

# Still Hidden in the Closet:

## *Trans Women and Domestic Violence*

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### ABSTRACT

This article addresses the issue of domestic violence against trans women in abusive relationships and examines reasons why they are particularly and uniquely vulnerable. It discusses how both social and legal rules governing gender identity contribute to an abuser’s ability to isolate his victim. It also illuminates how the conscious and unconscious transphobia of service providers heightens this ability. Finally, it discusses the recent reauthorization of the Violence Against Women Act and the impact that proposed changes may have for trans women victims of domestic violence.

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## INTRODUCTION

You have endured years of physical and psychological abuse from your partner. Your partner taunts you, claiming no one will believe you; besides, you are not even a real woman. Although you fear for your life and safety if you stay, you fear that the threat is worse if you go. But at last, gathering all of your courage, you leave your abusive partner and flee to a battered woman’s shelter,<sup>1</sup> hoping to disappear. In an attempt to figure out if you belong, the intake worker asks you a few awkward questions and then, finally, asks, “What’s between your legs?”<sup>2</sup>

Domestic violence<sup>3</sup> committed against cisgender<sup>4</sup> women is widespread in the United States.<sup>5</sup> Feminists of all stripes, from the radical to the essentialist, have fought to direct attention to this issue for decades.<sup>6</sup> Their efforts have resulted in domestic violence shelters across the country, criminal statutes that target domestic violence, and a focus on domestic violence in national discourse. In 1994, Congress enacted the Violence Against Women Act (VAWA),

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1. In this paper I have chosen to use the word “abuse” rather than battered/battering to reflect the fact that domestic violence is more than just physical violence. However, I use the phrase “battered woman’s shelter” instead of “domestic violence shelter” due to the fact that the shelters I am discussing in the paper are primarily gendered spaces.
  2. GLBT DOMESTIC VIOLENCE COAL. & JANE DOE INC., SHELTER/HOUSING NEEDS FOR GAY, LESBIAN, BISEXUAL AND TRANSGENDER (GLBT) VICTIMS OF DOMESTIC VIOLENCE 11 (2005) [hereinafter SHELTER/HOUSING], available at [www.ncdsv.org/images/shelterhousingneedsforglbtvictimsdv.pdf](http://www.ncdsv.org/images/shelterhousingneedsforglbtvictimsdv.pdf).
  3. “Domestic violence can be defined as a pattern of behavior in any relationship that is used to gain or maintain power and control over an intimate partner.” Joan B. Kelly & Michael P. Johnson, *Differentiation Among Types of Intimate Partner Violence: Research Update and Implications for Interventions*, 46 FAM. CT. REV. 476, 478 (2008).
  4. I use “cisgender” to describe people whose assignment of sex at birth is congruent with their current gender identity. This is not meant to imply that cisgender women must be “feminine” and cisgender men “masculine” in their gender presentations.
  5. There are approximately eight million physical assaults and rapes annually. Claire Wright, Lecture, *Confronting Domestic Violence Head On: The Role of Power in Domestic Relationships*, 32 T. JEFFERSON L. REV. 21, 23 (2009) (citing CTRS. FOR DISEASE CONTROL & PREVENTION, UNDERSTANDING INTIMATE PARTNER VIOLENCE (2009), available at [http://www.cdc.gov/ViolencePrevention/pdf/IPV\\_Factsheet-a.pdf](http://www.cdc.gov/ViolencePrevention/pdf/IPV_Factsheet-a.pdf) (2012 version)).
  6. See generally G. Kristian Muccio, *A House Divided: Mandatory Arrest, Domestic Violence, and the Conservatization of the Battered Women’s Movement*, 42 HOUS. L. REV. 237 (2005).

providing both federal penalties for abusers and funds to train local police and the judiciary on how to better address incidents of domestic abuse.<sup>7</sup>

The existence of domestic violence in lesbian and gay relationships has started to enter the national consciousness, even though it is still primarily, as one author puts it, “the violence that dare not speak its name.”<sup>8</sup> Although relatively few studies exist on domestic violence in LGB relationships, one large study by the UCLA Center for Health and Policy Research shows that domestic violence within LGB relationships is twice as prevalent as in heterosexual relationships.<sup>9</sup> In relationships where one or both partners are trans,<sup>10</sup> instances of domestic violence are possibly more prevalent.<sup>11</sup> However, less data is available pertaining to trans victims of domestic violence than for cisgender LGB domestic violence victims.<sup>12</sup> Often in studies addressing domestic violence in LGBT communities, the “T” is tacked on at the end as an afterthought.<sup>13</sup> Even so, some data specifically addressing trans individuals is available. In the Gender, Violence and Resource Access Survey, fifty percent of trans respondents stated that they had been assaulted or raped by a partner; thirty-one percent identified themselves as domestic violence survivors.<sup>14</sup> The comprehensive National Transgender Discrimination Survey (NTDS), which compiled the responses of over six thousand trans and gender nonconforming

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7. Violence Against Women Act, 42 U.S.C. §§ 13925-14045(b) (2006).
  8. Sandra E. Lundy, *Abuse That Dare Not Speak Its Name: Assisting Victims of Lesbians [sic] and Gay Domestic Violence in Massachusetts*, 28 NEW ENG. L. REV. 273, 273 (1993).
  9. “A relatively large study conducted using data from 2007 by the UCLA Center for Health Policy Research, released in 2010, indicates that bisexual (40.6%), gay or lesbian adults (27.9%) are almost twice as likely to experience intimate partner violence as heterosexual adults (16.7%).” NAT’L COAL. OF ANTI-VIOLENCE PROGRAMS, LESBIAN, GAY, BISEXUAL, TRANSGENDER AND QUEER DOMESTIC/INTIMATE PARTNER VIOLENCE IN THE UNITED STATES IN 2009, 10 (2010), available at [www.avp.org/documents/2009DV-IPVREPORTFINAL2.pdf](http://www.avp.org/documents/2009DV-IPVREPORTFINAL2.pdf).
  10. I will use “trans” in this paper to denote people whose gender identity is not congruent with the sex they were assigned at birth.
  11. Diana Courvant & Loree Cook-Daniels, *Trans and Intersex Survivors of Domestic Violence: Defining Terms, Barriers, & Responsibilities*, SURVIVOR PROJECT, <http://www.survivorproject.org/defbarresp.html> (last visited Apr. 18, 2012).
  12. *Id.*
  13. Even though many of the papers that refer to the “LGBT community” speak primarily about the “LGB” or “L” and “G” communities, I have used these texts as resources for this paper because of the paucity of trans-specific sources. I have typically done this where, I believe, the similarities in how homophobia and transphobia operate in society make the Article’s arguments apply to both groups. I would have preferred not to do this, as trans people’s issues are normally subsumed within the discourse around lesbian and gay issues. Professor and transgender activist Dean Spade refers to this phenomenon as “LGB fake T.” Gayle Salamon, *Transfeminism and the Future of Gender*, in *WOMEN’S STUDIES ON THE EDGE* 115, 122 (Joan Wallach Scott ed., 2008). Furthermore, “T” is a gender identity whereas “L,” “G,” and “B” are sexual preferences.
  14. *Id.* This is the only American study I could find that attempted to place a number on the percentage of trans people who had been the victims of domestic violence. It was compiled by The Survivor Project, a non-profit that provides services to trans and intersex victims of domestic violence.

people, found that nineteen percent of respondents had been subjected to domestic violence specifically *because* they were trans or gender non-conforming.<sup>15</sup>

Traditionally, domestic violence has been characterized by invisibility. Domestic violence has previously gone unregulated or unsanctioned because it occurs in the home, where privacy is supposed to reign supreme against the reach of the state.<sup>16</sup> Trans people have unique issues that increase the likelihood that domestic violence committed against them will thrive in silence. Many trans people exist in a “legal limbo.” They may be unable to get the “legal gender” on their identification to match their gender identity, forcing them to utilize an ID with gender markers<sup>17</sup> that do not match their gender presentation.<sup>18</sup> Their legal gender can have an impact on the state-recognized legitimacy of their identity and relationships as well as their access to services and benefits.<sup>19</sup> For example, they may risk being fired because of the absence of protections that would be found in trans-inclusive<sup>20</sup> antidiscrimination laws.<sup>21</sup>

This legal limbo leaves many trans people in a precarious position in society. Many trans people are underemployed or work at jobs for which they are

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15. This study seems not to distinguish between domestic violence from family members and from partners/spouses. JAIME M. GRANT ET AL., NAT'L CTR. FOR TRANSGENDER EQUALITY & NAT'L GAY & LESBIAN TASK FORCE, INJUSTICE AT EVERY TURN: A REPORT OF THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY 88 (2011), *available at* [http://www.ngltf.org/downloads/reports/reports/ntds\\_full.pdf](http://www.ngltf.org/downloads/reports/reports/ntds_full.pdf). There is an obvious discrepancy between the conclusions presented by these surveys, which in the absence of further information I have found difficult to reconcile. I believe this may be because the Gender, Violence and Resources Survey tallies *total* incidents of domestic violence whereas the NTDS focuses on those occurring specifically *because* the respondent was trans. The NTDS was also a more comprehensive survey and likely had a larger pool of respondents. Regardless of whether the figure of nineteen percent or thirty-one percent is more accurate, this is obviously a pervasive problem that impacts potentially tens of thousands of people.
  16. See Rebecca Hulse, *Privacy and Domestic Violence in Court*, 16 WM. & MARY J. WOMEN & L. 237, 238 (2010).
  17. “Gender marker” refers to the “M” or “F” on one’s identification. Furthermore, referring to the concept as “legal gender” rather than as “legal sex” is an indication that people’s internal beliefs rather than a medical model should guide the classification (though ideally there would be no classification at all on ID).
  18. See Dean Spade, *Documenting Gender*, 59 HASTINGS L.J. 731, 752 (2008) (discussing the impact of using ID that does not match one’s gender presentation on job applications).
  19. See generally Julie A. Greenberg, *When Is a Man a Man, and When Is a Woman a Woman?*, 52 FLA. L. REV. 745 (2000) (discussing Christie Lee Littleton’s “legal gender” and how it foreclosed success in a wrongful death suit regarding her husband).
  20. For a piece of legislation to be “trans-inclusive,” it must include gender identity as a protected class.
  21. “ENDA” is the short way of referring to an employment nondiscrimination act. Some states and localities have passed antidiscrimination measures that include gender identity as well as sexual orientation. *U.S. Jurisdictions that Include Transgender People in Human Rights Laws*, TRANSGENDER L. & POL’Y INST., <http://www.transgenderlaw.org/ndlaws/index.htm#jurisdictions> (last visited May 15, 2012). A national ENDA has come up for a vote in versions that both include and exclude gender identity.

underpaid relative to their credentials.<sup>22</sup> Others are simply unemployed because they could not access necessary education.<sup>23</sup> The National Transgender Discrimination Survey (NTDS) found that trans people are nearly four times as likely to have an income under \$10,000 as the general population.<sup>24</sup> This may lead trans people to be more susceptible to the economic control that abusers often utilize.<sup>25</sup> These issues are further complicated by the intersection of other marginalized identities trans people might have, such as being people of color. The NTDS found that while trans people in general had twice the rate of unemployment as the general population, trans people of color had up to four times the national rate.<sup>26</sup>

This hostile legal environment is compounded by societal transphobia<sup>27</sup> which abusers can use to isolate and deprecate their partners.<sup>28</sup> Transphobia represents an extra “tool” in the abuser’s arsenal.<sup>29</sup> This can be true in relationships during which a person transitions<sup>30</sup> as well as in those in which the

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22. Masen Davis & Kristina Wertz, *When Laws Are Not Enough: A Study of the Economic Health of Transgender People and the Need for a Multidisciplinary Approach to Economic Justice*, 8 SEATTLE J. FOR SOC. JUST. 467 (2010) (citation omitted).
23. Transgender youth face a high level of harassment at school, which leads many to drop out. Dean Spade, *Trans Formation: Three Myths Regarding Transgender Identity Have Led to Conflicting Laws and Policies That Adversely Affect Transgender People*, L.A. LAWYER, Oct. 2008, at 34, 36 (citing JODY MARKSAMER & DEAN SPADE, MEETING THE NEEDS OF TRANSGENDER YOUTH IN CONGREGATE CARE FACILITIES (2008)).
24. GRANT ET AL., *supra* note 15, at 51.
25. Laurie Pompa, Note, *The Family Violence Option in Texas: Why It Is Failing to Aid Domestic Violence Victims on Welfare and What to Do About It*, 16 TEX. J. WOMEN & L. 241, 243-45 (2007) (discussing different methods of economic control in abusive relationships).
26. GRANT ET AL., *supra* note 15, at 51.
27. “Transphobia” is an irrational fear or hatred of people who have chosen to live presenting a different gender than the sex they were assigned at birth, no gender at all, or multiple fluid genders. It can manifest itself in violent ways, such as physical attacks, or in more insidious ways, such as a refusal to respect people’s right to identify as they choose and change their name, pronouns, or appearance to match their internal desire. It can also result in a curious belief that one can catch “the trans” or “the gay” by peeing next to someone of “questionable gender pedigree” in a public restroom.
28. SCOTTISH TRANSGENDER ALLIANCE & STOP DOMESTIC ABUSE, OUT OF SIGHT, OUT OF MIND?: TRANSGENDER PEOPLE’S EXPERIENCES OF DOMESTIC ABUSE 15 (2010) [hereinafter SCOTTISH ALLIANCE], available at [http://www.scottishtrans.org/Uploads/Resources/trans\\_domestic\\_abuse.pdf](http://www.scottishtrans.org/Uploads/Resources/trans_domestic_abuse.pdf).
29. Nancy J. Knauer, *Same-Sex Domestic Violence: Claiming a Domestic Sphere While Risking Negative Stereotypes*, 8 TEMP. POL. & CIV. RTS. L. REV. 325, 337 (1999) (citing Lundy, *supra* note 8, at 278).
30. Transition can mean different things to different trans people. For some, it involves medical and surgical intervention; for others, it does not. Some people do not identify as transitioning, as they had always been the same gender, merely choosing at some point to acknowledge it. The definition from the National Transgender Discrimination Survey is as follows:

For many gender non-conforming people, transition as a framework has no meaning in expressing their gender—there may be no transition process at all, but rather a recognition of a gender identity that defies convention or conventional categories. For yet other gender non-

individual has already transitioned.<sup>31</sup> In both relationships, the abuser can use threats of “outing” to establish and retain control over the partner.<sup>32</sup>

The inadequacy of services available for abused trans people due to societal transphobia also helps the abusers maintain coercive control over their partners. Besides having access to few services, abused trans people may be unwilling to call on transphobic police for help because they fear that the police will not believe them or will abuse them too.<sup>33</sup> Also, trans people may be barred from battered women’s shelters because of shelter policies.<sup>34</sup> Finally, their abusers may threaten trans parents with the loss of their children, a very real possibility for a trans person whose child custody is challenged in court.<sup>35</sup>

This paper will focus on the challenges that trans women<sup>36</sup> face because of domestic violence. Many unique issues affecting trans women stem from the fact that their gender identity is met with cynicism or open hostility by society at large and also by the feminist movement, which has been a bulwark in the struggle against domestic violence.<sup>37</sup> This hostility is particularly damaging for trans women, as many of the resources available to abuse victims and the literature about domestic violence come from the feminist movement. As one trans author states, “[t]ranssexual people are not only abnormal, but their very humanity is in question.”<sup>38</sup>

The first part of this paper will address the different methods by which

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conforming people, transition is a meaningful concept that applies to their journey from birth.

GRANT ET AL., *supra* note 15, at 26.

When I refer to transition, I mean the closest analogue to a point in time when a trans person externalizes their internal sense of gender, whether that involves undergoing multiple medical procedures or simply informing a few close friends.

31. SCOTTISH ALLIANCE, *supra* note 28, at 17.
32. *Id.* at 15.
33. AMNESTY INT’L, STONEWALLED 41 (2006) [hereinafter STONEWALLED], available at <http://www.reentry.net/library/attachment.75986>.
34. VIVIAN K. NAMASTE, INVISIBLE LIVES: THE ERASURE OF TRANSEXUAL AND TRANSGENDERED PEOPLE (2000) 177-78.
35. See generally Kari J. Carter, *The Best Interest Test and Child Custody: Why Transgender Should Not Be a Factor in Custody Determinations*, 16 HEALTH MATRIX 209 (2006).
36. I have decided to use “trans woman” to refer to anyone who identifies as transgender, genderqueer, or gender nonconforming on the transfeminine end of the spectrum or as transsexual, MTF, FTF, or to any other person who identifies as female whose assigned sex at birth was male. I have chosen this phrase rather than “transwoman” or “transgender,” because there are people who identify as transsexual women but object to being called transgender. Rather than place a person in a box labeled “transwoman,” I have inserted a space between “trans” and “woman” to signal that “trans” is an adjective modifying “woman.” I fully believe in and support people’s right to identify themselves as they choose and hope that most readers will feel comfortable with and not be alienated by the terminology I have chosen.
37. See generally Miccio, *supra* note 6 (providing a history of the feminist movement against domestic violence).
38. Jillian Todd Weiss, *The Gender Caste System: Identity, Privacy, and Heteronormativity*, 10 LAW & SEXUALITY 123, 125 (2001).

abusers isolate their partners, providing context for the discussion of domestic violence in relationships where one of the partners is a trans woman. The second part will examine the legal and societal barriers to accessing services and the ways in which these barriers are reinforced by the legal standards that apply to trans women. The conclusion will examine some recent changes to the Violence Against Women Act (VAWA) and identify ways they might improve access to services for trans people as well as ways they might fall short of real trans accessibility.

### I. TRAPPED BETWEEN A ROCK AND A HARD PLACE: THE MECHANICS OF DOMESTIC VIOLENCE

The question “Why didn’t you leave?” hangs heavily over many abuse victims as they prepare to separate themselves from their abusers, possibly after years of mistreatment. This question is asked by judges, friends, family, and by the victims themselves over and over again. Anti-domestic violence activists explain that:

Partner abuse/domestic violence refers to a pattern of abusive, violent, and/or coercive behaviors that are used by one person in an intimate relationship to manipulate or control the thoughts, beliefs or behavior of her/his intimate partner or to punish the partner for resisting that control. It is a pattern that one person uses to gain and maintain power, dominance, and control in a relationship.<sup>39</sup>

A major barrier to a person’s ability to leave hir<sup>40</sup> abuser is the abuse victim’s social entrapment.<sup>41</sup> As one scholar writes:

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39. DELENA COUCHMAN & SUSAN HOLT, L.A. GAY AND LESBIAN CENTER: BREAK THE SILENCE 4 (2002), available at [http://laglc.convio.net/site/DocServer/DV\\_INFORMATIONAL\\_BOOKLET.pdf?docID=569](http://laglc.convio.net/site/DocServer/DV_INFORMATIONAL_BOOKLET.pdf?docID=569).

40. After much deliberation, I decided to make this paper gender-neutral unless the gender of the subject of a sentence is specified or is important to the point. I have chosen to use the gender-neutral pronoun “hir” to refer to people whose gender is not specified. It can be argued that applying a language of gender neutrality to domestic abuse contributes to the problem by preventing the handling of domestic violence in a gender-specific manner. And the reality is that most domestic abuse is committed by cisgender men against cisgender women. In terms of percentages, however, it has been found that domestic violence occurs in LGB relationships and in relationships where either one or both partners are trans at the same rate as, or higher, than it does in cisgender heterosexual relationships. See *supra* note 9 and accompanying text. Therefore, using “he/she” as the default would render a proportionately similar problem invisible. I would argue that there needs to be a greater specificity of language when discussing domestic violence to avoid rendering any group invisible and to acknowledge the different ways in which domestic violence impacts different communities. This means that one needs to be explicit when referring to a heterosexual couple where both partners are cisgender or to a gay or lesbian couple where both partners are cisgender. For a discussion of the strategic use of gender-neutral pronouns, see Dean Spade, *Resisting Medicine, Re/Modeling Gender*, 18 BERKELEY WOMEN’S L.J. 15, 19 n.7 (2003).

41. JAMES PTACEK, BATTERED WOMEN IN THE COURTROOM: THE POWER OF JUDICIAL

Social entrapment emphasizes the inescapably social dimension of women's vulnerability to men's violence, women's experience of violence, and women's ability to resist and escape. This approach links private violence to community responses and offers a way of connecting poverty, racism, and political disempowerment to women's abilities to survive violent relationships.<sup>42</sup>

A person in an abusive relationship can feel "backed into a corner," due to the realities of systems that disempower her and the victim's perception of her ability to successfully leave the abuser.

Social entrapment has an impact on anyone in an abusive relationship, but this entrapment acutely affects trans women in a number of ways. This section focuses on how abusers are able to constrain trans women. The stigma resulting from transphobia in the larger community, a lack of trans-competent services for abused women, and other factors combine to exacerbate the effects of an abuser's coercive behaviors toward trans women. Those who wish to escape their partners have few options for recourse, even when they actively advocate for themselves.<sup>43</sup>

#### A. Overview of Social Entrapment and Battered Women's Syndrome

Domestic violence is "[a] pattern of behavior where one intimate partner coerces, dominates and isolates the other intimate partner in order to maintain power and control over the partner and over the relationship."<sup>44</sup> The traditional model of battered women's syndrome, based on a heterosexual cisgender couple, suggests that, after a period of time in the abusive relationship, an abused woman feels as if all avenues of escape have been cut off. She then feels that there is nothing she can do to change her situation, and a sense of "learned helplessness" sets in.<sup>45</sup> In contrast, Evan Stark has promulgated a "coercive control model" that "shifts the basis of women's justice claims from stigmatizing psychological assessments of traumatization to the links between structural inequality, the systemic nature of women's oppression in a particular relationship, and the harms associated with domination and resistance *as it has been lived*."<sup>46</sup> Stark's

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RESPONSES 10 (1999).

42. *Id.*

43. *See generally* SCOTTISH ALLIANCE, *supra* note 28.

44. KIM FOUNTAIN ET AL., LESBIAN, GAY, BISEXUAL, TRANSGENDER AND QUEER DOMESTIC VIOLENCE IN THE UNITED STATES IN 2008, at 6 (2009), *available at* <http://www.avp.org/documents/2008NCAVPLGBTQDVReportFINAL.pdf>.

45. Meghan Condon, Note, *Bruise of a Different Color: The Possibilities of Restorative Justice for Minority Victims of Domestic Violence*, 17 GEO. J. ON POVERTY L. & POL'Y 487, 494 (2010) (citing LENORE E. WALKER, *THE BATTERED WOMAN* 49-52 (1979)). Psychologist Lenore Walker promulgated the theory of "learned helplessness" to explain battered woman syndrome. Jane Aiken & Katherine Goldwasser, *The Perils of Empowerment*, 20 CORNELL J. L. & PUB. POL'Y 139, 148 n.52 (2010).

46. *See* Evan Stark, *Re-Presenting Woman Battering: From Battered Woman Syndrome to Coercive Control*, 58 ALB. L. REV. 973, 976 (1995).

model is supposed to leave room for a victim to have agency in attempting to fight hir abuser and focuses on the various tools that an abuser uses to maintain control over a victim.

Three elements common to social entrapment are “1) a focus on the social isolation, fear and coercion that men’s violence creates in women’s lives; 2) attention to the indifference of powerful institutions to women’s suffering; and 3) identification of the ways that men’s coercive control can be aggravated by structural inequalities of gender, class, and racism.”<sup>47</sup> The theory of social entrapment explains how the abuser maintains control through the use of societal stereotypes and constructs and the ways in which the structural inequities “collude” with the abuser to maintain hir relationship.<sup>48</sup>

In the first element of social entrapment, an abuser isolates the abused person from hir networks of support through a combination of humiliation, micromanagement, threats, physical abuse, and other techniques.<sup>49</sup> In a cisgender heterosexual relationship, for example, a male abuser can use the sexual discrimination that women face in the world and stereotypes about women’s roles to assert control over his victim.<sup>50</sup> The control he asserts leads to her sense of entrapment since “[e]ntrapment builds off existing sexual inequality in rights and opportunities and extends it to every aspect of a woman’s private life, including her access to money, food, help, protection, friendships, family and children, work, transportation, and her control over sexuality or the minutiae of everyday living.”<sup>51</sup> Psychiatrist Judith Herman compares the mental state of the abused individual as a result of this level of control to that of a political prisoner.<sup>52</sup> In sum, in the first element of social entrapment, the abuser asserts power over a partner, utilizing a variety of techniques to compound the abused person’s sense of isolation.

The second element of social entrapment identifies how the various networks that should assist the abused person in leaving hir abuser instead both actively and passively collude to further hir sense of isolation.<sup>53</sup> “[H]ealth, criminal justice, and social service institutions” should provide a place of refuge; their failure to do so deepens the victim’s entrapment.<sup>54</sup> Evan Stark and Anne Flitcraft examine how the medical community, rather than recognizing abuse and helping to empower an abused woman, treat her in a way that increases her sense

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47. PTACEK, *supra* note 41, at 10.

48. *Id.*

49. See EVAN STARK, COERCIVE CONTROL: HOW MEN ENTRAP WOMEN IN PERSONAL LIFE 5 (2007).

50. *Id.*

51. Stark, *supra* note 46, at 1005.

52. See generally JUDITH LEWIS HERMAN, *Captivity, in* TRAUMA AND RECOVERY: THE AFTERMATH OF VIOLENCE-FROM DOMESTIC ABUSE TO POLITICAL TERROR 74 (1992).

53. Stark, *supra* note 46, at 1005.

54. *Id.* at 1023.

of isolation.<sup>55</sup> To medical professionals, a woman who repeatedly visits a hospital emergency room with injuries caused by abuse might be a “hypochondriac,” “depressive,” or suffering from some other mental disorder.<sup>56</sup> As Stark and Flitcraft explain, “[e]ven as they salve medicine’s wounds, labels isolate women from further care and so help to transform them into apparently helpless objects available to be subordinated by particular men.”<sup>57</sup> Abuse victims who do not reach out to other services are likely to show up at the doors of emergency rooms. However, the ways that hospital staff treat such women and “medicalize” their condition, serve only to further emphasize the victims’ isolation. As a result, the hospital staff aligns themselves with “parallel systems . . . including the system of male authority.”<sup>58</sup>

Additionally, “[t]he medical gaze transposes a disease model that sets out to deflect attention away from social injustices, while highlighting individual pathology.”<sup>59</sup> This means that doctors just treat the resulting trauma, such as injuries or mental health disorders, rather than trying to identify the root of the problem, such as social inequities or the existence of abuse and then tackling the real problem. As a result, the medical system also isolates the victim by individualizing hir condition. Similar failures by police and court systems— institutions that should help abuse victims to escape their abusers— also cause victims to feel more isolated.<sup>60</sup> Thus, systems that should provide succor to abuse victims actually reinforce and exacerbate their social isolation.

The final element of social entrapment relates to how structural inequalities, such as societal discrimination, contribute to an abuser’s power to isolate a victim.<sup>61</sup> To understand hir social entrapment, one needs to examine how these structures inhibit the victim’s ability to leave hir abuser.<sup>62</sup> For

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55. EVAN STARK & ANNE FLITCRAFT, *Medicine and Patriarchal Violence*, in *WOMEN AT RISK: DOMESTIC VIOLENCE AND WOMEN’S HEALTH* 3 (1996).

56. *Id.* at 16.

57. *Id.*

58. *Id.* at 15-16.

59. Ana Clarissa Rojas Durazo, *The Medicalization of Domestic Violence*, in *COLOR OF VIOLENCE: THE INCITE! ANTHOLOGY* 179, 181 ([Incite! Women of Color Against Violence](#) ed., 2006) (citing Howard Waitzkin, *Social Structures of Medical Oppression: A Marxist View*, in *PERSPECTIVES IN MEDICAL SOCIOLOGY* (P. Brown ed., 1989)).

60. See generally Carol Jacobson, Kammy Mizga, & Lynn D’Orio, *Battered Women, Homicide Convictions, and Sentencing: The Case for Clemency*, 18 *HASTINGS WOMEN’S L.J.* 31 (2007) (discussing how the failures of law enforcement and the courts make abused women feel as if they have no other recourse than to kill their abusers in self-defense).

61. PTACEK, *supra* note 41, at 10.

62. As explained by Julie Stubbs and Julia Tholmie, for example, “[t]he position of Aboriginal women who experience violence at the hands of male intimates require an analysis that recognizes both racism and sexism structure and limit Aboriginal women’s opportunities in specific ways.” The ways in which other “isms” intersect for Aboriginal women affect their options for dealing with the violence of their batterers as well as shape their perception about what “safer alternatives” exist for them. Julie Stubbs & Julia Tholmie, *Gender, Race, and the Battered Woman Syndrome: An Australian Case Study*, 8 *CANADIAN J. WOMEN & L.* 122, 131 (1995).

example, as Professor Kimberlé Crenshaw points out, “racially discriminatory employment and housing practices” affect the ability of women of color to access alternative shelter.<sup>63</sup> Therefore, as a result of discrimination, an abused woman of color may be less able to leave her abuser because she will have a more difficult time finding alternative shelter than would a white woman. A study of discrimination in housing conducted by HUD in 2000 found that White potential renters were favored over African Americans (by 21.6%) and over Latinos (by 25.7%) in paired testing of metropolitan rental markets.<sup>64</sup> Thus, the intersection of other forms of oppression can limit a victim’s ability to leave hir abuser and actively contribute to the abuser’s ability to isolate and entrap hir.

## II. SOCIAL ENTRAPMENT AND TRANS WOMEN

A trans woman’s status as trans interacts with other parts of her identity in enabling an abuser to use unique forms of social entrapment to control her. For example, the trans community is one that is often both medicalized and stigmatized.<sup>65</sup> Due to this medicalization and their relationship with health care providers, trans people may be unlikely to go to a hospital, which is one place where they may be screened for domestic violence and connected to services.<sup>66</sup> Additionally, trans women experience social entrapment due to isolation from potential support networks available to cisgender people, internalized transphobia, the insularity of the LGBT community in some locations, and the threat of outing.

### A. Medicalization

Trans people have a historically dysfunctional relationship with the

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63. Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1246 (1993).

64. U.S. DEP’T OF HOUS. & URBAN DEV., DISCRIMINATION IN METROPOLITAN HOUSING MARKETS iii-iv (2005), available at [http://www.huduser.org/portal/publications/hsgfin/hds\\_phase1.html](http://www.huduser.org/portal/publications/hsgfin/hds_phase1.html).

65. Dylan Vade, *Expanding Gender and Expanding the Law: Toward a Social and Legal Conceptualization of Gender That Is More Inclusive of Transgender People*, 11 MICH. J. GENDER & L. 253, 256 (2005) (describing how courts only recognize trans people who have undergone medical interventions as “real”). Franklin H. Romeo, *Beyond a Medical Model: Advocating for a New Conception of Gender Identity in the Law*, 36 COLUM. HUM. RTS. L. REV. 713, 733 (2005) (discussing how those trans people who fail to conform to the medical model are viewed as “unreal, fraudulent, or illegitimate”).

66. The National Transgender Discrimination Survey found that twenty-eight percent of trans people had waited to go to the doctor due to fear of discrimination or harassment. GRANT ET AL., *supra* note 15, at 76. This cuts off an avenue of support and outreach for trans survivors of domestic violence. One of the aims of the the recent VAWA reauthorization is to “provid[e] vital training and education to help health care providers better identify the signs of domestic violence and sexual assault . . . help[ing] medical professionals [assess] violence and then refer patients to the appropriate victim services.” 158 CONG. REC. S2768 (daily ed. Apr. 26, 2012) (statement of Sen. Kay Hagan).

medical community.<sup>67</sup> Doctors, psychologists, and other medical professionals typically hold a position of power in trans peoples' lives (at least for those trans people who are able to see them).<sup>68</sup> To access hormones and surgery through most medical providers, a person must conform to the diagnostic criteria of Gender Identity Disorder (GID), which the Diagnostic and Statistical Manual of Mental Disorders IV<sup>69</sup> categorizes as a psychological disorder,<sup>70</sup> and the path to transition must follow World Professional Association of Transgender Health Standards of Care.<sup>71</sup> Therefore, unless trans people live in an area where service providers offer medical treatment on an informed-consent basis<sup>72</sup> or have access to black-market hormones, they must meet the requirements set by their medical community to receive either the hormones or the gender-conforming surgeries

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67. See PATRICK CALIFIA, *SEX CHANGES: THE POLITICS OF TRANSGENDERISM* 52-82 (2d ed. 2003). For a comprehensive history of the relationship between trans people and medical providers in the United States, see JOANNE J. MEYEROWITZ, *HOW SEX CHANGED: A HISTORY OF TRANSEXUALITY IN THE UNITED STATES* (2002).
  68. Doctors and medical professionals control not only trans people's access to medical intervention but also trans people's access to their rights. In legal proceedings for issues ranging from name changes to custody battles, a court may require medical documentation that trans people are the gender they state they are. Romeo, *supra* note 65, at 726 (citing Jerry L. Dasti, *Advocating a Broader Understanding of the Necessity of Sex-Reassignment Surgery Under Medicaid*, 77 N.Y.U. L. REV. 1738, 1758 (2002)). If the medical practitioner disagrees and refuses to give the documentation, the trans person may be unable to win the case. See *id.* at 730-36, for a discussion of the impact of the medical model in court.
  69. The diagnostic criteria for mental health disorders are compiled in the Diagnostic and Statistical Manual of Mental Disorders IV, or DSM IV. See generally AM. PSYCHIATRIC ASS'N, *DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS: DSM-IV-TR* (4th ed. 2000).
  70. A new version of the DSM is due to be released in May 2013. *DSM-5: The Future of Psychiatric Diagnosis*, AM. PSYCHIATRIC ASS'N, <http://www.dsm5.org/Pages/Default.aspx> (last visited Apr. 24, 2012). There have been several proposals to attempt to lessen the stigma of a GID diagnosis. For example, it has been proposed to change the name from "Gender Disorder" to "Gender Identity Dysphoria." *Gender Dysphoria in Adolescents and Adults*, AM. PSYCHIATRIC ASS'N (last updated May 4, 2011), <http://www.dsm5.org/ProposedRevision/Pages/proposedrevision.aspx?rid=482#>. However, unlike homosexuality, GID still remains in the DSM. *Id.*
  71. See Kristin Wenstrom, "What the Birth Certificate Shows": *An Argument to Remove Surgical Requirements from Birth Certificate Amendment Policies*, 17 LAW & SEXUALITY 131, 132 n.5 (2008) (briefly discussing the WPATH Standards of Care and their relation to a GID diagnosis). The WPATH standards are significantly more liberal than their predecessor. For example, they emphasize that the choice to undergo hormone therapy should be "first and foremost the client's decisions." WORLD PROF'L ASS'N FOR TRANSGENDER HEALTH, *STANDARDS OF CARE FOR THE HEALTH OF TRANSSEXUAL, TRANSGENDER, AND GENDER NONCONFORMING PEOPLE*, 25 (7th ed. 2011), available at [http://www.wpath.org/documents/Standards%20of%20Care\\_FullBook\\_1g-1.pdf](http://www.wpath.org/documents/Standards%20of%20Care_FullBook_1g-1.pdf). However, even if the standards have evolved, practitioners have not, and many still follow the older, more restrictive standards. JULIA SERANO, *WHIPPING GIRL: A TRANSSEXUAL WOMAN ON SEXISM AND THE SCAPEGOATING OF FEMININITY* 119 (2007).
  72. Places like the Mazzoni Center in Philadelphia that offer hormones on an informed-consent basis provide hormone therapy to people who understand the risks without a diagnosis of GID. MAZZONI CTR., *TRANSGENDER HEALTH PROGRAM*, available at [http://mazzonicenter.org/sites/default/files/ma\\_resources/Transgender%20Health%20Program%20description.pdf](http://mazzonicenter.org/sites/default/files/ma_resources/Transgender%20Health%20Program%20description.pdf).

that they might desire.<sup>73</sup> In other words, trans people commonly need to convince a medical provider that they have a mental illness in order to obtain their desired medical treatment.<sup>74</sup>

Their access to medical providers and medical intervention is also predicated on their ability to pay because health insurance oftentimes does not cover transition-related care.<sup>75</sup> The fact that medical providers act as gatekeepers puts trans people in a very vulnerable position. This vulnerability, combined with the well-documented mistreatment of trans people by the medical community (which will be examined in more depth later in this Article) likely makes trans people apprehensive about depending on a medical provider, and unlikely to reach out to one in the case of domestic violence.

### B. Stigmatization

Moreover, trans people who successfully navigate the medical waters and receive a diagnosis of GID must then grapple with the stigma that continues to attach to mental illness. As one researcher states, “[t]he shame and self-doubt often experienced by survivors may be compounded by the stigma of mental illness attached to the diagnoses of ‘gender identity disorder.’”<sup>76</sup> This stigma affects many trans people’s sense of self-esteem.<sup>77</sup> The medical community doubts a trans person’s identity and sense of self, and so trans people are forced to conform to certain medical models to receive necessary treatment.<sup>78</sup> Regardless of whether it is directly based in the medicalization of trans identity, this attitude migrates from the medical arena into the general society.

The view of trans people within pop culture also works to stigmatize them by portraying them as confused, objects of pity, or frauds and deceivers.<sup>79</sup> This perception is particularly salient in movies and television where the “big reveal” concerns the main character’s trans status to which the other characters react with horror and dismay. One of the most egregious and sensationalist examples was the British show *There’s Something About Miriam*, which aired in 2004 after a lawsuit that held up its television release was resolved.<sup>80</sup> On the reality

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73. See generally Spade, *supra* note 40 (discussing Spade’s initial attempts to gain access to hormone therapy while not pretending to conform to the GID requirements).

74. *Id.*

75. See Romeo, *supra* note 65, at 735-36 (discussing the impact of the medical model on lower-income people and people without health care).

76. Danica R. Bornstein et al., *Understanding the Experiences of Lesbian, Bisexual and Trans Survivors of Domestic Violence: A Qualitative Study*, 51 J. HOMOSEXUALITY 159, 162 (2006) (internal citations omitted).

77. *Id.*

78. Vade, *supra* note 65, at 271.

79. “Media depictions of trans women, whether they take the form of fictional characters or actual people, usually fall under one of two main archetypes: the ‘deceptive transsexual’ or the ‘pathetic transsexual.’” SERANO *supra* note 71, at 36.

80. Jason Deans, *Reality Show Men Sue Sky Over Transsexual “Trick,”* GUARDIAN, Oct. 31,

show, six eligible bachelors vied for the hand of a supermodel.<sup>81</sup> During the last episode the suitors found out that the model was trans.<sup>82</sup> They subsequently sued.<sup>83</sup> Additionally, TV or film characters sometimes use cross-dressing<sup>84</sup> as a way to enter forbidden spaces in order to deceive others. An example of this paradigm is found in the movie *Ace Ventura*, in which Sean Young plays Lt. Lois Einhorn, who is actually disgraced Miami Dolphin's kicker Ray Finkle in disguise.<sup>85</sup> Ray Finkle dresses as a woman specifically so she can enter the police force and exact her revenge.<sup>86</sup> In that film and in others using this plot element, a character wears the clothing of the "opposite sex" to deceive the other characters in the movie. Broadly, gender non-conforming women are painted as fraudulent.<sup>87</sup>

Trans women face the additional stigma of transmisogyny. Writer Julia Serano defines transmisogyny as occurring "[w]hen a trans person is ridiculed or dismissed not merely for failing to live up to gender norms, but for their expressions of femaleness or femininity."<sup>88</sup> Whereas mainstream society can be forgiving, to an extent, of cisgender women displaying traits that are traditionally coded as masculine, it is quick to condemn the same trait exhibited by a trans woman, using it as proof that she is not a "real woman."<sup>89</sup> The general societal acceptance of transmisogyny makes it a very powerful tool for abusers.

This social stigmatization can have deadly effects for trans people, and abusers can utilize it to isolate victims. Research indicates that most trans people will be the victim of a hate crime during their lives.<sup>90</sup> For many, harassment and maltreatment is a common occurrence.<sup>91</sup> For some, it can have lethal

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2003, available at <http://www.guardian.co.uk/media/2003/oct/31/broadcasting.uknews>.

81. *Id.*

82. *Id.*

83. *Id.*

84. Although cross-dressing (dressing in the clothing of another gender) and being trans are two different gender expressions, the two are conflated in much of popular culture. Therefore, movies dealing with cross-dressers can be assumed to impact people's perceptions of trans people, as most films do not differentiate between the two. This conflation by people who both create and watch popular media can be seen in the Wikipedia entry "Cross-dressing in Film and Television," which includes both movies about cross-dressing, such as *She's the Man* and *Mulan*, and movies about trans people, such as *Boys Don't Cry* and *Ma Vie En Rose*. *Cross-dressing in Film and Television*, WIKIPEDIA, [http://en.wikipedia.org/wiki/Cross-dressing\\_in\\_film\\_and\\_television](http://en.wikipedia.org/wiki/Cross-dressing_in_film_and_television) (last visited Apr. 24, 2012).

85. *Transphobia in Film: Selected Quotations*, TRANSSEXUAL ROAD MAP, <http://www.tsroadmap.com/info/film-quotations.html> (last visited Apr. 24, 2012).

86. *Id.*

87. See generally Cord Jefferson, *How I Learned to Hate Transgender People*, GOOD (Jun. 30, 2011, 7:00 AM), <http://www.good.is/post/how-i-learned-to-hate-transgender-people/>.

88. SERANO, *supra* note 71, at 14-15

89. *Id.*

90. Vade, *supra* note 65, at 256-57 (citing C. DALEY, E. KULGER & J. HIRSCHMAN, WALKING WHILE TRANSGENDER: LAW ENFORCEMENT HARASSMENT OF SAN FRANCISCO TRANSGENDER/TRANSSEXUAL COMMUNITY (2000)).

91. See EMILY A. GREYTAK ET AL., GAY, LESBIAN & STRAIGHT EDUC. NETWORK, HARSH

consequences. Beyond the well-publicized and sensationalized murders of trans people such as Brandon Teena, an average of one trans person is murdered per month because they are trans.<sup>92</sup> This violence against trans people is such a pervasive problem that activists have declared November 20th an annual International Transgender Day of Remembrance.<sup>93</sup> Serano identifies transmisogyny as a reason that trans women face a disproportionately high amount of this violence.<sup>94</sup>

People who commit crimes against trans people sometimes attempt to use the stigma against them in their defense. For example, people who have attacked or murdered trans people have attempted to use “trans panic” to defend their actions.<sup>95</sup> The murderers of Gwendolyn Araujo tried to get their charge reduced to manslaughter by claiming that they had killed her in the heat of passion brought on by their discovery that their friend, with whom they had been sexually intimate, was a trans woman.<sup>96</sup> The author Victoria Steinberg, citing Martha Nussbaum, condemns the trans panic defense, stating, “Today’s tolerance of disgust defenses against gay and transgendered individuals highlights cultural anxiety around gender and sexuality boundary crossing. Allowing the fact of being transgendered to qualify as sufficient provocation reifies this anxiety.”<sup>97</sup>

Defenses such as this, based on the idea that the attacker was driven into a blind rage upon discovering that the person they were interacting with was trans, bear an uncanny resemblance to the “big reveals” that have been portrayed on TV and in film. One activist, Dylan Vade of the Transgender Law Center, posits,

Why do some folks feel that transgender people need to disclose their history and their genitalia and nontransgender people do not? When you first meet someone and they are clothed, you never know exactly what that person looks like. And when you first meet someone, you never know that person’s full history. Why do only some people have to describe themselves in detail—and

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REALITIES: THE EXPERIENCES OF TRANSGENDER YOUTH IN OUR NATION’S SCHOOLS (2009), available at [http://www.glsen.org/binary-data/GLSEN\\_ATTACHMENTS/file/000/001/1375-1.pdf](http://www.glsen.org/binary-data/GLSEN_ATTACHMENTS/file/000/001/1375-1.pdf).

92. Vade, *supra* note 65, at 256 (citing GENDER EDUCATION & ADVOCACY, TRANS MURDER STATISTICS: 1970 TO 2004, available at <http://www.gender.org/resources/dge/gea02002.pdf> (compiling statistics from 25 countries)).

93. *Id.* at 256 n.8; see also INTERNATIONAL TRANSGENDER DAY OF REMEMBRANCE, <http://www.transgenderdor.org> (last visited May 10, 2012).

94. SERANO, *supra* note 71, at 15.

95. See generally Victoria L. Steinberg, Book Note, *A Heat of Passion Offense: Emotions and Bias in “Trans Panic” Mitigation Claims*, 25 B.C. THIRD WORLD L.J. 499 (2005) (reviewing MARTHA C. NUSSBAUM, *HIDING FROM HUMANITY*) (applying Nussbaum’s analysis of the “trans panic” defense to the Gwendolyn Araujo case).

96. *Id.* at 499-502.

97. *Id.* at 509.

others do not?<sup>98</sup>

The belief that people have a “right to know” the intimate details of a trans person’s medical history is reflected in the courtroom, where judges persist in asking questions about and documenting trans people’s medical histories and the physical state of their genitals in exhaustive detail.<sup>99</sup>

The stigmatization of trans people manifests itself in discrimination, which has negative consequences in areas such as employment and allows abusers to economically abuse their trans partner. Statistically, trans people with higher degrees are underemployed, earning significantly less than cisgender people with the same academic credentials.<sup>100</sup> Trans people are also vulnerable to job termination if their status is revealed, a problem that will be addressed in greater depth later in this Article.<sup>101</sup> Finally, many trans people do not complete their education because of the harassment they face in schools.<sup>102</sup> Overall, this leads to a disproportionate number of trans people being underemployed or unemployed.<sup>103</sup> Nearly half of trans people who leave school due to harassment reported to the NTDS that they experienced homelessness.<sup>104</sup> Many trans people turn to survival crimes such as theft, drugs, or sex work as their only income

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98. People believe that they almost have a right to know, asking intimate questions of a transgender person that they would never feel comfortable asking a cisgender person. Talia Mae Bettcher, *Evil Deceivers and Make Believers: On Transphobic Violence and the Politics of Illusion*, 22 HYPATIA 43, 53 (2007) (citing Dylan Vade, *No Issue of Sexual Deception, Gwen Araujo Was Just Who She Was*, S.F. CHRONICLE, May 30, 2004).

99. For example, in her discussion of the *Littleton* case, Professor Julie Greenberg points out that by the end of the case, the court knew about Christie Lee Littleton’s current and former internal and external organs. Greenberg, *supra* note 19, at 752-53; *see also* Taylor Flynn, *The Ties That [Don't] Bind: Transgender Family Law and the Unmaking of Families*, in TRANSGENDER RIGHTS 32, 37-38 (2006) (discussing what Flynn refers to as the “body-parts” checklist).

100. This is true in the United Kingdom as well as in the United States:

They [trans people] have been found to be in jobs that are below their skills and educational capacity and appear more likely to work in lower-paid and insecure employment in the public sector, or to be self-employed. There is evidence that they may also experience greater debt and difficulty paying bills, which trans people have linked to their gender identity.

MARIN MITCHELL & CHARLIE HOWARTH, EQUALITY & HUMAN RIGHTS COMM’N, TRANS RESEARCH REVIEW vii (2009), *available at* [http://www.equalityhumanrights.com/uploaded\\_files/trans\\_research\\_review\\_rep27.pdf](http://www.equalityhumanrights.com/uploaded_files/trans_research_review_rep27.pdf)

101. For the story of Dana Rivers, a teacher fired for transitioning, see Marvin Dunson III, *Sex, Gender, and Transgender: The Present and Future of Employment Discrimination Law*, 22 BERKELEY J. EMP. & LAB. L. 465, 466 (2001).

102. According to the findings of the National Transgender Discrimination Survey, fifteen percent of respondents reported dropping out of school due to severe harassment. GRANT ET AL., *supra* note 15, at 33; *see also* Spade, *supra* note 23, at 36. However, the NTDS found that trans people have a higher rate of educational attainment than the general population since they often return to school later in life. GRANT ET AL., *supra* note 15, at 33.

103. Davis & Wertz, *supra* note 22, at 472-473; GRANT ET AL., *supra* note 15, at 55 (reporting that forty-four percent of survey respondents considered themselves underemployed).

104. GRANT ET AL., *supra*, note 15, at 33.

option (or, in some cases, as the only way to access medical treatment such as hormones).<sup>105</sup> Furthermore, involvement in criminalized industries means trans people are more likely to have interactions with the police.<sup>106</sup> And for a trans person, interactions with the police can range from humiliating to downright dangerous.<sup>107</sup> Many trans women, especially trans women of color, are profiled as sex workers and picked up for “walking while trans” in moral sweeps by the police.<sup>108</sup>

The stigmatization of trans people also leads to other issues, such as youth homelessness, which can correlate with a lack of familial support when exiting an abusive relationship.<sup>109</sup> Trans status can cause friction between a youth and hir family and a young trans person may choose to leave the home as a result.<sup>110</sup> Or, hir parents may reject their child for being trans and kick the youth out of the home.<sup>111</sup> After leaving home or being evicted, the youth may head to urban areas with larger trans populations.<sup>112</sup> Many homeless youth also turn to survival crimes, which can lead to early engagements with the police and legal system.<sup>113</sup> Or, they may end up in the foster care system, which has its own attendant risks for trans youth.<sup>114</sup>

### C. Isolation from Family and Friends

In a coercive-control model, abusers manipulate their partners into a corner through a combination of harassment, degradation, and violence.<sup>115</sup> Abusers typically attempt to isolate victims from their traditional support networks of

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105. Spade, *supra* note 23, at 38. Trans survivors of domestic violence are four times as likely both to be homeless and to engage in sex work. GRANT ET AL., *supra* note 15, at 88.
106. SYLVIA RIVERA LAW PROJECT, IT’S WAR IN HERE: A REPORT ON THE TREATMENT OF TRANSGENDER AND INTERSEX PEOPLE IN NEW YORK STATE MEN’S PRISONS 15 (2007) [hereinafter WAR], available at <http://srlp.org/files/warinhere.pdf>.
107. *Id.*
108. “Walking while trans” refers to police targeting of trans women as sex workers, regardless of whether they are. See Masen Davis, *Gender Freedom and Self Expression*, RACIAL EQUITY: FUNDERS FOR LGBTQ ISSUES, <http://www.lgbtracialequity.org/perspectives/perspective.cfm?id=21> (last visited Apr. 24, 2012); see also URBAN JUSTICE CENTER, SEX WORKERS PROJECT, REVOLVING DOOR: AN ANALYSIS OF STREET-BASED PROSTITUTION IN NEW YORK CITY 36-37, 41 (2003), available at <http://www.sexworkersproject.org/downloads/RevolvingDoor.pdf> (discussing the targeting by police of off-duty sex workers).
109. WAR, *supra* note 106, at 13.
110. Richard A. Hooks Wayman, *Homeless Queer Youth: National Perspectives on Research, Best Practices, and Evidence-Based Interventions*, 7 SEATTLE J. FOR SOC. JUST. 587, 594-95 (2009).
111. WAR, *supra* note 106, at 13.
112. See Wayman, *supra* note 110, at 600-01.
113. See *id.* at 605.
114. J. Lauren Turner, Note, *From the Inside Out: Calling on States to Provide Medically Necessary Care to Transgender Youth in Foster Care*, 47 FAM. CT. REV. 552, 554 (2009).
115. Jeffrey R. Baker, *Enjoining Coercion: Squaring Civil Protection Orders with the Reality of Domestic Abuse*, 11 J. L. & FAM. STUD. 35, 47-50 (2008).

family and friends to solidify their control over them.<sup>116</sup> In the case of trans women, many of the victims start out isolated from these networks of support, giving the abusers a distinct advantage.

First, many trans women are geographically isolated from their families and childhood friends. Prior to coming out, many trans women move to major metropolitan areas like San Francisco or New York that have active trans communities as well as trans-competent resources and health care.<sup>117</sup> They may have moved away from the areas in which they grew up, which may be less trans-friendly than a large city.<sup>118</sup> Or, they may have isolated themselves from their families while going through transition so that they would not have to reveal their trans status to them.<sup>119</sup> For whatever reason, the trend suggests that trans people's families are frequently not a readily accessible source of support because of their geographical separation. As a result, trans women often cannot, for example, use their family home as a safe house from an abusive partner unless they have the time and resources to return home. The same may be true of their ability to turn to childhood friends for support.

Second, a trans woman may not be able to rely on her family because they rejected her as a result of her transitioning. Many families ostracize their trans children, and as trans youth come out earlier, they risk family rejection at an increasingly younger age.<sup>120</sup> A trans woman may have a strained or nonexistent relationship with her family or none at all and therefore cannot call on them for help. The NTDS found that fifty-seven percent of respondents had suffered some estrangement from their families due to coming out as trans.<sup>121</sup> Another study comments, "LBT people are often estranged to some extent from family support and may not have access to institutional supports that are available to heterosexual couples through churches, workplaces and schools."<sup>122</sup>

Finally, a trans woman may not wish to disclose the abuse she suffers to her family because she does not want to "air her dirty laundry."<sup>123</sup> A trans

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116. STARK, *supra* note 49, at 5.

117. FOUNTAIN ET AL., *supra* note 44, at 6.

118. For example, trans youth may move to a city where they believe "they may be afforded greater safety and employment opportunities." Wayman, *supra* note 110, at 600-01.

119. "Some youth fear that because their sexual orientation or gender identity will disappoint their parents, they need to find an alternative space where they can be respected and optimize their chances of succeeding in life." NICHOLAS RAY ET AL., LESBIAN, GAY, BISEXUAL, AND TRANSGENDER YOUTH: AN EPIDEMIC OF HOMELESSNESS 26 (2006) (citing M. Rojas, *Green Chimneys in NYC Helping Lesbian, Gay, Bisexual, and Transgender Youths*, JOURNAL NEWS, Dec. 11, 2005, at 103.)

120. WAR, *supra* note 106, at 12-13.

121. GRANT ET AL., *supra* note 15, at 7. One U.K. study "reported that 37 per cent of the respondents to their online survey were excluded from family events and have family members who no longer speak to them because they have transitioned." MITCHELL & HOWARTH, *supra* note 100, at 69.

122. Bornstein et al., *supra* note 76, at 175.

123. Charlene Allen & Beth Leventhal, *History, Culture, and Identity: What Makes GLBT Battering Different*, in SAME-SEX DOMESTIC VIOLENCE: STRATEGIES FOR CHANGE 73, 78

woman, queer or straight, may have fought to have her sexual orientation, gender identity, and relationship accepted by her family and friends.<sup>124</sup> Or her identity may still not be accepted. Either way, she may not want to strengthen any negative perceptions that her family and friends might have of her status or relationship by revealing that her partner is abusive.<sup>125</sup> She may want to avoid reinforcing their transphobic belief that this is what she gets for being trans.

#### D. Internalized Transphobia

The victim may herself believe that this is the kind of relationship she deserves, a factor that the abuser can take advantage of.<sup>126</sup> The National Coalition of Anti-Violence Programs identifies the level of self-blame caused by internalized homophobia as a factor that differentiates LGBTQ relationships involving domestic violence from heterosexual ones.<sup>127</sup> After a lifetime of being insulted for who they are or of hiding who they are for fear of other's reactions, trans people may internalize some of the hate or believe that they are immoral or abnormal and therefore deserving of their abusive relationship.<sup>128</sup>

Abusers use this shame and self-doubt against their trans and intersex victims to undermine their victims' perceptions and to convince them that no one else will want them. Combined with stories of dating violence (such as that of Chanelle Pickett, an MtF trans woman who was recently murdered by a date enraged at the revelation of her trans status), these "warnings" can convince trans and intersex survivors that they are lucky just to have a partner who doesn't kill them.<sup>129</sup> A trans woman may also blame herself for the abusive relationship.<sup>130</sup> Or finally, she may have been trained from a young age by her parents or by society to believe that violent reactions to her femininity are to be expected or are deserved, and she may blame herself for not fighting back harder.<sup>131</sup>

For some trans women, the point at which abuse may begin or may escalate is when they come out as trans. One U.K. study found that:

transgender people are at a high risk of domestic abuse, especially emotionally abusive transphobic behaviors, when they come out as trans for the first time to existing partners. A second high risk point for domestic abuse . . . occurs when a person reveals plans to undergo gender reassignment to a partner who is

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(Beth Leventhal & Sandra E. Lundy eds., 1999).

124. Krisana M. Hodges, *Trouble in Paradise: Barriers to Addressing Domestic Violence in Lesbian Relationships* 9 LAW & SEXUALITY 311, 321 (1999-2000).

125. *See id.*

126. *Id.* at 321.

127. FOUNTAIN ET AL., *supra* note 44, at 12-13.

128. Courvant & Cook-Daniels, *supra* note 11.

129. *Id.*

130. FOUNTAIN ET AL., *supra* note 44, at 13.

131. Courvant & Cook-Daniels, *supra* note 11.

already aware of the person's trans identity but has been assuming they would not transition.<sup>132</sup>

The abuser can exploit the fact that a trans woman coming out or contemplating transition is in a very vulnerable position.<sup>133</sup> Or an abuser can turn her internalized transphobia against a trans woman who has transitioned. The abuser can insult her, claiming that she is not a "real woman,"<sup>134</sup> that this is the best that she deserves, or that she will not have a better relationship.<sup>135</sup> One trans woman recounts, "This woman, whom I'll call Mary, was careful to tell me how beautiful I was *to her*. She was occasionally subtle and often not so subtle about using my trans status to tell me how no one could really love or accept me like her."<sup>136</sup> Or abusers may try and convince their partners that this kind of relationship is normal for trans people.<sup>137</sup>

Beth Leventhal, executive director of The Network/La Red, has written of lesbian and gay relationships:

In a culture without many healthy role models for lesbian [and gay] relationships . . . the batterer can convince [his or] her partner that the abusive behavior is normal and that any problems the partner has with it are a reflection of [his or] her lack of experience and understanding of [gay or] lesbian relationships.<sup>138</sup>

Although the availability of role models has changed since Leventhal wrote this about gays and lesbians, her comments have continued relevance for the trans community. Trans survivors in the U.K reported that their abusers convinced them that this was just how a normal relationship was for a trans person or for a lesbian if this was her first relationship with another woman since transitioning.<sup>139</sup> Many trans people have discomfort with their bodies, possibly centered on certain features.<sup>140</sup> In an attempt to denigrate a trans woman, the abuser, building on that discomfort, may force her to engage in sexual activity

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132. SCOTTISH ALLIANCE, *supra* note 28, at 17.

133. *See id.*

134. GREATER LONDON DOMESTIC VIOLENCE PROJECT, DOMESTIC VIOLENCE: A RESOURCE FOR TRANS PEOPLE IN THE UK 13 (2009), *available at* <http://womenborntranssexual.com/2009/12/14/domestic-violence-a-resource-for-transpeople/> [hereinafter LONDON]; Bornstein et al., *supra* note 76, at 170.

135. Hodges, *supra* note 124, at 321.

136. Lisa Harney, *Survivors and Triggering*, QUESTIONING TRANSPHOBIA BLOG (Aug. 16, 2008, 5:01 AM), <http://www.questioningtransphobia.com/?p=351>.

137. LONDON, *supra* note 134, at 5.

138. Lundy, *supra* note 8, at 282 (citing Letter from Beth Leventhal, Coordinator, Network for Battered Lesbians, to Robert Gittens, Chairman, Massachusetts Advisory Board of Pardons, in support of the commutation petition of Debra D. Reid (Feb. 4, 1992) (on file with Lundy)).

139. LONDON, *supra* note 134, at 18.

140. *See* SCOTTISH ALLIANCE, *supra* note 28, at 18.

focused on that portion of her anatomy.<sup>141</sup> Overall, the abuser can attempt to reinforce a trans woman's negative self-image to make her vulnerable to the abuser's control.

An abuser may control a trans woman's ability to live her life in her chosen gender. A Scottish survey found that a third of the trans domestic violence survivors had partners who had either restricted or stopped them from expressing their gender identity through their clothing choices or through what name or pronouns they selected.<sup>142</sup> An additional way that abusers dominate trans women is by controlling their access to medical care in one of two ways. Some abusers may try to deny their trans partners access to gender-affirming medical care, such as hormones.<sup>143</sup> Conversely, others might try to coerce their trans partners into undergoing medical intervention that they may not desire.<sup>144</sup>

### E. Small Communities, Small Networks

Trans women also may find their ability to leave their abuser hampered by the fact that the LGBT community in their town is small and insular (and the trans community even smaller) and that there are not many service providers, even in cities with large trans populations such as New York or San Francisco.<sup>145</sup> A trans survivor of domestic violence, because of her unique circumstances, her relationship to her body, or her history of dealing with trans-incompetency and fear of being revictimized, may only feel comfortable utilizing confirmed trans-competent services.<sup>146</sup> Also, the community may discourage disclosure of one's "dirty laundry," fearing that it would increase negative perceptions of the LGBT community.<sup>147</sup> As one participant in a study by the Northwest Network of BTLG Survivors of Abuse puts it, "I think that people are very afraid to add to [the stigma of being queer] by saying . . . not only are we queer, but we also have violence in our relationships and in our community."<sup>148</sup>

A trans woman may fear that her network of friends and acquaintances, especially if they are part of the LGBT community, will "take the side of the abusive partner."<sup>149</sup> A survivor in the study of LBT domestic violence recounts,

I know that if I were to tell any of the friends of my abuser they would not

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141. *Id.*

142. *See id.* at 15.

143. *Id.*

144. LONDON, *supra* note 134, at 14.

145. MORGAN LYNN, TOOLKIT FOR ATTORNEYS WORKING WITH LESBIAN, GAY, BISEXUAL, AND TRANSGENDER (LGBT) SURVIVORS OF DOMESTIC VIOLENCE 2 (2010).

146. Courvant & Cook-Daniels, *supra* note 11.

147. Knauer, *supra* note 29, at 331.

148. Bornstein et al., *supra* note 76, at 169.

149. Michelle Aulivola, Note, *Outing Domestic Violence: Affording Appropriate Protections to Gay and Lesbian Victims*, 42 FAM. CT. REV. 162, 164 (2004).

believe me. They would say she's such a great person and she's so outgoing and she's so charming and she's so gorgeous and so funny and so capable and she's told them things about me, that I'm crazy, and they wouldn't believe me.<sup>150</sup>

Such a split with friends may further isolate the trans woman within her small community, a division that the abuser may actively exploit. For instance, “[m]any [survivors] also noted that their abusers were well-liked by friends, and were able to take advantage of the small size of the community and the fact that both knew the same people to cut survivors off from their friends.”<sup>151</sup> Being cut off from one's friends is a significant issue because of the importance of one's chosen family within the trans community.<sup>152</sup> If estranged from her biological family, a trans woman's chosen family is an incredibly valuable resource, and losing one's friends thus presents a more serious issue for her than it would for many cisgender or heterosexual people.<sup>153</sup> Abusers take advantage of this fact, actively seeking to separate their victims from their community.<sup>154</sup> One trans man survivor commented:

My trans ex and I are part of a very small trans community, and as a result of our breakup I have become largely alienated from our community. He is a respected leader in the trans community. He spread rumors about me, and I don't defend myself because I don't want to engage him. But after leaving my abusive relationship, I pretty much lost my community. People don't take what happened seriously. It's difficult because it seems like every organization I want to be a part of, he's there.<sup>155</sup>

This problem may be even more acute in lesbian relationships. For instance, “[s]ome observed that because their abusive partner was female, she could access all of the supports and resources the survivor could. This made it difficult for survivors to have any community contacts that did not involve their partners.”<sup>156</sup>

## F. Outing

Another effective weapon that an abuser can use against a trans woman

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150. Bornstein et al., *supra* note 76, at 170.

151. *Id.*

152. *Id.* at 176.

153. *Id.* at 175-76.

154. FOR OURSELVES: REWORKING GENDER EXPRESSION, TRANSGENDER SEXUAL VIOLENCE PROJECT 4 (2005) [hereinafter FORGE], available at [http://web.archive.org/web/20101130225250/http://forge-forward.org/transviolence/docs/FINAL\\_narrative\\_implications.pdf](http://web.archive.org/web/20101130225250/http://forge-forward.org/transviolence/docs/FINAL_narrative_implications.pdf) (archived page).

155. *Id.*

156. Bornstein et al., *supra* note 76, at 170.

victim is to threaten to “out” her.<sup>157</sup> The victim may be perceived within her circle of friends or at work as cisgender and therefore may be at risk of losing either her friends or her job if her trans status is revealed.<sup>158</sup> In the case of a trans woman who is not yet presenting as a woman, an abuser can threaten to reveal her trans status. Such a revelation could also have negative consequences for a trans woman’s employment, as people have been fired for “cross-dressing” even outside of the workplace.<sup>159</sup> One trans respondent to the NTDS survey recounted, “I was fired from my job after 18 years of loyal employment after a fellow employee saw me dressed while attending counseling and reported me to the boss. I was forced on to public assistance to survive.”<sup>160</sup> As explained in greater detail below, depending on where she lives, a trans woman fired from her job because of her gender presentation may have little recourse. Therefore, the threat to out a trans person can be a very powerful way for the abuser to maintain control.

### III. NOWHERE TO RUN: THE TRANSPHOBIA OF SOCIETY

Societal transphobia and transmisogyny also contribute to the entrapment of trans women, increasing abusers’ ability to make their victims feel isolated. Additionally, as examined in the second element of Stark’s classic model of coercive control, entities that should help victims of domestic violence often further alienate them. Trans women can be made to acutely feel the “indifference of powerful institutions to women’s suffering” when organizations like the police and battered women’s shelters contribute to their isolation by refusing to offer them adequate services.<sup>161</sup> Finally, as described in Stark’s third element, the structural inequalities caused by transphobia, such as restricted access to housing and insured employment, enhance an abuser’s ability to coercively control hir partner.<sup>162</sup> This section will examine the unequal access to resources

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157. AM. BAR ASS’N & NAT’L LGBT BAR ASS’N, WHAT RIGHTS DO I HAVE AS AN LGBT VICTIM OF DOMESTIC VIOLENCE? 2 (2012), *available at* [http://www.americanbar.org/content/dam/aba/multimedia/domestic\\_violence/publications/LGBT\\_update/ABA\\_LGBT-rights\\_Final.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/multimedia/domestic_violence/publications/LGBT_update/ABA_LGBT-rights_Final.authcheckdam.pdf)
158. As of January 2012, only sixteen states and the District of Columbia had banned discrimination on the basis of sexual orientation and gender identity/expression. NAT’L GAY & LESBIAN TASK FORCE, STATE NON-DISCRIMINATION LAWS IN THE US (2012), *available at* [http://www.thetaskforce.org/downloads/reports/issue\\_maps/non\\_discrimination\\_1\\_12\\_color.pdf](http://www.thetaskforce.org/downloads/reports/issue_maps/non_discrimination_1_12_color.pdf). As of 2012, 109 cities and counties also prohibit discrimination on the basis of gender identity. *U.S. Jurisdictions with Laws Prohibiting Discrimination on the Basis of Gender Identity or Expression*, TRANSGENDER L. & POL’Y INST., <http://www.transgenderlaw.org/ndlaws/index.htm#jurisdictions> (last visited Feb. 1, 2012).
159. *See Oiler v. Winn-Dixie La., Inc.*, No. Civ. A. 00–3114, 2002 WL 31098541 at \*1-2 (E.D. La. Sept. 16, 2002) (involving an individual who was fired when hir employer discovered that the plaintiff wore women’s clothing outside of work).
160. GRANT ET AL., *supra* note 15, at 57.
161. PTACEK, *supra* note 41, at 10.
162. *Id.*

and services faced by trans women and the ways in which these barriers, including gender markers on identity documents, employment discrimination, and housing discrimination, can contribute to further isolation of trans victims of domestic violence.

### A. Legal Genders and Gender Markers on Identity Documents

The legal landscape and current law governing the “legal gender” of trans people contribute to trans women’s difficulties in safely leaving their abusers. A great number of sometimes-conflicting rules govern legal gender recognition.<sup>163</sup> This is perhaps due to the fact that the term “legal gender” is a misnomer, because there is no one legal determinant of gender. Each administrative body responsible for issuing identification documents sets its own rules regarding what documentation and physical alterations are required for an individual to change the gender marker.<sup>164</sup> In certain instances, case law or statutes may modify these regulations.<sup>165</sup> For example, some state Departments of Motor Vehicles, the body responsible for issuing driver’s licenses, accept a letter from a therapist, whereas others require a letter stating that the trans person has undergone some form of genital surgery.<sup>166</sup> The rules set by some administrative bodies, such as state DMVs, essentially can be modified by administrative fiat, which can lead to documentation that is acceptable on one day being unacceptable on another.<sup>167</sup> A trans woman’s ability to change her gender markers (or name) may be further influenced by the judgment of the individual administrative worker she encounters.<sup>168</sup> Some workers are unaware of

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163. Spade, *supra* note 18, at 733-34.

164. *See generally* Spade, *supra* note 18 (laying out the different administrative bodies that issue identification and their procedures).

165. *See* Weiss, *supra* note 38, at 132.

166. Spade, *supra* note 18, at 770-74. In fact, the NTDS found that the type of surgery a trans woman had undergone had an impact on her ability to change her gender marker on her license. *See* GRANT ET AL., *supra* note 15, at 140-41.

167. For example, until the summer of 2009, the Pennsylvania Department of Transportation accepted court orders to change one’s gender on a driver’s license. In 2009 however, the administration circulated an internal memo that said that these orders would no longer be accepted and that people had to obtain letters stating they had undergone medical intervention. This change was discovered when trans people who had gotten a court order were refused a gender marker change at the DMV. PennDOT modified its policies in 2010 to be significantly more trans-friendly. Randy LoBasso, *A Question of Gender, A Matter of Choice*, PHILA. WEEKLY, Sept. 28, 2010, available at <http://www.philadelphiaweekly.com/news-and-opinion/cover-story/Rights-of-Passage.html>.

168. Weiss, *supra* note 38, at 153.

If you seem unsure of yourself, if the world has made you feel shame, if you are uncertain of what you are doing there, the clerk will pick up on this ‘vibe,’ and begin a cross examination of you. The clerk will examine your papers several times. The clerk will be suddenly unsure of how to accomplish this simple task (or begin to wonder whether he/she is even allowed to do it in the first place), and will take an immediate coffee break so that she/he can consult with the supervisors of supervisors . . . . You will, though, have been made to feel embarrassed, humiliated,

prevailing administrative policies or feign ignorance out of spite.<sup>169</sup>

Thus, a trans person may present the “correct” documentation, and a worker can nonetheless deny the changes sought. Essentially, the patchwork of administrative, state, and federal rules means that a trans woman can have identification reflecting different genders depending on what medical interventions she has undergone and which state she lives in.<sup>170</sup> For example, a trans woman Pennsylvania resident, born in Pennsylvania, who has not undergone any gender-related surgery may have a passport and driver’s license marked “F” and a birth certificate that is still marked “M.”<sup>171</sup> Not having identification that matches one’s gender expression can have a significant impact on one’s daily life. The NTDS found that “[f]orty percent (40%) of those who presented ID (when it was required in the ordinary course of life) that did not match their gender identity/expression reported being harassed and 3% reported being attacked or assaulted.”<sup>172</sup>

Furthermore, due to a lack of statutory definitions of male or female, the sex that a court decides to apply to a trans woman is essentially subject to the discretion of the judge.<sup>173</sup> As one trans scholar relates,

In some jurisdictions, an individual may obtain legal recognition of change in physical sex pursuant to statute, and a corresponding change may be made in gender identity on government documents. However, the legal recognition of a

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and generally less than human.

*Id.* (citing Susan Lynn Solomon, *Exploring the Paper Trail*, TRANSGENDA PRESS, 59-62 (1995); see also Spade, *supra* note 18, at 763-64 (describing the inconsistent enforcement of Social Security Administration rules by various SSA employees).

169. See Weiss, *supra* note 38, at 153-54.

170. Spade, *supra* note 18, at 737 (detailing how two transgender men living in Massachusetts had differing abilities to change the gender marker on their driver’s license, depending on where each was born).

171. *Id.* at 761-64 (outlining SSA policies); NAT’L CTR. FOR TRANSGENDER EQUALITY, UNDERSTANDING THE NEW PASSPORT GENDER CHANGE POLICY (2012), available at [http://transequality.org/Resources/passports\\_2012.pdf](http://transequality.org/Resources/passports_2012.pdf) (explaining the new requirements for changing the gender on one’s U.S. passport); LoBasso, *supra* note 167 (describing the PennDOT requirements for changing the gender marker on one’s license); see also EQUALITY ADVOCATES, NAME CHANGE KIT 17 (2008) (on file with author) (explaining that in order to change the gender marker on a birth certificate in Pennsylvania, an individual needs a letter indicating that he or she had genital surgery).

172. GRANT ET AL., *supra* note 15, at 139.

173. John M. Ohle, Note, *Constructing the Trannie: Transgender People and the Law*, 8 J. GENDER RACE & JUST. 237, 250-52 n.74 (2004) (providing a comprehensive list of cases involving trans people and the judges’ explanations of why they would or would not use that person’s preferred pronoun).

“Prior to my participation in this case, I would have had no doubt that the question of sex was a very straightforward matter of whether you are male or female . . . . After listening to the evidence in this case, it is clear to me that there is no settled definition in the medical community as to what we mean by sex.”

Weiss, *supra* note 38, at 166 (quoting *Ulane v. Eastern Airlines*, 581 F. Supp. 821, 823 (N.D. Ill. 1983), *rev’d* 742 F.2d 1081 (7th Cir. 1984)).

change in sex is not always given effect. This leads to incongruent results in law and concomitant institutional tension between legislative pronouncements, to which courts must defer, and court judgments that ignore or limit the effect of those legislative pronouncements.<sup>174</sup>

Thus a person may have identification that matches their gender identity, but that they may be forced to defend that gender when a legal adversary “seeks to have the court give effect to the [assigned] sex.”<sup>175</sup> The court’s ability to arbitrate one’s gender regardless of the steps sie has undertaken to change hir “legal gender” can have a profound effect on whether a marriage is recognized, whether a trans person gets custody of a child, and other legal issues.<sup>176</sup> If there is a conflict between a trans person’s designated sex on hir ID and hir gender identity, it can inhibit hir ability to access services, including battered woman’s shelters.<sup>177</sup> Moreover, such a conflict can force a trans woman to out herself on a regular basis—when shopping with a credit card for example, or more seriously, when giving her identification to police responding to a domestic dispute.<sup>178</sup> As one trans woman points out, “[t]hat’s one of the most threatening things that we have, that sometimes our identity does not match our persona.”<sup>179</sup> In a post-9/11 world, having identification that does not match one’s gender presentation can impede, or even prevent, an individual from engaging in basic activities, such as traveling free from harassment.<sup>180</sup>

## B. Employment

The lack of antidiscrimination protection for trans individuals in the employment setting may also impair a trans woman’s ability to leave her abuser.

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174. Weiss, *supra* note 38, at 127.

175. *Id.*

176. See *Littleton v. Prange*, 9 S.W.3d 223, 230 (Tex. App. 1999) (finding that Christie Lee Littleton was legally male even though a court had found that she could amend her birth certificate to read female).

177. As will be discussed further, presenting an ID that does not match one’s gender presentation can out someone as trans, which can lead to denied entrance into “women only” spaces such as battered women’s shelters.

178. Flynn, *supra* note 99, at 36-37.

179. Symposium, *Lesbian, Gay, Bisexual, and Transgender Communities and Intimate Partner Violence*, 29 *FORDHAM URB. L. J.* 121, 148 (2001) (quote from Victoria Cruz).

180. Flynn, *supra* note 99, at 36-37. This may be further complicated by the use of the new “whole body imaging” that allows TSA agents to see the “passenger’s bodily contours, including breasts, genitals, buttocks, prosthetics, binding materials, and any other objects on the passenger’s body.” NAT’L CTR. FOR TRANSGENDER EQUALITY, *WHOLE BODY IMAGING FAQ* 2 (2010), available at [http://transequality.org/Resources/NCTE\\_Body\\_Scan\\_Nov\\_2010.pdf](http://transequality.org/Resources/NCTE_Body_Scan_Nov_2010.pdf). This means that even if trans people have an ID with a gender marker that matches their gender presentation, they may be outed as trans as a result of having “unexpected” genitalia or devices. *Id.* This could lead to TSA employees, under the pretense of “security measures,” flagging or harassing trans individuals. *Id.* The alternative to the body scan is an invasive pat down. *Id.*

Trans people consistently face harassment and discrimination in the workplace.<sup>181</sup> Forty-seven percent of respondents to the NTDS reported adverse job consequences (defined as “being fired, not hired, or denied a promotion”) due to their trans status.<sup>182</sup> The unemployment rates for black and Latino trans people were between two and four times the national average.<sup>183</sup> However, courts have not been particularly helpful in remedying this inequality. Most courts currently do not consider trans individuals to be a suspect class for Equal Protection purposes.<sup>184</sup> Therefore, due to a lack of consensus over whether trans people are covered under Title VII,<sup>185</sup> unless a city or a state has passed an antidiscrimination statute that includes gender identity, trans people are not guaranteed judicial recourse in the face of discrimination.<sup>186</sup>

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181. GRANT ET. AL, *supra* note 15, at 55.

182. *Id.* at 54.

183. *Id.*

184. “The court has also made clear that transgender people are not in the intermediate ‘sex’ category of judicial scrutiny.” Ohle, *supra* note 173, at 277 (citing *Holloway v. Arthur Anderson*, 566 F.2d 659, 663 (9th Cir. 1977)).

185. This is not necessarily true under state law. For example, in *Rentos v. Oce-Office Systems*, the New York federal court found that, under New York City and New York State human rights law, transgender people were a protected class. Carolyn E. Coffey, *Battling Gender Orthodoxy: Prohibiting Discrimination on the Basis of Gender Identity and Expression in the Courts and in the Legislatures*, 7 N.Y. CITY L. REV. 161, 165-66 (2004) (citing *Rentos v. Oce-Office Systems*, No. 95-7908, 1996 U.S. Dist. LEXIS 19060 (S.D.N.Y. 1996)). A recent ruling by the EEOC finding that trans people are protected under Title VII of the Civil Rights Act may help to alleviate much of the discrimination faced by trans people, as now trans people may apply to any of the 53 district offices of the EEOC if they face discrimination. *Macy v. Holder*, EEOC Appeal No. 0120120821, Agency No. ATF-2011-00751 (Apr. 23, 2012). The agency found that

when an employer discriminates against someone because the person is transgender, the employer has engaged in disparate treatment ‘related to the sex of the victim.’ This is true regardless of whether an employer discriminates against an employee because the individual has expressed his or her gender in a non-stereotypical fashion, because the employer is uncomfortable with the fact that the person has transitioned or is in the process of transitioning from one gender to another, or because the employer simply does not like that the person is identifying as a transgender person. In each of these circumstances, the employer is making a gender-based evaluation, thus violating the Supreme Court’s admonition that ‘an employer may not take gender into account in making an employment decision.’

EEOC Appeal No. 0120120821, 2012 WL 1435995, at \*7-8 (April 20, 2012) (internal citations omitted). However, though this is a step forward, EEOC findings are only persuasive in the courtroom, not mandatory, and the impact of this ruling remains to be seen. Chris Geidner, *Transgender Breakthrough*, METRO WEEKLY (Apr. 23, 2012), <http://metroweekly.com/news/?ak=7288>.

186. See Coffey, *supra* note 185 at 165-66 (referencing several cases where trans people were fired owing to their status or their transitioning). Trans people have found some limited protection in the courtroom under Title VII of the Civil Rights Act of 1964. Daniella Lichtman Esses, *Afraid to Be Myself, Even at Home: A Transgender Cause of Action Under the Fair Housing Act*, 42 COLUM. J. L. & SOC. PROBS. 465, 492 (2009). In *Price Waterhouse v. Hopkins*, the Supreme Court held that Title VII protects people from being discriminated against on the basis of sex stereotyping. *Id.* In that case, the plaintiff, a cisgender woman, was critiqued for being too masculine at her job and was denied a promotion. *Id.* A handful

The paucity of legal protections may induce individuals to keep their trans status or gender history hidden because they fear the repercussions if they are outed at a job. As described in the preceding section, abusers manipulate trans women's employment vulnerability by threatening to out them to their employers.<sup>187</sup> Though the trends are changing, trans people have faced negative workplace consequences in staggering numbers.<sup>188</sup> Even where its illegality is clear, discrimination does not cease to exist. Regardless of whether or not protections are available through the EEOC or judicial process, a trans woman must be able to access and navigate these systems in order to combat discrimination she has faced. This may be difficult for many trans women, especially when they are also dealing with an abusive partner. Because trans women remain vulnerable to workplace discrimination and employment termination, a trans woman can feel even more dependent on her abuser for economic support, which serves to further entrap her in an abusive relationship.<sup>189</sup>

### C. Housing

A trans woman's ability to leave her abuser may also be constricted by limited housing options. Trans women may experience housing discrimination in a number of ways. They may have trouble finding and maintaining a residence due to housing discrimination.<sup>190</sup> Trans women may have trouble finding housing that will accept them since "[s]ome landlords refuse to rent apartments

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of jurisdictions have applied this "sex stereotyping" argument to non-gender-normative trans plaintiffs. *Id.* at 494-95. For example, the Sixth Circuit held in *Barnes v. Cincinnati* that a trans woman was protected under Title VII. *Id.* at 494. However, the Tenth Circuit declined to extend this protection in *Etsitty v. Utah Transit Authority*. *Id.* at 494-95. Recently, the Ninth Circuit, in *Schwenk v. Mitchell*, reiterated that the defendant's gender discrimination, not the plaintiff's status as transgender, should be the point of inquiry, placing discrimination against transgender people under the ambit of Title VII. *Dunson supra* note 101, at 480-81 (2001). Additionally, in a recent case out of the Eleventh Circuit, the court found in favor of a trans woman plaintiff by applying intermediate scrutiny under an equal protection analysis. *Glenn v. Brumby*, 663 F.3d 1312 (11th Cir. 2011). Therefore, although most courts do not currently recognize transgender people as a suspect class, this trend seems to be changing, and the EEOC ruling in *Macy v. Holder* could have wide reaching effects. *See supra* note 185 and accompanying text.

187. HUMAN RIGHTS CLINIC & SEXUALITY & GEND. LAW CLINIC, HUMAN RIGHTS AND DOMESTIC VIOLENCE: AN ADVOCACY MANUAL 79 (2010) [hereinafter COLUMBIA MANUAL], available at [http://www.law.columbia.edu/null/download?&exclusive=filemgr.download&file\\_id=163703](http://www.law.columbia.edu/null/download?&exclusive=filemgr.download&file_id=163703).
188. Even though courts were beginning to provide protections for trans people, forty-seven percent of those surveyed still faced negative workplace consequences. GRANT ET. AL, *supra* note 15, at 54.
189. *See generally* Davis & Wertz, *supra* note 22 (discussing the economic vulnerability of transgender people). "Discrimination against transgender people in housing, employment, healthcare, public benefits, and social services is pervasive, pushing transgender people to the margins of the formal economy." Esses, *supra* note 186, at 487 (quoting WAR, *supra* note 106, at 11).
190. Esses, *supra* note 186, at 484.

to transgender tenants. Real estate brokers will steer transgender people away from certain properties.”<sup>191</sup> Trans people have recounted instances when they have responded to housing ads and shown up for their interview only to find that the housing was “no longer available.”<sup>192</sup>

Once trans people secure housing, domestic violence can cause them to be evicted, especially if an abusive partner outs them to a transphobic landlord.<sup>193</sup> As a legal clinic at Columbia Law School found when compiling its manual on domestic violence:

Many victims experience discrimination or forced eviction from landlords who do not want to deal with any “trouble” the domestic violence may cause, such as disturbance to neighbors . . . This situation can be worse for LGBT domestic violence victims. Landlords, in addition to their bias and hostility toward domestic violence victims in general may have another layer of bias towards LGBT individuals generally.<sup>194</sup>

This account underscores how a victim of domestic violence faced with a transphobic landlord has a heightened chance of losing her housing. And if a trans woman leaves her partner, she may find it difficult to secure alternate housing because landlords and potential roommates may be unwilling to rent to her.<sup>195</sup> This vulnerability to housing discrimination can further hamper her ability to leave an abusive partner.<sup>196</sup> Although protections for women in public housing now exist to prevent eviction due to domestic violence, exceptions that a landlord can use to evict a tenant still remain.<sup>197</sup>

Furthermore, an unlawfully evicted tenant often must mount a lawsuit to

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191. *Id.* at 482.

192. *Id.* at 466-67 (citing a Craigslist post).

193. *See id.* at 482 (citing *Housing & Shelter*, TRANSGENDER LEGAL DEF. & EDUC. FUND, [http://transgenderlegal.org/work\\_show.php?id=5](http://transgenderlegal.org/work_show.php?id=5) (last visited Apr. 24, 2012)). As discussed above, batterers use the threat of outing their partners as trans as a way of controlling them. Combined with a transphobic landlord, this can lead to homelessness for a trans person. Trans people generally report a high level of harassment in their homes. *See id.*

194. COLUMBIA MANUAL, *supra* note 187, at 81.

195. Esses, *supra* note 186, at 482-483 (citing Ethan Jacobs, *New Territory in Fair Housing: Housing Discrimination Laws Unclear for Trans People*, BAY WINDOWS, Oct. 2, 2003) (describing Professor Jill Weiss’s difficulty in finding roommates during her Ph.D. studies).

196. SHELTER/HOUSING, *supra* note 2, at 17 (describing how many battered trans women remain with their abuser rather than risking homelessness).

197. Under a reauthorization of the Violence Against Women Act (VAWA), landlords are forbidden to evict tenants in public housing who are victims of domestic violence. VAWA carves out an exception to the infamous “one-strike” policy, which calls for the eviction of a tenant. However, a landlord can evict a tenant if the landlord can prove that the tenant’s continued stay would be an “actual or imminent threat” to the other tenants or employees. ACLU: WOMEN’S RIGHTS PROJECT, THE RIGHTS OF DOMESTIC VIOLENCE SURVIVORS IN PUBLIC AND SUBSIDIZED HOUSING I, available at [www.aclu.org/pdfs/subsidizedhousingdv.pdf](http://www.aclu.org/pdfs/subsidizedhousingdv.pdf); Elizabeth M. Whitehorn, Comment, *Unlawful Evictions of Female Victims of Domestic Violence: Extending Title VII’s Sex Stereotyping Theories to the Fair Housing Act*, 101 NORTHWESTERN U. L. REV. 1419, 1423 (2007).

challenge the eviction, a daunting prospect for an evicted and vulnerable trans woman, especially one with a lower income.<sup>198</sup> Additionally, because eviction from public housing often means homelessness, tenants are in a vulnerable position and susceptible to unscrupulous landlords, who may sexually harass their tenants or ask them for sexual favors.<sup>199</sup> Due to the hypersexualization and perception of trans women, especially trans women of color, the sexual harassment of trans women in public housing is a very plausible, though perhaps under-examined, concern.<sup>200</sup> Recent changes to the HUD policies guaranteeing equal access to housing regardless of gender identity may provide some protections to trans women in public housing.<sup>201</sup> However, as noted above, discrimination in private housing is a very real concern, and it is yet to be seen how the changes to HUD's policy will play out. Finally, discrimination in housing affects a trans woman's ability to leave her abuser because it is uncertain whether there is a shelter that will accept her. A paucity of legal protection against housing discrimination allows shelters to have transphobic policies.<sup>202</sup>

#### IV. AN UPHILL BATTLE: THE TRANSPHOBIA OF SERVICE PROVIDERS

The most dangerous point in an abusive relationship comes when the victim attempts to leave hir abuser.<sup>203</sup> As attorney Sarah Warne points out, “the decision to stay with an abuser quite often results from a victim's assessment that the abuser will become more violent if he or she tries to leave.”<sup>204</sup> To leave, the victim must be very courageous and must also have some form of safety net. For trans women, however, as discussed above, the safety net may range from inadequate to nonexistent. Rampant discrimination in the services that are supposed to assist an abused person in getting away from hir abuser—medical services, law enforcement, shelters, and the courts—may actually cause a trans

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198. ACLU: WOMEN'S RIGHTS PROJECT, *supra* note 197, at 2.

199. Shirley Darby Howell, *Making Women Homeless and Keeping Them Homeless: Domestic Violence, Flawed Interpretations of 42 U.S.C. §143D(L)(6), Sexual Harassment In Public Housing, and Municipal Violations of the Eighth Amendment*, 65 GUILD PRAC. 77, 83 (2008)

200. Davis, *supra* note 108; *see also* SERANO, *supra* note 71, at 43-45 (discussing the link between the hyperfeminization and hypersexualization of trans women).

201. Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity, 77 Fed. Reg. 5662-01 (Feb. 3, 2012) (to be at codified 24 C.F.R. pts. 5, 200, 203, 236, 400, 570, 574, 882, 891, and 982).

202. The issue of shelters will be addressed more specifically in Part IV.

203. Dr. Dana Raigrodski terms this “separation abuse,” where the level of violence increases after a victim is able to leave hir abuser. Dana Raigrodski, *Consent Engendered: A Feminist Critique of Consensual Fourth Amendment Searches*, 16 HASTINGS WOMEN'S L.J. 37, 53 (2004).

204. Sarah E. Warne, Note, *Rocks, Hard Places, and Unconventional Domestic Violence Victims: Expanding Availability of Civil Orders of Protection in New York*, 52 N.Y.L. SCH. L. REV. 279, 283 (2007-2008).

woman to stay with her abuser rather than expose herself to their transphobia.<sup>205</sup> Indeed, a trans woman may prefer “the devil she knows.”

### A. Medical Assistance

A trans woman may hesitate to go to a hospital emergency room or to seek out a medical professional because of her past experiences with the medical community and her general awareness of the transphobia in the world of medical service providers.<sup>206</sup> As one trans survivor recounts, “I felt that the residents in the [Emergency Room] felt that being transgender meant I had some ‘sexual fetish’ and that I exposed myself to high risk situations (which wasn’t the case, it was partner-abuse).”<sup>207</sup> The actions of the emergency room staff made this trans survivor feel like a freak. It is little wonder if a survivor, after receiving such treatment at the hands of medical professionals, is reluctant to return, even when it is necessary. Furthermore:

Transpeople’s relationship to mental health professionals is unique. In many, if not most cases, therapists stand between a transperson’s identity and the services sie<sup>208</sup> must have to alter hir body by hormones and/or surgery . . . . This makes for a unique power dynamic in which transpeople feel they must hide information from therapists in order to get the services they desire.”<sup>209</sup>

As explained earlier, medical professionals act as gatekeepers to the treatments needed by trans people, such as hormones or surgery. In order for trans people to qualify for these procedures, under the standards recommended by WPATH, their “stories” must conform to a particular medical model.<sup>210</sup> Professor Dean Spade wrote of learning about these standards from other trans people in support groups: “I learned quickly that to achieve [a male-constructed

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205. Bornstein et al., *supra* note 76, at 172 (describing LBT people’s experiences with, or avoidance of, service providers such as the police, therapists, and shelters after domestic violence).

206. *Access to Health Care*, TRANSGENDER LEGAL DEF. & EDUC. FUND, [http://transgenderlegal.org/work\\_show.php?id=2](http://transgenderlegal.org/work_show.php?id=2) (last visited Apr. 24, 2012).

Transgender people face massive and systemic discrimination within the health care system. From instances of humiliation and degradation to outright refusals to provide care, the health care system presents a minefield of discrimination for transgender people seeking to access care. The end result is a community-wide disengagement from the health care system that results in dire health outcomes for transgender people. Rather than enduring abuse and poor treatment, transgender people often simply do without health care.

*Id.*

207. FORGE, *supra* note 154, at 3.

208. “Sie” is a gender-neutral pronoun.

209. FORGE, *supra* note 154, at 3 (emphasis omitted).

210. Again, as mentioned above, the WPATH standards are much more trans-friendly and patient centered than the old HBGDA standards. However, many providers still operate under the old standards. SERANO, *supra* note 71, at 119.

chest], I needed to perform a desire for gender normativity, to convince the doctors that I suffered from GID and wanted to ‘be’ a ‘man’ in a narrow sense of both words.”<sup>211</sup> The power dynamics between medical professionals and trans people are skewed. For an abused trans woman, this kind of dynamic likely will not foster a feeling of safety or trust. Rather, her history with medical professionals will make her feel that they are not people she can turn to and ask for assistance. She may also be concerned that her being an assault survivor may in some way jeopardize her access to hormones or surgery.<sup>212</sup>

In addition, if a trans woman does chose to go to a hospital for medical attention, she may find herself turned away from services.<sup>213</sup> As one trans person put it,

Denial of health care by doctors is the most pressing problem for me. Finding doctors that will treat, will prescribe, and will even look at you like a human being rather than a thing has been problematic. Have been denied care by doctors and major hospitals so much that I now use only urgent care physicians and I never reveal my gender history.<sup>214</sup>

Even when prohibited from doing so under public accommodations law, medical professionals have been known to turn away trans people, claiming not to “have expertise” in trans issues.<sup>215</sup> Twenty-four percent of trans women responders to the NTDS reported being denied equal treatment by doctors or hospitals on the basis of their trans status.<sup>216</sup> Such a response can increase social entrapment by closing off an important avenue of support and care.

Finally, the trans community has a deep-seated mistrust of medical professionals because of well-publicized cases of provider mistreatment of trans community members. For example, in 1995, Tyra Hunter, a trans woman of

211. Spade, *supra* note 40, at 24.

212. FORGE, *supra* note 154, at 3.

I’m afraid to go to a mainstream provider because I don’t want to have to justify my existence to receive help, but I am afraid to go to a trans-knowledgeable provider because I know the [Standards of Care] are more harsh if you are an assault survivor. I feel like I’m falling through the cracks and no one cares.

*Id.* The assault in this case, based on the context of the article, appears to be childhood sexual assault, but it is possible that intimate partner abuse may also compromise a trans woman’s ability to qualify for care under the WPATH standards as currently applied by doctors.

213. The NTDS found that nineteen percent of trans and gender nonconforming people were denied healthcare due to their trans or gender nonconforming status. GRANT ET AL., *supra* note 15, at 72; *see also* SYLVIA RIVERA LAW PROJECT, YOUR HEALTHCARE RIGHTS: TRANS ADULTS IN NEW YORK [hereinafter YOUR HEALTHCARE RIGHTS], available at <http://srp.org/files/trans%20health%20adult%20english.pdf>

214. GRANT ET AL., *supra* note 15, at 75.

215. One trans person recounts, “I have several health issues and have been refused care by one doctor who ‘suggested’ that I go someplace else because she could not treat me since she ‘did not know anything about transgender people.’” *Id.* at 76; *see also* YOUR HEALTHCARE RIGHTS, *supra* note 213.

216. GRANT ET AL., *supra* note 15, at 73.

color, was injured in a car accident.<sup>217</sup> After cutting away her clothes, the paramedics discovered that she had a penis and proceeded to ridicule and laugh at her.<sup>218</sup> She eventually died of her injuries because of the paramedics' callousness.<sup>219</sup> Incidents such as these cause trans women to doubt that medical professionals will help them, and this conclusion furthers the social entrapment of trans women.

### B. Law Enforcement

A trans woman may be even more reluctant to ask help from the police, whose transphobia is pervasive and well-documented.<sup>220</sup> Trans women who experience domestic violence may not call on the police for help because of personal negative experiences or the prior negative experiences of other trans women. One trans woman recounted, "When I told them my real name, Rachel, they refused to recognize that and continued to call me by my male name . . . The State Troopers tried to keep their smirks and comments at a distance, but I still heard words like 'fag' and 'freak' a number of times."<sup>221</sup> Such experiences make trans women reluctant to turn to the police for assistance.

Trans people of color may be especially slow to involve the police in their personal affairs because they may not wish to give the police a reason to enter their community.<sup>222</sup> Indeed, past experience with and fear of the police may cause trans women to identify more with their abusers than with the state.<sup>223</sup> As one study has stated, "[s]ome [LBT people] felt that, even though they needed help to escape abuse, they did not want to subject their partner to potentially discriminatory or dangerous interactions with police."<sup>224</sup>

Police brutality against trans people is endemic and well documented.<sup>225</sup> The activist Andrea Ritchie writes:

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217. JULIE DARKE & ALLISON COPE, WOMEN/TRANS DIALOGUE PLANNING COMM. & TRANS ALLIANCE SOC'Y, TRANS INCLUSION POLICY MANUAL FOR WOMEN'S ORGANIZATIONS 40 (2002), available at <http://www.transalliancesociety.org/education/documents/02womenpolicy.pdf>.

218. *Id.*

219. *Id.*

220. Forty-six percent of respondents to the NTDS reported that they are uncomfortable seeking police assistance. GRANT ET AL., *supra* note 15, at 158.

221. STONEWALLED, *supra* note 33, at 50 (quoting e-mail from Rachel Thompson to Amnesty International USA (Mar. 18, 2004)).

222. Adele M. Morrison, *Queering Domestic Violence to "Straighten Out" Criminal Law: What Might Happen When Queer Theory and Practice Meet Criminal Law's Conventional Responses to Domestic Violence*, 13 S. CAL REV. L. & WOMEN'S STUD. 81, 106 (2003).

223. "As with those who identify as belonging to other subordinated communities, LGBT individuals, even those who have been victimized, are often reluctant to bring the law into their homes." *Id.* at 94 (citing Jenny Rivera, *Domestic Violence Against Latinas by Latino Males: An Analysis of Race, National Origin, and Gender Differentials*, 14 B.C. THIRD WORLD L.J. 231, 248-49 (1994)).

224. Bornstein, *supra* note 76, at 172.

225. See generally STONEWALLED, *supra* note 33.

The interactions of transgender women, often perceived as the “ultimate” gender transgressors, with law enforcement are generally marked by insistence on gender conformity and punishment for failure to “comply,” including harassment, verbal abuse, and physical violence at the hands of police, often based on perceptions that they are fraudulent, deceitful, violent, or mentally unstable because of their perceived gender disjuncture.<sup>226</sup>

Furthermore, the police have historically targeted trans women in “moral sweeps,” profiling them as sex workers and arresting them for simply walking while trans.<sup>227</sup> One trans activist, Carrie Davis, recounted an incident in which, after a meeting of the Gender Identity Project of the NYCLGBT Center, a trans woman went over to a man and engaged in a friendly conversation with him after he had waved her over, and the man proceeded to arrest her on solicitation charges.<sup>228</sup> In a study of the New Orleans police by the Department of Justice, the DOJ found that “members of the LGBT community complained that NOPD officers subject them to unjustified arrests for prostitution, targeting bars frequented by the community and sometimes fabricating evidence of solicitation for compensation.”<sup>229</sup> Police responding to domestic violence calls from trans women also have been known to profile them as sex workers and refuse to help.<sup>230</sup> Therefore, past experiences with the police may cause a trans woman not to call them for fear of additional mistreatment.

Even if a trans woman does not fear a transphobic reaction by the police, she still risks being disbelieved. Over the last few decades, the image of the archetypal “good” victim has been refined to a standard that many trans woman may not meet. As Professor Adele Morrison writes:

The domestic violence identity—the “battered woman”—has been constructed in direct opposition to the identities of other subordinated groups. The essential victim of domestic violence, the essential battered woman, is a white, heterosexual, middle-class woman. She is the essential battered woman because society imagines that it is she who needs protection.<sup>231</sup>

Arriving at the scene of a domestic violence call, police will, in all

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226. Andrea Ritchie, *Law Enforcement Violence Against Women of Color*, in *COLOR OF VIOLENCE: THE INCITE ANTHOLOGY*, *supra* note 59, at 143.

227. Coffey, *supra* note 185, at 166.

228. Symposium, *Does New York City Look Different to You? The Changing Legal Landscape of Queer New York City*, 26 N.Y.U. REV. L. & SOC. CHANGE 139, 145-46 (2001) (remarks of Carrie Davis, counselor with the Gender Identity Project and presenter of *From Paddy Wagons to Minivans*).

229. U.S. DEP’T OF JUSTICE, CIVIL RIGHTS DIV., INVESTIGATION OF THE NEW ORLEANS POLICE DEPARTMENT 36 (2011), available at [http://www.justice.gov/crt/about/spl/nopd\\_report.pdf](http://www.justice.gov/crt/about/spl/nopd_report.pdf).

230. COLUMBIA MANUAL, *supra* note 187, at 78.

231. Adele M. Morrison, *Changing the Domestic Violence (Dis)course: Moving from White Victim to Multicultural Survivor*, 39 U.C. DAVIS L. REV. 1061, 1078 (2006).

probability, be looking for a woman who possesses the characteristics Morrison describes, a woman the police would consider both in need of and deserving of protection.<sup>232</sup> A trans woman victim, either because of her trans status or some other intersectional identity, may be disbelieved if she does not fit that model.

Further compounding this issue, the police may decide to characterize the situation as mutual combat.<sup>233</sup> Commonly, when the police respond to cases of domestic violence involving lesbian and gay couples, they will arrest either both partners or neither because the stereotypical criteria they rely on to determine who is the abuser are not evident.<sup>234</sup> According to Connie Burke, the executive director of the Northwest Network of Bisexual, Trans, and Lesbian Survivors of Abuse, seventy-five percent “of the victims in her program had been arrested, sometimes with their abusers.”<sup>235</sup> This dual arrest problem for trans women victims may have been exacerbated by mandatory arrest policies related to domestic violence calls.<sup>236</sup> Because it occurs so often, the LA Gay and Lesbian Center Stop Partner Abuse (STOP)/Domestic Violence Program actually has a support group for those victims of domestic violence who have been arrested as abusers and referred for treatment.<sup>237</sup>

The police may also read the trans woman victim as trans, which might cause them to disbelieve her. As Professor Morrison writes, “once a police officer identifies a person as [transgender], the officer’s attitude and behavior towards the individual often change. Transgender victims are often gender-misidentified and treated as if they are violating the law by simply being trans.”<sup>238</sup> Reading a trans woman as trans may cause the officer to doubt her story of abuse, especially if her abuser is perceived as a cisgender woman. This circumstance likely arises because of transphobia or because of a perception of trans women as “fraudulent” women or because of the stereotypes that the police apply when trying to determine who is the abuser in a queer cisgender relationship. In one instance, “[a] San Antonio woman, who called the police for help when her boyfriend broke a window and some of her possessions, was arrested on the mere word of her abuser, who asserted that she was ‘bipolar.’”<sup>239</sup>

Additionally, the police officers responding to a domestic violence call

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232. For example, the police, when dealing with a domestic disturbance call for a lesbian relationship, will often arrest the “butcher” woman, stereotyping her as the abuser because she appears more masculine. Hodges, *supra* note 124, at 328.

233. See MARY-ELIZABETH QUINN, THE NETWORK/LA RED, OPEN MINDS OPEN DOORS: TRANSFORMING DOMESTIC VIOLENCE PROGRAMS TO INCLUDE LGBTQ SURVIVORS 79 (2010), available at [http://tnlr.org/wp-content/uploads/2011/02/Open\\_Minds\\_Open\\_Doors.pdf](http://tnlr.org/wp-content/uploads/2011/02/Open_Minds_Open_Doors.pdf)

234. Aulivola, *supra* note 149, at 167.

235. Morrison, *supra* note 222, at 94.

236. See STONEWALLED, *supra* note 33, at 51.

237. *Id.* at 50.

238. Morrison, *supra* note 222, at 108.

239. JOEY MOGUL ET AL., QUEER (IN)JUSTICE: THE CRIMINALIZATION OF LGBT PEOPLE IN THE UNITED STATES 74 (2011).

may rely on secondary stereotypes, such as size, to determine which member of the couple is the abuser and therefore might believe that the trans woman is the abuser if she is larger than her partner. A study of juries on sexual assault cases found that

when the accuser was seen as larger than the male, observers were less favorably disposed towards her and perceived her as more responsible than the smaller female for the incident, probably because they inferred that she was much stronger and therefore should have been able to successfully physically defend herself.<sup>240</sup>

The police may similarly believe that a larger person is automatically the abuser since she should be able to defend herself against a physical assault. But, as The Network/La Red's literature points out, "Partner abuse is about control, not size or strength. There is no way to tell by looking at a couple who is the abuser and who is being abused."<sup>241</sup> A focus on size ignores the fact that domestic violence is about control and not just about physical dominance.

As already noted, intersecting identities may cause a trans woman to hesitate before calling the police for help and may make it more likely that the police will react to her negatively. In particular, members of over-policed communities, such as lower income people of color and undocumented immigrants, may be loath to voluntarily bring the police into their communities and involve law enforcement authorities in their issues.<sup>242</sup> For example, an immigrant trans woman may hesitate to call the police given the current close ties between U.S. Immigration and Customs Enforcement (ICE) and the police. Involving the police in her affairs could put her immigration status at risk. She may summon the police for assistance, only to find herself put into removal proceedings.<sup>243</sup> Furthermore, if she calls the police and is not an English speaker, she may even find herself in a situation where the police use her abuser as a translator!<sup>244</sup>

The fact that calling the police may increase the risk of the victim being arrested is also a major disincentive for the victim to seek help. Interactions with law enforcement in the context of incarceration can be especially degrading.<sup>245</sup> As Chris Daley, one of the co-founders of the Transgender Law Center, explains,

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240. Joel A. Gold et al., *Physical Size Stereotyping as a Mediator of Attributions of Responsibility in an Alleged Date-Rape Situation*, 28 J. APPLIED SOC. PSYCHOL. 1876, 1884 (1998).

241. *What Is Partner Abuse?*, THE NETWORK/LA RED, <http://tnlr.org/about-partner-abuse/what-is-partner-abuse/> (last visited Apr. 24, 2012).

242. See Morrison, *supra* note 222, at 94.

243. See generally Leslye E. Orloff, Mary Ann Dutton, Giselle Aguilar Hass, & Nawal Ammar, Recent Development, *Battered Immigrant Women's Willingness to Call for Help and Police Response*, 13 UCLA WOMEN'S L.J. 43 (2003).

244. STONEWALLED, *supra* note 33, at 51.

245. See generally *id.* at 20-27.

“Pat down searches rarely seem to be about weapons or safety and more often seem to be about ‘gender checks.’ They usually involve the officer groping a person’s groin and/or breasts in an effort to ‘figure things out.’ Some male cops are curious or fascinated about transgender women.”<sup>246</sup> This interest with trans women may not stop at pat downs, and, as discussed above, can devolve into physical violence or a sexual assault.<sup>247</sup> If a trans woman is incarcerated, she will most likely be placed in a sex-segregated facility according to her assigned gender at birth.<sup>248</sup> This placement puts trans women in an incredibly dangerous situation. For example, the 2006 Amnesty International report *Stonewalled* related the story of Patti Shaw, who was arrested following a domestic dispute. Despite the fact that she had undergone genital surgery and had identification that reflected her gender as female (neither of which should be required to determine placement,) she was classified as male and placed in a cell with male prisoners whereupon she was sexually harassed and sexually assaulted.<sup>249</sup> Many trans women are the victims of rape while incarcerated because of their placement in male facilities.<sup>250</sup> Trans women in immigration detention face similar problems as they are also placed in facilities according to their assigned gender at birth.<sup>251</sup> These policies make calling the police a particularly unattractive option for trans women.

### C. No Shelter from the Storm: Domestic Violence Shelters

As already noted, the social entrapment of trans women limits their options with respect to where they can go if they flee their abuser. Many cannot seek shelter with their birth family because of estrangement or lack of support. When their abusers are prominent in the local LGBT community, trans women victims may not wish to turn to LGBT-specific services. However, they may also be unwelcome in mainstream shelters, where transphobia or outright bans on trans women may present insurmountable barriers to access.

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246. *Id.* at 31.

247. *Id.* at 36.

248. *Id.* at 32 (citing Darren Rosenblum, *Trapped In Sing-Sing: Transgendered Persons Caught in the Gender Binarism*, 6 MICH. J. GENDER & L. 499, 552 (2002)).

249. *Id.* at 32.

250. MOGUL ET AL., *supra* note 239, at 107; *see also* WAR, *supra* note 106, at 19-20. The new standards released by the Department of Justice, however, will hopefully provide some improvement for incarcerated trans women. These standards mandate, “[T]he agency must consider on a case-by-case basis whether a placement would ensure the inmate’s health and safety, and whether the placement would present management or security problems, giving serious consideration to the inmate’s own views regarding his or her own safety.” Department of Justice, *Executive Summary: National Standards to Prevent, Detect, and Respond to Prison Rape*, 28 CFR Part 115 (May 16, 2012).

251. *See generally* Laurel Anderson, Commentary, *Punishing the Innocent: How the Classification of Male-to-Female Transgender Individuals in Immigration Detention Constitutes Illegal Punishment Under the Fifth Amendment*, 25 BERKELEY J. GENDER, L. & JUST. 1 (2010).

Domestic violence shelters do vital work, providing a place of refuge for women and children fleeing abusive situations. Their policies on access for trans women are varied.<sup>252</sup> Vivian Namaste, in her study of homeless shelters for women (which likely have policies similar to those of domestic violence shelters since they are both women's spaces), observed that shelters generally dealt with the question of transgender residents in three different manners: 1) complete denial of entry; 2) allowing in only women who have had genital surgery; and, 3) allowing in women who can provide some proof that they are in the process of transitioning (i.e., a doctor's note).<sup>253</sup> Mirha Soeleil Ross, in her study of battered women shelters in Toronto, found that some would deal with admission of trans women on a case-by-case basis.<sup>254</sup>

Requiring that trans women prove that they have had surgery is problematic because it ignores two realities of trans women's lives. First, many who want surgery cannot afford it; the costs can reach tens of thousands of dollars, making surgery prohibitively expensive.<sup>255</sup> As Ross comments, "[t]his policy is politically problematic when we know that the TS [transsexual] women who need those shelter's services the most, are the ones who are probably the least likely to have the privileges required to get" genital surgery.<sup>256</sup> Second, many trans women simply do not wish to have surgery.<sup>257</sup>

The reasons given for policies that exclude trans women typically center on the safety and comfort of the other residents, which means that their exclusion is for the comfort of cisgender women.<sup>258</sup> In terms of comfort, some shelters claim

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252. NATIONAL CENTER FOR VICTIMS OF CRIME AND NATIONAL COALITION OF ANTI-VIOLENCE PROGRAMS, WHY IT MATTERS: RETHINKING VICTIM ASSISTANCE FOR LESBIAN, GAY, BISEXUAL, TRANSGENDER, AND QUEER VICTIMS OF HATE VIOLENCE & INTIMATE PARTNER VIOLENCE 15 (2010), available at <http://www.avp.org/documents/WhyItMatters.pdf> (summarizing some of the issues faced by LGBTQ survivors in accessing domestic violence shelters and solutions); see also NATIONAL RESOURCE CENTER ON DOMESTIC VIOLENCE, LGBT COMMUNITIES AND DOMESTIC VIOLENCE: INFORMATION & RESOURCES: KEY ISSUE INTERVENTION/PREVENTION SERVICES 4 (2007), available at [http://www.vawnet.org/Assoc\\_Files\\_VAWnet/NRC\\_LGBTDVInterventionPreventionServices.pdf](http://www.vawnet.org/Assoc_Files_VAWnet/NRC_LGBTDVInterventionPreventionServices.pdf).

253. Namaste, *supra* note 34, at 177-78.

254. ALLISON COPE & JULIA DARKE, MAKING WOMEN'S SHELTERS ACCESSIBLE TO TRANSGENDERED WOMEN 3 (1999), available at <http://www.queensu.ca/humanrights/tap/index.html>. The NTDS also reported that six percent of the *total* respondents to the survey had experienced "unequal treatment" at domestic violence shelters and programs. GRANT ET AL., *supra* note 15, at 134.

255. For example, in doing a brief survey of surgery providers in the US online, I found that vaginoplasty can run from \$14,000 to \$19,000. All surgeons I researched were listed on SUSAN'S PLACE: TRANSGENDER RESOURCES, <http://www.susans.org> (last visited May 5, 2012).

256. COPE & DARKE, *supra* note 254 (citing Mirha-Soleil Ross, *Investigating Women's Shelters*, in *GENDERTRASH* 3, 10 (1995)).

257. This is based on my personal knowledge of the trans community through my work as an activist at a trans legal clinic.

258. Caroline White, *Re/Defining Gender and Sex: Educating for Trans, Transsexual, and Intersex Access and Inclusion to Sexual Assault Centers and Transition Houses*, 30 (July 2002) (unpublished M.A. thesis, University of British Columbia), available at

that “transsexual women can never be women because they were socialized as boys/men, and consequently, have experienced, learned, and exercised male privilege . . . [which] is intrusive and why ‘women’s-only spaces’ were created to begin with.”<sup>259</sup> The point is made that battered women’s shelters house people who have been through traumatic experiences, the majority of which were inflicted by men, and the shelters are worried that a trans woman’s penis or “masculine” demeanor might trigger a woman who has turned to the shelter for safety.<sup>260</sup> In regard to resident safety, shelters primarily make two claims. First, that there is a concern that transgender women who have not had genital surgery pose a threat to the women in the shelter and might physically or sexually assault a resident.<sup>261</sup> Second, shelters claim that if they were to admit trans women, the shelters could be faced with situations in which male abusers dress as women in order to access the facility.<sup>262</sup> Both these arguments are based on the belief that trans women are not “real women.”<sup>263</sup>

Even at shelters that accept trans women, the transphobia of some shelter workers can have a negative impact on trans women. Akasha, a trans woman, describes her experience: “The staff demonstrated the complete lack of training” on trans issues. “Apparently [the shelter] only bothered to offer any accommodations because of the local trans civil rights ordinance. They violated my confidentiality and outed me as trans to other residents.”<sup>264</sup> As discussed earlier, being outed as trans can put a woman at risk of verbal or physical assault.<sup>265</sup> Eventually, because of the treatment she received at the hands of shelter staff, Akasha chose living on the streets again over remaining in the shelter.<sup>266</sup> In another example, a woman in a different program “was told that she could only access services after a police body-cavity search because she had displayed masculine cues. She submitted to the search, but left the program while still in need of services in part, if not wholly, because of this traumatic invasion.”<sup>267</sup> Finally, there have been cases where LGBT survivors have been

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<https://circle.ubc.ca/handle/2429/13046>.

259. *Id.* This argument is framed around socialization so that butch women (“mannish women”) can be given access to shelters while trans women are still excluded because of their presumed experiences of male privilege. SERANO, *supra* note 71, at 240.
260. See DARKE & COPE, *supra* note 217, at 86; see also SERANO, *supra* note 71, at 239.
261. LISA MOTTET & JOHN M. OHLE, NAT’L GAY & LESBIAN TASK FORCE & NAT’L COAL. FOR THE HOMELESS, TRANSITIONING OUR SHELTERS: A GUIDE TO MAKING HOMELESS SHELTERS SAFE FOR TRANSGENDER PEOPLE 13 (2003), available at [http://www.thetaskforce.org/reports\\_and\\_research/trans\\_homeless](http://www.thetaskforce.org/reports_and_research/trans_homeless).
262. *Id.* at 14.
263. See COPE & DARKE, *supra* note 254, at 3.
264. EMI KOYAMA, DISLOYAL TO FEMINISM: ABUSE OF SURVIVORS WITHIN THE DOMESTIC VIOLENCE SHELTER SYSTEM 5 (2003), available at <http://eminism.org/readings/pdf-rdg/disloyal.pdf>.
265. MOTTET & OHLE, *supra* note 261, at 14.
266. KOYAMA, *supra* note 264 at 6.
267. Courvant & Cook-Daniels, *supra* note 11, at 2.

told that either their sexuality or their gender identity was the cause of the abuse they had suffered.<sup>268</sup>

The impact of such policies is devastating to trans women, further narrowing the already limited options available to them and inhibiting their ability to leave their abusive relationships. Many survivors of domestic violence will, for example, stay in an abusive relationship rather than risk becoming homeless.<sup>269</sup> In a study done in Massachusetts, housing options available to LGBT survivors were often limited to short-term stays in the homes of shelter workers or in hotels, rather than the ninety-day accommodations available to cisgender heterosexual survivors.<sup>270</sup> This temporary fix does not equate with adequate services for survivors. Speaking about this inadequacy, one shelter worker lamented:

Perhaps the biggest obstacle we face with hotel-based safe homes is the isolation of the survivor. . . . When a survivor first leaves their batterer, there is often a period of doubt as to whether they made the right decision. Survivors may feel frightened and alone, and decide that going home to the batterer is better than sitting alone, thinking, and worrying about the decision. This is the time when a survivor most needs support . . . I dream of a time when GLBT survivors will not have to worry about becoming homeless, and can focus on their emotional and psychological healing.<sup>271</sup>

Inadequate housing leads many survivors to return to their abusers.<sup>272</sup> Furthermore, their rejection from shelters also takes a psychological toll on trans women:

To be refused admittance into a woman's shelter on the basis of one's physical appearance can reinforce the hatred that transsexuals feel for their bodies. This rejection can also lead to low self-esteem, increased alcohol and drug consumption, and even attempts at suicide. In this complex way, the denial of services to transsexual women has repercussions that range beyond their immediate housing needs.<sup>273</sup>

Being barred from women's shelters reinforces what trans women often hear their entire lives—that they are inadequate, either as boys or as women.

As previously discussed, shelters deny access to trans women because a trans woman's presence in the shelter *might* trigger a cisgender resident. These shelters thereby prioritize the needs of cisgender residents over those of trans

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268. SHELTER/HOUSING, *supra* note 2, at 17.

269. *Id.*

270. *Id.* at 12-13.

271. *Id.* at 18.

272. *Id.* at 10.

273. NAMASTE, *supra* note 34, at 181.

women.<sup>274</sup> Yet any disruptive behavior at a shelter caused by a trans woman's presence can be dealt with under existing shelter policies that apply to all residents and that outline what is to be done if any resident acts in an aggressive or discriminatory manner toward another.<sup>275</sup> Those facilities that have integrated trans women do not report any assaults by or issues with trans residents that are different from those they report that involve cisgender residents.<sup>276</sup> In fact, there is a higher risk that a cisgender resident will attack a trans resident.<sup>277</sup> The arguments dealing with the fear that trans women may threaten cisgender women's safety are "eerily similar" to the arguments that used to be made to exclude lesbians from shelters.<sup>278</sup> There have been no reported incidents of men dressing as women to gain access to a shelter and track down their victim.<sup>279</sup> However, there have been cases of a lesbian abuser pretending to be a victim to gain access.<sup>280</sup> This dichotomy shows that the fear of men trying to pass is just an excuse, a belief that "privileges male attributes over female ones."<sup>281</sup>

Policies that claim to hinge on the discomfort of cisgender residents should be examined in light of the fact that other forms of discomfort are not allowed to direct shelter policy. For example, a white woman's desire not to be housed with black women would not be considered a basis for the exclusion of a black woman from a shelter. One survivor recounting a discussion at a shelter writes,

I mean, if we are going to be locating violence and oppression in an organ, none of the white women in the space seemed to have any problem with their white skin showing in that space, and the trans person that was there, it was really speculation . . . that there was a penis in the room.<sup>282</sup>

Furthermore, "[p]hysical alterations for the comfort of others should not be a requirement for human rights protection."<sup>283</sup> Discomfort about the penis that some trans women may retain, and both cisgender and trans women's general discomfort about being exposed around others, can easily be dealt with through

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274. E-mail from Natalie Hrubos, attorney, to Kae Greenberg, author (Apr. 25, 2010, 18:44 EDT) (on file with author).

275. COPE & DARKE, *supra* note 254, at 3.

276. MOTTET & OHLE, *supra* note 261 at 13.

277. *Id.* at 14.

278. SERANO, *supra* note 71, at 242 (citing ALICE ECHOLS, DARING TO BE BAD: RADICAL FEMINISM IN AMERICA, 1967-1975, at 210-28 (1989)).

279. MOTTET & OHLE, *supra* note 261, at 14.

280. White, *supra* note 258, at 103. Cisgender lesbian abusers presenting themselves as victims to gain access is a very real and documented occurrence. At the least, the cisgender lesbian is better able to discover the location of the shelter, negating its function as a safe space for the victim. Knauer, *supra* note 29, at 347 (citing Katherine Seligman, *S.F. Hires Advocate for Battered Gays: City First in Nation to Employ Counselor, Police Trainer*, S.F. EXAMINER, Feb. 14, 1997, at A1).

281. SERANO, *supra* note 71, at 242.

282. White, *supra* note 258, at 103.

283. COPE & DARKE, *supra* note 254 at 4.

the implementation of simple solutions like curtains in the showers or bathrooms that improve conditions for all residents.<sup>284</sup> Also, even though a cisgender woman may be triggered in some way by a trans woman's presence, "Part of a survivor's healing process is to learn to differentiate her abuser from others with a similar characteristic: whether it's the muscular arms of a non-trans woman or the curly red hair of a trans-woman."<sup>285</sup>

Another reason that shelters justify excluding trans women is that they were socialized "as men" and that their experience of male privilege will be disruptive in a women's space.<sup>286</sup> The arguments surrounding being raised with male privilege are similarly flawed for several reasons. These arguments rely on the false assumption that all women by virtue of their shared womanhood are equally privileged or oppressed, an idea that overlooks that some women's experience of privilege is shaped by race and class as well as the ways in which women can "act out violence and discrimination against each other."<sup>287</sup> Additionally, although trans women may have had access to a certain level of male privilege depending on the age at which they transitioned, they have simultaneously "experience[d] vast emotional, social, and financial disadvantages for being trans," whereas cisgender women have benefitted from the privilege of being cisgender.<sup>288</sup> Trans women may have been raised as males, but many of them have never felt like males.<sup>289</sup> One report relates,

If a transgender female did not express her gender identity in obvious ways, she probably did avoid the discriminatory treatment to which girls and women are subjected. However, the slightest show of her female identity likely resulted in severe punishment (for example, dressing in female clothing). The brutality of transphobia easily matches that of sexism. Although the rest of the world treated them as male, transsexual women do not speak of enjoying their male status; rather, they report detesting it.<sup>290</sup>

The argument that trans women have enjoyed male privilege at one point may hold weight for some trans people, but for others it falls totally flat. Although some trans women may have experienced the privileges associated with being identified as male, that identity was still not a comfortable mantle for them to wear.

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284. MOTTET & OHLE., *supra* note 261, at 28-32.

285. DARKE & COPE, *supra* note 217, at 86.

286. Argument for the Petitioner at 13, Vancouver Rape Relief Soc. v. Nixon, et al. 2003 BCSC 1936 (2003) (No. L021846) at 5; *see also* SERANO, *supra* note 71, at 239.

287. KOYAMA, *supra* note 264, at 702-03.

288. Emi Koyama, *The Transfeminist Manifesto*, in CATCHING A WAVE: RECLAIMING FEMINISM FOR THE TWENTY-FIRST CENTURY 244, 248 (Rory Dicker & Alison Piepmeier eds., 2003), available at <http://eminism.org/readings/pdf-rdg/tfmanifesto.pdf>.

289. COPE & DARKE, *supra* note 254, at 3.

290. *Id.*

Shelter policies that deal with trans women on a “case-by-case” basis run the risk of reifying the same gender-role stereotypes and biological determinism that feminists have fought against.<sup>291</sup> For instance, “[w]omen can (and often do) transcend their female socialization. It remains unclear why these same feminists would paradoxically insist that trans women are unable to similarly transcend our male socialization.”<sup>292</sup> Furthermore, decisions as to who can and cannot be admitted to a facility will most likely be based on a staff person’s appraisal of the abuse victim’s “femaleness,” where “each worker will use a subjective idea of masculine cues . . . placing additional barriers to service for any survivor that does not conform to a dominant culture of femininity.”<sup>293</sup> The shelter worker will use her own beliefs as to what constitutes femaleness to decide which women are “woman” enough for the shelter:

Non-trans observers and clinical practitioners fixate on ‘the transition,’ demanding with obvious gender privilege to *look*, to *know*, and to *judge* the most intimate details and private representations of trans people’s physical selves: name, photos and documents, sexualities, genitals, surgeries, and the artificiality or authenticity of trans bodies as constructed selves.<sup>294</sup>

Cisgender shelter workers assume the roles of gatekeepers, deciding whose gender is authentic enough to pass. However, as activist Diana Courvant poignantly puts it, “We do not serve survivors in our programs because we owe them money or a favor. We serve them because as members of our communities, they deserve our communities’ help during the difficult and dangerous transition out of an abusive relationship. Our trans and intersex neighbors deserve no less.”<sup>295</sup>

#### D. The Courts

Bigotry in the legal system, both as experienced and as feared, can impact a trans woman’s ability to leave her abuser. Abused people interact with the justice system in many ways. Two interactions that uniquely affect trans people are the filing for civil orders of protection and the determination of child custody. Access to both civil orders of protection and child custody determinations can involve the courts making judgments about a trans woman’s

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291. E-mail from Alexandre Baril, Ph.D. candidate, to Kae Greenberg, author (Apr. 27, 2010, 11:09:42 AM EDT) (on file with author).

292. SERANO, *supra* note 71, at 241.

293. Diane Courvant, *Why Serve Trans or Intersex Survivors?*, SURVIVOR PROJECT, <http://www.survivorproject.org/whyserve.html> (last visited Apr. 24, 2012).

294. Krista Scott-Dixon, *Public Health, Private Parts: A Feminist Public-Health Approach to Trans Issues*, 24 HYPATIA 33, 43-44 (Summer 2009).

295. Courvant & Cook-Daniels, *supra* note 11, at 3.

“legal gender.”<sup>296</sup> These determinations can provide a place in which a court’s transphobia will have an impact on a trans woman’s ability to leave her abuser. As some attorneys point out, “transgender people ‘continue to experience more overt and unabashed bigotry within the legal system than almost any other group’ and are routinely denied basic humanity when referred to by judges as ‘it.’”<sup>297</sup>

A civil order of protection, a common tool utilized by abuse victims, may not be available to a trans woman, depending on where she resides in the United States. Three states prohibit such orders for “same-sex” couples.<sup>298</sup> Therefore, an abused trans woman’s access to a CPO may be predicated on the state’s view of her legal gender and that of her partner. If the state classifies her as living in a same-sex couple, that is, as a trans woman living with a cisgender man in a state that does not recognize her as female, she may be barred from civil orders of protection.<sup>299</sup> If she does not have access to the civil remedy, she may hesitate to turn to the criminal remedy because of its implications for her abuser. As the Columbia domestic abuse manual points out,

criminal cases require a higher level of proof of the alleged incident(s) than civil court cases and can often take much longer to be decided. And furthermore, the victim may not want to make his or her partner a criminal even if he or she wants to obtain a restraining order.<sup>300</sup>

Therefore, if a civil remedy is not available to her, a trans woman may find herself without recourse in the courts.

Furthermore, abusers can, in general, use threats regarding child custody as a way of controlling their partners. In many cases involving domestic abuse, government agencies have removed the children from the home because the children either have been exposed to the abusive household or have themselves

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296. *See infra* note 299.

297. MOGUL ET AL., *supra* note 239, at 74.

298. Same-sex couples are explicitly barred from seeking civil orders of protection in Louisiana, Montana, and South Carolina, as of June 2009. AM. BAR ASS’N, COMM. ON DOMESTIC VIOLENCE, DOMESTIC VIOLENCE CIVIL PROTECTION ORDERS (CPOS) BY STATE (2009), available at <http://www.americanbar.org/content/dam/aba/migrated/domviol/docs/DVCPOChartJune07.authcheckdam.pdf>. However, in Louisiana, LGBT victims can get protected under the Dating Violence Act. AM. BAR ASS’N, COMM. ON DOMESTIC VIOLENCE, AVAILABILITY OF CIVIL ORDERS OF PROTECTION TO LGBT VICTIMS OF DOMESTIC VIOLENCE (2008), available at [http://www.americanbar.org/content/dam/aba/migrated/domviol/pdfs/CPO\\_Protections\\_for\\_LGBT\\_Victims\\_7\\_08.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/domviol/pdfs/CPO_Protections_for_LGBT_Victims_7_08.authcheckdam.pdf).

299. *See Sharon Stapel, Falling to Pieces: New York State Civil Legal Remedies Available to Lesbian, Gay, Bisexual, and Transgender Survivors of Domestic Violence*, 52 N.Y.L. SCH. L. REV. 247, 250 (2007-2008) (making occasional reference to the fact that transgender people who are in or who are viewed as in same-sex relationships would have been unable to get a CPO under New York’s old rules).

300. COLUMBIA MANUAL, *supra* note 187, at 72.

been abused by the abuser.<sup>301</sup> Every state has a law specifying that abuse should be taken into consideration when making custody determinations in private custody cases.<sup>302</sup> Twenty-two states have a rebuttable presumption against the awarding of custody to abusive parents.<sup>303</sup> Sometimes, abusers have engaged their partners in protracted custody battles as a way of continuing their control over a partner who has left.<sup>304</sup> Although being exposed to a violent household may have a negative impact on the development of a child,<sup>305</sup> these cases can result in the child being left in the joint custody of the abuser.<sup>306</sup>

A trans woman can face additional obstacles to retaining custody of her children after leaving an abusive relationship, a fact that can be manipulated by the abuser. One such obstacle is the fact that her relationship with her partner may not be legally sanctioned or could be annulled if challenged.<sup>307</sup> Trans people may or may not be able to legally marry their partners, depending on their partner's sex and how the state recognizes the trans person's legal gender.<sup>308</sup> For example, the state may recognize a trans woman as female, preventing her from

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301. According to Professor Leslie Harris, many states amended their codes in the 1990s to include exposing a child to domestic violence as a reason to remove the child owing to neglect. Leslie Joan Harris, *Failure to Protect from Exposure to Domestic Violence in Private Custody Contest*, 44 FAM. L.Q. 169, 184-86 (2010). This practice was challenged in NYC in the seminal case *Nicholson v. Scoppetta* in 2003, where mothers claimed that the practice violated their and their children's substantive and procedural due process rights. *Id.* The case was eventually settled, and New York City agreed to stop the practice of removing children solely because their mother is being abused. Nationwide, the practice of removing children owing to domestic violence still continues, but to a lesser extent. *Id.*

302. *Id.* at 170.

303. *Id.* at 173.

"These statutes use the [Model Code on Domestic and Family Violence's] wording, or similar wording, that there is a 'rebuttable presumption that it is detrimental to the child and not in the best interest of the child to be placed in sole custody, joint legal custody, or joint physical custody with the perpetrator of family violence.'"

DANIEL G. SAUNDERS, PH.D., CHILD CUSTODY AND VISITATION DECISIONS IN DOMESTIC VIOLENCE CASES: LEGAL TRENDS, RISK FACTORS, AND SAFETY CONCERNS 1 (2007) (citation omitted), available at [http://www.vawnet.org/applied-research-papers/print-document.php?doc\\_id=1134](http://www.vawnet.org/applied-research-papers/print-document.php?doc_id=1134).

304. *Id.* at 4-5.

305. See Harris, *supra* note 301, at 185 (detailing how two experts in *Nicholson v. Scoppetta* testified that exposure to domestic violence is not damaging to most children's development). But see Amy Haddix, Comment, *Unseen Victims: Acknowledging the Effects of Domestic Violence on Children Through Statutory Termination of Parental Rights*, 84 CAL. L. REV. 757, 788-92 (1996) (referencing studies showing that being exposed to battering causes developmental issues in children).

306. SAUNDERS, *supra* note 303, at 1-3 (stating that many children end up in the custody of the abusive parents, even to the extent that children in California have formed a support group online to help each other—Courageous Kids Network).

307. Greenberg, *supra* note 19, at 748-749; see also, *In re Estate of Gardiner*, 273 Kan. 191 (2002) (finding a marriage between a trans woman and cisgender man void on the basis of public policy).

308. See generally Mark Strasser, *Marriage, Transsexuals, and the Meaning of Sex: On DOMA, Full Faith and Credit, and Statutory Interpretation*, 3 HOUS. J. HEALTH L. & POL'Y 301 (2003).

marrying a female partner in a state that does not sanction same-sex marriage, or it may recognize her as male and therefore allow her to marry that same female partner.<sup>309</sup> Whether trans people can marry depends on what criteria the state they were born in uses for changing their birth certificate or on what the court decides their legal sex is.<sup>310</sup> Furthermore, even if a couple has been able to marry, their marriage may be invalidated and annulled.<sup>311</sup> In the oft-cited case of *Littleton v. Prange*, the court found that the marriage between Christie Lee Littleton and her husband was invalid because Christie was a trans woman, even though her husband knew of her status prior to the marriage.<sup>312</sup> Therefore, if challenged, a court that disagrees with the gender identity of a person can invalidate trans relationships.

The ability and willingness of judges to annul her marriage can influence a trans woman's ability to retain custody of her children if she leaves her abuser. A trans woman may not be biologically related to children that she considers to be her children. If she is not in a "valid" marriage, she may lack standing to fight for custody on the dissolution of this relationship.<sup>313</sup> However, courts have begun to accept more nontraditional family and kinship arrangements.<sup>314</sup> But in custody cases, a transphobic judge may nonetheless find that a trans woman lacks either the biological connection or a state-sanctioned relationship that

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309. *See id.*

310. Of the judge's decision in *Littleton v. Prange*, Judge Phyllis Randolph Frye writes, "Chief Justice Hardberger concluded that because she was declared a male at birth and presumably had XY chromosomes, Christie Lee Littleton would always be male. He wrote that gender is 'immutably fixed by our Creator at birth.'" Phyllis Randolph Frye, *The International Bill of Gender Rights vs. The Cider House Rules: Transgenders Struggle With the Courts Over What Clothing They Are Allowed to Wear On the Job, Which Restroom They Are Allowed to Use On the Job, Their Right to Marry, and the Very Definition of Their Sex*, 7 WM. & MARY J. WOMEN & L. 133, 136 (2000).

311. Strasser, *supra* note 308, at 310 (discussing the annulment of a marriage in New York).

312. In the seminal case *Littleton v. Prange*, the plaintiff filed a wrongful death suit upon the death of her husband of seven years. Greenberg, *supra* note 19, at 748-49. The court invalidated her marriage based on the premise that it was a same-sex marriage and refused to grant her standing to pursue the wrongful death suit. *Id.* This despite the fact that the plaintiff and her husband had had a marriage ceremony and had resided as a married couple for the seven years before his death. *Id.*

313. *See* Alexa E. King, *Solomon Revisited: Assigning Parenthood in the Context of Collaborative Reproduction*, 5 UCLA WOMEN'S L.J. 329, 343-47 (2005) (discussing what King terms "families of consent"). *See generally* June Carbone, *The Legal Definition of Parenthood: Uncertainty at the Core of Family Identity*, 65 LA. L. REV. 1295 (2005) (providing a history of the evolution of different forms of parenthood);.

314. Carter, *supra* note 35, at 233.

In fact, the American Law Institute's Principles of Law of Family Dissolution has recognized two new categories of parents that address the evolving family: "parent[s] by estoppel" and "de facto" parents. A "parent by estoppel" has "lived with the child since the child's birth, holding out and accepting full and permanent responsibilities as parent, as part of a prior co-parenting agreement with the child's legal parent . . . . A "de facto" parent has resided with the child and, with the consent of the legal parent, performed a share of parental functions.

*Id.*

would give her the standing to assert her custody rights.

Judicial biases can further contribute to a trans woman's inability to extricate herself from an abusive situation with her family intact when the "best interests of the child" standard is used to determine custody. This is an incredibly broad standard, one that allows the judge wide discretion in deciding what to consider when imposing a custody arrangement.<sup>315</sup> Although courts have generally shied away from ruling that a person's trans status is a *per se* reason to deny custody, trans status has been a negative factor in custody determinations.<sup>316</sup> Thirteen percent of respondents to the NTDS survey whose relationship with their children was ended stated that their relationships with their children had been ended or curtailed due to their trans or gender nonconforming identity.<sup>317</sup> For example, in the case *J.L.S. v. D.K.S.*, the court denied visitation rights to a parent who transitioned during a separation.<sup>318</sup> The court granted the mother sole custody and upheld visitation restrictions "as necessary to protect the moral development of the children."<sup>319</sup> Or the courts have found that the stigma of being associated with a trans parent may be harmful to a child.<sup>320</sup> A trans person who leaves her abuser and puts her custody at the mercy of the court may find that her parenting is considered not to be in the child's best interests.<sup>321</sup> Thus, the courts contribute to an abused trans woman's inability to leave her abusive partner.

### CONCLUSION

Recent changes passed by the Senate to the Violence Against Women Act (VAWA) may provide recourse for some of the problems faced by trans women in accessing shelters and in obtaining services as victims of domestic violence. However, as this article goes to print, it is unclear what provisions in the version of VAWA passed by the Senate, and the one passed by the House will make it into the final reauthorization. Furthermore, while the Senate's changes are a step in the right direction, they do not provide a full remedy to the problems faced by trans women leaving an abusive relationship.

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315. Julia Halloran McLaughlin, *The Fundamental Truth About Best Interests*, 54 ST. LOUIS U. L. J. 113, 119-35 (2009) (providing an exhaustive history of the evolution of the best interests of the child standard).

316. Ohle, *supra* note 173, at 264.

317. GRANT ET AL., *supra* note 15, at 98.

318. Shannon Shafron Perez, Note, *Is It a Boy or a Girl? Not the Baby, the Parent: Transgender Parties in Custody Battles and the Benefit of Promoting a Truer Understanding of Gender*, 9 WHITTIER J. CHILD & FAM. ADVOC. 367, 387-89 (2010).

319. *Id.* at 388-89.

320. *Id.* at 394-95. In fact, the courts have implied that trans parents are selfish and put their children at risk of social stigma. As the court in *Daly v. Daly* put it, "It was strictly Tim Daly's choice to discard his fatherhood." Carter, *supra* note 35, at 222.

321. I use "may" here because custody has not been wrested from a trans parent in every case. See Perez, *supra* note 318, at 393-94.

VAWA, first passed in 1994, was scheduled for reauthorization in 2011.<sup>322</sup> Currently, its reauthorization, which in the past was essentially a bipartisan rubber stamp, was the subject of serious debate in the Senate.<sup>323</sup> Since the law's passage, Congress has authorized the distribution of nine billion dollars to fund various programs authorized under VAWA.<sup>324</sup> These programs include the "STOP" Program (Services, Training, Officers, Prosecutors), which provides formula grants to the states to fund a variety of training, education, and enforcement endeavors.<sup>325</sup> With each reauthorization, the language of VAWA and the programs administered under it are modified as new problems are identified.<sup>326</sup> For example, the last reauthorization, in 2005, included provisions that modified public housing's "one strike rule" by creating an exception for the victims of domestic violence, as it was identified that many victims were being evicted under "one strike."<sup>327</sup> "[VAWA] has provided lifesaving assistance to hundreds of thousands of men, women, and children, and the annual incidence of domestic violence has dropped by 50 percent since the act was passed."<sup>328</sup>

The scheduled 2011 reauthorization was stymied owing to several controversial changes, one of which was the addition to S. 1925 of "gender identity" and "sexual orientation" to the nondiscrimination clause.<sup>329</sup> This is the first time that proposed changes have resulted in voting along party lines.<sup>330</sup> As

322. Violence Against Women Act, 42 U.S.C. §§13925-14045(d) (2006); *see also* Lynn Hecht Schafran, *Panel One: Present at the Creation: Drafting and Passing the Violence Against Women Act (VAWA)*, 11 GEO. J. GENDER & L. 511, 513 (2010).

323. 158 CONG. REC. S2307 (daily ed. April 26, 2012) (statement of Sen. Chuck Grassley).

324. Juley Fulcher, *Panel Three: The Impact of VAWA: Billions (Yes, With a B) for Prevention, Victim Services, Law Enforcement, Underserved Populations and the Courts, and Looking Ahead to VAWA IV*, 11 GEO. J. GENDER & L. 571, 572 (2010).

325. *Grant Programs*, U.S. DEP'T OF JUSTICE, OFFICE ON VIOLENCE AGAINST WOMEN, <http://www.ovw.usdoj.gov/ovwgrantprograms.htm> (last visited Apr. 24, 2012).

326. Fulcher, *supra* note 324, at 577; *see also* 158 CONG. REC. S1991 (daily ed. Mar. 22, 2012) (statement of Sen. Leahy).

327. *See* Whitehorn, *supra* note 197, at 1423.

328. 158 CONG. REC. S2307 (daily ed. Apr. 16, 2012) (statement of Sen. Patrick Leahy).

329. *See* S. 1925, 112th Cong. § 3 (2012). The definition of gender identity is that in 18 U.S.C. § 249(c)(4): "The term gender identity means actual or perceived gender-related characteristics." *See id.*; 18 U.S.C. § 249(c)(4) (2009). The other provision that is a cause of debate is a provision that would make additional U visas available each year and would allow Native American tribal units to prosecute non-Natives in cases of domestic violence. 18 U.S.C. §§ 805(b), 904. Protections from Native Americans were also stripped from the version of VAWA which was passed by the House, and additional roadblocks were added for immigrant victims. 158 CONG. REC. H2726 (daily ed. May 16, 2012) (statement of Rep. Gwen Moore).

Yet there are some who refuse to support it because it now includes expanded protections for victims. Let me put this on the table. The bill's protections extend to lesbian and gay victims of domestic abuse. It includes undocumented immigrants who are victims of domestic abuse. The bill also gives Native American tribes better prosecutorial tools to fight crimes of domestic violence. In my view, these are improvements. Domestic violence is domestic violence.

158 CONG. REC. S1696 (daily ed. Mar. 15, 2012) (statement of Sen. Diane Feinstein).

330. 158 CONG. REC. S1696 (daily ed. Mar. 15, 2012) (statement of Sen. Diane Feinstein).

is identified in the Congressional Report:

In past reauthorizations of VAWA, the Act's programs have been expanded to address the needs of various communities, including older victims, youth, and rural communities, among others. Congress accepted the data and expert conclusions supporting the need for these programs and did not demand that new studies be commissioned and new obstacles overcome before services were provided to these important communities of victims. To demand more or different requirements before accepting very modest measures to ensure that services are available to another community in need would simply be unfair.<sup>331</sup>

This resistance is especially troubling, because these provisions were specifically added to the Senate's version to address LGBT people's documented issues accessing domestic violence services.<sup>332</sup> Senator Leahy, in support of the reauthorization, stated:

This reauthorization seeks to ensure that services provided under the Violence Against Women Act are available for all victims, regardless of sexual orientation or gender identity. Research has proven that domestic and sexual violence affects all communities, but victims of different sexual orientations or gender identities have had a more difficult time obtaining basic services. There is nothing radical or new about saying that all victims are entitled to services. This is what the Violence Against Women Act has always done. It reaches out to help all victims. As Senator Feinstein said last week: "[T]hese are improvements. Domestic violence is domestic violence."<sup>333</sup>

As in past reauthorizations, the same proof was offered in support of these additions—the testimony of on-the-ground service providers.<sup>334</sup> However, the measure's detractors claimed that the addition of "gender identity" and "sexual orientation" "[are] a solution in search of a problem. Instead, it appears to be only a political statement that should not be made on a bill that is designed to address actual needs of victims."<sup>335</sup> Rather than accepting such proof as has been offered in the past, the detractors denied that such problems exist and called for studies to be done before "gender identity" and "sexual orientation" were added.<sup>336</sup>

This LGBT inclusive language was stripped, however, from the final version of the Bill passed by the House of Representatives, H.R. 4970. This

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331. S. REP. NO. 112-153, at 8 (2012).

332. *Id.* at 8 n.15.

333. 158 CONG. REC. S1991 (daily ed. Mar. 22, 2012) (statement of Sen. Patrick Leahy).

334. S. REP. NO. 112-153, at 8 (2012).

335. S. REP. NO. 112-153, at 40 (2012).

336. *Id.*

version of the VAWA was opposed by 325 organizations.<sup>337</sup> In the case of resistance to the addition of inclusive language in the House, a new argument was advanced that centers on inequality. This Bill's supporters claimed that having "broad" language (in other words, by not distinguishing the situation of LGBT people) would somehow make VAWA's protections more expansive and inclusive.<sup>338</sup> As one supporter put it,

Madam Speaker, I just become so distressed when I hear the allegations that there is a war on women. When we sat down and we began discussing VAWA, we sat down with the understanding that Americans deserve equal protection under the law. We are not going to single out. We are not going to distinguish one victim from another. Any person who is a victim of domestic violence is a victim of domestic violence. Beyond that, it should be of no concern.<sup>339</sup>

LGBT language was removed from the Bill in an attempt to treat everybody "equally."<sup>340</sup> However, as was pointed out by several opponents to H.R. 4970, this language was added to combat the fact that LGBT survivors of domestic violence are routinely denied services and access to shelters.<sup>341</sup>

Ensuring that money is directed toward providing services to trans people and LGB people should not be such a revolutionary idea. VAWA money was always supposed to be for underserved populations.<sup>342</sup> Prior to the current reauthorization, the definition of underserved population read:

The term "underserved populations" includes populations underserved because of geographic location, underserved racial and ethnic populations, populations underserved because of special needs (such as language barriers, disabilities, alienage status, or age), and any other population determined to be underserved by the Attorney General or by the Secretary of Health and Human Services.<sup>343</sup>

As has been established in the first two sections of this paper, trans women (and trans people in general) represent a "population that is underserved because of special needs." Other groups that have been singled out for special VAWA funding in the past include the elderly,<sup>344</sup> disabled people,<sup>345</sup> and youth,<sup>346</sup> all of

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337 . 158 CONG. REC. H2726 (daily ed. May 16, 2012) (statement of Rep. Gwen Moore).

338 . 158 CONG. REC. H2734 (daily ed. May 16, 2012) (statement of Rep. Richard Nugent).

339 . 158 CONG. REC. H2735 (daily ed. May 16, 2012) (statement of Rep. Ann Marie Buerkle).

340 . *Id.*

341. "Just last year, cases of LGBT domestic violence had increased by 38 percent. Of those who sought help, 44 percent of LGBT victims were turned away from traditional shelters." 158 CONG. REC. H2728 (daily ed. May 16, 2012) (statement of Rep. Maxine Waters).

342. 42 U.S.C. § 13925 (a)(33) (2006).

343. *Id.*

344. *Grant Programs, supra* note 325.

345. *Id.*

whom both experience domestic violence in unique ways and have a special vulnerability to domestic violence that needs to be addressed in a manner that is sensitive to that vulnerability. Similarly, trans women, because of the way that their abusers can use transphobia to isolate them and the impact of transphobia on services, represent a group for whom domestic violence is endemic and who are especially vulnerable to this violence. Recognition of this has been made explicit in the current reauthorization of VAWA, which includes “sexual orientation” and “gender identity” in the definition of “underserved population.”<sup>347</sup>

Regardless of their legal gender, trans women, and their relationships, have always been covered by VAWA, even prior to the Senate’s changes. Although titled the “Violence Against Women Act,” the law’s actual language is primarily gender neutral, referring to intimate partner violence.<sup>348</sup> Therefore, whether or not the state recognizes a trans woman’s gender as female, she should still have been able to claim protection under VAWA. Moreover, in 2010, the Acting Deputy Attorney General issued a memorandum opinion stating that the 2005 VAWA covered conduct “when the offender and victim are the same sex.”<sup>349</sup> The Acting Deputy AG found that this protection was extended irrespective of the federal Defense of Marriage Act (DOMA).<sup>350</sup> Thus a trans woman’s access was not conditioned on the gender of her partner either. Furthermore, 2005 VAWA protection was extended to those suffering from intimate partner violence whether they were married or not.<sup>351</sup> Thus, all trans women should have been able to claim protection under the 2005 VAWA. And, regardless of the issues discussed in this paper, some domestic violence organizations and shelters have taken steps to ensure that their services are available to all people who need them, including trans women.<sup>352</sup>

There are options that the federal government can pursue outside of VAWA to improve the situation for trans women victims of violence. For example, the passage of a trans-inclusive Employment Non-Discrimination Act

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346. 42 U.S.C. §§ 14043(c)(1)-14043(d)(3) (2006).

347. S. 1925, 112th Cong. § 3 (a)(21)(39) (2012).

348. Whether the Criminal Provisions of the Violence Against Women Act Apply to Otherwise Covered Conduct When the Offender and Victim Are the Same Sex, 2010 WL 2431395 (Op. O.L.C. 2010) (stating that “[VAWA’s] criminal provisions are gender neutral, and enforcement has been gender neutral as well”).

349. *Id.*

350. *Id.* at 4; Defense of Marriage Act, 1 U.S.C. § 7 (1996) (“In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word ‘marriage’ means only a legal union between one man and one woman as husband and wife, and the word ‘spouse’ refers only to a person of the opposite sex who is a husband or a wife”).

351. See 42 U.S.C. § 13925(a)(6)-(9) (2006).

352. For example, based on my knowledge of the organization, the Women Against Abuse in Philadelphia legal center serves all victims of domestic violence, regardless of sex, gender identity, or sexual orientation.

(ENDA) would provide job security for trans women who have been able to secure employment.<sup>353</sup> Even though the recent EEOC decision may improve the situation for trans women facing discrimination, a trans-inclusive ENDA would provide clear federal protection and guidance.<sup>354</sup> As has been described, a lack of job security is a form of economic control that abusers can use to control and isolate trans women. Comprehensive reform of the rules regarding changing the gender marker on one's identification, to the extent that this can be done federally, would also assist trans women victims of domestic violence. Unquestionably, using identification where the stated gender does not match one's presented gender can be extremely dangerous for a trans individual, and this can contribute again to an abuser's ability to isolate their victim.<sup>355</sup> Having identification which does not match one's gender presentation severely limits one's ability to travel, which obviously limits one's ability to leave an abusive partner.<sup>356</sup> Overall, any comprehensive reform that removes barriers to trans women in education and employment will contribute to their ability to leave their abusers, regardless of whether or not they have access to traditional domestic violence services.

Although the Senate's changes to VAWA recognize that the lack of access to services is a pervasive problem for LGBT victims of domestic violence, I have some fear that they do not go far enough. Throughout the debates over the changes, the debaters consistently refer to the denial of services to lesbians and gays,<sup>357</sup> or to the fact that LGBT people<sup>358</sup> suffer domestic violence. There are significantly fewer references that I could find to trans people or gender identity specifically, making me concerned that the ways in which money and services will be directed will be yet another case of "LGB Fake T."<sup>359</sup>

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353. See generally DEBORAH J. VAGINS, AM. CIVIL LIBERTIES UNION, WORKING IN THE SHADOWS: ENDING EMPLOYMENT DISCRIMINATION FOR LGBT AMERICANS (2007), available at [https://www.aclu.org/files/pdfs/lgbt/enda\\_20070917.pdf](https://www.aclu.org/files/pdfs/lgbt/enda_20070917.pdf) (describing what ENDA is and why it should be passed).

354. See generally Geidner, *supra* note 185.

355. See *infra* pp. 228-230.

356. See *Travel*, NAT'L CTR. FOR TRANSGENDER EQUALITY, <http://transequality.org/Issues/travel.html> (last visited Apr. 24, 2012) (describing issues faced when flying with identification which does not match one's presentation and giving recommendations on how to avoid issues); see also NAT'L CTR. FOR TRANSGENDER EQUALITY, *supra* note 180 (providing information regarding the added issues caused by TSA's use of full body image scanning); Harper Jean Tobin, *Fair and Accurate Identification for Transgender People*, HARV. KENNEDY SCH. LGBTQ POL'Y J. (2011), available at <http://isites.harvard.edu/icb/icb.do?keyword=k78405&pageid=icb.page414493> (referencing the fact that using identification not matching one's gender presentation means that one outs themselves at every routine traffic stop). Further, as discussed above, interactions with police where they know one's trans status can be dangerous. WAR, *supra* note 106, at 15.

357. 158 CONG. REC. S1696 (daily ed. Mar. 15, 2012) (statement of Sen. Feinstein).

358. 158 CONG. REC. S2761 (daily ed. Apr. 26, 2012) (statement of Sen. Blumenthal).

359. For example, Diane Feinstein stated, "VAWA will help ensure that all victims have access to life-saving services, regardless of sexual orientation or gender identity. Lesbian, gay,

Furthermore, although “gender identity” has been added as a protected category against discrimination, the nondiscrimination clause is followed by an exception, which reads:

Exception. If gender segregation or gender-specific programming is necessary to the essential operation of a program, nothing in this paragraph shall prevent such program or activity from consideration of an individual’s gender. In such circumstances, alternative reasonable accommodations are sufficient to meet the requirements of the paragraph.<sup>360</sup>

This exception might be broad enough to leave a loophole for organizations that wish to close their doors to trans women. Such a loophole has been found based on similar language in an analogous Canadian law. *Kimberly Nixon v. Vancouver Rape Relief*, was a suit brought by a trans woman in British Columbia against Vancouver Rape Relief (VRRS) when they did not allow her to volunteer.<sup>361</sup> The case turned on whether Ms. Nixon, who self-defined and lived her life as a woman, was a woman for the purposes of entrance into VRRS’s women-only space. “The VRRS argued that since ‘woman’ is defined by the VRRS as someone who has lived their entire life as a female, Ms. Nixon was not, and could not ever be, a woman for the purposes of the VRRS.”<sup>362</sup> The British Columbia Court of Appeals upheld VRRS’s definition of “woman,” thus allowing VRRS to exclude any woman whose life experiences fell outside those approved by the organization.<sup>363</sup>

A similar outcome might be possible under the Senate’s modifications to VAWA. The phrasing of the exception is too broad and leaves room for arguments like those used in Vancouver to exclude trans women from shelters. Although “gender identity” is defined for the purposes of nondiscrimination as “mean[ing] actual or perceived gender-related characteristics,” for the purposes of the exception, the terms “gender” and “gender specific” are left undefined.<sup>364</sup> Since, given its positioning in the law, the exception explicitly refers to the nondiscrimination clause, and since “gender” is not specifically defined in the exception, some organizations that are resistant to opening their doors to trans women may rely on this exception to exclude them. The phrasing of this exception leaves too much discretion for interpretation that could be harmful to

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bisexual and transgende[r] victims experience domestic violence in 25 percent to 35 percent of relationships—the same rate as heterosexual couples.” 158 CONG. REC. S2782 (daily ed. Mar. 15, 2012). Although she explicitly references “gender identity,” emphasizing that the bill is trans-inclusive, she conflates transgender with sexual orientation in her comparison to heterosexual couples.

360. S. 1925, 112th Cong. § 3 (2012).

361. Lori Chambers, *Principled Exclusions: Feminist Theory, Transgender Jurisprudence, and Kimberly Nixon*, 19 CAN. J. WOMEN & L. 305, 305-06 (2007).

362. *Id.* at 322.

363. *Id.*

364. *See* S. 1925, 112th Cong. § 3 (2012).

the needs of trans women.

Although, if present in the final reauthorization, the Senate's modifications to VAWA should mean that services will be provided for trans women, the changes must be made and accepted on the ground if they are to make any real difference. If a trans woman is badly treated once she accesses a shelter or if the staff is unresponsive to her needs, then it is not a safe place to which she can turn. Therefore, although the proposed "top down" changes to VAWA are important, it is the changes from the bottom up that are the most needed. The tireless campaigning and hard work of feminists first dragged domestic violence out of the private sphere and into the public eye. These same feminists who declared that one is not limited by one's biology and that "little girls can grow up to be whatever they want to be," must now "practice what they preach," and make room at the table for all the ways that people's genders manifest and evolve.