, 13% reported harassment or other mistreatment because they were transgender.
- Respondents were asked about their experiences in **public assistance or government offices**. Out of those who visited such offices in the previous year and were perceived to be transgender, 17% were denied equal treatment or verbally harassed. These experiences were especially common among people of color, including Native American (25%), multiracial (22%), Black (20%), and Latino/a (20%) respondents, as well as among respondents with disabilities (21%).
- Of respondents who sought **services for victims of domestic or sexual violence** and believed staff knew or thought they were transgender, 16% were denied equal treatment or service, 11% were verbally harassed, and 2% were physically attacked because of being transgender.
- Of respondents who interacted with **police** who thought or knew they were transgender, 58% faced some form of mistreatment, including being verbally harassed, physically assaulted, or sexually assaulted by police.
- Of respondents who had visited a **state motor vehicle agency (DMV) office** and believed staff knew or thought they were transgender, 14% reported mistreatment because they were transgender.
- Of respondents who used **public transportation** and believed transit employees knew or thought they were transgender, 34% reported harassment, physical violence, or denial of equal treatment or service because they were transgender.

### *Health Care*

Like anyone else, transgender people including youth need preventive health care to protect their health, and medical treatment when they are ill or injured. Yet in this most basic of human needs, USTS respondents reported severe and widespread discrimination, including harassment and outright refusal of care. Respondents reported the following experiences in the previous year:

- **One-third (33%) of those who saw a health care provider faced mistreatment**, such as being verbally harassed or refused treatment because of their gender identity.

- **Nearly one-quarter (23%) did not seek the health care they needed due to fear of being mistreated as a transgender person**, and 33% did not see a doctor when needed because they could not afford it.
- **One in four (25%) respondents experienced a problem with their insurance related to being transgender**, such as being denied coverage for care related to gender transition or being denied coverage for routine care because they were transgender.

These barriers to care contribute to the significant health disparities that continue to affect transgender people.

## **The Wide-Ranging Impacts of Discrimination**

By denying transgender people equal opportunities to thrive, stigmatizing them, and pushing them to the margins of society, discrimination imposes profound harm on the lives of these members of the American community. It contributes to economic hardships, to health disparities, and to transgender people’s vulnerabilities to violence. The following findings from the USTS underscore key disparities between transgender respondents and the general population. These disparities were consistently starker for people who had faced discrimination, such as losing a job, being mistreated in school, or being denied access to health care.

### *Economic Hardship and Instability*

Widespread and pervasive discrimination across all areas of public life drives substantial economic disparities for transgender people today, as documented in the USTS:

- **Nearly one-third (29%) of respondents were living in poverty**, more than twice the rate among adults in the U.S. population at the time (12%).
- With an **unemployment rate of 15%**, respondents were three times as likely as adults in the U.S. population to be unemployed.
- Respondents were nearly **four times less likely to own a home (16%)** compared to the U.S. population (63%).
- **Nearly one-third (30%) had experienced homelessness** in their lives.

### *Health Disparities*

Discrimination across the lifespan, including in access to health care, also drives health disparities. As major medical and mental health associations have recognized, these disparities are not “inherently attributable to one’s identity” as a transgender person, but are driven in large part by social stigma,

rejection, discrimination, violence, and the resulting stress and social and economic barriers.<sup>15</sup> USTS respondents reported the following:

- Nearly **four in ten (39%) experienced serious psychological distress** in the month before completing the survey (based on the Kessler 6 Psychological Distress Scale), compared with only 5% of the U.S. population.
- Forty percent (40%) have attempted suicide in their lifetime, nearly **nine times the estimated rate in the U.S. population (4.6%)**. Seven percent (7%) attempted suicide in the previous year—**nearly twelve times the rate in the U.S. population (0.6%)**. Psychological distress and suicide attempts were correlated with experiences of discrimination, violence, and rejection.
- Respondents were **living with HIV (1.4%) at nearly five times the rate in the U.S. population (0.3%)**.

### *Harassment and Violence*

Discrimination against transgender people often includes, and makes transgender people more vulnerable to, violent victimization across the lifespan. USTS respondents reported the following:

- **Nearly one in ten (9%) respondents were physically attacked** in the previous year because of being transgender.
- **Nearly half (47%) of respondents were sexually assaulted** at some point in their lifetime and **one in ten (10%) were sexually assaulted in the previous year**.
- **More than half (54%) experienced some form of intimate partner violence**, including acts involving coercive control and physical harm.
- **Nearly one-quarter (24%) have experienced severe physical violence by an intimate partner, compared to 18% in the U.S. population**.

Many respondents reported being targeted for violence in the workplace, at school, in hospitals or other health care settings, and by police and other government officials.

### **The Compounding Impact of Other Forms of Discrimination**

The 2015 USTS found a clear and disturbing pattern when respondents' experiences were examined by race and ethnicity: transgender people of color consistently experienced higher rates and more severe forms of discrimination.

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<sup>15</sup> Jason Rafferty, *American Academy of Pediatrics Policy Statement: Ensuring Comprehensive Care and Support for Transgender and Gender-Diverse Children and Adolescents*, 142 PEDIATRICS (2018).



- **Poverty:** While respondents in the USTS overall were living in poverty (29%) at a rate more than twice that in the U.S. adult population (12%), **the rate of poverty among transgender people of color was more than three times higher** than the U.S. population, including Latino/a (43%), Native American (41%), multiracial (40%), and Black (38%) respondents.
- **Unemployment:** The unemployment rate among respondents of color—including Middle Eastern (35%), Native American (23%), multiracial (22%), Latin/o (21%), and Black (20%) respondents—was **more than four times higher** than that in the U.S. population (5%).
- **HIV Status:** 6.7% of Black respondents were living with HIV—compared to 1.4% of USTS respondents overall and 0.3% in the U.S. population. For Black transgender women, the prevalence was a staggering 19%.
- **Underground Economy:** Pervasive unemployment, discrimination in employment, education, and housing, and lack of access to health care have led 20% of respondents to participate in sex work, drug sales, and other work that is typically criminalized. Fully 42% of Black transgender women reported having participated in sex work. 32% of respondents who have engaged in sex work report having been arrested at least once, often resulting in a criminal record.

The 2015 USTS similarly found that other historically marginalized groups—including undocumented residents, respondents with disabilities, and respondents who have experienced homelessness—faced higher levels of violence, mistreatment, and discrimination.

### What Changes Should Be Made?

The law governing name changes in Pennsylvania<sup>16</sup> contains several provisions that make court-ordered name changes disproportionately difficult for transgender individuals to obtain.

- **Convicted Felons:** A petitioner with a felony conviction may not obtain a name change within two years of having completed their prison sentence, unless they have received a pardon.<sup>17</sup> A petitioner convicted of a violent felony may not receive a name change in Pennsylvania at all.<sup>18</sup>

This provision should be removed. 25 states, the District of Columbia, and all U.S. territories have no provisions barring convicted felons from obtaining a name change,<sup>19</sup> and NCTE is not aware of any negative consequences resulting from this lack. The discrimination, harassment, and other mistreatment faced by transgender people makes them disproportionately more likely than the general population to engage in criminalized conduct in order to survive, including sex work and drug sales. This creates a cycle wherein a transgender person, initially

<sup>16</sup> 54 Pa. Cons. Stat. Ann. §§ 701-705.

<sup>17</sup> *Id.* at § 702(c)(1).

<sup>18</sup> *Id.* at § 702(c)(2).

<sup>19</sup> Movement Advancement Project, *Identity Document Laws and Policies*, found at: <https://www.lgbtmap.org/equality-maps/identity-document-laws/name-change>.

pushed into the underground economy because of the discrimination they experience due to their lack of proper identification, is released from prison unable to obtain correct documentation for two years, eventually forcing them to return to the underground economy and risk another conviction.

- **Publication Requirement:** A petitioner must publish notice of their intent to change their name in two general circulation newspapers in their community.<sup>20</sup> If the judge hearing the name change case rules that the notice requirement would jeopardize the petitioner’s safety, this requirement may be waived.<sup>21</sup>

This requirement should be removed, or, in the alternative, waiver of publication should be the default assumption in the case of name change petitions by transgender individuals. 20 states, the District of Columbia, and Puerto Rico all have no publication requirement for changes of name,<sup>22</sup> and NCTE is not aware of any negative consequences resulting from this lack. A newspaper publication risks outing a person’s transgender status to the community at large, which can lead to all the forms of discrimination detailed above. As the waiver of the requirement is at this discretion of the judge, a transgender petitioner’s safety relies on the judge fully understanding the enormity of the impact this discrimination has on transgender individuals’ lives.

In addition, even if a petitioner is granted a waiver of court fees, they will need to pay the full costs of newspaper publication, which can cost several hundred dollars.<sup>23</sup> As described above, transgender people often experience unemployment and may find this cost insurmountable, thereby preventing them from obtaining a name change that would remove a barrier to obtaining employment.

## Conclusion

All Pennsylvanians will benefit by affording transgender Pennsylvanians access to the identity documents necessary to participate in and contribute to their communities. Removing the remaining barriers to obtaining proper identity documents will help protect the safety and dignity of transgender Pennsylvanians, and help guarantee to them the inherent rights of personhood.<sup>24</sup>

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<sup>20</sup> 54 Pa. Cons. Stat. Ann. § 701(a.1)(3)(ii).

<sup>21</sup> *Id.* at § 701(a.1)(3)(iii).

<sup>22</sup> Movement Advancement Project, *supra* note 19.

<sup>23</sup> See Transgender Legal Defense & Education Fund, *Name Change Project Attorney Handbook for Allegheny County*, PA 14-15 (2018) found at:

[https://transequality.org/sites/default/files/docs/id/TLDEF%20Name%20Change%20Project%20Attorney%20Handbook%20\(Alegheny%20County%20PA\)%20revised%204.23.2018.pdf](https://transequality.org/sites/default/files/docs/id/TLDEF%20Name%20Change%20Project%20Attorney%20Handbook%20(Alegheny%20County%20PA)%20revised%204.23.2018.pdf)

<sup>24</sup> PENN. CONST. art. 1 § 1, “Inherent rights of mankind. All [people] are born equally free and independent, and have certain inherent and inalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.”