

Know Your Rights Manual for the Transgender Community: Criminal Law

The National Lawyer's Guild, Minnesota
3547 Cedar Avenue South
Minneapolis, MN 55407
www.nlgminnesota.org

This is a publication of the National Lawyers Guild Minnesota Chapter, and is based on the Know Your Rights manuals published by the National Lawyers Guild Bay Area Chapter.

Last updated: April 2010. Available online at www.nlgminnesota.org/resources

First Bay Area edition compiled, written, and edited in July, 2008, by Alicia Virani, Thomas Steel Intern, 2008, and Prerna Lal, Law for the People Intern, Summer 2008, using the preliminary research of Becky Straus, Thomas Steel Intern, 2007

With special thanks to Carlos Villarreal and National Lawyers Guild; San Francisco, Alex Lee and the Transgender, Gender Variant, & Intersex Justice Project, and Community Advisory Board members: Andrea Horne, Ben Lunine, Esteban Rodriguez & Michelle Syler

Bay Area edition revised in July 2009 by Micah Ludeke, Thomas Steel Intern, 2009, and Kelly Densmore, Law for the People Intern, Summer 2009

With special thanks to Carlos Villarreal and the National Lawyers Guild; San Francisco, Dani Williams and the Transgender, Gender Variant, & Intersex Justice Project, and the Revision Advisory Committee

First Minnesota edition compiled, written, and edited in Spring, 2010, by Erica Keiter, Jessica Englund, John Ftizgerald, Sara Grant, and Micah Ludeke, volunteers of the Minnesota Justice Foundation and National Lawyers Guild, Minnesota

With special thanks to National Lawyers Guild San Francisco and all previous contributors, Carla Magnuson and the National Lawyers Guild; Minnesota, Sara Schwebbs and the Minnesota Justice Foundation, Phil Duran and OutFront MN, Professors Allen Blair and Beth Honetschlager of Hamline University School of Law, Michelle Gross and Communities United Against Police Brutality, and the Minnesota Lavender Bar Association

TABLE OF CONTENTS

INTRODUCTION.....	4
USING THIS MANUAL.....	4
FINDING THE LAW FOR FREE.....	4
ACCESSING LEGAL SERVICES.....	5
A NOTE TO PROFESSIONALS.....	5
BASIC RIGHTS.....	6
INTERACTIONS WITH POLICE OFFICERS.....	6
Stops and Searches on the Street.....	6
Identification.....	6
Questioning.....	7
Vehicle Exception.....	7
Transporting Arrestees.....	8
Treatment and Pronouns.....	8
Booking.....	8
TAKING ACTION: POLICE MISCONDUCT.....	10
DISCRIMINATION IN PRISON.....	12
Placement.....	12
Violence.....	13
Hormone Treatment.....	14
TAKING ACTION: DISCRIMINATION IN PRISON.....	15
GRIEVANCES.....	15
EXPUNGMENT.....	16
RESOURCES.....	18
MINNESOTA RESOURCES.....	18
NATIONWIDE RESOURCES.....	20
HELPFUL DOCUMENTS.....	22

INTRODUCTION

This information was compiled by law student volunteers of the National Lawyers Guild, Minnesota, using statutory law, case law, and the work of numerous legal and non-legal organizations across the country, notably, the National Lawyers Guild, Bay Area chapter. While the information here is up to date through April 2010, it is possible that substantive changes have been made to the laws since it was last updated. Please keep this in mind while using this resource. Source and reference information will be provided for most of the content in this manual to help you verify that the information is still good before relying on it.

This manual was created for use by transgender community members and allies, by service providers who work with the transgender community, and by attorneys and legal workers who provide advocacy and legal services to members of the transgender community. For purposes of this manual, the word “transgender” is used as an umbrella term that includes transgender, gender variant, and intersex people who are at any point of self-identification or physical transition. Occasionally, the text will refer to individuals as “he or she” or “his or her.” This reference does not indicate that a statement applies exclusively to persons who identify as male or female, but instead is used for legibility and accessibility. The information in this manual does not constitute legal advice; instead, it is meant to serve as a resource to help understand the landscape of transgender law in a particular area, and to help connect readers with the current information needed to verify law or navigate a particular situation. Although we hope that this manual assists service providers and community members in locating information and resources, it is important to note that only licensed attorneys are authorized to give legal advice. If you have a question of law that is outside of the scope of information provided in this manual, you may wish to consult or refer your client to an attorney or, if you are a client, to contact one of the legal support agencies listed in the resource guide in the back. Many of the organizations listed in the resource guide provide referrals to attorneys who are familiar with transgender law and working with the transgender community.

USING THIS MANUAL

This manual was created to be a first-stop reference for lawyers, service providers, and community members who need legal information about a transgender-specific issue or question of law. For ease of use, the content has been divided by common problems or needs. Case law, statutes, print and web resources, and other service organizations can be found embedded throughout the manual, referenced in the footnotes, and listed in the directory at the back of this manual. This resource was created by and for people in Saint Paul, Minnesota, and therefore much of the information is specific to Minnesota and Twin Cities-specific resources and law. We hope that this manual will be a helpful resource to readers outside of Minnesota because it includes information that is nationally relevant. However, it is important that non-Minnesotan readers pay close attention to what information appears to be specific to Minnesota or the Twin Cities, and not presume that the local information contained in this manual will transfer to other cities and states. Non-Minnesotan readers are encouraged to use the national resources listed in the directory at the back to locate up-to-date information about the laws and precedent in their state or city. Californian readers are encouraged to refer to similar Know Your Rights manuals for the transgender community in CA, which can be found at the National Lawyers Guild, Bay Area website: <http://www.nlgsf.org/resources>

It is important to note that, although the researchers who assembled this information did our best to be accurate on points of both black letter law and how the law tends to play out in the real world, there may be inaccuracies and nothing in this manual should be relied on as legal advice. Legal advice can only come from a lawyer. This manual is, however, a good starting place to understand the law and how it affects transgender people and communities in Minnesota.

FINDING THE LAW FOR FREE

Legal documents, such as cases and statutes, are actually public documents. This means that everyone (members of the public) has the right to research and read these documents. The problem is that sometimes these documents can be hard to find or access. Here are a few tricks to locate these documents. First, by going to

<https://www.revisor.mn.gov/statutes/> a person may search through an updated collection of the Minnesota Statutes. Second, if a case is cited in document and a person desires to find and read the actual case, we can find it by following a series of steps. The first step is to avoid getting flustered by the complicated series of numbers, letters and punctuation that follows the name of the case. The next step is to simply go to <http://scholar.google.com/>, click the “Legal opinions and journals” button and type in the volume number, the journal name, and the page number from the case citation.

For example, to find the case of *State v. Jordan*, 742 N.W.2d 149(Minn. 2007). We would ignore the name of the case (*State v. Jordan*), and copy the volume number (742), then journal name (N.W.2d), followed by the page number (149). Those three things are all that’s needed to find the case on Google scholar. Sometimes the journal name will be different, but as long as the right information is copied into the search bar, Google Scholar should be able to pull it up.

ACCESSING LEGAL SERVICES

The information in this manual is not legal advice. We hope that transgender individuals and their allies will use this manual as a first step for beginning to understand applicable law, and identify when legal help is needed. Many transgender people report barriers to accessing legal services for a number of reasons. The cost of hiring a lawyer is a major issue for many, along with fears that lawyers will not be respectful of trans clients, will not know enough about how laws specifically affect transgender people, or that the court system is prejudiced against transgender people. While all of these fears are justified, attorneys, activists, and advocates across the country are making huge strides in increasing legal services and resources for transgender people. Many states have GLBT bar associations that can be helpful in locating legal information or finding lawyers who are knowledgeable about transgender law and sensitive to the specific concerns of transgender clients. Many of the organizations listed in the resource section at the end of this manual are happy to assist individuals in finding legal services. Although legal services often seem too expensive, there are a lot of organizations and individual attorneys committed to making justice more accessible. You may be eligible for pro bono (free of charge) representation or fee structures that work for you (such as contingency fees, where you only pay if you win your case). Additionally, many attorneys are happy to meet with potential clients for free to assess your case. This can be a good way to learn more about your options and whether it's worth it to you to pursue specific legal actions.

A NOTE TO PROFESSIONALS

This manual was designed to be a resource to clients, but it is our hope that service providers and legal professionals will also find it useful. Attorneys may find this manual to be a helpful starting point for legal research and a useful tool for locating additional resources. All manuals in this series contain footnotes to case law, law review articles, and statutes that we hope will assist you. As with any compilation of research, attorneys are urged to check all cited law before relying on it to make sure there haven't been substantive changes and that it will apply to your client's particular case. Many of the organizations listed in the resource section of this document provide assistance to attorneys representing clients, and can be excellent sources for information and insight. When advocating for transgender clients in Minnesota, attorneys can advocate for the use of appropriate name and pronoun for their client in court and other proceedings. Minnesota Rule of Professional Conduct 8.4(6), which classifies the [harassment of] “a person on the basis of sex. . . sexual orientation, or marital status in connection with a lawyer’s professional activities” as misconduct. This obligation can be used to compel attorneys to refer to your client using the client's preferred name and pronouns. “Sexual orientation” here, as under the Minnesota Human Rights Act includes transgender individuals. Likewise, the Minnesota Code of Judicial Conduct can be used if a judge is refusing to address your client by appropriate name and pronouns.

BASIC RIGHTS

Both citizens and non-citizens alike have rights under the United States Constitution. The Fifth Amendment gives every person the right to remain silent – that is, to not answer questions asked by a police officer or government agent. The Fourth Amendment restricts the government’s power to enter and search a person’s home or workplace, although there are many exceptions and new laws have expanded the government’s power to conduct surveillance, as well as the authority for the police to search a person or belongings. The First Amendment protects a person’s right to speak freely and to advocate for social change. However, the Department of Homeland Security (DHS) can legally target someone based on political activities if that person is a non-citizen and can be deported. These Constitutional rights are absolute, and cannot be suspended – even during wartime.¹

INTERACTIONS WITH POLICE OFFICERS²

Stops and Searches on the Street

Much of what could potentially transpire between a police officer and someone on the street is governed by the Fourth Amendment, including when an officer may stop someone and what that officer has the authority to do after stopping someone. Even if it appears that a person has been stopped by an officer for no reason, this is often hard to prove, as the officer only needs to meet a relatively easy requirement in order to stop an individual. Although an officer is prohibited from stopping someone solely based on gender presentation, an officer must be able to state a “reasonable cause” (reasonable belief that someone is engaged in or about to be engaged in criminal activity) in order to stop an individual. The “reasonable cause” test, however, is easy to satisfy. Officers can cite to things such as being in a high crime area, the time of day, and their own expertise to support their findings of “reasonable cause.”³ The Minnesota Human Rights Act explicitly prohibits discrimination on the basis of gender and sexual orientation (among other things).⁴ Regardless, even if a person is doing nothing illegal, it is fairly easy for an officer to claim that he or she felt suspicious. Furthermore, police officers making traffic stops may order passengers to get out of the vehicle pending the completion of a stop.⁵

Under the Fourth Amendment and Minnesota law, the police need reasonable cause that a person is armed and dangerous in order to search their person.⁶ This type of search is referred to as a “frisk,” or a “pat down.”⁷ The purpose of a frisk is for the officer’s safety and therefore can only be done in search of weapons, and not in search of drugs. An officer may pat down a person’s clothing, which may include patting area over or near the chest, buttocks, or genitals. Grabbing at or near genitalia, however, simply to establish a person’s “true sex” is inappropriate and potentially unlawful, depending on the jurisdiction. Even if the police have no other grounds for suspicion, hostility or aggressive behavior may be enough for them to justify a search. It is important that the person being stopped continues to assert that they do not consent to the search; this will help ensure that any evidence found will be inadmissible in court if the officer’s search is later ruled to have been illegal.

Identification

After making a stop, an officer might ask the person for identification. In Minnesota, the refusal or failure of a person to submit an identification upon request cannot be the sole cause for arrest or detention, except where the driver of a motor vehicle refuses to produce a drivers license upon request.⁸ In other words, unless an individual

¹*Know Your Rights*, (2004) New York: National Lawyers Guild

²*Know Your Rights*, (August 2004) New York: National Lawyers Guild; *Know Your Rights*, (2006) Midnight Special Law Collective

³ *State v. Dalos*, 635 N.W.2d 94 (Minn. Ct. App. 2001).

⁴ Minn. Stat § 363A.

⁵ *Maryland v. Wilson*, 519 U.S. 408 (U.S. 1997).

⁶ Minn. Const. art. I, § 10

⁷ *Arizona v. Johnson*, 129 S. Ct. 781, 784 (U.S. 2009).

⁸ Minn. Stat. § 171.08

is pulled over while driving, it is legal to refuse to produce identification, and an officer may not threaten arrest in order to make a person comply. Individuals can also refuse to provide other personal information, such as address or immigration status. If arrested, an individual is not obligated to provide identification, but may be released more quickly if a name is provided, unless the individual is driving a vehicle, in which case refusing to provide identification can result in charges.

In some states, including New Mexico and Nevada, refusing to give a name can be cause for being detained or arrested. Regardless of the laws in a particular state, Police do not always follow the law, and refusing to provide your name may make an officer suspicious and lead to a person being arrested anyway. If an individual fears that providing a legal name would lead to arrest or harassment, such as having a legal name that is obviously not congruent with gender presentation, that person can claim the right to remain silent and, if arrested, this fact can be helpful later. Individuals should not give any name that is not a legal name, as providing a false name can be considered a crime, and even if the name given is the only name that person uses, it could still potentially be considered a false name for purposes of charging the individual.

Questioning

Everyone has the right to talk to a lawyer before deciding whether to answer questions. If a person does agree to be interviewed, that individual has the right to have a lawyer present. The lawyer's job is to protect a person's rights. Once a detainee requests a lawyer, the officer must stop trying to question the detainee, and the individual should make any further contact through the lawyer. If the person does not have a lawyer, the individual can still request to speak with one before answering questions. A detainee or arrestee should remember to get the name, agency and telephone number of any investigator who visits, and give that information to the lawyer. The government does not have to provide a free lawyer unless the person is charged with a crime, but the National Lawyers Guild or another organization may be able to help find a lawyer for free (pro bono) or at a reduced rate.

Some people might worry that insisting on remaining silent, requesting a lawyer, or refusing a search will make an officer more suspicious. This is not necessarily the case. Silence can demonstrate to officers an awareness of rights, thus providing additional incentive for the officers to follow procedural rules to avoid accusations of misconduct. As the *Miranda* Warning states, "anything you say can be used against you in a court of law." Arrestees often believe that explaining the situation will help resolve the problem, but it is impossible to know how statements made in front of an officer will be interpreted later, often in ways that will harm the arrestee rather than helping. The safest approach is for detainees or arrestees to calmly repeat that they wish to remain silent and do not consent to a search of their person or of their vehicle.⁹

Vehicle Exception

The law allows greater authority to officers stopping people in cars. In this context, there are certain actions a person can take to increase the chances of a safe and less confrontational encounter with an officer. People being stopped should keep their hands where the police can see them. If stopped while driving a vehicle, the driver is required to show license, registration, and proof of insurance. A stop of a motor vehicle is considered by law to create an exception to the warrant requirement. This means that if officers have probable cause to believe there is contraband in the vehicle, they can search without a warrant. If officers want to search the vehicle, it is best for a person to state clearly and calmly that he or she does not consent to a search. Often, police will request consent to a search because they do not have probable cause to search without asking. After all, if they had probable cause, there would be no need for consent, other than to broaden the scope of the legal search. Officers may separate passengers and drivers from each other to question them, but no one has to answer any questions.

In short, if someone is in a car, the police can search the driver and the passenger compartment of the vehicle, if they can show it was in the interest of their own safety. It is best not to consent to a search. The police may

⁹ *Know Your Rights: Dealing with Police*, (2006) Midnight Special Law Collective. Available online at: <http://www.midnightspecial.net/materials/dealingwithpolice.html> (Last visited June 23, 2008).

search anyway, but an illegal search may lead to suppression of the evidence in court.¹⁰

Treatment and Pronouns

Disrespectful and unsafe treatment by police officers is particularly prevalent with transgender community members. Acknowledging this reality, it can be difficult for detainees to know how to increase their chances of being treated safely and respectfully, especially in regards to pronoun use for transgender detainees. Minnesota does not have any policies regarding pronoun use or proper treatment of transgender detainees. This should not, however, stop you from requesting to be addressed by your preferred gender pronoun. Though Minnesota has not enacted a pronoun policy, the Minnesota Supreme Court looks to the 9th district, which includes California, for guidance. In San Francisco and in other municipalities, police officers are required to avoid harsh, profane or uncivil language as well as address a person with respect to their self-identified gender.¹¹ The Minnesota Supreme Court as well as Minnesota appellate courts have respected transgendered parties' preferred gender pronouns in recent written opinions¹². This demonstration of sensitivity could be indicative of a movement towards anti-discrimination by the court.

Transporting Arrestees

After being arrested, individuals are often transported to a different destination than where the arrest took place. Transport is a stage of the process where transgender people are particularly vulnerable to police misconduct. The Minneapolis Police Department has a policy requiring officers transporting an arrestee of the opposite sex to give the Minneapolis Emergency Communications Center (MECC) their destination and odometer reading upon leaving. When the officer reaches the destination, that officer must immediately notify MECC. The officer must notify MECC of any delay and, if possible, two officer squads should transport arrestees of the opposite sex¹³. There is no policy specific to transgender arrestees. However the public policy rationale for requiring notification of transportation of opposite sex arrestees could be extended to transgendered individuals. The Minneapolis Police Department's Code of Conduct requires that, "[n]o person shall be singled out or treated differently as a consequence of his/her race, ethnicity, national origin, gender, sexual orientation, or religion."¹⁴

Though it is important to know that these rules and guidelines exist, it is similarly important to know that these rules are not always followed. Document any suspected violation of rules and consult your attorney or consider filing a misconduct report if you believe your rights, as provided by these rules, have been violated. Use your own judgement and intuition to decide how to best keep yourself safe in a particular situation. For example, in order to request that arresting officers observe the policy for transporting arrestees of the opposite sex, and detainee might have to disclose his or her transgender identity; whether or not the arresting officers are aware or have assumed that the arrestee may be a transgender community member, this disclosure could result in increased safety, or decreased safety. Only individuals in a particular situation can make the judgement call about whether disclosing transgender status during transport will increase his or her safety.

Booking

Booking, which is the process of being admitted into detention after being arrested, can be complicated and stressful for transgender people. If a transgender arrestee has not already disclosed his or her transgender status or identity, the booking process is where disclosure might occur regardless of the arrestee's wishes. The booking process involves paperwork where the sex on a person's driver's license or state ID is recorded, and where a person's legal name is demanded.

¹⁰ State v. Jordan, 742 N.W.2d 149(Minn. 2007); State v. Gauster, 752 N.W.2d 496, 499 (Minn. 2008).

¹¹ *General Rules of Conduct*, SFPD General Order 2.01, #14; SFPD Department Bulletin, 03-243, 12/22/2003.

¹² Goins v. W. Group, 635 N.W.2d 717 (Minn. 2001); Doe v. City of Minneapolis, No. C2-02-817 (Minn. Ct. App. December 17, 2002)

¹³ MPD Policies and Procedures: 9-111 Transportation of Prisoners of the Opposite Sex, 2002. <http://www.ci.minneapolis.mn.us/mpdpolicy/9-100/9-100.asp#P174-11321>

¹⁴ MPD Policies and Procedures: 5-104 Impartial Policing, 2001. <http://www.ci.minneapolis.mn.us/mpdpolicy/5-100/5-100.asp>

Hennepin County has two detention facilities: the Public Safety Facility and the Adult Detention Center. Both of these facilities are located in Downtown Minneapolis. Each facility is separated into three sections: men, women, and a co-ed work-release section. It is probable that a transgendered arrestee will be housed according to the gender on their driver's license. Additionally, there are no regulations or codes determining whether a male or female officer will conduct the search. If you feel safe and are comfortable, request whether you would prefer a male or female officer perform the search. It is possible that your request will not be granted, but asking could help you feel safer during the process.

Neither Minneapolis nor St Paul have specific regulations related to booking transgender individuals. The Minnesota Department of Corrections offers a general booking procedure that will shed some light on the process. When a transgender arrestee is brought to the detention center, an officer will review the individual's legal documents to see if that person meets the admission requirements of the facility. The general booking process has several steps where transgender or intersex status might be disclosed whether or not the individual wants this information known. The first general step is recording of information – the booking form. The booking form in Hennepin County will ask for either Male or Female gender as well as driver's license information. Similar to a job application, the form will request your address, work or school information, and emergency contact. The name on the driver's license is the name that you will be booked under. However, if the name on your driver's license is not the name that you prefer to be called, let the officer know when the form is being filled out. It is possible that the officer will disregard your request, but if you feel safe and are comfortable with voicing your preferred name, do so. After the intake form, arrestees will usually have their mug shot taken and their property collected. The fourth step is often fingerprinting, which will likely connect your fingerprint to the gender/sex indicated on the booking form. A nurse will screen the arrestee for potential vulnerability to sexual assault and if that person has tendencies to act out with sexually aggressive behavior. If either of these are present, the nurse will notify the associate warden of operations. Being a transgender individual is often considered within the scope of vulnerability to sexual assault. However, as always, be mindful of who is making the assessment and your safety during that process. Individuals may feel that disclosing to the examining nurse is a safer choice than disclosing to the booking officer. Although it often feels like there is no safe time to disclose transgender status or identity while detained, individuals may choose to disclose during the booking process before an unclothed body search if he or she believes that this search will be uncomfortable or unsafe.

Next, the arrestee will be assigned an Offender Identification Number and will undergo an unclothed body search. Generally, a staff member of the same gender will conduct the search. If you feel safe and comfortable, voice the gender you identify with and/or request that the same gendered officer conduct the search. You will then be photographed, including all "identifying marks, scars, tattoos and unusual physical characteristics". This has the potential to be highly invasive and uncomfortable. The arrestee will then be fingerprinted and given the intake interview. The intake interview will encompass personal, work, and health information. When asked for your name, offer your preferred name if it is different than the name on your driver's license, and your preferred pronoun if it is different than what the officers have been using. The officer conducting the interview may or may not respect your request.

The arrestee's personal property will then be searched. Contraband items, like guns, knitting needles, tweezers, and knives will be confiscated, and you will not be allowed to retrieve them after you are released. The remaining personal property may be picked up according to which county you are in and what their procedures are. The staff will then offer the arrestee a chance for shower and hair care as well as clean clothing. At this time, the staff will assign a living unit and a case manager to the arrestee. If the arrestee indicates a transgender identity or medical history or transsexual treatment, identifies as gender-variant, indicates a medical history of an intersex condition, or is perceived by the staff to be gender-variant or transgender,, the staff may request that the individual be placed separately in an administrative segregation until the Transgender and Placement and Treatment form is considered by the warden. Administrative segregation is also known as solitary confinement, and although individuals are protected from other detainees, guards can still access the detainee, and many detainees

have reported harassment and assault by guards while in administrative segregation.

A registered nurse will then complete a medical, dental, mental health, and sexual assault risk assessment within 24 hours after arrival to the facility. Additionally, within 14 days of admission, a Behavioral Health staff member will conduct an Admission Mental Health Screening.¹⁵

TAKING ACTION: POLICE MISCONDUCT

When dealing with the police, there are basic things one can do to stay safe, or at least make a stressful situation safer. People are less threatening to an officer if they keep their hands in view, don't make sudden movements, never touch the officers or their equipment, and remain respectful at all times. Anything that detainees might do to give an officer reason to argue that they are dangerous will work against them. Such behavior could even lead to an aggressive reaction on the part of the police, and a charge of assault against the detainee. Just after someone has been stopped by an officer, it is a good idea to ask the officer if he or she is free to go. If the answer is yes, one might consider just walking away. If the police say an individual is not under arrest, but is not free to go, that person is being detained¹⁶. Though being detained is not the same as being arrested, an arrest could follow. An officer is required to have an explanation for such detention¹⁷. It is advisable to ask the officer for an explanation of why you are being detained, though they may not answer your question. If the detention is later challenged, the officer will be required to provide the court with an explanation for the detainment. The person being detained does not have to answer any questions¹⁸. Even though people who are being detained often feel that they are not being treated with respect, and may be stressed out or upset, maintaining a respectful and polite tone with the officer can go a long way toward staying safe. Especially if you are refusing to answer questions or identify yourself, use your own best judgement about how to speak to police officers.

If a person feels his or her rights have been violated by a police officer, it is important to document as many of the following as possible:

- Date, time, and location of the incident
- The officer's name, badge number, and squad car number
- A physical description of the officer
- The officer's precinct number or division (found on the brass insignia on the officer's shirt collar)
- Any witnesses present at the time (get names and phone numbers if possible)

Document any injuries right away. If a person is injured, they should get medical care right away. Be sure to tell the caregiver that the injuries were caused by police and be certain it is noted in the medical record. Get a copy of the medical record when leaving the clinic or hospital. Have injuries photographed immediately, using good quality color film. If a healthcare facility offers to take photographs, have them use your camera or take copies of the photographs when you leave. Sit down right away and write down every detail about the incident. Ask any witnesses to do the same.

Below are several ways to report police misconduct. **Please note that the National Lawyers Guild does not**

¹⁵ Policy 202.040 & 202.045, Minnesota Department of Corrections Policies. Available online at: http://www.doc.state.mn.us/DocPolicy2/html/DPW_toc.asp#OFFENDER_SERVICES.

¹⁶ Based on Minnesota case law, a person is "seized" or detained, if an officer asks them to stop when they try to leave. In order for an officer to legally detain a person they must have a reason to do so. *In re E.D.J.*, 502 N.W.2d 779, 783 (1993). If a person believes they are or have been unlawfully detained, they should clearly and repeatedly ask if they are free to go, and ask to call an attorney.

¹⁷ Based on Minnesota case law, reasonable and articulable suspicion must be present at the moment the person is detained, but it is unclear whether or not a police officer is required to give his or her reasons to the person being detained when asked. See Minnesota Court of Appeals case, *State v. Bergerson*, 659 N.W.2d 791, 795 (Minn.App. 2003).

¹⁸ In Minnesota you do not have to give law enforcement your name. However, beware that in some states it is a crime to refuse to provide law enforcement with your name. See U.S. Supreme Court case, *Hiibel v. Sixth Judicial District*, 542 U.S. 177, 187-188 (2004).

encourage individuals to report police misconduct directly to police departments or city offices because of a historically high incidence of retaliation and non-response.

For issues with the Minneapolis Police, one can file a complaint with the **Minneapolis Civilian Police Review Authority**, located in the Grain Exchange Building, 301 4th Avenue South, Room 670, Minneapolis, MN 55415. You can file a complaint online at <http://www.ci.minneapolis.mn.us/forms/mpd-citizen-report/cra-complaint.asp>. An investigator will follow up with you. Or you can contact an investigator by calling 612-673-5500. An official complaint does not exist until an investigator drafts a written complaint, the individual signs the complaint, and it is received in the Civilian Review Authority office.

Individuals who experience police harassment or misconduct by the Saint Paul Police can contact the **Police-Civilian Internal Affairs Review Commission**, located at 367 Grove Street, Saint Paul, Minnesota 55101. A person can start the complaint process by calling the Review Commission at 651-266-5583, or by visiting the office. The office is open regularly on Monday-Friday from 8:00am-4:00pm. After calling or visiting the Review Commission office, you will get a complaint packet that includes several forms, and requires you to attach a sworn statement describing the event(s) that occurred. You must complete and return this packet in order for the process to move forward. Once the Review Commission office receives the complaint packet, the complaint is reviewed and assigned to an investigator.

Individuals in Minneapolis who believe that there is a discrimination element in their complaint may also wish to file a complaint with the **Minneapolis Commission on Civil Rights**. To set up an appointment to file a complaint in person, one can call 612-673-3012. One can also file a complaint online at <http://www.ci.minneapolis.mn.us/forms/civil-rights/>

It is important to note that many people do not choose to file police misconduct reports with the Minneapolis Civilian Police Review Authority or with city offices because they fear retaliation by officers, or a lack of response due to a lack of resources and support for these review processes. If you do not feel comfortable with reporting in a way that could alert the officers involved of your complaint, you may wish to file a report with a community organization dedicated to addressing police misconduct in Minnesota.

Individuals can file a report with **Communities United Against Police Brutality (CUAPB)**. CUAPB is a community advocacy and social justice organization which aims to create a climate of resistance to abuse of authority by police organizations and to empower local people with a structure that can take on police brutality and actually bring it to an end. They also provide support for survivors of police brutality and families of victims so they can reclaim their dignity and join the struggle to end police brutality. CUAPB can assist people by helping them document their injuries, locating evidence of their mistreatment by police, and linking people with resources, such as lawyers.

CUAPB operates a 24-hour emergency hotline, which can be reached at 612-874-STOP.

CUAPB does not investigate the complaint, and does not have any authority to discipline police officers. In order to have a complaint investigated for possible officer discipline, one must report the misconduct to the appropriate city agency. CUAPB will help community members with this process. All CUAPB reports are 100% confidential.

Individuals also have the right to go down to a police precinct and make a report to the commanding officer about police misconduct. **However, the Minnesota National Lawyers Guild does not encourage individuals to take this step, as many people have experienced extreme, violent retaliation as a result.** Individuals may also make a complaint directly with the Internal Affairs Division of the police department, but the National Lawyers Guild similarly does not recommend this due to the likelihood of retaliation. If one desires to go to a police station or other law enforcement facility to file a complaint it is highly recommended to bring a person or two with you. It is recommended that you do not go alone. A person may also want to carefully consider filing a

complaint with a city agency if there is any possibility of criminal charges being filed against the person who experienced the misconduct. Charges can be filed in retaliation of a person making a police misconduct report.

Individuals anywhere in the country can visit the **National Police Accountability Project** (NPAP)'s website at www.nlg-npap.org to locate attorneys and organizations that work with police misconduct issues across the country. The National Police Accountability Project is a project of the National Lawyers Guild, and is an organization of plaintiff's attorneys who work on police misconduct cases.

Making complaints to the city agencies can be highly ineffective and discipline is historically and statistically unlikely. Frequently, there is very little action taken on reports of police misconduct. A report by the Minneapolis Civilian Police Review Authority explains that even when the Civilian Review Board substantiates complaints of police misconduct, Minneapolis Police Chief Dolan refuses to sustain the complaints or to discipline officers¹⁹. However, benefits of reporting to the city agencies include that there is a possibility (though unlikely) of officer discipline, a report that is substantiated may bolster any civil lawsuit that might be brought against the officer(s), reports can be used in class action lawsuits brought by non-profits on behalf of a group, and each individual report affects statistics and other information that is used to influence attempts to bring about changes in police policies and tactics.

DISCRIMINATION IN PRISON²⁰

Transgender people in prison often face a variety of types of discrimination. One common problem is discrimination in gender identity expression. This may involve policies that require prison staff to refer to people in prison by titles or pronouns associated with their birth sex (for example, calling a trans woman "Mr." and "he" against her wishes) or instituting mandated dress and grooming codes that negatively affect transgender people (for example, requiring all people in men's prisons to wear masculine clothing, refusing to permit inmates in men's prisons to use makeup, and denying transgender women in men's prisons access to bras or prescription hormones). In addition, prison staff often discriminate against transgender people by asking them to strip unnecessarily for "gender checks," asking improper questions about private details of their anatomy, or placing them in isolation as the alternative to an unsafe group placement. Transgender people in prison frequently face verbal humiliation from both other prisoners and staff. Transgender people often have difficulty accessing hormone replacement therapy (HRT) while incarcerated. In some cases, hormones that have been prescribed, approved, and ordered by a doctor and/or court are not accessible to an inmate because of uncooperative staff or medical providers in the jail or prison. Transgender people often face additional types of medical neglect, both in receiving transgender-specific care and in general medical attention. Transgender people in prison are often subjected to very serious discrimination including sexual harassment, physical assault, and even sexual assault and rape both by fellow inmates and staff.

Placement

Commonly, in prison systems, transgender people who have not had genital surgery are housed according to birth sex, regardless of how long the individual may have lived in his or her present gender identity, and regardless of how many other types of medical transition treatments used, such as hormones, facial surgeries, or top surgeries, and regardless of the inmate's appearance. To illustrate this issue, a transgender woman who has been on hormones, has had a tracheal shave and facial reconstruction surgery, has breasts, long hair, and lives full time as a woman, but has not had genital surgery would be classified as male and incarcerated in a male facility. It is easy to see how this policy creates potentially dangerous situations for transgender inmates, particularly in circumstances where transgender women are housed in mens prisons, renowned for sexual and

¹⁹ Civilian Police Review Authority, CRA Participation in Performance Review of MPD Chief Dolan, December 2009, http://www.ci.minneapolis.mn.us/cra/docs/CRA-Board_Chief-Dolan_review_2009.pdf

²⁰ Most of the information is taken from Rights of Transgender Prisoners, National Center for Lesbian Rights, June 2006, <http://www.nclrights.org/site/DocServer/tgprisoners.pdf?docID=1285> and supplemented with phone calls

physical violence. Transgender individuals who are concerned with safety in the prison system can, upon entry, request “administrative segregation”(isolation), though such an accommodation will not always be granted. On the positive side, placing a transgender woman in administrative segregation may provide her with greater protection than being housed in the general population. On the negative side, however, administrative segregation also results in exclusion from recreation, educational and occupational opportunities, and associational rights. Such exclusion may violate the constitutional rights of prisoners if the conditions of segregation are excessively harsh. Furthermore, administrative segregation does not protect transgender prisoners from abuse at the hands of guards and may even lead to increased vulnerability to such violence.

In Minnesota, the Department of Corrections has implemented a policy to specifically address placement concerns of transgender and transsexual prisoners.²¹ The Evaluation and Placement of Transgender Offenders policy outlines procedures for evaluating placement requests. Prisoners who indicate a past history of transgender treatment, identify as gender-variant, or has “other clinical conditions in which gender assignment is unclear such as cross-dressing or physical features characteristic of gender different from that assigned at birth” may request a placement review. The Transgender Committee, comprising of facility staff, will evaluate the prisoner’s individual placement concerns and make a recommendation.²² The prisoner will need to submit to a physical examination and agree to the release of all past medical records for the Committee’s review. If the prison fails to comply with these requests, the Committee may refuse a determination and place the prisoner in administrative segregation instead. After a proper evaluation of all requested materials, the Committee will make a placement and treatment plan recommendation to the Assistant Commissioner for final approval. Unfortunately, since each review is completed subjectively on a case-by-case basis, there is no guarantee that the transgender prisoners will be granted their placement request or will receive the treatment and protection necessary while serving their sentence.

Although there is significant negative precedent for prisoner's access to transgender-related health care, new case law is emerging all the time that is helping to pave the way toward better access. Much of the negative case law involves prisoners who were representing themselves (pro se). Many organizations across the country, including the American Civil Liberties Union, the Transgender Rights Project of LAMBDA Legal, the National Center for Lesbian Rights, the Sylvia Rivera Law Project, and the Transgender, Gender Variant, and Intersex Justice Project are working to support individuals fighting for transgender health care while incarcerated.²³ Notably, in April, 2010, Wisconsin struck down a state law that prevented transgender prisoners from receiving transgender-related medical care while incarcerated.²⁴

Violence

Prison officials are required to protect prisoners from violence at the hands of other prisoners. Prison officials who display a "deliberate indifference" to this duty violate the Eighth Amendment prohibition of cruel and unusual punishment. The U.S. Supreme Court defined "deliberate indifference" in *Farmer v Brennan*, 511 U.S.

²¹ MN DOC policy 202.045 under the authority of Minn. Stat. §241.01

²² The Transgender Committee is comprised of “Health Services Director, department Medical Director, intake/security representative, Director of Behavioral Health, health services administrator from intake facility, department Director of Nursing, warden of the facility where the offender is currently housed, and any other department employee deemed necessary to make a decision.”

²³ See generally *Kosilek v. Maloney*, 221 F.Supp.2d 156 (D.Mass. 2002) (Federal district court held that Gender Identity Disorder diagnosis constituted serious medical need and prison officials were required to provide adequate treatment), *South v. Gomez*, 211 F.2d 1275 (9th Cir. 2000) (9th Circuit held that terminating transgender prisoner's hormone replacement therapy when she was transferred to a new facility violated her Eighth Amendment rights), *Wolfe v. Horn*, 130 F. Supp. 2d 648 (E.D. Pa. 2001) (Court held that terminating prescribed hormone replacement therapy without understanding plaintiff's condition and failing to treat withdrawal symptoms and effects of termination could constitute “deliberate indifference”).

²⁴ The Wisconsin law denying medical care to transgender prisoners was struck down on March 31, 2010, and is not yet reported. A case profile and PDF of the court order can be viewed online at: http://www.aclu.org/lgbt-rights_hiv-aids/sundstrom-v-frank-case-profile

825 (1994). *Farmer* involved a transgender woman who was severely beaten and raped by her male cellmate in a maximum-security prison. The Court declined to adopt a definition of deliberate indifference that would hold a prison official liable for violence inflicted on a prisoner when the official "should have known" the prisoner was in danger. Instead, the Court ruled that an officer is in violation of the Eighth Amendment where the officer is found to have actual knowledge that the prisoner is at risk of violence and deliberately fails to act on that knowledge, a more difficult standard to meet.

According to Amnesty International, an inmate's "perceived or actual sexual orientation is one of four categories that make a female prisoner a more likely target for sexual abuse, as well as retaliation when she reports that abuse."²⁵ The Minnesota Department of Corrections has policy provisions, based on the Prison Rape Elimination Act, specifically aimed to support and ensure enforcement of its zero-tolerance approach toward sexual violence and misconduct towards incarcerated individuals. The DOC has implemented a bilingual telephone reporting system, referred to as the Sexual Assault Helpline, where currently incarcerated victims may call to report instances of sexual violence and misconduct committed by offenders, staff, volunteers, and contractors.²⁶ Additionally, the DOC has established a Sexual Assault Response Team (SART) for the sole purpose of addressing and responding to the needs of identified victims.

For other complaints of violence an aggrieved inmate may communicate informally with prison staff through kite forms. Once the inmate has submitted a kite form, the inmate may later submitted a more formal complaint called an Offender Grievance Form, which is intended to address issues that were not satisfactorily addressed under an earlier complaint, claim, or administrative procedure. An inmate has 30 days, from the date of the alleged occurrence, to submit this form. Further, if that same inmate is not satisfied with the warden or designee's response to the Offender Grievance Form they have 15 days to appeal.²⁷

In addition to the policies set forth by the Minnesota Department of Corrections, organizations across the country are working to address violence and sexual violence in prison and many of these organizations provide assistance with filing complaints and support for survivors. then refer them to the resource section (and maybe embed one or two organizations right into the text if there's one or two that are really full service)

Hormone Treatment

Currently, no legislative act exists mandating the distribution of or detailing the procedures for hormone replacement therapy (HRT) for transgender inmates.²⁸ The U.S. Bureau of Prisons has a policy to provide transgender prisoners, who were receiving such treatment prior to incarceration, with hormone replacement therapy.²⁹ The hormone therapy provided is typically restricted to the level the prisoner had received prior to incarceration. All states vary on their policies regarding hormone replacement therapy.³⁰ Locally, the Minnesota

²⁵ Amnesty International, *Women in Prison: A Fact Sheet*, available at <http://www.amnestyusa.org/women/womeninprison.html> (last visited March 10, 2010).

²⁶ The Helpline is accessible to all inmates and victims can access the Hotline answering services by calling (651) 603-6798. Inmates will not be charged for accessing the Hotline using the collect call option. The Hotline has options for both English and Spanish prompts.

²⁷ DOC policy 303.100 under the authority of Minn. Stat. §243.56

²⁸ ACLU, *Know Your Rights: Transgender People & the Law*, available at http://www.aclu.org/images/asset_upload_file781_33764.pdf (last visited March 24, 2010).

²⁹ *Id.* See U.S. Dept. of Justice, Federal Bureau of Prisons Program Statement 6031.01, *Patient Care* (Jan. 15, 2005), available at http://www.bop.gov/policy/progstat/6031_001.pdf (Last visited March 30, 2010). The policy specifically provides: "Inmates who have undergone treatment for gender identity disorder will be maintained only at the level of change which existed when they were incarcerated in the Bureau. Such inmates will receive thorough medical and mental health evaluations, including the review of all available outside records. The Medical Director will be consulted prior to continuing or implementing such treatment. The Medical Director must approve, in writing, hormone use for the maintenance of secondary sexual characteristics in writing." *Id.*

³⁰ See National Center for Lesbian Rights, *Rights of Transgender Prisoners*, available at <http://www.nclrights.org/site/DocServer/RightsOfTransgenderPrisoners.pdf?docID=6381> (last visited March 30, 2010).

Department of Corrections has a policy, entitled the Evaluation and Placement of Transgender Offenders, which provides transgender prisoners with “gender-related mental health services and other medical or mental health therapy as necessary throughout [their] incarceration.”³¹ Under this policy, each inmate is evaluated on an individual basis by DOC health services staff for a subjective determination on the inmate’s treatment plan. Unfortunately, neither policy guarantees that transgender inmates receive the correct levels of hormone treatment or the necessary support services throughout their incarceration.

Some transgender inmates have attempted to use the Cruel and Unusual Punishment clause of the Eighth Amendment in persuading the courts to mandate proper hormone treatment during incarceration. However, recent case law indicates a general consensus among the courts that hormone replacement therapy for transgender prisoners is not a constitutional right and, therefore, not mandatory. The adoption and implementation of such treatment programs is left to the discretion of individual prison administrations. Additionally, because hormone replacement therapy has not been deemed a protected constitutional right, prisoners denied this treatment have typically been unsuccessful when raising eighth amendment concerns in court.³²

According to the policy set forth by the MN Department of Corrections, transgender prisoners in need of hormone replacement therapy must follow certain, set procedures in order to be potentially eligible for hormone replacement therapy during their period of incarceration. The inmate will need to submit a request to the MN DOC and agree to a complete medical history and physical examination. The information gathered will be used by the facility’s health services to make a determination regarding the inmate’s transgender status.³³ The Transgender Committee will review each case individually and, based on the prisoner’s medical history and physical/mental examinations, will make a recommendation for both the inmate’s placement and treatment plan.³⁴ Unfortunately, there is no guarantee that the transgender prisoner will receive their requested hormone replacement therapy or, even if permitted, that they will receive the requisite levels of therapy as necessary for their medical needs.

TAKING ACTION: DISCRIMINATION IN PRISON

Filing Grievances

The Minnesota Department of Corrections does not offer information directly affiliated with prisoner discrimination. In order to access such information one would have to refer to MN DOC Policy 202.005 entitled Offender Rights.³⁵ Under this policy the Department has affirmatively defined prisoner’s rights as including the protection from “personal abuse, corporal punishment, personal injury, property damage, harassment and/or disease.”³⁶ Although the Department explicitly condones discrimination, it does not give viable or unequivocal resources for transgender prisoners in need to legal protection from discrimination while incarcerated.

³¹ See Minnesota Department of Corrections, *Policy 202.045: Evaluation and Placement of Transgender Offenders* (2007) available at http://www.doc.state.mn.us/DOcpolicy2/html/DPW_Display.asp?Opt=202.045.htm (last visited March 24, 2010).

³² See generally *Young v. Adams* (2010 court opinion - case not yet published). See generally *Praylor v. TDCJ*, 430 F.3d 1208 (5th Cir. 2005).

³³ MN DOC, Policy 202.045: Evaluation and Placement of Transgender Offenders (2007), available at http://www.doc.state.mn.us/DOcpolicy2/html/DPW_Display.asp?Opt=202.045.htm (last visited March 30, 2010). An inmate must meet pre-determined criteria in order to be evaluated for hormone therapy: indication of a history of transgender or transsexual-related treatment. *Id.*

³⁴ *Id.* The policy does not specifically state that all treatment plans will necessarily include hormone treatment. Rather, one must infer that hormone replacement therapy is merely one option, which may potentially be recommended by the Transgender Committee. *Id.*

³⁵ MN DOC, Policy 202.005, available at http://www.doc.state.mn.us/DOcpolicy2/html/DPW_Display.asp?Opt=202.055.htm (last visited 4-15-10)

³⁶ *Id.*

EXPUNGEMENT IN MINNESOTA

Expungement is a process by which a person can ask to have their arrest and court records returned to them or sealed, depending on the specifics of their case³⁷. Individuals should be aware that even if the charges were dropped, or if a person is acquitted of a crime, there are still records of the arrest that may be detrimental in finding housing and employment, or may have consequences in other areas. A person should also be aware that certain types of arrest and court information that are not normally available to the public might be accessed because common forms, such as many rental applications require that you authorize the landlord to access this information. There are many reasons that might lead a person to seek an expungement, however a person should be aware that the benefits available through the expungement process in Minnesota are limited. There are two different types of expungement under Minnesota law, expungement under Minnesota Statutes and expungement under the inherent power of the court, and what actions can be taken to expunge records also depends on several different factors specific to the individual case³⁸. An individual should be aware that arrest and court records are maintained by 10-11 different government agencies³⁹ in addition to private data companies. A person should determine what records they are targeting to be expunged and make sure that they are using the correct process to target those specific records. The following information is general information, and it should be noted that there are many exceptions to these general rules⁴⁰. Therefore it is highly recommended to consult with an attorney to see if there are specific exceptions that might apply to your case.

Expungement of Criminal Records Under Minnesota Statutes

Two different Minnesota Statutes govern expungement. The first law, Minnesota Statutes, section 299C.11, governs arrest records that are maintained by law enforcement agencies. The second law, Minnesota Statutes, chapter 609A, applies to all criminal records maintained by agencies within the criminal justice system. Minnesota Statutes, section 299C.11, lets the subject of an arrest record request that it be returned if proceedings in the criminal justice system ended at an early stage. Specifically, the person cannot have been convicted of a felony or gross misdemeanor in the ten years preceding the arrest; and all criminal proceedings related to the arrest must have been determined in favor of the arrested person; and either the charges must have been dismissed before a probable cause determination⁴¹ was made in the case or the prosecutor must have declined to file charges and no grand jury indictment was returned in the case. If the above requirements are met, the law allows the petitioner to seek return of the records directly from the law enforcement agency or to ask a court to order the records returned as part of an order in an expungement proceeding under chapter 609A. In order to request records from law enforcement you must write a letter to the agencies that may have a record of the arrest⁴².

Minnesota Statutes, chapter 609A, provides a procedure for requesting expungement of criminal records that must be used by an individual who was convicted of certain offenses or by an individual whose case proceeded further than would qualify for return of records under Minnesota Statutes, section 299C.11. Additionally, an individual who would be eligible to ask law enforcement for return of records under section 299C.11 may choose to use the chapter 609A process.

Under chapter 609A, expungement means that the records are sealed and that the agency maintaining the records may not disclose their existence or open them unless otherwise authorized by a court order or statutory authority.

³⁷ See Minnesota Statutes sections 299C.11 and 609A (2009).

³⁸ It should also be noted that there is no such thing as “expungement” in Federal Court. However, a person with charges in Federal Court can seek a pardon. Information and instructions regarding the pardon process are available at http://www.justice.gov/pardon/pardon_instructions.htm. There is also a state pardon process. The MN Board of Pardons can be reached at 651-361-7171.

³⁹ Records for juvenile offenders are more limited and tend to be kept at a fewer number of agencies.

⁴⁰ One such exception is that most sex offenses cannot be expunged under Chapter 609A.

⁴¹ See Minnesota Appellate Court case, *State v. Bragg*, 577 N.W.2d 516 (Minn. App. 1998) which interpreted “probable cause determination” to mean a determination, based on the full record, of whether sufficient probable cause exists to proceed to trial.

⁴² Several sample letters can be found at <http://www.mncourts.gov/selfhelp/?page=1673>.

Minnesota Statutes, section 609A.01, specifically states that “[n]othing in this chapter authorizes the destruction of records or their return to the subject of the records.”

In order to pursue expungement under chapter 609A, a person must file a petition with the court. There is no filing fee to file this petition. The petition must then be served on all agencies that may have records of the arrest and/or court proceedings. At least 60 days after service on the agencies, there will be a court hearing. If none of the agencies come to the court hearing and object, the expungement will be granted.

In addition to other identifying and personal information, the petition filed under Minnesota Statutes, chapter 609A must include the following:

- why expungement is sought (e.g., for employment or licensure purposes), the statutory or other legal authority under which it is sought, and why it should be granted;
- the details of the offense or arrest for which expungement is sought, including information about any victim and any current or prior order for protection;
- in the case of a conviction, what steps the petitioner has taken toward personal rehabilitation;
- the petitioner’s criminal conviction record in this state and in other states, regardless of whether the conviction occurred before or after the arrest or offense for which expungement is sought;
- the petitioner’s criminal charges record in all prior and pending cases, including charges continued for dismissal or stayed for adjudication, or charges that were the subject of diversion; and
- all prior requests made by the petitioner for a pardon, return of arrest records, or expungement for this or any other offense, whether granted or not, and all stays of adjudication or imposition of sentence involving the petitioner.

Expungement of Criminal Records Under the Court’s Inherent Judicial Power

The statutory remedies providing for expungement are only available in cases where the underlying proceedings were resolved in favor of the petitioner, so the majority of requests for expungement are brought pursuant to the courts’ inherent authority. Petitions for expungement under the court’s inherent authority require a \$330 filing fee. A petition for expungement under the court’s inherent authority should state what the person has done to “rehabilitate” themselves after the offense and why the expungement should be granted. It can be helpful to get evidence of the harm of the criminal record to the person (for example, a letter from an employer explaining that but for the criminal conviction, they would have hired the person). The court will use a “balancing test” to decide whether or not the records should be expunged, which means that the court will balance the interests of the person seeking the expungement with the interest of the state, such as public safety. Judges generally can only order judicial records to be expunged, however many criminal records are stored in offices that are considered to be within the executive branch of the government⁴³. When determining whether the benefit to a petitioner of expungement outweighs the disadvantages to the public, a district court should consider five factors: (a) the extent that a petitioner has demonstrated difficulties in securing employment or housing as a result of the records sought to be expunged; (b) the seriousness and nature of the offense; (c) the potential risk that the petitioner poses and how this affects the public’s right to access the records; (d) any additional offenses or rehabilitative efforts since the offense, and (e) other objective evidence of hardship under the circumstances⁴⁴. These factors are generally only used to decide whether judicial branch records should be expunged; executive branch records are generally only expunged when it is considered to be an “essential” judicial function, meaning that the court could not adequately function as a court without the power to expunge the records in question⁴⁵.

⁴³ Some judges have at times ordered both judicial and executive records to be expunged, however the expungement of the executive records is often reversed if appealed. See Minnesota Appellate Court case *State v. N.G.K.*, 770 N.W.2d 177, 181-183 (Minn.App. 2009). This is because the United States and Minnesota Constitutions require separation between the judicial and executive branches of government. A prominent Minnesota Supreme Court case that explains the separation of powers under the Minnesota Constitution is *In re Clerk of Lyon County Courts’ Comp.*, 241 N.W.2d 781, 786 (Minn. 1976).

⁴⁴ See Minnesota Appellate Court case *State v. H.A.*, 716 N.W.2d 360, 364 (Minn.App. 2006).

⁴⁵ See Minnesota Supreme Court case *State v. S.L.H.*, 755 N.W.2d 271, 275-282 (Minn. 2008); and Minnesota Appellate Court case *State v. N.G.K.*, 770 N.W.2d 177, 181-183 (Minn.App. 2009).

RESOURCES

Below is a brief list of resources that may be especially helpful. This collection is only a small representation of transgender-welcoming services in Minnesota and the United States. Searching online for additional resources may yield more specific information or assistance. Resources are divided by Minnesota-specific organizations, national organizations, and general resources, which includes legal documents, publications, research tools, and “know your rights” resources. For ease of use, we have specified whether organizations provide direct or support services, and to what extent they serve the LGBTQI (Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex) communities, and specifically, to what extent they serve transgender communities. National Lawyers Guild Interns spoke with representatives of most of these organizations to ensure that our description of their services is correct and up-to-date, and that they are explicitly welcoming of transgender community members. If an organization's description does not address being explicitly welcoming, it means that NLG could not reach anyone with the organization. In the general experience of the NLG interns, legal aid attorneys and volunteers work hard to be welcoming to all clients. If you are a client in need of legal aid services but feel uncomfortable contacting organizations without knowing how welcoming they are to transgender clients, some of the below organizations that are explicitly transgender-welcoming may be able to help you identify safe and welcoming services that are specific to your particular legal needs.

MINNESOTA RESOURCES

Communities United Against Police Brutality, www.cuapb.org

24-hour hotline: 612-874-7867 (612-874-STOP)

Communities United Against Police Brutality is a Twin-Cities based organization that was created to deal with police brutality on an ongoing basis. CUAPB offers a 24-hour crisis line that people can call to report instances of abuse. CUAPB can send out a crisis team to investigate the complaint, take photos and statements and offer immediate assistance. CUAPB will follow up with legal, medical and psychological referrals and other services as needed, and bring together families and survivors in a local network to provide ongoing support and empowerment for people suffering from their encounter with police brutality. However, CUAPB maintains a referral list of lawyers and a legal support library. Communities United Against Police Brutality welcomes transgender community members.

ACLU of Minnesota, www.aclu-mn.org

450 N Syndicate

Suite 325

St Paul, MN 55104

support@aclu-mn.org

651-645-4097

The ACLU of Minnesota is an affiliate of the American Civil Liberties Union and coordinates philosophy, approach to litigation and funding with that organization. It fights to protect the civil liberties of Minnesotans through litigation, public education, and lobbying related to legislation that impacts civil liberties and civil rights. Though the ACLU is not a specifically GLBT organization, it works for individuals within the community and is a fierce supporter of equal rights and anti-discrimination. The phone number provided will take you to the main extension. The current legal counsel is Teresa Nelson, but any of the staff at the office will be willing to point you in the right direction.

Legal Assistance to Minnesota Prisoners, www.wmitchell.edu/Legal-Practice-Center/Clinics/LAMP

The LAMP project is a clinic hosted by William Mitchell College of Law in Saint Paul, MN. The LAMP Clinic provides help with all types of legal matters to inmates. LAMP cases range from lawsuits to stop inmate mistreatment to helping an inmate with a divorce to drafting a will. LAMP does not handle appeals for inmates to contest their convictions.

Minnesota Lavender Bar Association, mnlavbar.org

2751 Hennepin Ave. S.

#257

Minneapolis, MN 55408

800.800.0350, ext. 530

612.822.0127, ext. 530

The Minnesota Lavender Bar Association is an affiliate of the Minnesota State Bar Association and the National LGBT Bar Association. MLBA maintains a member directory on its website which can be helpful for locating attorneys who have experience working with GLBT clients. The directory can be viewed at:

www.mnlavbar.org/directory.htm

Minnesota AIDS Project, www.mnaidsproject.org/living/legal/index.htm

1400 Park Avenue S

Minneapolis, MN 55404

Metro: 612-373-AIDS

Statewide: 800-248-AIDS

Metro TTY: 612-373-2465

Statewide TTY: 888-820-2437

mapaidslines@mnaidsproject.org

Minnesota AIDS Project Legal Services provides advice, direct representation and referrals to a network of volunteer attorneys for HIV-related legal matters including estate planning, discrimination, social security, immigration, and employment-related concerns. Participants must be HIV-positive and complete our legal intake process. MAP also provides brief consultation to HIV service providers and family members on HIV-specific legal topics. MAP welcomes transgender community members.

OutFront Minnesota, www.outfront.org

310 38th Street E #204

Minneapolis, MN 55409

inquiries@outfront.org

612-822-0127 or 800-800-0350

OutFront Minnesota's mission is to make our state a place where GLBT Minnesotans have the freedom, power, and confidence to make the best choices for their own lives. This group has worked incredibly hard towards the elimination of discrimination of GLBT individuals and toward bringing full equality to all members of the community. OutFront has dealt with many transgender specific issues and can offer guidance on changing your name, changing your driver's license, amending your birth certificate, getting a new passport, gender reassignment, as well as legal advice regarding your rights in the workplace.

Transgender Community Resources

Minnesota Transgender Health Coalition, www.mntranshealth.org

3405 Chicago Ave Suite 103

Minneapolis, MN 55407

mntranshealth@yahoo.com

612-823-1152

The MN Transgender Health Coalition is committed to improving health care access and quality of health care received by trans and gender non-conforming people through education, resources and advocacy. The Coalition works for racial, social, and economic justice and have been very active in community outreach. This group can and does provide resources for transgender individuals regarding safe health providers and information regarding trans health issues.

University of Minnesota's Center for Sexual Health, www.med.umn.edu/fp/phs/clinic/transgender/home.html

1300 S 2nd St
Minneapolis, MN 55454
csh@umphysicians.umn.edu
612-625-1331

The Center for Sexual Health welcomes individuals who identify as transgender, transsexual, crossdresser, bigender, drag queen, drag king, gender queer, and intersex. The Center offers clinical services as well as hormone therapy and surgery, therapy groups, and support groups. The Center is dedicated to giving accurate health information and competent services for specific needs.

Transgender Commission, www.glbta.umn.edu/trans
TransCom@umn.edu
Transgender Commission c/o GLBTA Programs Office
University of Minnesota
46 Appleby Hall, 128 Pleasant St SE
Minneapolis, MN 55455

The Transgender Commission was formed in March 2006 in partnership with the GLBTA Programs Office at the University of Minnesota. The University of Minnesota Transgender Commission works to create equity, access, and an inclusive environment for people of all genders through education, advocacy, and institutional change. The Commission strives to honor transgender people and celebrate gender diversity, make visible the systems of gender that profoundly affect all our lived experiences, and eliminate the discrimination faced by transgender and gender non-conforming students, staff, faculty, alumni, and community members.

NATIONWIDE RESOURCES

Just Detention, www.justdetention.org
Attn: Ms. Melissa Rothstein, Esq.
3325 Wilshire Boulevard - #340
Los Angeles, CA 90010

Just Detention, formerly named “Stop Prison Rape Now” seeks to end sexual violence against men, women, and minors in all forms of detention. Just Detention’s website provides information for survivors, a legal section with legislation and case law, appeals for action, a comprehensive bibliography and links to articles, reports and other resources. Prisoners should address their correspondence to Ms. Melissa Rothstein, Esq. Just Detention assists with referrals and resources, rather than direct support, and is welcoming to transgender inmates, but is not a explicitly transgender or LGBTQI organization.

Transgender Law Center, www.transgenderlawcenter.org
870 Market Street, Room 823
San Francisco, CA 94102
Phone: (415)865-0176
Email: info@transgenderlawcenter.org

The Transgender Law Center (TLC) is a civil rights organization advocating for transgender communities. TLC provides direct legal services, engages in public policy advocacy and education and works to change laws and systems that fail to incorporate the needs and experiences of transgender people. TLC is specific to California, but they do assist out-of state callers in locating appropriate local resources whenever possible.

Sylvia Rivera Law Project, www.srlp.org
Attn: Gabriel Arkles
322 8th Avenue, 3rd Floor
New York, NY 10001
Phone: (212) 337-8550

SRLP provides free legal services to transgender, intersex and gender nonconforming low-income people and

people of color in the New York area. SRLP provides advice and referral for a wide variety of legal issues. Sometimes, they can also provide more help, such as advocacy, help with a case you are bringing on your own, or, more rarely, representation in a legal action. The best way to reach them is to either call or write to Gabriel Arkles directly.

ACLU National Prison Project, www.aclu.org/prison

The ACLU's National Prison Project is the only national litigation program on behalf of prisoners. They fight the unconstitutional conditions in prisons, and publish **The Prisoners' Assistance Directory**, a directory list of local, state, national and international organizations that provide services to prisoners and their families. It is available on-line at: www.aclu.org/images/asset_upload_file139_33694.pdf

ACLU Lesbian, Gay, Bisexual, Transgender Rights/AIDS Project, www.aclu.org/lgbt

125 Broad St, 18th Floor

New York, NY 10004

This project is an affiliate of the American Civil Liberties Union that provides expertise in constitutional law and civil rights, specializing in sexual orientation, gender identity, and HIV.

COLAGE, for people with a Lesbian, Gay, Bisexual, Transgender and/or Queer Parent, www.colage.org

1550 Bryant St, Suite 830

San Francisco, CA 94103

Email: colage@colage.org

Phone: (415) 861-5437(KIDS)

COLAGE is a national movement of children, youth, and adults with one or more lesbian, gay, bisexual, transgender and/or queer (LGBTQ) parent/s. While COLAGE does not offer direct legal services, they offer many educational, community building, and advocacy programs for youth with LBGT parents. COLAGE's Kids Of Trans (KOT) program offers a Kids of Trans Resource Guide, as well as a document of Legal Q&As for Kids with Trans Parents.

National Center for Lesbian Rights, www.nclrights.org

Legal Helpline: 415.392.6257 (9AM-5PM PST)

Toll free: 1.800.528.6257 (9AM-5PM PST)

The National Center for Lesbian Rights helps GLBT individuals and families nationwide through litigation, public policy advocacy, and public education. NCLR offers a legal helpline during regular business hours, and the best way to request assistance is by filling out an online help form on NCLR's website. NCLR provides referrals, assistance locating GLBT-aware attorneys, and offers limited direct services. The National Center for Lesbian Rights is committed to serving transgender communities, and is very welcoming to transgender clients.

ACTIVIST ORGANIZATIONS

Critical Resistance, www.criticalresistance.org

1904 Franklin Street, Suite 504

Oakland, CA 94612

Phone: (510) 444-0484

Email: crnational@criticalresistance.org

CR is a national organization working towards prison abolition. CR creates and promotes policies that reduce the number of people in prison and the reliance on policing, educates through media and public education work and builds and supports the leadership of people directly impacted by the Prison Industrial Complex. CR does not have direct legal services.

National Police Accountability Project, www.nlg-npap.org

14 Beacon St. Suite 701

Boston, MA 02108
Phone: (617) 227-6015
Email: Npap@nlg.org

NPAP is a project of the National Lawyers Guild that seeks to end police abuse of authority and to provide support for grassroots and victims' organizations combating police misconduct. NPAP is an organization of plaintiffs' attorneys who work on police misconduct cases. The website includes directories for attorneys and organizations across the country who work around police misconduct issues. NPAP does not provide any direct services, but the website is extremely useful for locating attorneys and local direct services across the country. Most of the resources are not transgender-specific, but NPAP and its parent organization, the National Lawyers Guild, are committed to trans justice, and affiliated attorneys and organizations are often welcoming to trans clients. The NPAP office will provide referrals by phone to individuals who do not have internet access, but cannot provide legal advice or direct services to callers. National Police Accountability Project also has a great manual called "Evaluating Your Potential Police Misconduct Civil Rights Case. It can be found online at: www.2momslaw.com/police_misconduct.pdf

Midnight Special Law Collective, www.midnightspecial.net

Phone:(510)761-MSLC

Email: MSLC@midnightspecial.com

Midnight Special is an independent non-profit organization dedicated to providing legal trainings and accessible, relevant, democratic and accountable legal support to a wide range of activists participating in the struggle for social change. MSLC fosters the formation of community-based legal teams and law collectives nationally to achieve these goals on a larger scale by helping activists network with lawyers and by sharing our knowledge and practical experience.

HELPFUL DOCUMENTS

ACLU National Prison Project, *The Prisoners' Assistance Directory*.

www.aclu.org/images/asset_upload_file139_33694.pdf

A directory list of local, state, national and international organizations that provide services to prisoners and their families.

Midnight Special Law Collective, *Know Your Rights: Dealing With Police* (2008)

www.midnightspecial.net/files/dealingwithpolice.pdf

This document covers various aspects of dealing with police: safety, questioning, searches, infiltrators and informants, and documenting interactions.

Midnight Special Law Collective, *Legal Steps and Choices*.

www.midnightspecial.net/files/Legal_Steps_Chart_9.01.pdf

a flowchart showing the typical steps through the criminal legal system from arrest to trial as well as choices facing defendants at each step

Midnight Special Law Collective, *Police Misconduct Report*.

www.midnightspecial.net/files/policemisconductreport.pdf

This document was designed to help victims of police misconduct document the incident. While concise, the report is designed to help victims recall important details and record them in a useful format.

National Police Accountability Project, *Evaluating Your Potential Police Misconduct Civil Rights Case*.

www.2momslaw.com/police_misconduct.pdf

A treatise developed to aid San Francisco Bay Area residents, particularly political and social activists, in evaluating and preparing police misconduct civil rights cases.