Transgender Decarceration Guide: Representing Gender Expansive People in Federal Criminal and Post-Conviction Cases

JUNE 2026

HARVARD LAW SCHOOL
LGBTQ+ Advocacy Clinic

LEGAL SERVICES CENTER
LSC
CENTER DE SERVICIOS LEGALES
HARVARD LAW SCHOOL

www.legalservicescenter.org
www.hlslgbtq.org

ISBN: 979-8-9967924-0-5

Disclaimer: *This guide is intended for informational purposes only, to be used as a tool for attorneys and advocates, and does not constitute legal advice. For advice regarding your specific situation, consult a qualified attorney licensed in your jurisdiction. While every effort has been made to ensure the information is accurate and current at the time of publication, laws and circumstances in this area of practice are shifting rapidly and may have changed since this guide was finalized or published.*

HARVARD LAW SCHOOL
LGBTQ+ Advocacy Clinic

Transgender Decarceration Guide: Representing Gender Expansive People in Federal Criminal and Post-Conviction Cases

Date of Publication: June 2026

Faculty Author: Deborah Lolai, Clinical Instructor and Lecturer on Law, LGBTQ+ Advocacy Clinic at the Legal Services Center of Harvard Law School.

Student Authors: Alis Yoo '25; Anabel Masaschi '26; Ashley Bae '28; Ava Pacchiana '27; Avik Sarkar '28; Brooke Langis '28; Claudia Fontanet '26; Delia McDevitt '26; Ethan Johnstone '26; Hadley Lloyd '27; Jessica Spiers '27; Jude Hoag '26; Lexi Foman '26; Liv Panarella '27; Liyu Woldemichael '28; Pritika Seshadri '27; Reilly Johnson '27; Shay Berger '28; and Taylor Redd '27.

Acknowledgments: We are grateful to everyone who has contributed to developing this resource. We want to specifically thank the clinical students who chose not to be listed as co-authors for personal safety reasons; Shanna Rifkin, who suggested including a section about compassionate release and who drafted a large part of it; and Achara Amy Schroder, A.D. Sean Lewis, Adrienne Spiegel, Alice Fontier, Angelo Petrigh, Amy Whelan, Andrea Brockman, Caitlin Glass, Christopher Lau, D Dangaran, Erika Lorshbough, Erin B. Harrist, Ian Weinstein, Jack Donson, Jack Einstein, Judi O'Kelley, Kara Janssen, Lynly Eyges, Marianna Yang, NACDL's First Step Act Resource Center, Nell Gaither, Pat Cresta-Savage, Quinn Phillips, Richard Saenz, Robyn Mar, Scott Levy, Shana Knizhnik, Shayna Medley, Sinéad MK, and Tahanee Dunn for their guidance, feedback, and various forms of inspiration and assistance.

Graphic Design: Catherine Rizos.

About The Authors: This guide was developed by the Harvard Law School LGBTQ+ Advocacy Clinic,[1] in consultation with public defenders, medical professionals, community advocates, transgender rights attorneys, and transgender individuals whose experiences shape the practices described here. It is the product of a collaborative effort in which clinical students and interns researched, drafted, and edited this guide under the supervision and guidance of Clinical Instructor Deborah Lolai. The Clinic engages in impact litigation, legislative and policy advocacy, and direct representation on behalf of the LGBTQ+ community, with a particular focus on issues affecting underrepresented groups within the LGBTQ+ umbrella. Some student authors are not listed by name for safety and privacy reasons, and the Clinic gratefully acknowledges and honors their essential work and insights. We hope that one day we will live in a society where it is safe for all contributors to publish their names on the resources they co-author.

1 This guide represents the views of the LGBTQ+ Advocacy Clinic of the Legal Services Center at Harvard Law School and does not purport to reflect the views of Harvard University.

Contents

I. Introduction

This practice guide was developed in direct response to the escalating political and legislative attacks on transgender people—particularly those impacted by Executive Order 14168[2] and its prohibition of the use of federal funds to promote so-called "gender ideology." Although Executive Order 14168 is designed to further harm incarcerated transgender people and exacerbate already horrific conditions of confinement, this resource outlines strategies, arguments, and tools that legal advocates can use to leverage the Executive Order and conditions of confinement to seek release, reduced sentences, compassionate release, and clemency for transgender clients. Executive Order 14168 has authorized agencies across the executive branch, beyond the BOP, to promulgate new rules aimed at harming transgender people.[3] Transgender people in federal custody have increasingly been deprived of access to gender-affirming care, safe housing placements, and basic dignity.[4] These particularized attacks threaten not only the physical, mental, and emotional health and safety of transgender people in custody, but also complicate efforts by legal advocates to ensure their rights are protected. Throughout this guide, the term 'transgender' is used to refer to transgender people, nonbinary people, gender-diverse people, and intersex people who identify as transgender.[5] Additionally, though this guide is tailored for representation and decarceration of transgender clients, its work linking discrimination to criminalization and providing mitigation strategies may be useful in representing cisgender clients experiencing systemic marginalization.

This guide is organized to follow the life cycle of a criminal case. Part I provides background on Executive Order 14168. Part II explains core gender identity concepts, client-centered and trauma-informed practice, and structural barriers for transgender, gender non-conforming, nonbinary, and intersex clients. Part III addresses pretrial advocacy, including interviewing, framing 18 U.S.C. § 3142(g) factors (i.e., the factors a judge must consider in determining a defendant's eligibility for pretrial release), and diversion. Part IV focuses on sentencing, offering mitigation frameworks, sample arguments, and a model sentencing memorandum. Part V covers post-conviction strategies, with an emphasis on compassionate release for transgender people facing heightened harm in custody, and Parts VI and VII compile practice resources and referral information. Part VIII provides a glossary of key terms to support accurate and affirming language throughout your representation." Attached at the end of this document is an expert affidavit prepared by Dr. Rachel Golden that supports many of the arguments and assertions set forth in this resource. Because it is not tailored to any specific client, it is intended as a supplemental tool. While retaining an expert to conduct an individualized evaluation and submit client-specific findings to the court remains best practice, we recognize that resource constraints may make this infeasible. Where an expert witness cannot be retained, this affidavit can be filed on its own. When an individualized expert is available, it can also be filed

2 Exec. Order No. 14168, 90 Fed. Reg. 8615 (Jan 20, 2025).

3 *Id.*

4 Schuyler Mitchell, *How Is Trump's Anti-Trans Executive Order Being Used? Here's What We Know*, Truthout (Jan. 27, 2025), https://truthout.org/articles/how-is-trumps-anti-trans-executive-order-being-used-heres-what-we-know/ [https://perma.cc/AUK4-CQ64].

5 The authors recognize that not all intersex, nonbinary, or gender-diverse people identify as "transgender;" However, much of the jurisprudence and federal policy relating to the issues covered in this guide utilizes "transgender" as an encompassing term.

alongside a client-specific expert submission. This guide was designed so that the subsections can be referenced in isolation by practitioners, and therefore, it intentionally repeats relevant information across sections.

This resource focuses on decarceration strategies available in federal courts, in response to the Trump Administration's attacks on transgender people in federal custody. However, this focus should not be misinterpreted to mean that transgender people incarcerated in state or local facilities are safe from or are not facing similar harms. In fact, many of the challenges and systemic issues discussed in this guide are shared across jurisdictions.[6] Accordingly, the principles and tools presented here may also be applicable—and adaptable—to advocacy and legal strategies in state and local courts. For example, the interview templates provided in the pretrial section can be readily used to support LGBTQ+ individuals charged with crimes in any jurisdiction, not just in federal cases. Likewise, the factors outlined in the pretrial release section are common across many jurisdictions. The template sentencing memorandum in the sentencing section also serves as a general mitigation template in plea negotiations and at sentencing in state courts. In addition, although this guide focuses on the eligibility criteria for compassionate release in the federal system, many states provide comparable forms of relief. With appropriate adaptation, the arguments and strategies outlined here can be effectively applied in those state and local contexts as well.

This practice guide aims to support defense attorneys, advocates, and legal professionals in representing transgender clients with practical tools, cultural humility and cultural competency, trauma-informed care, and a clear understanding of the policy landscape that can impact legal strategies and available options for your clients. If you are unfamiliar with any of the terms in the glossary in Part VIII, we recommend reviewing the glossary before proceeding to read this guide. The glossary will ground the reader in foundational concepts around gender identity—defining terms like *transgender, nonbinary, gender non-conforming,* and *intersex*, and explaining transition-related care that may be relevant to clients' needs. The guide also emphasizes client-centered practices such as respecting pronouns, disclosing gender identity only with consent, and addressing mistreatment by system actors with care and discretion—especially in hostile environments.

A core component of being a client-centered attorney is taking a trauma-informed approach, which is essential to this work. This is particularly true for incarcerated clients who have experienced systemic violence, neglect, or abuse. Practical strategies are included to guide sensitive interviewing, reduce re-traumatization, and ensure clients with cognitive differences are understood and supported. This guide also outlines the legal implications of Executive Order 14168 and offers tools for advocates to communicate those impacts effectively to judges, prosecutors, and other decision-makers.

This guide is an educational resource meant to support more affirming and effective representation. However, it **does not constitute legal advice**, nor does it create an attorney-client relationship. Legal professionals should rely on their independent judgment and consult applicable laws, court rules, and ethics guidance in their jurisdiction when making case-specific decisions. Policies

6 Megan Robertson, *Improper Housing and Inadequate Medical Treatment for Transgender Prisoners*, 24 Geo J. Gender & L. Online 1 (2022), https://www.law.georgetown.edu/gender-journal/online/volume-xxiv-online/improper-housing-and-inadequate-medical-treatment-for-transgender-prisoners/ [https://perma.cc/HG7K-JVU8].

affecting transgender clients are rapidly evolving. Therefore, practitioners are encouraged to stay informed and seek expert advice when appropriate.

A. Executive Order 14168

This section provides the foundational context for representing transgender clients in the current federal landscape. It begins with an overview of Executive Order 14168 and its implications for housing, medical care, and daily conditions in custody.

On January 20, 2025, President Trump signed Executive Order 14168, "Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government," into law.[7] Section 3(g) of the order states that "federal funds shall not be used to promote gender ideology."[8] Section 4(a) of the order directs the "Attorney General and Secretary of Homeland Security [to] ensure that males are not detained in women's prisons or housed in women's detention centers."[9] In so doing, Section 4(a) also directs the Attorney General and Secretary of Homeland Security to revise "interpretation guidance regarding the Americans with Disabilities Act" and to amend "Part 115.41 of title 28, Code of Federal Regulations," a provision entitled "Screening for risk of victimization and abusiveness."[10] Subsection (d)(7) of those regulations state that intake screening criteria to "assess inmates for risk of sexual victimization" includes "[w]hether the inmate is or is perceived to be gay, lesbian, bisexual, transgender, intersex, or gender nonconforming."[11] Thus, the Executive Order aims to eliminate intake protections for inmates that are perceived to be LGBTQ+ and are therefore at an increased risk of abuse and harm while incarcerated. Section 4(c) of the Executive Order directs the Attorney General to "ensure that no Federal funds are expended for any medical procedure, treatment, or drug for the purpose of conforming an inmate's appearance to that of the opposite sex."[12]

1. Political and Legal Background

The Executive Order's prohibition on the use of federal funds "to promote gender ideology" stands to have far-reaching impacts on the "2,198 [trans] inmates housed in Federal Bureau of Prisons (BOP) Facilities and halfway houses"[13] especially when paired with the funding limitations for BOP provision of gender-affirming care.

On February 19, 2026, the Federal Bureau of Prisons promulgated a rule to enforce Executive

7 Exec. Order No. 14168, *supra* note 2.
8 *Id.*
9 *Id.*
10 *Id.*
11 28 C.F.R. § 115.41 (2025).
12 Exec. Order No. 14168, *supra* note 2.
13 Declaration of Rick Stover ¶ 5, Doe v. McHenry, No. 1:25-cv-00286 (D.D.C. Jan. 30, 2025), https://www.courtlistener.com/docket/69593824/52/1/doe-v-mchenry/ [https://perma.cc/C89B-YVCN].

Order 14168's ban on the use of federal funds for gender-affirming care.[14] As of April 15, 2026, this BOP rule is enjoined by a federal district court in D.C., although the BOP has sought to dissolve the existing preliminary injunction.[15] If the rule is permitted to be implemented, incarcerated people diagnosed with gender dysphoria (GD) who are currently prescribed gender-affirming hormone therapy will be placed on a "tapering plan" with the goal of "discontinuation of the hormone intervention."[16] The policy categorically bans incarcerated people who are not already receiving gender-affirming hormone therapy from beginning it.[17] The policy states that incarcerated people will also no longer receive "social accommodations," which includes items like cosmetics and clothing that align with incarcerated transgender peoples' gender.[18] Where necessary, the Bureau will confiscate these possessions.[19] Further, the policy states that "the Bureau will not provide" what it calls "sex trait modification surgeries," which includes "vaginoplasty, phalloplasty, orchiectomy, vulvoplasty, hysterectomy, oophorectomy, mastectomy, metoidioplasty, chest reconstruction, breast augmentation, hair removal, facial feminization surgery, and voice modification."[20] Finally, "the policy substitutes psychotherapy specifically directed at reducing gender dysphoria symptoms, combined with psychotropic medication, for the evidence-based care that was previously available."[21]Advocates have described these efforts, taken together, as a government run "conversion therapy program."[22]

This policy followed similar February 2025 BOP guidance on complying with Executive Order 14168. In a February 21, 2025, memorandum, the BOP ordered staff to "refer to individuals by their legal name or pronouns corresponding to their biological sex" and limited the purchase and use of accommodations like "binders, stand-to-pee devices, hair removal devices" and "undergarments that do not align with an inmate's biological sex."[23] These resources are routinely prescribed by healthcare professionals as an aspect of gender-affirming care.

---

14 U.S. Dep't of Just., Fed. Bureau of Prisons, Program Statement 5260.01: Management of Inmates with Gender Dysphoria (Feb. 19, 2026), https://www.bop.gov/policy/progstat/5260_001.pdf [https://perma.cc/UYS4-NJZN] [hereinafter "Program Statement 5260.01"].

15 *Mot. to Quash Prelim. Inj. at 4, Kingdom v. Trump, 1:25-cv-00691 (D.D.C. April 1, 2026), Dkt. No. 160.*

16 Program Statement 5260.01, *supra* note 14, at 8.

17 Sharon Minter, *The Federal Bureau of Prisons Is Running a Conversion Therapy Program. We Must Not Let It Stand*., Nat'l Ctr. For LGBTQ Rights. (Mar. 16, 2026), https://www.nclrights.org/the-federal-bureau-of-prisons-is-running-a-conversion-therapy-program-we-must-not-let-it-stand/ [https://perma.cc/9XQP-9MGH].

18 Program Statement 5260.01, *supra* note 14, at 3, 8.

19 *Id.* at 8.

20 *Id.* at 2, 7.

21 Minter, *supra* note 17.

22 *Id.*

23 *See BOP Jettison Transgender Offender Manual, PRISON LEGAL NEWS (May 1, 2025), https//*www.prisonlegalnews.org/news/2025/may/1/bop-jettisons-transgender-offender-manual/ [https://perma.cc/N6F7-V5MM]; *Colin Kalmbacher, May Not Arbitrarily Deprive Inmate of Medications: Judge Orders Trump Admin to Provide Hormone Therapy and Social Accommodations to Transgender Federal Prisoners, NEWSBREAK (Jun. 3, 2025),* https://www.newsbreak.com/law-crime-520571/4036311990910-may-not-arbitrarily-deprive-inmates-of-medications-judge-orders-trump-admin-to-provide-hormone-therapy-and-social-accomodations-to-transgender-federal-prisoners [https://perma.cc/FZ32-57X2].

The BOP issued another memorandum on February 28, 2025, stating that "no Bureau of Prisons funds are to be expended for any medical procedure, treatment, or drug for the purpose of conforming an inmate's appearance to that of the opposite sex."[24] This memo emphasized that the "policy is to be implemented in a manner consistent with applicable law, including the Eighth Amendment,"[25] referencing the potential for constitutional challenges to these healthcare restrictions.

Over 98% of the approximately 2,000 transgender people in BOP custody are housed in prisons that do not align with their gender identity.[26] This Executive Order serves to further limit access to important gender-affirming care and social services. While the Executive Order is undoubtedly harmful to transgender people, it may also provide a basis for their release. Accordingly, the potential adverse consequences of the Executive Order in federal jails and prisons, outlined below, should be evaluated not only for their inherent harms but also for their possible usefulness in supporting an argument for release. Potential harmful outcomes of the Executive Order in both state and federal prisons include:

Increased Risk of Sexual Assault

- According to the DOJ's Bureau of Justice Statistics, transgender people in state and federal prisons are 10 times more likely to be sexually assaulted than the general prison population.[27]
- The Bureau of Justice Statistics found that, of the 4,110 incarcerated people who experienced a substantiated incident of "inmate-on-inmate" sexual victimization in 2019-20, 4.3% were transgender or intersex.[28] Given that transgender people comprise only about 1% of the population in federal prisons and jails, this makes them at least four times as likely as cisgender people incarcerated in federal facilities to experience such assaults.[29]

---

24 Memorandum from Christopher A. Bina, Assistant Director, Health Services Division, Federal Bureau of Prisons, *Executive Order 14168 Compliance* 2 (Feb. 28, 2025), https://clearinghouse-umich-production.s3.amazonaws.com/media/doc/156822.pdf [https://perma.cc/7TXJ-Y6A4].

25 *Id.*

26 Maya Nathan, *End the Abuse of Trans People in Federal Custody*, The Remedy Project (Apr. 21, 2025), https://theremedyproj.org/prison-exposed/end-the-abuse-of-trans-people-in-federal-custody [https://perma.cc/P5SC-3DU9].

27 U.S. Dep't of Just., Bureau of Just. Statistics, *Sexual Victimization in Prisons and Jails Reported by Inmates, 2011—12* 9 (May 2013), https://bjs.ojp.gov/content/pub/pdf/svpjri1112.pdf [https://perma.cc/9ESS-X9AW]; U.S. Dep't of Just., Bureau of Just., Statistics, *Sexual Victimization in Prisons and Jails Reported by Inmates, 2011—12: Supplemental Tables: Prevalence of Sexual Victimization Among Transgender Adult Inmates* 2 (Dec. 2014), https://bjs.ojp.gov/content/pub/pdf/svpjri1112_st.pdf [https://perma.cc/4WWU-XVY2] (reporting that in 2011—12, an estimated 39.9% of transgender state and federal prison inmates experienced one or more incidents of sexual victimization by another inmate or facility staff in the prior 12 months or since admission, compared to 4.0% of the general prison inmate population); *see also* Women & Justice Project, *Transgender, Nonbinary, and Intersex People in U.S. Prisons & Jails* 3 n.8 (2021), https://womenandjusticeproject.org/wp-content/uploads/2021/12/WJP-TGNBI-12-6-21.pdf [https://perma.cc/US6T-HKUE].

28 U.S. Dep't of Just., Bureau of Just. Statistics, *Sexual Victimization Reported by Adult Correctional Authorities, 2019—2020 Statistical Tables* 15 (July 2024), https://bjs.ojp.gov/document/svraca1920st.pdf?utm [https://perma.cc/RET2-ME4H].

29 Nathan, *supra* note 26.

- 76% of surveyed incarcerated LGBTQ+ people reported that "prison staff intentionally placed them in situations where they would be at high risk of sexually [sic] assault from another prisoner."[30]
- "[S]exual abuse behind bars can lead to post-traumatic stress disorder, depression, substance abuse, HIV, and other infections that can take a heavy toll on survivors, their families and communities, and public budgets."[31]

Diminished Access to Gender-affirming Personal Care Items and Clothing

- Only 21% of incarcerated LGBTQ+ people were "allowed access to underwear and cosmetic needs that match their gender."[32]
- Lack of access to gender affirming personal care items and clothing can worsen your client's gender dysphoria and the attendant psychological harm and trauma, thereby presenting a potential Eighth Amendment violation.[33]
- A Biden-era BOP "Transgender Resource Guide" suggests that hair removal tools can be medically necessary as they relate to a transgender person's individual transition.[34] Removing access to these gender-affirming tools and resources will further harm incarcerated transgender people.

Increased Distress from Being Forced to Live in a Non-affirming Housing Facility

- "[P]lacement in a male penitentiary by itself will exacerbate the symptoms of their gender dysphoria . . . whether because they will be subject to searches by male correctional officers, made to shower in the company of men, referred to as men, forced to dress as men, or simply because the mere homogenous presence of men will cause uncomfortable dissonance."[35] Moreover, detention facilities have "punish[ed transgender people] for attempting to express their gender identity."[36]

---

30 Jason Lydon et al., *Coming Out of Concrete Closets: A Report on Black & Pink's National LGBTQ Prisoner Survey, Black & Pink 5 (Oct. 2015),* https://www.blackandpink.org/wp-content/uploads/2020/03/Coming-Out-of-Concrete-Closets-incorcporated-Executive-summary102115.pdf [https://perma.cc/A6W9-C54N].

31 Advocates for Trans Equality, *Standing With LGBT Prisoners: An Advocate's Guide to Ending Abuse and Combating Imprisonment*, https://transequality.org/issues/resources/standing-with-lgbt-prisoners-an-advocate-s-guide-to-ending-abuse-and-combating [https://perma.cc/F6PS-5CMD].

32 Lydon et al., *supra* note 30, at 4.

33 Jaclyn Diaz, *Trans Community Fears Trump's Actions Will Upend Legal Precedent on Prison Protections*, NPR (Jan. 30, 2025), https://www.npr.org/2025/01/30/nx-s1-5277164/trump-executive-order-trans-inmates [https://perma.cc/UQ67-VC2Q].

34 Federal Bureau of Prisons, *Transgender Resource Guide: An Aid for People in the Custody of the Federal Bureau of Prisons 5* (2022) (explaining that transgender individuals may receive gender-affirming medical care based on individualized treatment plans, including hair-removal tools when medically necessary), https://lgbtqbar.org/wp-content/uploads/sites/6/sites/8/2023/06/Transgender-Resource-Guide-09-06-2022.PDF [https://perma.cc/T2CE-XL7X].

35 *Doe v. McHenry*, No. 1:25-CV-286-RCL, 2025 WL 388218 at 9 (D.D.C. Feb. 4, 2025) (citing Compl. ¶¶ 5, 44).

36 *Transgender Resource Guide, supra* note 34.

Lack of Medically Necessary Healthcare

- It has been reported that the BOP told incarcerated transgender men that "they will no longer receive hormone therapy or other gender-affirming care."[37]
- Courts consistently find that gender dysphoria "presents a serious medical need that may require treatment to comply with the Eighth Amendment."[38] The majority opinion in the Seventh Circuit case *Fields v. Smith* held that "[r]efusing to provide effective treatment for a serious medical condition serves no valid penological purpose and amounts to torture."[39] Furthermore, in *Edmo v. Corizon, Inc.*, the Ninth Circuit affirmed a finding that denying the plaintiff's medical request for gender affirming surgery can amount to a violation of their Eighth Amendment rights, as the surgery was medically necessary and the incarcerated person would be irreparably harmed absent the surgery.[40] In *Williams v. Kincaid,* the Fourth Circuit held that transgender people who experience gender dysphoria are protected under the Americans with Disabilities Act and Rehabilitation Act.[41]

Increased Risk of Depression and Suicidality

- December 2016 BOP clinical guidance stated that "[t]ransgender adults with GD are at an increased risk of suicidal ideation and suicide prior to initiation of their gender transition. … Hormone supplementation is an important part of transitional treatment for many transgender individuals. Studies demonstrate improvement (in the range of 70—80%) in gender dysphoria, mental health, quality of life, and sexual function, for transgender treatment that included hormone therapy."[42]
- A National Institute of Health (NIH) study found that access to gender-affirming healthcare lowered odds of depression by 60% and suicidality by 73% in surveyed transgender and nonbinary youths.[43]

37 Diaz, *supra* note 33.

38 Am. Civil Liberties Union & Nat'l Ctr. For Lesbian Rights, *Know Your Rights: Laws, Court Decisions, and Advocacy Tips to Protect Transgender Prisoners 6* (Dec. 1, 2014), https://www.aclu.org/sites/default/files/assets/121414-aclu-prea-kyrs-1_copy.pdf [https://perma.cc/LMV5-8K58].

39 *Fields v. Smith*, 653 F.3d 550, 556 (7th Cir. 2011).

40 *Edmo v. Corizon, Inc.*, 935 F.3d 757 (9th Cir. 2019).

41 *Williams v. Kincaid,* 45 F.4th 759 (4th Cir. 2022); for a further analysis on the utilization of the Americans with Disabilities Act in supporting incarcerated transgender people with gender dysphoria *see* D Dangaran, *Bending Gender: Disability Justice, Abolitionist Queer Theory, and ADA Claims for Gender Dysphoria,* 137 Harv. L. Rev. F. 237 (2024).

42 Bureau of Prisons, *Medical Management of Transgender Inmates*, 3, 11 (Dec. 2016) [https://perma.cc/P922-ANRJ].

43 Diana M. Tordoff et al., *Mental Health Outcomes in Transgender and Nonbinary Youths Receiving Gender-Affirming Care*, 5 [J]AMA Network (Feb. 25, 2022), https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2789423#google_vignette [https://doi.org/10.1001/jamanetworkopen.2022.0978].

Greater Likelihood of Solitary Confinement

- Transgender detainees, particularly women, are already "far more likely than other prisoners to be held in solitary confinement, which prisons often say is for their protection."[44] Since this Executive Order aims to place transgender women in men's facilities, it will most certainly increase the instances of transgender women being placed in solitary confinement.
- A report published by the PREA Resource Center (PRC), a cooperative project between the DOJ's Bureau of Justice Assistance and the National Council on Crime and Delinquency, states: "Increasing evidence suggests that holding people in isolation with minimal human contact for weeks, months, or years can create or exacerbate serious mental health problems and assaultive or anti-social behavior, and lead to decreases in physical health and functioning."[45] "An additional concern is the chilling effect that fear of being placed in involuntary segregated housing . . . may have on victims' willingness to report sexual abuse."[46]
- Mental illness diagnoses, trauma, sexual assault, and the perceived commission of minor infractions—which transgender people experience at higher rates than the general population—can all lead to solitary confinement.[47]
- There are also deadly consequences for those in solitary confinement. "People in solitary are seven times more likely to commit self-harm and six times more likely to commit fatal self-harm . . . [S]olitary for any amount of time . . . [makes people] more likely to die of all causes in the first year after release, especially of suicide."[48]

2. Legal Challenges to Executive Order 14168

There has been extensive litigation challenging Executive Order 14168 as of the publication of this guide. Some basic information about each case is provided below; however, readers should be mindful of any intervening developments from the federal district courts, the U.S. Courts of Appeals and, potentially, the Supreme Court. Ongoing updates, including new relevant cases, may be found at the website of the National LGBTQ+ Bar.[49]

In *Kingdom v. Trump*, the ACLU, the ACLU of DC, and the Transgender Law Center filed a putative class action seeking to enjoin the BOP from implementing Executive Order 14168 by eliminating

44 Shaila Dewan & Amy Harmon, *Trump Bars Transgender Women From U.S. Prisons for Female Inmates*, N.Y. Times (Jan. 23, 2025), https://www.nytimes.com/2025/01/23/us/trump-transgender-inmates-prison-html [https://perma.cc/3RXD-LFAQ].

45 Angela Browne et al., *Keeping Vulnerable Populations Safe under PREA: Alternative Strategies to the Use of Segregation in Prisons and Jails*, 6 Nat'l PREA Res. Ctr. (Mar. 2015), https://www.prearesourcecenter.org/sites/default/files/library/housingvulnerablepopulationsfinalmarch.pdf [https://perma.cc/6UJN-YDNM].

46 *Id.*

47 Lydon et al. *supra* note 30, at 5.

48 Solitary Watch, *Solitary Confinement & The Brain: The Neurological Effects: Fact Sheet #5* 1 (June 2023), https://solitarywatch.org/wp-content/uploads/2023/06/SW-Fact-Sheet-5-Neurological-Effects-v230613.pdf [https://perma.cc/3M5Y-MW4F].

49 *Trump Anti-LGBTQ+ Executive Order Litigation Tracker*, Nat'l LGBTQ+ Bar, https://lgbtqbar.org/programs/advocacy-resources/trump-executive-order-tracker/ [https://perma.cc/8XM7-92AC].

access to gender-affirming medical care or social accommodations.[50] The class includes "all persons who are or will be incarcerated in the custody of BOP facilities, with a current medical diagnosis of gender dysphoria or who receive such a diagnosis in the future."[51] The plaintiffs argue that the policy violates the Eighth Amendment's prohibition on cruel and unusual punishment, "which federal courts have long held includes the denial of medically necessary health care, including access to gender-affirming care."[52] They further argue that "the policy violates the equal protection requirement of the 5th Amendment, the Administrative Procedure Act, and the Rehabilitation Act."[53] The BOP's implementation of EO 14168 has been enjoined pursuant to a preliminary injunction in *Kingdom* since June 3, 2025.[54] Following BOP's issuance on February 19, 2026, of Program Statement 5260.01, the plaintiffs have sought to update the preliminary injunction to cover the new version of the policy.[55] For updates, visit the website of the American Civil Liberties Union.[56]

In three suits consolidated for appeal in the D.C. Circuit, 19 transgender women in BOP custody sued to enjoin their transfer to men's facilities, alleging it would constitute an Eighth Amendment violation.[57] In each case—*Moe v. Trump*, *Doe v. Bondi*, and *Jones v. Bondi*—the plaintiffs, represented by GLAD Law, the National Center for LGBTQ Rights, and Rosen Bien Galvan & Grunfeld LLP, Brown Goldstein & Levy LLP, and Lowenstein Sandler LLP, challenged Executive Order 14168's categorical mandate that all transgender women be housed in men's prisons, with "no discretion to consider the Plaintiffs' safety or [the BOP's] own prior determinations."[58] As Plaintiffs argue, "these policies are illegal under the Administrative Procedure Act because they are arbitrary and conflict with federal [Prison Rape Elimination Act] regulations, which require individualized housing decisions based on safety and security—not blanket bans."[59] The plaintiffs also argue that the executive order is unconstitutional because it "discriminates against transgender people, violating the Equal Protection Clause, and subjects them to serious harm in violation of the Eighth Amendment's prohibition against cruel and unusual punishment."[60]

---

50 *See* Mem. Op. Granting Pls.' Mot. for Class Cert. and Mot. for a Prelim. Inj., *Kingdom v. Trump*, No. 1:25-cv-00691 (D.D.C. June 3, 2025), ECF No. 67.

51 Order Granting Mot. for Prelim. Inj. and Mot. to Certify Class, *Kingdom v. Trump*, No. 1:25-cv-00691 (D.D.C. June 3, 2025), ECF No. 68, at 1.

52 *Kingdom v. Trump*, ACLU, https://www.aclu.org/cases/kingdom-v-trump [https://perma.cc/DD2Q-UCNZ] [hereinafter "*Kingdom v. Trump* Case Summary"].

53 *Id.*

54 *See Kingdom v. Trump, supra* notes 50-51, ECF Nos. 67 and 68.

55 *See* Proposed Supp. Compl., *Kingdom v. Trump*, No. 1:25-cv-00691 (D.D.C. Apr. 29, 2026), ECF No. 178; Mem. in Support of Mot. for Updated Prelim. Inj., *Kingdom v. Trump*, No. 1:25-cv-00691 (D.D.C. Apr. 29, 2026), ECF No. 179.

56 *See Kingdom v. Trump* Case Summary, *supra* note 52.

57 Consolidated Brief for Appellees, *Doe, Jones & Moe v. Bondi*, Nos. 25-5099, 25-5101, 25-5108, at 1-2 (D.C. Cir. 2025), https://glad-org-wpom.nyc3.cdn.digitaloceanspaces.com/wp-content/uploads/2025/07/20250630_Doe-Jones-Moe-v-Bondi_Consolidated-for-Appellees.pdf [https://perma.cc/YV2K-HQDW].

58 *Id.*; *Doe, Jones, and Moe v. Bondi*, GLAD Law, https://www.gladlaw.org/cases/doe-jones-and-moe-v-bondi [https://perma.cc/QEU7-QLKE].

59 *Id.*

60 *Id.*

II. Practitioner Notes & Guiding Principles

A. Cultural Competency: Gender Identity 101

Cultural competency begins with a foundational understanding of gender identity and the diverse ways people may describe themselves. Some people identify as ***transgender***, meaning their gender identity does not align with the sex they were assigned at birth.[61] It is important to note that transgender people may or may not pursue changes to their appearance, such as through clothing, hormones, or surgeries.

Others may identify as ***nonbinary*** or ***gender non-conforming***, terms often used by people who do not identify strictly as men or women.[62] Nonbinary people may identify with multiple genders, no gender, or a fluid gender.[63] Additionally, ***intersex*** people are born with natural variations in sex characteristics—such as chromosomes, hormones, or reproductive anatomy—that do not fit typical definitions of male or female bodies.[64] In many cases, these differences are medically benign but are still pathologized or misunderstood.

Some transgender and nonbinary people seek gender-affirming care, such as surgical care, hormone therapy, or hair removal procedures. It is essential to remember that such care is deeply personal and is not required for someone to identify as transgender or nonbinary. This care is always provided in an individualized manner, based on individualized patients' needs.[65]

Importantly, the language used to describe gender identity is shaped by individual and community knowledge and continues to evolve over time.[66] Language preferences often change based on shifting ideas within the community, or as conscious efforts to move past historical discrimination.[67] Words that are affirming for one client may feel outdated, inaccurate, or even harmful to another. Moreover, while transgender and nonbinary identities are distinct (as described above), they are not mutually exclusive. Pervasive and deeply entrenched gender normativity in the U.S. often

---

61 GeniUSS Group, *Best Practices for Asking Questions to Identify Transgender and Other Gender Minority Respondents on Population-Based Surveys,* The Williams Inst. (2014), https://williamsinstitute.law.ucla.edu/wp-content/uploads/Survey-Measures-Trans-GenIUSS-Sep-2014.pdf [https://perma.cc/X4UB-DU48].

62 *Id.* at ix.

63 *Id.*

64 Ctr. for Prisoner Health and Human Rights, *Emerging Best Practices for the Management and Treatment of Lesbian, Gay, Bisexual, Transgender, Questioning, and Intersex Youth in Juvenile Justice Settings* 61, The Fenway Inst., https://fenwayhealth.org/wp-content/uploads/TFIP-21_BestPracticesForLGBTYouthInJuvenileJustice_Brief_web.pdf [https://perma.cc/VN2S-Y6KY].

65 E. Coleman et al., *Standards of Care for the Health of Transgender and Gender Diverse People Version 8*, 23 Int'l Transgender Health S1 (2022), https://doi.org/10.1080/26895269.2022.2100644.

66 Univ. of Tex. at Austin, *University of Texas Study Tracks History of Inclusive Language Around Sexual and Gender Identity* (Mar. 22, 2022), https://liberalarts.utexas.edu/news/university-of-texas-study-tracks-history-of-inclusive-language-around-sexual-and-gender-identity [https://perma.cc/BM9N-BQFB].

67 Mary-Celeste Schreuder, *Safe Spaces, Agency, and Resistance: A Metasynthesis of LGBTQ Language Use*, 18 J. LGBT Youth J. 256 (2021), https://www.tandfonline.com/doi/abs/10.1080/19361653.2019.1706685.

obscures the diverse gender experiences of transgender people.[68] Some clients may identify solely as transgender or solely as nonbinary, but others may identify as both transgender and nonbinary. Transgender is an umbrella term that encompasses multiple gender experiences. It is thus imperative for legal practitioners to use their client's desired language, and to lead with curiosity and empathy to identify the intersectionalities[69] within their client's experience. Legal practitioners should therefore avoid assumptions and create space for their clients to describe their identities in their own words. We encourage practitioners to explicitly welcome correction if they use terminology that is outdated or not aligned with a client's lived experience and to advocate for such correction in court proceedings and interactions with opposing counsel as long as the client consents. This not only affirms the client's autonomy and dignity, but also builds critical trust, especially in systems that have historically misgendered, pathologized, or silenced transgender and gender non-confirming people. For additional guidance on language and terms, refer to the glossary in Part VIII of this guide.

B. Healthcare Needs for Incarcerated Transgender People

Gender dysphoria is "the distress that may accompany the incongruence between one's experienced or expressed gender and one's assigned gender."[70] As mentioned above, transition-related healthcare is deeply personal, widely varied, and not necessary for a person to hold a certain identity. However, medical experts agree that gender-affirming healthcare can be lifesaving, medically necessary treatment for individuals who experience gender dysphoria.[71] Transgender individuals can receive one or multiple gender affirming procedures and interventions as part of their treatment. Some of the most common procedures that your clients may have undergone or seek to undergo include hormone therapy; genital or "bottom" surgeries; facial procedures; chest or "top" surgeries; hysterectomies or oophorectomies; and voice surgery.[72] In federal prisons, transgender individuals have received access to hormone therapy, counseling services, surgical procedures, and other gender-appropriate accommodations such as gender-related hair removal tools and gender-appropriate undergarments.[73]

Despite having the legal right to gender-affirming care, it is very common for incarcerated transgender people to experience a variety of barriers to receiving this care.[74] The BOP weaponizes

68 Ashley Shank, *Disrupting Gender Normativity Through a Social Learning Framework,* UNLV Theses, Dissertations, Professional Papers & Capstones, No. 4199 (2021), http://dx.doi.org/10.34917/25374095 (citing Carrie L. Buist & Codie Stone, *Transgender Victims and Offenders: Failures of the United States Criminal Justice System and the Necessity of Queer Criminology,* 22 Crit. Crim. 37 (2014), doi.org/10.1007/s10612-013-9224-1.).

69 "Intersectionality" is a term coined by Professor Kimberlé Crenshaw that refers to the complex, cumulative way in which the effects of multiple forms of discrimination (such as racism, sexism, and classism) combine, overlap, or intersect, especially in the experiences of marginalized individuals or groups.

70 Am. Psychiatric Ass'n, *Diagnostic and Statistical Manual of Mental Disorders* 511, 513 (5th ed., text rev. 2022).

71 *Id.*

72 Madeline B. Deutsch, *Overview of Gender-Affirming Treatments and Procedures,* UCSF Gender Affirming Health Program (2016), https://transcare.ucsf.edu/guidelines/overview [https://perma.cc/J6Y3-B8P5].

73 Jennifer Aldrich et al., *Gender-Affirming Care, Incarceration, and the Eighth Amendment,* AMA J. Ethics (2023), https://doi.org/10.1001/amajethics.2023.407.

74 Kedryn Berrian et al., *Barriers to Quality Healthcare Among Transgender and Gender Nonconforming Adults,* 60 Health Servs. Rsch. 1 (2025), https://doi.org/10.1111/1475-6773.14362.

the World Professional Association for Transgender Health (WPATH) criteria to deny incarcerated transgender people gender-affirming bottom surgery for not meeting the arbitrary requirement that a transgender individual have twelve months of full-time experience living in the gender role congruent with their gender identity.[75] This can be a challenging requirement for incarcerated people to meet because of their lack of access to gender-expressive clothing, grooming products, and procedures in prisons, especially under the Trump Administration. Additionally, transgender individuals seeking surgery while incarcerated generally have needed to file lawsuits to access both surgical and non-surgical care.[76] Notably, transgender individuals have also been denied access to hormone therapy, even if their treatment began prior to their incarceration.[77] And in federal prison, because of EO 14168 and the BOP's ban on gender affirming care and social accommodations in incarcerated transgender people's access to healthcare depends on the outcome in *Kingdom v. Trump* (discussed above) and the BOP's compliance with it.[78]

Transgender clients may have other health needs that stem from systemic challenges prior to incarceration.[79] Even before entering a carceral setting, transgender adults experience significant barriers to accessing healthcare due to higher rates of housing instability, lower rates of insurance coverage, and experiences of discrimination in healthcare settings.[80] Transgender individuals experience higher rates of HIV and AIDS than the general population.[81] These clients also disproportionately experience intimate partner violence[82] and sexual assault[83] compared to their cisgender counterparts. Intimate partner violence and sexual assault can cause other medical conditions, such as increased exposure to sexually transmitted infections, physical trauma, chronic pain, gastrointestinal disturbances, disturbed sleep, psychological and emotional distress, and post-

75 *WPATH Guidelines for Genital Gender-Affirming Surgeries,* Stan, Medicine, https://med.stanford.edu/obgyn/divisions/gyn/transgender_surgery/wpath.html [https://perma.cc/ZC3R-P5W6].

76 *See Federal Bureau of Prisons Provides Gender-Affirming Surgery Amid Historic Legal Victory*, ACLU of Ill. (Apr. 6, 2023), https://www.aclu-il.org/en/press-releases/federal-bureau-prisons-provides-gender-affirming-surgery-amid-historic-legal-victory [https://perma.cc/J8NU-URNB]. *See also* Jaclyn Diaz, *Trans Inmates Need Access to Gender-Affirming Care. Often They Have to Sue to Get It*, NPR (Oct. 25, 2022), https://www.npr.org/2022/10/25/1130146647/transgender-inmates-gender-affirming-health-care-lawsuits-prison [https://perma.cc/R3VD-L6KJ].

77 Diaz, *supra* note 76 (discussing how Ashley Diamond sued the Georgia Department of Corrections after she was denied hormone therapy that she had been taking for almost two decades before her incarceration to alleviate her gender dysphoria).

78 *See* Program Statement 5260.01, *supra* note 14, at 6. ("The Bureau will comply with this Executive Order unless compliance with the Executive Order is prohibited by a court injunction or court order.").

79 Berrian et al., *supra* note 74.

80 Haley Norris, *LGBTQI+ People Are Underinsured and Experience Health Insurance Discrimination in Key Areas,* Ctr. For Am. Progress (June 30, 2025), https://www.americanprogress.org/article/lgbtqi-people-are-underinsured-and-experience-health-insurance-discrimination-in-key-areas/ [https://perma.cc/Q7ER-2TV9].

81 *Fast Facts: HIV and Transgender People*, CDC (2024), https://www.cdc.gov/hiv/data-research/facts-stats/transgender-people.html [https://perma.cc/ALZ9-VM8C].

82 Sarah M. Peitzmeier et al., *Intimate Partner Violence in Transgender Populations: Systematic Review and Meta-analysis of Prevalence and Correlates*, 110 Am. J. Pub. Health 1 (2020), https://doi.org/10.2105/AJPH.2020.305774.

83 Lauren Abern et al., *Prevalence of Sexual Assault in a Cohort of Transgender and Gender Diverse Individuals*, 38 J. Gen. Internal Med. 1331 (2022), https://doi.org/10.1007/s11606-022-07900-y.

traumatic stress disorder.[84] Lack of insurance and housing instability can compound issues for a number of reasons. Uninsured individuals often struggle to access and afford medical care to treat these medical conditions. Housing instability makes it more difficult to attend to other basic needs and poses structural and social barriers to obtaining healthcare and maintaining treatment for health problems.[85] Housing instability also increases the risk of exposure to infectious disease and mental illness.[86] Because of these compounding factors, transgender clients are more likely to have untreated health conditions when they enter carceral settings.

Executive Order 14168 and the BOP Program Statement attempt to cut off all access to gender-affirming medical care, appropriate grooming tools and undergarments, and other accommodations. These interruptions to and cessation of access to these items has and will continue to cause immense harm to incarcerated transgender people. Sudden and nonconsensual withdrawal from gender-affirming hormone therapy can result in severe bone density loss, leading to osteoporosis and an increased risk of fractures; cardiovascular complications; cognitive decline; mood instability, often leading to severe depression and anxiety; and metabolic dysfunction, impacting weight, energy levels, and overall health.[87] For people who no longer have hormone producing organs as a result of gender-affirming surgeries, withdrawal presents an even greater risk of irreparable harm. Studies show that transgender individuals who are denied gender-affirming surgical care are at increased risk for experiencing severe depression, anxiety, thoughts of self-harm, and suicidal ideation.[88] Transgender women being placed in prisons that are misaligned with an individual's gender identity increases their risk of exposure to extreme levels of sexual and physical violence, which contributes to adverse physical and mental health outcomes.[89] Housing assignments for transgender women that are misaligned with an individual's gender identity during incarceration can also lead to isolation, physical distress, risky behavior, and sexual abuse, and may culminate in suicide.[90] For these reasons, the lack of access to gender-affirming care in federal prisons poses serious health risks to incarcerated transgender people and may provide a basis for seeking compassionate release.

84 Jacquelyn Campbell, Health Consequences of Intimate Partner Violence, 359 Lancet 1331 (2002), https://doi.org/10.1016/S0140-6736(02)08336-8.

85 *About Homelessness and Health*, CDC (2024), https://www.cdc.gov/homelessness-and-health/about/index.html [https://perma.cc/2KKA-BJYG].

86 *Id.*

87 Helen Webberley, *The Danger of Withdrawing Hormones from Trans People: A Frank Reality Check*, Gender GP (2025), https://www.gendergp.com/the-danger-of-withdrawing-hormones-from-trans-people/ [https://perma.cc/X3LU-7CUG].

88 Tordoff et. al., *supra* note 43.

89 Elida Ledesma & Chandra L. Ford, *Health Implications of Housing Assignments for Incarcerated Transgender Women*, 110 Am. J. Pub. Health 650, 650-51 (2020), https://doi.org/10.2105/AJPH.2020.305565.

90 *Id.* at 650-52.

C. Client Centeredness

When representing transgender clients, it is essential to approach advocacy with a trauma-informed lens that centers the client's experiences, goals and unique circumstances. If you have received explicit consent from your client to disclose their gender identity, you may inform the Assistant U.S. Attorney (AUSA), court officers, and the judge of your client's pronouns and chosen name, unless you believe it will be detrimental to the case. Doing so affirms their identity, builds trust between the lawyer and client, and sets a respectful tone for the legal proceedings.

In the event that a legal actor repeatedly disrespects your client's gender identity by misgendering them or otherwise—even after multiple reminders—and your client has expressed that they want this behavior to change, it may be necessary to escalate the matter after discussing the pros and cons of doing so with your client. You could file a motion with the court requesting that your client be appropriately addressed by all actors in the legal system. If this fails, then consider bringing the issue to the AUSA's supervisor or filing an ethics complaint against the judge or AUSA. It is important to be mindful of the political and institutional context, particularly in environments influenced by anti-transgender policies and attitudes. Use your discretion when determining whether escalation may expose your client to additional harm,[91] and evaluate how trans-friendly your audience is likely to be.

If your client has undergone a legal name change process, and their new name is not reflecting in the case documents, it is important that you inform both the Court and any prosecutors working on the case. This will reduce the likelihood of confusion, and possibility of deadnaming, which is the harmful practice of referring to an individual by their former name rather than their current, affirming name.

Establish from the outset that the client controls the pace and content of the conversation. Reinforce this periodically to ensure they remain empowered throughout the interview to pause, stop, or change topics at any time. A trauma-informed approach to interviewing is equally crucial, especially when working with transgender clients who have likely experienced systemic and compounded violence. Begin each interview by clearly explaining your process to the client. Let them know who will have access to the information discussed in the interview, why you take notes during the interview, and the purpose behind your questions.

Structure your interview to start with a neutral, non-traumatizing topic such as hobbies, and only gradually move toward more difficult subjects like the underlying offense. It is important to mirror the client's language when discussing aspects of their personal life. If feasible, break difficult discussions into segments to reduce the likelihood of overwhelming your client. While it is necessary to ask probing and follow-up questions, these should always be posed gently and with sensitivity.

If your client shows signs of distress, pause the conversation and check in with them. For clients who appear dissociated or overwhelmed, you may introduce a grounding exercise to help them re-

91 For example, angering the prosecutor by reporting their behavior to a supervisor could prevent your client from receiving a favorable plea offer.

center.[92] Always reassure the client that it is okay to return to a difficult topic later on, depending on their readiness.

It is also critical not to place the full burden of information-sharing on the client. Supplement the interview with records, contacts, and other forms of documentation whenever possible. If you must discuss traumatic topics, do your best to take detailed notes the first time. This reduces the risk of re-traumatization, by minimizing the need for clients to repeatedly recount and relive traumatic experiences.

When communicating with clients who have cognitive differences, adapt your communication strategies accordingly. Present one point at a time to avoid cognitive overload or confusion. Use plain language and emotional descriptors—like good or bad feelings—to explain legal or abstract concepts. Incorporate visual supports, such as written notes or diagrams, to enhance understanding. Periodically check for comprehension and ask clients to repeat or show what they've understood in their own words, through speaking, writing, or drawing.

Recognize that many neurodivergent or traumatized clients have developed masking behaviors; they may say they understand even when they are confused. As their advocate or lawyer, it is your responsibility to normalize uncertainty. Explicitly tell your client that it is okay not to understand and that it is your job to help clarify. This not only reduces shame but also strengthens the trust and transparency essential to a productive attorney-client relationship.

D. Discrimination-to-Incarceration Pipeline

To understand why transgender clients are overrepresented in the criminal legal system, it is critical to situate their experiences within what Chinyere Ezie describes as the discrimination-to-incarceration pipeline.[93] This framework captures the push factors that systemically funnel transgender people, especially transgender people of color, into contact with the criminal legal system through intersecting forms of discrimination.[94]

From an early age, many transgender people experience family rejection, school bullying, homelessness, and unsafe foster placements that increase exposure to state systems. As adults, discrimination in employment, housing, and healthcare often leaves people with few options for survival, pushing some towards survival strategies that are criminalized. At the same time, police profiling and selective enforcement make everyday existence grounds for suspicion and arrest. Professor Leonore Carpenter of Rutgers Law School writes extensively about this phenomenon known as "walking while trans."[95] According to Professor Carpenter, "[l]aw enforcement officers regularly stop, harass, and demand identification from transgender women, regularly subject them

92 Everett Redente, *Self-Care on the Inside: Tips & Activities to Take Care of Yourself*, Sylvia Rivera Law Project (May 13, 2017), https://srlp.org/wp-content/uploads/2017/05/Self-Care-on-the-Inside-Guide.pdf [https://perma.cc/X6PX-L5QH] (discussing ways to take care of oneself while incarcerated).

93 Chinyere Ezie, *Dismantling the Discrimination to Incarceration Pipeline for Trans People of Color,* 19 Univ. St. Thomas L.J. 276 (2023).

94 *Id.* at 279.

95 Leonore F. Carpenter & R. Barrett Marshall, *Walking While Trans: Profiling of Transgender Women by Law Enforcement, and the Problem of Proof,* 24 Wm. & Mary J. Race, Gender & Soc. Just. 5 (2017).

to commands to disperse, and regularly arrest them for low-level offenses tied to suspicions of prostitution."[96]

In custody, transgender people are often housed according to their sex assigned at birth, denied gender-affirming care, and subjected to extraordinary rates of violence and solitary confinement. Incarceration then reinforces the structural barriers that led to criminalization, deepening cycles of poverty and trauma. What may appear in court records as instability or noncompliance often reflects a lifetime of systemic neglect rather than individual failings.

Understanding this pipeline is essential to client-centered defense. When advocates situate each client's story within these broader patterns, they can challenge carceral narratives of risk or blame, humanize their clients before the court, and push for outcomes grounded in safety and equity. The following section provides guidance for applying this framework to pretrial advocacy and crafting release arguments that account for the structural barriers transgender clients face.

E. Intersex Client Considerations[97]

For intersex clients especially, it's important to avoid assumptions about medical history and gender identity. Human Rights Watch explains that "[a]s many as 1.7 percent of babies are different from what is typically called a boy or a girl. The chromosomes, gonads, internal, or external sex organs of these children differ from social expectations. Some intersex traits—such as atypical external genitalia—are apparent at birth. Others—such as gonads or chromosomes that do not match the expectations of the assigned sex—may manifest later in life, in some cases around puberty."[98]

Human Rights Watch further notes that intersex people are vulnerable to nonconsensual medical and social interventions aimed at reinforcing the gender chosen for them at birth by adults, which can result in trauma and gender dysphoria.[99] Genital and gonadal surgeries that some intersex children endure can effectively "amount to sterilization without the patient's consent," and may constitute a human rights violation.[100]

Discussions surrounding an intersex client's gender identity and any medical treatment they have received should be approached through a trauma-informed lens due to the high likelihood that they have experienced medical mistreatment and/or difficulties related to their actual or perceived gender. Keeping in mind the sensitivity of the topic, you should allow your client to decide what, when, and how much of their medical history to share, and be sensitive to the fact that their experience of their own gender may range from very straightforward to very complex.

96 *Id.* at 6.

97 The authors thank Erika Lorshbough of InterACT: Advocates for Intersex Youth, for their contribution to this section.

98 US: Harmful Surgery on Intersex Children, Hum. Rts. Watch (July 25, 2017), https://www.hrw.org/news/2017/07/25/us-harmful-surgery-intersex-children [https://perma.cc/5ZZH-8L5C].

99 *Id.*

100 *Id.*

III. Pretrial Detention Status

This section outlines key considerations for representing transgender clients at the pretrial stage. It is divided into three parts: conducting the initial interview, developing arguments for release and detention, and identifying or advocating for diversionary programs. Each subsection offers strategies to help attorneys contextualize perceived "risk" through the lens of systemic discrimination and craft release arguments that prioritize client safety and autonomy.

Practice Tip: For the initial appearance, we recommend reviewing University of Chicago Law School Professor Alison Siegler's comprehensive resource, "Essential Resource for Litigating Federal Pretrial Release," which includes detailed checklists and template motions.[101]

A. Initial Interview

1. General Principles

The following principles outline trauma-informed, client-centered approaches to conducting initial interviews with transgender clients. These guidelines are designed to help attorneys gather necessary information while protecting client autonomy, safety, and dignity.

Ask every client about their gender identity and how to refer to them, including name and pronouns. Do not assume a client's gender based on appearance or documentation. Some clients might still be figuring out their identities while incarcerated, so be prepared that their responses or level of comfort with the topic might change over time. Even if you feel hesitant to ask directly, whether out of personal discomfort or concern about offending clients, clarity is more respectful and essential for effective representation. Sharing your own gender identity and pronouns may make a client feel more comfortable. Using plain, direct language (e.g., "What is your gender?", "What is your sexual orientation?", or "Do you identify as transgender?") ensures that clients' needs are identified early. Aliases or inconsistencies in recorded name or gender may suggest a client is not cisgender, but the only way to know is to ask.

Respect evolving or uncertain identities. Some clients may still be in the process of exploring or articulating their gender identity. A client's self-understanding may evolve over time, and some may not yet have a clear answer about how they identify or may not feel comfortable communicating it for many reasons. Attorneys should allow space for that uncertainty and evolution without judgment or pressure.

Incarceration can make this process even more difficult. Clients may be more hesitant to share details about their gender identity because of the heightened risks of violence and dehumanization in confinement. As a result, some clients may not feel ready or safe to discuss their gender identity in detail, or to discuss it at all.

101 Alison Siegler, *Handout Materials Federal Defender and CJA Panel Representatives Conference* (Feb. 2023), https://ms.fd.org/sites/ms/files/cle-document/2023%20CJA%20Training%20Materials/Natl%20Defender%20and%20Panel%20Rep%20Bail%20Speech--Siegler%20Handout%202-10-23.pdf [https://perma.cc/S8PS-9FUQ].

Be transparent about why you are asking. Explain to clients why you need certain information, especially when discussing sensitive topics. Framing or contextualizing questions with your purpose in asking helps build trust and shows that you are gathering these details to protect your client's safety, dignity, and legal goals. Always respect the language your client uses for themselves and never force disclosure or pressure them to claim a label.

Affirm clients who choose not to disclose. Even though every client should be invited to share their gender identity, some will choose not to respond or may not yet have the language to do so. Your role is to create a space where clients feel affirmed and protected, regardless of how much they choose to share. Avoid interpreting non-disclosure as resistance or lack of cooperation.

An absence of information should not be interpreted as disinterest or inauthenticity. When clients are unable or unwilling to discuss their identity in depth, attorneys can rely on other indicators, such as records of discrimination, placement in segregated housing, or histories of victimization, to contextualize risk and build arguments for release. Provide future opportunities to disclose the client's gender identity once greater trust has been built and leave the door open for the client to re-start the conversation. You can say something like "I am glad we are having this conversation, and we can revisit this anytime you want."

Recognize how structural barriers shape lived experience. Keep in mind the discrimination-to-incarceration pipeline discussed above when evaluating a client's history. Experiences that might appear to the court as instability or noncompliance often reflect systemic failures rather than individual fault. Using this framework enables advocates to situate a client's story within broader patterns of discrimination and to communicate those realities effectively to the court. The following template includes suggested questions to guide that process.

2. Recommended Resources

Before developing your own interview template, review the following materials for guidance on trauma-informed and culturally competent interviewing:

- GLAAD's Guide for Allies of Transgender People, which provides accessible guidance on language, allyship, and respectful communication.
- Transgender Law Center's Guide to Screening LGBTQ Clients for Trafficking, which offers best practices for creating affirming and trauma-informed spaces, sample screening questions, and strategies for identifying trafficking risks specific to LGBTQ+ clients.
- Sarah Schriber & David Fischer, Relationship Building and Zealous Advocacy of LGBTQ Clients, 32 DCBA Brief 26 (2020), which offers practical guidance on relationship building, courtroom advocacy, and affirming communication strategies for attorneys representing LGBTQ+ clients.

Together, these resources and the principles outlined above provide the foundation for effective, client-centered interviews with transgender people.

The next section provides a sample interview template to guide your first meeting with transgender clients.

3. Interview Template

This template is designed to help advocates conduct trauma-informed, client-centered interviews that surface the structural barriers contributing to criminalization. It follows Chinyere Ezie's discrimination-to-incarceration pipeline framework to situate each client's experience within broader patterns of systemic harm and survival. Transgender people are, of course, not the only people who experience the discrimination-to-incarceration pipeline, and this template may be a useful guide to navigating conversations about how other forms of systemic oppression impact a client's bail profile.

The interview template that follows provides a scaffolding for a comprehensive conversation addressing the many ways in which transphobic discrimination leads to criminalization. However, where there is significant time pressure, or where discussion of traumatic topics is not necessary for the bail argument, it will be worthwhile to postpone aspects of this conversation. For practitioners who are only able to spend a few minutes with a client in advance of their arraignment—such as misdemeanor state public defenders, for example—it may be most practical to focus on the most challenging aspects of the client's bail profile. Where a client has multiple failures to appear, for example, you might choose to spend your interview time probing whether familial rejection, employment discrimination, denial of access to safe housing, or other systemic barriers have made it difficult for your client to return to court. It is also worthwhile to set goals for the conversation, like focusing on failures to appear or gathering information about the danger of incarceration to your client, and to communicate those goals with the client early in the interview. And from a trauma-informed perspective, you should make strategic decisions about when to raise challenging topics. Where detention is possible, focusing on the bail factors is essential. If detention is a certainty (due to a hold, for example), then conditions of confinement are the key matter to address. And if release is agreed upon or seems very likely, it may be appropriate to postpone discussion of the topics with the highest potential for retraumatization.

INTERVIEW TEMPLATE

Introductions

The first few minutes of your meeting will set the tone for the entire attorney-client relationship. For transgender clients, these opening moments are especially critical, as they are more likely to have experienced harm from court actors. Establishing safety, respect, and transparency from the outset helps undo that expectation of harm.

In introducing yourself, you can model sharing your own pronouns or gender identity/sexual orientation.

1. **Explain what they can expect and why**

   ➔ Framing up front that your questions serve *their* interests restores a sense of control and distinguishes you from prior experiences of surveillance or interrogation.

   - Example language: *I'm going to ask you a wide range of questions. A lot of them are*

going to be really personal and may feel invasive. But the reason I am asking you all these questions is because your answers can help me advocate for your safety and possibly get you released while your case is pending.

- ➔ Invite them to pause, skip, or return to any topic later.

2. Clarify confidentiality and privilege

- ➔ Explain attorney-client privilege and confidentiality. Reinforce that you will always seek their explicit permission before disclosing information.
- ➔ This step is especially critical when representing transgender clients, who may reasonably fear that disclosure of information about gender identity, transition-related care, or HIV status will be shared with system actors who could weaponize it.

3. Affirm advocacy and unconditional support

- ➔ Many transgender and gender nonconforming clients have had negative experiences with lawyers or the court system that left them feeling unsupported or disempowered. Stating your unconditional support can begin to rebuild trust and signal that your representation is not conditional.
    - Example language: *I am here to fight for you. Nothing you say is going to make me fight for you less.*

4. Background and Identity

- ➔ Explaining why you are asking these questions will be important before you ask them. Misgendering and deadnaming are forms of violence that clients may have experienced from attorneys in the past. By asking identity-related questions at the start of your interview, you signal that you will not replicate that harm. This can also be a segue into conversations about how clients can stay safe if incarcerated.

5. Opening the conversation

- ➔ The next few questions are questions about gender. I ask them because some clients have specific concerns, and I want to keep all my clients safe. You don't have to answer if you don't want to; just let me know if you want to skip a question.

6. Name and Pronouns

- ➔ I have your name as ____. Is that the name you prefer?
- ➔ What pronouns do you use?
- ➔ Do you want me to use those pronouns and the name you actually use in the courtroom, or do you prefer I use the name on your paperwork? What about with your family [or others like caseworkers, etc.]?

- Flag that you can return to this conversation / decision at any point moving forward.

7. **Gender Identity**

   ➔ What is your sexual orientation?

   - If clarification is needed: *What is the gender of your intimate/romantic partners?*

   ➔ What is your gender identity?

   - If clarification is needed: *Are you transgender, nonbinary, or intersex?*

   ➔ *Is there anything about your gender identity or expression that you want me to know so I can represent you as well as possible and make sure I do everything I can to keep you safe?*

Experiences linked to structural barriers

The sections below are categories of extremely common experiences of discrimination that transgender and other gender nonconforming people share. It is very likely that your client has experienced trauma or discrimination in one of these categories at one point in their life. The questions below are ways that you may respectfully engage them around these experiences. It may feel invasive to ask such questions, but it is important to get their full narrative and be able to contextualize it.

Consider reiterating the invasive nature of these questions and explaining here or throughout why the information is necessary, e.g.: ***I am going to ask you about some experiences over your life like about your family, school, jobs, and housing. This information will help me explain to the judge why you should be released.***

1. **Familial Rejection**

   ➔ *Who was your caregiver growing up?*

   ➔ *How did they find out you were transgender?*

   ➔ *How did they react?*

   ➔ *Did they support you with housing, material needs, and emotional support?*

   ➔ *What's your relationship with them like now?*

   ➔ *How does [the state of that relationship] affect you?*

   ➔ *Were you ever placed in foster care?*

2. **If client was in foster care:**

   ➔ *Were you housed in placements that matched your gender?*

   ➔ *Did you feel safe?*

- ➔ *Were you harassed, abused, or discriminated against by foster family or administrators, foster siblings, etc.?*[102]

    - Have you ever been physically, sexually, or emotionally abused as a child?
    - ***Practice Tip***: Research suggests people underreport childhood abuse when asked generally. One study suggests using descriptive questions such as:[103]

        a. *Growing up, did family or adults in your life ever hit you so hard that it left bruises or marks?*

        b. *Did anybody try to touch you in a sexual way, or try to make you touch them?*

        c. *Did people in your family call you names like 'stupid,' 'lazy,' or 'ugly'?*

    - How did your community growing up view your gender identity?

3. Discrimination and Harassment in School

- ➔ Were you harassed or bullied by students, teachers, or other staff such as administrators, security guards, or school resource officers?
- ➔ What kind of harassment did you experience (for example, verbal, physical, subtle restrictions on your freedom, discipline, etc.)?
- ➔ How did it affect you (e.g., emotions, actions, health, academic performance, or attendance)?
- ➔ Was there anyone you confided in for support?
- ➔ Were you disciplined or pushed out of school for your sexual orientation or gender expression?

4. Employment Discrimination

- ➔ What challenges have you faced in finding or keeping a job?
- ➔ Have you experienced harassment or discrimination when applying for jobs or at work?

    - Forms of unfair treatment, *e.g.:* not being promoted, not receiving raises, being treated differently than cisgender coworkers, having their schedules changed or reduced and being excluded from company events.[104]

---

102 *Quick Guide to the Criminalization of Transgender and Gender Non-Conforming People*, Transformative Just. L. Project Ill., https://www.prisonlegalnews.org/media/publications/Guide%20to%20Criminalization%20of%20Trans%20%26%20Gender%20Non-Conforming%20People%20Transformative%20Justice%20Law%20Proj.%20of%20IL.pdf [https://perma.cc/EJL6FX4Z].

103 Brett D. Thombs et al., *An Evaluation of Screening Questions for Childhood Abuse in 2 Community Samples: Implications for Clinical Practice*, 166 JAMA 2020, 2023 (2006).

104 Brad Sears et al., *LGBT People's Experiences of Workplace Discrimination and Harassment* 10 The Williams Inst. (Aug. 2024), https://williamsinstitute.law.ucla.edu/wp-content/uploads/Workplace-Discrimination-Aug-2024.pdf [https://perma.cc/5KGP-MUK7].

- ➔ Did employers react negatively when they saw your identity records? If so, how?
- ➔ Did you ever consider filing a discrimination claim and, if not, what made that difficult?
    - If yes: *Did you face retaliation if you reported harassment/discrimination?*
- ➔ *How did that make you feel, and how did you respond?*

5. Housing Discrimination and Insecurity:

- ➔ *What has your housing situation been like over the past few years? Where have you been staying recently?*
- ➔ *What kinds of challenges have you faced in finding or keeping housing?*
- ➔ *Did you face harassment or discrimination while [applying for housing or facing eviction]?*
- ➔ *Were you denied housing after a background check or after you showed identity documents?*
- ➔ If client has been at a shelter:
    - Were you allowed to be in a shelter that matched your gender?
    - How did shelter staff treat you?
    - How did other residents treat you?
- ➔ *What did you do when you couldn't find a safe place to stay?*
- ➔ *Did you ever consider filing a discrimination claim and, if not, what were the barriers?*
    - Gather the number of housing applications they submitted in a given period.

6. Intimate Partner Violence

- ➔ Have you ever experienced a romantic or sexual partner calling you names or mistreating you emotionally?
- ➔ Have you ever experienced a romantic or sexual partner hurting you physically or sexually?

7. Barriers to Healthcare Access

- ➔ Have you been able to access the medical or mental health care you need?
    - *Have you ever avoided or delayed care because you were worried about being disrespected or discriminated against?*
    - *Has a doctor, nurse, or therapist ever refused to treat you or made you feel unsafe or uncomfortable?*
    - *Do you currently have a primary care provider or place you can go when you need*

medical help?

- *Have you had trouble accessing gender-affirming care? What barriers did you face (for example, cost, insurance, transportation, fear of mistreatment)?*
- *How does your health affect your day-to-day life right now—physically, mentally, or emotionally?*

Information to contextualize factors in favor of release

1. **Prior Contacts with Criminal Legal System:** This information will help you accurately reframe "criminal history" in your pretrial release argument to reflect profiling, discrimination, poverty, or survival rather than risk.

   ➔ *Preface to client: I want to ask a few questions about your past experiences with law enforcement and the criminal legal system. This helps me understand if you have ever been mistreated, profiled, or abused by police or other system actors, and whether any past charges or convictions were connected to meeting basic needs like housing, safety, or survival. Knowing this information helps me build stronger arguments for your release.*

   ➔ *Have you ever had interactions with the police that felt discriminatory, unsafe, or frightening to you?*

   ➔ *Have officers profiled you or stopped you because of your gender presentation?*

   ➔ *What was going on in your life at the time of [previous criminal legal involvement]?*

   ➔ *Were any of your past arrests connected to homelessness, trying to get food or money, trading sex for survival, or other attempts to meet basic needs?*

   ➔ *Were any of your arrests connected to having sex for money or other forms of compensation, whether or not you were doing so voluntarily?*

   ➔ *Were any of your past arrests related to defending yourself or trying to stay safe?*

   ➔ *Have any negative experiences with police or courts made you hesitant to seek help or interact with the legal system now?*

      - ***Note:*** this information may be helpful in understanding missed court appearances.

2. **Missed court appearances:** This information will allow you to contextualize missed dates in your pretrial release argument as the result of structural barriers such as housing instability, safety concerns, discrimination, or lack of reliable notice, rather than avoidance.

   ➔ *Have you ever missed a court date before?*

   ➔ *Can you tell me what was happening at that time?*

   ➔ *Did you know about the date? How did you receive notice?*

   ➔ *Were there any barriers that made it hard to get to court?*

      - E.g. Lack of notice, transportation, childcare, work schedule, health issues, housing

instability (including not being able to leave your belongings somewhere safe), fear of mistreatment, safety concerns, concerns about ICE.

- Did anything or anyone prevent you from attending that day?
- Are you still facing those barriers now?
- Do you have people or organizations you rely on for reminders or support, like friends, chosen family, case managers, shelters, or community groups, who could help you stay connected to future court dates?
- Did you ever feel you were being treated negatively because of your gender identity by people who work in the court?

3. **Community ties:** These questions will help you identify the people, places, and community structures that anchor your client's life. For many transgender clients, chosen family, queer community spaces, harm reduction programs, shelters, and service providers function as primary sources of stability and support. This information will allow you to demonstrate strong community ties in your pretrial release argument, even when clients have limited traditional family connections.

   ➜ Preface to client: *I'm going to ask you some questions about the people and places you feel connected to, because this is something the court will want to know about. Knowing who supports you and where you feel safe helps me understand what supports you already have in your life.*

   ➜ Who are the most important people in your life right now?

   ➜ Where do you usually spend your time, and who do you spend it with?

   ➜ Are there friends, partners, chosen family members, or mentors you feel connected to?

   ➜ Are you involved in any community groups, support groups, LGBTQ+ centers, faith communities, or services?

   ➜ Do you have regular contact with any case managers, outreach workers, shelter staff, or service providers?

4. **Substance use:** If the court has evidence of substance use, the following information will be critical in contextualizing the structural barriers that have contributed to their use and any barriers to getting treatment.

   ➜ *Preface to client: I want to ask you a few questions about substance use because this may come up in court, and I want to make sure I understand the context so I can advocate for you effectively.*

   ➜ *When did you first start using substances, and what was going on in your life at that time?*

   ➜ *What purpose do substances serve for you right now, such as coping with stress, pain, trauma, or difficult situations?*

   ➜ *Have you ever considered treatment, therapy, harm-reduction services, or support*

groups?

- ➔ *Have you ever tried to get substance use treatment or mental health support?*
    - If yes: *what was that experience like for you?*
- ➔ Did you face any barriers when trying to get help, such as cost, lack of insurance, discrimination, unsafe program environments, long waitlists, or transportation challenges?
- ➔ Are there types of support you would want now or feel would be helpful moving forward?

5. **Harm reduction if incarcerated:** The following questions will help you gather critical information to advocate against detention and identify specific steps to reduce harm your client may face if they are incarcerated, given the heightened harm transgender people experience in custody.

    - ➔ *The Bureau of Prisons may house you based on your sex assigned at birth ("SAAB") or genital/surgery status. I unfortunately can't guarantee that you'll be placed where you prefer, but we can still argue for placement that best supports your healthcare needs and safety.*
        - Plainer language for SAAB is "sex on original birth certificate."[105]
    - ➔ *Do you have a preference for or against certain facilities?*
        - Often, both transgender men and women prefer to be housed at women's facilities because those facilities are generally safer. It is important to ask your client where they would prefer to be housed, while also explaining the limits created by BOP policies or practices.
    - ➔ What are your medical needs? What are the physical or mental health consequences if you are unable to receive this care while incarcerated?
    - ➔ What kind of programming would help you (e.g., therapy, education)?
        - In scenarios where you are requesting BOP placement from a hostile judge who would weaponize your client's transgender identity to put them in unsafe situations, some federal defenders have found it helpful to argue for the programs and healthcare that a preferred facility has, without revealing their client's gender identity or need for gender-affirming healthcare. However, it should be up to the client whether you will take this strategy.
    - ➔ You should also know that you can be transferred between facilities without warning.

105 Andrew M. Snyder, *Dignity, Visibility, and the Right to Be Counted: SOGI Data in LGBTQ+ Research*, Ctr. For Cmty. Sols. (Nov. 18, 2024), https://www.communitysolutions.com/resources/visibility-sogi-data-lgbtq-research [https://perma.cc/DJL5-TRGA].

- ➔ Do you have any questions or concerns about gendered housing in jail/prison, healthcare access, or anything else related to incarceration?

Closing

- ➔ Ask your client what information they feel comfortable having you disclose, and to whom. Always ask permission before sharing any information, especially sensitive details such as gender identity, sexual orientation, and HIV status.
    - Clarify that disclosure to different actors (for example, the judge, the Bureau of Prisons, or the AUSA) serves distinct purposes, and that you will only share information with their explicit consent for each audience.
- ➔ Discuss the next steps and confirm your action items with your client.
- ➔ Check if they have any final questions.
- ➔ Close the interview by checking in on the client's well-being, noting that the conversation may have covered difficult topics, and assessing whether any immediate follow-up or adjustment in approach is needed.

B. Arguing for Pretrial Release

1. Strategy

Crafting a persuasive release argument for transgender clients requires reframing risk as the result of discrimination and structural barriers, rather than personal shortcomings. This approach connects the information gathered in the client interview with the analysis you can offer under each 18 U.S.C. § 3142(g) factor to help secure the least restrictive outcome for your client.

Our general strategy recommendation is as follows:

- **Identify and contextualize negative facts.** Start by reviewing each potentially negative fact with your client and exploring how it is connected to structural barriers. Many facts that courts typically treat as "risk indicators" are, for transgender clients and other clients experiencing systemic marginalization, predictable outcomes of discrimination in housing, employment, healthcare, education, and policing. Positioning these facts within established patterns of anti-transgender discrimination shifts the focus from individual blame to systemic cause.
- **Combine structural data with individual lived experiences.** Use national research and data included in this guide to show that your client's experiences are part of well-documented patterns that result from structural barriers and discrimination faced by transgender people. Then connect that research to your client's lived experience. Pairing individual detail with data helps the court see your client's history as shaped by external barriers, not as evidence of risk or dangerousness.
- **Highlight your client's effort over conventional success.** Traditional bail arguments reward outcomes like stable housing or long-term employment. However, many transgender clients cannot reach traditional markers of stability because of systemic discrimination, through no fault of their own. Focus instead on effort, persistence, and concrete attempts to improve stability. Effort demonstrates responsibility and accountability, even when structural barriers shaped the results.
- **Show the heightened harm of detention.** Highlight the heightened consequences of incarceration for transgender clients in all cases. For judges who are skeptical of structural arguments, federal defenders report the most success with demonstrating the physical and mental health consequences of incarceration, as articulated by government statistics and expert witnesses. This provides concrete, individualized risks the court must consider, even if the judge is less receptive to broader discrimination-based framing.
- To support these arguments, this guide includes statistics and studies from the Department of Justice's Bureau of Justice Statistics and Bureau of Justice Assistance. It also provides a psychologist's affidavit that addresses the transgender-specific mental health and safety concerns, which can be used to support arguments for release because of the consequences of detention.
- **Tailor argument to the judicial audience.** Adapting your approach ensures that the court hears a clear explanation of why detention carries distinct risks for transgender people. Some judges are more receptive to structural analysis, while others respond more strongly

to concrete evidence about health and safety. Either path highlights the same reality: that detention exposes transgender clients to significant risk.

- **Center your client's comfort and consent.** Before sharing any information with the court, obtain your client's explicit consent. Transgender clients face heightened risks of outing, misgendering, and retaliation when identity-related information is disclosed to the court. Even information that is not directly tied to their identity may be weaponized against them. Discuss the potential benefits and risks of disclosing each detail and let your client decide what they want to include in the argument.

2. Factors

For transgender clients, each of the 18 U.S.C. § 3142(g) factors are shaped by the discrimination-to-incarceration pipeline that produces housing instability, employment discrimination, criminalization of survival, and elevated vulnerability in custody. Traditional bail arguments often emphasize access to stable family relationships, employment, housing, and healthcare, but these assumptions do not reflect the lived experiences of most transgender people.

This section reframes each statutory factor through an anti-discrimination lens, offering concrete ways to contextualize "bad facts," highlight your client's strengths and efforts within structural constraints, and demonstrate why pretrial detention is especially dangerous for transgender clients.

The Nature and Circumstances of the Offense

Courts often treat the nature and circumstances of the offense charged as a neutral indicator of dangerousness or flight risk. For transgender clients, however, this factor is frequently shaped by anti-transgender bias at the policing and charging stages of the criminal legal process. Transgender people, particularly transgender women of color, experience harassment, discriminatory arrests, and physical and sexual assault[106] by police at very high rates.[107] Additionally, police officers and civilians routinely interpret transgender people's presence as suspicious or criminal while they engage in everyday activities like shopping or walking on the sidewalk.[108] Scholars have suggested that these high levels of criminalization are partly due to police profiling transgender people as

106 Madeline R. Stenersen et al., *Police and Transgender and Gender Diverse People in the United States: A Brief Note on Interaction, Harassment & Violence*, 37 J. Interpers. Violence NP23527, NP23528 (2022), https://journals.sagepub.com/doi/10.1177/08862605211072161 (finding that transgender and gender-diverse people engaged in sex work were 11 times more likely to report being forced to engage in sex with the police to avoid arrest compared to those who were not engaged in sex work).

107 Advocates for Trans Equality, *supra* note 31; Jordan Blair Woods et al., *Latina Transgender Women's Interactions with Law Enforcement in Los Angeles County*, Williams Inst. (Nov. 2013), https://williamsinstitute.law.ucla.edu/publications/latina-tran-women-law-enforce-lac/ [https://perma.cc/UAT4-6XDH].

108 Amnesty Int'l, *USA: Stonewalled: Police Abuse and Misconduct Against Lesbian, Gay, Bisexual and Transgender People in the U.S.* 4 (Sept. 21, 2005), https://www.amnesty.org/en/documents/amr51/122/2005/en/ [https://perma.cc/WAQ5-PDMR] [hereinafter "*Stonewalled*"].

engaged in sex work.[109] As a result, arrest narratives often reflect anti-transgender biases rather than objective facts, embedding discriminatory perceptions into the very foundation of the case. It is also important to note, however, that many transgender people do engage in sex work.[110] The core issue is not a client's decision to engage in sex work, which is often necessitated by economic circumstances, but rather the criminalization of sex work in the first place.

For "Crimes of Violence"

Transgender people experience disproportionately high rates of physical and sexual violence from strangers, partners, community members, and law enforcement.[111] Transgender people are over four times more likely than cisgender people to be victims of violent crime.[112] In a 2022 study by the National Center for Transgender Equality, nearly one-third (30%) of respondents reported being verbally harassed in the last 12 months because of their gender identity or expression, and 3% of respondents reported that they were physically attacked for the same reason.[113]

Despite elevated levels of victimization, transgender people often face criminal charges for actions tied to survival and self-protection in the face of violence. In the same 2022 study referenced above, 62% of transgender respondents reported that they were uncomfortable asking the police for help when they needed it because of their gender identity or expression.[114] One reason for this may be that law enforcement officers regularly misidentify transgender victims seeking assistance as aggressors and arrest them.[115]

When addressing the "nature and circumstances of the offense," you should situate the allegation within this broader landscape of vulnerability and systemic failure. Evaluate whether your client is actually the victim of violence who has been misidentified as the aggressor. Alternatively, determine whether the conduct reflects a reasonable response to fear, trauma, or an immediate threat. Because transgender people are disproportionately subjected to violence and are often charged for actions rooted in survival or self-protection, you can reframe the government's characterization of the conduct to show that it does not demonstrate inherent dangerousness. Behavior labeled as "violent" may be shaped by a lifetime of elevated victimization and deep mistrust of law enforcement. This framing can help persuade the court that the charged conduct is not predictive of future harm.

---

109 Stenersen et al., *supra* note 106, at NP23529 (citing Ashley Lacombe-Duncan & Ronke Olawale, *Context, Types, and Consequences of Violence Across the Life Course: A Qualitative Study of the Lived Experiences of Transgender Women Living With HIV*, 37 J. Interpers. Violence 2242 (2020); Rebecca L. Stotzer, *Law Enforcement and Criminal Justice Personnel Interactions with Transgender People in the United States: A Literature Review*, 19 Aggression & Violent Behav. 263 (2014).

110 *See infra* page 60.

111 *Transgender People Over Four Times More Likely Than Cisgender People to Be Victims of Violent Crime, Williams Inst.*, (Mar. 23, 2021), https://williamsinstitute.law.ucla.edu/press/ncvs-trans-press-release/ [https://perma.cc/4NZK-NNDH].

112 *Id.*

113 Sandy E. James et al., *Early Insights: A Report of the 2022 U.S. Transgender Survey*, Nat'l Ctr. For Transgender Equal. 21 (Feb. 2024), https://transequality.org/sites/default/files/2024-02/2022%20USTS%20Early%20Insights%20Report_FINAL.pdf [https://perma.cc/P3LB-GUXM].

114 *Id.* at 22.

115 *Stonewalled, supra* note 108, at 5-6.

For Drug-Related Offenses

When representing transgender clients charged with narcotics offenses, it is essential to situate the alleged conduct within the discrimination-to-incarceration pipeline, rather than allowing courts to interpret it as inherently dangerous. Structural discrimination forces many LGBTQ+ people, especially transgender people, into criminalized economies in order to survive.[116] The unemployment rate for incarcerated LGBTQ+ people surveyed in 2014 was nearly seven times higher than the national rate.[117] Half of surveyed incarcerated LGBTQ+ people reported that they sold drugs for survival.[118]

In your argument, focus the court's attention on the structural conditions that constrained your client's economic choices and pushed them into informal or criminalized work to survive. Highlight any employment discrimination they faced, including exclusion during hiring, harassment in the workplace, discriminatory discipline, termination tied to gender identity or expression, and employers' refusal to respect their name, pronouns, or gender presentation. Use the details from your client's interview to place their individual experiences within broader, well-documented patterns of anti-transgender employment discrimination. This framing highlights how economic marginalization, rather than criminal intent, shapes the alleged conduct and disrupts narratives that are routinely used to justify punitive outcomes for transgender people.

Sex-Related Offenses

When representing transgender clients charged with sex-related offenses, situate the allegation within both the discriminatory policing that targets transgender people and the economic marginalization that pushes many transgender people into criminalized survival economies. Discrimination in employment, poverty, housing instability, and exclusion from formal labor markets can leave sex work as one of the few viable options for survival for transgender people.[119] By naming these structural conditions explicitly and using information from your client interview, you can demonstrate how the alleged conduct reflects the well-documented need among transgender people to enter criminalized economies when safe and affirming economic opportunities are denied. This framing can create a narrative that roots your client's actions in the structural barriers transgender people face while rejecting the narrative that their attempts to survive reflect inherent danger.

It is important to remember that using sodomy laws to criminalize same-sex sexual conduct was only ruled unconstitutional in 2003, in *Lawrence v. Texas*.[120] Throughout history, claims of 'sexual deviance' have been used to wrongfully convict LGBTQ people and to justify disproportionately harsh sentences. In recent years, this dynamic has reemerged in the form of false narratives that

116 Deborah Lolai, *Out of the Closet, In on Bail*, 61 Harv. C.R. & C.L. L. Rev. 126, 140-41 (2026).

117 Lydon et al., *supra* note 30, at 3.

118 *Id.*

119 Erin Fitzgerald et al., *Meaningful Work: Transgender Experiences in the Sex Trade*, Red Umbrella Proj., Best Practices Pol'y Proj & Nat'l Ctr. For Transgender Equal. 4 (Dec. 2015), https://transequality.org/sites/default/files/Meaningful%20Work-Full%20Report_FINAL_3.pdf [https://perma.cc/EV67-XP4T]; Kevin L. Nadal et al., *Transgender Women and the Sex Work Industry: Roots in Systemic, Institutional, and Interpersonal Discrimination*, 15 J. Trauma & Disassociation 169, 171-74 (2014).

120 *Lawrence v. Texas*, 539 U.S. 558 (2003).

portray transgender people as 'sexual predators.'[121] This is an important lens through which to analyze both prior convictions and new charges. Therefore, if your client has any sex-related convictions, you should ask about the underlying facts of those cases, as it is entirely possible that the conviction resulted, at least in part, from anti-LGBTQ bias in policing or prosecution, even if only indirectly.

The Weight of the Evidence Against the Person

Consider how the government's evidence may be shaped by anti-transgender bias. Transgender people are frequently misidentified as aggressors when they seek help, profiled as sex workers or drug offenders for ordinary conduct, and viewed as inherently suspicious by police and civilians.[122] These patterns shape how officers document events and how witnesses understand what occurred. Apply the same scrutiny to testimony from partners, family members, or neighbors. Many transgender people have experienced rejection or abuse within these relationships, and those dynamics can affect how events are described. Use information from your client about the role bias or misconceptions played in the allegations to challenge the credibility of the government's evidence and to argue that the weight of evidence does not support a finding of dangerousness or flight risk.

History and Characteristics of the Person

Section 3142(g)(3) directs the court to consider the history and characteristics of the person, including physical and mental condition, family ties, employment, financial resources, community ties, past conduct, substance use, criminal history, and record of appearances. The sections below break these factors down and provide guidance on how you can frame each one in light of the structural barriers that transgender people face. Situating your client's experiences within these broader patterns helps counter narratives of individual fault and present a fuller, more accurate account of their circumstances.

Physical Condition

The BOP has a constitutional duty to provide adequate medical care to people in its custody. Transgender people are disproportionately impacted by chronic health conditions, HIV/AIDS, substance use, mental illness, and sexual and physical violence, as well as higher prevalence and earlier onset of disabilities that can also lead to health issues.[123] Nearly half of transgender people seeking medical care report being mistreated by providers, which often leads to delayed or

121 *See generally* Jordan Blair Woods, The New Sexual Deviancy, 113 Geo. L.J. 911 (2025); Valena E. Beety, Manifesting Justice: Wrongly Convicted Women Reclaim Their Rights (Citadel Press 2022); Joey L. Mogul, Andrea J. Ritchie & Kay Whitlock, Queer (In)Justice: The Criminalization of LGBT People in the United States (Beacon Press 2011).

122 *See generally* Somjen Frazer et al., *Protected & Served? 2022 Community Survey of LGBTQ+ People and People Living with HIV's Experiences with the Criminal Legal System,* Lambda Legal & Black and Pink Nat'l *(2023),* https://www.protectedandserved.org/2022-report-full-report [https://perma.cc/QQ3X-RM69]; *Stonewalled, supra* note 108, at 4.

123 Caroline Medina, *Fact Sheet: Protecting and Advancing Health Care for Transgender Adult Communities*, Ctr. for Am. Progress (Aug. 25, 2021), https://www.americanprogress.org/article/fact-sheet-protecting-advancing-health-care-transgender-adult-communities/ [https://perma.cc/Q7B3-K623].

interrupted treatment and worsened health outcomes.[124] You should explain that these compounding disparities mean that your client will enter the system with heightened medical vulnerability, and that incarceration will predictably worsen their health because jails routinely provide inadequate medical care and frequently fail to deliver timely medications or access to specialists.

For clients who receive gender-affirming healthcare, the dangers of incarceration and interruption of medically necessary care are even more pronounced. Loss of access to hormone therapy can trigger cardiovascular complications, bone density loss, metabolic dysfunction, and acute spikes in dysphoria, depression, and suicidality.[125] Courts often underestimate these consequences, so it is critical to explain the specific medical risks your client faces if their treatment is interrupted. If your client is in custody and has been denied care, they should follow the available grievance process. You may also highlight that while access to medical care in jails has always been unreliable, Executive Order 14168 further jeopardizes the health of transgender people experiencing incarceration.

Using the information gathered during your interview, argue that your client's medical needs cannot be safely met in custody. Identify the ongoing conditions, medications, and treatment routines that require stability, regular provider access, and timely refills, and explain how detention will disrupt each of them. Medical records or provider letters documenting the necessity of uninterrupted treatment (see sample MD affidavit) can strengthen this argument and help persuade the court that your client's physical condition weighs heavily against pretrial detention.

Mental Condition

Research consistently shows that LGBTQ+ people face far higher rates of mental health conditions, including substance use disorders, than the general population.[126] Studies indicate that LGB adults are more than twice as likely as heterosexual adults to experience a mental health condition, and transgender people are nearly four times as likely as cisgender people to experience a mental health condition.[127] These disparities are closely tied to the structural harms transgender people encounter throughout their lives. Experiences such as coming out in unsupportive environments, family rejection, trauma, homelessness, discrimination, harassment, and inadequate access to affirming mental health care all contribute to or intensify depression, anxiety, suicidality, and substance use.[128]

---

124 Lambda Legal, *Defending and Expanding Nonbinary and Transgender Rights*, https://lambdalegal.org/issues/transgender-nonbinary-rights/ [https://perma.cc/7H48-ADNY].

125 Helen Webberley, *The Danger of Withdrawing Hormones from Trans People: A Frank Reality Check* GenderGP (Jan. 27, 2025), https://www.gendergp.com/blog/the-danger-of-withdrawing-hormones-from-trans-people/ [https://perma.cc/3QTN-B8GK].

126 Bastian Rosner et al., *Substance Use Among Sexual Minorities in the U.S. — Linked to Inequalities and Unmet Need for Mental Health Treatment? Results from the National Survey on Drug Use and Health (NSDUH),* 135 J. Psychiatric Rsch. 107, 108 (Mar. 2021); Michael E. Newcomb et al., *High Burden of Mental Health Problems, Substance Use, Violence, and Related Psychosocial Factors in Transgender, Non-Binary, and Gender Diverse Youth and Young Adults*, 49 Archives of Sexual Behav. 645, 654 (2020).

127 Homeyra Banaeefar, *Mental Health and the LGBTQ* Population*, Inst. for Soc. Rsch., Univ. of Mich., https://www.icpsr.umich.edu/sites/icpsr/posts/shared/lgbtq-mental-health [https://perma.cc/K2Y5-KVNW].

128 Michael E. Newcomb et al., *The Influence of Families on LGBTQ Youth Health: A Call to Action for Innovation in Research and Intervention Development*, 6 LGBT Health 139, 141-42 (2019).

When a transgender client has a documented mental health condition, contextualize that diagnosis as the foreseeable result of discrimination, violence, and systemic failure, rather than a marker of dangerousness or instability. Emphasize that incarceration will predictably worsen their mental health. Detention separates clients from stabilizing relationships, cuts them off from community support, and exposes them to environments where misgendering, harassment, and violence are common. For many transgender people, these conditions replicate the exact harms that produced their trauma in the first place.

Using information gathered during the interview, identify your client's current mental health needs, any diagnoses or symptoms, and their efforts to seek care. Argue that detention will interrupt critical treatment, worsen symptoms, and place your client at significant risk of harm, all of which weigh strongly against pretrial detention.

Family Ties

LGBTQ+ youth experience family rejection at disproportionately high rates, in part because many transgender people are forced out of their homes as teenagers or run away from unsafe and hostile environments.[129] Approximately 40% of homeless youth in the United States identifies as LGBTQ+, and the primary reason is familial rejection because of their sexual orientation, gender identity, or gender expression.[130] These ruptured family relationships often persist into adulthood, meaning that conventional expectations of parental support, stable multigenerational households, or having family members from one's family of origin present in court do not reflect the lived experiences of most transgender individuals. Family estrangement "makes it difficult to demonstrate a connection to their community, responsibilities as a caretaker, and overall accountability."[131]

Because judges often rely on family ties to infer stability, accountability, and likelihood of return to court, you should explain to the court that the absence of traditional familial support is not evidence of irresponsibility or risk. Rather, it is the result of lack of acceptance and rejection. By providing this context, you reframe what otherwise might appear as instability or an indicator of future danger or flight.

While considering family ties generally disproportionately harms LGBTQ+ individuals in pretrial detention determinations, you can reframe this by foregrounding the client's chosen family and community ties. "Chosen family" refers to the people whom one chooses to love and care for, forming reciprocal and familial-like bonds.[132] Highlighting these relationships can demonstrate meaningful sources of support and accountability that weigh in favor of release.

---

129 Lolai, *Out of the Closet, In on Bail, supra* note 116, at 134-38.

130 M. H. Morton et al., *Missed Opportunities: LGBTQ Youth Homelessness in America,* Chapin Hall, Univ. of Chicago 11 (2018), https://www.chapinhall.org/wp-content/uploads/VoYC-LGBTQ-Brief-FINAL.pdf [https://perma.cc/QL9B-42HY]; Laura E. Durso & Gary J. Gates, *Serving Our Youth: Findings from a National Survey of Services Providers Working with Lesbian, Gay, Bisexual, and Transgender Youth Who Are Homeless or at Risk of Becoming Homeless*, Palette Fund, True Colors Fund & Williams Inst. 4 (2012), https://williamsinstitute.law.ucla.edu/wp-content/uploads/Serving-Our-Youth-July-2012.pdf [https://perma.cc/E33Y-UTZE].

131 Lolai, *Out of the Closet, In on Bail, supra* note 116, at 135.

132 *Id.* at 136.

Employment

The rate of employment discrimination against LGBTQ+ people is overwhelming, particularly against transgender individuals, despite such discrimination being prohibited by federal law.[133] A 2023 report found that over half (55%) of transgender or nonbinary employees reported experiencing discrimination (being fired or not hired) based on their LGBT status.[134] This has been widely cited as the reason many transgender women are compelled to engage in sex work for survival.[135]

Courts often interpret stable employment as a marker of responsibility and reliability, reasoning that a person who consistently reports to work will also consistently report to court. Unemployment, by contrast, is frequently misread as a personal failing or a sign that the individual is less likely to appear. For transgender clients, you should explain that this assumption is inaccurate and discriminatory. High rates of workplace discrimination mean that many transgender people are denied jobs, pushed out of jobs, or made unsafe in their workplaces through no fault of their own.

In your argument for release, make clear that employment barriers are not indicators of instability, but predictable consequences of systemic bias. When appropriate, document the number of applications your client has submitted, instances of misgendering or harassment during the hiring process, and any retaliatory treatment they faced in prior jobs. Consider including illustrative anecdotes that, with your client's consent, make the impact of discrimination clear and concrete for the court.

You should also contextualize any involvement in criminalized economies. Because discrimination often forecloses access to lawful employment, transgender people are frequently pushed into survival economies such as sex work or the informal drug trade. Frame these activities not as evidence of dangerousness, but as the direct result of employment discrimination and the absence of safe, legal opportunities to earn income. Use this context to argue that unemployment, underemployment, or participation in criminalized economies should not weigh against release.

Financial Resources

Transgender people experience exceptionally high poverty rates.[136] Family rejection, employment discrimination, and housing instability directly limit individuals' financial means. They are far less likely to have access to family resources or to own property that could be posted for bail. When representing transgender individuals with limited financial resources, emphasize to the court that their limited financial means eliminate any meaningful risk of flight. A person who lacks savings, access to family funds, or the ability to travel long distances is not in a position to flee the jurisdiction if granted release. Rather than indicating danger or unreliability, financial insecurity often reflects the client's deep attachment to their local community and their inability to go anywhere else.

133 Lolai, *Out of the Closet, In on Bail*, *supra* note 116, at 140; *see also Bostock v. Clayton County*, 590 U.S. 644 (2020) (holding that Title VII of the Civil Rights Act of 1964 prohibits employment discrimination based on sexual orientation and gender identity).

134 Sears et al., *supra* note 104, at 10.

135 Lolai, *Out of the Closet, In on Bail*, *supra* note 116, at 141 (citing Nadal et al., *supra* note 119).

136 Bianca D.M. Wilson et al., *LGBT Poverty in the United States: A Study of Differences between Sexual Orientation and Gender Identity Groups*, Williams Inst. (Feb. 2023), https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Poverty-COVID-Feb-2023.pdf [https://perma.cc/SJV2-5B4W].

Length of Residence in the Community

For transgender clients, housing instability should be framed as a consequence of pervasive discrimination, rather than a sign of unpredictability or flight risk. Transgender people experience elevated rates of housing discrimination and instability due to anti-transgender bias.[137] Unlike their cisgender counterparts, transgender individuals are far less likely to have familial support to rely on when facing housing instability.[138] These barriers force many transgender people into frequent moves or short-term arrangements that reflect systemic exclusion, not personal instability.

Because discrimination is so widespread, transgender people are disproportionately likely to be unhoused. Survey data shows that only 52% of incarcerated LGBTQ+ people had their own home prior to incarceration, and 20% were homeless or transient.[139] Additionally, unhoused transgender individuals are more likely to be unsheltered than cisgender individuals experiencing homelessness.[140] Many transgender people prefer unsheltered homelessness to shelters, which often subject them to harassment, violence, and misgendering by staff and residents.[141] Additionally, sex-segregated shelter policies frequently place transgender people in facilities that do not align with their gender identity.[142]

When arguing the "length of the residence in the community" factor, explain that short-term housing, frequent moves, or the absence of a stable address are predictable consequences of anti-transgender discrimination, not indicators of flight risk. Transgender clients often remain deeply connected to their communities through chosen family, affirming service providers, LGBTQ+ spaces, and support networks, even when they cannot secure long-term housing. Highlight these connections to counter assumptions that housing instability reflects a lack of community ties.

Community Ties

Because transgender clients are disproportionately likely to experience family rejection, homelessness, or transient living situations, it may be harder for them to demonstrate traditional forms of community ties.[143] As a result, their community may look different from what a court

137 Sandy E. James et al., *The Report of the 2015 U.S. Transgender Survey*, Nat'l Ctr. for Transgender Equal., 175-76 (2016), https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf [https://perma.cc/S88G-UTUD]; Diane K. Levy et al., *A Paired-Testing Pilot Study of Housing Discrimination Against Same-Sex Couples & Transgender Individuals*, Urban Inst. 60-63 (2017), https://www.urban.org/sites/default/files/publication/91486/2017.06.27_hds_lgt_final_report_report_finalized_0.pdf [https://perma.cc/35B6-KX2T] (observing overt discrimination against trans housing applicants and fewer referrals by rental listing agents in an empirical study).

138 *See supra, page 38; Lolai, Out of the Closet, In on Bail*, *supra* note 116, at 134-38.

139 Lydon et al., *supra* note 30.

140 Nat'l All. to End Homelessness, *Data Snapshot: Trans and Gender Non-Conforming Individuals Experience Unsheltered Homelessness at Higher Rates* (July 14, 2020), https://endhomelessness.org/resources/sharable-graphics/data-snapshot-trans-and-gender-non-conforming-individuals-experience-homelessness-at-higher-rates/ [https://perma.cc/J6B5-HC96] (finding that 49% of cisgender adults experiencing homelessness were unsheltered, compared to 63% of transgender adults and 80% of gender non-conforming adults).

141 Lolai, *Out of the Closet, In on Bail*, *supra* note 116, at 138-39.

142 *Id.*

143 *Id.* at 134-37.

typically expects. For many LGBTQ+ people, especially those who have lost or strained relationships with their families of origin due to lack of acceptance, the concept of chosen family is particularly important.[144] As noted above, chosen family refers to people, not necessarily biological or legal relatives, with whom individuals build reciprocal, familial-like bonds of care and support.[145] Information about your client's chosen family can be used to demonstrate strong community ties by identifying the individuals who provide support, accountability, and connection in their daily life, reinforcing that your client is rooted in the community and has every reason to return to court and comply with court orders.

Other examples of community ties include houses of worship, support groups, local businesses such as cafes or clubs, and community-based hobbies (dance, drag, ballroom, sports), as well as libraries, shelters, drop-in centers, and food pantries. If your client is connected to any community programs or services, even informally, highlight those relationships to demonstrate their meaningful community ties that support release.

History Relating to Drug or Alcohol Abuse

Many LGBTQ+ people use substances as a way to cope with the trauma, violence, and chronic stressors that their cisgender and straight counterparts are far less likely to encounter.[146] It is estimated that 20-30% of LGBTQ+ people abuse substances, compared to 9% of the general population.[147] This disparity is driven by the daily stressors of stigma and discrimination, which lead many people to turn to substances as a coping mechanism.[148] Limited access to culturally competent healthcare further compounds these challenges, making it more difficult for transgender people to obtain appropriate treatment or support.[149]

When discussing a client's substance use history with the court, frame any evidence of use as a response to structural barriers such as family rejection, homelessness, and mistreatment in healthcare settings. Emphasize any steps your client has taken to seek treatment. Include information about whether those attempts were disrupted by discrimination, financial barriers, or the absence of affirming services.

144 *Id.* at 136.

145 *Id.*

146 Margaret M. Paschen-Wolff et al., *Experiences of and Recommendations for LGBTQ+-Affirming Substance Use Services: An Exploratory Qualitative Descriptive Study with LGBTQ+ People Who Use Opioids and Other Drugs,* 19 Substance Abuse Treatment, Prevention, & Pol'y 1, 2 (2024).

147 Jerome Hunt, *Why the Gay and Transgender Population Experiences Higher Rates of Substance Use*, Ctr. for Am. Progress 1 (Mar. 9, 2012), https://cdn.americanprogress.org/wp-content/uploads/issues/2012/03/pdf/lgbt_substance_abuse.pdf [https://perma.cc/ZYD4-CTRY].

148 *Id.*

149 *Id.*

Criminal history[150]

LGBTQ+ people are overrepresented in the criminal legal system.[151] Transgender women of color are particularly affected by arrest and incarceration; Black and Native American transgender women experience arrest at twice the rate of the American population.[152] This overrepresentation is driven by discrimination by system actors,[153] structural barriers,[154] criminalization of survival,[155] criminalization of LGBTQ+ identities,[156] and high rates of violence and victimization experienced by LGBTQ+ people.[157] It is important to contextualize a transgender client's criminal record within the long-standing criminalization of LGBTQ+ people, recognizing that many prior arrests or convictions reflect policing of identity and survival rather than evidence of inherent dangerousness or disregard for the law. When possible, connect each prior contact with the criminal legal system to specific structural factors — such as homelessness, profiling, or attempts to stay safe — to show the court that your client's record is a product of systemic harm, not personal risk.

Employment discrimination may push individuals into criminalized economies, such as sex work and selling drugs.[158] Other acts of survival may also lead to increased police contact or a criminal record, such as stealing food or using public transportation without paying the fare.[159] Sometimes police contact might be solely due to police bias. Research shows that transgender people are profiled by police officers and civilians as acting "suspicious" while going about their daily business.[160] Indeed, police officers subject transgender people to selective law enforcement and often see transgender victims seeking assistance as aggressors and arrest them.[161] Moreover, transgender people have been arrested for charges such as "false personation" for providing police officers with both their

150 *See generally* Frazer et al., *supra* note 122.

151 Jane Hereth, *What Is Behind the Overrepresentation of People Who Identify as LGBTQ+ in the Criminal Legal System?* Safety and Just. Challenge (June 24, 2022), https://safetyandjusticechallenge.org/blog/what-is-behind-the-overrepresentation-of-people-who-identify-as-lgbtq-in-the-criminal-legal-system/ [https://perma.cc/RZF2-LQ4K].

152 *Id.*

153 Frazer et al., *supra* note 122, at 17, 18, 36 (finding that nearly 58 percent of LGBTQ+ respondents had face-to-face contact with the police within the past five years, almost a third of transgender or gender nonconforming people reported that police had a hostile or mostly hostile attitude towards them, and among transgender or gender nonconforming respondents who had been involved in the court system in the last five years, over half were misgendered by a court employee).

154 *See supra* page 17.

155 *See supra* page 42.

156 Hereth, *supra* note 151*; see also* Lolai, *Out of the Closet, In on Bail*, *supra* note 116, at 19-23.

157 *Id.*

158 *Submission to UN Working Group on Discrimination Against Women and Girls*, Ctr. Const. Rts., Transgender L. Ctr., Lambda Legal 17-21 (Sept. 12, 2019), https://ccrjustice.org/genderjusticeintl [https://perma.cc/JFD9-UVC6]; Movement Advancement Proj. & Ctr. Am. Prog., *Unjust: How the Broken Criminal Justice System Fails Transgender People* (May 2016), https://www.lgbtmap.org/file/lgbt-criminal-justice-trans.pdf [https://perma.cc/W4WD-FZF6].

159 Christina Sewell, *Policing Poverty at the Turnstile*, Colum. Sch. Intl. & Pub. Affs. (Nov. 3, 2020), https://www.sipa.columbia.edu/news/policing-poverty-turnstile [https://perma.cc/44LR-LS32]; Christopher Mayer & Jessica Reichert, *The Intersection of Homelessness and the Criminal Justice System*, Ill. Crim. Just. Info. Auth., Ctr. Just. Rsch. & Evaluation 7 (July 9, 2018), https://researchhub.icjia-api.cloud/uploads/Homelessness_PDF-191011T20092064.pdf [https://perma.cc/LNC9-7ZJ4].

160 *Stonewalled, supra* note 108, at 4.

161 *Stonewalled, supra* note 108, at 6.

deadname and new name.[162] Additionally, because LGBTQ+ people face pervasive housing discrimination, laws that target unsheltered individuals disproportionately harm transgender people by penalizing survival rather than wrongdoing.[163]

When reviewing your client's criminal record, identify whether any charges reflect survival behaviors, such as sex work, selling drugs, larceny (especially of necessities like food or diapers), fare evasion, panhandling, violations of anti-homelessness laws (sleeping in public, loitering), failure to pay fines, or driving without a license (sometimes suspended for failure to pay child support). Also pay attention to indicators of sex trafficking that may have led to criminal charges. With your client's permission, frame these charges as consequences of unemployment, poverty, victimization, or homelessness rather than as evidence of risk. Cite research to illustrate that these charges arise from structural barriers and social stigma rather than intentional criminality; for example, one survey found that the unemployment rate for incarcerated LGBTQ+ people was nearly seven times higher than the national rate, with 39% reporting that they have traded sex for survival and over 50% reporting selling drugs to survive.[164]

If your transgender client has charges related to violence, explore whether they were acting in self-defense or whether an abusive partner or assailant weaponized the criminal legal system against them. Transgender people experience disproportionate rates of assault and intimate partner violence, a pattern that is especially severe for transgender women of color and most acute for Black transgender women.[165] When reviewing violent charges, highlight the high rates of violence faced by transgender people, especially transgender women of color, and contextualize incidents in light of these realities. This framing underscores that the record may reflect your client's attempts to stay safe in the face of danger rather than conduct suggesting future harm.

Record of Court Appearances

If your client has missed prior court dates, use information from the client interview and ask detailed follow-up questions to understand what happened. Many transgender clients miss court for reasons rooted in discrimination and instability, such as homelessness, lack of transportation, fear of mistreatment in court settings, disruptions in healthcare, or crises related to violence or safety.[166] Once you understand the underlying cause, provide the court with this context and explain how the circumstances that led to the missed appearance have since changed.

Emphasize concrete factors that now support reliable court attendance, such as stable housing, improved transportation access, connection with a support person, reminders from counsel, or

162 Deborah Lolai, Letter to the Editor, *Treatment of Transgender People in Custody Must Improve*, Law.com (Feb. 18, 2019), https://www.law.com/newyorklawjournal/2019/02/08/treatment-of-transgender-people-in-custody-must-improve/?slreturn=20250212170605 [https://perma.cc/VNQ8-6KSS].

163 *See* Brief of Amicus Curiae, Ctr. for Const. Rts. et al. in Support of Respondents 6-17, *City of Grants Pass v. Johnson*, 603 U.S. 520 (2024) (No. 23-175) (describing the disproportionate impact of criminalizing homelessness on queer communities).

164 Lydon et al., *supra* note 30, at 3.

165 Ezie, *supra* note 93, at 291 (citing Cynthia Lee, *The Trans Panic Defense Revisited*, 57 Am. Crim. L. Rev. 1411, 1418-25 (2020)); Leigh Goodmark, *Transgender People, Intimate Partner Abuse, and the Legal System*, 48 Harv. C.R.-C.L. Rev. 51, 56-59 (2013).

166 Lolai, *Out of the Closet, In on Bail*, *supra* note 116, at 150-54; Lydon et al., *supra* note 30, at 3.

engagement with services. Argue that missed appearances were the product of structural barriers rather than willful avoidance and that your client has every reason and ability to appear for future dates.

Whether, at the time of the current offense or arrest, the person was on probation, on parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under Federal, State, or local law

Consider whether discrimination shaped the events leading to the current arrest or at any stage of the criminal process for the underlying case. Transgender people are frequently profiled by civilians and police and charged with survival-based offenses.[167] Structural barriers such as homelessness and lack of family or foster placement support can also put clients in situations that increase police contact.[168] Provide this context to demonstrate that the new arrest may reflect the cumulative impact of discrimination and structural constraints, rather than intentional noncompliance.

The Nature and Seriousness of the Danger to Any Person or to the Community that Would be Posed by the Person's Release

When addressing the nature and seriousness of any potential danger posed by release, focus on reframing the government's narrative and grounding the court's analysis in context. For transgender clients, conduct that appears concerning at first glance may be closely connected to survival, discrimination, or prior victimization rather than a risk of future harm. Ask about the circumstances surrounding the allegations, any history of being targeted or misidentified as an aggressor, and any supports the client relies on to stay safe. Emphasize protective factors, such as community ties, service engagement, stable routines, or safety planning. A clear explanation of the surrounding circumstances, along with the client's existing supports and stabilizing factors, can help the court make a more accurate assessment of risk.

3. Pretrial Status Outcomes

This subsection highlights the pretrial outcomes that carry unique implications for transgender clients. Rather than covering every possible form of release or supervision, it focuses on the outcomes that pose distinct risks or require tailored advocacy. Detention is addressed first because it is the most harmful outcome for transgender people and should be vigorously contested in every case.

Detention

Detention is the most dangerous pretrial outcome for transgender clients. Incarcerated transgender people face disproportionate rates of sexual and physical violence, solitary confinement, denial of gender-affirming medical care, and routine misgendering by staff and other incarcerated people.[169] Placement decisions that disregard gender identity can further increase the risk of victimization,

167 Lydon et al., *supra* note 30, at 3.

168 *See also* Frazer et al., *supra* note 122, at 45.

169 Erin McCauley et al., *Exploring Healthcare Experiences for Incarcerated Individuals Who Identify as Transgender in a Southern Jail,* 3 Transgender Health 34, 35 (2018).

and interruption of hormone therapy or other necessary care can result in severe physical and mental health consequences. Emphasize these dangers to demonstrate why detention is uniquely harmful for transgender clients and why alternative release options can better serve both safety and compliance.

Key points to raise when opposing detention include:

- **Heightened physical danger**, including a significantly increased likelihood of sexual assault and forced placement in solitary confinement for "protection."
- **Interruption of medically necessary care**, such as hormone therapy, gender-affirming items, and mental health treatment, which can lead to acute medical and psychological harms.
- **Misgendering, outing, and retaliation**, which are pervasive in custodial settings.
- **Placement misaligned with gender identity**, which has become increasingly likely under Executive Order 14168 and therefore compound exposure to violence.
- **Loss of community support**, which can undermine stability and make future re-entry more difficult.

The magnified harms transgender people face in prison are described in depth above in Part I of this guide.

Court-ordered Substance Use or Mental Health Treatment Programs

Treatment programs, whether outpatient or inpatient, can create significant and sometimes unworkable burdens for transgender clients, making compliance with those conditions impossible. When the court proposes treatment as a condition of release, evaluate whether the condition is feasible, safe, and appropriate, and be prepared to explain why certain programs or requirements may be harmful or discriminatory.

Many treatment programs lack cultural competency and experience working with transgender clients or actively discriminate against them, and their websites often overstate the program's inclusivity.[170] Before agreeing to a program in court, call the program directly and ask specific questions about whether they have experience working with transgender individuals, and what structures they have in place to support transgender people throughout the program. If you or your clients have concerns about a program, describe the risks to the court and offer alternatives that will not expose your client to harm or discrimination.

Inpatient Treatment

Many residential treatment programs fail to provide gender-aligned housing or room assignments, safe and accessible restrooms and showers, gender-affirming healthcare, or meaningful protections against discrimination and harassment from staff or other program participants.[171] Residential treatment programs can also replicate the same harms that transgender people experience while

170 Sara Matsuzaka, *Transgressing Gender Norms in Addiction Treatment: Transgender Rights to Access within Gender Segregated Facilities*, 17 J. Ethnicity Substance Use 420, 420-22 (2017).

171 Lolai, *Out of the Closet, In on Bail, supra* note 116, at 29 (citing Paschen-Wolff et al., *supra* note 146, at 2).

incarcerated, including misgendering, unsafe housing placements, denial of gender-affirming care, and exposure to harassment or violence.

Do not assume that residential treatment is a safe or stabilizing outcome for your client. Confirm that the program will house your client in accordance with their gender, provide gender-affirming personal items and clothing, provide or support the provision of gender-affirming items and clothing, and provide or support access to gender-affirming healthcare. Also ensure that the program has systems for responding to harassment or safety concerns your client may experience while in the program. In addition to speaking directly with program staff, reaching out to other attorneys who have had transgender clients in the program is the most reliable way to assess whether a program will actually support your client.

Outpatient Treatment

While outpatient treatment is less restrictive than inpatient placements, it can still carry significant risks for transgender clients who are less likely to have access to reliable transportation, stable housing, predictable schedules, and consistent access to communication devices. Ensure the court understands the concrete obstacles your client may face and explain what support or modifications are necessary for them to succeed.

Like with residential treatment, confirm that the program is affirming and safe, including whether staff consistently use correct names and pronouns, provide gender-appropriate restroom and group access, allow or support gender-affirming healthcare, and have clear policies to prevent harassment and discrimination.

Release on Appearance Bond

Transgender clients may have a more difficult time securing bonds, particularly when a co-signer is required. Posting a secured bond, cash bond, surety bond, or bond in general may be financially impossible for clients who face pervasive discrimination in employment and housing. Additionally, prosecutors generally want co-signers to be "employed and financially responsible," and will ask for identification and income-related documents.[172] This expectation creates additional barriers for transgender people, who experience disproportionately high rates of unemployment and otherwise are less likely to have supportive family members to help raise money for bail or serve as co-signers.[173] Transgender clients are also likely to have a social network that is similarly disadvantaged, making it far less likely that there will be someone in their network who meets prosecutors' expectations of a "suitable" co-signer.

172 *Bail and Pretrial Detention FAQs*, Fed. Defenders of N.Y., https://www.federaldefendersny.org/bail-pretrial-detention [https://perma.cc/K929-WCV7].

173 Lolai, *Out of the Closet, In on Bail, supra* note 116 at 9, 136, 140-43.

Release on Restriction of Travel, Surrender of Passports

In January 2025, the current administration issued an executive order directing the Departments of State and Homeland Security to require that all government-issued identification documents, including passports, visas, and Global Entry cards, reflect a person's sex "at conception."[174] Under the State Department's new policy, which stems from this directive, transgender applicants cannot update federal identity documents to reflect their gender identity, regardless of legal name change, clinical documentation, or prior eligibility.[175] While the constitutionality of this policy is currently being litigated, the Supreme Court granted the government's request to stay the preliminary injunction, allowing the policy to remain in effect while litigation continues.[176]

Because of the current policy, surrendering a passport may result in the loss of that document without any pathway for replacement. This consequence should be clearly explained to the court, emphasizing that this condition strips transgender clients of one of the few forms of government identification that may correctly reflect their identity and imposes a permanent penalty unrelated to any legitimate pretrial concern. Urge the court to avoid imposing passport surrender on transgender clients where possible and to consider less restrictive alternatives that address any identified concerns about travel.

Release on House Arrest or Electronic Monitoring

House arrest and electronic monitoring are likely to be safer alternatives a transgender client than incarceration. However, because of anti-transgender housing and employment discrimination, transgender people are more likely to be homeless and unable to comply with house arrest due to a lack of a stable address. If this applies to your client, explain to the court why your client is experiencing an unstable living situation, including the systemic discrimination that has impacted their life, and advocate for conditions of release more suitable for your client. Similarly, transgender people experience disproportionate rates of intimate partner violence,[177] so raise to the court any safety concerns associated with their confinement to their or another's home. In some jurisdictions, electronic monitoring requires payment of a daily rate. Because of high rates of employment discrimination and family rejection, such fees may be particularly difficult for your client.

174 *Supreme Court Allows Trump Administration To Enforce Discriminatory Passport Policy*, ACLU (Nov. 6, 2025), https://www.aclu.org/press-releases/supreme-court-allows-trump-administration-to-enforce-discriminatory-passport-policy [https://perma.cc/3JNX-ZDWU].

175 *Id.*

176 *Id.*

177 Goodmark, *supra* note 165, at 56-59.

Release on No Association with Co-Defendant, Certain People, or Institutions

For transgender clients, no-contact conditions can create serious and unintended harms. Many cities have few or even just one gender-affirming shelter.[178] If your client is homeless and has only identified one shelter that is safe or affirming of their gender identity, a no-contact order may effectively bar them from the only place where they can stay without facing discrimination or violence. If there is any possibility that the prohibited person may also access that shelter, the condition may force your client into unsheltered homelessness in order to comply with the court's order. Assess whether this concern applies to your client. If so, raise it with the court to ensure that the condition does not eliminate your client's only safe housing option or create disproportionate barriers to compliance.

Release on Maintaining Employment or Actively Seeking Employment

This condition may create disproportionate burdens for transgender clients, who face high levels of employment discrimination, frequent job loss based on gender identity, and limited access to workplaces that are safe or affirming.[179] Structural barriers such as lack of transportation, unstable housing, absence of a phone, or fear of discrimination from employers can make both maintaining employment and documenting job searches significantly more difficult.[180] Further, state job placement and assistance programs may discriminate against transgender people by outing, misgendering, or harassing them. Consider whether this condition would place unrealistic or punitive expectations on your client and raise these concerns with the court where possible.

Release on Maintaining or Commencing an Educational Program

Education conditions may be difficult for transgender clients to meet without additional support if they face barriers such as unreliable transportation, lack of access to a phone or internet, unstable housing, or health conditions that make strict schedules challenging. They may also encounter discrimination or unsafe environments in educational settings.[181] If relevant, explain these barriers to the court and outline what accommodations would make participation feasible, such as flexible attendance policies, remote options, or transportation assistance. As with treatment programs, vet any educational program to ensure it is affirming and safe for transgender participants.

178 For example, the state of Ohio has one LGBTQ+ adult homeless shelter, which opened in March 2026. *See* Megan Henry, *'Everyone Deserves a Warm Bed.' Ohio's Only LGBTQ+ Adult Homeless Shelter is Opening in Youngstown*, Buckeye Flame (Mar. 2, 2026), https://thebuckeyeflame.com/2026/03/02/ohios-only-lgbtq-adult-homeless-shelter-is-opening/ [https://perma.cc/MFA9-MPBC].

179 Lolai, *Out of the Closet, In on Bail*, *supra* note 116, at 140-43.

180 Sandy E. James et al., *Executive Summary of the Report of the 2015 U.S. Transgender Survey* 10-11, Nat'l Ctr. for Transgender Equal. (Dec. 2016), https://transequality.org/sites/files/docs/usts/USTS-Executive-Summary-Dec17.pdf [https://perma.cc/T6QD-QC6L].

181 *Id.* at 9.

Release on Court-ordered Mental Health Evaluation

Clients may be apprehensive about court-ordered mental health evaluations because of past experiences of discrimination and trauma in healthcare systems, including the high prevalence of erroneous diagnoses and the pathologization of transgender individuals by providers.[182] Some clients may also have had negative and traumatic experiences with transphobic providers. These histories can make evaluations particularly distressing or unsafe. Explain these risks to the court and request that the evaluation be conducted by providers with demonstrated experience working with transgender people and with clear, affirming approach to gender identity where possible.

Release on Refraining from Excessive Alcohol or Drug Use

Most people would rather comply with detox or treatment conditions than risk pretrial detention. However, high rates of family rejection, homelessness, chronic exposure to violence, denial of gender-affirming healthcare, and persistent harassment in employment, housing, and education among transgender people often make substance use a coping mechanism for trauma and survival rather than a sign of disregard for the court's orders.

Compliance can also be difficult because transgender people are frequently shut out of treatment programs that are not culturally competent or affirming.[183] Even when a program is appropriate, logistics such as unstable housing, lack of transportation, or not having reliable access to a phone make attendance challenging.

If your client is struggling to stop using substances, explain these realities to the court and request supportive conditions — such as harm-reduction services, flexible scheduling, or transportation assistance — so that the substance-related requirements are achievable rather than purely punitive.

Release on Maintenance of Curfew

Compliance with curfew may be difficult for transgender clients who are more likely to face housing instability and irregular work schedules.[184] Clients without stable housing may have no safe place to return to by a fixed time or may rely on shelters whose rules conflict with court-ordered curfews. Employment discrimination also pushes many transgender people into jobs with later or unpredictable hours, making rigid curfews unworkable.[185] If relevant, explain these barriers to the court and request a flexible or modified curfew that reflects your client's housing situation, work schedule, and safety needs.

182 Eli Coleman et al., *Standards of Care for the Health of Transgender and Gender Diverse People, Version 8,* 23 Int'l J. Transgender Health S1, S56-S58 (2022), https://doi.org/10.1080/26895269.2022.2100644 [https://perma.cc/B2TQ-869A]; *Id.,* at 8.

183 *See* Paschen-Wolff et al., *supra* note 146.

184 James et al., *supra* note 180.

185 Annabel Utz & Julie Cai, *LGBTQ+ Workers Especially Burdened by Unpredictable Work Hours, Unstable Incomes*, Ctr. for Econ. & Pol'y Rsch. (June 27, 2022), https://cepr.net/publications/lgbtq-workers-especially-burdened-by-unpredictable-work-hours-unstable-incomes/ [https://perma.cc/N5JE-QPY8].

C. Diversion

This section reviews common diversion program elements through a queer lens. For each element, consider how transgender clients may be uniquely burdened, and be prepared to raise concerns with the court and program staff.

First, examine whether the disposition upon successful completion (e.g., dismissing charges vs. retaining conviction) depends on prosecutorial discretion. If the prosecutor places your client on a less advantageous track, you should challenge that decision. Draw on the structural discrimination analysis above to argue that your client should receive the most favorable disposition track in light of the systemic harms they have faced.

Next, determine whether the duration of the program depends on someone's assessment of whether your client is "making good progress." Subjective assessments can be heavily influenced by bias.[186] Such biases can shape a case manager's or clinician's view of whether a transgender participant is "cooperative," "honest," or "doing the work." Where possible, ask the court to require clear, objective criteria for completion to guard against open-ended, discretionary extensions that could disfavor transgender participants.

For programs that require participation in treatment or classes, you should ensure that these services will respect and affirm your client's gender identity. Do not assume inclusivity based on silence. If the program does not explicitly state that it works with transgender and nonbinary clients, call to confirm their policies. Ask how staff are trained on gender identity, whether they use correct names and pronouns, how they handle bathroom and group placement, and what procedures exist for responding to harassment. If the program cannot provide basic assurances of safety and respect, raise these concerns with the court and propose alternative options.

Finally, many diversion programs require regular attendance—whether for court check-ins, treatment sessions, or community service. For transgender clients, this can be especially challenging. You should explore and present to the court the concrete barriers your client may face. You should proactively raise these concerns with the court and advocate for accommodations to ensure that your client will not be penalized for their poverty, disability, or structural disadvantage. This may include flexible scheduling, remote attendance options, transportation assistance, grace periods for lateness, or modified service requirements. Your goal is to ensure that diversion is genuinely accessible and does not become another avenue for penalizing transgender clients for conditions outside of their control.

186 *See* Sohaib A. Virk et al., *The Power of Subjectivity in Competency-Based Assessment*, 66 J. Postgraduate Med. 200 (2020).

IV. Sentencing

The fundamental rule governing consideration for the district court in sentencing is the directive of Congress that the district court "shall impose a sentence sufficient, but **not greater than necessary**, to comply with [the purposes of sentencing]" (emphasis added).[187] The federal sentencing process is "not to be performed as a mechanical process but as a sensitive response to a particular person who has a particular personal history and has committed a particular crime."[188]

The federal sentencing guidelines instruct courts to consider "the nature and circumstances of the offense and **the history and characteristics of the defendant**."[189] Transgender peoples' lived experiences and the structural challenges they face are crucial for a judge to consider when issuing their sentence.

Courts have interpreted the factors set forth in the federal sentencing statute (18 U.S.C § 3553) to not be exhaustive, meaning courts can consider individualized circumstances.[190] This gives federal defense attorneys great latitude to argue why their client deserves a reduced or minimum sentence. Given the fact that the harms of incarceration are heighted for transgender people, the sentencing stage is of vital importance.

A. Relevant Factors

This subsection suggests many possible arguments that can be made on behalf of transgender clients in a sentencing memorandum:

1. Incarceration Is an Elevated Punishment

Public defenders in state court have had success with this mitigation argument. Transgender people face magnitudes-higher rates of sexual violence, solitary confinement, healthcare deprivation, psychological anguish, and death from the moment they enter prison, simply for being transgender. According to a recent survey of 280 transgender people incarcerated in state prisons across 31 states, more than half (53%) of respondents reported experiencing a nonconsensual sexual encounter during their current sentence.[191] The harsh reality is that transgender people are much more likely to face abuse, rape, and sexual assault in prison, which ultimately makes any prison sentence more punitive compared to their cisgender counterparts. Furthermore, nearly 90% of respondents had spent time in solitary confinement.[192] Unfortunately, being placed in solitary confinement is nearly inevitable for transgender people in the prison system — whether done under the guise of protecting them from abuse or as unfair targeting by correctional officers for

187 18 U.S.C. § 3553(a).

188 *United States v. Harris*, 679 F.3d 1179, 1183 (9th Cir. 2012).

189 18 U.S.C. § 3553(a)(1).

190 *See generally United States v. Carter,* 530 F.3d 565 (7th Cir. 2008).

191 Kelsie Chesnut & Jennifer Peirce, *Advancing Transgender Justice: Illuminating Transgender Lives Behind and Beyond Bars* 10-11, Vera Inst. Of Just. (Feb. 2024), https://www.vera.org/advancing-transgender-justice [https://perma.cc/KG6X-XV4Q].

192 *Id.* at 9.

disciplinary infractions. Solitary confinement in and of itself is a heightened form of punishment that "constitutes not just a mental but also a physical health risk."[193]

Prisons also either refuse or lack the proper protocol and resources to provide adequate medical care to transgender incarcerated people, which in turn makes living as an incarcerated transgender person much more difficult or nearly impossible. Reflecting this reality, 53% of incarcerated people who sought medication to support gender transition in prison were unable to access it.[194] In addition to these existing harms that transgender people face during incarceration, the Trump Administration has taken steps to further punish transgender incarcerated people. Executive Order 14168 prohibits transgender people from being housed in alignment with their gender identity and further requires federal jails and prisons to refuse gender-affirming care to transgender people in their custody.[195] The BOP has made it clear that it will implement these restrictions by eliminating access to gender affirming hormones and social accommodations like gender-appropriate clothing and cosmetics.[196] This further increased the likelihood that incarcerated transgender people will face sexual and verbal abuse.

2. Lack of Medically Necessary Gender-Affirming Care in Prison

Gender-affirming care for transgender people is lifesaving medical care.[197] As mentioned above, the Trump Administration signed an Executive Order directing the Attorney General and the Bureau of Prisons to "ensure that no Federal funds are expended for any medical procedure, treatment, or drug for the purpose of conforming an inmate's appearance to that of the opposite sex."[198] This Executive Order, if implemented, ensures that any sentence a transgender person serves will cause them serious physical and mental harm, pain, and suffering. For clients who have already obtained gender affirming care before incarceration, halting treatment will cause irreparable and life-threatening harm.[199] Any federal sentence that a transgender person serves will therefore be a form of heightened punishment as a result.

3. Homelessness and Rejection by Family and Friends

Transgender people are much more likely to have been abandoned or rejected by their family and, as a result, to experience homelessness at some point in their lives. This dramatically impacts life

193 Justin Strong et al., *The body in isolation: The physical health impacts of incarceration in solitary confinement*, PLoS One, Oct. 9, 2020, at 5.

194 Chesnut & Peirce, *supra* note 191, at 10.

195 Deborah Lolai, *The Crisis of Incarcerated Transgender People: A Call to Action for the Judiciary, Prosecutors, and Defense Counsel*, N. Y. L. J. (Jan. 27, 2025), https://hnba.com/wp-content/uploads/2025/02/The-Crisis-of-Incarcerated-Transgender-People-A-Call-to-Action-for-the-Judiciary-Prosecutors-and-Defense-Counsel.pdf [https://perma.cc/4TSX-A39F].

196 *See* Program Statement 5260.01, *supra* note 14.

197 *See* Kareen M. Matouk & Melina Wald, *Gender Affirming Care Saves Lives*, Colum. Univ. Dept. of Psych. (Mar. 30, 2022), https://www.columbiapsychiatry.org/news/gender-affirming-care-saves-lives [https://perma.cc/DM2S-V26H].

198 Exec. Order No. 14168, *supra* note 2.

199 *See generally* Lauren Porsch-Ortega & Sara Birnel Henderson, *The harmful effects of legislative restrictions on gender affirming hormone therapy in Florida and Missouri: Challenges for patients and providers*, PLoS One, (Jul. 23, 2025).

outcomes and increases their odds of incarceration. According to a study conducted by the Williams Institute, lesbian, gay, and bisexual people in the United States are twice as likely to experience homelessness compared to their straight counterparts, and transgender people are eight times as likely to experiences homelessness compared to their cisgender counterparts.[200] Additionally, LGBTQ+ youth in the United States are 120% more likely to experience homelessness than their heterosexual and cisgender peers.[201] These statistics are striking and highlight the fact that, for many LGBTQ+ Americans, the cards are stacked against them from an early age.

4. Institutional Failures

From a young age, transgender people are often alienated, harassed, and denied opportunities by schools, foster care systems, religious institutions, recreational organizations, and medical and mental healthcare providers who either do not have the resources to care for transgender youth or expressly reject offering resources.[202] Whether they are forced to use gendered spaces (locker rooms, bathrooms, dorms) that do not align with their identity or are denied a name and pronoun change, these actions have an immense impact on transgender youth that follows them through their adult lives. Transgender adults are often further harmed by being discriminated against or otherwise rejected by institutions such as homeless shelters, public housing, employers, service providers, and the state more broadly.[203]

The harms transgender people face at the hands of institutions and their fellow peers at a young age can translate into a general distrust of institutions that can manifest itself in ways that society looks down upon (such as non-cooperation with the police, failure to appear in court, or apprehensiveness to dealing with formal institutions, etc.). This dynamic only serves to further marginalize transgender people.

5. Good Character and Importance to Community

Convey the importance of your client's successes despite the significant barriers they have faced and explain why those successes may not look like "conventional" signals of good character (e.g., relationship with biological family, no history of substance use). Moreover, use the common mitigating factor of "responsibility to family" to describe how your client's community depends on them. Transgender people are more likely to have a "chosen family," since many transgender people were abandoned by or kicked out of the home and often live with others in similar situations. A "chosen family" is a group of non-biologically related people that functions like a traditional family,

200 Bianca D.M. Wilson et al., *Homelessness Among LGBT Adults in the US* 1, The Williams Inst. (May 2020), https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Homelessness-May-2020.pdf [https://perma.cc/AU4V-BTGS].

201 Morton et al., *Missed opportunities: Youth homelessness in America* 12, ChapinHall, Voices of Youth Count (2017), https://www.chapinhall.org/wp-content/uploads/ChapinHall_VoYC_NationalReport_Final_Web.pdf [https://perma.cc/8JAY-WFYK].

202 *See generally* Terrence Scraggins, *For LGBTQ Youth in Foster Care, Finding Home Is Hard*, The Imprint, (last visited June 18, 2026) https://www.fostercarecapacity.com/stories/gay-in-foster-care [https://perma.cc/T54L-9UXR]; *see also* Jack K. Day et al., *Safe Schools? Transgender Youth's School Experiences and Perceptions of School Climate*, 47 J. Youth & Adolescence 1731 (June 1, 2018).

203 *See generally* Jennifer L Glick et al., *Housing insecurity and intersecting social determinants of health among transgender people in the USA: A targeted ethnography*, 21 Int. J. of Transgender Health 337 (Jul. 2, 2020).

supporting and caring for one another. Your client may have a great deal of responsibility towards the people in their life, which you should emphasize.

6. Stigma of Conviction

Given the preexisting societal and institutional barriers facing transgender clients, a conviction may further impede their ability to obtain employment or housing. Over 70% of transgender employees have reported experiencing at least one form of employment discrimination (including being fired, not hired, or not promoted) based on their sexual orientation or gender identity at some point in their lives, regardless of criminal history.[204] Having a criminal record in addition to experiencing discrimination is likely to make finding employment or housing exceedingly difficult and will further increase the cost and harm of incarceration.

7. Former Convictions

If your client has a criminal record, it is important to explain how transgender people are disproportionately arrested, charged, and convicted. The convergence of discriminatory policing and inadequate institutional support for transgender people produces systemic conditions that significantly elevate their risk of contact with the criminal justice system. For example, an astounding 21% of transgender women had been jailed for any reason, compared to only 2.7% of the general population in the United States.[205] Such disproportionate incarceration rates are a direct consequence of societal and institutional failures that leave transgender people uniquely vulnerable to criminalization.

8. Sex Work and Related Offenses

Transgender individuals, especially transgender women of color and undocumented transgender immigrants, often face discrimination in schools and workplaces, experience high rates of homelessness, and have limited access to social support services.[206] As a result, some turn to sex work as a means of survival, either to earn income or secure housing. Due to their disproportionate involvement in sex work,[207] they are frequently targeted by laws that criminalize prostitution and related activities. Law enforcement officers typically have broad authority under these laws and often arrest people based on vague charges like "loitering with intent to solicit."[208] Transgender women in particular are often targeted and arrested for sex-work or loitering crimes due to police profiling based on their physical appearance.[209] Thus, if your client has a sex work related conviction,

204 Brad Sears et al., *Workplace Experiences of Transgender Employees* 7 Williams Inst. (Nov. 2024), https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Workplace-Discrimination-Nov-2024.pdf [https://perma.cc/7V2D-GEAS].

205 Jaime M. Grant et al., Injustice at Every Turn: A Report of the National Transgender Discrimination Survey 163 (2011), https://www.thetaskforce.org/app/uploads/2019/07/ntds_full.pdf [https://perma.cc/F38C-U2U5].

206 *See, e.g.*, Katerina Gonzalez et. al., "*A center for trans women where they help you": Resource needs of the immigrant Latinx transgender community*, 23 Int. J. Transgender Health 60 (2020).

207 *See, e.g.*, Madeline Stenersen et al., *Sex Work Patterns Among Transgender and Gender Diverse People: A Latent Class Analysis*, 72 J. of Homosexuality 2134, 2134 (2024).

208 Grant et al., *supra* note 205, at 158.

209 *See generally* Leonore F. Carpenter & R. Barrett Marshall, *Walking While Trans: Profiling of Transgender Women by Law Enforcement, and the Problem of Proof*, 24 William & Mary J. Gender Race & Soc. Just. 5 (2017).

it would be helpful to include the context around the conviction. It is also recommended that, if possible, you inquire about their prior conviction(s) to ascertain if there were clear instances of prejudicial profiling or transphobia during or relating to the arrest and prosecution.

9. History of Abuse

Unfortunately, transgender people are much more likely to face abuse at the hands of both their family and the public at large. In a recent study, 43% of transgender people reported having been abused at the hands of a family member.[210] If a transgender client has suffered abuse, it is relevant to their mitigation report because studies from the Department of Justice show that being abused or neglected as a child increases the likelihood of arrest as a juvenile by 53% and arrest for a violent crime as an adult by 38%.[211] Transgender people are much more likely to have faced abuse throughout their lives, and they are more than likely to face similar sexual and verbal abuse in prison. It is important for judges to understand that a history of suffering from abuse and violence impacts transgender people's life outcomes, and incarceration will likely subject transgender people to more abuse.

10. Structural Barriers

Your client may have been punished their entire life for being transgender—through family rejection, harassment in school affecting academic and employment outcomes, and turning to criminalized economies for medically necessary gender-affirming care, etc. The solution lies in helping them overcome those hurdles, not incarceration. "In certain cases, a downward departure may be appropriate to accomplish a specific treatment purpose."[212] It will be exceedingly difficult to gain access to gender affirming care while incarcerated, which drastically hurts transgender people's life outcomes. If one of the goals of incarceration is rehabilitation, then a long sentence of incarceration will surely do more long-term physical and mental harm than good.

11. Suggested Interview Questions

Please refer back to the questions included in this guide under the Initial Interview subsection of the Pretrial Detention Status section. These questions will likely elicit personal information from your client relevant to the mitigating factors covered in this section. This stage of litigation, unlike pre-arraignment, affords you more time to prepare and meet with your client—time you should use to uncover any gaps in their personal background. However, it is important to remember that asking about your client's possible history of familial abuse, prior convictions, housing security, employment discrimination, and current/desired gender affirming care treatment plan are all potentially sensitive topics. You will likely have a better relationship with your client at this stage of litigation. Thus, you may be able to dive deeper into some of the topics touched upon or skipped in previous interviews. As a reminder, it is vital that you explain to your client why you are asking these intimate questions and offer them a chance to take breaks and ask you clarifying questions.

210 Galop LGBT+ Experiences of Abuse from Family Members (2022), https://cdn.prod.website-files.com/67cee904ccdbce2dd00f65d0/67e6a24234568643b9fd4760_Galop-LGBT-Experiences-of-Abuse-from-Family-Members.pdf [https://perma.cc/HZ6M-C57W].

211 *See* Cathy Spatz Widom, *The Cycle of Violence*, Nat'l Inst. of Justice, U.S. Dep't of Just. 1 (Sept. 1992), https://www.ojp.gov/pdffiles1/nij/136607.pdf [https://perma.cc/5RSZ-TM3X].

212 U.S. Sent'g Guidelines Manual § 5H1.3 (U.S. Sent'g Comm'n 2024).

B. Sample Sentencing Memorandum

This example draws from sample memoranda referenced in "Developing Mitigation Evidence" by Janet Hinton[213] and the Harvard Law School LGBTQ+ Advocacy Clinic's prior criminal defense cases.

1. Introduction

Defendant, JANE DOE, by the FEDERAL DEFENDER PROGRAM and its attorney, JANE SMITH, respectfully requests that this Honorable Court impose a sentence of 5 years' mandatory monitored programming through the Women's Freedom Association's Justice program, with special conditions requiring sex offender, mental health, and substance abuse treatment as directed by the U.S. Probation Office. Such a sentence is sufficient but not greater than necessary to satisfy the § 3553(a) sentencing factors and is reasonable in light of *Gall v. United States*, 552 U.S. 38 (2007), *Kimbrough v. United States*, 552 U.S. 85 (2007), and the sentencing factors set forth in 18 U.S.C. § 3553(a).

Ms. Doe is a 37-year-old Black transgender woman who has faced significant obstacles because of how others react to her gender identity. As a teenager, she was disowned by her family, bullied out of school, and has since been intermittently homeless and unemployed throughout her adult life. For these reasons, she has been unable to access the gender-affirming healthcare and therapy she needs to address her post-traumatic stress disorder ("PTSD") diagnosis and trauma. Despite these tremendous barriers, Ms. Doe has fostered a loving community in her chosen family, the members of the House of St. Clair of NYC's underground ballroom scene. Ms. Doe is committed to her chosen family and her personal improvement.

Ms. Doe's request for [insert desired sentence] is based on her personal and family history and characteristics; the elevated punishment that incarceration poses for transgender women of color; the need for the sentence imposed to provide her with sex offender, mental health, and substance abuse treatment; her low risk of recidivism, and the lack of a need to protect the public from her. The proposed sentence is commensurate with an offense committed by a first-time child pornography offender at a low risk for becoming a repeat offender or committing a contact offense. The proposed sentence also takes into account that, as a consequence of her conviction, Ms. Doe has already been required to register as a sex offender for the rest of her life.[214]

In support of this sentencing request, Ms. Doe states as follows:

2. Childhood Marred by Being Abused, Disowned, and Bullied out of School

a. Ms. Doe knew she was transgender from a young age.

Ms. Doe was born and raised by her biological father and mother in a quiet town in South Jersey. Ms. Doe's childhood was characterized by her father forcing her to run soccer drills on sweltering summer days. "I think [my father] could tell that I wasn't going to become the man he expected me

213 *See* Janet Hinton, *Developing Mitigation Evidence*, Fed. Def., E. D. of Mo, https://moe.fd.org/resources/developing-mitigation-evidence [https://perma.cc/TSY8-6TT5].

214 18 U.S.C. §§ 3563, 3583, 4042(c).

to be, so he pushed me harder. It was a sick cycle of us hating each other more and more." Ms. Doe's father forced her to exercise through injuries without any recovery, to which Ms. Doe attributes the chronic pain she experiences today. Her mother turned a blind eye in large part because both of Ms. Doe's parents believed in adhering strictly to gender roles: "She was willing for my body to break if it meant I would be a normal son."

From a young age, Ms. Doe would sneak into her mother's closet to drape herself in dresses and jewelry. She knew that her assigned sex did not fit her but did not know the word for it until her family got a desktop computer when she was 10 years old. Ms. Doe made her first friends on internet forums. "My real life was on the internet. There, I could share my authentic, charming, funny self without worrying that my father or classmates would mock me." Ms. Doe never met these friends because they lived all over the world, but distance did not dim the strength of their friendship. Ms. Doe keeps in touch with a few of those friends, who have written letters of support attesting to Ms. Doe's good character, attached herein as Exhibit A. One wrote: "Even if I never get to see Jane in person, she is family to me."

It was also online that Ms. Doe realized she was transgender. Ms. Doe said that it was a relief to put a name to the unease she felt existing in her body—gender dysphoria—but she also developed a paralyzing fear of her parents finding out that she was transgender and of going through puberty. Because she could not ask her doctor for puberty blockers without her parents taking notice, Ms. Doe felt helpless as her body went through unwanted changes. Her mental health deteriorated greatly in her adolescence: she became more reclusive and began self-harming. To feel more at home in her body, Ms. Doe bought women's clothing that she hid in her room. She would only try on the skirts and camisoles when her parents were out of the house but often wore women's undergarments under baggy clothes. Due to risk factors like family rejection, anti-transgender discrimination and violence, and lack of access to healthcare, employment, and housing—each of which has affected Ms. Doe—transgender people are at substantially higher risk of mental health issues than the general population. The 2015 U.S. Transgender Survey (USTS), the largest survey of transgender Americans to date, found that transgender people were nearly nine times more likely to have attempted suicide than the general U.S. population.[215]

b. Ms. Doe was consistently bullied because of her gender identity.

School was no respite for Ms. Doe. Discrimination and harassment of transgender students, by classmates and faculty alike, is an unfortunately well-documented phenomenon.[216] She felt uncomfortable using the urinal or changing in front of her male classmates. "They were like sharks smelling blood with my insecurities. When I was using a bathroom stall, they'd bang on the stall door with their fists and taunt me. They trapped me in there until they got bored." Ms. Doe felt that she could not turn to her teachers because none of them signaled that they were safe to talk to, and because her parents' abuse and indifference made Ms. Doe reluctant to trust the adult figures in her life.

215 James et al., *supra* note 180, at 10.

216 *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 597 (4th Cir. 2020) ("In the largest nationwide study of transgender discrimination, the 2015 U.S. Transgender Survey (USTS), 77% of respondents who were known or perceived as transgender in their K-12 schools reported harassment by students, teachers, or staff.").

Ms. Doe skipped school to avoid the incessant bullying, which damaged her ability to learn and socialize. The few days she went to school, she tried to go to the bathroom as little as possible, which resulted in her suffering kidney-related problems. Lack of safe restroom facilities, and the resulting health consequences, is an unfortunately common experience for transgender people. The 2015 USTS found that 59% of respondents reported avoiding public bathrooms due to fear and 8%, like Ms. Doe, reported urinary tract infections or kidney-related health problems due to avoiding using restrooms.[217]

One night in the 10th grade, Ms. Doe stayed up all night talking to an online friend who was going through a crisis. She stumbled through class all the way to last period, gym, when she realized she had forgotten to wear boxers. Her male classmates noticed her discomfort and started taunting her, first with words then with jabs. One boy pulled down her pants, and the locker room erupted with cruel laughter. The gym teacher came in to settle them down, effectively ending Ms. Doe's life as she knew it. Ms. Doe and her parents were called into the principal's office. Ms. Doe received a one-week suspension for violating the dress code and sexual harassment, even though Ms. Doe was the one who had been victimized and forcibly exposed. Transgender people are often seen as inherently sexually deviant and are punished, even when they are the victims in the situation.[218]

Ms. Doe's parents were not understanding. Ms. Doe recounted tearfully:

> *My mom asked me why I would wear girl's underwear. I didn't know what lie I could make up, so I just told her it's because I was a girl. I was a girl inside even if my body didn't look like it right now. They were stunned silent. Then—I'll never forget this—my father said, "Why did you say that? Did you really think we would accept you?"*

c. Ms. Doe was disowned by her parents and experienced severe trauma.

After learning that Ms. Doe was transgender, Ms. Doe's parents swiftly disowned her. After the trauma of being victimized and disowned all in one day, Ms. Doe dropped out of school, joining the 17% of USTS respondents who reported having left school due to severe mistreatment and the 8% who were kicked out of the house because they were transgender.[219]

The difficulties Ms. Doe faced at home and school amount to what are known as adverse childhood experiences (ACEs), which are traumatic events that occur in childhood and are a precursor for PTSD. Toxic stress from ACEs can negatively affect a child's brain development, immune systems, and stress response systems. Overall, ACEs can have lasting, negative effects on health, wellbeing, and life opportunities—such as education and job potential—well into adulthood.[220] Moreover, the USTS found that family rejection sets transgender people up for failure: compared to those with supportive families, respondents with unsupportive families were 20% less likely to be employed;

---

217 *See id.* at 617.

218 Years of research show that transgender people are profiled by police officers and the wider civilian community "as suspicious or as criminals while going about everyday business such as shopping for groceries." *See, e.g., Stonewalled*, *supra* note 108.

219 James et al., *supra* note 180, at 11.

220 *See* CDC, *About Adverse Childhood Experiences* (Mar. 2, 2026), https://www.cdc.gov/aces/about/?CDC_AAref_Val=https://www.cdc.gov/violenceprevention/aces/fastfact.html [https://perma.cc/2YQC-3SCZ].

45% more likely to have engaged in sex work; 67% more likely to have experienced homelessness; 61% more likely to currently experience serious psychological distress; and 46% more likely to have attempted suicide—all things that Ms. Doe experienced.[221] Ms. Doe's persistent exposure to ACEs—bullying from her classmates, indifference and rejection by her parents and teachers—paved the way for a difficult adulthood.

3. Transition to Adulthood Marked by Homelessness, Sexual Trauma, and Mental Health Challenges

To the young Ms. Doe, New York City represented a haven for transgender people, the place she associated with the birth of the modern LGBTQ+ rights movement, and a chance for Ms. Doe to belong. After being disowned and kicked out of her home, Ms. Doe moved out of the suburbs of New Jersey and to Manhattan.

a. Ms. Doe was intermittently homeless.

As a transgender girl without any savings or support, Ms. Doe quickly fell into hardship. The only places she could stay at night were youth homeless shelters. However, shelter staff and residents were hostile towards her. Residents ganged up on her, called her a "tranny" or "man pretending to be a woman," and screamed at her if she used the women's bathroom; one even told her they could hear that she "had to stand up to pee." Ms. Doe said of this: "Commenting on my body like that is an invasion of privacy. I couldn't feel safe when I slept. Imagine if you were scared to go to sleep every night because someone would attack you." Shelter staff did little to make Ms. Doe feel safe, telling her that it was understandable that the other residents felt uncomfortable around her and that she should not use the bathroom at the same time as other residents.

Because Ms. Doe was under constant fear of verbal and physical abuse, sleeping on the street seemed like the safer option. "No one wants to sleep outside . . . but I experienced that kind of hate at several shelters. I was tired of waking up before dawn to reserve a shelter bed, only to be treated like I didn't belong and end up on the street that night anyway." Ms. Doe's experience is not unique. According to the 2015 USTS, 70% of transgender people who stayed in a shelter in the past year reported some form of mistreatment because of being transgender, including harassment, assault, and being required to dress or present as the wrong gender in order to stay at the shelter.[222] Research has long suggested that the trauma of experiencing homelessness can cause people to develop mental health problems and can worsen existing behavioral health challenges.[223] Longer periods spent without a home is associated with lower rates of recovery from mental illness as well as higher rates of psychiatric distress.[224]

On the streets of New York, Ms. Doe found community among other teenagers and young adults like her, many of whom were also transgender girls of color who felt rejected by every social safety

221 James et al., *supra* note 137, at 176.

222 *Id.*

223 Lisa Goodman et al., *Homelessness as Psychological Trauma: Broadening Perspectives*, 46 Am. Psych. 1219, 1224 (1991).

224 Jennifer Castellow et al., *Previous Homelessness as a Risk Factor for Recovery from Serious Mental Illnesses*, 51 Community Mental Health J. 674, 680 (Jan. 2015).

net. "It started by asking girls who left the shelter before me where they were headed. This park, that intersection." The girls took care of each other: entering shelters as a group to stave off bullying and supporting each other emotionally. However, peer support was insufficient to address the lifelong trauma of family and community rejection that Ms. Doe carried. The streets introduced Ms. Doe to a sense of community, but also to drugs that numbed her chronic physical pain and daily mental anguish.

b. Ms. Doe was turned away from every job she applied to and thus forced into sex work to survive.

Ms. Doe made significant but unsuccessful efforts to secure a job. For the first two years of her time in NYC, Ms. Doe applied to at least one job every day. She walked in anywhere that had a "Help Wanted" sign: beauty supply stores, restaurants, bodegas, and urgent care clinics. However, at every turn, Ms. Doe was met with dismissal, hostility, and even violence. Some employers bristled at the prospect of sharing a bathroom with her, at the idea of her wearing feminine clothing, and at her introducing herself as "Jane." Ms. Doe's inability to find a job, despite her best efforts, is a common experience among transgender people: 39% of USTS respondents reported they were not hired for a job they applied for in the past year because of their gender identity or gender expression.[225] As a result of such pervasive discrimination, transgender people are three times more likely to be unemployed and 2.4 times more likely to live in poverty than the general U.S. population.[226]

To keep herself alive, Ms. Doe had no choice but to engage in sex work. Sometimes, she exchanged sex for food or a bed to sleep in, which is unfortunately common among low-income women, particularly transgender women.[227] Ms. Doe could not bring herself to revisit the sexual violence and trauma she experienced, choking up with sobs every time she tried to talk about it. She told me that she has always repressed those memories because "processing that would put me in the fetal position for weeks, maybe months. And I have no time for that. I have to make money and survive."

Sex work is dangerous work for transgender women. Yet Ms. Doe was often criminalized for protecting herself from harm. For instance, in the late evening of June 23, 2009, a man catcalled Ms. Doe and indicated that he wanted to pay to have sex with her. When Ms. Doe stepped into the streetlight, the man got violent. He grabbed her by the throat and said, "No one will miss you if you're gone." Ms. Doe blacked out and wrestled out of his grasp. According to the trial transcript, Ms. Doe testified that she blacked out because she was overwhelmed by the fear that she would become like many of her friends: fellow transgender women of color who were killed while engaging in sex work.

225 James et al., *supra* note 137, at 151.

226 *Id.* at 5.

227 Dana D. DeHart, *Pathways to Prison: Impact of Victimization in the Lives of Incarcerated Women*, 14 Violence Against Women 1362, 1375 (2008); *see also* James et al., *supra* note 137, at 14.

c. Inability to afford or access gender-affirming healthcare and substance abuse treatment

Due to the traumas of family rejection, homelessness, and constant threat of transphobic harassment and violence, Ms. Doe has severe and complex mental health needs that were going unmet until the Federal Defenders connected her to services. Ms. Doe's prior efforts to apply for support were unsuccessful in part because her parents withheld many documents from her, such as her birth certificate, passport, and social security card, making the already difficult multi-step process virtually impossible.

Because of these barriers to healthcare access, Ms. Doe relied on avoidant and maladaptive coping mechanisms such as self-harm, substance abuse, and child pornography consumption. According to Ms. Doe's therapist, people who experience child sexual abuse ("CSA"), as Ms. Doe did as a minor engaging in sex work, may suffer from a "distorted understanding of sexuality" and may engage in "abnormal sexual behavior" as a way to "externalize the psychological distress caused by the abuse."[228]

Since being connected with the Federal Defenders, Ms. Doe finally has a reliable support system to help her obtain mental and gender-affirming healthcare services. Ms. Doe was diagnosed with depression, PTSD, and gender dysphoria, for which she is now receiving integrated mental health care and sex offender treatment at the Health Center's Behavioral Health Clinic, which provides services targeted to the LGBTQ+ community.[229] Ms. Doe is eager to address her mental health. According to her psychotherapist, John Roe, LMSW, as of April 21, 2025, Ms. Doe is regularly attending her appointments, "fully engaged in her treatment," and "taking her responsibilities in counseling very seriously." To treat her gender dysphoria, Ms. Doe is also receiving consistent hormone replacement therapy. Roe and Ms. Doe's primary care physician, Dr. Farmer, report that Ms. Doe's mood, social anxiety, and suicidality have improved markedly.

d. Ms. Doe's chosen family

Two years ago, Ms. Doe's acquaintances encouraged her to get involved in New York City's underground ballroom scene, an LGBTQ+ subculture of dance, music, visual arts, nightlife, fashion, and community activism. There, she met the members of the House of St. Clair, which is not only a collective of ballroom scene participants, but also a surrogate family for LGBTQ+ individuals who have lives similar to Ms. Doe's.

As with Ms. Doe's online friends, while Ms. Doe is not related by blood to the St. Clairs, they are each other's family. Chosen families, "group[s] of individuals who deliberately choose one another

228 Ami Rokach & Shauna Clayton, Adverse Childhood Experiences and their Life-Long Impact, 62 (2023) (citing Marie-Pier Vaillancourt-Morel et al, *Avoidant and Compulsive Sexual Behaviors in Male and Female Survivors of Childhood Sexual Abuse*, 40 Child Abuse & Neglect 48, 48-59 (2015)).

229 *See* Paschen-Wolff et al., *supra* note 146 (describing how it is important for transgender people to receive healthcare that respects their gender identity because research shows that substance use disorder increases with trauma); *see generally* Axenya Kachen &, Jennifer R. Pharr, *Health Care Access and Utilization by Transgender Populations: A United States Transgender Survey Study*, 5 Transgender Health 141 (Sep. 2020).

to play significant roles in each other's lives," are particularly important in the LGBTQ+ context because LGBTQ+ people frequently face rejection or exclusion by their families of origin and are therefore led to seek chosen families "that offer them the love and security that they did not receive from their biological families."[230] The St. Clairs share a home—a loft in Gowanus—where family members cook and eat meals together and decorate with family photos. They support each other, going to doctor's appointments and spending holidays together. They even share a last name: all members of the House adopt the last name St. Clair to signify their familial bond.

Ms. Doe said that her life has improved markedly since gaining a family in the St. Clairs. She has stable housing and a financial safety net system in place. More importantly, she has parental and older sibling figures to offer her the mentorship and emotional support she never received from her family of origin.

4. A Path Towards Stability: Housing, Services, and Staying Connected with Her Chosen Family

a. 18 U.S.C. § 3553(a) mandates that the court consider what constitutes the "most effective" correctional treatment when crafting a sentence.

A mandated sentencing consideration is the need to provide Ms. Doe with "needed educational or vocational training, medical care, or other correctional treatment in the most effective manner."[231] Research suggests that treatment and supervision are the two best ways to ensure that a sex offender will not recidivate.[232] Ms. Doe's compulsion to use pornography to cope with her mental health diagnoses will greatly diminish, if not dissipate, if she is properly treated, further reducing the already low probability that she will commit another child pornography offense.

Ms. Doe should be allowed to remain in the community because research shows that a positive social support system is important to reducing the risk for abusive behavior in the future. When people who engage in abusive conduct have access to strong social supports and treatment and are firmly supported and held accountable by their friends and families, they are more likely to complete their treatment programs and live productive, abuse-free lives.[233]

230 Seohyun Kim & Israel Fisseha Feyissa, *Conceptualizing "Family" and the Role of "Chosen Family" within the LGBTQ+ Refugee Community: A Text Network Graph Analysis*, 9 Healthcare 369 (Mar. 2021) (citing Catherine Donovan et al., Same Sex Intimacies: Families of Choice and Other Life Experiments (2001)); *see also* Dani Blum, *The Joy in Finding Your Chosen Family*, N.Y. Times (June 25, 2022), https://www.nytimes.com/2022/06/25/well/lgbtq-chosen-families.html. [https://perma.cc/F9PB-7XFM].

231 18 U.S.C. § 3553(a)(2)(D)

232 *See, e.g.*, R. Karl Hanson & Kelly Morton-Bourgon, Predictors of Sexual Recidivism: An Updated Meta-Analysis, Public Safety and Emergency Preparedness Canada (2004); *see generally* Andrew J. R. Harris & R. Karl Hanson, Sex Offender Recidivism: A Simple Question, Public Safety and Emergency Preparedness Canada (2004).

233 *Does Treatment for Adults Who Have Sexually Abused Children Really Work?* (last visited June 18, 2026), Stop It Now!, https://www.stopitnow.org/faq/does-treatment-for-adults-who-have-sexually-abused-children-really-work [https://perma.cc/9ZJJ-RJY3].

b. Incarceration is an excessive and counterproductive punishment.

A prison sentence will harm Ms. Doe's ability to live a productive life due to the abuse and harm that transgender incarcerated people are forced to endure while incarcerated. Furthermore, any time in prison that Ms. Doe serves will be a heightened and unfair punishment compared to that experienced by her cisgender peers.

Statistics highlight the harsh reality of what awaits Ms. Doe if she is sentenced to a term of imprisonment. According to a Vera Institute survey of 280 transgender people incarcerated in state prisons across 31 states, more than half (53%) of respondents reported experiencing a nonconsensual sexual encounter during their sentence.[234] Ms. Doe is much more likely to face abuse, rape, and sexual assault in prison, which ultimately makes any prison sentence more punitive than that faced by her cisgender counterparts. In fact, during her last sentence, Ms. Doe was sexually harassed and abused by other incarcerated people on multiple occasions because of her identity, with little to no protection from the facility.

While serving time for her last conviction, Ms. Doe had to spend over a third of her days in solitary confinement to "protect her from abuse," which has had a lasting impact on her. Unfortunately, solitary confinement is almost a certainty for transgender people in the prison system, whether it is imposed under the guise of protecting them from abuse or is a result of being unfairly targeted by correctional officers for discipline. Nearly 90% of respondents in the Vera Institute survey had spent time in solitary confinement.[235] Solitary confinement is a heightened form of punishment that "constitutes not just a mental but also a physical health risk."[236]

Prisons also lack the proper protocol and resources to provide adequate medical care to transgender incarcerated people, which in turn makes living as an incarcerated transgender person much more difficult or nearly impossible. Reflecting this reality, 53% of incarcerated people who sought medication to support gender transition in prison were unable to access it.[237] Access to life-saving hormone replacement treatment will be extremely challenging or impossible to obtain for Ms. Doe—leaving her helpless. As per the affidavit of Frederic M. Ettner, MD, in *Doe v. McHenry*, estrogen plays a critical role in stabilizing brain chemistry and physiological homeostasis for transgender women, and termination of HRT "constitutes a serious medical risk" to both physical and mental health, such as rapid hormonal changes, hot flashes, insomnia, and risk of suicidal ideation due to intensified gender dysphoria.[238] Ultimately, serving time in prison will be a dramatically more punitive measure for Ms. Doe than it would be for a cisgender person. Thus, we ask that any sentence explicitly reflects this unfortunate but true reality.

234 Chesnut & Peirce, *supra* note 191.

235 *Id.* at 9.

236 *See* Justin D. Strong et al., *The Body in Isolation: The Physical Health Impacts of Incarceration in Solitary Confinement*, 15 PLoS One 10 (Oct. 9, 2020).

237 Chesnut & Peirce, *supra* note 191.

238 Declaration of Frederic M. Ettner in Support of Plaintiff's Motion for a Temporary Restraining Order and Preliminary Injunction at 2, Doe v. McHenry, 763 F. Supp. 3d 81 (D.D.C. Feb. 3, 2025). This is not limited to clients taking estrogen—stopping any form of HRT can carry risks.

5. Conclusion

Ms. Doe understands that the allegations in this case are undeniably serious and in no way seeks to minimize them. Given her own history of sexual abuse in prison, the prospect of incarceration is particularly dangerous for Ms. Doe, who is at high risk of being targeted due to her gender identity. Ms. Doe implores the Court to follow the statutory mandate to consider her individual need for a sentence.[239] We ask that you allow Ms. Doe to continue her path of stability, programming, and treatment by giving her the opportunity to be supervised in the community. A non-incarceratory sentence would hold Ms. Doe accountable and condition her liberty on her continued participation in services and programming, while allowing her to remain connected to her support system and the coordinated services that she needs.

239 *United States v. Wachowiak,* 496 F.3d 744 (7th Cir. 2007) (affirming district judge's consideration of treatment available in the community versus in the Bureau of Prisons in case where guideline range for possession of child pornography was 120-151 months and district judge imposed 70 months); *see also United States v. Grossman*, 513 F.3d 592 (6th Cir. 2008) (holding that a sentence of 66 months imprisonment and 10 years' supervised release for possession of child pornography where guideline range was 135-168 months was proper in part because district court opted to protect society and deter criminal conduct "not through a longer term of imprisonment, but through extensive counseling and treatment and an extensive period of supervised release, which itself contains substantial limitations on an individual's freedom"); *United States v. Cherry*, 487 F.3d 366 (6th Cir. 2007) (holding that a sentence of 120 months for possession of child pornography where guideline range was 210-262 months was proper in part because defendant wanted to continue counseling and treatment not available in prison).

V. Post-Conviction Relief[240]

A. Compassionate Release[241]

For transgender people incarcerated in federal prison, Executive Order 14168 and subsequent BOP guidelines will inflict severe harm. For some, these new policies will be fatal. As outlined in this guide, the restrictions on gender-affirming care, housing, and clothing put transgender incarcerated people in a place of heightened vulnerability for harassment, sexual assault, and rape from incarcerated individuals and correctional officers. It will also undoubtedly lead to serious, individualized medical harm, such as increased risk of osteoporosis, cardiovascular complications, cognitive decline, mood instability, metabolic dysfunction, post-traumatic stress disorder, depression, anxiety, and suicidality.[242] This section of the guide first seeks to explain the severe threat transgender individuals face in federal jails and prisons. It will then demonstrate how those harms satisfy the requirements set forth in the Sentencing Commission's mechanism for releasing incarcerated people facing such a life-threatening condition: compassionate release.

1. Explanation of Compassionate Release

Compassionate release is a tool for incarcerated individuals currently serving federal prison sentences to request reduced sentences because they have "extraordinary and compelling" circumstances that justify reducing their sentence.[243] The Sentencing Commission (Commission) crafts the criteria for what constitutes an "extraordinary and compelling reason" (ECR) to warrant a reduced sentence.[244] Before 2018, only the BOP could file for a reduced sentence on behalf of an incarcerated person.[245] Although BOP had the authority to bring motions to reduce sentences for incarcerated people, they almost never did.[246] People died waiting for BOP to even respond to their request.[247] In the face of BOP's intransigence, Congress passed the First Step Act, which included

240 We recognize that this guide doesn't include guidance around filing writs of habeas corpus. While beyond the scope of this guide, habeas represents an important form of relief and may be the subject of a future resource.

241 The authors thank Shanna Rifkin for suggesting the inclusion of the section on compassionate release and for her substantial contributions to its development.

242 *See* Helen Webberley, *The Danger of Withdrawing Hormones from Trans People: A Frank Reality Check*, GenderGP (Jan. 27, 2025), https://www.gendergp.com/the-danger-of-withdrawing-hormones-from-trans-people/ [https://perma.cc/6KBA-XAL2].

243 *Reduction in Sentence (aka compassionate release) Explainer: Grounds & Procedure for a Reduction in Sentence*, Fams. Against Mandatory Minimums, https://famm.org/wp-content/uploads/2025/09/Compassionate_release_explainer_092025.pdf [https://perma.cc/LS2G-NGXL] [hereinafter Reduction in Sentence (aka compassionate release) Explainer].

244 28 U.S.C. § 994(t).

245 For brief discussion of the history of compassionate release, *see* Charles Doyle, Cong. Rsch. Serv., R47195, Federal Compassionate Release After the First Step Act (2022).

246 *See The Federal Bureau of Prisons' Compassionate Release Program*, Off. of the Inspector Gen., U.S. Dep't of Just. 1 (Apr. 2013), https://www.oversight.gov/sites/default/files/documents/reports/2017-12/e1306.pdf [https://perma.cc/V228-HSMR].

247 *See id.* at 11.

many landmark criminal justice reforms.[248] One of these legislative changes amended 18 U.S.C. § 3582(c)(1)(A) to allow people in prison to petition their sentencing judge for a reduced sentence.[249]

In 2023, the United States Sentencing Commission promulgated a new policy statement defining the contours of "extraordinary and compelling circumstances."[250] This policy statement recognizes the following circumstances as grounds for a reduced sentence:

> *(b) Extraordinary and Compelling Reasons.—Extraordinary and compelling reasons exist under any of the following circumstances or a combination thereof:*
>
> *(1) Medical Circumstances of the Defendant.—*
>
> *(A) The defendant is suffering from a terminal illness (i.e., a serious and advanced illness with an end-of-life trajectory). A specific prognosis of life expectancy (i.e., a probability of death within a specific time period) is not required. Examples include metastatic solid-tumor cancer, amyotrophic lateral sclerosis (ALS), end-stage organ disease, and advanced dementia.*
>
> *(B) The defendant is—*
>
> *(i) suffering from a serious physical or medical condition,*
>
> *(ii) suffering from a serious functional or cognitive impairment, or*
>
> *(iii) experiencing deteriorating physical or mental health because of the aging process, that substantially diminishes the ability of the defendant to provide self-care within the environment of a correctional facility and from which he or she is not expected to recover.*
>
> *(C) The defendant is suffering from a medical condition that requires long-term or specialized medical care that is not being provided and without which the defendant is at risk of serious deterioration in health or death.*
>
> *(D) The defendant presents the following circumstances—*
>
> *(i) the defendant is housed at a correctional facility affected or at imminent risk of being affected by (I) an ongoing outbreak of infectious disease, or (II) an ongoing public health emergency declared by the appropriate federal, state, or local authority;*
>
> *(ii) due to personal health risk factors and custodial status, the defendant is at*

248 *See* Shanna Rifkin & Elizabeth Blackwood, *Like They're Waiting for You to Die*, 21 Ohio St. J. Crim. L. 47, 52 (2023).

249 18 U.S.C. § 3582(c)(1)(A).

250 *See* U.S. Sent'g Guidelines Manual § 1B1.13(b) (U.S. Sent'g Comm'n 2023). The Sentencing Commission needs a quorum of Commissioners to vote on new amendments. *See* U.S. Sent'g Comm'n, Rules of Practice & Procedure, Rule 1.2 (2016), https://www.ussc.gov/about/rules-practice-and-procedure [https://perma.cc/GQR5-AMF5]. From 2018 — 2022, the commission lacked such a quorum and was unable to update the policy statement pertaining to compassionate release. *See* Rifkin & Blackwood, *supra* note 248, at 61. In this time period, nearly every court across the country found that the old policy statement was not binding on courts. *See id.* at 54. As such, for the first time, people in prison could petition their sentencing judges for a reduced sentence and could do so based on a wide range of circumstances. *See id.* at 55. This was essentially a large-scale experiment that allowed the Commission to see what judges across the country found to be "extraordinary and compelling" outside the traditional grounds.

increased risk of suffering severe medical complications or death as a result of exposure to the ongoing outbreak of infectious disease or the ongoing public health emergency described in clause (i); and

(iii) such risk cannot be adequately mitigated in a timely manner.

(2) Age of the Defendant.—The defendant (A) is at least 65 years old; (B) is experiencing a serious deterioration in physical or mental health because of the aging process; and (C) has served at least 10 years or 75 percent of his or her term of imprisonment, whichever is less.

(3) Family Circumstances of the Defendant.—

(A) The death or incapacitation of the caregiver of the defendant's minor child or the defendant's child who is 18 years of age or older and incapable of self-care because of a mental or physical disability or a medical condition.

(B) The incapacitation of the defendant's spouse or registered partner when the defendant would be the only available caregiver for the spouse or registered partner.

(C) The incapacitation of the defendant's parent when the defendant would be the only available caregiver for the parent.

(D)The defendant establishes that circumstances similar to those listed in paragraphs (3)(A) through (3)(C) exist involving any other immediate family member or an individual whose relationship with the defendant is similar in kind to that of an immediate family member, when the defendant would be the only available caregiver for such family member or individual. For purposes of this provision, "immediate family member" refers to any of the individuals listed in paragraphs (3)(A) through (3)(C) as well as a grandchild, grandparent, or sibling of the defendant.

(4) Victim of Abuse.—The defendant, while in custody serving the term of imprisonment sought to be reduced, was a victim of:

(A) sexual abuse involving a "sexual act," as defined in 18 U.S.C. § 2246(2) (including the conduct described in 18 U.S.C. § 2246(2)(D) regardless of the age of the victim); or

(B) physical abuse resulting in "serious bodily injury," as defined in the Commentary to §1B1.1 (Application Instructions);

that was committed by, or at the direction of, a correctional officer, an employee or contractor of the Bureau of Prisons, or any other individual who had custody or control over the defendant.

For purposes of this provision, the misconduct must be established by a conviction in a criminal case, a finding or admission of liability in a civil case, or a finding in an administrative proceeding, unless such proceedings are unduly delayed or the defendant is in imminent danger.

(5) Other Reasons.—The defendant presents any other circumstance or combination of circumstances that, when considered by themselves or together with any of the reasons described in paragraphs (1) through (4), are similar in gravity to those described in paragraphs (1) through (4).[251]

251 U.S. Sent'g Guidelines Manual § 1B1.13(b) (U.S. Sent'g Comm'n 2023).

We have provided a brief summary of the compassionate release process below. We encourage advocates to review FAMM's guide to Federal Compassionate Release Criteria, for more information on compassionate release eligibility requirements.[252]

Weighing the Use of Compassionate Release

When weighing the use of compassionate release for your client, consider the following factors: whether or not your client's initial case is the kind that the sentencing judge has deemed sympathetic in the past; whether the judge reviewing the case would consider the time they've served a sufficient punishment; whether the case was high profile at sentencing; whether the harms the client is experiencing by remaining in prison are concrete; the significance of your client's demonstrated rehabilitation; actions your client has taken to try to help their circumstance (i.e., Prison Rape Elimination (PREA) reports, notifying staff, filing grievances, etc.); and the stability of your client's release plan.

Exhaustion of Administrative Remedies

Before a court can consider an incarcerated person's petition, the incarcerated person must first demonstrate exhaustion of administrative remedies.[253] Exhausting administrative remedies requires the person (or the attorney on the person's behalf) to file a request for compassionate release to the warden.[254] Once the request is submitted, the 30-day clock begins.[255] After waiting 30 days, you may file your motion in court.[256] You must wait 30 days even if BOP responds to approve or deny your motion.[257] This 30-day waiting period is essentially a "notice" period for the federal government.

In making out your request to the warden, the most important thing to know is that if you do not raise an issue in the warden letter that may form the basis for an extraordinary and compelling circumstance, you are precluded from raising that claim in court.[258] In other words, if you want to argue a ground for a reduced sentence in a motion, that ground must be identified in the warden letter. This does not mean that you need to include every detail as to the contours of the claim. The warden letters can be conclusory and fairly bereft on detail—the point is just to give the government some notice of the claim.

If you file a warden letter at one point, but then after a month of representation, learn additional facts that support a new ground for a reduced sentence that you would want to add in your motion, you will need to make a renewed request to the warden with the new ground and wait another thirty

252 *See* Reduction in Sentence (aka compassionate release) Explainer, *supra* note 243.

253 18 U.S.C. § 3582(c)(1)(A).

254 *Id.*

255 *Id.*

256 *Id.*

257 *See* Deborah Wang, *Expanding Judicial Discretion to Grant Compassionate Release During COVID-19*, 97 Wash L. Rev. 1283, 1298 (2022).

258 *See* Lynn Reece, *Applying for Compassionate Release as a Pro Se Litigant*, UCLA L. Rev. Online (May 10, 2021), https://www.uclalawreview.org/applying-for-compassionate-release/ [https://perma.cc/P4MQ-MKYV] ("This initial stage is called a 'BP8' form. The tricky part about this is that in appealing to the next stage, 'BP9' form, you can't cite anything that was not raised in the initial BP8.").

days.[259] Thus, warden letters should be thought of as "kitchen sink" letters—if you think there may be a ground applicable to your client, include it in the letter.

Of note, for cases of sexual or physical abuse, or where there are concerns about retaliation against your client—which may be particularly relevant in representation of transgender clients—including fewer details in the warden letter may be useful to protect your client.

District Court Standards

Once the claims have been exhausted, district courts have discretion to grant or deny a sentence reduction motion if there are extraordinary and compelling reasons to reduce a sentence, and if the factors in 18 U.S.C. § 3553(a) support release.[260] A sentencing reduction must also be consistent with "applicable policy statements" issued by the United States Sentencing Commission.[261] In 2023, the Sentencing Commission updated its policy statement on sentencing reductions to include the previously listed "extraordinary and compelling circumstances."[262]

If the judge finds that an extraordinary and compelling circumstance exists, they must then also find that the individual does not pose a danger to public safety and then find a reduction in sentence to be consistent with the sentencing factors in 18 U.S.C. § 3553(a).[263]

In issuing these decisions, judges are given great latitude. The standard of review for appellate courts is usually "abuse of discretion."[264] Thus, in many cases, what the district court says, goes.

2. Eligibility Categories for Compassionate Release of Transgender People

Attorneys should consider each criterion of compassionate release[265] when considering how to best advocate for their clients. However, the two eligibility criteria set forth by the Sentencing Commission which might be especially applicable for transgender clients are (1) serious medical condition and/or inadequate medical care under U.S. Sentencing Guidelines § 1B1.13(b)(1)[266] and (2) victim of abuse under U.S. Sentencing Guidelines § 1B1.12(b)(4).[267] Each of these eligibility criteria is discussed in turn below, as well as separate considerations and counterarguments to be aware of.

259 *See id.* ("[Y]our petition will be dismissed if you raise new issues and you will be forced to start over.").
260 18 U.S.C. § 3582(c)(1)(A).
261 *Id.*
262 *See* U.S. Sent'g Guidelines Manual § 1B1.13(b) (U.S. Sent'g Comm'n 2023).
263 *See* 18 U.S.C. § 3582(c)(1)(A)(ii); 18 U.S.C. § 3553(a).
264 *See, e.g., United States v. Trenkler*, 47 F.4th 42, 46 (1st Cir. 2022).
265 *See Reduction in Sentence (aka compassionate release) Explainer, supra* note 243, at 1-3.
266 *See* U.S. Sent'g Guidelines Manual § 1B1.13(b)(1) (U.S. Sent'g Comm'n 2023).
267 *See* U.S. Sent'g Guidelines Manual § 1B1.13(b)(4) (U.S. Sent'g Comm'n 2023).

Category #1: Criteria for Serious and Chronic Medical Conditions

Serious and chronic medical conditions that substantially diminish the incarcerated person's ability to care for themselves in the prison setting can be grounds for compassionate release.[268] In addition, the Sentencing Commission has most recently recognized that BOP's failure to provide medical care for a recognized health condition that may diminish the wellbeing of a person in custody could constitute an extraordinary and compelling reason.[269] Under this newer ground, an individual must demonstrate failure to provide "long-term or specialized medical care" that could lead to "serious deterioration in health or death."[270] While gender dysphoria alone has not commonly been considered a serious and chronic medical condition under this category, experiencing gender dysphoria in a carceral setting should arguably be considered a serious and chronic medical condition under the Trump Administration's policies related to the BOP's treatment of transgender people. Qualifying for this criterion will likely require the client to have an official gender dysphoria diagnosis, which will require clients and advocates to consider the benefits and risks of having an official diagnosis.

If a client has an official diagnosis of gender dysphoria, attorneys should use medical documentation of the client's need for HRT and other therapies to support that person. Additionally, documenting the medical consequences of taking someone off HRT and other specialized medical care for the transgender population can support a finding of inadequate medical care. The attorney should be sure to document that this person would be able to get the healthcare they need in the free world.

The Trump Administration's new policies dictating the treatment of transgender incarcerated people, if implemented, will prevent the effective treatment of gender dysphoria. Executive Order 14168 and related actions by the Administration aim to cut off access to gender-affirming healthcare for incarcerated transgender people, deny recognition of their names and correct pronouns, and cease access to gender affirming clothing, hair removal devices, and undergarments.[271] The Executive Order also prevents people from being housed in facilities that match their gender identity,[272] which will increase the likelihood of sexual assault, violence, and dysphoria.[273] By depriving transgender people of basic necessities, medical care, and recognition of their identity, the BOP will create an environment that makes gender dysphoria a serious chronic medical condition that diminishes incarcerated transgender people's ability to care for themselves in prison for the following reasons:

268 *See* U.S. Sent'g Guidelines Manual § 1B1.13(b)(1) (U.S. Sent'g Comm'n 2023); *Reduction in Sentence (aka compassionate release) Explainer*, *supra* note 243, at 1.

269 *See* Rifkin & Blackwood, *supra* note 248, at 61 (citing U.S. Sent'g Comm'n, Amendments to the Sent'g Guidelines 1-9) (describing the Commission's recognition of failure to provide medical care as an ECR) (Apr. 27, 2023), https://www.ussc.gov/sites/default/files/pdf/amendment-process/official-textamendments/202305_Amendments.pdf [https://perma.cc/LR2S-QRET].

270 U.S. Sent'g Guidelines Manual § 1B1.13(b)(1)(C) (U.S. Sent'g Comm'n 2023); *see id.*

271 *See* Exec. Order No. 14168, *supra* note 2; Program Statement 5260.01, *supra* note 14.

272 *See* Exec. Order No. 14168, § 4(a), *supra* note 2 (directing the "Attorney General and Secretary of Homeland Security [to] ensure that males are not detained in women's prisons or housed in women's detention centers").

273 *See supra* section I.A.

Effect of Withdrawal from Hormone Replacement Therapy (HRT)

Section 4(c) of the Executive Order directs the Attorney General to "ensure that no Federal funds are expended for any medical procedure, treatment, or drug for the purpose of conforming an inmate's appearance to that of the opposite sex."[274] In February 2026, the Federal Bureau of Prisons released guidance to forbid commencement of new gender-affirming hormone treatment and to require those currently prescribed this treatment to taper off their medication.[275] Considering the BOP's sudden policy change, advocates could argue that incarcerated transgender people will no longer have access to the medication necessary to manage their care.

Sudden withdrawal from gender-affirming hormone therapy can result in severe bone density loss, leading to osteoporosis and an increased risk of fractures, cardiovascular complications, cognitive decline, and mood instability, often leading to severe depression and anxiety, and metabolic dysfunction, impacting weight, energy levels, and overall health.[276] Even when people are withdrawn gradually from HRT, withholding the treatment can significantly impact transgender people's mental health and can worsen gender dysphoria.[277] The danger withdrawing from gender affirming care presents to a transgender person's overall health is even more dangerous if the person has had bottom surgery, because they will not have circulating endogenous hormones.[278]

Under the new BOP policies, there is little chance of mitigating the effects of gender dysphoria. No person should be incarcerated in a prison that will not treat a serious medical condition, whether that is gender dysphoria or any other serious medical condition. This, paired with other factors listed, should be the kind of medical issue considered for compassionate release. Previous cases denying this factor could be distinguished by the fact that, prior to the Executive Order, the BOP had policies allowing for other mechanisms besides compassionate release to allow access to HRT.

Lack of Access to Gender-Affirming Self-Care Products

The BOP's February 2026 guidance would forbid incarcerated transgender people from accessing so-called "social accommodations," including "binders, undergarments, [and] makeup."[279] These accommodations, however, are not just "social" items; they are gender-affirming, medical items. Where an incarcerated person already owns their gender-affirming item, the BOP "shall . . . , when practicable, remove or confiscate the social accommodations."[280] It is likely that a prison will make the argument that commissary items that are gendered can pose a risk in prison and should therefore be excluded. And even where they are not confiscated, these items can also

274 Exec. Order No. 14168, *§ 4(c), supra* note 2.

275 *See* Program Statement 5260.01, *supra* note 14, at 7-8.

276 *See* Helen Webberley, *The Danger of Withdrawing Hormones from Trans People: A Frank Reality Check*, GenderGP (Jan. 27, 2025), https://www.gendergp.com/the-danger-of-withdrawing-hormones-from-trans-people/ [https://perma.cc/LRA8-AN26].

277 *See id.*

278 *See id.*

279 *See* Program Statement 5260.01, *supra* note 14, at 3,9.

280 *Id.* at 8.

be prohibitively expensive for incarcerated people to purchase,[281] as BOP jobs pay extremely low wages,[282] people may have restitution payments they need to make, and transgender people are less likely than others to have outside familial support who put money into their accounts.[283] In limited circumstances, courts have demanded further justification for the denial of gender-affirming items—that are typically available in women's prison—than merely an assertion that those items would be dangerous in a men's prison.[284] Indeed, withholding such items risks aggravating gender dysphoria.

Harms of Being in a Non-Affirming Housing Facility

Section 4(a) of Executive Order 14168 directs the "Attorney General and Secretary of Homeland Security [to] ensure that males are not detained in women's prisons or housed in women's detention centers."[285] If transgender women are housed in a prison that does not match their gender identity, it can create an environment where gender dysphoria impacts transgender people's ability to care for themselves. A case has been filed challenging the Executive Order on these grounds.[286] Courts may find that being in a non-affirming housing facility causes irreparable harm to transgender clients.

Increased Risk of Self-Castration

Experiencing gender dysphoria in a carceral setting without access to gender-affirming surgery can lead to self-castration.[287] It is important to understand that this is not self-harming behavior and is instead health-seeking behavior. When people do not have access to the healthcare they need, they will sometimes resort to even dangerous ways of trying to access that care on their own. While self-castration is believed to be rare, there are several cases where incarcerated transgender people have either self-castrated or considered self-castrating if denied gender-affirming surgery. Self-castration is both physically and psychologically harmful, and could cause lifelong medical

281 *See, e.g., Commissary Shopping List*, Fed. Bureau of Prisons (Jul. 11, 2022 at 9:37 EST), https://www.bop.gov/locations/institutions/dev/dev_commlist.pdf?=v1.0.0 [https://perma.cc/542Q-DBJR]; *cf.* Elizabeth Weill-Greenberg & Ethan Corey, *Locked In, Priced Out: How Prison Commissary Price-Gouging Preys on the Incarcerated*, The Appeal (Apr. 17, 2024) https://theappeal.org/locked-in-priced-out-how-much-prison-commissary-prices/#:~:text=Policing-,Locked%20In%2C%20Priced%20Out%3A%20How%20Prison%20Commissary%20Price%2DGouging,as%20high%20as%20600%20percent [https://perma.cc/K8ZY-KUZB].

282 *See Work Programs*, Fed. Bureau of Prisons, https://www.bop.gov/inmates/custody_and_care/work_programs.jsp#:~:text=Federal%20Bureau%20of%20Prisons&text=Sentenced%20inmates%20are%20required%20to,hour%20for%20these%20work%20assignments [https://perma.cc/3T6S-EE6P].

283 *See* The LGBTQI+ Economic and Financial (LEAF) Survey, Ctr. for LGBTQ Econ. Advancement & Rsch., https://lgbtq-economics.org/research/leaf-report-2023/#:~:text=LGBTQI+%20people%20reported%20losing%20the,%25%20of%20non%2DLGBTQI+%20respondents [https://perma.cc/5C59-W6FC].

284 *See Quine v. Beard*, No. 14-cv-02726-JST, 2017 WL 4551480, at *1 (N.D. Ca. Oct. 12, 2017) (denying defendant's motion to stay court order granting enforcement of a settlement granting women's property to transgender plaintiff); *Edmo v. Corizon, Inc.*, 935 F.3d. 757, 797 (9th Cir. 2019).

285 Exec. Order No. 14168, § 4(a), *supra* note 2.

286 *See Doe v. Bondi*, No. 1:25-CV-286-RCL, 2025 WL 596653, at *1 (D.D.C. Feb. 24, 2025), *vacated and remanded sub nom. Doe v. Blanche*, No. 25-5099, 2026 WL 1042002 (D.C. Cir. Apr. 17, 2026).

287 *See Doe v. Ga. Dep't of Corr.*, 730 F.Supp.3d 1327, 1338 (N.D. Ga. 2024) (finding that plaintiff was likely to succeed on her Eighth Amendment claim where Georgia DOC knew about plaintiff's prior attempts at self-castration and suicide and refused to provide her adequate gender-affirming care); *Norsworthy v. Beard*, 87 F. Supp. 3d. 1164, 1195 (N.D. Ca. 2015) (granting preliminary injunction for gender-affirming surgery).

problems.[288]

Increased Risk of Suicidality

Gender-affirming care is an important and life-saving way to treat gender dysphoria. A 2018 study found that "transgender individuals reporting long-term incarceration and residing in states providing high levels of transgender-related medical services were significantly less likely to report attempting suicide and . . . transgender individuals who experienced gender-based victimization while incarcerated were more likely to report lifetime suicide attempts."[289] This study highlights how living in a carceral environment without any gender-affirming care can be life-threatening.

Case Law on Gender Dysphoria

In *Doe v. Georgia Dep't of Corr.*[290] the U.S. District Court for the Northern District of Georgia found that commissary items such as "breast and buttock padding, makeup, wigs, and hair removal" were medically necessary care for an incarcerated transgender woman.[291] Likewise, the U.S. District Court for the Southern District of Illinois in *Iglesias v. Fed. Bureau of Prisons*[292] found that the plaintiff, an incarcerated transgender woman, faced irreparable harm due to the lack of proper gender-affirming care to treat her gender dysphoria.[293] The court reasoned that without such care, the plaintiff "is at risk for suicide, and her psychological condition will continue to deteriorate."[294]

Category #2: Survivor of Abuse

Many transgender people in custody are subjected to heightened risk of sexual assault and violence by BOP guards and other people in custody.[295] Another potentially fruitful avenue of relief is the survivor of abuse ground in § 1B1.13(b)(4). This ground allows a court to reduce a sentence if someone has been the victim of "sexual abuse" or "physical abuse" "that was committed by, or at the direction of, a correctional officer, an employee or contractor of the Bureau of Prisons, or any other individual who had custody or control over the defendant."[296] But there are a few significant hurdles that may make meeting these standards difficult.

For sexual abuse cases, the individual has to have been involved in a "sexual act" as defined by statute to be penetrative contact.[297] In the physical abuse realm, a client must demonstrate

288 *See* Matthew St. Peter et al., *Self-Castration by a Transsexual Woman: Financial and Psychological Costs: A Case Report*, 9 J. Sexual Med. 1216, 1218-19 (April 2012).

289 Leah Drakeford, *Correctional Policy and Attempted Suicide Among Transgender Individuals*, 24 J. Correct. Health Care 171, 177 (2018).

290 730 F.Supp.3d 1327 (N.D. Ga. 2024).

291 *Id.* at 1340-42.

292 598 F.Supp.3d 689 (S.D. Ill. 2022).

293 *See id.*

294 *Id.* at 702; *see also* Edmo v. Corizon, Inc., 935 F.3d. 757, 785 (9th Cir. 2019) (collecting cases that similarly found that "gender dysphoria is a sufficiently serious medical need to implicate the Eighth Amendment").

295 *See supra* section I.A.

296 U.S. Sent'g Guidelines Manual § 1B1.13(b)(4) (U.S. Sent'g Comm'n 2023).

297 U.S. Sent'g Guidelines Manual § 1B1.13(b)(4) (U.S. Sent'g Comm'n 2023).

that the physical abuse resulted in "serious bodily injury."[298] Additionally, the "misconduct must be established by a conviction in a criminal case, a finding or admission of liability in a civil case, or a finding in an administrative proceeding, unless such proceedings are unduly delayed or the defendant is in imminent danger."[299]

This standard may be very difficult to meet given all of the threshold determinations (sexual act, serious bodily injury, and adjudication). The case law in this area is constantly developing. If you need assistance working through the state of the law or have questions about how best to support a client with a sexual abuse claim, please reach out to Shanna Rifkin at srifkin@famm.org.

Many individuals who are survivors of abuse in prison may not actually meet the § 1B1.13(b)(4) victim of abuse ground, but there is good caselaw supporting survivors of abuse advancing a claim under the "catchall" provision in § 1B1.13(b)(5).[300] This provision allows judges the discretion to find an ECR if the reasons identified are "similar in gravity" to the enumerated grounds in (b)(1)-(b)(4).[301]

Case Law

Few cases address compassionate release for transgender incarcerated people with a discussion of the prison's inability to protect the prisoner.[302] Interestingly, cases dealing with COVID-19 provide a helpful example of compassionate release as it relates to a prison's environment.[303] These cases can be used to illustrate how a prison environment can be so detrimental to an individual's health and well-being that compassionate release might be appropriate.

A History of Sexual Assault Victimization

In some circuits, a compassionate release advocate can and should argue — when applicable — that the district court must consider their transgender client's previous rape or sexual assault in federal prison.

298 U.S. Sent'g Guidelines Manual § 1B1.13(b)(4)(A) (U.S. Sent'g Comm'n 2023) (citing 18 U.S.C. § 2246(2)).

299 U.S. Sent'g Guidelines Manual § 1B1.13(b)(4) (U.S. Sent'g Comm'n 2023).

300 For questions about this caselaw, please email Shanna Rifkin at srifkin@famm.org.

301 U.S. Sent'g Guidelines Manual § 1B1.13(b)(5) (U.S. Sent'g Comm'n 2023).

302 On November 13, 2025, the Supreme Court heard oral arguments in two cases, *Fernandez v. United States* and *Rutherford v. United States*, that ask the Court to delimit the circumstances that justify compassionate release. At oral arguments, a majority of the justices appeared skeptical of the defendants' claims in both cases. If decided narrowly, as expected, neither case will have much impact on an incarcerated transgender person's ability to argue that the Executive Order creates exceptional challenges for them and warrants their compassionate release. For an in-depth discussion of both cases, *see* Richard Cooke, *The Justices to Consider Compassionate-Release Statute,* SCOTUSblog (Nov. 10, 2025), https://www.scotusblog.com/2025/11/the-justices-to-consider-compassionate-release-statute/ [https://perma.cc/G798-55LN].

303 *See* Meredith B. Esser, *Extraordinary Punishment: Conditions of Confinement and Compassionate Release*, 92 Fordham L. Rev. 1369, 1396-1402 (2024).

Placing a Transgender Woman into Men's Prison

The fact that a transgender person is no longer being housed properly should itself infer likely abuse. As in *United States v. Nash*, courts may be sympathetic to how a transgender woman entering men's prison could lead to an increased risk of sexual assault victimization.[304] Advocates should consider arguing that transgender people being housed incorrectly is almost certain to lead to this result. 59% of transgender people in prison experience sexual assault, compared to 4.4% of the general incarcerated population.[305] A culture of sexual coercion or outright abuse uniquely harms transgender women entering men's prison. Advocates should highlight if their client has lived as their transgender identity for a long period, has been housed previously in gender-affirming housing, and has successfully taken hormone replacement therapy as factors that would exacerbate the harm of suddenly being stripped of their appropriate housing.[306]

Separate Considerations

Client-Centered Lawyering

While transgender clients may not be able to get the treatment and accommodations they need without a medical diagnosis,[307] it can be deeply non-affirming to insist that a client seek out a gender dysphoria diagnosis or to imply that being transgender is a disability or mental illness. However, advocating that a facility's failure to adequately treat gender dysphoria causes harm to your client may be necessary to achieve the relief your client seeks, like release. It is therefore critical to discuss with your client whether to seek or leverage a diagnosis of gender dysphoria. Further, a public record of your client's diagnosis of gender dysphoria may have negative future consequences both personal and collateral. For instance, if the client is released, they may not be able to keep custody of their children if they have a mental health disorder.[308] You should be willing to advocate for the client regardless of the path they choose. That is to say, you should prioritize the client's goals and allow them to make this decision. Client-centered lawyering here is

304 *See id.; United States v. Nash, 2025* U.S. Dist. LEXIS 158343, 2025 LX 396694, 2025 WL 2380000 (N.D. Ohio. Aug. 15, 2025).

305 *See* Valerie Jenness et al., *Violence in California Correctional Facilities: An Empirical Examination of Sexual Assault*, U.C. Irvine Ctr. for Evidence-Based Corrections 42 (2007), https://ucicorrections.seweb.uci.edu/files/2013/06/PREA_Presentation_PREA_Report_UCI_Jenness_et_al.pdf [https://perma.cc/8PDL-CZ79].

306 The Supreme Court addressed this issue during oral argument in a notable case on conditions of confinement, *Farmer v. Brennan*: "Suppose we were making a list of people who would be at obvious risk of sexual assault if placed in a high security male prison. Women would be at the top of the list, surely, and the risk is so obvious that we cannot imagine a prison deciding to confine women in general population at a male high security facility. But also, near the top of the list would be someone who had the appearance and demeanor of a woman, a transsexual like petitioner." Transcript of Oral Argument at 9, *Farmer v. Brennan*, 511 U.S. 825 (1994) (No. 92-7247).

307 *See* Francine Russo, *Where Transgender is No Longer a Diagnosis*, Sci. Am. (January 6, 2017), https://www.scientificamerican.com/article/where-transgender-is-no-longer-a-diagnosis/ [https://perma.cc/PF5W-8CYX]; *see also* D Dangaran, *Bending Gender: Disability Justice, Abolitionist Queer Theory, and ADA Claims for Gender Dysphoria*, 137 Harv. L. Rev. 237, 266 (Apr. 2024).

308 For a discussion of this issue as it specifically relates to gender dysphoria, *see* David Steerman, *The Impact of Gender Identity Issues on Custody Proceedings*, Reuters (May 29, 2024), https://www.reuters.com/legal/litigation/impact-gender-identity-issues-custody-proceedings-2024-05-29/ [https://perma.cc/7USU-XBPH

imperative.[309]

To summarize, each compassionate release is brought individually with specific considerations given to each client.[310]

Sample Intake Questions

Below follows some suggestions for how to phrase questions that you may need to ask your client to assess their eligibility under the compassionate release factors.[311]

Medical condition:

- How would you describe your gender identity?
- Have you been allowed access to clothing or undergarments that are consistent with your gender identity? Have you requested gender affirming undergarments and been denied?
- Have you ever been denied programming, personal property, or educational materials that were needed to express your gender identity?

Sexual abuse:

- Have you experienced discrimination by prison staff? If so, by whom, and how frequently?
- Have you ever been physically assaulted (hit, punched, kicked, beaten) by a prison staff member? If so, by whom, and how frequently? What happened?
- Have you ever been sexually assaulted, sexually harassed (verbal taunting), or experienced unwanted sexual touching by a prison staff person? If so, by whom, and when?
- How about by other people in the prison? Do you believe your housing placement puts you at high risk of being assaulted by others in prison?
- Have you ever been promised anything by prison staff in exchange for sexual favors?
- Did anyone else at the facility know about what happened (e.g. friend, coworker, counselor)?
  - If yes: Who knew? When did they know? How did they know? What did they know?
- Was the abuse/neglect reported to any authorities?
  - If yes: To whom was it reported? When? How? What was reported? Do you have documentation?

309 For recommended reading, *see* D Dangaran, *Bending Gender: Disability Justice, Abolitionist Queer Theory, and ADA Claims for Gender Dysphoria*, 137 Harv. L. Rev. F. 237 (Apr. 2024).

310 If you are representing a transgender client in a post-conviction matter who is not a citizen, one consideration is whether release could result in them being detained and deported to a country that is unsafe for them.

311 Thank you to D Dangaran, Shayna Medley, and the team at the ACLU of Delaware for helping generate the questions in this section.

B. Clemency

Clemency can be a powerful tool—not only as a potential path toward release, but also as a vehicle for storytelling, dignity, and visibility. Submitting a clemency petition creates an opportunity to uplift the humanity, resilience, and systemic harms experienced by incarcerated people, particularly queer and transgender individuals who are so often rendered invisible in the criminal legal system. It allows advocates to present a fuller narrative of a person's life, including the context of criminalization, the impact of incarceration, and the transformative potential of release.

Much of the framing, language, and advocacy strategies outlined throughout this manual can be repurposed or adapted for use in clemency petitions. For example, the emphasis on structural violence, identity-specific harms, and post-release planning can help create a compelling and holistic petition that speaks to both legal and moral grounds for clemency.

For those working in the federal system, particularly federal defenders, it's important to note that while clemency remains technically available under any administration, filings under the Trump administration may be less likely to succeed, given its historical hostility toward LGBTQ communities. However, preparing clemency petitions now can still be a strategic investment, especially for cases where future administrations may offer more favorable outcomes. Having well-developed petitions ready for filing can allow advocates to act quickly if and when clemency pathways open more widely.

In short, clemency should not be dismissed, even when the current administration appears unsympathetic. It can be a crucial part of a broader narrative and release strategy, one that centers the humanity of incarcerated queer and transgender people while keeping the door open for future opportunities.

VI. Additional Resources

- If your client is an incarcerated transgender person who is being negatively impacted by Executive Order 14168, they are a member of the plaintiff class in *Kingdom v. Trump* if they have a gender dysphoria diagnosis. For more information, we recommend that you contact Transgender Law Center at transgenderlawcenter.org/get-help. If your client is a transgender woman who requires assistance being placed in or remaining in a women's facility, we recommend that you contact Amy Whelan (awhelan@nclrights.org) at the National Center for LGBTQ Rights.
- For a general list of resources, see the Resources page on GLAD Law's website, Advocates for Trans Equality (A4TE)'s Transgender Legal Services Network Directory, the Transgender Law Center's Helpdesk, or the National Center for LGBTQ Rights Legal Helpline.
- For more information on transgender rights (including employment, healthcare, health insurance coverage, housing, etc.), see A4TE's Know Your Rights articles and Transgender Legal Survival Guide.
- For resources to assist your client with harm reduction while incarcerated, see the Transgender Gender-Variant & Intersex Justice Project (TGIJP)'s Guide to Legally Changing Your Name & Gender While Incarcerated and the Trans/GNC Guide to Parole Prep.
- For more information on compassionate release, see the Compassionate Release Clearinghouse (crresource@nacdl.org) You can also have clients fill out a survey for review of the Clearinghouse here, https://www.nacdl.org/r2f/CRClearinghouseLovedOnesForm.
- For assistance with PREA complaints, see ACLU's PREA Know Your Rights packet and short summary and/or contact the Transgender Gender-Variant & Intersex Justice Project (TGIJP).

VII. Directory of Organizations

A

ACLU LGBT & HIV Project | www.aclu.org

- **What they do:** Handle impact litigation cases and civil rights complaints focusing on LGBTQ+ rights and the rights of people living with HIV.
- **Address:** 125 Broad St., 18th Fl. New York, NY 10004
- **Contact Page:** https://action.aclu.org/legal-intake/report-lgbtqhiv-discrimination

ACLU National Prison Project | www.aclu.org

- **What they do**: Ensure that prisons, jails and detention centers comply with the requirement of the U.S Constitution, federal law and international human rights principles.
- **Address:** 915 15th St., NW, 7th Floor Washington, DC 20005
- **Contact Page:** www.aclu.org/documents/about-aclu-national-prison-project

ACLU National Prisoners' Rights Program | www.aclu.org/issues/prisoners-rights

- **What they do:** lawsuits regarding civil liberties violations in prison; healthcare in prison; cruel, inhuman, and degrading conditions; and solitary confinement.
- **Contact Page:** find your state ACLU affiliate: https://www.aclu.org/affiliates

Advocates for Transgender Equality (A4TE) | https://transequality.org/

- **What they do:** impact litigation; name change assistance transgender health project.
- **Contact Page:** https://transequality.org/contact-us.
- A4TE was formed by the 2024 merger of the National Center for Transgender Equality (NCTE) and the Transgender Legal Defense and Education Fund.

Alyssa Rodriguez Center for Gender Justice | https://www.arcgenderjustice.org/

- **What they do:** Provide various types of support, educational, and organizing opportunities for incarcerated transgender people and advocates.
- **Address:** PO Box 180198, Brooklyn NY 11218
- **Contact Page:** https://www.arcgenderjustice.org/connect

B

Black and Pink | www.blackandpink.org

- **What they do:** A prison abolitionist organization with a focus on supporting and freeing LGBTQIA2S+ individuals and people living with HIV/AIDS who are impacted by it.
- **Address**: 614 Columbia Rd. Dorchester, MA 02125
- **Phone number:** 617-519-4387
- **Contact Page:** https://www.backandpink.org/contact/

C

Center for Constitutional Rights | www.ccrjustice.org

- **What they do:** Partner with communities under threat to fight for justice and liberation through litigation, advocacy and strategic communication.
- **Address:** 666 Broadway, 7th Floor New York, NY 10012
- **Phone:** 646-862-9396
- **Contact Page**: https://ccrjustice.org/home/who-we-are/contacting-center-constitutional-rights

F

Fight4Justice | https://fight4justice.info/

- **What they do:** Direct services: assisting with obtaining appropriate housing, programs, safety needs, and treatment; consulting on incarceration-related issues; compassionate release fact development.
- **Email:** Fight4justice@fight4justice.info
- **Phone:** 443-420-7370
- **Contact page**

Fordham Law School's LGBTQ+ Litigation Clinic | https://www.fordham.edu/school-of-law/experiential-education/clinics/

- **What they do:** Direct legal services and litigation focusing on addressing, securing, and defending the rights of the most vulnerable populations within the LGBTQ+ community, such as criminalized and incarcerated people, people living in poverty, people living with disabilities, survivors of violence, unhoused people, immigrants, and youth.
- **Email:** clinicdesk@law.fordham.edu
- **Phone:** 212-636-6934

G

Gender Justice | https://www.genderjustice.us/

- **What they do:** Impact litigation, including prison litigation.
- **Email:** info@genderjustice.us
- **Phone:** 651-789-2090

GLBTQ Legal Advocates & Defenders (GLAD Law)

- **Resource Guide:** https://www.glad.org/issues/criminal-justice-resources-for-incarcerated-people-national/
- **Lawyer Referral Service:** https://www.glad.org/know-your-rights/lawyer-referral/

GLMA: Health Professionals Advancing LGBTQ+ Equality | https://www.glma.org/

- **What they do:** Conduct research, do advocacy work, and connect and train medical professionals to advance healthcare equity for LGBTQ+ people.
- **Address:** 1629 K St. NW, Suite 300, Washington, DC 20006
- **Contact Page:** https://glma.org/contact_us.php

H

Harvard Law School LGBTQ+ Advocacy Clinic | https://hlslgbtq.org

- **Relevant work we do:** Post-conviction matters, prisoner rights advocacy, clemency applications, compassionate release cases, and criminal defense cases for LGBTQ+ clients.
- **Email:** info@hlslgbtq.org or Contact form

J

Just Detention International | https://justdetention.org

- **What they do**: Support for incarcerated people experiencing sexual abuse.
- **Phone/Email/Contact Page**: 202-506-3333; info@justdetention.org
- Leelyn Aquino, Operations Director: laquino@justdetention.org; 213-384-1400 ext. 110
- **Confidential legal mail for people in prison**
  Cynthia Totten, Attorney at Law
  CA Attorney Reg. #199266
  3250 Wilshire Blvd., Suite 1630
  Los Angeles, CA 90010

L

Lambda Legal | https://lambdalegal.org/

- **What they do:** Impact litigation, policy development and public education.
- **Phone:** 866-542-8336
- **Helpdesk:** https://lambdalegal.org/helpdesk/#contact
- Provides general legal information and resources relating to discrimination based on sexual orientation, gender identity and gender expression, and HIV status. Cannot provide legal advice or assist with emergencies or time-sensitive requests.

LGBT National Hotline | www.LGBThotline.org

- **What they do:** Crisis hotline designed for all members of the LGBTQ+ community.
- **Address:** 2261 Market Street, #296, San Francisco, CA 94114
- **Phone:** 888-843-4564
- **Contact Page:** https://lgbthotline.org/contact/

LGBT National Youth Talkline | www.LGBThotline.org/youth-talkline

- **What they do:** Confidential support hotline where people of any age can talk about their sexual orientation, gender identity, or gender expression.
- **Address:** 2261 Market Street, #296, San Francisco, CA 94114
- **Phone:** 800-246-7743
- **Contact Page:** https://lgbthotline.org/contact/

LGBT National Senior Hotline | www.LGBThotline.org/senior-hotline

- **What they do:** Confidential support hotline where people of any age can talk about their sexual orientation, gender identity, or gender expression.
- **Phone:** 888-234-7243
- **Website:** https://lgbthotline.org/senior-hotline/
- **Address:** 2261 Market Street, #296 San Francisco, CA 94114
- **Contact Page:** https://lgbthotline.org/contact/

N

National Center for LGBTQ Rights | https://www.nclrights.org/

- **What they do**: Impact litigation, including prison rights.
- **Helpline:** 1-800-528-6257 or 415-392-6257
- **Hours:** Mon-Fri, 9am-5pm Pacific Time
- **Legal assistance request form:** https://www.nclrights.org/get-help/
- **Email:** Info@NCLRights.org

National Center for Transgender Equality | www.transequality.org

- **What they do:** Work to advance the rights and well-being of transgender people.
- **Address:** 228 Park Ave South, PMB 38268, New York, NY 10003-1502
- **Phone number:** (202) 642-4542
- **Contact Page:** https://transequality.org/contact-us

National PREA Resource Center | https://www.prearesourcecenter.org/

- **What they do:** Offer information and support related to PREA, along with guidance on adult and youth detention facilities across the country.
- **Contact Page:** https://www.prearesourcecenter.org/about/assistance/prea-compliance-and-audit-support-helpdesk

P

Prison Legal News | www.prisonlegalnews.org

- **What they do:** As an independent monthly magazine, offers in-depth analysis and up-to-date coverage of prisoner's rights, legal decisions, and developments related to the criminal justice system.
- **Address:** P.O. Box 1151 Lake Worth, FL 33460
- **Phone number:** 561-360-2523
- **Contact Page:** https://www.prisonlegalnews.org/contact-us/

R

Rights Behind Bars | https://www.rightsbehindbars.org/

- **What they do:** Impact litigation and appellate advocacy regarding prison rights (e.g., solitary confinement, disability, pretrial detention, healthcare, qualified immunity).
- **Contact Page:** https://www.rightsbehindbars.org/contact-us

S

Southern Poverty Law Center | www.splcenter.org

- **What they do**: Public interest litigation; advocate for civil rights and racial equality.
- **Address:** 400 Washington Ave. Montgomery, AL 36104
- **Phone number:** 888-414-7752

Sylvia Rivera Law Project | www.srlp.org

- **What they do:** Help with name changes, IDs, immigration, prisoner rights, and more for low-income transgender and gender non-conforming people in NYC.
- **Phone number:** 212-337-8550

T

The Bronx Defenders LGBTQ Defense Project | https://www.bronxdefenders.org/programs/lgbtq-defense-project/

- **What they do:**
  - Direct services: Provide holistic criminal defense of LGBTQ+ people who have open criminal cases in the Bronx, NY.
  - Consulting on criminal defense, mitigation, and conditions of confinement issues for LGBTQ+ clients in all jurisdictions.
  - Policy, legislative, organizing, and education efforts on behalf of LGBTQ+ New Yorkers.
- **Email:** LGBTQDefense@BronxDefenders.org
- **Phone:** 718-838-7878

The NYC Legal Aid Society LGBTQ+ Law and Policy Unit | https://legalaidnyc.org/programs-projects-units/lgbt-law-and-policy-initiative/

- **What they do:** Litigate issues that impact LGBTQ+ New Yorkers; policy, legislative, organizing, and education efforts on behalf of LGBTQ+ New Yorkers.
- **Phone:** 212-577-3300

Transgender Gender-Variant & Intersex Justice Project (TGIJP) | https://tgijp.org/

- **What they do:** Organization challenging human rights abuses against Black and Brown transgender people in prisons, jails, and detention centers.
  - Correspondence with incarcerated people.
  - Name & Gender Marker Change Clinics
  - Housing and supportive services referrals in San Francisco, CA
  - Reentry Program
- **Address:** 1230 Market St. PMB 705 San Francisco, CA 94102
- **Phone:** 415-554-8491
- **Email:** info@tgijp.org

Transformative Justice Law Project | www.tjlp.org

- **What they do:** Provide free legal services to transgender people, focusing on name changes and gender self-determination.
- **Address:** 4707 N. Broadway, Suite 307 Chicago, IL 60640
- **Contact Page:** https://www.tjlp.org/contactus

TransHealthCare | https://www.transhealthcare.org/

- **What they do:** A free global directory helping transgender people find gender-affirming surgeons worldwide.

Transgender Law Center | https://transgenderlawcenter.org/

- **What they do:**
  - Impact litigation: laws and policies that disproportionately impact and criminalize transgender people; criminalization inside prisons, detention centers, and hospitals; and collateral consequences of convictions.
  - Respond to incarcerated people's legal questions by mail.
- **Phone:** 510-587-9696
  - Collect line for people in prison and detention: 510-380-8229
- **Email:** info@transgenderlawcenter.org
- Legal Information Helpdesk Contact Form
  - Basic information on transgender rights (including employment, health care, housing, civil rights, immigration, prisoners' rights, and identity document changes).
  - Does not provide any individualized legal advice or legal representation, or take on cases.

Trans Lifeline | https://translifeline.org

- **What they do:** Peer support phone service run by trans people for trans and questioning people.
- **Website:** https://www.translifeline.org/hotline
- **Phone:** 877-565-8860

Transgender Pulse | https://www.transgenderpulse.com/

- **What they do:** Offer support, resources, and suicide prevention to the transgender community and its allies.

VIII. Glossary of Terms

Language preferences often change based on shifting ideas within the community, or as conscious efforts to move past historical discrimination. Words that are affirming for one client may feel outdated, inaccurate, or even harmful to another. Advocates should mirror the language their clients use to refer to themselves.

AMAB/AFAB: Abbreviation for "assigned male at birth" and "assigned female at birth."

Binding: The process of tightly compressing one's chest in order to minimize the appearance of having breasts, often by using a binder.[312]

Bottom Surgery: Surgery performed on an individual's reproductive system as a part of gender-affirming surgery. Examples of this include a partial or total hysterectomy, orchiectomy, vaginoplasty, and phalloplasty. Not all trans people undergo medical interventions. As with any other aspect of transition, transgender people retain the right not to discuss their surgical history, and surgery does not define gender.[313]

Cisgender: A term referring to people whose gender identity is the same as their assigned or presumed sex at birth.[314]

Deadname: The name that a transgender person was given at birth and no longer uses.[315]

Gender Expression or Gender Presentation: The way a person outwardly expresses their gender, such as through their name, pronouns, clothing, hairstyle, mannerisms, and/or other characteristics.[316] An individual's gender expression/presentation may or may not correspond with their gender identity.

Gender Identity: A person's inner and deeply held understanding of their own gender, which may or may not be the same as their assigned or presumed sex at birth. Everyone has a gender identity.[317]

Gender-Affirming Care: A range of social, psychological, behavioral, and medical interventions designed to support and affirm an individual's gender identity.[318]

Gender-Diverse: A term referring to the community of people who fall outside of the gender

312 *Binding*, PFLAG National Glossary, https://pflag.org/glossary/ [https://perma.cc/4HL9-LYBA]. (last visited June 19, 2026).

313 *Bottom Surgery*, PFLAG National Glossary, https://pflag.org/glossary/ [https://perma.cc/4HL9-LYBA]. (last visited June 19, 2026).

314 Somjen Frazer et al., Protected & Served?: 2022 Community Survey of LGBTQ+ People and People Living with HIV's Experiences with the Criminal Legal System 62 (2022), https://www.protectedandserved.org/2022-report-full-report [https://perma.cc/3HW9-NYFT].

315 *Deadname*, Merriam-Webster, https://www.merriam-webster.com/dictionary/deadname [https://perma.cc/3VKM-MLDR]. (last visited June 19, 2026).

316 Frazer et al., *supra* note 122, at 62.

317 *Id.*

318 Patrick Boyle, *What Is Gender-Affirming Care? Your Questions Answered*, Ass'n of Am. Med. Colls. (Apr. 12, 2022), https://www.aamc.org/news/what-gender-affirming-care-your-questions-answered [https://perma.cc/WL2E-JCGP].

binary structure. Other terms for gender-diverse include nonbinary, gender expansive, gender fluid, genderqueer, etc.[319]

Gender Dysphoria: A psychiatric diagnosis that refers to the psychological distress that results from an incongruence between one's sex assigned at birth and one's gender identity.[320] Not all transgender people experience gender dysphoria, however, a formal diagnosis is generally required for incarcerated people to access gender-affirming care in the federal prison system.

Gender Non-Conforming (GNC): A term used to describe people whose gender expression differs from society's expectations of gender norms. Anyone, regardless of gender identity, can be gender non-conforming. Additionally, being transgender is not synonymous with being gender non-conforming; many transgender people conform to gender norms.[321]

Intersex: An umbrella term for differences in sex traits or reproductive anatomy. Intersex people are born with these differences or develop them in childhood. There are many possible differences in genitalia, hormones, internal anatomy, or chromosomes, in addition to the usual two ways that human bodies develop. Some people who are intersex identify as binary while others do not.[322] Intersex people should not be assumed to identify as transgender.

LGBTQ+: An acronym used to describe people who identify as lesbian, gay, bisexual, transgender, or queer/questioning. The "+" symbol is used to include and acknowledge people with identities beyond lesbian, gay, bisexual, transgender, and queer/questioning, but who are still a part of the community of people who do not identify as straight or cisgender.[323]

Nonbinary: An umbrella term and a gender identity label referring to people who experience their gender identity and/or gender expression as falling outside the binary gender categories of male or female. Many nonbinary people also call themselves transgender and consider themselves part of the transgender community, while others do not.[324]

Queer: A term people often use to express a spectrum of identities and orientations that are counter to the mainstream. Queer is often used as a catch-all to include many people, including those who do not identify as exclusively straight and/or folks who have non-binary or gender-expansive identities. This term was historically used as a slur but has been reclaimed by many parts of the LGBTQ+ movement.[325]

Top Surgery: Surgery performed on an individual's chest/breasts as a part of gender-affirming surgery. Examples of this include a chest reduction or mastectomy, or an increase in chest size

---

319 *Gender-diverse*, Bos. Med. Ctr., https://www.bmc.org/glossary-culture-transformation/gender-diverse [https://perma.cc/4FC4-LEAF]. (last visited June 19, 2026).

320 Am. Psychiatric Ass'n, What is Gender Dysphoria?, https://www.psychiatry.org/patients-families/gender-dysphoria/what-is-gender-dysphoria [https://perma.cc/6UB5-2U8K]. (last updated July 2025).

321 Frazer et al., *supra* note 122, at 63.

322 *Id.* at 64.

323 *Id.* at 65.

324 In Focus: Nonbinary People, Discussed in GLAAD Media Reference Guide 11th Edition GLAAD https://glaad.org/reference/nonbinary/ [https://perma.cc/9AKN-7S2Z] (last visited June 19, 2026) [hereinafter "GLAAD Media Reference Guide"].

325 *Queer,* Glossary of Terms, HRC Found., https://hrc.org/resources/glossary-of-terms [https://perma.cc/5AAG-GLEH]. (last visited June 19, 2026).

using saline or silicone.[326]

Transgender: An umbrella term and gender identity label referring to people whose gender identity and/or expression differs from their assigned or presumed sex at birth.[327] Throughout this guide, the term "transgender" is used to refer to transgender people, nonbinary people, gender-diverse people, and intersex people who identify as transgender.

Transgender Man: A man who was assigned female at birth may use this term to describe himself. He may shorten it to trans man. (Note: trans man, not "transman.") Some trans men may prefer to simply be called men, without any modifier. Use the term the person uses to describe their gender.[328]

Transgender Woman: A woman who was assigned male at birth may use this term to describe herself. She may shorten it to trans woman. (Note: trans woman, not "transwoman.") Some trans women may prefer to simply be called women, without any modifier. Use the term the person uses to describe their gender.[329]

Transfeminine: A term used to describe a transgender person who identifies with feminine gender identities more than masculine gender identities.[330] Often abbreviated to transfem or transfemme.

Transmasculine: A term used to describe a transgender person who identifies with masculine gender identities more than feminine gender identities.[331] Often abbreviated to transmasc.

Transition: A term used to refer to the process—social, legal, and/or medical—one goes through to affirm one's gender identity. This process may include changing hairstyles, clothing, and other forms of gender expression; or changing names, pronouns, and identification documents. For some, it may also include medical care such as taking puberty blockers, taking hormones, and having gender-affirming surgeries. The validity of an individual's gender identity does not depend on any social, legal, and/or medical transition. Many individuals choose not to or are unable to transition for a wide range of reasons both within and beyond their control.[332]

TGNCNBI: Abbreviation for 'Transgender, Gender Non-Conforming, Nonbinary, and Intersex.'

Terms to avoid: "Born a man," "born a woman," "biologically male," "biologically female," "biological boy," "biological girl," "genetically male," "genetically female."[333]

Terms to use instead: Terms referencing a person's gender identity. For example, "girl," "woman," "transgender girl," "transgender woman," "boy," "man," "transgender boy," "transgender man," "nonbinary person."[334]

326 *Top Surgery*, PFLAG National Glossary, https://pflag.org/glossary/ [https://perma.cc/4HL9-LYBA]. (last visited June 19, 2026).

327 Frazer et al., *supra* note 122, at 67.

328 *Transgender,* defined in GLAAD Media Reference Guide, *supra* note 325.

329 *Id.*

330 Frazer et al., *supra* note 122, at 67.

331 *Id.*

332 *Transition,* PFLAG National Glossary, https://pflag.org/glossary/ [https://perma.cc/4HL9-LYBA]. (last visited June 19, 2026).

333 GLAAD Media Reference Guide, *supra* note 325.

334 *Id.*

IX. Attachment: Affidavit of Dr. Rachel Golden

The expert affidavit from Dr. Rachel Lynn Golden in the following pages is provided as a resource to assist attorneys representing transgender clients in carceral settings. It is intended as a generalized resource to support advocacy on issues related to gender identity, safety, healthcare, and conditions of confinement. It has been included in this guide so that counsel may easily separate it from the text and use it as an attachment in their filings. This affidavit should not be treated as a substitute for case-specific expert input. Whenever possible, counsel is strongly encouraged to retain a qualified expert to conduct an individualized evaluation and prepare an affidavit tailored to the client's unique history and needs. No person may reproduce this affidavit, in whole or in part, without clear attribution to Dr. Rachel Lynn Golden as the original author. If you are interested in retaining Dr. Golden for an individualized evaluation, please email hello@golden-psychology.com.

GOLDEN PSYCHOLOGY

Rachel Lynn Golden, PhD
Golden Psychology
New York, NY
646.460.0097
golden-psychology.com
hello@golden-psychology.com

AFFIDAVIT OF DR. RACHEL LYNN GOLDEN

Expertise

I am a Clinical Psychologist with direct experience in forensic evaluation and clinical care. I have training, education, and related experience in psychological assessment and treatment of transgender individuals in forensic and non-forensic settings. I received my doctorate in psychology from the University of Denver in 2017 and have consistently practiced clinical psychology since then. I have particular expertise in the development of gender-affirming mental health care programs. I developed the New York State Transgender Identity Program (NYSTIP) at the New York State Office of Mental Health (NYS OMH). In my capacity at NYSTIP, I focused on diagnosis and treatment, especially providing differential diagnosis of complex presentations of mental health symptoms in people who experienced serious mental illness alongside gender dysphoria. I also developed online trainings for all forensic mental health and medical staff at NYS OMH. I trained a team of doctoral psychology student trainees in the comprehensive evaluation and treatment of incarcerated transgender and nonbinary individuals and collaborated with interdisciplinary teams on the provision of gender-affirming care, including with New York State Department of Corrections and Community Services (DOCCS) staff. I regularly conduct evaluations of transgender individuals who are court involved for the first time, who have prior incarceration history, or who are incarcerated in prisons or jails at the time of interview. I am licensed in the states of New York, New Jersey, Pennsylvania, Texas, Vermont, California, and Washington D.C. I can provide services across 41 additional states and territories in the United States with my PSYPACT Temporary Authority to Practice (TAP) and Authority to Practice Interjurisdictional Telepsychology (APIT).

Information Relied Upon

I have considered information from various sources in forming the opinions enumerated herein, in addition to drawing on my extensive experience and review of the literature related to gender expansiveness over the past decade. The materials I have relied upon in preparing this report are the same types of materials that experts in my field regularly rely upon when forming opinions. They include peer-reviewed journal articles, other evidence-based publications, and years of experience in the provision of care to transgender and nonbinary people, including those who are incarcerated.

Gender Identity and Gender Incongruence

When a child is born, a doctor, nurse or midwife views the external genitalia of the child and assigns a sex of either male or female based on that visual assessment. The assignment of sex at birth by viewing external genitalia alone overlooks the myriad differences of sex development resulting from chromosomal, developmental, hormonal, and environmental factors affecting approximately 1 in 4,500 newborns (Ventresca et al., 2025). The variability in these factors necessarily define sex as more than a binary concept. Moreover, the assignment of sex, based solely on external genitalia, have also been used

to define one's gender identity due to the erroneous assumption that everyone's gender identity and sex align. A more accurate and nuanced approach separates these concepts and recognizes the differences between sex assignment and gender identity. Beyond one's external genitalia, gender identity is a complex internal experience that is impacted by dynamic factors. Gender identity appears to be related to a constellation of biological, physiological, prenatal, and genetic influences. It is a natural and valuable part of human experience separate, and sometimes misaligned, with one's assigned sex.

When someone's assigned sex and gender identity do not match, it is referred to as gender incongruence. Over 2.8 million transgender and nonbinary people in the United States (Williams Institute, 2025) experience some degree of gender incongruence and prove the conflation of the terms and reductionist definition of sex to be inaccurate. Studies have demonstrated that gender incongruence may be associated with myriad components though the exact etiology is not well understood (Levin et al., 2023). For example: gene expression (Foreman et al., 2018), prenatal hormone exposure, (Sadr et al., 2020), environmental endocrine disrupters (Gaspari et al., 2024), and neuroanatomy (Mueller et al., 2021). Being transgender also appears to be heritable (Diamond, 2013), for example, identical twins are more likely to both identify as transgender than fraternal twins (Heylens, 2012). Taken together, we can understand gender incongruence as a natural aspect of the diversity of human experience.

The experience of gender incongruence itself is not a mental health disorder, and major psychiatric and psychological associations have recognized as much. The American Psychiatric Association (APA) eliminated the diagnosis of gender identity disorder from their diagnostic manual in 2013. The change followed recognition that there is no mental health etiology of holding any identity. The APA instead operationalized the distress related to the incongruence under the heading gender dysphoria. Diagnostic and Statistical Manual of Mental Disorders (DSM-5) (American Psychiatric Association, 2022) diagnoses are established through review of empirical literature assessing the reliability and validity of diagnoses. The diagnosis of gender dysphoria still codifies experiences related to gender identity under a mental health classification and therefore creates a barrier to accessing gender-affirming medical care. However, diagnosis with gender dysphoria is still the current standard used in community and carceral environments to permit access to care.

An important comparison can be made between the elimination of gender identity as a disorder with the elimination of homosexuality as a disorder in the DSM. From 1952-1973, homosexuality was listed as a "sociopathic personality disturbance" and later as a sexual deviation (American Psychiatric Association, 1952, 1968). In 1974 homosexuality was eliminated from the DSM as a diagnosis and then was listed as "sexual orientation disturbance" a narrower category, much like gender dysphoria, that applied to those who were distressed by their orientation (American Psychiatric Association, 1974). After several other iterations, the diagnoses related to homosexuality were removed completely. A small but vocal group of medical and mental health providers continued to erroneously claim that homosexuality was caused by disturbed mother-child relationships, or regression in psychosexual development, among other spurious associations. These individuals often advocated for the draconian practice of reparative therapy (today called conversion therapy). Conversion "therapy" is not in itself therapeutic. There is no evidence supporting its efficacy, and ample evidence for the harm it causes, such as suicidality, depression, and anxiety (Blosnich et al., 2020; Tran, et al 2024; Turban et al., 2019). This often-traumatic intervention attempts to convince individuals that their gender or sexual orientation experience is due to some type of disordered thinking, past experience, or behavior and can be remedied by punitive measures meant to disabuse the person of their knowledge of their identity, or by punishing behaviors associated with that

identity. The same tactics used to pathologize and "cure" homosexuality are in use today with gender identity through attempts to mis-label gender identity as psychopathology rather than a natural part of human experience, deny or delay access to care, or invalidate the existence of gender expansive people entirely.

In the time since the removal of homosexuality from the DSM, we have seen a tremendous growth in the wellbeing and acceptance of Lesbian, Gay and Bisexual individuals. Though anti LGBTQ advocates still promote the harmful and often deadly use of conversion therapies, opposing opinions do not reflect scientific practice, extant psychological research, or the reality of gender incongruence as a part of human experience.

Gender Dysphoria

Gender dysphoria has been recognized by every major U.S. Medical and Mental Health organization (American Academy of Child and Adolescent Psychiatry, 2024; American Academy of Dermatology, 2022; American Academy of Family Physicians, 2018; American Academy of Nursing, 2025; American Academy of Pediatrics, 2018; American Academy of Physician Assistants, 2021; American College Health Association, 2023; American College of Nurse-Midwives, 2024; American College of Obstetricians and Gynecologists, 2021; American College of Physicians, 2022; American Counseling Association & SAIGE, 2021; American Heart Association, 2020; American Medical Association, 2023; American Nurses Association, 2019; American Osteopathic Association, 2020; American Psychiatric Association, 2020; American Psychological Association, 2024; American Public Health Association, 2017; American Society of Plastic Surgeons, 2021; Endocrine Society, 2024; Federation of Pediatric Organizations, 2022; GLMA: Health Professionals Advancing LGBTQ Equality, 2024; National Association of Nurse Practitioners in Women's Health, 2023; National Association of Social Workers, 2022; National Commission on Correctional Health Care, 2020; Pediatric Endocrine Society, 2021; Society for Adolescent Health and Medicine, 2024; World Medical Association, 2020; World Professional Association for transgender Health, 2022).

These organizations also recognize that gender-affirming care is evidence-based and medically necessary care that improves health and mental health outcomes for transgender and nonbinary individuals. Further, national and international professional bodies have issued policy statements and clinical guidance supporting access to individualized, multidisciplinary, and trauma-informed gender-affirming care, including affirming evaluation, psychosocial supports, and medically necessary hormonal and surgical interventions. These standards of care are established by the World Professional Association of Transgender Health (WPATH) which is a multidisciplinary body of experts on gender affirming care who utilized research to determine the standards of care for the treatment of gender dysphoria over the past 46 years. The 8th version of the scientifically-based standards of care, published in 2022, is commonly referred to as SOC8 (Coleman et al., 2022). The guidelines set forth in the SOC8 are used around the world to inform medical care. The American Psychological Association, American Psychiatric Association, the Endocrine Society, American Medical Association, World Health Organization, American Public Health Association, American Academy of Family Physicians, American College of Obstetrics and Gynecology and the National Association of Social Workers, among others all endorse the SOC8 for the treatment of Gender Dysphoria, and the utilization of treatment protocols aligned with SOC8. Further, The American Medical Association, Endocrine Society, American Nurses Association, and American Psychiatric Association among others,

agree that gender-affirming care is medically necessary, and evidence-based (American Medical Association, 2023; American Nurses Association, 2025; American Psychiatric Association, 2020; Endocrine Society, 2024).

The SOC8 clearly states that gender-affirming care is medically necessary and includes hormone therapy to achieve a more feminine or masculine physicality (Coleman et al., 2022, Statement 12.20-12.21), surgery that modifies primary or secondary sex characteristics (such as: chest masculinization, breast implants, vulvovaginoplasty, phalloplasty, body contouring, hair removal or implants, facial feminization surgery) (Coleman et al., 2022, Statement 12.19), aspects of social transition (hairstyle, clothing, vocal training, name changes) (Coleman et al., 2022, Statement 11.5), and supportive psychotherapy when needed to help with exploring gender identity, managing distress and impacts of stigma, and treat associated distress not limited to PTSD, anxiety, depression, suicidal ideation, and self-harm (Coleman et al., 2022, Statement 7.8-7.10). These standards of care have also been cited for use by the National Commission on Correctional Health Care (NCCHC) within carceral settings.

When people experience gender incongruence with distress, they are given a diagnosis of gender dysphoria. Gender dysphoria diagnoses are rendered after assessing gender incongruence and related cognitions, their impairment, and the duration of the distress. There is no measure or test of dysphoria better than the structured clinical interview ascertaining a patient's own experience.

The diagnostic criteria for gender dysphoria are as follows (American Psychiatric Association, 2022):

A marked incongruence between one's experienced/expressed gender and their assigned gender, lasting at least 6 months, as manifested by at least two of the following:

a. A marked incongruence between one's experienced/expressed gender and primary and/or secondary sex characteristics (or in young adolescents, the anticipated secondary sex characteristics);
b. A strong desire to be rid of one's primary and/or secondary sex characteristics because of a marked incongruence with one's experienced/expressed gender (or in young adolescents, a desire to prevent the development of the anticipated secondary sex characteristics);
c. A strong desire for the primary and/or secondary sex characteristics of the other gender;
d. A strong desire to be of the other gender (or some alternative gender different from one's assigned gender);
e. A strong desire to be treated as the other gender (or some alternative gender different from one's assigned gender);
f. A strong conviction that one has the typical feelings and reactions of the other gender (or some alternative gender different from one's assigned gender).

To receive a diagnosis, the condition must also be associated with clinically significant distress or impairment in social, occupational, or other important areas of functioning. It is important to note that distress is not always visible. It can be experienced in a way that is visible to others, or in ways that are not apparent. A person's expression of their own subjective distress can meet the criterion of clinically significant distress, even if outward functioning appears mostly preserved. In addition, impairment in functioning alone is sufficient, even when a person reports little or no subjective distress.

It is essential to note that there are differential diagnoses that are listed in the DSM however, there are no commonly experienced mental health conditions that rise to the level of consideration for differential diagnosis to necessitate that they be ruled out prior to a diagnosis of gender dysphoria. This means that diagnoses such as PTSD, borderline personality disorder, antisocial personality disorder, depression, anxiety, autism, and others are NOT considered rule outs for gender dysphoria. People with all types of mental health diagnoses experience co-occurring gender dysphoria, and therefore can be given another diagnosis alongside gender dysphoria without concern for whether it provides a better alternative explanation for the dysphoria symptoms.

Further, due to the extensive gender invalidation that transgender and nonbinary individuals experience in custody, there can be an overlap between gender dysphoria and emotion dysregulation. People who experience emotion dysregulation related to complex PTSD, or borderline personality disorder often are judged by mental health providers as being untrustworthy in describing their own experiences of distress due to a perceived over-amplification of distress. However, due to the intensity of distress that is intrinsically linked with chronic gender invalidation, this distress supports a diagnosis of gender dysphoria rather than undermining it.

In carceral environments, diagnosis seems to be most challenging for providers when adults present with co-occurring dysregulation or distress. Often, more complex presentations are used as justification by carceral systems for delay or denial of care. Frequently this results in communications to patients that they must regulate their distress without being provided the necessary care to do so (e.g. reduce outbursts, decrease suicidal ideation or attempt, or engage in therapy not conducive to reducing dysphoria symptoms). When this happens, transgender and nonbinary individuals are moved farther away from the care they need, and distress is amplified, therefore rendering impossible a reduction in distress.

Gender Dysphoria Is Not Treated by Psychotherapy

There is no therapeutic technique that treats gender identity, much as there is no treatment for homosexuality, religious, political, racial or ethnic identity. There are therapies that support individuals who are coping with invalidation and lack of access to care. Some therapies provide skills to cope with distress and emotion dysregulation (for example, DBT and CBT). Though coping skills are essential for functioning in difficult environments, having those skills provided as the only intervention for gender dysphoria is grossly inadequate care. In addition, requiring learning and utilization of skills in order to access care directly harms transgender and nonbinary people by further invalidating the experiences.

Medically Necessary Care and Informed Consent

Medical and mental health organizations across the United States utilize the same standards of care to affirm the gender identities of transgender and nonbinary individuals. The American Psychological Association, American Psychiatric Association, Endocrine Society, American Medical Association, World Health Organization, American Public Health Association, American Academy of Family Physicians, American College of Obstetrics and Gynecology and the National Association of Social Workers, among others all endorse the same standards of care for guidance in the treatment of Gender Dysphoria, and the utilization of treatment protocols aligned with those standards.

The SOC8 clearly states that there are medically necessary ways to treat gender dysphoria, which include hormone therapy to achieve a more gender-aligned physicality (Coleman et al., 2022, Statement 12.20-12.21), surgery that modifies primary or secondary sex characteristics (such as: chest masculinization, breast implants, vulvovaginoplasty, phalloplasty, body contouring, hair removal or implants, and facial feminization surgery) (Coleman et al., 2022, Statement 12.19), aspects of social transition (hairstyle, clothing, vocal training, name changes) (Coleman et al., 2022, Statement 11.5), and finally supportive psychotherapy as needed to help to explore gender identity, manage distress and impacts of stigma and treat associated distress not limited to PTSD, anxiety, depression, suicidal ideation, self-harm, and other symptoms (Coleman et al., 2022, Statement 7.8-7.10). Note that none of the listed therapeutic interventions treat the dysphoria itself, rather they treat the associated distress without mitigating the source of the distress.

It is essential to note the medically necessary nature of these recommendations, particularly for those held in carceral environments. The medical necessity of gender affirming care is just as essential for those held in custody as for those living in community, and is just as essential as the medically necessary treatment of other medical conditions, such as diabetes and heart disease. These standards of care have also been cited for use by the National Commission on Correctional Healthcare within carceral settings (2020).

Decisions about Gender Affirming Care and Agency

People in custody regularly make decisions about the medically necessary care that they need. For example, they consent to medical care like surgeries to support their heart function, to repair broken bones, to address hernias and ulcers, and to receive treatments for endocrine disorders. People in custody are able to make decisions about their care, to understand the risks and rewards of interventions, and to consent to care. For medically necessary gender affirming care, decisions about what type of care patients wish to have to affirm their gender and reduce their gender dysphoria should be made by the patient alone. They should have access to evidence-based and accurate information about the array of procedures that are available to individuals seeking gender-affirming care. For individuals in custody, given limited access to information about gender affirming care within custody settings, individuals should be provided with the same information available to people in the community to make their decisions.

In consultation with an up to date and well-trained team of providers, people in custody can gain the appropriate information that they need to provide informed consent to care. Informed consent is a standard procedure for all medically necessary care. Provision of informed consent does not imply that a patient obtains a medical-level understanding of the medical intervention, rather it assumes that they have understood the risks, expected outcomes and reasonable available alternatives (National Cancer Institute, n.d.).

Though transgender and nonbinary individuals in custody need to make their own decisions about gender-affirming interventions, it is essential that they are provided with education from a medical provider who can detail the risks and rewards of surgery, preparation for and aftercare of surgery, and any reasonable alternatives to surgery as well as addressing any other concerns. This is especially important for people in custody as they do not generally have access to the plethora of information

available to individuals in community, including information about providers' surgical outcomes, examples of providers' prior work, and provider rates of complications.

Finally, it is important to address the actual risks of gaining access to gender-affirming surgical care. Given the emphasis on singular stories of regret about the experience of transition, it is important to highlight the actual rates of regret about surgery and their source. The following is a list of surgeries people undergo followed by their known rates of regret and satisfaction: Top surgery (0-4% regret), vaginoplasty (0-8% regret, 78-100% satisfaction) phalloplasty (0% regret, 83-100% satisfaction), facial gender affirming surgery (72-100% satisfaction) (Coleman et al., 2022). It is important to note that the rates of regret are typically associated with the surgical outcome and not the surgery itself. As many of these surgeries allow for revisions, that rate of regret due to surgical outcome can be improved. It is true that a very small number of people will decide that their gender affirming interventions either did not affirm their gender in the way they had hoped or had outcomes that they did not like. These individuals need to be supported in their gender journeys as much as anyone else.

Care for Transgender and Nonbinary People in Custody

The National Commission on Correctional Health Care is an interdisciplinary body of medical, mental health, and legal professionals working to foster best health care practices in correctional systems. They focus on reduction in mortality across medical presentations in prison settings. Their position statement (2020) underscores the importance of utilizing accepted standards of care developed by experts in transgender health. Their statement is an essential read for any correctional body making decisions about the care of detained transgender and nonbinary people. It highlights the need for proper training of correctional healthcare staff, and access to professional consultation to support decision making as clinically indicated. They highlight the importance of comprehensive health care and timely treatment for concurrent mental health conditions. They highlight the importance of access to standard gender-affirming care, including continuity of prior care, access to evaluations for medically necessary gender-affirming surgical procedures, and provision of medically necessary care according to accepted standards. It underscores the importance of services and support systems to address acceptance and specifically states "reparative" or "conversion" therapy or attempts to alter gender identity should never be employed. Similarly, disciplining individuals solely for expressing their gender identity may have harmful health consequences."

The NCCHC underscores the risk to transgender individuals as targets of violence, and notes that their safety is of paramount importance, and that they should be placed in the least restrictive housing possible, and should not be placed in segregation to ensure their safety. It also emphasizes the need for access to safe housing, showering, and gender-aligned search procedures.

The NCCHC statement underscores the importance of training for medical, professionals working in custodial environments in the diagnosis and care of transgender and nonbinary individuals. In addition, it is paramount to the safety of transgender and nonbinary people in custody that all staff be trained in gender affirmation practices. These trainings should be based in scientifically sound, effective and affirming modalities of care, such that staff can appropriately make diagnoses, render effective medical treatment, and not further the emotional distress and trauma that is already pervasive in the lives of transgender and nonbinary people in custody. Without such training, carceral systems cannot provide the

circumstances for the trusting, and safe relationships necessary for effective gender affirming mental and medical care.

Mental healthcare requires a relationship between provider and patient that creates a safe environment for the disclosure of pertinent, private information. Gender-affirming mental healthcare requires that those disclosures are also met with knowledgeable staff who respond appropriately to requests for access to gender affirming care. These staff should have an awareness of the field and how to provide effective care for people in custody.

In addition, care for people in custody should be provided on coordinated interdisciplinary teams and should be responsive to providing access to gender affirming medical care to alleviate dysphoria symptoms when an individual wishes to receive it. Such care would match community care standards. This lack of a trusting relationship wherein effective support can be asked for and received, is a barrier to transgender and nonbinary people disclosing their gender identity sooner, and to openly discussing gender identity after disclosure. This often results in increasing distress and poorer mental health for transgender and nonbinary people in custody. Frequent experiences of intense distress as well as denial of care can be deadly for transgender and nonbinary people in custody, it results in suicide ideation and attempt and psychiatric and hospital admissions. Untrained staff, delays in receiving care, as well as outright denials of care are truly deadly for transgender and nonbinary people in custody. Effective training goes a long way in supporting appropriate and effective mental and medical healthcare for transgender and nonbinary people in custody.

Current Standards of Care and the Custodial Environment

As noted previously, the current model of gender affirming care is provided by the World Professional Association for Transgender Health (WPATH) via their publication of the standards of care version 8 (SOC 8). These standards underscore the importance of access to gender affirming medical care for all individuals who can consent to care and who wish to have their gender identity medically affirmed.

One issue that can arise in the custodial setting is when medical and mental health teams use outdated standards of care, for example, old versions of the SOC or the DSM. The problem with using outdated models of care is that they impose more restrictive, non-evidence-based standards on transgender and nonbinary people in order to access care.

Experiences of Identity-Related Trauma

Transgender individuals frequently experience identity related trauma, including stigma, discrimination, and rejection. Experiences of trauma have a powerful effect on mental and physical health for transgender and nonbinary individuals and are associated with depression, anxiety, substance use, and suicidality (Bockting et al., 2013; Reisner, et al. 2016; Sevelius, 2013). Further, trauma in early life is associated with later development of schizophrenia (Chen et al., 2024). For transgender and nonbinary individuals, this may look like family rejection and neglect. These experiences are well documented in research such as the United States Transgender Survey in 2015 where over 28,000 transgender and nonbinary individuals provided information on their experiences (James et. al., 2016). The results demonstrated prominent experiences of verbal abuse, bullying at school, home, and work, family rejection based on gender identity, and withdrawal of resources related to holding a transgender identity.

Trauma escalates with incarceration and is amplified by the gendered carceral environment. Indeed, there are unique ways in which detained transgender and nonbinary individuals experience identity related trauma. These experiences generally fall into the following categories: housing, assault, and denial of gender specific medical care.

Housing

Many transgender and nonbinary individuals are housed outside of gender alignment. Non-aligned housing certainly places them at greater risk for assault and abuse, including physical and sexual assault risk. In addition, being housed outside of gender alignment is a consistent and pervasive denial of identity. Being housed outside of gender alignment generally has a cascade effect as it pertains to other denials. For example, access to gender affirming items is typically limited by commissary and package limitations. In addition, daily misgendering, body exposure in gender-incongruent showers or during searches, and searches by non-gender-aligned staff all create opportunities for humiliation, disparagement and trauma (The Sylvia Rivera Law project, 2007; The Sylvia Rivera Law Project & Take Root Justice, 2021). In addition, gender affirming items are often confiscated. Confiscation or prohibition of gender-affirming clothing, cosmetics, hair removal, binders, bras, or underwear is not psychologically neutral; it directly worsens dysphoria, depression and anxiety and can precipitate self-harm and suicidal behavior.

Labeling these items as merely "social" or "non-medical" ignores their clinically documented role in alleviating dysphoria and supporting mental health. Within carceral environments, people who become a challenge to house are often housed in protective custody, solitary confinement, or other isolative units. Placement in solitary confinement—whether framed as "protection" or discipline—is damaging to anyone in its material deprivation and social isolation. As a result, it predictably worsens suicidality, self-harm, anxiety, depression (Reiter et al., 2020), PTSD (Hagan et al. 2018) and by association cognitive functioning, and is associated with all-cause mortality including suicide, homicide, and opioid overdose (Brinkley-Rubenstein et al., 2019). Using segregation as a purported "safety" measure for transgender individuals is psychologically contraindicated and constitutes a mental-health harm, not a protective intervention.

Assault

Transgender and nonbinary individuals detail physical and sexual assault by other people in custody and by staff at alarming rates. For example, one in five report sexual assault and almost one in four report physical assault (James et al., 2016). Many individuals express distress at being pushed, hit, punched, and kicked, receiving unwanted sexual advances and groping, and being forced to perform oral or anal sex, or another sexual act (The Sylvia Rivera Law project, 2007; The Sylvia Rivera Law Project & Take Root Justice, 2021).

Denial of Medical Care

Transgender and nonbinary people in custody report restriction of their hormones and denial of access to surgeries. Abrupt or forced discontinuation of established gender-affirming hormone therapy is associated with: (1) rebound or intensified gender dysphoria and (2) marked mood instability, major

depressive episodes, and increased suicidal ideation (CITE). Policies that cut off care increase risk of self-harm and mental health crisis. When access to gender-affirming care is blocked, some individuals engage in dangerous self-directed interventions (e.g., attempts at self-castration and unsafe hormone sourcing), which can be lethal. These attempts should be regarded as desperate measures to resolve the distress related to lack of access to care.

Complex PTSD

Persistent exposure to harassment, misgendering, and threat of assault in custody should be conceptualized as chronic traumatic stress. Prior to the publication of the DSM-V, trauma researchers joined together to propose that the evidence-based "Complex PTSD" diagnosis be added to the manual (Herman, 1992; van der Kolk, 2015). Unfortunately, it was not added; however, it is a diagnosis that is recognized in the current, 11th version of the World Health Organization's diagnostic manual, the ICD-11 (World Health Organization, 2023). This diagnosis is regarded as an updated version of the ICD-10 diagnosis of enduring personality change after catastrophic experiences (World Health Organization, 1992); the ICD-11 is used for most medical diagnoses and billing worldwide.

This diagnosis aptly describes the unique additional effects of exposure to chronic, pervasive, and often unrelenting traumatic experiences across the lifetime. Complex PTSD accounts for the unique neurological, endocrinological, physiological, and pervasive behavioral impacts of chronic exposure to trauma. Importantly, the traumatic experiences can have their onset in early life, where they have an impact on the developing brain and attachment and self-regulation systems, as well as setting the stage for later challenges with interpersonal relationships, emotion regulation, ability to tolerate distress and ability to form a positive self-concept (Cloitre et al. 2014). However, a diagnosis of complex PTSD does not necessitate onset in childhood. Any individual can develop complex PTSD when they experience pervasive, unrelenting trauma that causes alterations in their ability to regulate emotions, tolerate distress, or have safe and secure interpersonal relationships. For example, such trauma may include war or ongoing or sequential relationships where inter-partner violence occurs. Finally, it is important to underscore how disruptive complex trauma complex trauma can be to the automaticity of thought; it can change how one understands the self, others, and the world in ways that negatively skew interactions. For example, "people are always out to get me," "I can't trust anyone," "the world is dangerous," "I'm to blame for my suffering," are cognitive distortions that typically do not match reality and occur alongside emotion dysregulation (*e.g.*, difficulty modulating emotions like anger and sadness), difficulty reacting appropriately to distress or appropriately applying coping skills to manage distress, and loss of regulation in the areas of sleep, appetite, and self-care.

Complex trauma also has damaging social and emotional impacts in addition to the typical impacts of posttraumatic stress disorder. For example, children who experience chronic trauma, and who do not have adequate adult support to process these experiences, can have later sensitivity to new trauma experiences, exacerbating their existing distress and making them vulnerable to heightened distress. These difficulties do not need to be temporally proximal to the complex childhood trauma to have an impact later in life; rather, they shape the trajectory of later experience. For example, many years after trauma, people can have difficulty perceiving dangerous situations, experience challenges in managing safety, have trouble navigating healthy and safe interpersonal relationships, and have trouble setting and maintaining appropriate boundaries.

Another component of trauma that is essential to the diagnosis of complex trauma is the difference between traumatic dysregulation and dissociation. Though individuals can have a full range of responses to traumatic situations, the ends of the spectrum of the neurobiological impact of trauma represent the hyperactivation of brain and body networks into cerebral and behavioral fight and flight modes, or the slowing down of brain and body functioning into dissociation and freezing responses. Regardless of the response, the increased neurological over or under functioning impairs memory, judgment, and reactivity when traumatic events are occurring (van der Kolk, 2015).

The effects of chronic trauma also extend beyond typical traumatic stress responses to co-existing psychiatric disorders such as depression, anxiety, panic attacks and physiological or somatic conditions (*e.g.*, chronic pain, autoimmune disorders, cardiovascular symptoms) and substance abuse.

Conclusions

Transgender and nonbinary people in custody deserve to have their identities affirmed, and their rights and dignity respected. They deserve to live without the exacerbation of any existing trauma and mental health concerns. This means having access to the same care that is accessible to individuals outside of the custodial environment—including providers who are well trained and knowledgeable in the provision of gender-affirming medical and mental health care, safe environments, gender affirming items, excellent and effective supportive therapy, continuation of care, and access to the same medically necessary care as those in community. Denial of this care is directly associated with negative medical and mental health outcomes and increases risk of death.

Transgender and nonbinary people in custody deserve immediate access to gender affirming, lifesaving, medically necessary care.

Rachel Lynn Golden, PhD
Date: June 25, 2026
Licensed Psychologist
Golden Psychology

References

American Academy of Child and Adolescent Psychiatry. (2024). *Access to gender-affirming healthcare* [Policy statement]. https://www.aacap.org/AACAP/Policy_Statements/2024/Access_Gender-Affirming_Healthcare.aspx

American Academy of Dermatology. (2022). *AAD issues position statement addressing sexual & gender minority health.* https://www.mdedge.com/content/aad-issues-position-statement-addressing-sexual-gender-minority-health

American Academy of Family Physicians. (2018). *Clinical update: Providing care to transgender patients. American Family Physician, 98*(11), 645–651. https://www.aafp.org/pubs/afp/issues/2018/1201/p645.html

American Academy of Nursing. (2025). *Position statement on gender-affirming care.* https://aannet.org/page/gender-affirming-care-position-statement-2025

American Academy of Pediatrics. (2018). *Ensuring comprehensive care and support for transgender and gender-diverse children and adolescents* [Policy statement]. *Pediatrics, 142*(4), e20182162. https://publications.aap.org/pediatrics/article/142/4/e20182162/37381/

American Academy of Physician Assistants. (2021). *Expert advice on providing trans-affirming healthcare.* https://www.aapa.org/news-central/2021/03/expert-advice-on-providing-trans-affirming-healthcare/

American College Health Association. (2023). *Access to health care services for transgender patients.* https://www.acha.org/resource/access-to-health-care-services-for-transgender-patients/

American College of Nurse-Midwives. (2024). *Health care for transgender and gender-nonbinary people* [Position statement]. https://midwife.org/wp-content/uploads/2024/10/Health-Care-for-Transgender-and-Gender-Non-Binary-People.pdf

American College of Obstetricians and Gynecologists. (2021). *Health care for transgender and gender-diverse individuals* [Committee opinion]. https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2021/03/health-care-for-transgender-and-gender-diverse-individuals

American College of Physicians. (2022). *ACP offers recommendations to support LGBTQ health-care equity.* https://www.acponline.org/acp-newsroom/acp-offers-recommendations-to-support-lgbtq-health-care-equity

American Counseling Association, & SAIGE. (2021). *SAIGE position statement on gender-affirming healthcare bans.* https://www.counseling.org/about/values-statements/saige-position-statement-on-gender-affirming-healthcare-bans

American Heart Association. (2020). *Cardiovascular care of lesbian, gay, bisexual, and transgender patients* [Scientific statement]. *Circulation, 142*(10), e506–e524. https://www.ahajournals.org/doi/10.1161/CIR.0000000000001003

American Medical Association. (2023). *AMA strengthens its policy on protecting access to gender-affirming care.* https://www.endocrine.org/news-and-advocacy/news-room/2023/ama-gender-affirming-care

American Nurses Association. (2019). *Advocacy for LGBTQ+ populations* [Position statement]. *OJIN: The Online Journal of Issues in Nursing, 24*(1). https://ojin.nursingworld.org/table-of-contents/volume-24-2019/number-1-january-2019/ana-position-statement-advocacy-for-lgbtq/

American Osteopathic Association. (2020). *Gender identity non-discrimination* [Policy H439-A-20]. https://osteopathic.org/wp-content/uploads/policies/Policy_H439-A-20_Gender_Identity_Non-Discrimination.pdf

American Psychiatric Association. (1952). *Diagnostic and statistical manual of mental disorders* (1st ed.). American Psychiatric Association.

American Psychiatric Association. (1968). *Diagnostic and statistical manual of mental disorders* (2nd ed.). American Psychiatric Association.

American Psychiatric Association. (1974). *Diagnostic and statistical manual of mental disorders* (2nd ed., 7th printing). American Psychiatric Association.

American Psychiatric Association. (2013). *Diagnostic and statistical manual of mental disorders* (5th ed.). https://doi.org/10.1176/appi.books.9780890425596

American Psychiatric Association. (2020). *Position statement on treatment of transgender and gender-diverse youth.* https://www.psychiatry.org/getattachment/8665a2f2-0b73-4477-8f60-79015ba9f815/Position-Treatment-of-Transgender-Gender-Diverse-Youth.pdf

American Psychiatric Association. (2022). *Diagnostic and statistical manual of mental disorders* (5th ed., text rev.). https://doi.org/10.1176/appi.books.9780890425787

American Psychological Association. (2024). *Affirming evidence-based inclusive care for transgender, gender-diverse, and nonbinary individuals* [Policy statement]. https://www.apa.org/about/policy/transgender-nonbinary-inclusive-care

American Public Health Association. (2017). *Promoting transgender and gender-minority health through inclusive policies & practices.* https://www.apha.org/policy-and-advocacy/public-health-policy-briefs/policy-database/2017/01/26/promoting-transgender-and-gender-minority-health-through-inclusive-policies-and-practices

American Society of Plastic Surgeons. (2021). *Statement to press regarding gender surgery for adolescents.* https://www.plasticsurgery.org/for-medical-professionals/publications/psn-extra/news/asps-statement-to-press-regarding-gender-surgery-for-adolescents

Blosnich, J. R., Henderson, E. R., Coulter, R. W. S., Goldbach, J. T., & Meyer, I. H. (2020). Sexual orientation change efforts, adverse childhood experiences, and suicide ideation and attempt among sexual minority adults, United States, 2016–2018. *American Journal of Public Health*, *110*(7), 1024–1030. https://doi.org/10.2105/AJPH.2020.305637

Bockting, W., Miner, M., Swinburne Romine, R., Hamilton, A., & Coleman, E. (2013). Stigma, mental health, and resilience in an online sample of the US transgender population. *American Journal of Public Health, 103*, 943–951. https://doi.org/10.2105/AJPH.2013.301241

Brinkley-Rubinstein, L., Sivaraman, J., Rosen, D. L., Cloud, D. H., Junker, G., Proescholdbell, S., ... & Ranapurwala, S. I. (2019). Association of restrictive housing during incarceration with mortality after release. *JAMA Network Open*, *2*(10), e1912516.

Brockmann, B., Cahill, S., Wang, T., & Levengood, T. (2019). *Emerging best practices for the management and treatment of incarcerated lesbian, gay, bisexual, transgender, and intersex (LGBTI) individuals* (TFIP-33). The Fenway Institute. https://fenwayhealth.org/wp-content/uploads/TFIP-33_Best-Practices-for-LGBTI-Incarcerated-People-Brief_web.pdf

Chen, Y. J., Lu, M. L., Chiu, Y. H., Chen, C., Santos, V. H. J., & Goh, K. K. (2024). Linking childhood trauma to the psychopathology of schizophrenia: The role of oxytocin. *Schizophrenia, 10*(1), 24. https://doi.org/10.1038/s41537-024-00433-9

Coleman, E., Radix, A. E., Bouman, W. P., Brown, G. R., de Vries, A. L. C., Deutsch, M. B., … Arcelus, J. (2022). Standards of care for the health of transgender and gender diverse people, version 8. *International Journal of Transgender Health, 23*(Suppl 1), S1–S259. https://doi.org/10.1080/26895269.2022.2100644

Diamond, M. (2013). Transsexuality Among Twins: Identity Concordance, Transition, Rearing, and Orientation. *International Journal of Transgenderism*, *14*(1), 24–38. https://doi.org/10.1080/15532739.2013.750222

Endocrine Society. (2024). *Statement in support of gender-affirming care.* https://www.endocrine.org/news-and-advocacy/news-room/2024/statement-in-support-of-gender-affirming-care

Federation of Pediatric Organizations. (2022). *Joint FOPO statement on care for transgender children, youth & families.* https://www.abp.org/sites/public/files/pdf/news-fopo-statement-transgender-care.pdf

Foreman, M., Hare, L., York, K., Balakrishnan, K., Sánchez, F. J., Harte, F., Erasmus, J., Vilain, E., & Harley, V. R. (2019). Genetic link between gender dysphoria and sex hormone signaling. *The*

Journal of Clinical Endocrinology & Metabolism, *104*(2), 390–396. https://doi.org/10.1210/jc.2018-01105

GLMA: Health Professionals Advancing LGBTQ Equality. (2024). *Organizational Position & Resources.* https://www.glma.org/

Gaspari, L., Soyer-Gobillard, M.-O., Kerlin, S., Paris, F., & Sultan, C. (2024). Early Female Transgender Identity after Prenatal Exposure to Diethylstilbestrol: Report from a French National Diethylstilbestrol (DES) Cohort. *Journal of Xenobiotics*, *14*(1), 166-175. https://doi.org/10.3390/jox14010010

Hagan, B. O., Wang, E. A., Aminawung, J. A., Albizu-Garcia, C. E., Zaller, N., Nyamu, S., Shavit, S., Deluca, J., Fox, A. D., & Transitions Clinic Network (2018). History of Solitary Confinement Is Associated with Post-Traumatic Stress Disorder Symptoms among Individuals Recently Released from Prison. *Journal of Urban Health: Bulletin of the New York Academy of Medicine*, *95*(2), 141–148. https://doi.org/10.1007/s11524-017-0138-1

Herman, J. L. & Flores, A. R. (2025, August). *How Many Adults and Youth Identify as Transgender in the United States?* Los Angeles, CA: The Williams Institute, UCLA. Retrieved November 12, 2025, from https://williamsinstitute.law.ucla.edu/publications/trans-adults-united-states/

Heylens, G., De Cuypere, G., Zucker, K. J., Schelfaut, C., Elaut, E., Vanden Bossche, H., ... & T'Sjoen, G. (2012). Gender identity disorder in twins: a review of the case report literature. *The Journal of Sexual Medicine*, *9*(3), 751-757.

James, S. E., Herman, J. L., Rankin, S., Keisling, M., Mottet, L., & Anafi, M. (2016). *The Report of the 2015 U.S. Transgender Survey.* https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf

Levin, R. N., Erickson-Schroth, L., Mak, K., & Edmiston, E. K. (2023). Biological studies of transgender identity: A critical review. *Journal of Gay & Lesbian Mental Health*, *27*(3), 254–283. https://doi.org/10.1080/19359705.2022.2127042

Mueller, S. C., Guillamon, A., Zubiaurre-Elorza, L., Junque, C., Gomez-Gil, E., Uribe, C., ... & Luders, E. (2021). The neuroanatomy of transgender identity: Mega-analytic findings from the ENIGMA transgender persons working group. *The Journal of Sexual Medicine*, *18*(6), 1122-1129.

National Association of Nurse Practitioners in Women's Health. (2023). *Health care for transgender and gender-diverse individuals* [Position statement]. https://www.npwomenshealthcare.com/position-statement-healthcare-for-transgender-and-gender-diverse-individuals/

National Association of Social Workers. (2022). *Sexual orientation and gender diversity* [Policy statement]. https://www.socialworkers.org/Practice/LGBTQIA/Sexual-Orientation-and-Gender-Diversity

National Cancer Institute. (n.d.). *NCI dictionary of cancer terms.* Retrieved August 15, 2025, from https://www.cancer.gov/publications/dictionaries/cancer-terms/def/informed-consent

National Commission on Correctional Health Care. (2020). *Transgender & gender-diverse health care in correctional settings* [Position statement]. https://www.ncchc.org/wp-content/uploads/Transgender-and-Gender-Diverse-Health-Care-in-Correctional-Settings-2020.pdf

Pediatric Endocrine Society. (2021). *Statement on gender-affirmative care for transgender youth.* https://pedsendo.org/wp-content/uploads/2021/04/The-Pediatric-Endocrine-Society-Statement-TG.pdf

Reisner, S. L., Hughto, J. M. W., Gamarel, K. E., Keuroghlian, A. S., Mizock, L., & Pachankis, J. E. (2016). Discriminatory experiences associated with posttraumatic stress disorder symptoms among transgender adults. *Journal of Counseling Psychology, 63*, 509–519. https://doi.org/10.1037/cou0000143

Reiter, K., Ventura, J., Lovell, D., Augustine, D., Barragan, M., Blair, T., ... & Strong, J. (2020). Psychological distress in solitary confinement: Symptoms, severity, and prevalence in the United States, 2017–2018. *American Journal of Public Health*, *110*(S1), S56-S62.

Sadr, M., Khorashad, B. S., Talaei, A., Fazeli, N., & Hönekopp, J. (2020). 2D: 4D suggests a role of prenatal testosterone in gender dysphoria. *Archives of Sexual Behavior*, *49*(2), 421-432.

Sevelius, J. M. (2013). Gender affirmation: A framework for conceptualizing risk behavior among transgender women of color. *Sex Roles, 68*(11–12), 675–689. https://doi.org/10.1007/s11199-012-0216-5

Society for Adolescent Health and Medicine. (2024). *SAHM supports protecting access to gender-affirming care for transgender and nonbinary adolescents and young adults.* https://adolescenthealth.org/press_release/sahm-supports-protecting-access-to-gender-affirming-clinical-care-for-transgender-and-nonbinary-aya/

The Sylvia Rivera Law Project. (2007). *"It's war in here": A report on the treatment of transgender and intersex people in New York State men's prisons.* https://srlp.org/wp-content/uploads/2007/04/Its-War-In-Here-full-version.pdf

The Sylvia Rivera Law Project, & Take Root Justice. (2021). *It's still war in here: A statewide report on the TGNCI experience in New York prisons and the fight for trans liberation, self-determination, and freedom.* https://srlp.org/wp-content/uploads/2025/01/Its-Still-War-In-Here-1-2.pdf

Tran, N. K., Lett, E., Cassese, B., Weiss, R. E., Mays, V. M., & Cochran, S. D. (2024). Conversion practice recall and mental health symptoms in sexual and gender minority adults in the USA: A cross-sectional study. *The Lancet Psychiatry*, *11*(11), 874–883.

Turban, J. L., Beckwith, N., Reisner, S. L., & Keuroghlian, A. S. (2020). Association between recalled exposure to gender identity conversion efforts and psychological distress and suicide attempts

among transgender adults. *JAMA Psychiatry*, *77*(1), 68–76. https://doi.org/10.1001/jamapsychiatry.2019.2285

Ventresca, S., Chioma, L., Ruta, R., Mucciolo, M., Parisi, P., Suppiej, A., Loche, S., Cappa, M., & Bizzarri, C. (2025). Differences of Sex Development: A Study of 420 Patients from a Single Tertiary Pediatric Endocrinology Center. *Children (Basel, Switzerland)*, *12*(7), 954. https://doi.org/10.3390/children12070954

World Medical Association. (2020). *WMA statement on transgender people.* https://www.wma.net/policies-post/wma-statement-on-transgender-people/

World Professional Association for Transgender Health. (2022). *Standards of care for the health of transgender and gender-diverse people, version 8.* https://wpath.org/publications/soc8/

ISBN: 979-8-9967924-0-5