



## *Talking Points about Gender-Segregated Facilities*

*These talking points were drafted by Dean Spade, a member of the committee currently drafting the Compliance Guidelines for New York City's new anti-gender identity discrimination law. These guidelines have not yet been approved, but in preparation for questions regarding sex-segregated facilities, these talking points were drafted. These may be of use in clarifying issues in communities working toward transgender equality.*

New York City's Human Rights Law now explicitly protects all New Yorkers from discrimination on the basis of gender identity or expression. This means that, no matter who you are, you should be treated equally and with respect for how you understand your own gender. If you are transgender, transsexual, a feminine man or a masculine woman, or if for any reason you are being denied access to services or accommodations you need on the basis of your gender identity or expression, you are now protected by the law.

One source of curiosity around this law is what happens with gender-segregated facilities like bathrooms, homeless shelters, and locker rooms? The new law means that everyone's gender identity should be respected, and we should all be treated on an equal basis with other people who share our gender identity. No one can be forced to use a facility that does not match their gender identity. If you identify as a woman, you should be treated like all other women and allowed access to women's facilities. If you identify as a man, you should similarly be able to access men's facilities on an equal basis with other men.

### **FREQUENTLY ASKED QUESTIONS**

#### **1. Does this law mean that we have to let men into women's locker rooms or bathrooms?**

**No.** This law means does not require that men be let into women's facilities, or that women be allowed into men's facilities. Instead, it requires that we respect that some people's gender identity does not perfectly match societal expectations. Some men are more feminine than others, some women are more masculine than others, and some people live in a gender different from what was assigned to them at birth. This law only requires that all people who identify as women be treated as women, and all people who identify as men be treated as men.

#### **2. Will this law endanger women in spaces like locker rooms and bathrooms because it will allow men in who may want to sexually assault women?**

**No.** This law does not invite sexual assault on women in locker rooms and bathrooms. People who enter restrooms or locker rooms with the intent to commit sexual assault are



still subject to criminal penalty. However, the people who have often experienced the discrimination and harassment in gender segregated facilities that this law seeks to address, such as women of transgender experience trying to use women's facilities, masculine women trying to use women's facilities, men of transgender experience trying to use men's facilities, and feminine men trying to use men's facilities, are now explicitly protected from discrimination and exclusion. Any notion that these people are sexual predators is based in ignorance and misunderstanding that this new law seeks to remedy. This law does not change the fact that any person who seeks to enter a bathroom or locker room in order to sexually assault another person is punishable under the criminal laws of NY. There is no evidence that allowing transgender people to have safe access to facilities that concord with their gender identities will increase the incidence of sexual assault, however it is clear that the new law will protect them from the harassment and violence they frequently face when trying to access such facilities.

### **3. Does this law require that new bathrooms be constructed for transgender people?**

No. This law does not require any construction. It simply clarifies that all people should be able to access the bathroom that is appropriate for them based on their gender identity, and should not be forced to use a bathroom that is designated for individuals of another gender identity. The Compliance Guidelines do recommend that, because gender segregated bathrooms are often the site of harassment and discrimination for people whose gender expression transgresses societal norms, any single-stall bathrooms be converted into gender-neutral bathrooms. This recommendation comes from our understanding that many people find gender segregated bathrooms inaccessible, including people with disabilities who require attendance in the bathroom and whose attendant is a different gender than they are, parents with children whose gender is different from their own but who wish to accompany their child to the bathroom, and people whose gender expression transgresses societal norms. The Commission on Human Rights set out this recommendation with the safety and convenience of these people in mind, recognizing that all people should be able to safely access bathroom facilities.

### **4. What about transgender people who have not had surgery? What facilities will they use?**

The new law requires that people be allowed to use facilities that accord with their gender identity, not with any particular body part. Just as non-transgender men and women are not asked to prove what body parts they have before entering gender-segregated facilities, transgender people also should not be. All people, regardless of surgical status, are entitled to use facilities which comport with their gender identities regardless of whether their bodies match traditional expectations. Challenging someone's gender identity and/or asking invasive personal questions about their body parts is a form of harassment.



## **5. What about facilities where people see each other without clothing?**

The Commission recognizes that there are still some facilities without privacy, such as totally open showers. The Commission recommends that in circumstances where nudity is unavoidable, basic steps such as the installation of curtains be taken in order to create the minimal amount of privacy needed to maintain the comfort and safety of all people using facilities. Most importantly, this law requires that no person be forced to use facilities that do not comport with his/her gender identity, so employers, housing provider, schools and others maintaining gender segregated facilities should take the steps necessary to ensure that this requirement is met. Whether by creating private space through curtains, or designating a space as gender neutral, this task should be neither difficult nor expensive. The Commission is available to assist in creating plans to remedy any problems that may arise in the process of making facilities accessible to all people.