

Quick Guide to the Criminalization of Transgender and Gender Non-Conforming People

Transgender and gender non-conforming people are over-represented in the criminal legal system due to institutionalized oppression and increased poverty and criminalization. Trans and gender non-conforming people, especially trans and gender non-conforming people of color, face intersectional barriers to education, housing, employment, and medical care resulting in vulnerability and a constant fight for social and political resources. These barriers are further increased as a result of intersectional oppression including: racism, sexism, transphobia, homophobia, classism, ableism, and ageism.

Barriers to Education

Many trans and gender non-conforming people drop out of school due to harassment and discrimination suffered at all levels of education. Schools are also highly gendered spaces. Students are forced to use gendered bathrooms and locker rooms where they are frequently subjected to violence and persecution. This harassment and discrimination is frequently unchecked by school administration and educators. Mandatory trainings are not in place for young people and many jurisdictions do not have laws in place requiring schools to educate faculty, staff, and students about LGBT issues. Additionally, issues often arise for trans and gender non-conforming individuals who do not have matching identity documents, which can limit access to higher education. For transpeople with criminal convictions that limit name changes, this issue is further exacerbated.

Barriers to Housing

Trans and gender non-conforming people, especially young people, are disproportionately represented in homeless and street-based communities. Many people are kicked out of their homes for being transgender or gender non-conforming. All too often young transpeople are forced to run away from foster care due to sex-segregated group homes and/or unsafe family placements where they are subjected to abuse, harassment, and discrimination. There are very few temporary shelters that are safe for transpeople due to lack of staff training about trans issues, sex segregation in facilities, and discrimination and abuse at the hands of shelter employees and other residents. Furthermore, low-income housing options for young people and folks coming out of prisons and jails are generally not trans friendly and are often sex-segregated.

Barriers to Employment

Acquiring and maintaining employment is challenging for many trans and gender non-conforming people due to discrimination based on gender presentation. Oftentimes transpeople are fired when employers discover that identity documents do not match. Unfortunately, this often leads to transpeople being “outed” by employers or fellow co-workers, which leads to increased rates of violence, harassment, and discrimination in the workplace. The Illinois Human Rights Act was passed to prevent discrimination regarding employment, housing, access to financial credit, and public accommodations based on perceived sexual orientation or gender identity. 775 ILCS § 5. However, holding employers accountable for employment discrimination is difficult due to an inaccessible legal system and finding a zealous attorney that understands trans issues and has the capacity to represent individuals on these types of cases.

Barriers to Medical Care

For those who have healthcare, most transgender related medical care is specifically not covered by health insurance companies. It is difficult to find doctors that understand trans related health care needs and who do not further discriminate against transpeople in vulnerable medical settings. The vast majority of medical providers do not provide gender-affirming medical care and utilize transphobic standards of care that counteract informed consent models used for non-trans specific medical care. Gender-affirming healthcare includes but is not limited to providing access to hormone therapy without extensive requirements and

psychological evaluations, providing information about trans specific health care, and rejecting the notion that all people transition in the same way and have the same needs. As a result of the pervasive discrimination within medical systems and institutions, transpeople face persistent medical problems including lack of affirming OBGYN care, widespread use of street acquired hormone therapy, and disproportionate rates of depression and suicide. Additionally, basic medical needs often go untreated due to the lack of access to resources and the fear of facing harassment and discrimination in medical settings, including emergency rooms, hospitals, and doctors' offices.

Barriers to Political Participation

Due to disproportionate criminalization many transpeople suffer collateral consequences as a result of criminal convictions and incarceration. In Illinois, individuals who are incarcerated are barred from voting, and as a result, are not able to influence the political process and change transphobic laws.

Poverty and Criminalization

As a result of the barriers listed above, many trans and gender non-conforming people live in poverty. Low-income communities face higher rates of policing and arrests. Many transwomen, particularly transwomen of color, are profiled and arrested for prostitution even when not engaging in the sex trade – many practitioners refer to this as “walking while trans” much like racial profiling in traffic stops is referred to as “driving while Black.” Trans and gender non-conforming people who are restricted from housing, education, jobs, and medical care may be forced to rely on survival crimes including trespass, loitering, retail theft, and prostitution. Once arrested, transpeople are subjected to harsh discrimination, violence, and harassment at the hands of police officers and correctional officers. Incarcerated transpeople are placed in sex-segregated facilities, usually removed from hormones, stripped of gender-affirming clothing, and often times are placed in harsher conditions than non-transgender detainees (solitary confinement and medical wards). The cyclical nature of the effects of institutional oppression, poverty, and criminalization is an overall barrier to the liberation of transpeople.