



# — 2017 UT SYSTEM — LEGAL CONFERENCE

*presented by the Office of General Counsel*

THE UNIVERSITY of TEXAS SYSTEM | FOURTEEN INSTITUTIONS, UNLIMITED POSSIBILITIES.

## Session 10

# The Shifting Landscape of Transgender Students and Gender Identity in Higher Education

*Presented by:*

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Mills College

September 29, 2017 | 10:45-11:45 am



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# The Shifting Landscape of Transgender Students and Gender Identity in Higher Education



# Language and Terms

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Sex is the classification of people as male, female, or intersex. At birth, infants are assigned a sex based on a combination of bodily characteristics including: chromosomes, hormones, internal reproductive organs, and genitals.

- When referring to sex assigned at birth you may also see reference to birth sex.
- Generally when referring to sex assigned at birth appropriate terms are female, male, intersex.

# Language and Terms

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**Gender** is one's internal, personal sense of identity. For transgender persons, their birth sex and their own internal sense of gender identity may not match.

- Usage has referred to gender often a man or a woman however individuals may identify with genders outside this binary.
- When referring to gender deference should be given to individual identity but terms often include woman, man, trans, transgender, gender fluid, gender non-binary, agender.

# Language and Terms

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**Transgender, Trans, Trans\*** – Transgender is an umbrella term for people whose gender identity or gender expression is different from those typically associated with their assigned sex at birth.

❖ Note that transgender persons may or may not decide to alter their bodies hormonally and/or surgically, so their identity as a transgender person is unrelated to physical alterations, such as surgery or hormone therapy.

■ **Trans man/trans male** – A term for a transgender person who currently identifies as a man. Female to male and FTM are also used.

■ **Trans woman** – A term for a transgender person who currently identifies as a woman. Male to female and MTF are also used.

# Language and Terms

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**Gender Non-Binary-** is a term used by some individuals who identify outside of the gender binary or man/woman.

**Genderqueer/Genderfluid** – some used by individuals with a flexible range of gender identity or expression that may change, even from day to day.

- Other terms that may be used include gender non-conforming, gender variant, gender different.

# Language and Terms

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**Sexual Orientation** – Sexual orientation describes an individual's enduring physical, romantic and/or emotional attraction to another person. Although gender, birth sex and sexuality are all interrelated, they are distinct.

- Appropriate terms may vary but commonly used terms include lesbian, gay, bisexual, pansexual, queer.
- Trans people identify across the sexual orientation spectrum. For example: a trans man may identify as straight, gay, or something else entirely.

# Language and Terms

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**Transition** – This term refers to the process of beginning to live in one's gender self-identify rather than one's birth sex. Transition can be social, legal and medical, but may not be all three aspects or all three aspects at the same time.

- HRT- Hormone replacement therapy
- Gender confirming surgery (GCS)- formerly sex change, or sexual reassignment surgery (SRS)
- Hormone Blockers- taken by pre-puberty youth to prevent puberty related physical changes.



# Gender Pronouns

Please note that these are not the only pronouns. There are an infinite number of pronouns as new ones emerge in our language. Always ask someone for their pronouns.

| Subjective | Objective | Possessive | Reflexive           | Example  |
|------------|-----------|------------|---------------------|--|
| She        | Her       | Hers       | Herself             | She is speaking.<br>I listened to her.<br>The backpack is hers.      |
| He         | Him       | His        | Himself             | He is speaking.<br>I listened to him.<br>The backpack is his.        |
| They       | Them      | Theirs     | Themselves          | They are speaking.<br>I listened to them.<br>The backpack is theirs. |
| Ze         | Hir/Zir   | Hirs/Zirs  | Hirself/<br>Zirself | Ze is speaking.<br>I listened to hir.<br>The backpack is zirs.       |

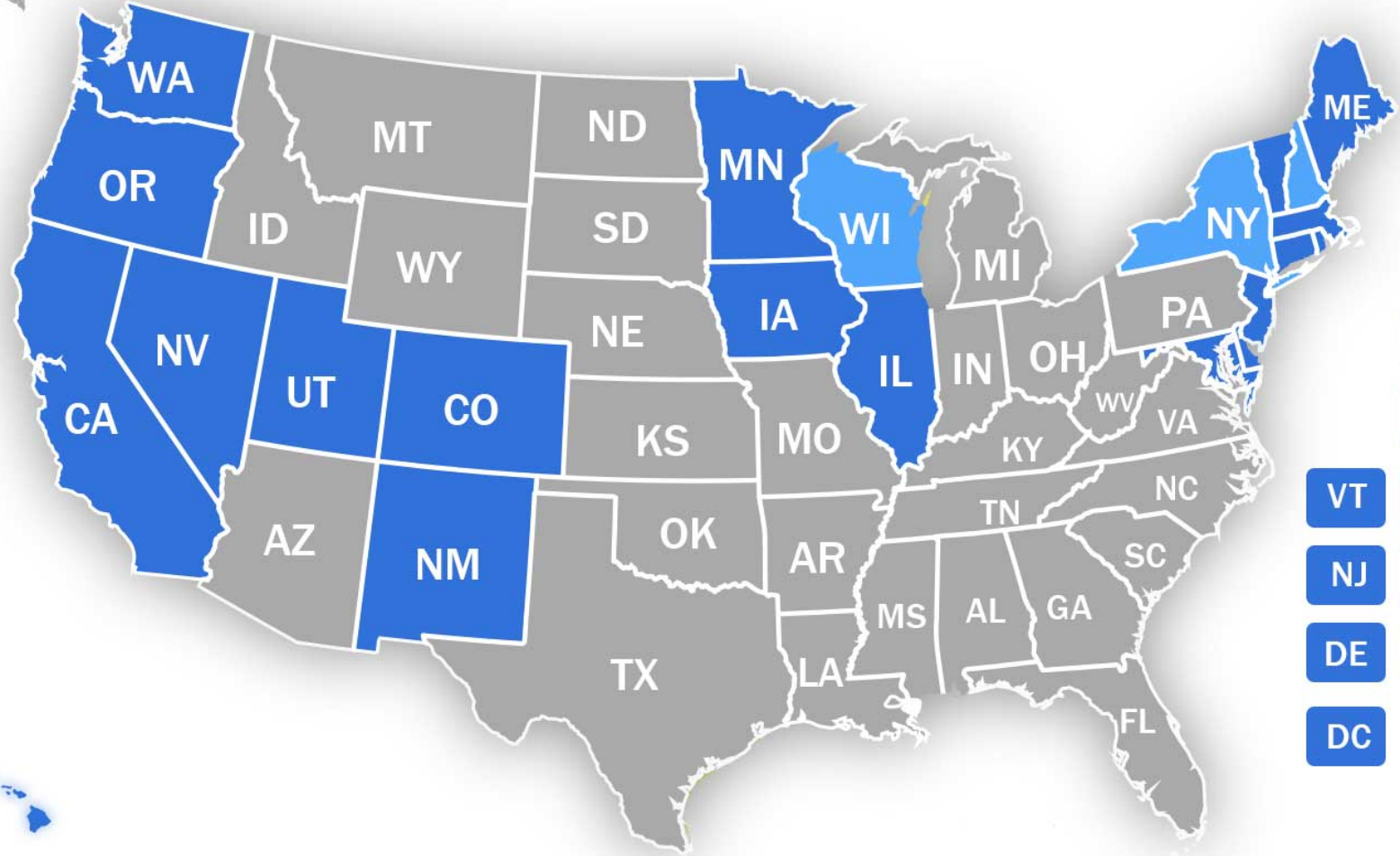
# Social Justice Movements in the U.S. often take place in the Restroom






Last week, as debt-ceiling talks were building to a fever pitch, Room H211 in the U.S. Capitol quietly opened its door to the 76 female members of the House, giving them their own restroom near the Speaker's Lobby. July 28, 2011



# State Nondiscrimination Laws



-  Clear gender identity and sexual orientation protections
-  Sex and sexual orientation protections only
-  Sex discrimination protections only

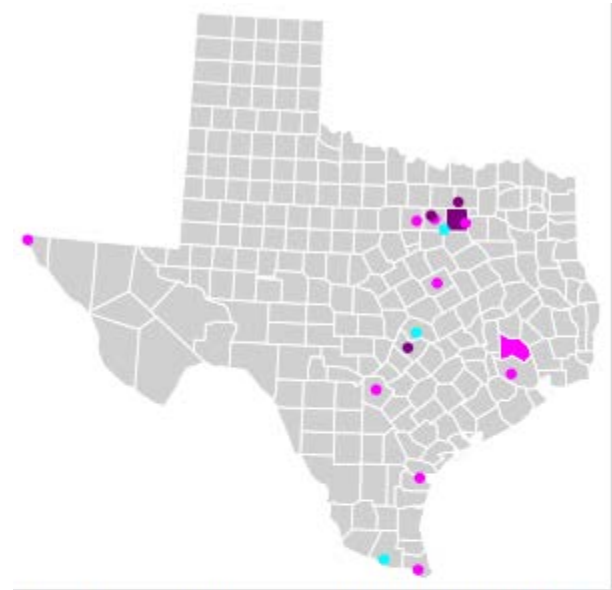
- RI
- CT
- NH
- VT
- MA
- MD
- DE
- DC



# The “State” of Texas

7 Texas Cities with some type of inclusive nondiscrimination policies

- 1) Houston: City employment, city contractors (UT Health Sciences at Houston)
- 2) San Antonio: Housing, public accommodations, city employment, city contractors (UT San Antonio & UT Health Sciences at San Antonio)
- 3) Dallas: Housing, public accommodations, city employment, private employment, city contractors (UT Dallas)
- 4) Austin: Housing, public accommodations, city employment, private employment, city contractors (UT Austin)
- 5) Fort Worth: Housing, public accommodations, city employment, private employment, city contractors
- 6) El Paso: Public Accommodations and City employment (UT El Paso)
- 7) Plano: Housing, public accommodations, city employment, private employment, city contractors



Map of Texas counties and cities that have sexual orientation and/or gender identity anti-employment discrimination ordinances

- Sexual orientation and gender identity with anti-employment discrimination ordinance
- Sexual orientation and gender identity solely in public employment
- Sexual orientation in public employment
- Does not protect sexual orientation and gender identity in employment

# Texas Schools with Gender Identity Inclusive Non-Discrimination Policies

|                                   |                                    |                                       |
|-----------------------------------|------------------------------------|---------------------------------------|
| Alamo Colleges                    | Rice University                    | Trinity University                    |
| Art Institute of Dallas           | Sam Houston State University       | Tyler Junior College                  |
| Art Institute of Houston          | San Jacinto College District       | University of Houston                 |
| Austin College                    | South Texas College of Law         | University of North Texas             |
| Brazosport College                | Southern Methodist University      | University of Texas- Austin           |
| Brite Divinity School             | Stephen F. Austin State University | University of Texas- Dallas           |
| Central Texas College             | Texas A & M University             | University of Texas- Pan American     |
| Cisco College                     | Texas Christian University         | University of Texas-Rio Grande Valley |
| Dallas Community College District | Texas State University             | University of Texas- San Antonio      |
| Houston Community College         | Texas Tech University              |                                       |
| Our Lady of the Lake College      | Texas Women's University           |                                       |

1,036 College across the U.S. have inclusive polices

# How State Law impacts you

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## **Oregon**

- Oregon became the first state to allow a third marker gender on state issues I.D. in 2017
- Requesting a new I.D. with X is free for those individuals.

## **Washington, D.C.**

- Started issuing I.D.s with the gender marker X June 2017.

## **New York**

- Issued the first US non-binary birth certificate in 2016.

What does this mean for student's using out of state I.D.s for identification at your institutions?

# International Policies

**Australia (2003)** March 2017 Australian and Aotearoa/New Zealand community statement called for an end to legal the classification to sex.

**Nepal (2007)** Supreme Court of Nepal mandated that the government stop all laws and policies that discrimination on sexual orientation/gender identity and include a third option on passports and official documentation.

**Indian (2009)** lists transgender people as “other” on documentation.

**New Zealand (2012)** Birth certificated are available showing undetermined sex and X may be used as identifier on passports.

**Germany (2015)** does not use a sex marker in cases of intersex people

**Canada (2016)** Ontario Health Card no longer has a sex designation and drivers have the option of X as an identifier.

**United Kingdom-** Mx is widely accepted as an alternative to Mr. or Ms/Mrs.

What does this mean for student's passports for identification at your institutions?

# CAMPUS RECORDS

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- Integrity of Records- Fact and Fiction
- Communicating legal limitations and campus changes
- Privacy considerations- who needs to know
- FERPA considerations- changes to records



# NAME POLICIES

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Creating a “preferred” name policy:

- (1) Assemble a group representative of end users and impacted parties.
- (2) Look at other campus’s process/policies
- (3) Identify where any changes legally cannot be made
- (5) Draft and review (draft and review and review some more)
- (6) Education, Communicate and Adapt

# RESTROOMS AND LOCKER ROOMS

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- Adopt a model that includes gender inclusive and gender specific spaces and a policy and practice to address conflict
- Communicate locations and access
- Health and safety considerations
- Financial considerations- plan for the long term and include ADA updates.

# CAMPUS HOUSING

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- Options in single-gender housing
  - Individualized approach
  - Housing selection/changes
  - Confidentiality & communication
  
- Gender inclusive housing
  - Gender non-binary students

# ACADEMICS

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- Name and pronoun use in the classroom
- Experiential education, including study abroad and professional placements
- Academic conversations

# ATHLETICS

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- NCAA guidance
- NAIA participation
- Club sports and intramural sports
- Olympic Impact

# CAMPUS ACTIVITIES

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- Changing traditions in campus activities
- Greek organizations

# Tips for Support

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- Acknowledge and Affirm
- Self-identification is key.
- You will make a mistake, name it and move on
- Patience and flexibility for all parties
- Understand and deconstruct systemic barriers
- The box is mighty- get out of it anyway.
- Show that you are willing to do the work so you are a more knowledgeable person and better ally.

# Resources

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Martin, C. (2016). Gender Identity and Campus Resources. NACUA Annual Conference. San Francisco, CA.

Martin, C. (2016). LGBTQI+ Terms. NACUA Annual Conference. San Francisco, CA.

Perdue, T. (2016). Trans\* Issues for Colleges and Universities: Records, Housing, Restrooms, Locker Rooms, and Athletics. *Journal of College and University Law*. Vol. 41, No 1.

**Other citations are within the Campus Resources Document**





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