

The Gender Expression Non-Discrimination Act (GENDA)
Testimony on Behalf of
Legal Services-NYC
By Daniel F. Pepitone
at the Public Forum Called By
New York State Senator Daniel Squadron
& New York State Assembly Member Richard Gottfried
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Hello, I am Dan Pepitone and I am a staff attorney at Manhattan Legal Services. Thank you both for having me here today. As New York City's largest free civil legal services program, Legal Services NYC ("LS-NYC") regularly sees the discrimination experienced by lesbian, gay, bisexual and transgender ("LGBT") members of our community. The discriminatory treatment of transgender New Yorkers is particularly shocking, and exacerbated by poverty, race and lack of access to safe housing and healthcare. LS-NYC has responded to this need by expanding our LGBT advocacy, with projects now resident in our Manhattan, Brooklyn and Queens offices. Working closely with community partners and long-time defenders of transgender rights like Callen-Lorde Community Health Center and Sylvia Rivera Law Project, our advocates are challenging transgender discrimination through legal advocacy, law reform efforts and community education.

As a community-based program with deep neighborhood roots, our clients are our neighbors, family and friends—equally deserving of equal protection under the law. This past June, LS-NYC filed a lawsuit under the State Human Rights Law and the NYC Human Rights Law against the NYC Human Resources Administration ("HRA") on behalf of a Latina transgender woman living with HIV. Our client was harassed and demeaned by HRA staff based on her gender identity while being denied benefits and services routinely provided by the agency.

Our client's situation is all too typical. Imagine someone insisting on calling you by a name that isn't yours and maliciously referring to you by the wrong pronouns – "he, him, his or she, her, hers" – and refusing to stop no matter how many times you tell him your real name. This is the type of person transgender people frequently encounter when applying for a new public benefits card, recertifying for Medicaid or trying to prevent an eviction. Transgender individuals are constantly forced to accept this kind of harassment or give up on their benefits. That's not a choice that anyone should be forced to make, particularly at agencies that serve as a last defense against poverty, homelessness, and poor health. Individuals must be given the ability to access public accommodations and to do so in a manner equal to the rest of the population.

In a 2011 study of 6,450 transgender and gender non-conforming individuals, researchers found that while in grades kindergarten through 12, 78% of their subjects were harassed, 35% were physically assaulted and 12% were victims of sexual violence. 90% of the survey's respondents reported "experiencing harassment or mistreatment on the job or took actions to avoid it" and "26% of respondents said that they had lost a job due to being transgender or gender non-conforming." 28% of respondents reported that they postponed medical care due to discrimination, and 19% reported "being refused care due to their transgender or gender non-conforming status." Another 19% reported that they had been denied a home or apartment, and 11% were evicted because they were transgender or gender

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non-conforming. 44% of respondents reported being denied equal treatment or service in a place of public accommodation. Grant, Jaime M., Lisa A. Mottet, Justin Tanis, Jack Harrison, Jody L. Herman, and Mara Keisling. *Injustice at Every Turn: A report of the National Transgender Discrimination Survey*. Washington: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011, (pp. 33, 51, 72, 106, 124, 139).

The New York City Human Rights Law specifically prohibits discrimination based on gender identity and provides us with an important tool to protect the rights of our clients. We encourage the State Legislature to adopt a similar policy, as included in GENDA, which includes strict enforcement and comprehensive training for agencies who have proven to be the most egregious abusers of transgender individuals, including all state agencies, police, and corrections facilities.

One of the most urgent issues facing the low income transgender community is the difficulty they face in getting documents changed to match their new legal names and their lived gender identity. Having identification that matches their gender identity is essential to preserving the safety and confidentiality of transgender individuals. Despite the fact that 80% of transgender women and 95% of transgender men have not and may not have genital surgery, the Human Resources Administration and the NYS Department of Health require proof of genital surgery to correct the gender marker on documents including birth certificates and public benefits cards. Since genital surgeries are not covered by New York's Medicaid program, anyone currently enrolled would simply be unable to obtain a proper, gender-appropriate ID. The demand for proof of surgery reflects an archaic understanding of transgender identity and New York is embarrassingly behind the times on this issue. It is currently considerably easier for someone to correct the gender marker on one's passport than it is to update one's public benefits card, despite the fact that one's gender does not affect one's eligibility for public assistance or Food Stamps. Other state and federal agencies, including the United States Citizenship and Immigration Services, have altered their policies to replace the gender surgery requirement with a standard of appropriate clinical treatment.

We frequently hear stories from people who have been harassed, abused and refused access to benefits when they present identification that does not match their gender. For transgender individuals who receive Medicaid, many are denied appropriate care. With this, Legal Services NYC and our collaborative group, which includes Housing Works and the Transgender Legal Defense and Education Fund, is advocating for gender marker change policies that conform to modern standards of care and promote the equal treatment of transgender individuals. We propose policies that require agencies to update a gender marker when presented with a government-issued identification document that reflects the applicant's preferred gender or a letter from a licensed medical or mental health professional that confirms that the recipient has had appropriate clinical treatment for gender transition.

Transgender discrimination is one of the final frontiers of undisguised bigotry and fear. GENDA cannot tell people how to feel, but it can tell them what behaviors the law will not tolerate, and it is time for the laws to offer this protection to transgender New Yorkers simply living as themselves.