

use the women's restroom in her therapist's office. Also, you must be allowed to wear clothing that matches your gender identity.

### HIV Healthcare Discrimination

It is against federal, state, and local law for healthcare providers to refuse to treat people because of HIV status. Refusing to treat you because you are positive is discrimination on the basis of disability.

Some procedures may not be right for you because of your HIV status, but it is almost never okay for a healthcare provider to refuse to treat you because they are worried that there is some risk that they or their staff will catch HIV. These laws apply to surgeons who provide gender affirming surgery to transgender people, just as they apply to all other surgeons and healthcare providers. If a surgeon refuses to give you some type of sex reassignment or other surgery because of your HIV status, they are probably breaking the law.

### Rights of Youth to Consent to Healthcare

Trans youth often have a very hard time getting necessary healthcare. Hormones are especially hard for people under the age of eighteen to get. One reason is that many people believe that as a young person, you can never consent to healthcare on your own. In fact, there are many times when you have a right to the healthcare that you need, even if no parent is on your side.

#### *Others can consent to healthcare for you*

A parent, guardian, or the state can consent to healthcare for people under eighteen. Healthcare providers may treat young people for gender identity issues—including with hormones—if a parent, guardian, or foster care agency agrees. Providers can also treat you if a court has ordered the treatment.

#### *You can consent to your healthcare if...*

You can consent to all of your own care if you are married, emancipated or a parent. There is no court process to go through to become emancipated. You are emancipated if you are married, in the armed services, have a job and support yourself financially, or have not been supported by your parents and want to be emancipated. Some legal service providers will write letters explaining

*The Sylvia Rivera Law Project works to guarantee that all people are free to self-determine gender identity and expression, regardless of income or race, and without facing harassment, discrimination or violence.*

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# KNOW YOUR RIGHTS

## Your Healthcare Rights: *Trans Youth in New York*



### *In this brochure:*

- Right to Emergency Medical Care
- Transgender Healthcare Discrimination
- HIV Healthcare Discrimination
- Rights of Youth to Consent to Healthcare
- Commitment and Involuntary Mental Health Treatment
- The Right to Adequate Care
- Checklist: What to Do About Discrimination

### **The Right to Emergency Medical Care**

If you have a health emergency and go to a hospital with an emergency room, you have the right to be evaluated, treated, and stabilized. It is against federal and state law for a hospital with an emergency room to turn you away for any reason, including because you are transgender or gender nonconforming, because you have no way to pay, or because you are an undocumented immigrant.

### **Transgender Healthcare Discrimination**

Hospitals, clinics, doctors' offices, dentists' offices, and therapists' offices are "places of public accommodation." In New York State, it is against the law for a place of public accommodation to discriminate against transgender and gender nonconforming people.

A healthcare provider should never refuse to treat you because you are transgender. Sometimes doctors claim that they will not treat you because they do not have enough "expertise" in treating transgender people or because transgender people have "special needs." That may be an okay reason if you are seeking specific complex care related to being transgender, such as a type of sex reassignment surgery that the doctor does not know how to do. But, if you are looking for a type of care the doctor provides to non-transgender people, such as breast enhancement, gyn exams, or treatment for illness or infection, the doctor may not use his or her failure to treat transgender people in the past as an excuse to discriminate against you now.

Harassment is a type of discrimination. If hospital staff or other providers keep calling you names, insulting you, making fun of your body, or refusing to use the right pronouns for you, they may be breaking the law.

It can also be discrimination to deny you access to gender segregated facilities based on your gender identity. For example, a trans woman should be allowed to

that you are emancipated. You can use these letters to show doctors.

In New York, mature minors may also be allowed to consent to their own medical care. You are a mature minor if you understand your condition, your values, the options for treatment, and the consequences of those options in a mature way, and are able to make a mature choice based on those factors.

If you are married, emancipated or a parent, you can consent to taking hormones or getting other treatment without a parent, guardian, or foster care agency getting involved, no matter how old you are.

*You can always consent to your own healthcare when...*

Even if you are not a parent, married, emancipated, or a mature minor, there are some types of healthcare that you can still consent to on your own, such as emergency care, reproductive care, STD testing and treatment, prenatal care, and in some cases substance abuse treatment. Sometimes you can also consent to mental health treatment, including therapy and medication. That means that sometimes you can consent to therapy and hormones for gender identity issues.

To be able to consent to outpatient services including therapy, you must be knowingly and voluntarily seeking the treatment, the provider must believe the services are necessary to your well-being; and the provider has to decide that:

- a parent or guardian is not reasonably available; *or*
- requiring parental or guardian consent or involvement would harm the course of outpatient treatment; *or*
- a parent or guardian has refused to give consent and a doctor finds that treatment is necessary and in your best interests.

If hormones are considered “psychotropic medications,” or drugs that act on the mind, youth from the age of sixteen to eighteen can also consent to them without a parent or guardian in three types of cases:

- A parent or guardian is not reasonably available: if the doctor finds that you have capacity and the medications are in your best interests; *or*
- Requiring consent of a parent or guardian would harm you: if the treating doctor and a psychiatrist who does not work at the same hospital finds that the harm would happen, that you have capacity, and that the medications are in your best interests; *or*

- The parent or guardian has refused to give consent: if the treating doctor and a psychiatrist who does not work at the same hospital finds that you have capacity and that the medications are in your best interests.

The provider should document the reasons for giving the services and have you sign a form saying that you are voluntarily seeking the treatment.

### **Commitment and Involuntary Mental Health Treatment**

Sometimes, youth are still committed to institutions, forced to conform to rigid gender stereotypes, and given other abusive “treatment” for gender identity disorders. A parent, guardian, or, in some cases, foster care agency may “voluntarily” commit people under the age of eighteen to psychiatric hospitals. Youth between the ages of sixteen and eighteen can also, in some cases, admit themselves on a voluntary basis.

If you are in a mental institution on a voluntary basis, no matter who committed you, you can ask to be released. Even if you are under the age of sixteen, you can give notice in writing to the director of the institution of your desire to be released. The director then has to let you go unless they have reasonable grounds to think that you may need involuntary commitment. In that case, the director may hold you for three days and then must either release you or ask a court to allow you to be held involuntarily.

You can only be involuntarily committed to mental institutions if you would be a danger to yourself or others because of a serious mental illness and if there are no less restrictive alternatives. Also, care and treatment for the mental illness in a hospital must be essential to your welfare, and your judgment must be so impaired that you cannot understand the need for the care and treatment. Because of these standards, you cannot be involuntarily committed for a gender identity disorder alone.

Once committed, you have some rights to refuse treat-

ment even if your parent, guardian, or foster care agency consents to it. If you would be able to give consent to the treatment (see section: *Rights of Youth to Consent to Healthcare*), you also have the right to refuse treatment.

If you object to receiving psychotropic medication but your parent or guardian consents to it, a doctor from outside of the facility has to do an independent review and make a recommendation to the clinical director.

The clinical director then must make their own review. If they decide to give you the treatment over your objection, they have to notify Mental Hygiene Legal Services and delay treatment for at least four days unless it is an emergency. Mental Hygiene Legal Services can challenge the decision in court.

Youth who are institutionalized also have other rights, such as the right to be free from discrimination and physical or sexual abuse and the right to balanced nutritious meals.

### **The Right to Adequate Care**

Healthcare providers generally have a duty not to give care that is “negligent.” Also, when the state has people in its custody—such as foster youth, prisoners, and involuntarily committed patients—the state has a duty to provide adequate medical care. In some cases, it is against the law for a facility not to provide you with hormones or other treatment to support your transition.

Since therapy designed to force adolescent or adult trans people to identify with the sex we were assigned at birth has been so thoroughly discredited, if you have endured that type of treatment, you might be able to win in a lawsuit.

You cannot bring a lawsuit on your own until you are eighteen. However, you can bring a lawsuit through certain other people, such as a guardian ad litem, a parent, a guardian, or an adult spouse. Also, after you turn eighteen, you can often bring law suits about things that happened while you were still a minor, even if time would normally have run out.

## **WHAT TO DO ABOUT DISCRIMINATION**

*If you think you have been discriminated against, there are things you can do to protect your rights.*

### **Keep good records**

Write down everything that happened to you right away, including dates and the names and numbers of anyone who saw what happened. Ask for copies of all your medical records by signing a release as soon as you can. Be sure to keep copies of any papers about what happened.

### **Get support**

Healthcare discrimination can be a trauma. You may want to get help in coping with the stress from friends, support groups, or a therapist.

### **File a complaint**

There are a lot of different places where you can file complaints to try to get action about what happened to you. Most hospitals and healthcare provider’s offices have an internal way to file a grievance. Some have an office of a patient advocate that may be able to help you. You can also file a complaint with a professional association about a provider’s unethical acts. Also, there are local and state government agencies that can enforce discrimination laws if you file a complaint with them. See the brochure *Resources For Trans Communities* for more information.

### **Talk to a lawyer**

You may be able to bring a law suit about what happened to you. The time limits about how soon you have to bring a law suit or give notice of your claim are complicated. It is best to talk to a lawyer as soon as possible so you can better protect your rights. Sometimes it can take a while to find the right lawyer. Even if the first couple of lawyers you talk to cannot take your case, you may still find the right one.

### **Organize!**

Whether or not you file a complaint or a law suit, you can also make change in other ways. Working with other people in your community, organizing, doing direct action and speaking out publicly can help end discrimination against all people.

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**ABOUT THIS FACT SHEET:** *This fact sheet was prepared by the Sylvia Rivera Law Project. It is meant to share general legal information to help transgender and gender nonconforming New Yorkers understand their rights. It is not legal advice. If you need legal advice about a problem you have, please contact a lawyer.*

**For more information about understanding, exercising, and protecting your rights, see SRLP’s other publications:** *Your Healthcare Rights: Trans Adults in New York* • *Your Immigration Rights* • *Transgender Employees in New York: Protect Yourself at Work* • *How to Legally Change Your Name in New York City* • *Resources for Trans Communities* **all of which are available by calling 212-337-8550, and at [www.srlp.org](http://www.srlp.org)**