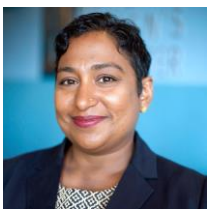




Webinar Series: Sex Discrimination against LGBTQI+ Individuals

Part I: Working on Sex Discrimination Cases With LGBTQI+
Individuals: An Introduction and Best Practices



Moderator: Sunu Chandy,
Legal Director,
National Women's Law Center
Pronouns: She/Her/Hers



Presenter: Demoya R. Gordon,
Supervising Attorney,
New York City Commission on Human Rights
Pronouns: She/Her/Hers



Presenter: michael munson,
Executive Director, FORGE
Pronouns: Any pronouns



Presenter: Julie Wilensky,
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Pronouns: She/Her/Hers



Presenter: Joseph J. Wardenski,
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Pronouns: He/Him/His



Demoya Gordon

- Supervising Attorney, New York City Commission on Human Rights
- Pronouns: She/Her/Hers

Terms and Concepts

- **Sex assigned at birth:** the sex designation given to a person at birth. Avoid use of term “biological sex.”
- **Gender identity:** an individual’s innate sense of being male, female, or another gender. Not necessarily the same as sex assigned at birth. Primary determinant of a person’s sex.
- **Gender expression:** refers to the way a person expresses gender through dress, grooming habits, mannerisms, and other characteristics.
- **Transgender:** refers to people whose innate sense of being male, female, or something else, differs from their assigned sex at birth.
- **Cisgender:** refers to people whose gender identity is the same as their assigned sex at birth.
- **Transgender woman:** a woman who was assigned the sex of male at birth.
- **Transgender man:** a man who was assigned the sex of female at birth.
- **Gender Dysphoria:** clinically significant distress that some transgender people experience due to the fact that their gender identity is different from the sex they were assigned at birth.

Terms and Concepts

- **Non-binary:** refers to a person whose gender identity is not exclusively male or female. For example, some people have a gender identity that blends elements of being a man or a woman or a gender identity that is neither male nor female.
- **Gender-nonconforming:** a term used to describe people who do not meet society's expectations of gender roles.

Terms and Concepts

“Transition” or “gender transition” is the period during which a transgender person begins to live more fully as their true gender, which may include any combination of the following: alterations to dress and other aspects of outward appearance; use of a different pronoun or name; changes to legal documents; hormone therapy; or gender **affirming** surgeries.

Terms and Concepts

- Transition does NOT mean:
 - That all transgender people have the same experiences.
 - That all transgender people must undergo a certain set of social and medical processes in order to have their gender recognized.
 - That there is a set beginning point and end point.
 - That a transgender person must have a certain anatomy before they can be treated as who they are as men, women, neither, or both.

Terms and Concepts

Regarding Surgery:

- Not the end goal for all trans people
- Inappropriate to ask
- Unless the case is about this type of medical care or treatment, no one needs to know

Terms and Concepts

- **Intersex:** An umbrella term used to describe a wide range of natural bodily variations. Intersex people are born with sex characteristics that do not fit typical binary notions of bodies designated “male” or “female.” Experts estimate that between 0.05% and 1.7% of people are born with intersex traits.

Terms and Concepts

- **Sexual Orientation:** Separate from gender identity, gender expression, etc. This has to do with who a given person finds romantically or sexually attractive.
- **Lesbian** - Refers to a woman who is primarily romantically or sexually attracted to other women. Lesbian refers exclusively to women, while gay can refer to either women or men.
- **Gay**- A term that can be used to describe either a male whose primary sexual or romantic attraction is to other males or to reference anyone whose primary sexual or romantic attraction is to a person who is the same sex as themselves.
- **Bisexual**- A sexual orientation or identity describing one's sexual or romantic, or affectional attraction to more than one sex/gender, or as attraction to same and different sexes/genders from your own. This is a community identity label, and individuals may use a variety of personal identity labels for themselves, including **pansexual**, which is attraction to people regardless of gender, or attraction to all genders.
- **Queer**- originally a slur, it is an umbrella term used by people who reject conventional categories such as LGBT or embrace a political identity as 'queer' in addition to being LGB or T. While many people identify with this term, others still do not. It can also still be used as a slur. It should be used only when the person self-identifies as queer.
- **Straight**- a sexual orientation describing a person whose sexual or romantic attraction is to people of a different sex. Also known as heterosexual.

How big is the transgender community?

- There is to date no nationwide collection of this data.
- Many transgender people do not readily disclose their transgender status.
- The Williams Institute at UCLA School of Law estimated in 2016 that there were 1.4 million transgender adults in the United States or 0.6% of the U.S. population.
- This estimate is double the estimate that The Williams Institute made in 2011.

How big is the LBG community?

- An estimated 3.5% of adults in the United States identify as lesbian, gay, or bisexual
- Over 8 million adults in the U.S.

Terms to Avoid

- A transgender
- Transgendered
- Hermaphrodite
- Slurs (heshe, shemale, etc.)

Terms to Avoid

- Homosexual- this is an outdated term that most people do not use to identify their sexual orientation.*
- Sexual preference- Sexual orientation is not a preference or a “lifestyle.” “Sexual orientation” should be used when talking about someone’s attraction to another person.
- Slurs* (“homo,” “dyke,” etc.)

* There are some people who use these terms to describe their identity. You should not use these terms unless the person indicates it is what they wish YOU to call them.

LGBT people face discrimination in
many contexts

Findings from Lambda Legal's *Protected and Served?* *Government Misconduct Community Survey*

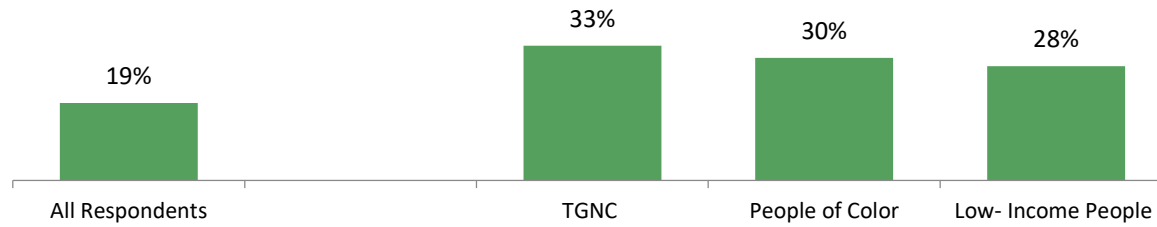
- 2,376 people were surveyed
- **43%** had been involved in the court system in the past five years.
- Of these respondents:
 - **61%** were a party to a case
 - **44%** served as jurors
 - **21%** were witnesses
 - **19%** were attorneys

Findings from Protected and Served?

- **19 %** of those surveyed heard a judge, attorney or other court employee make negative comments about a person's sexual orientation, gender identity or gender expression
- **6%** heard negative comments about an individual's HIV status

Findings from Protected and Served?

- While 19% of survey respondents with court involvement heard discriminatory comments in the courts, certain groups reported them at much higher rates:



- 66% of transgender women heard negative comments about an LGBT person made by a judge, attorney, or other court employee.
- 43% of Native American, 34% of Latinx, and 27% of African American respondents heard such negative comments.
- 24% of respondents with disabilities and 28% of POC under 30 years heard such negative comments.
- More than half of TGNC POC (53%) heard negative comments about LGBT people from a judge, attorney, or other court employee.

Findings from Protected and Served?

- Of court-involved respondents, 16% reported that their LGBT identity was raised in court when sexual orientation and gender identity were not relevant to the case
- 11% reported that their sexual orientation or gender identity was made known in court against their will.
- 15% reported having their HIV status raised in court when it was not relevant to the case

Ethical Considerations

ABA Model Rules of Professional Conduct

Rule 1.1: Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Ethical Considerations

Rule 1.6 Confidentiality Of Information

- (a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).
- (b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:
- (1) to prevent reasonably certain death or substantial bodily harm;
 - (2) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services;
 - (3) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;
 - (4) to secure legal advice about the lawyer's compliance with these Rules;
 - (5) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;
 - (6) to comply with other law or a court order; or
 - (7) to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client.
- (c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

The Second Circuit recognized in *Powell v. Shriver* that transgender people have a constitutionally protected interest in privacy regarding their transgender status. 175 F.3d 107, 111 (2d Cir. N.Y. 1999).

Ethical Considerations

Model Rules of Professional Conduct- ABA

Maintaining The Integrity Of The Profession

Rule 8.4 Misconduct

- It is professional misconduct for a lawyer to:

. . .

(g) engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law. . . .

Ethical Considerations

- Several Jurisdictions have adopted ethical and other rules prohibiting attorneys from discriminating against LGBT people, including:
 - NY
 - CA
 - CT
 - MA
 - VT

Best Practices

Ways to create respectful environment

- Think of the big picture

What will the experience be for a client from the first interaction with staff, security, or you through to the completion of the case?

Best Practices

- Front line staff should be trained.
- Security staff should be prepared for your client.
- Providing identity to security can be very intimidating.
- Change intake forms to include the pronouns and the name a person wants used.

Best Practices

- Don't make assumptions
- Refer to someone by their affirmed name, not their legal name (if there is a difference)
- Ask what pronouns they want to be referred by **AND** offer yours as well
- Apologize and acknowledge when you've made a mistake on someone's pronouns. Do not make excuses or act like it didn't happen
- Keep educating yourself

Best Practices

- Avoid using gendered language such as “Ms.” or “Mr.”, “ladies” or “gentlemen” until you are sure of the gender identity of the parties
- Dress codes should not be enforced by gender. Transgender and gender non-conforming people must be allowed to dress consistently with their gender identity or gender expression.

Best Practices

- Avoid making heterocentric statements or asking heterocentric questions about clients and colleagues.
- Do not assume your client is struggling with identifying as LGBT. But, be mindful of the high risk for feelings of isolation, depression, anxiety, shame, guilt, loneliness, fear, and stigma in the LGBT population due to lack of support.

Best Practices

- Always use the pronouns and titles that align with a client's gender identity in court and court documents.
- Take the lead on informing the court of a client's pronoun or honorific.
- Ask for a sidebar or bench conference to address the issue instead of addressing it publicly, if necessary.

Best Practices

- Use the clients preferred name in the courtroom, EVEN if it is not their legal name.
- Especially when talking about your client to the court or in making a name known to the other people in the courtroom.
- Challenge the assertion that using legal name is necessary or required.

Best Practices

Address Explicit Bias and Disrespect

- Immediately respond to jokes or disrespectful comments.
- If during a court hearing, judges and attorneys should respond promptly.
- If on the record, the response and any reference to the response should also be on the record.

Best Practice Evidence

- Oppose the introduction of evidence of actual or perceived sexual orientation, sexual conduct, gender identity or expression, or HIV status unless these characteristics are relevant to an issue in the proceeding
- Oppose the introduction of such evidence in an attempt to embarrass an individual, attack his or her character, or play to the biases of decision-makers.



Michael Munson

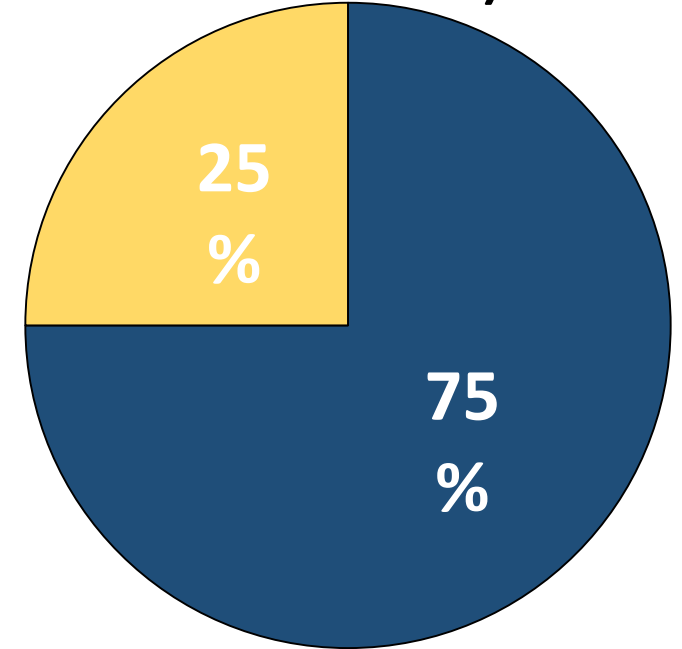
- Executive Director, FORGE
- Pronouns: any pronouns

Who is FORGE?

25
yo



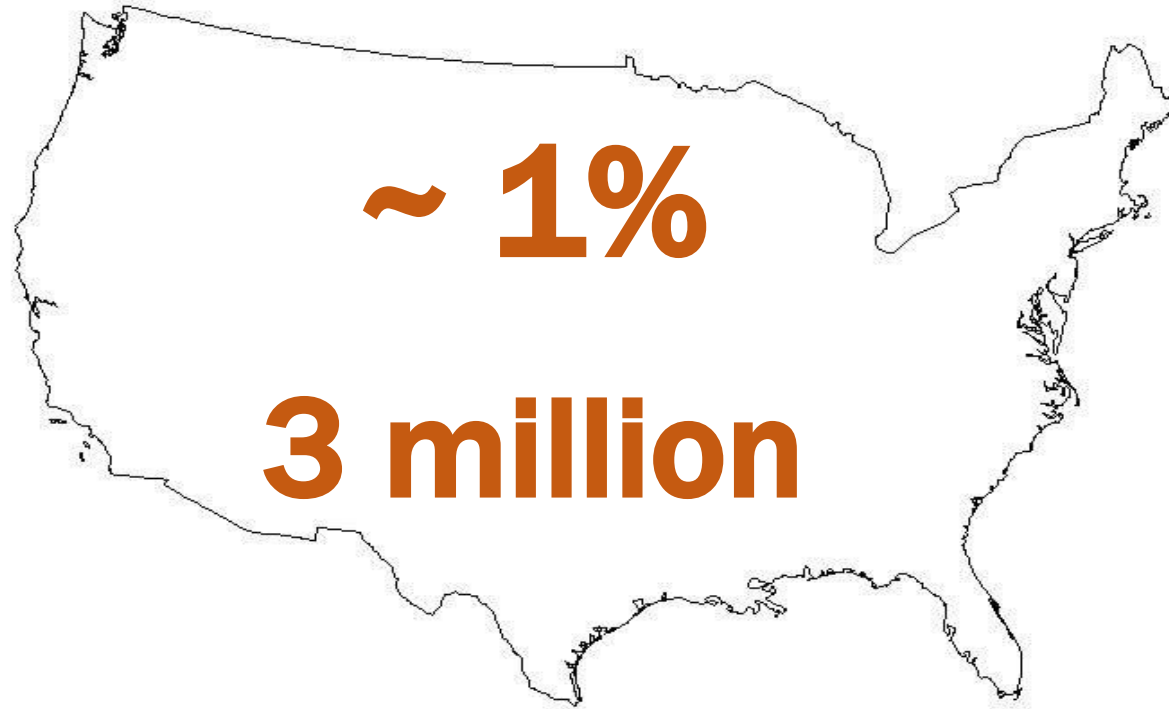
Direct service / TTA



Quick Trans 101 Review!

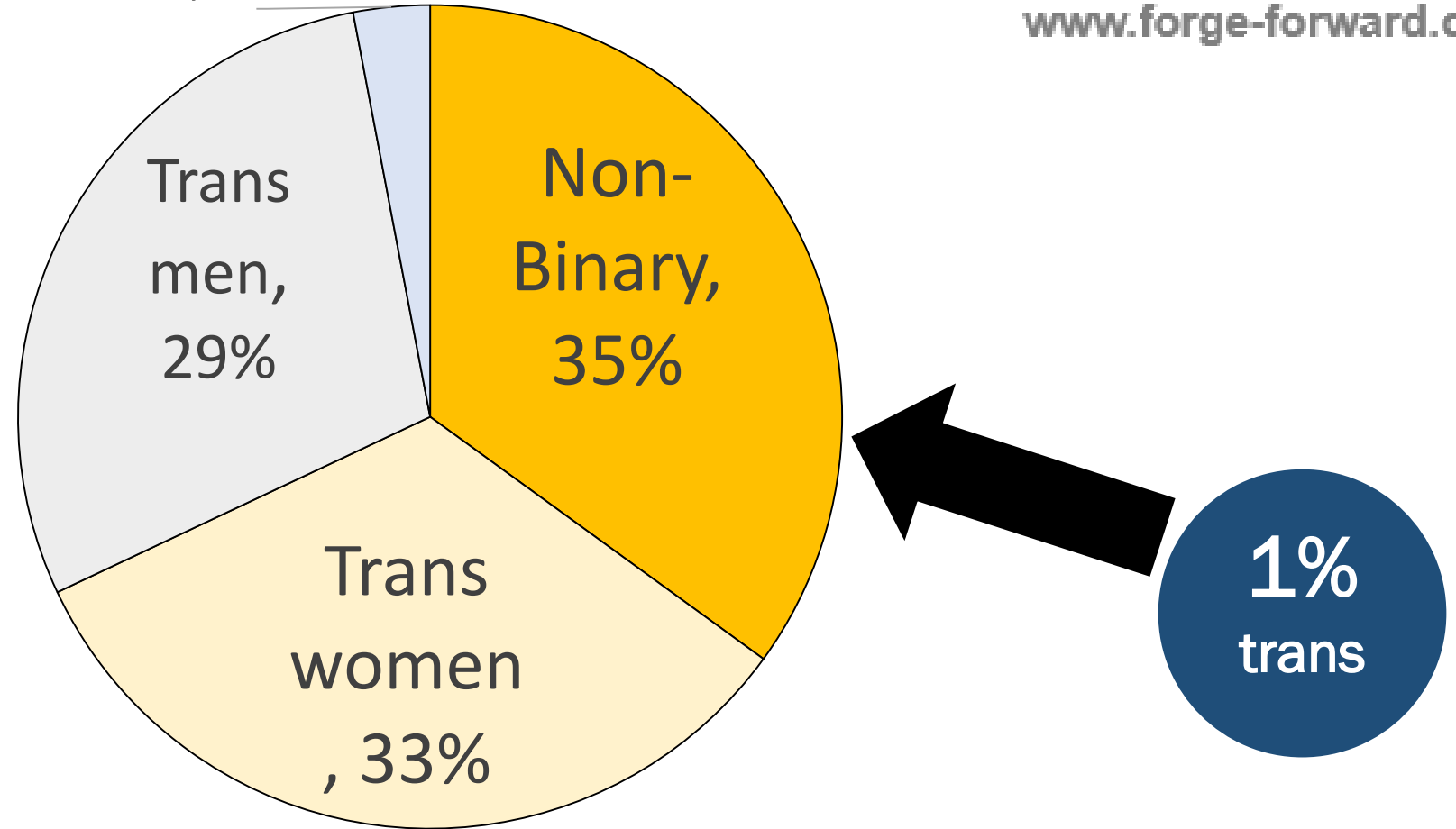
How many people are trans?

US population = 318,857,056



Breaking it down

Crossdressers, 3%



Source: USTS, 2016 (n=27,715)

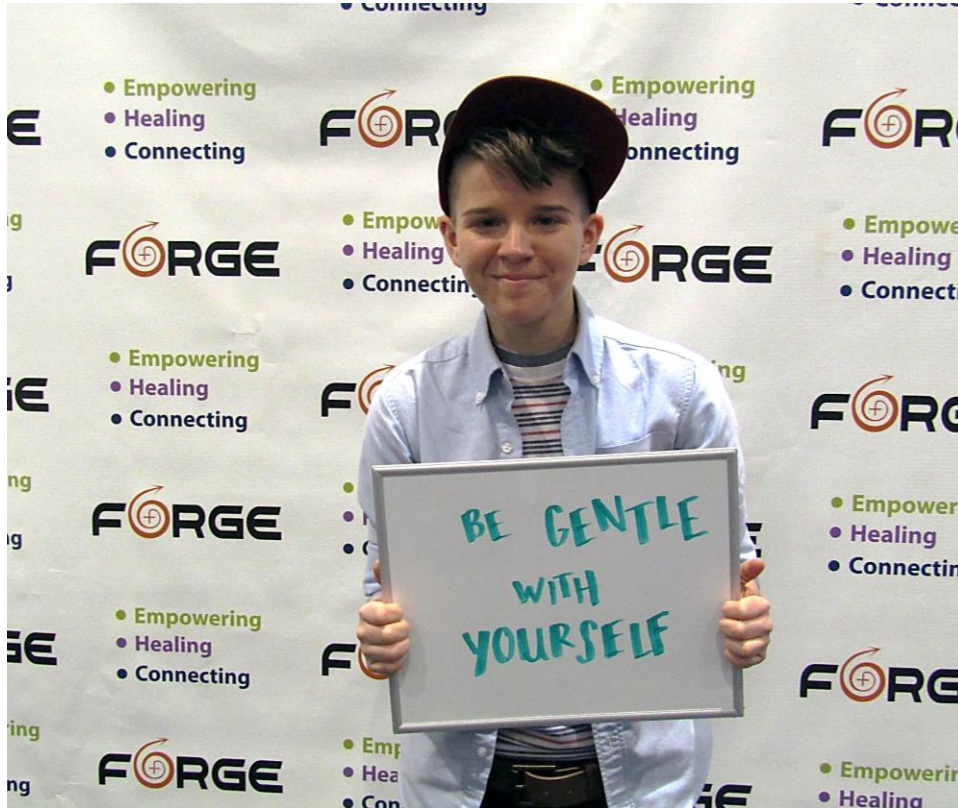
Growing non-binary population

4.5%

of youth aged 12 to 17
said they are gender
non-conforming

Source: UCLA Center for Health Policy Research (CHIS) (2016)

Non-binary people...

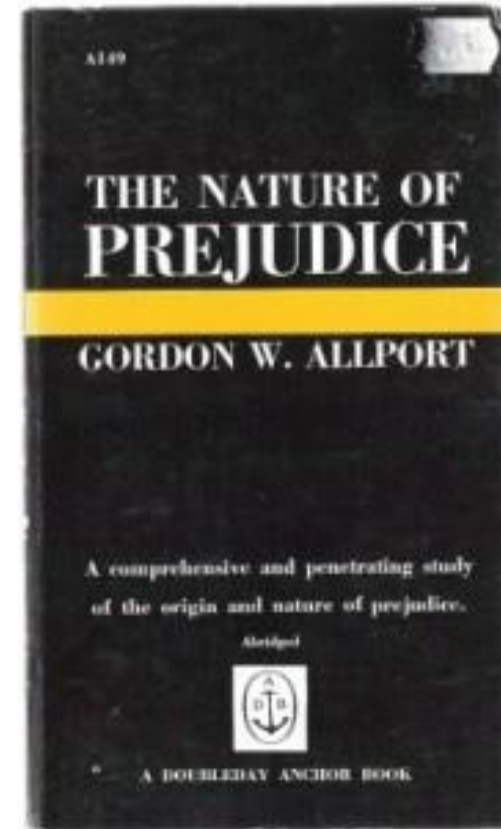


...do not adhere to “binary” (male/female) expectations and cultural norms with respect to gender identity, roles, or expression—whether intentionally or unintentionally.

3 Guiding Principles

1a. Master Status

- 1940s - Everett Hughes defined it as “master status.”
- 1954 - G. Allport, in his book, The Nature of Prejudice, named it the “label of primary potency.”



1b. Master Status / Primary Potency

- Both terms refer to the tendency of observers to believe that one label or demographic category is “more significant than any other aspect of [the observed person’s] background, behavior, or performance.”

**WHITE
BLACK**

1c. Master Status in Action

When professionals can't see past the T

- When a professional makes gender the primary issue vs. the issues a client prioritizes
 - Curiosity (trans history and experiences)
 - Types of questions (focus on transness)
 - Invasive questions (inappropriate)
 - Redirecting conversation (back to transness)
 - Causality / correlations (possibly false or true)

**When someone shares that they
are trans or non-binary, it
doesn't necessarily tell us very
much about who they are**

2a. Terms Paradox: Definition

- **Terms are CRUCIAL**

- Finding out what terms the person uses and then using their language is a primary way of conveying respect and openness.

AND...

- **Terms are MEANINGLESS**

- Terms tell you none of what you need to know to provide appropriate services.

2b. Terms Paradox: Example

“Masculine of Center”

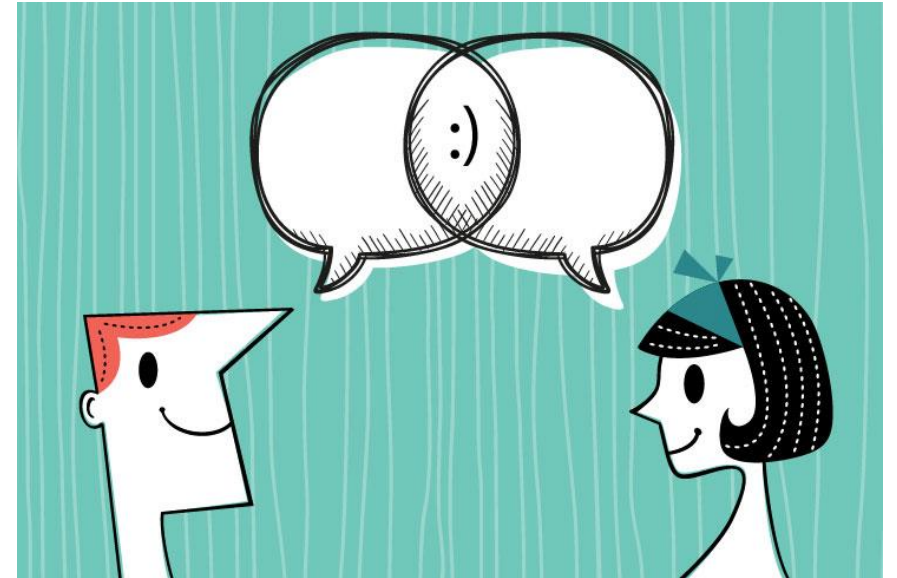
Terms are CRUCIAL

AND...

Terms are MEANINGLESS

3a. Person-centered approach

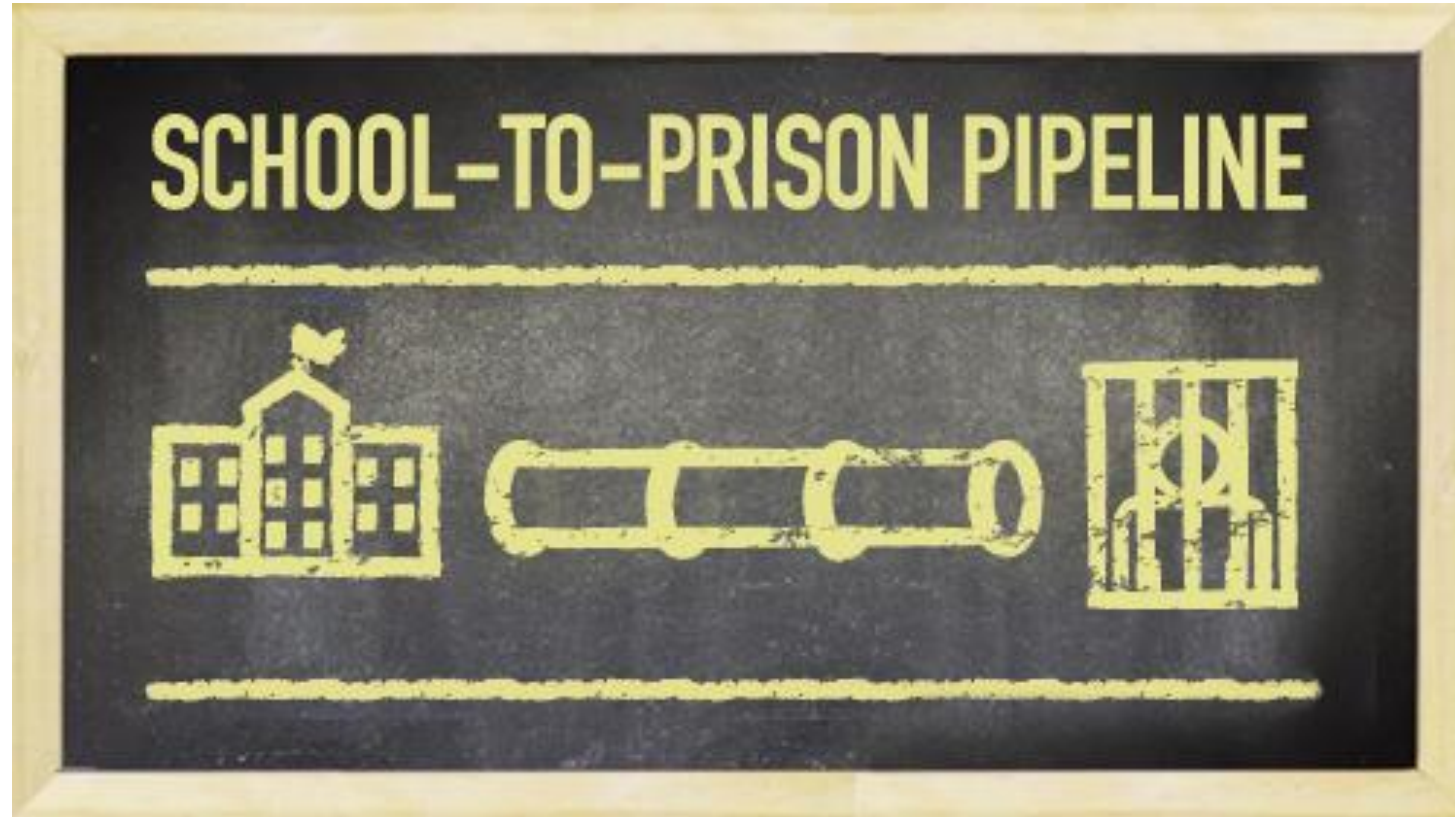
- Client-driven language
- Acknowledge the centrality of their identity (which might not be trans!)
- Mirror client's language
 - Creates resonance and trust



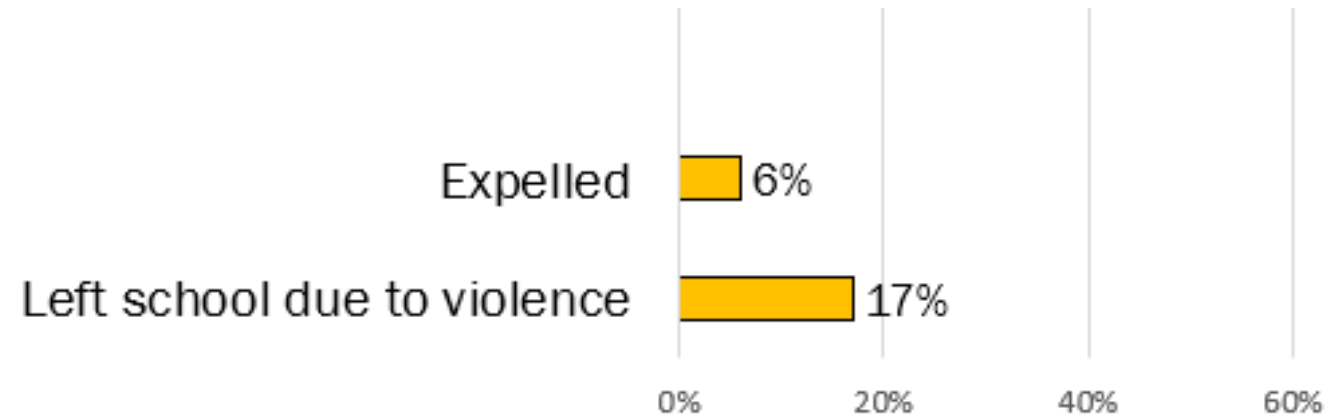
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Trans-specific barriers

1a. Limited work experience?

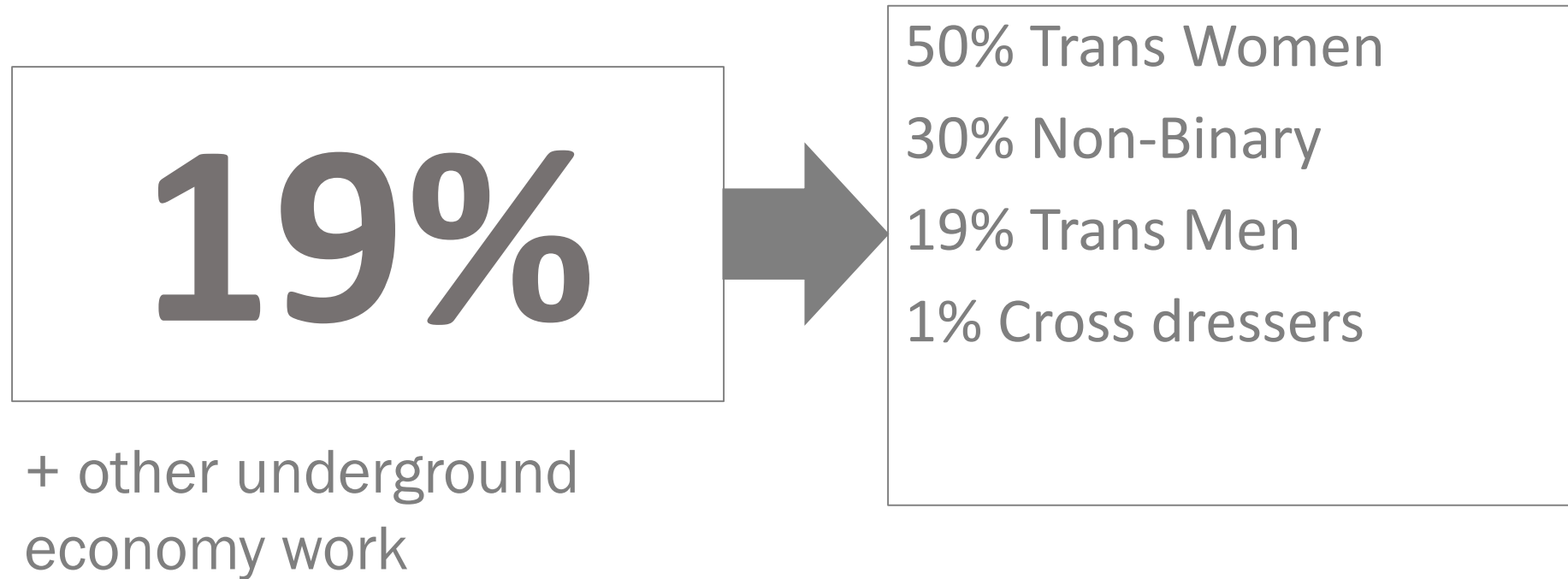


Left school due to violence



Source: USTS, 2016 (n=27,715)

Sex Work



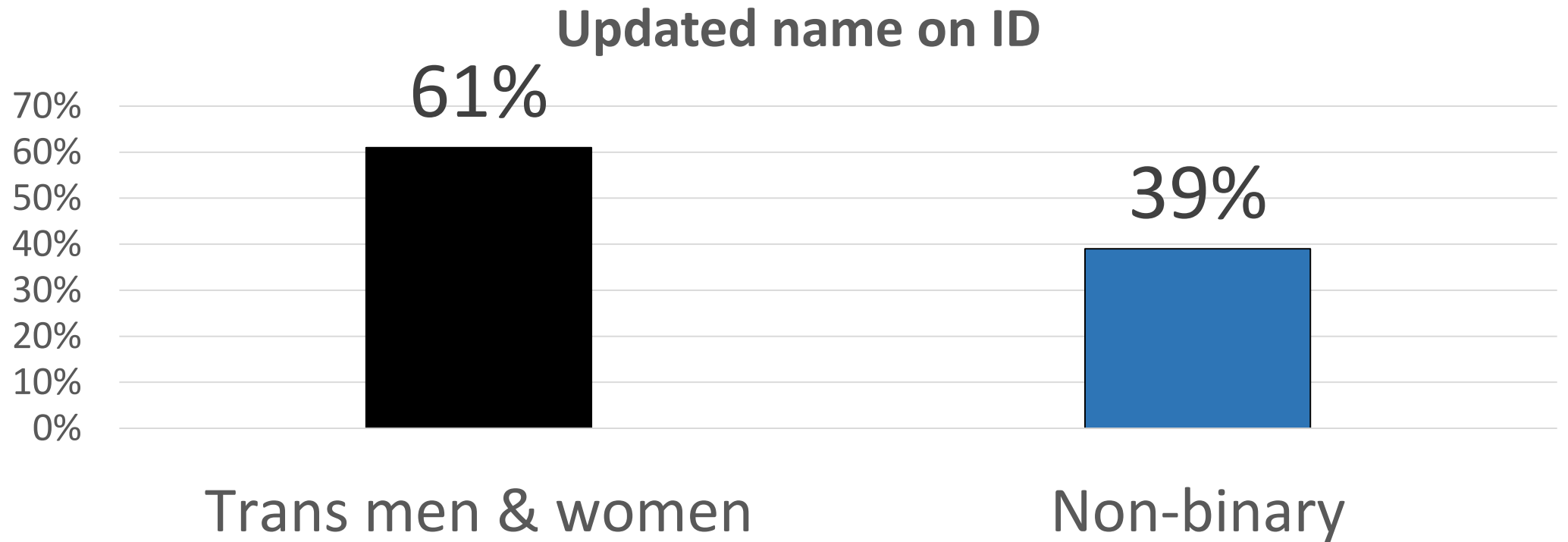
Source: USTS, 2016 (n = 27,715)

Actions taken to avoid workplace discrimination and mistreatment

They had to hide their gender identity	53%
They did not ask employer to use their correct pronouns	47%
They delayed their gender transition	26%
They stayed in a job they would have preferred to leave	26%
They hid the fact that they had already transitioned gender	25%
They kept a job for which they were overqualified	24%
They did not seek promotion or raise	13%
One or more experiences listed	77%

Source: USTS, 2016 (n=27,715)

2. Identity documents

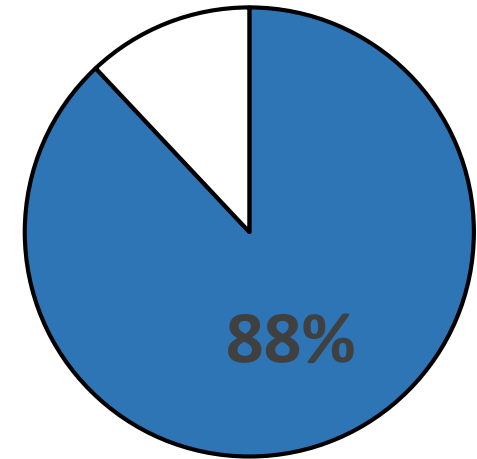


Source: USTS, 2016 (n = 27,715)

ID docs and binary systems

Nearly all non-binary individuals who indicated that none of their IDs or records had their current gender reported it was because the available gender options (male or female) did not fit their gender identity.

Gender Options
Didn't Fit Identity



Source: USTS, 2016 (n = 27,715)

2. Law enforcement

51-71%

Never or only sometimes
treated with respect by
LE in the past year

51% trans women | 62% trans men | 71% NB

Source: U.S. Trans Survey (2016)

4. Expecting to be harassed

what if this is
as good as it gets

- e.g. “This is what it’s like to be a woman”
- e.g. “This is what men do. Man up – this is just locker room talk”

6

(totally free and easy) things you can do

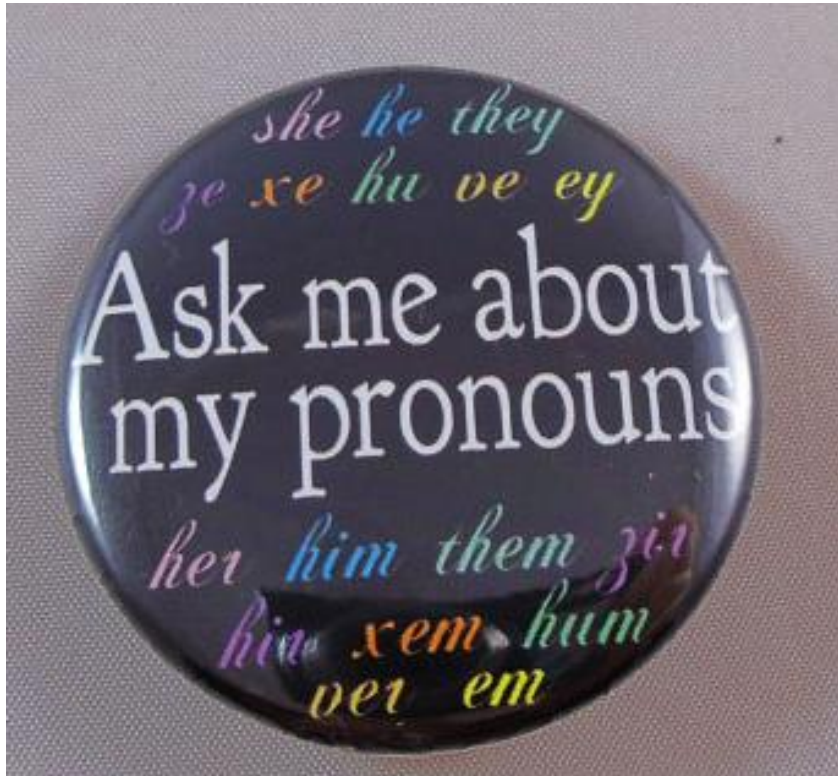
Micro-INCLUSIONS

Micro-INCLUSIONS

Micro-inclusions are a small step to include someone.

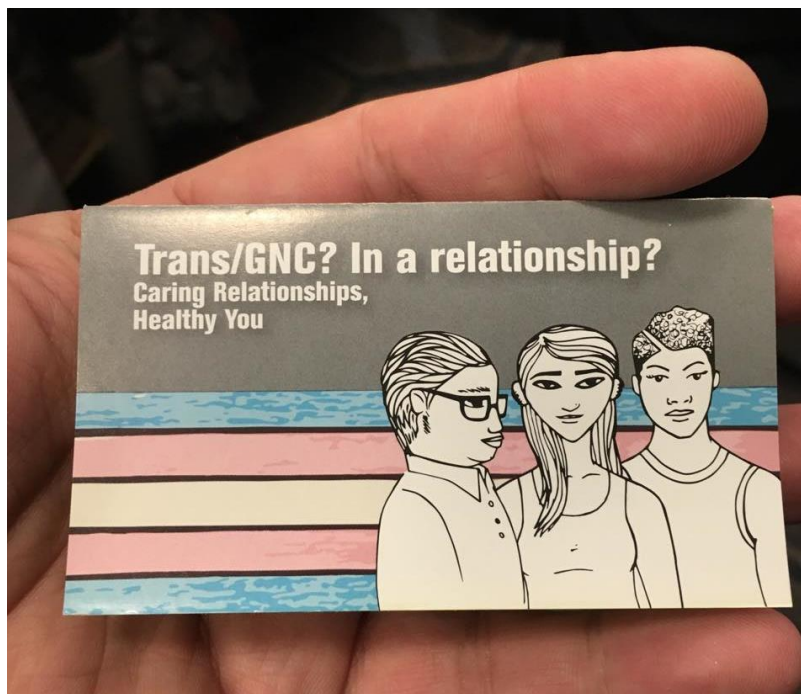
On a bigger scale, **micro-inclusions are symbolic**

1. Name and Pronoun



2. Inclusive Literature

futureswithoutviolence.org/lgbt-health-cards/



2b. I'm here for you cards

I'm here for you!

I will believe you. I will listen. I will be patient.

I'd be happy to...

<input type="checkbox"/> Go for a walk with you	<input type="checkbox"/> Run
<input type="checkbox"/> Get some coffee/tea	<input type="checkbox"/> Hang out
<input type="checkbox"/> Make art/get crafty together	<input type="checkbox"/> Just be with you
<input type="checkbox"/> Listen to music with you	<input type="checkbox"/> Make a meal
<input type="checkbox"/> _____	
<input type="checkbox"/> _____	
<input type="checkbox"/> _____	
<input type="checkbox"/> _____	

#TransToo

Transgender and non-binary people experience high rates of sexual assault, coercion, threats, and other forms of sexual violence. **You are not alone.** Over 50% of transgender and non-binary people have experienced some form of sexual violence. There are many people who care about and support you, and want to see you **survive, heal, and thrive.**

Believe that you are **strong, resilient**, and that **healing is possible.** Please use this card any time you need some extra support.

FORGE
forge-forward.org

#TransToo

I'm here for you!

3. Accessible bathrooms



4. Gender-inclusive language

“Thanks, **friends**.
Have a great
night.”

“Good morning,
folks!”

“Hi, **everyone!**”

“And for **you?**”

“Can I get
you **all**
something?”

Why?

Shifting to gender-inclusive language respects and acknowledges the gender identities of all people and removes assumption.

Be mindful of language

Based on Toni Latour’s “Hello there” cards.

Learn more at qmunity.ca

5. See and affirm resilience



6. Stay person-(or issue)-centered



Stay connected with FORGE



FORGE.trans



@FORGEforward



@FORGE_forward

Thank you!

michael munson

mmunson@forge-forward.org



Julie Wilensky

- Senior Staff Attorney, National Center for Lesbian Rights
- Pronouns: She/Her/Hers

LGBTQI+ People Face Widespread Discrimination in the Workplace

- LGBTQI+ people face discrimination in many areas: employment, education, housing, encounters with law enforcement/courts, health care, public accommodations, prisons & jails
- LGBTQ people of color are more than twice as likely as white LGBTQ people to have personally experienced discrimination in applying for jobs (NPR/Robert Wood Johnson Foundation/Harvard T.H. Chan School of Public Health, *Discrimination in America: Experiences and Views of LGBTQ Americans*)
- Transgender people (especially those who are POC or disabled) experience extremely high rates of workplace discrimination
 - *2015 US Transgender Survey*: 27% of respondents who had or applied for a job in the past year were fired/forced to resign, not hired for a job they applied for, or denied a promotion *in that year* due to their gender identity/expression

Employment Discrimination in the Context of LGBTQI+ Poverty

- LGBTQ people live in poverty at disproportionately high rates (Hunter et al., *Intersecting Injustice: A National Call to Action*)
 - LGBTQ people of color, particularly those who are transgender or gender nonconforming, experience the highest rates of poverty, discrimination and violence
 - Food insecurity: more than 1 in 4 LGBTQ people (and 37% of Black LGBTQ people) experienced a time in the last year when they didn't have enough money to feed themselves or their family
 - LGBTQ people have higher rates of unemployment/under-employment, housing instability and homelessness

Common Ways LGBTQI+ Individuals Experience Discrimination in the Workplace

- Forms of discrimination include:
 - Failure to hire, other barriers to accessing employment
 - Firing, denials of promotion, pay disparities
 - Harassment or mistreatment on the job
 - Verbal harassment (slurs, misgendering, deadnaming)
 - Physical/sexual assault
 - Sharing of confidential/personal information
 - Access to sex-separated facilities, sex-specific uniforms/dress codes
 - Discrimination in employee benefits (family leave policies, health benefits)
- Examples of ways LGBTQI+ people experience these forms of discrimination

LGBTQI+ People and Workplace Harassment

- Legal claims under federal, state, and local laws
- Overlap between anti-LGBTQI+ bias and sex harassment - examples from cases
- Prevalence of avoidance behaviors among LGBTQI+ people, especially transgender people, due to fear of discrimination
- Heightened vulnerability of LGBTQI+ people of color to workplace harassment



Joseph J. Wardenski

- Counsel, Relman, Dane & Colfax PLLC
- Pronouns: He/His/Him

Statistics from 2015 U.S. Transgender Survey

- **High poverty and unemployment**

- 29% of transgender people live in poverty, compared to 12% of the overall population
- 15% of transgender people are unemployed, compared to the overall 5% employment rate at time of survey

- **Barriers to housing**

- 16% of respondents owned a home, compared to 63% of U.S. population
- 30% of transgender people have been homeless at some point in their lives, including 12% in just the previous year

Statistics from 2015 U.S. Transgender Survey (continued)

- **Access to Health Care**

- 33% of survey respondents experienced discrimination or harassment from a health care provider in the previous year
- 23% did not seek needed health care out of fear of discriminatory treatment, and 33% because they could not afford it
- 55% of transgender people who sought insurance coverage for transition-related surgery in the previous year, and 25% who sought coverage for transition-related hormone treatments in the previous year, were been denied insurance for those services

Common Types of Housing Discrimination

- Differential treatment by landlords and rental/sales agents during housing searches
 - Incorrectly informed housing is unavailable
 - Shown less desirable units
 - Given less desirable pricing and incentives
- Outright denial of housing
- Discrimination and harassment by housing providers, staff, and neighbors

Housing Discrimination: Statistics

- **Same-sex couples and lesbian, gay, and bisexual people**
 - In 2014-15 Virginia study, 44% of same-sex couples and 50% of gay male couples experienced differential treatment in housing searches (HOME of Virginia study)
 - In study published in 2017 of rental housing in DC, Dallas, and LA, gay male couples were less likely to be shown a unit, shown fewer units overall, and quoted rents an average of \$272 higher than other couples (Urban Institute)
- **Transgender people**
 - 23% of respondents experienced housing discrimination in the last year (2016 U.S. Transgender Survey)
 - In Boston-area study, transgender housing testers seeking rental housing experienced disparate treatment compared to their cisgender counterparts over 60% of the time (Suffolk Law School testing study, 2015-2016)

Housing Discrimination: Case Examples

- ***Smith v. Avanti***

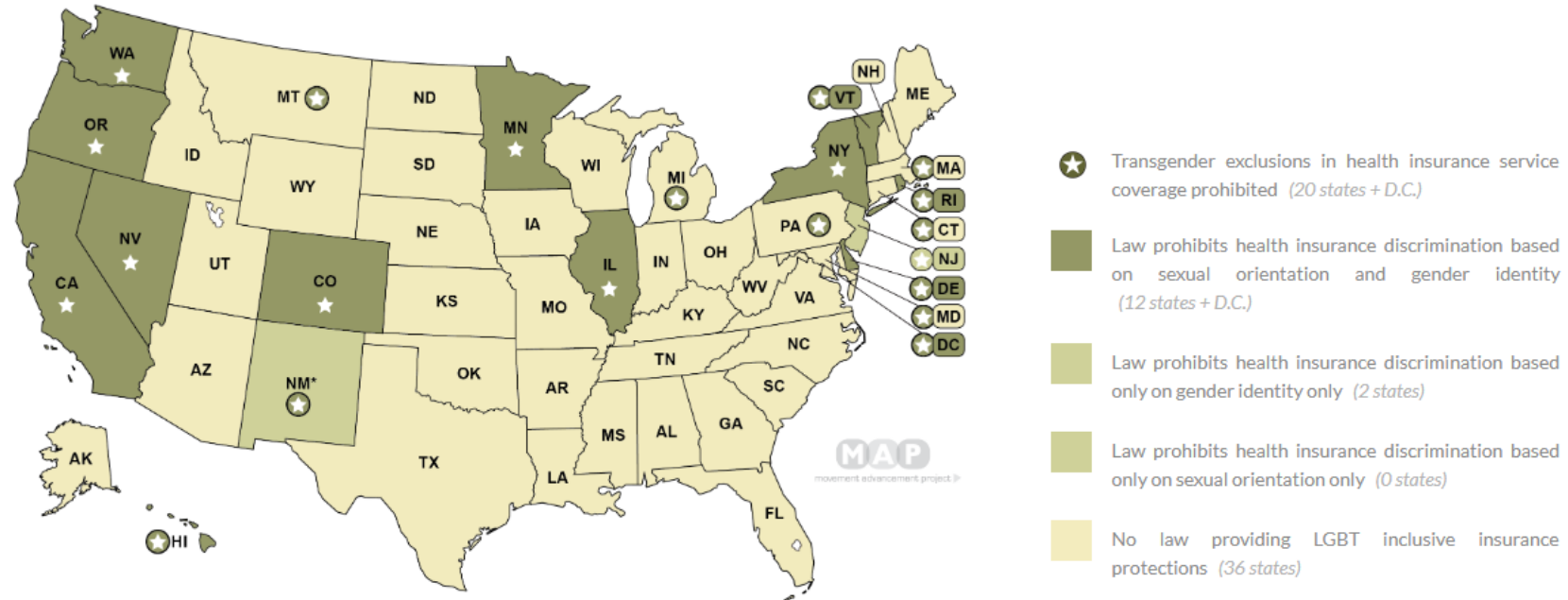
- A Colorado landlord told a same-sex couple that she would not rent to them and their children because of their “unique” family
- In 2017, a federal court found that a landlord’s denial of housing to a same-sex couple because of their relationship was illegal sex discrimination in violation of the federal Fair Housing Act

- ***Walsh v. Friendship Village of South County***

- Mary Walsh and Bev Nance, a married couple, were denied housing at a St. Louis-area senior living community based on a policy that only different-sex married couples could live there
- Case is pending in the Eighth Circuit Court of Appeals

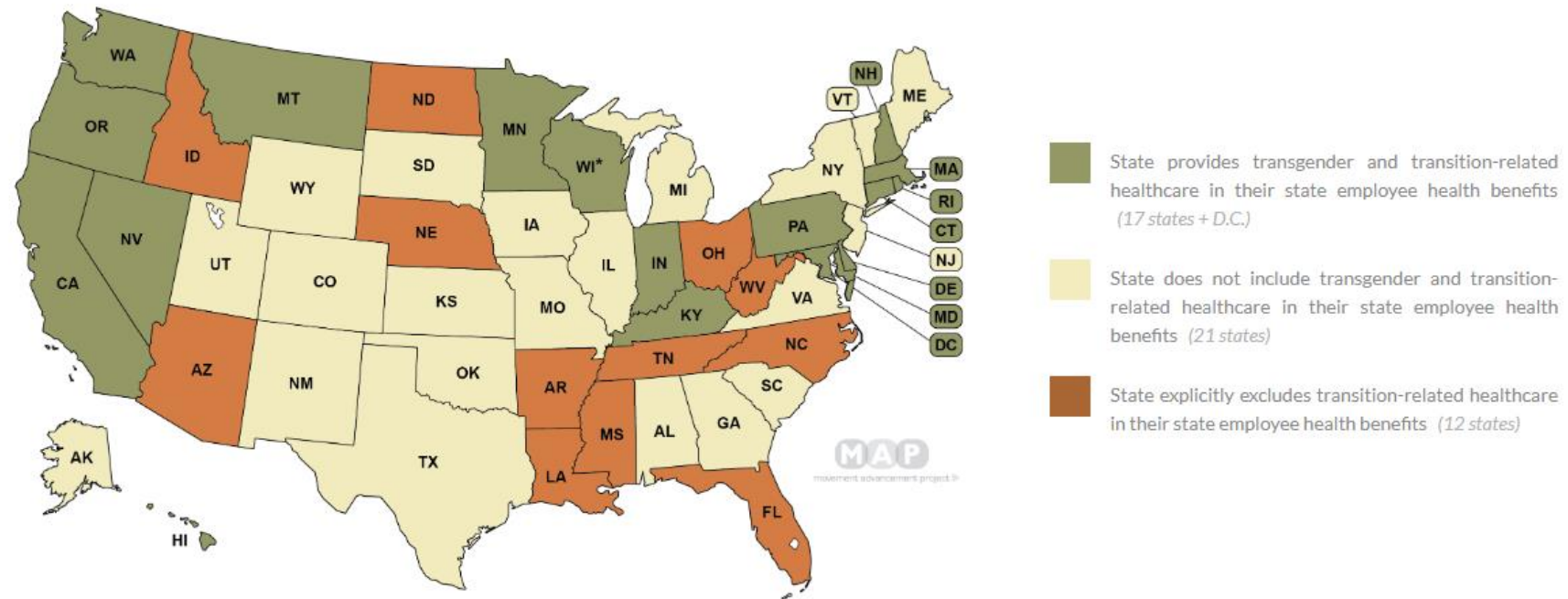


Health Insurance Discrimination: Private Plans



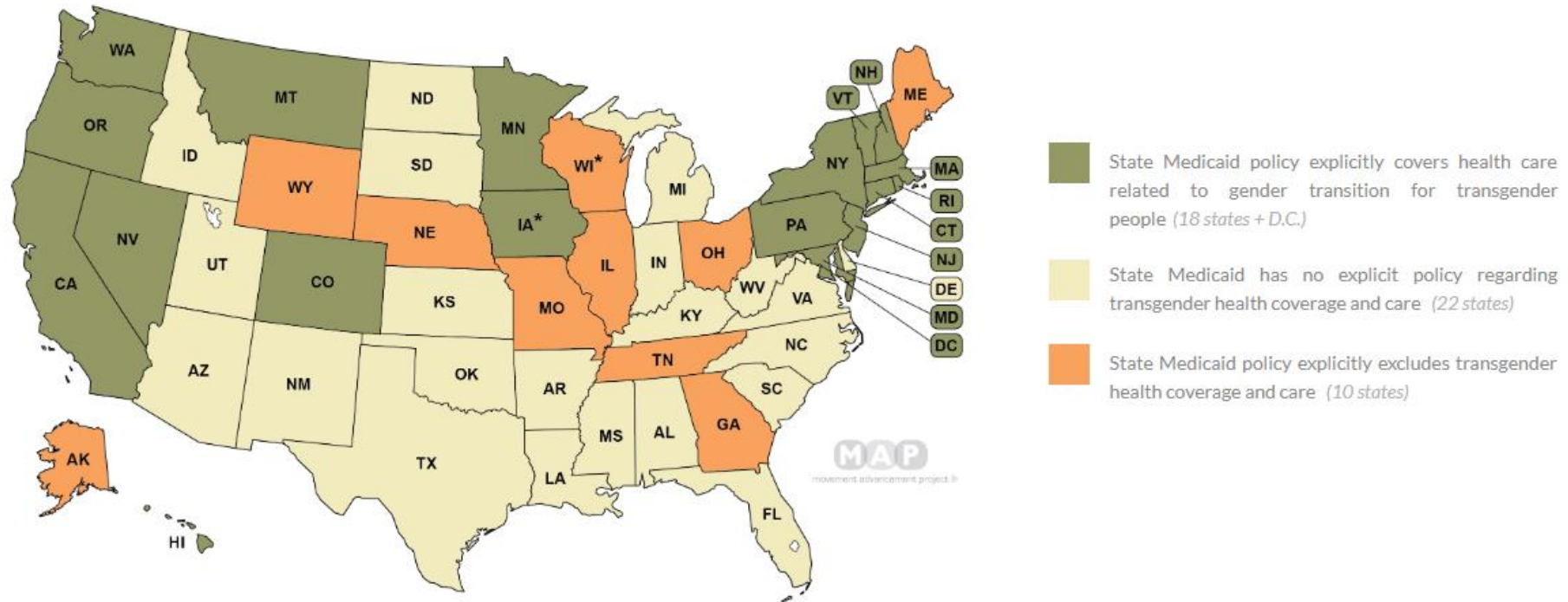
Source: Movement Advancement Project

Health Insurance Discrimination: State Employee Plans



Source: Movement Advancement Project

Health Insurance Discrimination: State Medicaid Plans



Source: Movement Advancement Project



Case Example: *Flack v. Wisconsin Dep't of Health Services*

- Lawsuit challenging Wisconsin Medicaid's categorical exclusion on transition-related surgical and hormone treatments
- In 2018, a federal judge held that the policy harms transgender Medicaid beneficiaries and was likely to violate federal laws prohibiting discrimination in health care

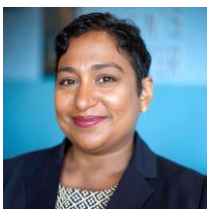
Case Example:

Flack v. Wisconsin Dep't of Health Services

- The Court found that:
 - “As a group, transgender individuals have been subjected to harassment and discrimination in virtually every aspect of their lives, including in housing, employment, education, and health care.”
 - “30% of transgender adults in Wisconsin have been denied insurance coverage because of their transgender status.”
 - “Further, visibly gender nonconforming transgender individuals suffer worse health outcomes and more discrimination than transgender individuals whose appearance aligns with their gender identity. Gender-confirming medical care may decrease mistreatment caused by being visibly gender-nonconforming.”

Concluding Thoughts

- Discrimination and lack of access to housing, health care, and equal treatment in other aspects of their lives is often interrelated with LGBT people's experiences in the workplace or when seeking employment



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Pronouns: She/Her/Hers



Presenter: Joseph J. Wardenski,
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Pronouns: He/Him/His

THANK YOU

Merci beaucoup *Thank You*
Danke *Gracias* お疲れ様
Grazie *Danke u*
Thanks 谢谢你 *Obrigado*