Trans* 101 for Public Defenders

What does this have to do with Ethics?

1.3 (1) Diligence
[A] lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and take whatever lawful and ethical measures are required to vindicate a client’s cause or endeavor.

6.1 Pro Bono Public Service
Every lawyer has a professional responsibility to provide legal services to those unable to pay.

6.4 Law Reform Activities
A lawyer may serve as a director, officer or member of an organization involved in reform of the law or its administration notwithstanding that the reform may affect the interests of a client of the lawyer.

8.4 (g) Misconduct
It is professional misconduct for a lawyer to... intentionally prejudice or damage his or her client during the course of the professional relationship.

What’s The ‘T’?

Umbrella label
LBTQIAA+
Gender & Sexual Minorities (GSM)
Sexual Orientation and Gender Identity (SOGI)
Cis-Gender
**Stats**
- 17% drop out of K-12 or college
- 15% have an annual income of less than $10,000, four times the rate of the general population
- 30% will be homeless at some point
  - 30% were turned away from shelters and 22% were physically or sexually assaulted at shelters
- Triple the general population's rate of unemployment, quadruple for black & latinx trans* people
- 90% experience workplace harassment or hide their identity to prevent harassment
- 20% were forced into the underground economy

**Stats**
- 41% attempt suicide, nine times the national average
- 33% have been denied access to healthcare
- 89% do not have all their IDs preferred name and gender
- 57% do not feel safe seeking police assistance
- 22% have been denied police assistance
- 23% of incarcerated trans* people were physically assaulted, 20% were sexually assaulted
- 37% harassed by guards/COs, 35% by fellow inmates
Intersectional Identities

Interconnectionality is
• the interconnected nature of social categorizations such as race, class, and gender as they apply to a given individual or group, regarded as creating overlapping and interdependent systems of discrimination or disadvantage.

• No universal trans* identity or experience
• Avoiding essentialism
Transitioning

- Means something different for everyone
- Can be a lifelong process
- World Professional Association of Transgender Health (WPATH) Standards of Care
- Most trans* people don't "fully" transition
  - Lack of access to gender-confirming healthcare
  - Lack of desire for some or all medical interventions
- Rejecting the binary means rejecting the medical model

So, what do I call you?

- ASK!
  - Respectfully, of course
- Pronouns
  - He/him/his
  - She/her/hers
  - Singular "they"
- Non-traditional pronouns
  - E.g., xe/xer/xyr; ze/zir/zem
- "Legal" names

Key Words NOT to Use

- Tranny
- She-male/he-she
- Transvestite
- Transgendered, transgenderism
- Transgenders/a transgender
- Sex change
  - Pre/post-op
- Biologically male/female (and/or birth sex)
- https://www.youtube.com/watch?v=UM8H7Q9zA
Gender Identity Disorder and Gender Dysmorphia (aka fun times with the DSM)

- DSM IV
  - Gender Identity Disorder (GID)
  - Characterizes all trans* people as mentally ill
- DSM V (Current version)
  - Gender Dysphoria
    - "a marked incongruence between one’s experienced/expressed gender and assigned gender…[and] often experience significant distress and/or problems functioning associated with this conflict"
  - Legal Implications for the difference
    - Case law
    - Access to health care

Areas of Practice

- Intake
- Client Interviews
- Court Documents
  - Importance of Gender Affirming Language
- Sex-segregated facilities and programs/opportunities(particularly incarceration)
- Gender-specific services and/or criminal charges

Collateral Legal Issues

- Identity Documents
  - http://www.transequality.org/documents
- Access to Services
  - Homeless, DV shelters
  - Substance abuse facilities
  - Medical care
  - Employment Discrimination
Trans* Crimes

- Manifesting Intent Laws
- Prostitution
- Fictitious Information to an Officer/Fraud
- Assault
- Shoplifting/Larceny

Case Law

- Trans* discrimination as sex discrimination
  - 14th Amendment
  - Title IX
- Mixed success between Pricewaterhouse gender expectations argument and courts specifically recognizes sex discrimination against people for their transgender status
- Rules of Professional Conduct
  - Harassment rules
- Gender Confirming Healthcare
  - Eighth Amendment-Serious Medical Need
    - Hormone Replacement Therapy (HRT)
    - Pre or post incarceration
    - Surgical Intervention

Sex-segregated Incarceration

- Prison Rape Elimination Act (PREA) Standards
  - 28 C.F.R. § 115.42-43
- Local Policy
  - E.g., Harris County Policy
- Federal Decisions
  - Fields v. Smith
Ten Things You Should Never Ask a Trans* Person
(and why PDs may have to anyway)