

# **Trans People in the Criminal Justice System**

*A guide for criminal justice personnel*



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for the Women/Trans Dialogue Planning Committee,  
the Justice Institute of BC, and the Trans Alliance Society

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# Trans People in the Criminal Justice System:

## *A guide for criminal justice personnel*

In order to do their job effectively, criminal justice personnel are expected to respond to and treat all members of the community with respect. As our population has become increasingly diverse, criminal justice personnel have had to expand their awareness and understanding of the unique and specific needs of each community. Diversity extends beyond culture, ethnicity, religion, abilities, and sexual orientation; there is also diversity of gender beyond the binary division into man/woman. This diversity is referred to as *gender-variance* or *transgenderism*.

The purpose of this information package is to provide criminal justice personnel and those who work with them in policing, court services, and corrections with the information necessary to respond appropriately to trans individuals who come into contact with the criminal justice system.

Specifically, this information package is designed to:

- 1) Provide readers with an understanding of the specific needs and concerns of trans individuals involved with the criminal justice system;
- 2) Raise awareness of the legal, medical, and social issues that impact the safety and well-being of trans people involved with the criminal justice system;
- 3) Enable police and victim service workers to better support trans victims of crime;
- 4) Present strategies to increase the cooperation of trans individuals who are suspects and offenders; and
- 5) Identify the needs of trans people working in criminal justice facilities.

This information package has been designed in two formats: (1) a series of frequently asked questions (FAQs) on specific topics that can be used for self-study, and (2) more detailed information on each of these topics – including current statistics, case studies, and updated resources – that can be delivered in a workshop setting. The Women/Trans Dialogue Committee and the Trans Alliance Society can provide resource people to assist with the delivery of a workshop on any of the topics contained in the information package.

## Before You Begin: Frequently Asked Questions

### I have already taken diversity training – why do I need more training?

Getting a better sense of specific information about gender diversity will help you deal with the complex situations that may arise in your day-to-day work. For example:

- Should you refer to a trans victim of crime as he or she?
- If a suspect stopped on a traffic violation has a driver's licence with a man's photo and name, but other identification has a female name and is marked "F," how do you know which ID to go by?
- If you get a "domestic" call and you find out that the victim is a trans person, does the Violence Against Women in Relationships Policy apply?
- How should you respond to a complainant who says, "There's a man in the women's washroom"?
- If a woman you've arrested discloses she is a pre-operative male-to-female transsexual, where should she be celled, and should she be strip-searched by a male or female officer?

### I don't work with offenders – why do I need this information?

Criminal justice personnel are most likely to come into contact with trans people as victims of crime. For example, more than 50% of participants in a survey of trans people at Gay Pride celebrations in numerous American cities reported they had experienced violence in a romantic relationship;<sup>1</sup> over 60% of trans participants in another American study said they had been the victim of at least one hate-motivated incident.<sup>2</sup>

Additionally, you may be working with trans colleagues. Officers in various departments – including Vancouver, San Francisco, Portland, Minneapolis, and North Yorkshire – have gone through gender transition while on the job. Tensions can be most productively addressed when there is understanding of workplace issues that may arise when a colleague discloses their status as a trans person.

### Don't we already have policies on dealing with diversity?

You likely have a diversity policy that may be helpful in thinking about general issues such as discrimination. You may also have policies that specifically relate to trans people; for example, your facility may already have policies on respectful language, strip-searching, and celling. We hope you find the suggestions throughout this manual useful in thinking about how to deal with situations where existing policies aren't sufficient to answer your questions.

### Isn't treating everyone the same the best approach?

This is true in some ways. Trans people don't want to be singled out, made to feel like freaks, or otherwise treated as abnormal. However, you will likely encounter situations where the standard rules of dividing people up into men and women don't fit. In these situations, "treating everyone the same" just doesn't work. Human rights law (see pages 18 to 20) recognizes this need to be flexible and creative in order to avoid inadvertently discriminating against people who are in situations that require more than "just the usual."

## Emerging Issues: The Concerns of People Who Are Intersex

*Intersexuality* is a set of medical conditions that, according to the Intersex Society of North America (ISNA) “features congenital anomaly of the reproductive and sexual system. A person with an intersex condition is born with sex chromosomes, external genitalia, or an internal reproductive system that is not considered ‘standard’ for either male or female.”<sup>3</sup> This includes people born with variations in chromosome patterns, genital size and appearance, and ovaries/testes, and those who have hormone levels that cause mixtures of secondary sex characteristics following puberty. It is estimated that 1% of the population is intersex.<sup>4</sup>

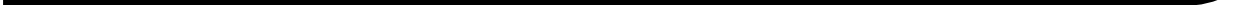
While intersex people can, like anyone else, self-identify as trans or be perceived as trans (and hence experience transphobic discrimination and harassment), intersexuality is not the same as transgenderism. The Intersex Society of North America (ISNA) highlights the medical establishment’s role in fostering shame and secrecy, and the invasive and unnecessary genital surgeries routinely performed on children born with atypical sex anatomy, as key issues for people who are intersex.

Intersex people may come into contact with the criminal justice system as victims of crime, as suspects/offenders, or as staff in a criminal justice facility. Some intersex people do not require any special accommodation within the criminal justice system; others have specific needs that must be accommodated as per human rights law (see “Duty to Accommodate,” page 19). Intersex people who have been criminally abused (by a partner, family member, etc.) because they are intersex may need specialized assistance to cope with the resulting trauma.

On the advice of intersex advocates, we have not included detailed information in this manual so as to avoid the all-too-common confusion of intersexuality with gender-variance. As resources for further reading, we recommend:

- The Intersex Society of North America website has detailed information and links to a range of resources. Their online library at <http://www.isna.org/library/readonline.html> is an excellent resource, and their online store at <http://www.isna.org/store/> features videos, books, resource manuals, etc.
- Dreger, A.D. (ed.) (1999). *Intersex in the age of ethics*. Hagerstown, MD: University Publishing Group.
- Kessler, S. (1998). *Lessons from the intersexed*. New Brunswick, NJ: Rutgers University Press.





# SECTION 1:

# Basic Information

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## Frequently Asked Questions: Basic Information

### What does it mean to be trans?

*Trans* (short for *transgender*) people have a gender identity that is different from their birth sex, and/or express their gender in ways that contravene societal expectations of the range of possibilities for men and women. Some trans people identify as men or women, while others have an identity that is not as simple as “man” or “woman.” This umbrella term may include crossdressers, drag kings/queens, transsexuals, people who are androgynous, Two-Spirit people, and people who are bi-gendered or multi-gendered.

### How do I know if a person is trans?

There is no reliable way of knowing if a person is trans unless they reveal this information to you. Just as there is great variation in what non-trans people look like, trans people also have a wide variety of physical appearances and clothing, mannerisms, etc. Some trans people are perceived by those around them to be trans, while others are not visually recognizable as trans. Additionally, some people who you might think look trans may not think of themselves in this way.

### If I’m not sure if someone is trans, can I ask?

For most people – including trans and non-trans people – questions about their gender, or incorrect gender attributions (e.g., referring to a woman as “he”), can be distressing. Because of this, questions about a person’s gender should be handled with great sensitivity and caution, and should be asked only on a need-to-know basis (not because you are curious).

### If I’m not sure what a person’s gender is, should I say her, him, or it?

Given that there is no reliable way of knowing if someone is trans unless they reveal this information to you, you might benefit from using these guidelines with *every* person, not just those you suspect might be trans, so as to avoid incorrect assumptions about a person’s gender. The term “it” is considered dehumanizing and should never be used. If someone has disclosed to you that they are a man (including those transitioning from female-to-male [FTM]) or a woman (including those transitioning from male-to-female [MTF]), use the gender pronoun that matches the person’s gender – he/him for men (including FTMs) and she/her for women (including MTFs). If you don’t know a person’s gender, you will have to consider other options.

- 1) Try to use language that avoids gendered terms (e.g., use “this person,” “they,” or the individual’s name instead of “he” or “she”).
- 2) Use the gender pronoun that matches the way a person is dressed and other cues of gender expression (hairstyle, makeup, shoes, name, etc.). For example, a masculine-looking person in a dress will generally appreciate being called “her.” If a person has checked “M” or “F” on a form, you should refer to them as they have indicated.

- 3) Ask in a way that is respectful. To avoid offence, you can try inquiring indirectly by asking, “Can I refer to you by your first name, or would you prefer to be called ...” and hoping they indicate a title (Mr., Ms., Mrs., etc.) or a pronoun that gives you a cue you can act on. If you are just not sure, you can try a pronoun and see what the response is, or directly ask which gender pronoun the person would prefer. Some people will be upset by a direct question, but if you are gentle and non-confrontational, most people will understand that you are doing your best to be sensitive.

### **What is involved in a sex change?**

The term “sex change” is confusing because there is a difference between the process of gender transition – which is what “sex change” usually refers to – and a legal change of sex. In BC, a legal change of sex refers narrowly to whether a person has had sex reassignment surgery (see page 25). “Transition” refers to broader changes in the way persons present themselves in their social environment and daily life – from living as a woman to living as a man, or vice versa. It usually involves a change in appearance (hairstyle, clothing, jewelry), behaviour (mannerisms, language), and way of referring to oneself (name, gender pronoun, identification). People in transition may or may not take hormones or have surgeries.

### **Do more males or females transition?**

It is estimated that there are as many male-to-female (MTF) as female-to-male (FTM) transsexuals (people who have undergone or are going through gender transition – for more information, see definition on next page).<sup>5</sup>

### **After a person goes through transition, is he or she gay, straight, or bisexual?**

*Sexual orientation* – who a person is romantically and erotically attracted to – is different from gender. Just like non-trans people, trans people, including those who have undergone transition, may be heterosexual, gay, lesbian, bisexual, etc. Some people find that one of the changes of transition is a change in whom they are attracted to, while others experience no change. Trans people usually describe their sexual orientation by the gender they identify as, regardless of their bodies. For example, a trans woman with a male partner usually identifies as heterosexual or bisexual (not gay). Some people find the terms “straight,” “gay,” and “bisexual” too limiting or confusing, and choose other ways to describe their sexual orientation. In your work, it is unlikely that you will need to ask the sexual orientation of a trans person you come into contact with. However, if someone uses a term that you are not familiar with, it is appropriate to respectfully ask what it means.

# Terminology

There are many ways in which trans people describe their sense of self, and it is difficult to define terms precisely. Some people reject any term as a label that forces them into a box. Nevertheless, the following terms are some of the ways in which trans people describe who they are.

**Trans** (or **transgender**) people have a gender identity that is different from their birth sex, and/or express their gender in ways that contravene societal expectations of the range of possibilities for men and women. Some trans people identify as men or women, while others have an identity that is not as simple as “man” or “woman.” The umbrella term *trans* includes a wide range of people, including those who are Two-Spirited, crossdressers, drag kings/queens, transsexuals, and others listed below.

**Androgynous** people identify as having elements of both masculinity and femininity that lead to a neutral gender, or may identify as having no gender.

**Bi-gendered** people identify and/or express two genders, much as bilingual people can express themselves in two languages. **Multi-gendered** or **pan-gendered** people identify with and/or express the many shades of gender.

**Crossdressers** enjoy wearing clothing and possibly other accoutrements (such as makeup/hairstyle) that is considered appropriate for the “opposite” gender. Some prefer to do this privately, while others go out in public while crossdressed. Some crossdressers appreciate being referred to in the gender associated with their outer appearance, while others have a constant identity that remains unchanged by wearing “opposite” clothing.

**Drag king/queen** refers to those who crossdress in a showy or campy way, often for theatrical purposes and often to caricature famous men or women. “Drag” is a term that is often associated with gay or lesbian communities; some people who perform professionally crossdressed outside gay/lesbian communities prefer the term “female/male impersonator.” While some drag kings and queens may self-identify as trans, many do not, as their sense of gender identity is not affected by their performance.

**MTF (or M2F/male-to-female)** is generally used to refer to anyone assigned male at birth who identifies or expresses their gender as a woman. Similarly, **FTM (or F2M/female-to-male)** is generally used to refer to anyone assigned female at birth who identifies or expresses their gender as a man.

**Transsexuals** have a gender identity that may not be congruent with their body. There is often discomfort with the disparity between the body and sense of self (*gender dysphoria*), and a desire for hormones and/or surgery to make the body more closely match the gender identity. The term *non-op* refers to transsexuals who are not intending to have surgery; *pre-op* refers to those who have surgery pending, while *post-op* refers to those who have had surgery. Some transsexuals reject these terms because they feel they focus too heavily on medical intervention as the marker of a trans person’s identity.

**Two-Spirit** is a term used by some First Nations people to describe themselves in a way that is closer to their cultural construct of sex/gender/sexuality than the dominant Western view. Some of the languages of indigenous nations of North America have retained specific terms for gender and sexual diversity; some First Nations people may use both the general term “Two-Spirit” and the culturally specific term from their nation to describe themselves.

## Historical Perspectives

Transgenderism is often perceived as a phenomenon that arose in North America from the “sexual revolution” of the 1960s. However, just as gender is a concept that has existed in various forms throughout history and across cultures, so references to trans people can be found throughout time, in mythology, legend, oral history, and written history on every continent.<sup>6</sup>

Finding information about culturally diverse approaches to gender is very difficult because of the skewed perspective of many historical records. For example, European anthropologists’ and settlers’ records of indigenous cultural approaches to sex and gender diversity are often based on the assumption that European culture is superior and recorded with the aim of dehumanizing indigenous peoples. Despite this difficulty in interpreting historical documents, it appears that there have always been people who felt a deep need to express their gender in ways that contravened the gender norms of their time, and those who sought to change their bodies long before synthetic hormones were developed. In some cultures and times, trans people have been revered, and in others reviled, feared, or ignored.

“For a very long time prior to the colonial and postcolonial periods (this little blip on the time-line of our history), Indigenous peoples brought into being and practiced a social organization that viewed gender in the same continuum, with the same sense of circularity and integral interrelations which we attached to everything else in life ... Various social positions were created for these people who are neither woman nor man. These special people were recognized as having all the knowledge of these genders and more, so by and large the roles of these special people were ones where mediation between man and woman and spirit was required. In ceremony, physically and metaphorically, our place was between the women and men. We were healers, people of medicine, we were storytellers, seers and visionaries, artists and artisans – we were among the keepers of the culture. Our counsel was often sought.”

– excerpted from Aiyiyana Maracle (2001), *A Journey in Gender*, with permission of author

As Jamison Green points out in *Transgender Equality*,

Even today, social norms about gender vary significantly within different geographic regions, classes, and ethnic or racial groups. For example, social expectations concerning what counts as “appropriately” masculine or feminine attire in a small farming community in the Midwest may differ considerably from those in Los Angeles, New York City or other large cities. While these differences may sometimes simply reflect different cultural norms, they are also frequently used to perpetuate invidious racist stereotypes and practices. For example, the racist stereotype that black men are “hypermasculine” and therefore supposedly prone to violent and criminal behavior has contributed to pervasive discrimination against black men in the criminal justice system, from the use of “racial profiling” by law enforcement personnel to the disproportionate targeting of black men in prosecution and sentencing. In practice, stereotypes about gender are rarely independent of stereotypical assumptions about race and class.<sup>7</sup>

Historically, relationships between trans individuals/communities and criminal justice personnel in North America have been strained, in part due to a societal characterization of gender-variance as a criminal form of deviance. In the semi-autobiographical novel *Stone Butch Blues*, trans writer Les Feinberg graphically describes the escalation of tensions between police and poor/working-class trans people that led to the infamous Stonewall riots in 1969 – tensions caused in part by laws prohibiting crossdressing, and in part by discriminatory and harassing behaviour by some of the police officers.

## The Social Status of Trans People

People who are perceived as trans or who are “out” (open about their identity and experiences) as trans often experience:

- abuse or abandonment by family, friends, and communities of origin
- loss of employment and difficulty finding work
- verbal harassment and physical/sexual violence (including hate crimes)
- refusal of medical treatment, or unwanted psychiatric or medical intervention
- denial of housing
- denial of access to health and social services
- discrimination within the justice system: harassment by criminal justice personnel, complaints not taken seriously/hate crimes not investigated thoroughly, inequitable child custody rulings

As a result, many trans people remain “closeted.” The difficult decision to keep one’s gender a secret is similar to that made by some lesbians, gay men, and bisexuals who do not reveal their sexual orientation for fear of the resulting discrimination and stigma, and/or out of internalized shame and embarrassment. Although being “closeted” may provide some protection from others’ hostility, it is often accompanied by great stress and fear of the secret being discovered.

While some trans individuals are well-supported and experience relatively minor discrimination, within trans communities there are disproportionately high incidences of depression, HIV infection, poverty, alcohol and drug use, and suicide. Studies of trans youth have documented elevated high-school dropout rates and increased likelihood of becoming street-involved.

Masculine women, feminine men, and people who are intersex who do not think of themselves as trans but are perceived by others to be trans can share some of the same experiences as trans people, including discrimination, harassment, and violence.



Family members of trans people also face transphobic discrimination and stigma, including isolation, denial of housing and services, harassment, and hate crimes. Partners of trans people often experience both transphobia and homophobia, as they are assumed to be gay or lesbian for dating a trans person (regardless of their sexual orientation). Pfc. [Private First Class] Barry Winchell, whose partner Calpernia Adams was a trans woman, was beaten to death while he slept in his barracks at an army base in Tennessee, by a fellow soldier who had called Winchell a “faggot” in a fight a few days before the murder.<sup>8</sup>

# Crossdressing

As described earlier, *crossdressing* refers to wearing clothing (and possibly other accoutrements, such as makeup, hairstyle, and accessories) that is considered appropriate for the “opposite” gender. Some people crossdress on an occasional basis, while others do it more frequently; some people do it privately, while others feel comfortable being publicly crossdressed. While for some people crossdressing does not involve a change in sense of self or behaviours associated with gender, for others being crossdressed involves adopting a persona that is consistent with the change in appearance – for example, male crossdressers may use a woman’s name while crossdressed, raise the pitch of their voice, etc.

There are many myths and stories in popular culture about people who crossdressed to gain opportunities they felt were available only to the other gender, such as Dustin Hoffman and Barbra Streisand in the films *Tootsie* and *Yentl*. This does not accurately portray the complexity of the motivations behind crossdressing. The Cornbury Society, a Vancouver-based support and social group for crossdressers, identifies the following reasons for crossdressing:

- Some crossdressers simply prefer the comfort, style, feel, or variety of the clothes of the opposite sex; many women wear men’s clothes quite openly for these reasons.
- Some crossdressers are fetishists who are sexually stimulated by certain clothing or objects.
- Some people attribute their crossdressing to their parents dressing them as the opposite sex at an early age.
- Some men (or women) have a strong sense of the feminine (or masculine) aspects of their personality and enjoy expressing it through dress and behaviour.
- Crossdressing may be related to employment. Female and male impersonators dress mainly to perform, and most rarely crossdress offstage. Crossdressing sex trade workers meet the desires of certain customers.
- Drag queens and drag kings often crossdress outrageously, usually to amuse or offend or to make a statement.
- “Gender benders” enjoy combining visible gender cues that are contrary to societal norms, e.g., a person with a beard wearing a miniskirt.
- Some enjoy the hobby and the craft of passing as the opposite sex.
- Some religious ceremonies have a symbolic crossdressing component.

– adapted from *About Them Crossdressers*, retrieved September 28, 2002, from <http://www.cornbury.org/aboutcds.html>

# Transition

*Transition* refers to a change in the way persons present themselves in their social environment and daily life – from living as a woman to living as a man, or vice versa. Transition usually involves a change in physical appearance (hairstyle, clothing, jewelry), behaviour (mannerisms, language), and identification (name, gender pronoun). It may be preceded or accompanied by the use of hormones and other medical procedures to change the appearance of secondary sex characteristics and genitals.

Not all trans people transition in the same way, or at all. Among people who do transition, many feel that hormonal and/or surgical interventions are not necessary; others may desire physical changes but do not pursue them for reasons relating to health, finances, family, community, culture, spirituality, or politics. Some people have surgery but do not take hormones, or vice versa. While many people who transition live full-time as the gender they are transitioning to, others do not – because they do not want to or because they do not feel safe to do so.

People who decide to transition typically describe an urgent and persistent need to do so; one person described life before transition as “looking in the mirror and seeing the wrong person there – the image reflected is not who you really are.” The decision to transition is not a frivolous one.

In addition to adjusting to physical and social changes, transition often involves losses of family, friends, social networks, and/or employment. For some people, transition is the first time that family, friends, co-workers, and employers become aware that a person is trans. The surprise and stigma can affect not only the person in transition but also their partners, family members, friends, co-workers, and community members, resulting in a loss of support from those who have difficulty accepting the transition.

## Changes in Physical Appearance

A number of non-hormonal and non-surgical techniques can be used to assist in transition. Such techniques (e.g., chest binding, prosthetic devices, padded bras) are used not only by those undergoing transition but also by other trans people (e.g., drag queens/kings) to make it more feasible to cross-live on a part-time basis.

A range of emotional, physical, and mental changes are often experienced by people taking hormones as part of transition. Typically, secondary sex characteristics such as facial and body hair, breast development, body shape, and voice pitch will change, although the degree of change and the length of time it takes to effect change varies greatly from person to person. In BC, most physicians require a psychiatric and physical assessment before prescribing hormones for gender transition. Hormones are also used by some trans people without medical supervision (purchased as a street drug or by mail order from outside Canada); reasons for this vary, including discomfort with the mainstream medical approach, attempts to speed up transition through higher doses, and difficulty in finding a doctor who is willing to prescribe hormones for gender transition.



Genital surgeries are intended to reshape genitals to more closely match a person's gender identity. FTMs may also seek surgical chest reconstruction and removal of the uterus/ovaries. MTFs may undergo electrolysis to remove facial and body hair, and may seek surgery to reduce the Adam's apple and reshape facial features, conceal balding, tighten vocal cords, or augment breasts. In BC, the Medical Service Plan (MSP) provides partial financial coverage for FTMs to obtain the first stage of chest surgery and removal of the ovaries/uterus, and for MTFs to obtain genital surgery. The limited health care coverage means that many people in transition cannot afford needed surgeries.

In BC, approval for surgery requires two psychiatric assessments and at least one year of "real life experience" (two years for those requesting MSP coverage). During this time, the person seeking surgery must live full-time in the gender they are transitioning to. It is during this time that the person in transition is most vulnerable to discrimination and violence, as their physical features often don't match their clothing, mannerisms, and behaviour. For example, to qualify for chest reconstruction, female-to-males (FTMs) are supposed to use men's washrooms for 1-2 years *prior* to chest surgery, a requirement that puts those with noticeable breasts at great risk of harassment and physical violence.

## Changes in Behaviour

Some trans people already have the experience of living in the gender they are transitioning to prior to the physical changes of hormones and surgery. However, for many people in transition, the changes in appearance change how people react to you socially, and with this comes the need to learn unfamiliar social cues.

Many people who have undergone transition have commented on the remarkable "gendering" of the many small behaviours that shape our social interactions. Social expectations for acts such as greetings, posture, and eye contact while talking are often different for men than for women. This process of exploring gendered behaviour and learning new social cues can be both exhilarating and also quite disorienting. There are few professional supports for understanding and relearning gender cues, and so they are learned primarily through trial and error.

Trans people who are taking hormones can experience changes in their personality and behaviour as a result of the changes in biochemistry. Although for most people the changes are a welcome part of transition and are manageable, and while many trans people report mood stabilization with hormone use, hormones can be destabilizing for others. The dosage of testosterone for FTMs is typically not high enough to cause the stereotypical uncontrollable anger termed "roid rage," but some FTMs do experience heightened irritability and aggressiveness. Some MTFs report increased sensitivity depending on hormonal fluctuations. For both, hormone interactions with alcohol, street drugs, or prescription medications, as well as accidental overdose, can result in unusual and potentially dangerous behaviour (see page 51).

## Changes in Identification

Many people who transition change their names to better match their gender identity or expression. Bi-gendered people and those who have not fully transitioned may use two names to reflect their multiple forms of gender expression. Those who are “out” in some parts of their lives but not in others may be known by different pronouns and names to different people.

A legal name change is an expensive and labour-intensive process, involving changes to all records and identification. During this process, different agencies may have different names on record, and a certain amount of confusion may ensue (see page 24).

An additional confusion is the legal designation of sex: the M or F on legal records such as driver’s licence and birth certificate, and on medical records. A change of legal sex designation can proceed only after genital surgery for MTFs or chest reconstruction and hysterectomy for FTMs, and is available only for people who are not legally married (because same-sex marriage is not legal). Because surgeries are not universally available or desired, and because many people are married, many people who have fully transitioned still have a legal sex that does not match their gender identity or appearance. This disparity breaches personal privacy by revealing they are trans every time they show ID. As a result, trans people may be reluctant to show identification.

## Relationships

Some partners, family members, friends, community peers, and other people in a trans person's life are consistently supportive, while others are initially or permanently hostile. Conflicts are unfortunately common, culminating in abandonment in some cases and abuse in others. While most relationship conflicts do not involve criminal behaviour, understanding some of the relationship dynamics relating to transgenderism can be helpful for criminal justice personnel who are dealing with family members or with criminal concerns such as relationship violence.

Although some people may have known all along that their loved one is trans, most trans people spend at least part of their lives (and many live their entire lives) closeted, keeping their gender identity, gender expression, and/or gender history a secret from others. A primary reason for many is a fear of the impact of disclosure on other family members, and the possibility of family breakup. It's often bluntly stated as, "Whom do you love more – yourself or your family?"

Feelings upon disclosure that a loved one is trans range from excitement to disgust, depending on an individual's perspectives, their relationship to the trans person, social and cultural beliefs about gender diversity, and the timing and method of disclosure. If disclosure occurs as the result of a conflict or is accidental, the impact is likely to be different from when the trans person voluntarily brings up the issue and feels ready to discuss it. It is common to confuse gender identity with sexual orientation, and some may think their loved one is coming out as gay or lesbian; some partners may question their own sexual orientation. Given the stigma associated with transgenderism and the stresses of disclosure, it is unfortunately not surprising that many trans people are abandoned following disclosure.

When a trans person is not fully out, a loved one who does know faces difficult decisions relating to who else to tell, what to say, and when to say it. There is a risk of loss of others who are not accepting. In communities that strongly stigmatize gender-variance, disclosure may jeopardize not only the trans person but also the status of family members within the community. For people who are part of other minority groups (based on culture, religion, sexual orientation, etc.), it can be particularly painful to lose community support.

Whether out of fear or internalized shame, partners may agree to stay only if it remains a secret, or the trans person may forbid family members to discuss it with others. Conflicts about disclosure can isolate friends and family members and make it difficult for them to seek assistance to resolve feelings of confusion or frustration.

With transition, many family members feel a sense of loss and grief. Although transition does not remove the person, there is a loss of the son, daughter, brother, sister, mother, or father that the person was prior to transition. Although the person transitioning is often excited at the change, they can also experience the change in their roles and relationships to other family members as a loss.

## Child Custody

Whether a relationship ends as a result of disclosure or for other reasons, trans parents who lose their relationship with their partner may also lose custody of their children. Opposition to a trans parent's custody may stem from concerns that children will become confused about their own gender or sexual identity, will be harmed by teasing or other peer reactions to the parent's status, or will be isolated from other (transphobic) family members. Additionally, the non-trans parent may be very angry at disclosure of a former partner's status as trans, feeling betrayed and hostile and wanting no further contact.

While all changes – including transition – undoubtedly affect children as they do all other family members, research into the development of gender identity, peer friendships, and understanding of a transsexual parent's history concluded that, “Available evidence does not support concerns that a parent's transsexualism directly adversely impacts on the children. By contrast, there is extensive clinical experience showing the detriment to children in consequence of terminated contact with a parent after divorce.”<sup>9</sup> In recognition that transsexuality is not inherently harmful to children, Justice Theo Wolder ruled in a 2001 Ontario case that “the applicant's transsexuality, in itself, without further evidence ... would not be considered a negative factor in custody determination.”<sup>10</sup>

Although few criminal justice personnel will be involved directly in child custody disputes, fear of loss of custody can be a factor in relationship violence (see page 31). It may also be a factor in lack of cooperation by a witness or victim who fears being “outed” to family members who are not aware they are trans.



# SECTION 2:

# The Legal Status of Trans People

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## Frequently Asked Questions: The Legal Status of Trans People

### What do I need to know about the legal status of trans people?

As criminal justice personnel, you will benefit from having a basic understanding of the laws that commonly affect the status of trans people involved with the criminal justice system. These include the laws that protect human rights (pages 18 to 20), laws relating to privacy (pages 21 to 22), and the legal regulation of identification (pages 23 to 25).

Other sections of this manual include information on the laws relating to police intervention under the *Mental Health Act* (pages 49 to 51) because trans people are at relatively high risk for self-harm and suicidality. In addition, because social conditions such as employment, discrimination, and poverty lead to relatively high numbers of trans people in the sex trade, we have included information on the laws governing prostitution (page 47).

### What is the legal sex of a trans person?

*Legal sex* is the designation of male or female that appears on legal records (such as birth certificate) and some forms of identification. At birth, a doctor decides the sex of the infant as male or female based on the appearance of the genitals and records this on the birth records. The legal sex of a person who has undergone transition depends on the criteria set by the province and country in which they were born. In BC, a change of legal sex requires a doctor's certification of surgery, a declaration that the applicant is not married (as same-sex marriages are not legal), and the money for the processing of the paperwork. For more information on legal sex, see page 25.

### How should I record a trans person's legal sex?

Decisions about how to record legal sex designation may involve a judgment call on the part of the officer or counsel who is taking the notes. In some circumstances where the legal sex of the person is not likely to be a crucial issue (e.g., a traffic ticket), it may be appropriate to ask what the person would prefer you to record (see tips on pages 5 to 6 about how to do this respectfully). In other situations, you may need to explicitly ask what a person's legal sex is (e.g., in following policies relating to procedures such as strip-searches – see page 41).

### Isn't it illegal to have identification under more than one name?

While some discrepancies in identification are illegal, such as forgery or the use of ID to commit fraud, discrepancies in the identification used by trans people are commonly not criminal in nature but rather reflect the contradictions and complexities of the regulations governing identification. The information on pages 23 to 25 will help evaluate discrepancies in identification and determine appropriate action.

## Human Rights and the Law

The intent of human rights legislation is to ensure that people are dealt with on their own merits and not on the basis of personal characteristics, stereotypes, or assumptions. A key purpose of human rights legislation is to protect and provide a remedy for people who are discriminated against.

There are four laws governing protection of the human rights of people within BC: the *Canadian Charter of Rights and Freedoms*, the *Criminal Code of Canada*, the *Canadian Human Rights Act*, and the *BC Human Rights Code*.

- The *Canadian Charter of Rights and Freedoms* provides constitutional guarantees of equality and prohibits discrimination in legislation, policies, and practices.
- The *Criminal Code* prohibits hate propaganda and requires that if a criminal act is motivated by hate, this must be considered as an aggravating factor by the judge in sentencing.
- The *Canadian Human Rights Act* prohibits discrimination in areas of federal jurisdiction, including federal prisons, airlines, and banks. The Canadian Human Rights Commission investigates and mediates complaints of discrimination according to the *Act*.
- The *BC Human Rights Code* prohibits discrimination in areas of provincial jurisdiction, including publications, employment, accommodation, tenancy, public services, and facilities. At the time of this writing (January 2003), the BC Human Rights Commission is responsible for investigating and attempting to mediate complaints of discrimination according to the *Code*, with an independent tribunal that hears cases unresolved by mediation;<sup>11</sup> however, the provincial government recently passed legislation (Bill 64) that will drastically change this structure.

### Discrimination and Harassment

In human rights law, *discrimination* involves “making a distinction between people or groups on the basis of certain characteristics” – including sex, disability, sexual orientation, race, colour, ancestry, place of origin, religion, marital status, family status, and age – “that results in a negative effect.”<sup>12</sup> Discrimination can be the actions of an individual, or it can be systemic, involving patterns that permeate an entire system (such as the health care system or the legal system).



In 1995, Tyra Hunter, a trans woman, was seriously injured in a car accident in Washington, DC. Paramedics arrived and began emergency medical care. When they removed Tyra’s clothing and discovered that she had a penis, they made derogatory transphobic comments and refused to continue treating her, with one paramedic repeatedly referring to Tyra as “that bitch.” After being taken to hospital, an emergency room physician failed to provide care that a jury later ruled could have saved Tyra’s life. A DC court found that the paramedics and the physician had discriminated against Tyra and ruled that they were legally liable for her death by their negligence.<sup>13</sup>

Discrimination can be blatant, such as refusing to provide services to a trans person. Discrimination may be the result of policies that seem to be neutral but may adversely impact trans people, such as requiring people to indicate a legal sex designation of male or female on an employment form (thereby effectively “outing” trans people whose legal sex does not match their appearance, name, etc.).

Trans people have succeeded in human rights cases on the grounds of sex, disability, and sexual orientation. Some cases proceeded to provincial or national tribunals, while others were settled by mediation and did not go to tribunal. Examples of successful human rights complaints include:

- A police department changed their policy after a transsexual woman filed a complaint regarding demands to provide her pre-transition male name when stopped for a traffic violation.<sup>14</sup>
- A transsexual woman held in a male prison was granted access to hormones and sex reassignment surgery, and following surgery was placed in a women’s prison to finish her sentence. A Canadian Human Rights Tribunal ruling that Corrections Canada change its policy relating to sex reassignment surgery is currently under appeal.<sup>15</sup>
- Transsexual women have the legal right to access women’s washrooms, and such access does not violate the legal definition of “public decency.”<sup>16</sup>
- An employer cannot fire an employee on the basis of being trans.<sup>17</sup> Similarly, women’s organizations cannot dismiss a volunteer on the basis of being trans, but rather must assess trans volunteers’ competence and skill as they would those of non-trans volunteers.<sup>18</sup>

The *BC Human Rights Code* contains some provisions for situations that distinguish or give preference to a specific group but are not considered discrimination. For example, with the approval of the Deputy Chief Human Rights Commissioner, an agency can implement an employment equity program or other action that gives preference to members of groups who have been historically disadvantaged. Similarly, a provision of the *Code* allows washrooms and change rooms to be designated for the use of one sex only. Neither of these situations is considered a breach of the *Code*.

*Harassment* is defined as unwelcome conduct related to a prohibited ground of discrimination that has a negative impact or leads to adverse consequences for the individual. Harassment is conduct that interferes with the creation or maintenance of a climate or environment of understanding and mutual respect for the dignity and worth of each individual person.

Discrimination and harassment are defined on the basis of the effect of the action, policy, or practice, and not on the intention of the person or system that is discriminating or acting in a harassing manner. Someone who “doesn’t mean to offend anyone” is still considered to be acting in a discriminatory fashion if a “reasonable person” would recognize the actions as likely to have a negative effect.

## The “Duty to Accommodate”



*Accommodation* is a very important concept in human rights law. Services and employers are expected to take substantial and meaningful steps to address barriers to inclusion and participation. The duty to accommodate includes changing rules or policies that are discriminatory, changing the physical structure of a facility to accommodate a person's disability, restructuring work schedules to accommodate the observance of religious holidays, etc. Accommodation involves assessing an individual's abilities and needs, rather than making assumptions based on stereotypes. The cost and disruption, impact on workplace collective agreements, or health and safety concerns must be substantial in order to justify not meeting a person's needs.

Accommodations must respect the autonomy, comfort, self-esteem, and confidentiality of the person seeking accommodation in order to protect their dignity. For example, offering a person in a wheelchair the use of a freight elevator at the back of a building is not considered a dignified accommodation. Similarly, segregation of trans people is objectionable because it disrespects their dignity.

## **What Happens When a Human Rights Complaint Is Made?**

As mentioned earlier, legislation that was recently passed will drastically change the process for resolving a human rights complaint. At the time of this writing (January 2003), a complaint made to the BC Human Rights Commission is investigated by a human rights officer. If there is evidence of discrimination, the investigator will try to help the parties come to a mutually agreeable resolution. If a settlement cannot be reached through negotiation, the Commission will refer the case to a Human Rights Tribunal.

Tribunals are independent of the Commission. Tribunal members hear evidence, make rulings as to whether or not discrimination has occurred, and order remedies – such as reinstatement of employment or changes in policy – to prevent further discrimination.

## Privacy and Confidentiality

Legal protection of privacy is set out in the *Freedom of Information and Protection of Privacy Act* (FIPPA) (provincial), the *Privacy Act* (federal), and the *Personal Information Protection and Electronic Documents Act* (federal). Sections 15, 19, and 22 of the *FIPPA* are particularly relevant to criminal justice personnel in terms of disclosing information about a trans person to a third party; Sections 26-28 describe the special conditions granted when the purpose of collecting personal information relates to law enforcement.

Your facility likely has policies to ensure that you are following the guidelines of these acts relating to the purpose and methods of collecting personal information, the storage and release of personal information, and the protection of privacy. The following information is intended to explain the particular concerns trans people have relating to privacy and confidentiality, to help you consider how your facility's policies can best be applied when working with trans people.

While some trans people are not concerned about others knowing their status, most prefer to be involved in decisions about when and how others are told. Even if the trans person explicitly gives permission to reveal to others that they are transgendered, this should be done only on a need-to-know basis, and not to satisfy curiosity.

Trans people are often asked questions about their genitals, sexual preference and practices, transition status and history prior to transition, or other private aspects of their life – by professionals, friends and family, and even strangers! As a result, many trans people are wary when someone asks them for information about their gender. Although there is no legal obligation to explain the reason behind a request for information if it is for the purposes of law enforcement, trans people may be more likely to cooperate with requests for information if you explain why you need to know it.

Trans people often experience negative consequences when they disclose their status. These consequences can include verbal harassment, violence, family breakup, social isolation, loss of employment, housing discrimination (refusal to rent or eviction), refusal of health and social services, and loss of custody or access to children. Because the consequences of disclosure can be so serious, you have the responsibility to protect the confidentiality of trans people engaged with the criminal justice system.



The Oscar-winning film *Boys Don't Cry* told the story of Brandon Teena, a young trans man who was killed in Nebraska. After Brandon was arrested for cheque forgery, police reported to a local newspaper that he was legally and biologically female. He was subsequently abducted, beaten, and raped by two acquaintances who were outraged that Brandon was trans. Despite threats by his assailants that they would kill him if he told police about the assault, he did report the rape, and named the men who had assaulted him. Police scorned and mocked Brandon, and no charges were laid. Two days later, the same assailants killed Brandon and two friends (Lisa Lambert and Philip DeVine). Courts found the police officials partially responsible for Brandon's death.<sup>19</sup>

## Confidentiality and Privacy Checklist

Your department or agency's policies on rights to privacy may already include guidelines for appropriate questioning of trans people and management of written materials such as court reports and witness statements. Consider the following additional strategies to protect the privacy and confidentiality of trans people you come into contact with:

- Ask questions or share information about a person's gender or legal sex designation only on a need-to-know basis.
- If you need to ask questions or discuss someone's gender with a colleague, don't ask in front of others; move to a private location.
- Use the correct name and gender pronoun (he/she, him/her) when referring to the trans person, particularly in the presence of others.
- Using your position of authority to intimidate a person to answer you will likely provoke fear and defensiveness. Cooperation is more likely if you recognize the sensitivity of the information, acknowledge people's fears, and explain what steps you will take to protect the person's privacy.
- Trans people will appreciate your honesty in assessing who needs to know and how public the knowledge about their status will be. For example, will it appear in court reports? Will it be disclosed to family members or to the media?

## Laws Relating to Identification

While some trans people have an appearance that is congruent with their name, legal sex designation, and photo on their identification, many do not. For example:

- The legal sex is designated as male, the name is masculine, and the photo appears to be that of a man, but the bearer of the ID has the clothing and general appearance of a woman.
- The legal sex is recorded as female, but the name and appearance of the bearer are masculine.
- A birth certificate is marked with a legal designation “M,” while the driver’s license is marked as “F.”
- A photo on one piece of identification appears to be of a man, while another appears to be of a woman – both with the same name.

### Legal Name Change

As discussed on page 13, many trans people change their names to better match their sense of self and self-expression. Some people may be satisfied with informally asking others to use their new name, while others legally change their name. Legal name changes are regulated by provincial legislation. Adult residents of BC can legally change their name by applying to the Division of Vital Statistics, completing a series of forms, and posting a notice in two newspapers; fees for the various stages of the process total at least \$200. People who have lived in BC for less than three months must apply to the government office that handles name changes in the province/country of their birth. Some trans people would like to pursue a legal name change but can’t afford it, aren’t sure how to go about it, or have concerns about the requirement of publishing one’s intention to change name in a local newspaper (this public notice includes full name and residential address, leaving the trans person vulnerable to public scrutiny and harassment).

Regulations explicitly prohibit the change of name for any criminal purpose (such as fraud) or for the avoidance of legal responsibilities. Even after a legal name change, any contracts or agreements under the old name are still valid and enforceable.

Most institutions have policies regarding name change procedures that are applicable to anyone changing their name for any reason, including as part of gender transition. A Notice of Name Change and a birth certificate showing the new legal name, available from the Division of Vital Statistics after a legal name change, are required to change virtually every other piece of identification or institutional record. Some institutions require additional ID; in some cases there may be a fee to update records. In BC, a full legal

name change involves changing birth records and birth certificate, social insurance number records, driving records and driver's licence, health insurance records and CareCard, passport, landlord-tenant agreements, utility agreements, and files used by the person's employer, school, bank, hospital, library, social clubs, and credit agency.

Trans people may have discrepancies in the name on different pieces of ID. For example, one piece of ID may have the name "John Doe," while another reads "Jane Doe." These discrepancies are not necessarily criminal in nature. While there can be only one name legally registered on birth records, it is not illegal to have identification under a name that is commonly used to identify the bearer. Trans people who are cross-living part-time may have ID under multiple names to match the gender appearance used when in different settings; for example, bi-gendered people who work as men but socialize as women may have an employee card under their legal male name, and social club or video store membership cards under their chosen female name.

Changing all legal records after a name change is a time-consuming process. During this process, different agencies may have different names on record, and a certain amount of confusion may ensue. Even after extensive efforts to change existing records and identification, it is relatively common to have, years later, a record or piece of identification that is still registered to the old name. It is also expensive to legally change one's name and amend all records and identification accordingly; trans people with low incomes may not be able to update every piece of identification after a legal name change.

### **Photo vs. Appearance**

Many people do not look exactly like the photo on their ID due to changes brought about by aging or changes in the style of facial hair or makeup. With the advent of coloured contact lenses, even eye colour may vary from picture to picture. However, there is generally an expectation that the ID bearer be recognizable by the photo on their identification.

For trans people, this is not always the case. As described earlier, trans people who are cross-living part-time may have ID with photos that vary accordingly to match the gender appearance used when in different settings. In other instances, physical changes brought about by hormones or surgeries may significantly alter a person's appearance.

As with other changes to ID, people with low incomes may not be able to afford to change all their photo identification. Others may be reluctant to update their photo ID because they do not want to explain why their appearance has changed.

## Legal Sex Designation

Legal sex designation depends on the legislation in the country/province of one's birth. For those born within Canada, while legislation regarding changes to legal sex designation varies from province to province, people who are legally married cannot change their legal sex designation (as same-sex marriages are not legal). As well, most provinces will not change the legal sex of a trans person unless they have undergone sex reassignment surgery (SRS). In BC, male-to-female (MTF) transsexuals must have undergone genital surgery, while female-to-male (FTM) transsexuals must have had a hysterectomy and chest reconstruction; however, the SRS requirement has been waived in at least one case involving a transsexual who could not have surgery due to a pre-existing medical condition.

Because the requirements for changing legal sex designation are so restrictive, many trans people have a legal sex that does not match their name or their appearance. In addition, it is relatively common for trans people to have different sex designations on different pieces of identification. While it is not possible to obtain a birth certificate unless you meet the physical criteria set out by Vital Statistics, other agencies may not be as stringent in their requirements. For example, the Insurance Corporation of British Columbia (ICBC) will amend the legal sex designation on driver's records upon receipt of a letter from a doctor that states that the bearer is undergoing gender transition and is living full-time as either a man or a woman. In other instances, a clerk may see a feminine name, assume that a designation of M is a clerical error, and change computer records accordingly.

"I had just started testosterone and still looked pretty feminine, despite a couple months on the hormones. I'd filed my application for a legal name change but none of my paperwork had come through yet.

"One night I was pulled over for not having a light on the front of my bicycle. I explained to the officer writing the ticket that I had just legally changed my name from a feminine name to an obviously masculine one. He wrote down my new name, even though that name didn't match any of my ID.

"When he got to the 'sex' section, he paused for a moment, pointed to the 'M/F' boxes on the ticket, and said, 'How would you like this to be recorded?' I blurted out that I would prefer 'M,' but that my legal sex was still 'F' and I didn't want to get in trouble for lying. He replied, 'Don't worry about it. It's up to me what I write in, and as far as I'm concerned, you're a man.'

"That whole incident made a big difference to me. It was the first time that anybody in a position of authority had shown me respect as a transgendered person."

– excerpted from *TransForming Community: Resources for Trans People, Intersexed People, and Their Families*<sup>20</sup>



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# SECTION 3:

## Responding to Trans Victims of Crime

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## Frequently Asked Questions: Responding to Trans Victims of Crime

### What is the incidence of trans people being victimized?

There is little information about the frequency of crimes against trans people, or the proportion of crime in which trans people are victimized relative to incidence of crime against non-trans people. However, various studies suggest that trans people are particularly vulnerable to parental abuse, sexual assault, sexual exploitation, relationship violence, and hate crimes.<sup>21</sup>

### These types of crimes often aren't reported. How can we be expected to do anything about it if the person doesn't come forward?

Another way to think about this is: Are there steps that criminal justice personnel can take to increase reporting? An Australian study on violence against trans people found that trans victims were reluctant to report to police because of “perceptions and prior experiences of negative police attitudes”;<sup>22</sup> a 1995 report on underreporting of hate crimes in Canada had similar findings.<sup>23</sup> The implication is that criminal justice personnel may be able to improve reporting by actively demonstrating to trans people that officers are able to take complaints in a respectful manner, and that trans people will be taken as seriously as any other victim of crime. Suggestions from one study include creating liaison officers, informing community members of departmental efforts to educate officers about trans issues, and developing interviewing protocols with sensitivity to the specific impacts of crime on trans people.<sup>24</sup> Just as trans people are responsible for coming forward to report crimes, criminal justice personnel are responsible for creating a safe and welcoming environment for people who are courageous enough to make these reports.

### If I get a “domestic” call and I find out that the victim is trans, does the Violence Against Women in Relationships Policy<sup>25</sup> apply?

Yes. The policy explicitly extends to all people who are abused by a partner, regardless of the gender or sexual orientation of the victim or partner.

### Is it realistic for trans people to crossdress in public or try to use a women's/men's washroom? Doesn't that just invite harassment?

People who are visibly trans face the constant challenge of evaluating how safe they will be doing things most people take for granted – using a washroom, walking down the street, getting stopped at a traffic check, etc. To avoid discrimination and violence, some trans people become social recluses; others cross-live only in private. Many trans people feel it is unacceptable to have to hide, and that doing so only reinforces the shame and stigma associated with transgenderism. People who crossdress in public or use the washroom appropriate to their gender identity are not trying to provoke harassment or violence, but rather are trying to claim their inherent dignity and their legal rights to use public spaces without being harassed or assaulted.



## The Impact of Crime on Trans Victims

Victims of crime often experience a range of emotions and physical or social reactions to the stress and trauma of being victimized, including:

- *Physical*: pain, panic attacks, headaches, muscle tension, digestive upset, fatigue, increased sensitivity to sensory stimuli, difficulty sleeping, dizziness, change in appetite, shaking/trembling, rapid heartbeat, hyperventilation
- *Emotional*: shock, numbness, anger, irritability, sadness, grief, depression, fear, anxiety, obsessive thinking about what happened, worry, confusion, feeling dirty or violated
- *Social*: avoiding people or fearing being alone, self-destructive behaviours or impulsive risk taking, substance use, impaired performance at work/school, withdrawal from community<sup>26</sup>

While the duration and severity of these reactions varies from person to person and may come in waves, overall the severity tends to decrease or at least feel more manageable over time.

Trans people may experience all these reactions, and have few resources to help them cope. Those who do not have good support networks (family, friends, community peers, etc.) or who are already facing crises relating to poverty, employment, or the stresses of transition may be particularly overwhelmed by the trauma of crime. Additionally, many formal supports for victims of crime are not aware of or responsive to the specific needs of trans victims.

Survivors of sexual assault and/or relationship abuse face particular difficulty in accessing services, due in part to gender-based distinctions of women's and men's services and in part to tensions between some women-only organizations and some trans advocacy groups and individuals over issues of who is defined as a woman.

“Past experiences of discrimination, coupled with the realization that changing their behaviour will not decrease the likelihood of repeat attacks, lead to an increased sense of fear, isolation and vulnerability.”

– excerpted from *End Hate Crime: Hate/Bias Crime Policy Guide*<sup>27</sup>

## Acknowledging the Victim's Courage and Protecting Their Safety

Many victims, not just trans people, avoid reporting crimes. The reasons may be emotional, relating to feelings such as denial, minimization of the incident, embarrassment, or shame. There may also be social factors such as fear of reprisal from the perpetrator or from other community members, financial reliance on the perpetrator, or a perception that the justice system is unjust. Some victims fear that reporting the crime will only make things worse. It is especially difficult for those who are reporting crimes that are stigmatized, such as sexual assault and relationship violence, to come forward.

When the perpetrator is someone the victim knows, a victim may have complex feelings such as anger, guilt, and embarrassment. They may also be afraid. It is often more productive to respond to non-cooperation based on anxiety by acknowledging fears rather than dismissing them as paranoid. For example, if a victim is afraid a perpetrator will punish them for reporting the crime, you can say, "It sounds like you are worried about retaliation" and offer to make a safety plan with the victim, including exploring legal options such as a restraining order or no-contact order against the perpetrator.

Trans victims of crime may be particularly afraid of being ridiculed by police, believe that there is nothing the police can do to protect them, or fear that if they report a crime their status as trans will be made public by the perpetrator or through the legal process. When responding to trans victims of crime, care should be taken in interviewing and investigation techniques so that evidence of gender-variance is handled respectfully and in a way that protects privacy and confidentiality (see pages 21 to 22). For example, trans people who cross-live part-time or who use prosthetic devices to assist with sexual or urinary function may keep evidence of this in a secure place; victims of burglary may be fearful that police will inadvertently display or refer to these items in the presence of people who they are not "out" to. It can also be helpful for personnel responding to victims to inform them of any information that could be made public through court reports, media coverage, etc.

"BilliJo Wolf's passion for activism grew out of the discrimination she has faced over the years as an intersexed person, a transsexual woman, a lesbian ... Besides facing discrimination in academia, housing, and employment, her motivation stems from prejudice she encountered following an attempted rape in Monroe County, New York in January 1998. When Wolf attempted to have the man charged, the local district attorney decided not to prosecute her assailant despite direct evidence – including the perpetrator's own statement – that provided a solid case. The official failed to bring charges because of 'a lack of credibility due to her lifestyle.' According to Wolf, 'though I received the same treatment most women receive when reporting a rape or sexual assault crime, it was more severe because most of the response was based on my gender identity and sexual orientation. I take serious exception to my life as a human being demeaned by references to my "lifestyle." I have a life, not a lifestyle.'"

– excerpted from *Transgender Equality*<sup>28</sup>

## Sexual Assault

Sexual assault may be perpetrated by a stranger, friend, acquaintance, lover, family member, or spouse. Studies throughout North America suggest that in 80% of cases, assailants are known to the victim prior to the assault<sup>29</sup> (note that this is a general statistic for all sexual assault cases, and it is not known whether or not this general pattern is accurate for cases involving trans victims). Trans prisoners and sex trade workers are particularly vulnerable to sexual assault.

Sexual assault is extremely traumatic, and as such victims will likely experience the range of emotions described on page 28. In addition, there may be physical symptoms relating to injuries or sexually transmitted diseases contracted as a result of the assault. Victims may be extremely concerned about the possibility of HIV transmission. Trans victims of sexual assault often have additional concerns:

- Describing the sexual violation that took place is painful for all victims. For someone who has gender dysphoria or other discomfort relating to body parts that were violated, it can be even more traumatic.
- Trans people may be very distressed by having to reveal their genitals for a medical exam or rape kit. If at all possible, a trans victim of sexual assault should have intensive support available, and be allowed to choose the gender of the person conducting the examination. It is not appropriate to comment on or react to genital appearance, nor is it appropriate to use the victim as a “teaching” tool for colleagues.
- A female-to-male (FTM) who has a uterus and one or more ovaries may be able to conceive. For those taking hormones, if the dosage of testosterone is too low to act as a failsafe contraceptive, other options should be explored, preferably with assistance from an endocrinologist or other medical professional with experience in hormone treatment. It can be extremely humiliating for someone who lives as a man to discuss concerns relating to potential pregnancy, and this topic should be discussed with great caution and sensitivity.
- Involuntary physiological reactions such as erection, ejaculation, or orgasm are *not* evidence of consent, or do they indicate that the victim found the traumatic experience pleasurable. Trans people who have dysphoria relating to their genitals may find involuntary reactions such as these particularly confusing and/or distressing.
- One of the enduring myths about sexual assault is that the victim “asked for it.” Many victims experience confusion, self-doubt, and shame about being assaulted. This can be particularly agonizing for trans people who were assaulted following disclosure to the perpetrator. It can be helpful to acknowledge the confusion and remind the victim that retaining autonomy over decisions of who, when, and how to tell is an important right, that it is not “deception” to choose a moment that feels right, and that in any case there is no justification for assault.

## Relationship Violence

Relationship violence can take many forms, including verbal, emotional, physical, sexual, or financial abuse. Abuse of trans people may include elements that are specifically transphobic. For example, abusers may ridicule the victim for cross-gendered behaviour. Some abusers seek to increase the harm by intentionally targeting body parts associated with gender, such as breasts and genitals; this can include unwanted touching (slapping, hitting, etc.), sexual activities that the victim has delineated as off-bounds, disparaging comments about body parts (e.g., “What kind of a woman has a penis?” “You’ll never pass as a real man with breasts like that”), and intentional damage to prosthetic genital or chest devices.

A 1998 survey of trans people at Gay Pride celebrations in various American cities indicated that 50% had been physically and/or sexually assaulted by a romantic partner, with 23% of those requiring medical assistance for injuries sustained in the attack.<sup>30</sup>

Emotional abuse includes efforts to restrict the victim’s control of decisions relating to transition. For example, abusers may hide paperwork, threaten to punish a victim for seeking services, or report false information to doctors. Many abusers try to control their victim’s behaviour by reinforcing the victim’s powerlessness and dependence, often as a means of rationalizing abusive demands. Manipulation of this type includes using transphobia to rationalize control, saying, “It’s not safe for you to leave the house without me,” or “Nobody else really cares about you.” Abusers may also threaten to reveal their victim’s status as trans to family members, neighbours, friends, or an employer.

Trans people experience widespread employment discrimination and often are economically dependent on a partner for day-to-day expenses and/or costs relating to transition. Abusers may exploit financial dependence by demanding that the victim do things to “compensate” for the financial assistance, including forced involvement in prostitution or the drug trade.

In addition to the difficulties faced by all victims seeking to leave abusive relationships, trans people face additional barriers shared by other marginalized groups (people with disabilities, women, etc.). Many trans people are impacted by internalized shame and self-loathing (which may be reinforced by the abuser), believing that it will be impossible to find another partner because “nobody else could love me.” The isolation and loss experienced by many trans people means that few have support networks to assist in leaving an abuser, and formal supports such as transition houses often will not take trans people. Those with histories of abuse as children can have difficulty recognizing and resisting abuse as adults. For example, trans people who grew up being mocked by parents or peers for cross-gendered behaviour may have difficulty recognizing that as abuse in a current relationship, because it seems “normal.”

In many situations of relationship violence, the victim is afraid of what will happen if they leave the abuser, including a possible escalation of violence. Trans people are additionally vulnerable to threats of disclosure of their status to others if the victim seeks services or attempts to leave the relationship. They may also be threatened with loss of custody of children.

## Abuse of Trans Children and Youth

Gendered play and experimentation with gender roles and clothing are a normal part of child development. Some children demonstrate persistent cross-gendered behaviour or articulate a cross-gendered identity at a very young age. While some parents and caregivers, family members, teachers, or other adults are supportive, many are not, and actively try to discourage cross-gendered play or dress. Some may physically, verbally, or sexually abuse trans children to punish them for breaking parental rules about “appropriate” behaviour, to try to discourage cross-gendered acts, or to reinforce identity as a boy or a girl.

While the abuser may believe they are acting in the best interests of the child, adults who experienced these types of abuse report that punishment of cross-gendered behaviour was harmful rather than helpful. Victims of this type of abuse typically report intense shame, withdrawal, suppression of inner feelings, loneliness, and acting out of inner demands in a private fantasy world. This pressure and isolation can lead to emotional and physical illnesses at a young age, such as apparent personality disorders, self-injury, or eating disorders.

Puberty can be very upsetting for trans youth, as it is a time when a great deal of social attention focuses on appearance, gender norms, bodies, and sexuality. It is also a time when youth are particularly concerned about what peers think, say, and do, and when incidences of peer violence (bullying), depression, and suicide attempts rise sharply.

Although some teenagers maintain close relationships with adults or siblings, in many instances adolescence is accompanied by increased tension between family members. While trans children of all ages are at risk of emotional neglect if a parent is unsupportive, during adolescence there is an increased risk of withdrawal of material support (particularly shelter). Parents may force their trans child to leave home during adolescence, or a youth may decide that leaving is a better alternative than staying in an abusive environment. Street-involved trans youth are particularly vulnerable to violence by strangers and to sexual exploitation.

## Commercial Sexual Exploitation

Commercial sexual exploitation relies on coercion to force sexual acts in exchange for money or goods and implies a lack of ability to give consent. When a youth below the legal age of consent performs sexual acts in exchange for cash, shelter, food, or drugs/alcohol, that is sexual exploitation. Similarly, if a person of any age is participating in paid sexual acts to alleviate a third party’s threats (e.g., a partner demanding that a certain amount of money be obtained), that is inherently exploitive because consent is lacking. Commercial sexual exploitation is illegal under sections of the *Criminal Code* relating to kidnapping, forcible confinement, sexual and physical assault, coercion, extortion, and sex with minors.

While trans people of any age can be sexually exploited, trans youth are particularly financially vulnerable should their families withdraw material support or become so abusive that the youth believe it is better to leave than to stay. “Transgendered children who get kicked out of their homes, like other children in the same predicament, must resort to one or more of three basic means of survival: prostitution, theft or drug dealing.”<sup>31</sup> A 2001 study of Canada, the US, and Mexico identified trans youth as a population at “substantial risk” of being commercially sexually exploited.<sup>32</sup>

## Dangerous Working Conditions: Protecting the Safety of Sex Workers

People in the sex trade are made vulnerable to sexual assault and violence by societal attitudes that dehumanize sex workers and promote the idea that they are disposable. Trans sex workers face the triple burden of prejudice against sex workers, transphobia, and homophobia (because trans people are often perceived to be gay, regardless of their actual sexual orientation).



On February 5, 2002, Faye Paquette, a 41-year-old First Nations trans woman and sex worker, was beaten, choked, and bludgeoned to death in Prince George, BC. A man who turned himself in to police hours after Paquette's body was discovered in an industrial compound is currently facing manslaughter charges.

Family and community members are very concerned that despite another sex worker's assertion that Faye was killed because she was trans, and a physical pattern of assault that is consistent with other hate-motivated murders of trans people (often characterized by attempts to obliterate the body even after death), the murder is not being prosecuted as a hate crime.<sup>33</sup>

The criminalization of various aspects of the sex trade (see page 47) forces those in the sex trade to work in dark and isolated (and therefore dangerous) settings in order to avoid police attention. Criminalization of sex work also causes tension between law enforcement and sex workers that makes it difficult for those in the sex trade to seek police assistance; many sex workers feel uncomfortable asking a person who arrested them in the past to help them, or have difficulty asserting their rights to people who have the discretionary authority to charge them.

In some instances, police have responded to requests for assistance with inaction or hostility. In other cases, police have been supportive but counsel or judges have dismissed sex workers as "unreliable" witnesses who "lack credibility."<sup>34</sup> Such actions only serve to further deepen the tensions between sex workers and criminal justice personnel.

On April 23, 2000, a friend reported Tyra Henderson, a 22-year old African-American male-to-female (MTF) trans sex worker in Washington, DC, missing after she did not return from a date. The night Tyra disappeared, a resident called 9-1-1 to report a woman yelling, "Help, help, call the police!" Two hours later, the 9-1-1 caller, not having seen any police, called 9-1-1 a second time to report a body outside her house. By the time an ambulance arrived, Tyra had been bludgeoned to death. Police denied reports that her breasts had been slashed and her penis cut off, and refused to designate it a hate crime.<sup>35</sup>

Criminal justice personnel may not only cause harm by their inaction but in some cases also be the instigators of violence. In interviews with a San Francisco reporter, transsexual prostitutes working on the streets described personal experiences of police demanding sexual favours in exchange for not making an arrest, and of being verbally, physically, and/or sexually assaulted by one or more officers during an arrest.<sup>36</sup> Similar incidents of police harassment have been documented in Toronto.<sup>37</sup>

It is understandable that the many good police officers on the force would resent being lumped in with those who are abusive. However, the consistency of stories from various jurisdictions across North America suggests that this may be a problem of more than a few "bad apples." Cross-department policies may be necessary to promote respectful and professional behaviour in interactions with sex workers.

Proactive strategies suggested by various community groups include:

- The establishment of liaison officers with the mandate to develop more positive working relationships with sex worker advocacy groups, similar to the role of the LGBTT (lesbian, gay, bisexual, trans, and Two-Spirit) or diversity officers (see page 38). In order for sex workers to feel comfortable reporting incidents of assault and other violent crimes, they need to trust that they will not be dismissed, told they "had it coming," or otherwise traumatized by insensitive comments.
- Sex workers who are victims of crimes should not be charged for minor outstanding offences when they come into the station to file a report.
- Complaints by sex workers against law enforcement officials must be seriously investigated and the identity of the complainant concealed to prevent retaliation. If there is evidence of a criminal act, charges should be laid under the *Criminal Code* rather than referring to the matter to an internal inquiry.



Grayce ("Candace") Baxter, a trans woman who worked at two escort agencies, was killed by Patrick Johnson, a regular client of Baxter's who worked part-time as a guard at the Toronto (Don) Jail. Johnson choked Baxter to death when she tried to leave his apartment at the end of an appointment. He then dismembered her body into several parts with a hacksaw, wrapped them up with some personal effects in a number of garbage bags, and hid them in a nearby dumpster, which was later emptied at a local landfill site. Baxter's body has never been recovered. Johnson was sentenced to life in prison.<sup>38</sup>

## Hate Crimes

The BC Ministry of Public Safety and Solicitor General defines hate crime as “any crime against a person (or their property) which was motivated by hate, prejudice or bias due to race, nationality, language, sex, age, sexual orientation, mental or physical disability, or any similar factor.”<sup>39</sup> The *Criminal Code* has two provisions relating to hate crimes:

- a) Criminal charges: Hate propaganda, where the offender advocates genocide or communicates hatred of any identifiable group, is illegal under s. 318 and s. 319.
- b) Sentencing considerations: Where hate is a motivation for any criminal offence (assault, mischief, etc.), this must be considered as an aggravating factor by the judge in sentencing, as per s. 718.2. There is no specific offence of committing a crime motivated by hate or bias.

While perpetrators may target specific individuals, a hate crime is specifically committed to harm, intimidate, and terrify not only a particular victim, but the entire group of which the victim is a member. Where incidents involved violence (roughly 50% of incidents reported to the BC Hate Crime Team), the suspect and victim tended to be strangers – unusual for violent offences not motivated by hate. Violent hate crimes have a much lower resolution rate than other reported violent *Criminal Code* offences.

From July 1997 to December 1999, 426 hate or bias incidents were reported to the BC Hate Crime Team. The Team estimates that this comprises only 5-10% of all hate crimes committed during this period.<sup>40</sup> The BC Hate Crimes Team does not distinguish between hate crimes caused by sexual orientation and those caused by transphobia, and so it is not clear how many of the 140 incidents reported as relating to sexual orientation involved hatred of gender-variance. In many cases, there are simply no clear criteria for distinguishing between homophobic and transphobic violence. For example, one American survey of violence against trans people found that “faggot” was the most common epithet used by the assailants. The director of the group that commissioned the survey commented,

Transpeople are targeted because of the perception that we are gay. And gays are often picked out because they are “visibly queer,” that is, because they are gender-different. But the fine-line distinctions ... are lost upon those who stalk and prey upon us.<sup>41</sup>

From anecdotal evidence and community-wide surveys, trans groups have estimated that 60% of trans people are victims of hate-motivated violence.<sup>42</sup> In the US, over 120 trans people have been killed in the last decade – an average of one per month – in circumstances where hatred of gender-variance was known to be a contributing factor.<sup>43</sup> In Canada, where reporting has been more sporadic, 11 deaths have been reported over a period of 15 years.

Some crimes are clearly motivated by hatred of gender-variance, with the assailant using transphobic insults or attacking a person upon discovering that the victim is trans. In other cases, there may be attempts to obliterate the victim’s body – targeted to their sex, such as wounds to the genitals or chest, or more generally by multiple forms of violence that suggests extreme and irrational rage behind the attack. For example, in 1996, Christian Paige, a trans woman, was brutally beaten about the head and ears, then strangled, stabbed deeply in her chest and breast area 15-24 times, and finally burned.<sup>44</sup>



## Is Verbal Harassment a Hate Crime?

Many visibly trans people experience transphobic and homophobic verbal harassment – ranging from epithets such as “freak,” “faggot,” and “queer” to direct threats. While verbal harassment is a breach of the *BC Human Rights Code*, it is not, per se, an offence under the *Criminal Code* and thus may be outside the purview of criminal justice personnel. However, s. 264.1 (Uttering threats) and s. 175 (Causing disturbance) may be appropriate criminal charges in some instances of verbal harassment.

Even if a charge is not appropriate, criminal justice personnel should be alert to the possibility that verbal harassment may escalate to physical violence.

“September 24, 2002 – A gay couple says it contacted police last week after being verbally assaulted by a group of teens at the intersection of Cardero and Comox streets.

“But they say the police officer who arrived to investigate ended up leaving the two to fend for themselves.

“The couple – one of whom is transgendered, and both of whom wish to remain anonymous – says the officer said there was nothing he could do because there was no proof of an assault.

“The couple claims that after police left, the teens returned to the scene and physically assaulted them.

“‘Thank God we were able to hold our own somewhat,’ says one. ‘(But) the treatment we received by the police department was deplorable as far as I’m concerned.’

“‘When have they ever come out to a situation like that, where two adults are standing there around nine youths with their stuff all over the sidewalk, visibly shaken and injured, and nothing’s done about it?’”

– excerpted from *Gay-Bashing Response in Question*<sup>45</sup>

## The BC Hate Crime Team

In 1996, the BC Hate Crime Team was created with the mandate to improve the consistency of police investigation and reporting of hate crimes, coordinate enforcement, develop a data-tracking system, respond to victim needs, suggest legislative changes, and provide training for justice personnel on issues relating to hate crimes. The team is composed of members from municipal police departments, RCMP, the Ministry of Attorney General, and the former Ministry of Multiculturalism and Immigration.

In 2000, the BC Ministry of Attorney General published *End Hate Crime: Hate/Bias Crime Policy Guide*.<sup>46</sup> The guide defines hate crime; outlines the roles of the Hate Crime Team, police, and Crown counsel; and suggests guidelines for responding to victims of hate crimes.

According to the Hate Crime Team procedural guidelines,<sup>47</sup> all police agencies in BC should:

- Assign officers to respond to all incidents or reported incidents of hate/bias crimes
- Ensure that officers provide assistance in accordance with established victim services procedures
- Ensure that all evidence is gathered as if it were for court purposes, including photographing, seizing, and securing crime scene evidence
- Ensure that all incidents are investigated and that investigators are informed of their high priority
- Ensure documentation of all incidents and that they are separately categorized as hate/bias offences
- Forward immediately all hate/bias crime reports to the Team's enforcement section
- Inform the enforcement section of the Team of community concerns or potential problems

In addition, the Team has developed guidelines relating to identification of a reported crime as a hate crime, investigation of hate crimes, resources for victims, and notification of the Hate Crimes Team. For more information, see [http://www.pssg.gov.bc.ca/end\\_hate\\_crime/policy\\_guide/police\\_role.htm](http://www.pssg.gov.bc.ca/end_hate_crime/policy_guide/police_role.htm).

**BC Hate Crime Team:**

Tel: 604-660-2659  
Fax: 604-660-2606

## Designated Trans Liaison Officers

Some police departments have taken the proactive step of designating LGBTTT (lesbian, gay, bisexual, trans, and Two-Spirit) liaison officers who can help establish a relationship of trust with trans communities and reassure victims that they will be dealt with respectfully and sensitively.

The designation of one or more members of the force as liaison officers does not mean that other officers are not equally responsible for responding respectfully to trans victims of crime. It simply creates a mechanism for community members and police to work together to encourage victims of crime to come forward and to educate the police about community members' concerns.

“Public safety is the main priority of the Queensland Police Service. Improved liaisons with the LGBT communities through an accessible network of police liaison officers state-wide will ensure that partnerships are formed which will work together for equality and a common goal ... The objective of this enhanced liaison is the reduction of the incidence of crime, hate related and/or domestic violence, discrimination or complaints of inadequate policing response, due to the lack of understanding by some police officers and staff members, of the many issues impacting on the LGBT communities.”

– excerpted from *Queensland Police Liaison to the Lesbian, Gay, Bisexual and Transgender Communities Newsletter*<sup>48</sup>

## Points to Remember When Responding to Trans Victims of Crime

- Many trans people have personally experienced mistreatment from criminal justice personnel or have heard stories of negative encounters from other community members, and as a result may be suspicious, frightened, or uncooperative. Cooperation is most likely if you use a respectful tone, explain the process of filing a complaint and pursuing charges, keep the victim updated on the progress of the case, discuss questions relating to safety, and otherwise demonstrate that (a) you are taking the victim's concerns seriously, and (b) you can be trusted to protect the victim's confidentiality and privacy.
- Apparent discrepancies between the victim's name, appearance, and legal sex should be handled with great sensitivity. While questions about gender or sex may be necessary in some cases, it is important that people who have been victimized not be traumatized further by extensive questioning of a personal nature.
- Use the gender pronoun (he or she) that matches the person's overall physical appearance, mannerisms, and name. If you are unsure which pronoun to use, you can use the victim's name, ask, "How do you prefer to be addressed?" or another strategy that similarly respects the privacy and dignity of the victim. (See pages 5 to 6 for more tips relating to gender pronouns.)
- Trans victims of crime may need you to help them find resources to cope with the physical, emotional, and social aftermath. While some trans people have strong networks of family, friends, and community peers, many are extremely isolated.
- Before making referrals to counselling or crisis services that are specifically for women or for men, it can be helpful to inquire about policies that may restrict accessibility to trans people. Alternatively, find services that are not gender-specific (for example, many of the Specialized Victim Assistance Programs, listed at <http://www.endingviolence.org/members.html#svap>, are open to all genders).
- People who cross-live part-time may want to change their appearance before seeking medical or legal help. Washing, removing makeup, altering hairstyle, or changing clothing can destroy important evidence. While trans people should be informed of the value of protecting evidence, they should not be pressured to maintain an appearance that is profoundly uncomfortable for them.



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# SECTION 4:

# Trans Suspects and Offenders

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## Frequently Asked Questions: Trans Suspects and Offenders

### **Why should a trans person who breaks the law be treated any differently from any other suspect or offender?**

Many unique issues arise in the handling of trans suspects and offenders – including protection of their safety, provision of appropriate health care, and specific concerns around confidentiality and privacy. Addressing the specific concerns of trans suspects and offenders promotes the smooth running of the facility. In addition, as per human rights law, criminal justice facilities are expected to accommodate the special needs of trans inmates. While specific protocols will depend on the policy of your facility, this section offers general guidelines.

### **What about some guy putting on a dress to get into the women’s washroom? Isn’t this a threat to women’s safety?**

Anyone using a washroom inappropriately (e.g., exposing their genitals to others) can be arrested and charged on the basis of their illegal behaviour, regardless of their gender. Trans people use washrooms for the same purpose as other people, not for exhibitionism or peeping. In recognition that trans women do not pose any inherent threat to non-trans women, human rights tribunals have upheld the legal right of trans women to access women’s washrooms.<sup>49</sup>

### **Who should strip-search a trans suspect/offender – a male or a female officer?**

While existing policies likely require that an officer of the same sex conduct a strip search, in the case of a trans person it may be most appropriate to offer the choice of being searched by a male or female officer. For example, a pre-operative male-to-female transsexual may prefer to be searched by a female officer, to maintain her dignity as a trans woman. If your department approves of such measures, the preference/consent of the trans person involved should be documented so as to avoid future human rights complaints. In addition, it is helpful to pass such information on to other officers who will be dealing with this same individual to ensure consistency in practices. Whether a person self-identifies as trans or not, comments made during a strip search should be professional in nature and not derogatory; it is not appropriate to comment on the appearance of genitals, breasts, or other body parts.

### **How do I know if an inmate is legitimately trans or just trying to get special treatment?**

The “special treatment” trans inmates are entitled to relates to their access to transition-related health care (hormones, surgery, and psychiatric evaluation) and to the protection of their safety. In this sense, these aren’t really “special,” nor are they privileges that will be sought by non-trans inmates. It is extremely unlikely that a male prisoner would go through years of psychiatric assessment, crossdressing, hormone treatment, genital surgery, and the discrimination and ridicule faced by other inmates just to transfer to a women’s prison (which trans women are entitled to do following surgery). While your expert knowledge of a prisoner’s behaviour may be helpful in considering their readiness for gender transition, your job does not require that you assess whether or not someone is a “true” transsexual, only that you provide access to a psychiatric specialist who can make this assessment and prescribe treatment accordingly.

## Safety of Trans Prisoners

Numerous reports from various countries suggest that violence against male-to-females (MTFs) imprisoned with men is the norm rather than the exception. A 1998 legal brief by the Prisoners' HIV/AIDS Support Action Network (PASAN) identified safety as a major concern for MTFs held in male prisons in Canada, documenting incidents of sexual assault (and resulting transmission of HIV and other sexually transmitted diseases), physical and verbal harassment, and coercion to provide sex in exchange for protection from other inmates.<sup>50</sup>

Some female-to-males (FTMs) may feel safest in a men's facility. However, most FTMs have not had a vaginectomy (removal of the vagina), scrotoplasty (creation of testicles), and phalloplasty (construction of a penis), and would therefore likely be identifiable as trans in showers or other facilities shared with other men. This would likely create a very high risk of physical and sexual assault.

### The Legal Rights of Transsexual Prisoners: The Synthia Kavanagh Case

In 1993, Synthia Kavanagh filed three complaints with the Canadian Human Rights Commission. Kavanagh was born male but had dressed and lived as a woman since age 13, with a legal name change at age 19. At the time of her sentencing to a life term, she had already started hormone therapy. However, corrections staff restricted her hormone dosage to a level that reversed the physical changes she had undergone, and refused her repeated requests for sex reassignment surgery. In desperation, Kavanagh attempted to slice off her penis.

Kavanagh characterized showering with the male inmates and strip searches by male guards as "humiliating." She served several years in segregation after being taunted, harassed, and sexually assaulted while in the general population. Despite Ontario Justice Richard Reid's recommendation that she serve her term in a facility for women, her request to be transferred to Kingston's Prison for Women was denied by the Correctional Service of Canada (CSC).

Under the terms of the 1999 settlement of the complaint, Kavanagh was granted access to hormone therapy, permission to undergo breast and genital surgery, and a transfer to a women's correctional facility following genital surgery. The Canadian Human Rights Tribunal ruled that CSC's policy of housing male-to-female transsexuals among the male population was discriminatory because it did not take into account the special vulnerabilities of transsexuals as a group, and that CSC's absolute ban on sex reassignment surgery was unwarranted and discriminatory. The tribunal's ruling (which is being appealed by CSC) stated:

- Transsexuals and their housing needs should be assessed individually in consultation with a physician expert in the treatment of gender dysphoria.
- Policy should permit incarcerated individuals who had completed the qualifying period for sex reassignment surgery before going to jail to have the necessary surgery while in prison, if surgery was recommended by their physicians. CSC is expected to cover the costs of surgery for transsexual inmates who meet the above criteria.<sup>51</sup>

## Options for Placement of Trans Prisoners

As described on the previous page, trans prisoners are often not safe in the general population. Some facilities have attempted to address this by placing trans prisoners in protective custody (PC). However, there are concerns that PC units often house known sexual offenders and predators and are thus an unsuitable environment for people vulnerable to sexual exploitation and violence. The alternative chosen in some instances – placement in solitary confinement – is also not ideal as a long-term solution, as long-term isolation can damage the prisoner’s mental and physical health and increase the risk of suicide attempts or other self-harm.<sup>52</sup>

As the Correctional Service of Canada (CSC) is currently appealing the Canadian Human Rights Tribunal ruling relating to a general housing policy for trans prisoners, in the interim it is likely that placement decisions will be made on a case-by-case basis depending on each individual’s unique situation. In some cases, it may be appropriate to place a prisoner according to their identity (e.g., placing a trans woman in a women’s facility). In some locations, it may be possible for trans prisoners to be housed together in a special unit. In some instances, a trans prisoner may request placement in the general population or in PC.

While case-by-case assessments are a good approach, there needs to be a framework to guide the assessment. After two incidents of gang rape of MTF inmates, Australian correctional services implemented a three-tier policy<sup>53</sup> for placement that prioritizes the prisoner’s safety:

- 1) What facility would provide the safest environment for the trans prisoner? Is it safer to place them in a male facility or a female facility? Which unit in a particular facility is safest?
- 2) A secondary consideration is general appearance, i.e., what gender does the prisoner live as?
- 3) The last consideration is physiology, i.e., has the prisoner had genital surgery?



## Access to Health Information for Personnel Working with Trans Offenders

Trans people have complex medical, legal, and psychosocial health needs that corrections personnel and staff in post-release facilities may not be familiar with. For example, social workers and case management officers may be required to provide documentation regarding transition or to monitor the process of gender socialization; trans prisoners who have undergone surgery may require specialized post-operative care.

Although the Canadian Human Rights Tribunal ruling in the Kavanagh case (outlined on page 42) is under appeal, rulings on accommodation of health needs regarding disability suggest that criminal justice personnel will be expected to respond to the special health needs of trans people in custody. To enable corrections officers and those working in post-release programs to fulfill this requirement, it is crucial that information and training be available to all personnel working with trans offenders. Personnel in post-release programs will also benefit from having access to information about community-based resources for trans people.

## Access to Health Care

Whether placed in a men's or women's facility, trans inmates need preventive gynecological, urological, and reproductive care (and possibly treatment). For example, an FTM who has not had a hysterectomy will require regular pap smears to screen for cervical cancer and may need access to menstrual products; even after genital surgery, MTFs require examinations to screen for prostate cancer.

Trans inmates who are undergoing transition require, at minimum, access to specialists in psychiatry, endocrinology (hormones), and surgery for assessment and transition planning. Those who are taking hormones require ongoing medical monitoring to prevent fluctuations in hormone blood levels and unwanted side effects (such as heart disease). A new inmate who has been on hormones prior to incarceration should be seen immediately by an endocrinologist (hormone specialist) with specific expertise in evaluating trans people. A prisoner who wants to start hormone treatments should be assessed by a psychiatrist and endocrinologist to determine whether this is appropriate, and if so, should be granted the same rights to hormones as to any other essential medication.

## HIV/AIDS and Hepatitis C

In 1998, 10% of the members of the Prisoners' HIV/AIDS Support Action Network (PASAN) support group for HIV+ inmates self-identified as transsexual or transgendered. This “greatly overrepresents the proportion of transsexual and transgendered prisoners in any given prison population”<sup>54</sup> and suggests that the incidence of HIV may be higher among trans inmates than among the general population.

While many prisoners come to prison already infected with bloodborne diseases such as HIV and hepatitis C, many health authorities, including Health Canada, have identified the specific need for corrections facilities to implement comprehensive strategies to reduce the risks of transmission of bloodborne diseases during incarceration. The medical management of HIV/AIDS and hepatitis C infection – particularly in cases where a person is infected with both viruses – is complicated and very difficult to maintain in a prison. Most inmates cannot access comprehensive treatment information or individualized advice from an experienced specialist, let alone the special diets, purified water, etc., that are crucial to long-term survival. Additionally, the crowded environment of most prisons increases the risk of contracting contagious diseases such as TB and influenza. Researchers from Queen's University studying HIV and hepatitis C infection among prisoners concluded that the current situation is a “public health disaster in process” and identified many proactive steps that can be taken with minimal risk to guards.<sup>55</sup>

For example, trans prisoners have expressed concerns that condoms and lubricant are not readily available in many prisons, and that they are reluctant to ask guards for safer sex supplies because they are teased or subjected to more frequent cavity or cell searches.<sup>56</sup> Because penetrative sex without a lubricated condom carries a high risk of HIV transmission, the effective dispensing of condoms is key in preventing the spread of the virus.

Strategies are also needed to address the sharing of needles, other injection supplies, and hygiene equipment that breaks the skin. Both HIV and hepatitis C can be transmitted through sharing of needles for injection drug use (including self-administered hormones) or tattooing. Hepatitis C can also be transmitted through sharing of other injection paraphernalia (such as cookers or tattoo wipes) and razors. Provision of clean needles and syringes through a needle exchange program – successfully implemented in Switzerland<sup>57</sup> – would reduce the risk not only of transmission among inmates but also of needlestick injury when guards do cell searches.<sup>58</sup> While some prisons have attempted to make diluted bleach solutions available for cleaning of needles as an alternative to needle exchange, “There is no good evidence to suggest that strong bleach works, let alone solutions that can be drunk with impunity. The provision of bleach to a large number of individuals using a small number of syringes in a clandestine and hurried fashion should not be used as an example of an effective harm-reduction strategy.”<sup>59</sup>

There is also a need for peer support and peer education relating to transmission and prevention. Few educational materials for men specifically target trans people, and many male-to-females (MTFs) incarcerated in male prisons simply won't read information that states it is written for men. This is particularly important in terms of safer sex information or other materials that refer explicitly to genitals.

Trans inmates who have hepatitis C and/or HIV and are taking hormones should be thoroughly monitored by a specialist with expertise in both hepatitis/HIV management and endocrinology, as hormones can interact with HIV medication and can worsen liver damage associated with hepatitis C.

## Trans People in the Sex Trade

While it can be argued that sex trade is a type of work and not “criminal” activity in the usual sense of the word, the *Criminal Code* and municipal bylaws do criminalize those who work in the sex trade. This section of the manual is intended to assist criminal justice personnel who come into contact with trans sex workers as “offenders.” (Information on the specific concerns of trans sex trade workers who encounter the criminal justice system as victims of crime is included with other victim issues on pages 30 to 31.)

Significant numbers of trans people work part-time or full-time in the sex trade. Thirty-six percent of participants in an Ontario study of trans people were sex workers.<sup>60</sup> One month after beginning a volunteer outreach program in the Downtown Eastside of Vancouver in 1994, the High Risk Project made contact with 70 trans sex trade workers,<sup>61</sup> and in a recent study of sex workers in the Capital Health Region (Victoria and surrounding area), 3% self-identified as trans.<sup>62</sup> In addition, some men who do not identify as trans work crossdressed in order to make extra money (because men in the sex trade typically earn much less than women do).<sup>63</sup>

There are many reasons trans people get involved in the sex trade. The realities of employment discrimination leave some trans people with few economic choices other than the sex trade. Trans youth are particularly financially vulnerable should their families withdraw material support or become so abusive that the youth believe it is better to leave than to stay.<sup>64</sup>

Trans people may also enter the sex trade for positive social and personal reasons. Some trans sex workers have described prostitution as the first place where they had met others like them; for them, the sex trade is a venue for breaking social isolation and creating community. For trans people who struggle with negative societal messages about trans people being freakish and sexually undesirable, the offer of money for sex can be a way of feeling valued, and it can affirm gender identity. Others appreciate being able to cross-live full-time (which is not allowed in many jobs).

Thus far, male-to-females (MTFs) have been far more visible than FTMs in the sex trade. It has been assumed that there are more trans women than trans men in the sex trade because the sex trade is, in general, primarily composed of women,<sup>65</sup> and MTFs tend to be more socially and economically marginalized than FTMs<sup>66</sup> (because gender-variance is more stigmatized for people born male than for people born female). However, anecdotal evidence suggests underestimation of the numbers of FTMs in the sex trade, in part because within the sex trade many FTMs have to work as women (despite their identity as trans men).<sup>67</sup>

## Avoiding Bias in Enforcement of Laws Governing the Sex Trade

In Canada, prostitution is legal, but ss. 170-71 and 210-13 of the *Criminal Code of Canada* restrict various aspects of the sex trade. In some regions, municipal bodies also regulate escort agencies and dating services that operate on an out-call basis. For example, Victoria's Escort and Dating Service By-law (No. 93-134) licenses agencies for \$1500 per year and \$250 per escort worker;<sup>68</sup> as per the *Criminal Code*, clients cannot be entertained at the office address of the business (in-call), but the business can arrange dates between staff and callers, because such communications are private (i.e., do not violate s. 213).

Policies on enforcement of the *Criminal Code* vary across departments. Some departments limit their pursuit of sex workers to instances where public complaints are lodged. Some selectively apply s. 213 to try to move people working outside away from residential neighbourhoods or upscale businesses. A 1998 study in Québec suggests assertive enforcement in charging and sentencing trans sex trade workers, with over 50% of those interviewed having been incarcerated for convictions relating to prostitution.<sup>69</sup> Reports from other regions of Canada also suggest harsher sentencing of trans sex workers than non-trans sex workers.<sup>70</sup>

This raises disturbing questions about systemic transphobic bias in the justice system, with serious consequences for trans sex workers. There is concern that aggressive arrest and sentencing relating to prostitution reinforces the social stigma that legitimizes harassment and violence against sex workers, makes it difficult for sex workers to organize safer working conditions, and creates barriers for sex workers trying to access health and social services.<sup>71</sup> As discussed on page 29, fear of the legal system also makes it difficult for trans sex workers who are victims of crime to come forward.

While criminal justice personnel must, of course, enforce the law, there is discretion in how laws relating to prostitution are applied and prosecuted. At minimum, criminal justice personnel are expected to apply the laws fairly and not to discriminate against sex workers who are trans.



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# SECTION 5:

## Self-Harm, Suicide, and Other Potentially Dangerous Behaviour

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## Frequently Asked Questions: Self-Harm, Suicide, and Other Potentially Dangerous Behaviour

### Are trans people more likely to attempt suicide than other people?

Trans people are at high risk for suicide attempts. One study found that over 70% of transsexuals had considered suicide, and 20% had attempted suicide at least once.<sup>72</sup>

### How is self-harm different from attempting suicide?

The term “self-harm” is often used within the mental health field to refer to people who deliberately wound themselves not in order to kill themselves but rather as a means of releasing emotional tension or coping with stress. Examples of self-harm include cutting or burning one’s skin and taking small overdoses of medication or street drugs. While some people engage in self-harm only once or twice, many find that self-harm has an increasingly compulsive quality similar to an addiction.

### Why should criminal justice personnel get involved with someone who is harming themselves, is suicidal, or who is otherwise a danger to themselves? We aren’t mental health workers.

Police, corrections officers, and other front-line criminal justice personnel may be the first responders when a trans person is at immediate risk of harming themselves or attempting suicide, or may be called to intervene if someone is behaving strangely in a way that could cause harm (e.g., running into traffic). Under s. 35 of the *Mental Health Act*, police can force persons who are at immediate risk of harming themselves to undergo an emergency psychiatric assessment by taking them to the nearest hospital and waiting with them until they are evaluated. Police may be reluctant to exercise this authority. However, forced interventions are an important and necessary measure in some cases. Severe distress or illness can impair a person’s capability to recognize that they need assistance. Left untreated, some people may pose a real danger to themselves.

### What about persons who often inflicts minor cuts to themselves but without a real risk of bleeding to death – do I still have to take them to the hospital every time?

Repeated self-harm is sometimes misperceived as “crying wolf,” and there can be a feeling that someone is just “at it again.” While the term “self-harm” most often refers to people who are *not* intending to end their life, some people who self-harm do accidentally put their life at risk. In some cases an accidental miscalculation may require emergency treatment (e.g., an artery is severed while slashing the skin with a razor). Other situations may not be as obvious but still potentially lethal (e.g., infection from a burn). Fatalities can also occur as a result of cumulative self-harm over a period of time; not all damage is readily apparent (e.g., repeated Tylenol overdoses in quantities that are not, in and of themselves, lethal). Additionally, people who chronically self-harm may become suicidal and modify their habitual act in an attempt to end their life. Because of this risk, anyone who has just engaged in self-harm must be evaluated by a medical professional, *no matter how superficial the injury seems*.

## Gender Dysphoria and Self-Harm

*Gender dysphoria* refers to a profound sense of discomfort with aspects of one's body that are associated with gender or sex, i.e., primary or secondary sex characteristics such as genitals and breasts. The extent of dysphoria, and the resulting distress, varies widely. Many trans people do not have gender dysphoria; others can manage their mild discomfort without needing physiological changes; some have dysphoria that is so severe that they require changes via hormones and/or surgery.

Some people with profound gender dysphoria engage in self-harm as a means of coping with the discomfort. This may involve harm to a non-gendered body part (e.g., cutting one's arm) and/or harm to the part of the body that is felt to be the source of the dysphoria. For example, some male-to-females (MTFs) who cannot obtain genital surgery may slash their genitals or try to slice them off completely. Female-to-males (FTMs) may bind their chests to the point of causing pain and tissue damage.

The motivation for this type of self-harm is, in many cases, similar to that described earlier – the deliberate wounding of the body in order to effect emotional release or cope with stress. But self-harm that is rooted in gender dysphoria can also have the purpose of altering the appearance of the body. The pain or damage may not be perceived as the goal per se, but rather an unfortunate necessity of creating the degree of change necessary to bring the body closer in line with one's internal sense of self.

## Depression and Suicidality

Suicide attempts are, unfortunately, common among trans people. In some cases, a suicide attempt fits the cliché of being a “cry for help”; in other cases, the intent is not to communicate a severe level of distress but rather to end the distress by ending one's life. People who want to end their life may be in crisis and may feel unable to cope with the intensity of emotion, change, loss, or overwhelming responsibilities. Others have struggled and sought help over a long period of time, and despair when options for assistance are believed to be exhausted.

Suicidality among trans people may stem from depression unrelated to being trans, profound distress caused by gender dysphoria, or any of the social factors that affect our communities:

- The stigma, discrimination, and pressures related to gender-variance and gender transition can be emotionally overwhelming.
- Many trans people struggle with prolonged grief and isolation as a result of loss of family, friends, employment, housing, and custody of children.
- Employment discrimination and the costs of health care can create overwhelming economic burdens.
- Although trans people are at high risk for relationship violence, hate crimes, and sexual abuse, there are very few resources to address the specific needs of trans victims of violence

There can be a misperception that people who attempt suicide repeatedly “aren't really serious” about ending their life. On the contrary, every suicide attempt increases the risk of an eventual completion, and those who have attempted suicide in the past are at higher risk for suicide attempt in the future.<sup>73</sup> However, even among those people who clearly attempted suicide in order to die rather than to reach out, most suicide survivors who were rescued or who survived an attempt later expressed relief that they did not succeed.<sup>74</sup>

## Unusual and Potentially Dangerous Behaviour

Police are often called when someone is behaving strangely in a public setting. This can include instances where there is a concern that a person is delusional, demented, or otherwise suffering from illness or distress that could require medical attention; instances where the behaviour is perceived as a nuisance but not a threat (e.g., shouting but not threatening passers-by); and situations where the behaviour poses a potential threat to self or others (such as banging one's head repeatedly against a brick wall).

This sort of unusual behaviour is often misinterpreted as intoxication, and resistance to intervention is often viewed as deliberate non-cooperation or aggression. While substance use can certainly contribute to abnormal behaviour, in many cases the cause is mental or physical illness causing behaviour that is not within the person's control. For example, people who are suffering from delusions may be aggressive; this is not intentional provocation but rather an involuntary symptom of a medical crisis.

Whatever the cause of the behaviour, criminal justice personnel face the difficult task of exercising enough restraint to prevent the person from harming themselves or others, and using force that is not excessive. This is particularly important in situations where there is an underlying physical illness and the person could be harmed (or even killed) by use of strong force.

While trans people are not more prone to abnormal behaviour per se, hormone overdose can cause temporary psychosis due to strain on the liver. This is more likely if a trans person taking hormones:

- Is taking excessive dosages in error or in the hopes of increasing the rate or degree of change
- Is using hormone preparations that are not standardized (purchased illegally or via mail order)
- Has active hepatitis C or other liver disease
- Is using other medications, alcohol, or street drugs that also place a burden on the liver
- Is taking prescription drugs that interact with hormones (e.g., some HIV/AIDS medications)
- Is not being monitored by a health professional with specific expertise in this field

Trans people who are behaving strangely should be treated with the same respect shown to anyone else who is being evaluated by criminal justice personnel. Unusual behaviour or lack of responsiveness does not mean that the person is not aware of what is happening. In all instances, people who are behaving strangely should be accorded the same human rights accorded to people who are fully responsive and able to communicate clearly.

### Specialized Resources

Crisis lines are an excellent resource for people who have thoughts of self-harm or suicide, or for people who are concerned about a third party (neighbour, family member, workmate, etc.). Crisis line volunteers are trained to assess risk, offer support, and provide information about community-based services. A list of crisis lines in BC is posted on the Web at <http://www.crisiscentre.bc.ca/help.html>. Some cities have additional resources in cases where there is an urgent need for psychiatric assessment. In Victoria, Emergency Mental Health Services can be reached through the NEED Crisis and Information Line, 250-386-6323. Vancouver Mental Health Emergency Services can be reached at 604-874-7307, or Car 87 (a joint emergency assessment service of the Greater Vancouver Mental Health Services and the Vancouver Police Department) may be requested through 604-732-7307.





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# SECTION 6:

## When a Colleague Is Trans

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## Frequently Asked Questions: When a Colleague Is Trans

### Why did this person tell me they are trans? Are they coming on to me?

It is unlikely that a colleague would disclose their status in order to sexually proposition you; as one trans person wryly pointed out, “Telling someone you’re trans doesn’t usually get a positive response. ‘Hey baby, I’m trans,’ isn’t exactly a pick-up line, nor is it likely to get someone to be romantically interested in me.”<sup>75</sup> Criminal justice personnel rely on communication and trust to ensure their own safety and the safety of others. A deliberate disclosure of being trans is a mark of the trust your colleague holds for you. By disclosing their status, they are risking not only your reaction but also the possibility that you will reveal this information to others.

### Why can’t people just keep this to themselves?

The reasons for disclosure vary. Some trans people reveal their status immediately to avoid tensions related to keeping a secret, or because they are most comfortable being able to openly deal with whatever questions might arise. Even after years of secrecy, trans people may feel increasingly uncomfortable about keeping a secret from a colleague they become close to. Someone who is experiencing stress in their personal life as a result of issues relating to transgenderism may feel obligated to disclose these concerns to colleagues to evaluate any effects on work performance. For those undergoing transition (see pages 11 to 13), disclosure to co-workers will be necessary at some stage. Some may prefer to disclose prior to transition in order to prepare colleagues for the changes, while others may wait until changes are visible or imminent. A colleague in transition may disclose his or her status to you directly, or you may receive a letter from your supervisor or manager directed to all co-workers of the person in transition.

### What if I find out from someone else that my colleague is trans? Should I let them know?

If you find out through gossip or sharing of confidential documents such as requests for health benefits, it is appropriate to discreetly let the trans person know what information has been disclosed and offer to help them address this breach of privacy however they see fit.

### How am I supposed to react if somebody tells me?

It is normal and reasonable to react to disclosure with surprise, questions about what to expect, and concerns about how this will affect your work together. It may take time for the information to sink in, and you may have questions that arise some time after the initial disclosure. *You do not need to understand or agree with a colleague’s personal decisions or behaviours in order to be responsible and respectful in the workplace.* Try to remember that transgenderism is a normal variation of the human body and psyche, no more “strange” than any other kind of diversity.

### **If a co-worker is going through something as big as transition, will they be able to focus on the job? Can I count on them in an emergency?**

Like any other major life change, transition can be draining. However, trans people in transition are still at work to get the job done, and many people (including criminal justice personnel) have successfully transitioned on the job. If you have concerns about the effects of disclosure on your performance or ability to work with your colleague, speak to your supervisor. If you have concerns about your colleague's performance, speak to them or to their supervisor.

### **What happens if I call the person by their old name?**

As with any mistake, simply apologize. Accidental use of old names and pronouns is common when a colleague is in the early stages of transition. However, efforts to use correct pronouns and the correct name are appreciated by the person in transition, and essential in discouraging harassment by suspects and offenders.

### **I feel uncomfortable sharing a washroom/locker room with someone who used to be the opposite sex. Aren't there other options?**

Although you may have some discomfort sharing a washroom or locker room with a trans person, fears about what might happen are groundless. Trans people use washrooms and locker rooms for the same purpose as everyone else, not for purposes of exhibitionism or peeping. Although at first it can be strange to share a washroom or locker room with someone you have known as the "opposite" sex, with time this tends to pass.

As per human rights law, an employer has a duty to accommodate trans people (see page 19). Human rights tribunals have upheld the legal right of trans people to use the washroom that is congruent to their overall appearance, regardless of their genitals. Use of locker rooms and showers may also be appropriate if there are stalls with doors or curtains that allow privacy.

Despite their legal right to do so, some trans people may not want to use group washrooms or locker rooms out of concern for the discomfort this may cause other colleagues or for fear of harassment. Possible solutions to this include access to a single-user washroom or change room, or hanging an "In Use" sign on the outer door of a multi-user facility. These types of accommodations must be made only if the person in transition requests it, not because other co-workers are uncomfortable with the person in transition using a group facility.

"Stephanie had loved being a police officer, and it bothered the emerging Stephan that transsexuals often left their old lives entirely behind when they made their change. But it was hard to fathom announcing a sex change as a uniformed cop. 'I was fearful about what this would mean,' he says. 'I was afraid I might be fired. I was afraid that if I wasn't fired I might lose my backup in a dangerous situation. I was afraid that my life at work might be so unacceptable that I'd have to leave.'"

– excerpted from *A Sex-Change Odyssey: Police Officer Stephanie Ann Thorne's Transition from Being Female to Being Male*<sup>76</sup>

# Transitioning in the Workplace

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Editor's Note: This excerpt outlines some of the steps that can be taken in an on-the-job transition to a new gender role in a supportive company. It is not intended as an authoritative "how-to" list, but rather an overview of some of the strategies that have worked well for other trans people in transition. Every individual's situation and workplace is different, and there is no one right way to transition on the job. This is simply intended as a generic list that may be useful in thinking about the kinds of steps that can be helpful in the types of workplaces structures commonly found in the criminal justice field.

Unless otherwise specified, these steps should be initiated by the person undergoing the transition.

## Advance Preparation

- 1) Come out to your local (or at-large) employee resource group or union shop steward. Share your intent to transition. They may have someone who can advise you, and may know people in HR or other parts of the company who can support you in your transition. [Editor's Note: the basic process is to come out to allies first, and then move on up to your supervisor. In non-unionized workplaces, colleagues may be the best way to get support, or a supervisor could be approached right away.]
- 2) Come out to your local Diversity representative (or a Human Resources representative if no Diversity specialist is available.) Share your intent to transition.
- 3) Come out to your supervisor, and share your intent to transition. This should be in a face-to-face, one-on-one meeting. If you are uncomfortable or fearful of your supervisor's reaction, you may find it helpful to include one or two allies from Diversity, HR, or your employee group in the meeting.
- 4) Your supervisor will probably share your plans with a small portion of your management chain.
- 5) Your management and others involved in the planning should become familiar with educational resources, including company policy and books on the subject. (Recommended book: *Transsexual Workers, An Employer's Guide*, by Janis Walworth)

- 6) Plan your transition.
  - Involve a local transgender expert (your therapist, for example, or an expert consultant).
  - If necessary, involve others as locally appropriate. Examples of persons who may need to be involved are the Employee Assistance Program, Security, and your medical department.
  - Establish a timeline for the transition, including the date for an announcement to your work group, and the date of your transition. Generally these dates are a week or two apart.
  - Plan the solutions to the usual issues (restroom, new name, etc.).
  - Involve all the behind-the-scenes people in the planning process, to ensure they are in agreement with the plan.
- 7) You may choose to privately come out, one-on-one, to anyone you work with closely or know well and feel comfortable confiding in.

### **The Day of the Announcement**

- 8) Hold a department meeting, or include this in an already-scheduled face-to-face meeting. Everyone in your work group whom you interact with often at work should be there. Do not do this by e-mail.
- 9) The manager of the work group (the department head, for example) should make the announcement. It is important for the highest-level manager in the group to show support. The manager should:
  - Make it clear that the person transitioning is a valuable employee and has management's full support in making this transition.
  - Explain organizational policy and recommendations.
  - Stress that the employee should be called by the new name and new pronouns.
  - Answer people's questions.

## After the Announcement

- 10) Consider some general education on the subject for other employees. (Workshops are often available from local resources.) You should be given the choice whether to be present at this meeting, depending on your comfort level. If you agree to be present, people should be encouraged to ask you questions about the issue.
- 11) Make arrangements with the bank to ensure that payroll checks to your new name can be deposited in your existing account. This may be just a matter of adding a new signature to the bank card.

Your manager should take these steps, much as he or she would for a new or transferred employee:

- 12) Issue a new identification badge with the new name and photo.
- 13) Arrange for a new nametag on door/desk/cubicle.
- 14) Update any organizational charts, mailing lists, and other references to the new name.
- 15) Issue paperwork for the HR employee database to change the following:
  - New name.
  - Change the gender marker (“M” or “F”).
  - Computer handles and account IDs may be changed if the old ID is inappropriate.
  - Update the e-mail address if it contains the old name.
- 16) Address restroom use and communicate the decision, as planned earlier. The preferred recommendation is to use the restroom corresponding to the gender being presented (e.g., use the women’s restroom starting the first day of presenting as a woman). If someone objects, they should be reminded that this valued employee has the same rights to the restroom as all other employees.
- 17) The first few hours will involve many new introductions. It is especially nice if any informal social groups are inclusive, especially those relevant to the new gender. The novelty usually wears off by mid-morning and work returns to normal. Over time, as people get to know the person in the new gender role, it will become old news.



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## BC Trans Organizations

[NOTE: Many lesbian/gay/bisexual (LGB) organizations have added a “T” to include “transgender” in their mandate. The list of LGBT organizations around the province is too long to list here, but an extensive list for each region is posted on the Rainbow BC site at <http://www.rainbowbc.com>]

### BC FTM Network

(anyone designated female at birth, who identifies as male/masculine)

#### *Lower Mainland:*

Tel: 604-254-7292

E-mail: [70641.507@compuserve.com](mailto:70641.507@compuserve.com)

#### *Vancouver Island:*

Tel: 250-413-3220

E-mail: [jgoldber@uvic.ca](mailto:jgoldber@uvic.ca)

### Cornbury Society

(crossdressers)

Box 3745, Vancouver, BC V3B 1Z1

Tel: 604-862-1321

E-mail: [info@cornbury.org](mailto:info@cornbury.org)

Web: <http://www.cornbury.org/>

### Genderqueers

(anyone interested in intersections of race, class, ability, gender, sexual orientation, etc.)

E-mail: [tliberation@hotmail.com](mailto:tliberation@hotmail.com)

### Trans Alliance Society

(coalition of BC-based trans groups)

c/o 1170 Bute Street, Vancouver, BC V6E 1Z6

Tel: 604-684-9872, ext. 2044

E-mail: [communications@transalliancesociety.org](mailto:communications@transalliancesociety.org)

Web: <http://www.transalliancesociety.org>



**Transcend Transgender Support and Education Society**

(all trans people and family members)  
PO Box 8673, Victoria, BC V8X 3S2  
Tel: 250-413-3220 / Fax: 250-479-3836  
E-mail: [transcend@islandnet.org](mailto:transcend@islandnet.org)  
Web: <http://www.transgender.org/transcend>

**Transgendered Legal Education and Advocacy Foundation (TLEAF)**

(all trans people)  
1007 Empress Avenue, Victoria, BC V8T 1P1  
Tel: 250-920-9822  
E-mail: [tleaf@shaw.ca](mailto:tleaf@shaw.ca)

**Women/Trans Dialogue Planning Committee** (all trans people + non-trans women)

c/o 1170 Bute Street, Vancouver, BC V6E 1Z6  
Tel: 604-684-9872, ext. 2044  
E-mail: c/o Trans Alliance Society, [communications@transalliancesociety.org](mailto:communications@transalliancesociety.org)

**Zenith Foundation**

(transsexuals; primarily MTF)  
Web: <http://www.zenithfoundation.ca>

***Lower Mainland:***

Box 45006, 4326 Dunbar Street  
Vancouver, BC V6S 2G3  
Fax: 604-266-4469  
E-mail: [zenithfoundation@hotmail.com](mailto:zenithfoundation@hotmail.com)

***Vancouver Island:***

686 Hampshire Road  
Victoria, BC V8S 4S2  
Tel: 250-598-9711  
E-mail: [sivraj@netcom.ca](mailto:sivraj@netcom.ca)

## Legal Resources

**AIDSLaw: Legal and Ethical Issues Relating to HIV/AIDS and Prisons – Annotated Bibliography**  
<http://www.aidslaw.ca/Maincontent/otherdocs/biblio/c-20.htm>

**BC Association of Specialized Victim Assistance and Counselling Programs (BCASVACP)**

728 – 602 West Hastings Street, Vancouver, BC V6B 1P2

Tel: 604-633-2506 / Fax: 604-633-2507

E-mail: [bcasvaccp@endingviolence.org](mailto:bcasvaccp@endingviolence.org)

Web: <http://www.endingviolence.org/>

**BC Hate Crimes Team**

Ministry of Public Safety and Solicitor General, PO Box 9282 Stn Prov Govt, Victoria, BC V8W 9J7

Victim Information Line (toll-free): 1-800-563-0808

Tel: 604-660-2659 / Fax: 604-660-2606

**BC Human Rights Commission**

(Note: contact information accurate to January 2003; may be eliminated in near future by Bill 53)

Tel. (toll-free): 1-800-663-0876

E-mail: [bc.human\\_rights\\_commission@ag.gov.bc.ca](mailto:bc.human_rights_commission@ag.gov.bc.ca)

Web: <http://www.bchumanrights.org/>

***Vancouver office:***

306 – 815 Hornby Street

Vancouver, BC V6Z 2E6

Tel: 604-387-3710

TTY: 604-953-4911

***Victoria office:***

2nd floor, 844 Courtney Street, PO Box 9209

Stn Prov Govt, Victoria, BC V8W 9J1

Tel: 250-387-3710

TTY: 250-953-4911

**Gender Identity Center - *Trans in Prison Journal***

Gender Identity Center of Colorado, 1455 Ammons Street, Suite 100, Lakewood, CO 80215-4993

Tel: 303-202-6466

Web: <http://www.transgender.org/tg/gic/journal.html>

**Trans/Gender Variant in Prison Committee**

California Prison Focus, 2940 16th Street #307, San Francisco, CA 94103

Tel: 415-252-9211 / Fax: 415-252-9311

E-mail: [caoimhin33@yahoo.com](mailto:caoimhin33@yahoo.com)

Web: <http://www.prisons.org/TIP.htm>

**Vancouver Police Department, Diversity Relations Unit**

2120 Cambie Street, Vancouver, BC V5Z 4N6

E-mail: [vpd\\_diversity@city.vancouver.bc.ca](mailto:vpd_diversity@city.vancouver.bc.ca)

Web: <http://www.city.vancouver.bc.ca/police/chief/diver/index.html>

**Victoria Police Department, Diversity Unit**

Tel: 250-995-7379 / Fax: 250-384-6141

E-mail: [chowd@police.victoria.bc.ca](mailto:chowd@police.victoria.bc.ca) (Diversity Manager)

## Internet Resources

### **Bodies Like Ours**

<http://www.bodieslikeours.org/>

*Support and information for people born with atypical genitalia.*

### **International Foundation for Gender Education (IFGE)**

<http://www.ifge.org>

*Wide range of information, books, and other resources.*

### **Intersex Society**

<http://www.isna.org>

*Comprehensive website on intersex issues. Reading materials, links to support groups, and specific resources relating to Androgen Insensitivity Syndrome, Klinefelter Syndrome, Turner Syndrome, Congenital Adrenal Hyperplasia, and Hypospadias.*

### **National Coalition of Anti-Violence Programs**

<http://www.avp.org/ncavp/>

*Coalition of over 20 lesbian, gay, bisexual, and transgender victim programs throughout the USA.*

### **Remember Our Dead**

<http://www.gender.org/remember/>

*Memorial to people who have died as a result of transphobic violence.*

### **Renaissance Transgender Association**

<http://www.ren.org/page2.html>

*Primarily focused on crossdressing.*

### **SOFFA USA**

<http://members.aol.com/SOFFAUSA/index.html>

*Resources for significant others, families, friends, and allies (SOFFAs) of trans people.*

### **Survivor Project**

<http://www.survivorproject.org/>

*Resources on concerns of trans and intersex survivors of violence and abuse.*

### **Transgender at Work**

<http://www.tgender.net/taw/>

*Resources for trans people and their employers.*

### **Transgender Employment Links**

<http://www.gendersanity.com/resources.shtml>

*Resources for trans people, their employers, and their colleagues.*

## Suggestions for Further Reading

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## Films and Videos

*Boys Don't Cry* (1999). 1 hr. 54 min. Produced by Jeffrey Sharp, John Hart, Eva Kolodner, and Christine Vachon. Distributed by Fox Searchlight. Available from most video rental outlets.

*Gender Line – Extended* (2001). 59 minutes. Produced by WG Burnham. Available from Video Out (preview copies available at no charge), tel. 604-872-8449, e-mail: [videoout@telus.net](mailto:videoout@telus.net). Shot in Vancouver, each of the 20 participants candidly speaks on a range of topics, including gender, sexuality, surgeries, hormones, employment, families, discrimination, and feminism. The participants present their wide-ranging insights on being trans and give details about their life experiences. Designed to be used as a festival feature or as an educational tool, this video can be viewed in its entirety or presented in three 20-minute modules.

*Investigative Reports: Transgender Revolution* (1998). 50 min. Produced by the Arts and Entertainment Network. Available from the Arts and Entertainment Network, <http://www.AandE.com>, 1-888-423-1212. VHS, \$24.95 (refer to item number AAE-17196). Includes segment about a trans sheriff.

*You Don't Know Dick: Courageous Hearts of Transsexual Men* (1997). 56 min. Produced by Bestor Cram and Candace Schermerhorn. Available from the UC Extension Center for Media and Independent Learning, 4th floor – 2000 Center Street, Berkeley, CA 94704, tel. 510-643-2788, e-mail: [kspohr@uclink4.berkeley.edu](mailto:kspohr@uclink4.berkeley.edu) (refer to catalogue #38409). Includes segment about a trans police officer.

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