



Transgender Health & Medical-Legal Partnerships

 NATIONAL LGBTQIA+ HEALTH
EDUCATION CENTER

A PROGRAM OF THE FENWAY INSTITUTE

National Center for Medical  Legal Partnership

AT THE GEORGE WASHINGTON UNIVERSITY

WHAT TO KNOW IN 2024 AND BEYOND

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In 2018, we published our fact sheet, Transgender Health & Medical-Legal Partnerships.³ Though the approach to using medical-legal partnerships to meet the needs of transgender and gender diverse (TGD) people remains a core tool for addressing the social determinants of health for this population, the legal and legislative landscape has changed drastically in recent years. In addition to navigating insurance coverage; medical decision-making; legal name and gender marker changes; and discrimination in education, employment, housing/shelter, and public accommodations; TGD people now face stepped-up efforts to restrict their access to health care more broadly, including denial of gender-affirming care, and restrictions on accessing public spaces and speech.

There have been more than 500 bills introduced in states targeting TGD people.⁴ This follows a trend of increasing anti-trans laws in recent years.⁵ Bills banning bathroom use by TGD people; banning participation in youth sports; restricting discussion of sexuality, gender, and identity in public education; threats to take custody of TGD youth from affirming families; and limiting gender-affirming care for youth and adults create a dangerous environment for TGD people in many areas of the United States. Criminalization of TGD lives – and of the actions of their providers and caregivers – brings serious adverse consequences to the health and safety of TGD people.

These laws and proposed legislation in several states present significant new and escalated threats for TGD people. Medical-legal partnerships can provide effective and efficient pathways to addressing these threats and protecting the legal rights of these communities. As highly flexible interventions that can adapt to the needs of a specific population, medical-legal partnerships are uniquely situated to address the health-related legal needs of TGD people.

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³ National LGBT Health Education Center and National Center for Medical-Legal Partnership. Transgender Health & Medical-Legal Partnerships; 2018. Available at: <https://www.lgbtqiahealtheducation.org/wp-content/uploads/2018/08/Transgender-Health-and-Medical-Legal-Partnership-1.pdf>

⁴ Erin in the Morning. Anti-Trans Legislative Risk Map (May 20, 2023). Available at: <https://www.erininthemorning.com/p/may-anti-trans-legislative-risk-map>

⁵ Branigin A, Kirkpatrick N. “Anti-trans laws are on the rise. Here’s a look at where – and what kind.” Washington Post, Oct. 14, 2022, <https://www.washingtonpost.com/lifestyle/2022/10/14/anti-trans-bills/>

HOW TO STAY INFORMED

The dizzying pace of efforts to restrict the rights of TGD persons can make it difficult to accurately and fully list all the information providers need to help their patients and clients. Some helpful resources include:

ACLU Mapping Attacks on LGBTQ Rights in U.S. State Legislatures

<https://www.aclu.org/legislative-attacks-on-lgbtq-rights>

Equality Federation Anti-Transgender Medical Care Ban State Legislation Tracker

<https://www.equalityfederation.org/tracker/anti-transgender-medical-care-bans>

Erin in the Morning (anti-trans legislation trackers, news updates and reporting)

<https://www.erininthemorning.com/>

GLAD Know Your Rights by State (strategic litigation, public policy advocacy, education)

<https://www.glad.org/know-your-rights/>

Lambda Legal (LGBTQ+ and HIV+ litigation, public policy, education)

<https://lambdalegal.org/>

Transgender Law Center (trans rights, legal information, impact litigation)

<https://transgenderlawcenter.org/>



LEGAL HELP FOR PEOPLE WITH GENDER DYSPHORIA

A Federal Court Case Provides An Additional Legal Tool to Fight Discrimination

A decision by the U.S. Court of Appeals for the Fourth Circuit provides an important update and new legal tool for protecting some TGD people from discrimination. The case, [Williams v. Kincaid](#),⁶ concerned Kesha Williams, a transgender woman with gender dysphoria who was incarcerated in Virginia and moved to men's housing when the facility learned she was transgender. Williams had her prescription hormone medication confiscated, suffered delays in medical treatment, was harassed by other inmates and prison staff, and was denied a request to shower privately and have body searches conducted by women. Upon her release, she filed a lawsuit alleging violations of her rights under the Constitution and the Americans with Disabilities Act (ADA).

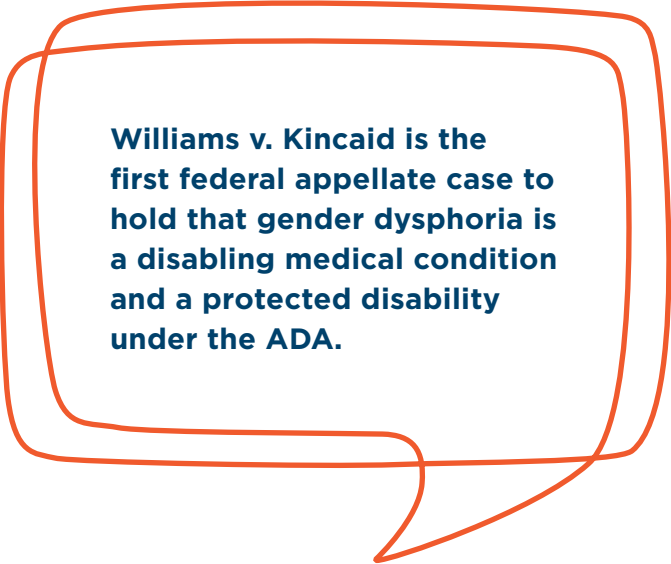
The district court dismissed her case, stating the ADA's definition of disability did not include Williams' gender dysphoria because the ADA excludes gender identity disorder not resulting from physical impairments. The appeals court disagreed and reversed the lower court concluding that the current understanding of gender dysphoria is distinct from the definition of gender identity disorder that was active at the time the ADA was enacted. The court engaged in an overview of the history of the terms, revisions in the DSM-5, and the clinically significant distress – including intense anxiety, depression, suicidal ideation, and suicide – experienced by some TGD people. The 4th Circuit Court of Appeals held that Williams' gender dysphoria was a disability covered by the ADA, and thus, Williams was entitled to the anti-discrimination protections afforded by the law, including accommodation for her gender dysphoria.

⁶ 45 F.4th 759 (4th Cir. 2022).

It is important to note the court's acknowledgment of the shift in medical understanding between 1990, when the ADA was enacted, and today and what that means for the scope of this court ruling. At the time the ADA was drafted, a gender identity disorder diagnosis often marked a transgender person as having a mental illness. Today, as the court stated, "a diagnosis of gender dysphoria, unlike that of 'gender identity disorder' concerns itself primarily with distress and other disabling symptoms, rather than simply being transgender."⁷ Put another way, being transgender alone does not necessarily indicate gender dysphoria or disability.

It is precisely because of that earlier characterization of being transgender as a mental illness that it is important to not broadly equate gender identity with disability unless there is a clinical justification, such as with diagnoses of gender dysphoria. Overzealous advocacy under this legal path could lead to similar mischaracterization and diminished rights for TGD people.

Williams v. Kincaid is the first federal appellate case to hold that gender dysphoria is a disabling medical condition and a protected disability under the ADA. Unless or until the law develops further to change this, advocates should proceed with this as a new legal tool in their toolkit for protecting some trans people against discrimination.



TGD people face a constantly changing landscape of laws – and with it, confusion about how to respond and who can help. These changes can be harmful, such as the myriad of new state laws restricting health care and barring certain activities, but they can also introduce new legal arguments such as the one used by Ms. Kincaid. At this time of this publication, lawsuits are under way challenging some of the harshest state laws. These cases demonstrate the vital necessity of medical support for legal arguments, and ultimately, for the protection of TGD rights. Whether the opportunity arises in the clinic or the courthouse, medical and legal providers and medical-legal partnerships remain crucial pieces of the armor available to TGD communities in fighting for fairness and freedom.

⁷ Id. at 768.

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