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VIEWPOINT: SPECIAL ISSUE ON TRANSGENDER HEALTH AND CORRECTIONS

Improving Access to Legal Gender Affirmation for Transgender Women Involved in the Criminal–Legal System

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Abstract

Transgender women of color experience interlocking systems of oppression rooted in racism and transphobia, which fuel economic vulnerability and over representation in the criminal–legal system. Legal gender affirmation, which refers to changing one’s name and gender marker on official documents, has the potential to mitigate these issues by improving access to employment, housing, education, health care, and social services. These services are particularly important for transgender women of color with criminal records, a history of incarceration, or other legal infractions; however, 23 states have policies that restrict access to legal gender affirmation for these individuals. Alongside eliminating restrictive policies to obtain legal gender affirmation, medical–legal partnerships in these states may address recidivism and health inequities among transgender women of color.

Keywords: legal gender affirmation, transgender women, incarceration, United States

In the United States, transgender (trans) women of color experience mutually reinforcing, interlocking systems of structural and institutional oppression rooted in racism and transphobia (Bailey & Trudy, 2018; Wirtz *et al.*, 2020). This pervasive and systemic intersectional racism and transphobia fuels economic vulnerability by limiting access to sustained education, employment, and housing (Fletcher *et al.*, 2014; Operario & Nemoto, 2010; Palazzolo *et al.*, 2016). An estimated 38.5% of Black trans people in the United States live below the poverty line, approximately double the rate for the general Black population (Badgett *et al.*, 2019; Semega *et al.*, 2020).

Economic vulnerability contributes to the health inequities trans women of color experience as financial resources are critical to preventing and treating mental health problems, HIV, and substance use disorders and to accessing gender-affirming health care (Jennings Mayo-Wilson *et al.*, 2020; Nuttbrock *et al.*, 2014; Safer & Chan, 2019).

Economic vulnerability combined with biased policing and sentencing contributes to the over representation of trans women of color in the criminal–legal system (James *et al.*, 2016; Yarborough, 2021). To reduce the impacts of economic hardship, avoid employment

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discrimination, or even have any source of income due to the confluence of racism and transphobia, some trans women of color engage in criminalized activities including sex work, selling drugs, and credit fraud (Jennings Mayo-Wilson *et al.*, 2020; Palazzolo *et al.*, 2016; Wilson *et al.*, 2018).

These types of survival strategies may result in arrest and conviction as police overly surveil and mistreat trans women of color (Daum, 2015; Yarborough, 2021). For example, compared with white lesbian, gay, bisexual, and transgender (LGBT) people, trans women of color are more likely to be stopped, harassed, treated disrespectfully, and victimized by the police (Irvine, 2015; James *et al.*, 2016).

An estimated 35% to 65% of trans women of color have a history of incarceration (Garofalo *et al.*, 2006; Reisner *et al.*, 2014), with Black trans women 3 times as likely to be arrested and 4.5 times as likely to be incarcerated in the past year compared with white trans women (James *et al.*, 2016). A history of incarceration has been associated with later health problems such as physical and sexual violence, substance use, and HIV (Hughto *et al.*, 2019; Ledesma & Ford, 2020; Reisner *et al.*, 2014).

In addition, a history of incarceration further exacerbates economic vulnerability, as having a criminal record can limit employment, housing, and education opportunities, particularly for people of color (Western & Sirois, 2019; Western *et al.*, 2015; Yarborough, 2021). Thus, systemic racism and transphobia perpetuate a cycle in which participating in illegal economies due to limited economic opportunity leads to further restrictions on economic opportunity and poorer health outcomes.

Legal gender affirmation may be one way trans women of color can prevent or disrupt this cycle. Legal gender affirmation refers to changing one's name and gender marker on official documents such as birth certificates and driver's licenses (Reisner *et al.*, 2016). Evidence suggests that when trans women have legal documents that match their gender identity, their economic outcomes (e.g., income, housing) improve and they are less likely to face discrimination (Hill *et al.*, 2018).

Trans people have described how, without legal gender affirmation, background checks conducted during employment screening or during a housing application process can reveal one's trans status and lead to discrimination (Glick *et al.*, 2020; Jennings Mayo-Wilson *et al.*, 2020). However, trans women with a criminal record—who are disproportionately trans women of color—can face additional barriers to legal gender affirmation (Hill *et al.*, 2018).

This Viewpoint describes the types of policies governing legal gender affirmation across the United States and the role medical–legal partnerships can play in reducing economic vulnerability and improving health outcomes for trans women of color by increasing access to legal gender affirmation.

Policy Landscape

Policies and procedures regarding name and gender marker changes vary considerably by state. Some of the most restrictive policies for gender marker changes include requiring proof of sex reassignment surgery, certification from a medical professional, criminal background checks, or court orders to update driver's licenses or birth certificates; furthermore, people seeking name changes may be required to publish newspaper announcements of the name change (Movement Advancement Project, 2021). In addition to the logistical burden these requirements introduce, many are financially impossible for economically vulnerable trans people.

Name changes are generally more financially accessible than gender marker changes. However, 23 states have additional restrictions or requirements for individuals with a criminal record seeking name changes (Movement Advancement Project, 2021). Some of these requirements relate to specific types of crimes; for instance, Tennessee unilaterally denies name change petitions from people convicted of first- or second-degree murder or sex offenses (Movement Advancement Project, 2021; National Center for Transgender Equality, 2021).

Other states have broader policies. For example, Michigan law states that name change applicants with any sort of criminal record “have the burden of proof to rebut a presumption of fraudulent intent” (Movement Advancement Project, 2021; National Center for Transgender Equality, 2021). Finally, in many states, laws regulating legal gender affirmation for those with criminal records use vague language, leaving decisions at the discretion of individual judges. In Colorado, adults convicted of any felony will be denied a name change unless a judge determines “there is good cause,” and in Ohio, judges determine whether the “nature of the offense” warrants ineligibility for a name change (National Center for Transgender Equality, 2021).

Given the over representation of trans women of color in the criminal–legal system, the additional name change requirements for people with criminal records disproportionately impact this subset of trans individuals (James *et al.*, 2016). Navigating these legal gender affirmation procedures can be confusing, emotionally taxing, or otherwise burdensome, particularly for trans women of color who are dealing with a wide variety of other life stressors (Maier, 2020; Muligan, 2017). Although organizations offering low- or no-cost legal help for gender affirmation exist in cities across the country (e.g., the Transformative Justice Law Project of Illinois, Equality Ohio's legal clinic), these organizations are not always able to serve clients with complex legal histories and may not be geographically accessible to all.

Medical–Legal Partnerships

In an effort to increase trans people's access to quality legal services, some health care and social service

organizations serving trans people have established medical–legal partnerships that strive to meet the myriad legal needs of trans people while providing access to gender-affirming care. Gender-affirming care has been described as health care that holistically addresses the physical, mental, and social health needs of trans people, which includes but is not limited to the provision of medical gender affirmation such as hormones (Reisner *et al.*, 2016).

Medical–legal partnerships embed civil legal aid professionals within health care settings to address structural oppression that contributes to poor health outcomes (Regenstein *et al.*, 2018). For example, Whitman-Walker Health in Washington, DC, screens all patients for health-harming legal problems including those related to discrimination, consumer/debtor rights, and immigration, and connects them to their dedicated legal team (National Center for Medical–Legal Partnership & National LGBT Health Education Center, 2018; Whitman-Walker Health, 2021). Whitman-Walker Health’s services also include providing help with legal gender affirmation for patients living in DC, Maryland, or Virginia (Whitman-Walker Health, 2021).

Similar medical–legal partnerships exist at the Los Angeles LGBT Center’s Transgender Health Program, Callen-Lorde Community Health Center in New York City, Fenway Health in Boston, and Howard Brown Health in Chicago (National Center for Medical–Legal Partnership & National LGBT Health Education Center, 2018). These organizations provide essential services for their clients, yet few such partnerships exist in states where policies concerning legal gender affirmation are most restrictive.

Community-Led Initiatives in Detroit

Community-led initiatives to improve access to legal gender affirmation exist across the country and include both online and in-person services. In Detroit, the Fair Michigan Foundation, a 501(c)(3) nonprofit organization, facilitates the Trans Renaming Project. The Trans Renaming Project is a free, in-person legal clinic directed by a trans woman of color that provides a licensed attorney and a peer support program to assist with legal gender affirmation for low-income individuals (Kucharski, 2019). The Fair Michigan Foundation is one of the few programs that provide peer support to help complete paperwork for legal name changes and legal representation in court; however, currently these services are available only for those without a criminal record.

Formative work with trans women of color in Detroit highlighted the lack of services for those with a criminal record as a community priority with the potential for large economic and health impact (Lacombe-Duncan *et al.*, 2021). As such, a partnership between Fair

Michigan, Corktown Health Center, and researchers at the University of Michigan is now expanding the Trans Renaming Project to include trans women of color with criminal records into a sustainable medical–legal partnership. The project seeks to develop and evaluate a medical–legal partnership with Corktown Health Center to include (a) the existing peer support program; (b) no-cost legal services; (c) emergency assistance for food, housing, and transportation; and (d) immediate linkage to health care and social services.

In contrast to current siloed models of social and medical service delivery (Regenstein *et al.*, 2018), the development and rigorous evaluation of this medical–legal partnership for trans women of color in Detroit has the potential to address intersectional oppression, recidivism, and health inequities.

Conclusion

Legal gender affirmation can improve economic opportunities for trans women of color by reducing the risk of discrimination in employment, housing, and education systems. Accessing employment, housing, education, health care, and other social services is particularly important for trans women of color with criminal records or a history of incarceration; however, nearly half of states have policies that restrict access to legal gender affirmation for these individuals. Eliminating these policies and other policy barriers to legal gender affirmation is a crucial step toward health equity for trans people. Until this happens, medical–legal partnerships, particularly in places with the most restrictive policies, can help trans women of color navigate the criminal–legal system to achieve their gender affirmation, economic, and health goals.

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Authors’ Contributions

K.E.G., L.J.-C., J.A., R.T., A.M., V.S., T.R., A.W., M.C., and G.W.H conceptualized and are implementing the project. K.E.G., W.M.K., and L.H. drafted the article. All authors reviewed and provided feedback on the article.

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