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## Transforming America's Perspective: How Recognizing the Rights of Transgender Youth Will Empower the Next Generation

*Daliah Silver*<sup>1</sup>

### INTRODUCTION

Imagine a world where children are shouted at every day for getting dressed in the morning, are beaten up for playing with dolls, and cry themselves to sleep every night after a day of taunts, name calling, and bullying. A world where teenagers sleep under store windows and park benches, trade anything they have for drugs, and find ways to make all the pain stop. All this for one sentence: “I am transgender.” For too many children, this world is a reality.

“I would change my current situation with my family – if I could I would tell them about my actual gender identity and do so without them judging me or rejecting me.”<sup>2</sup>

I didn't know what to do. Our son asked us over and over again to call him she. I just couldn't bring myself to do it. Finally[,] our family therapist asked—is it making him happy for you to insist on calling him a boy? Of course the answer was no. But then when he asked me if it would make my son happy if I called him she—the answer was a clear yes. He then asked me what was more important to me than my child's happiness . . . I started to cry. I realized that my fear of ridicule coupled with my fear of the ridicule he would suffer was causing me to deny him true happiness.<sup>3</sup>

Never has it been a more promising time to be transgender, identifying outside of the culturally accepted boundaries of male and female. In recent years, transgender celebrities have come out, undergone surgery, and spoken against intolerance<sup>4</sup>; hit television shows feature transgender actors and actresses<sup>5</sup>; and an Oscar winning film, for the first time, features a

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<sup>2</sup> *Supporting and Caring for Our Gender Expansive Youth*, HUM. RTS. CAMPAIGN FOUND. (Dec. 2014), [https://www.genderspectrum.org/staging/wp-content/uploads/2014/12/HRC\\_report.pdf](https://www.genderspectrum.org/staging/wp-content/uploads/2014/12/HRC_report.pdf).

<sup>3</sup> Erika Skougard, *The Best Interests of Transgender Children*, 3 UTAH L. REV. 1161, 1174 (2011).

<sup>4</sup> Greg Bishop, *A Pioneer, Reluctantly*, N.Y. TIMES (May 10, 2013), [https://www.nytimes.com/2013/05/13/sports/for-transgender-fighter-fallon-fox-there-is-solace-in-the-cage.html?fbclid=IwAR2X\\_RpQ2UnYIDXwfK\\_kYSbwtvTBMRjWv9M5BH3WAmWbbXtvWB\\_Vm23f8uk](https://www.nytimes.com/2013/05/13/sports/for-transgender-fighter-fallon-fox-there-is-solace-in-the-cage.html?fbclid=IwAR2X_RpQ2UnYIDXwfK_kYSbwtvTBMRjWv9M5BH3WAmWbbXtvWB_Vm23f8uk); Eric Spitznagel, *Laverne Cox: 'Blending In Was Never an Option'*, N.Y. TIMES (May 29, 2014), [https://www.nytimes.com/2014/06/01/magazine/laverne-cox-blending-in-was-never-an-option.html?fbclid=IwAR2K\\_d2GtzrlfchqODCffKQLlqeyrNH\\_sUTv8TEWDdUEY3i\\_otI5-nnpGIE](https://www.nytimes.com/2014/06/01/magazine/laverne-cox-blending-in-was-never-an-option.html?fbclid=IwAR2K_d2GtzrlfchqODCffKQLlqeyrNH_sUTv8TEWDdUEY3i_otI5-nnpGIE); Katy Steinmetz, *Meet The First Openly Transgender NCAA Division I Athlete*, TIME, <http://time.com/3537849/meet-the-first-openly-transgender-ncaa-athlete/?fbclid=IwAR3d1GCUKk55rIKitPE6lu6566-7FRcbbfYIbiMxgGyGd-JmeajD6BRxSM> (updated Oct. 28, 2014, 12:01 PM).

<sup>5</sup> *Transparent (TV Series)*, WIKIPEDIA, [https://en.wikipedia.org/wiki/Transparent\\_\(TV\\_series\)](https://en.wikipedia.org/wiki/Transparent_(TV_series)) (last visited Apr. 22, 2019).

transgender story line and an openly transgender lead actor.<sup>6</sup> In 2015, former President Barack Obama used the term 'transgender' for the first time in the State of the Union, a call for respect of human dignity for all citizens.<sup>7</sup> The term transgender produces sixty-four billion available sites on the Internet.<sup>8</sup> Yet stigma, fear, and misunderstanding still run rampant. Transgender youth experience verbal threats, physical violence, face homelessness, depression, and attempt suicide all due to the heartbreaking rejection from their parents.<sup>9</sup>

Every family reacts differently when learning about their child's gender identity. Parents may be shocked and surprised, some may already be aware of their child's identity, and many come to terms with this new normal by doing everything they can to support their child through their gender journey. However, not all parents embrace this change. Even after the initial shock and denial, some parents continue to reject their child's gender identity, forcing them to undergo harmful and unsuccessful therapies to 'change' their behavior, or force the child from the home. A misunderstanding of transgender identity and fear of what this will mean for their child's future influences these actions. A parent's mind is filled with questions: Will their child fit in? Will their child have a good life and be accepted by their peers and society? Oftentimes, these answers are yes, if the parents are willing to support their children. Unfortunately, many times, a parent opposes their child's transition with disastrous consequences. What outcome do children experience when their parents are unsupportive of their gender identity? Would transgender minors be able to advocate and consent to their own care and transition? This is unlikely without legal gender recognition, so transgender youth will continue to experience segregation, discrimination and stigma.

Part I provides an understanding of the pertinent terminology, explains children's psychological and biological development, as well as outlines the process of transitioning for youth. Part II outlines certain ramifications when an identity is denied, or attempts are taken to 'reverse' the identity. Part III explains the legal barriers youth face when changing and establishing a gender identity, including the rights of their parents and the ability to make informed decisions regarding their health care. Part IV offers possible solutions allowing minors an independent gender expression based upon already established legal rights afforded to youth. Across the globe, countries understand gender identity in various ways, and Part V finds alternate solutions for the United States with a glimpse into some of the many expressions of gender around the world. Finally, Part VI provides a brief overview of current laws working towards equality for the transgender community in the United States. Establishing legal rights for transgender minors, in conjunction with preexisting child welfare law, allows transgender minors to advocate and consent to their own social and medical interventions. In addition, established rights protects the child from the possible ramifications of a parent's rejection as legal recognition validates the requirements necessary for a healthy transition and well-being.

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<sup>6</sup> John Paul Brammer, *In a first, 'Fantastic Woman' wins Oscar with transgender lead*, NBC NEWS (Mar. 5, 2018, 2:32 PM), <https://www.nbcnews.com/feature/nbc-out/first-fantastic-woman-wins-oscar-transgender-lead-n853626>.

<sup>7</sup> Barack Obama, President of the United States, State of the Union Address (Jan. 20, 2015).

<sup>8</sup> Search results for transgender, GOOGLE, [https://www.google.com/search?q=transgender&rlz=1C1CHZL\\_enUS757US757&oq=transgender&aqs=chrome.0.69i59l3j69i60l3.1920j0j7&sourceid=chrome&ie=UTF-8](https://www.google.com/search?q=transgender&rlz=1C1CHZL_enUS757US757&oq=transgender&aqs=chrome.0.69i59l3j69i60l3.1920j0j7&sourceid=chrome&ie=UTF-8) (last visited Apr. 15, 2019).

<sup>9</sup> *Growing Up LGBT in America*, HUM. RTS. CAMPAIGN, [https://hrc.org/files/assets/resources/Growing-Up-LGBT-in-America\\_Report.pdf](https://hrc.org/files/assets/resources/Growing-Up-LGBT-in-America_Report.pdf) (last visited July 7, 2019).

## I. UNDERSTANDING TRANSGENDER IDENTITY

Transgender identity is not a modern Western concept; multiple countries and cultures exhibit gender non-conforming individuals throughout their society.<sup>10</sup> According to a study conducted by the Williams Institute in 2016, 1.4 million Americans, or 0.6% of the population, identify as transgender.<sup>11</sup> This number has doubled from the estimate almost a decade ago<sup>12</sup>, and is broken down by state and age demographic, with young adults 18-24 years old and the State of Hawaii leading the way with the highest reported identifying groups.<sup>13</sup> Transgender identity is commonly misunderstood within mainstream society, so before progress can be made, the concept itself must be made clear.

### A. Definitions

Gender itself is a spectrum, with a wide variety of terminology used.<sup>14</sup> Those working alongside transgender individuals are encouraged to use the terms the individuals themselves use, for ease of comfort, acceptance, and inclusion, and in order to avoid confusion.<sup>15</sup> First, it is important to understand the distinction between sex and gender.<sup>16</sup> Biological chromosomes, XX

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<sup>10</sup> See, e.g., *India court recognizes transgender people as third gender*, BBC NEWS (Apr. 15, 2014), [https://www.bbc.com/news/world-asia-india-27031180?fbclid=IwAR3o6MnUIqGGW6t6ZkDsXXCT-aZIMSbY\\_tYFu3rMuqbZOFupXAJnU4fonwI](https://www.bbc.com/news/world-asia-india-27031180?fbclid=IwAR3o6MnUIqGGW6t6ZkDsXXCT-aZIMSbY_tYFu3rMuqbZOFupXAJnU4fonwI); *Two Spirit*, INDIAN HEALTH SERV., <https://www.ihs.gov/lgbt/health/twospirit/?fbclid=IwAR2JIUgOLJwUmBgxP54R3ClaiCI55uTALicuySOdlr1XLoBfQH5QsBpsUIE>; Sebastian Strangio in Yogyakarta, 'Allah doesn't care if you are transgender: 'the Indonesian school fighting backlash', THE GUARDIAN (Nov. 15, 2017, 10:29 PM), [https://www.theguardian.com/world/2017/nov/16/allah-transgender-indonesian-school-fighting-backlash?fbclid=IwAR05jCUFqSFUmbxyz\\_UrfrluNKeE7BJ7BwosmYqinNdeCiao1Rs0cohraE](https://www.theguardian.com/world/2017/nov/16/allah-transgender-indonesian-school-fighting-backlash?fbclid=IwAR05jCUFqSFUmbxyz_UrfrluNKeE7BJ7BwosmYqinNdeCiao1Rs0cohraE); Yvette Tan, *Miss Fa'afafine: Behind Samoa's 'third gender' beauty pageant*, BBC NEWS (Sept. 1, 2016), [https://www.bbc.com/news/world-asia-37227803?fbclid=IwAR3pY3HZEWIHquvS-SqlKZVg3idiEAEVWahMQQgG\\_YIsJEGQuS6rhae3pNY](https://www.bbc.com/news/world-asia-37227803?fbclid=IwAR3pY3HZEWIHquvS-SqlKZVg3idiEAEVWahMQQgG_YIsJEGQuS6rhae3pNY); *The Beautiful Way Hawaiian Culture Embraces A Particular Kind Of Transgender Identity*, HUFFINGTON POST (Apr. 28, 2015, 5:48 PM), [https://www.huffpost.com/entry/hawaiian-culture-transgender\\_n\\_7158130?fbclid=IwAR08mE-DHmxRHUoScyVgXXHlyrKfW-h7bW17LkadMPEmAoS5W5WZtQk3iE](https://www.huffpost.com/entry/hawaiian-culture-transgender_n_7158130?fbclid=IwAR08mE-DHmxRHUoScyVgXXHlyrKfW-h7bW17LkadMPEmAoS5W5WZtQk3iE) (last updated Dec. 6, 2017).

<sup>11</sup> Andrew R. Flores et al., *How Many Adults Identify As Transgender In The United States?* THE WILLIAMS INST. (June 2016), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/How-Many-Adults-Identify-as-Transgender-in-the-United-States.pdf>.

<sup>12</sup> A population-based survey from California in 2003 and Massachusetts from 2007 and 2009 estimated 0.3%, about 700,000 individuals, identified as transgender. *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> Additionally, terminology and definitions of gender and identity are always evolving. The terminology used here reflects the most up-to-date and socially common language.

<sup>15</sup> Throughout this paper, in any references to case studies, the gender pronoun and terminology will reflect those with which the subject identifies.

<sup>16</sup> While this paper specifically addresses transgender youth, many of the studies detailed here also include statistics, observations and conclusions regarding LGBT youth. There are few studies available solely on transgender issues; instead, authors work with the entire demographic, and many of the conclusions drawn affect the entire LGBT community. LGBT is a common umbrella term to encompass the entire spectrum of the lesbian, gay, bisexual, and transgender community. *Glossary of LGBT Terms for Health Care Teams*, NAT'L LGBT HEALTH EDUC. CTR., [https://www.lgbthealtheducation.org/wp-content/uploads/LGBT-Glossary\\_March2016.pdf](https://www.lgbthealtheducation.org/wp-content/uploads/LGBT-Glossary_March2016.pdf) (last visited July 7, 2019). When information will encompass all LGBT youth, the distinction will be made.

or XY, developed as a fetus, determine biological sex.<sup>17</sup> Sex is purely anatomical, and is assigned at birth based on the visual inspection of external genitalia.<sup>18</sup> Gender, on the other hand, is an identity that changes over time, is learned, and varies across culture and regions.<sup>19</sup> Experts define gender identity as each person's deeply felt internal and individual experiences which may not match the sex assigned to them at birth and can include their personal sense of the body and other expressions, such as dress or mannerism.<sup>20</sup> Transgender people are individuals whose gender identity, the intrinsic concept of self, differs from their biological sex.<sup>21</sup> For adults and children, gender identity and expression can present differently. Finally, it is important to distinguish between sexual orientation – those to whom one is attracted – to gender identity – how one perceives their own gender.<sup>22</sup> Transgender individuals can have any sexual orientation.<sup>23</sup>

There is additional important terminology when framing any discussion around gender. Cisgender, or “same gender” is an individual whose gender identity matches their biological sex.<sup>24</sup> Gender binary is the concept of male and female, with no exceptions beyond the two. Gender dysphoria is a diagnosis defined in the *Diagnostic and Statistical Manual of Mental Disorders* (DSM-5) as those who have varying degrees of discomfort with their bodies not matching their internal sense of gender.<sup>25</sup> The DSM-5 stresses the importance of gender non-conformity itself as not being a mental disorder, but highlights the clinically significant distress and reactions people have when existing in a body that does not match their internal gender.<sup>26</sup> Often, individuals with gender dysphoria choose to transition.<sup>27</sup> Gender expression is how one communicates externally to others their gender, through mannerisms, hair, clothing, and expressions.<sup>28</sup> Gender non-conforming, or non-binary, individuals express their identity outside of the socially acceptable norms for males and females.<sup>29</sup> Gender pronouns are pronouns used to describe male (He, His,

<sup>17</sup> Biological males have an XY chromosome with higher levels of testosterone, and the genitals include a scrotum, penis, and testes. Biological females have an XX chromosome with higher levels of estrogen, and the genitals include a vagina, ovaries, and breasts. *Frequently Asked Questions about Transgender People*, NAT'L CTR. FOR TRANSGENDER EQUALITY (July 9, 2016), <https://transequality.org/issues/resources/frequently-asked-questions-about-transgender-people>. See also *id.*

<sup>18</sup> Intersex is an individual born with reproductive or sexual organs, or chromosomes, that do not fall within the socially defined male/female boundaries. When a baby is born, the doctor and family make the decision as to what sex the child is. This can include children born with larger or smaller than average male or female genitalia, or a combination of both. Often surgery would be performed on the child to align them with the specific sex. See *What's intersex?*, PLANNED PARENTHOOD, <https://www.plannedparenthood.org/learn/sexual-orientation-gender/gender-gender-identity/whats-intersex> (last visited Apr. 22, 2019); see also *interACT FAQ*, INTERACT, <http://interactadvocates.org/faq/> (last visited Apr. 22, 2019). However, due to the vast scope of the condition, and the factors involved, for the purposes of this paper, intersex individuals will not be discussed.

<sup>19</sup> SACHA M. COUPET & ELLEN MARRUS, *CHILDREN, SEXUALITY, AND THE LAW* 187 (New York University Press, 1st ed. 2015).

<sup>20</sup> *Id.*

<sup>21</sup> *Glossary of LGBT Terms for Health Care Teams*, *supra* note 16.

<sup>22</sup> *Frequently Asked Questions about Transgender People*, *supra* note 17.

<sup>23</sup> *Id.* As this paper discusses the gender identity of children and youth, sexual orientation will not be addressed.

<sup>24</sup> *Glossary of LGBT Terms for Health Care Teams*, *supra* note 16.

<sup>25</sup> AMERICAN PSYCHIATRIC ASSOCIATION, *DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS* 302.6 (5th ed. 2013).

<sup>26</sup> *Id.*

<sup>27</sup> *Glossary of LGBT Terms for Health Care Teams*, *supra* note 16.

<sup>28</sup> *Id.*

<sup>29</sup> Non-binary can also be called agender, bigender, gender fluid, and genderqueer. *Id.*

Him), female (She Her, Hers), or non-binary (They, Them, Theirs) people.<sup>30</sup> Queer can be used as an umbrella term, or in place of, LGBT, which encompasses all non-heterosexual and non-cisgender people.<sup>31</sup> Gender affirming surgery is the process transgender individuals take to transition to their gender identity.<sup>32</sup> Transition/-ing is the process of altering their name, pronoun, physical appearance, or body to match their gender identity.<sup>33</sup> This includes social and/or medical transition.<sup>34</sup> The world of LGBT, vocabulary, and definitions are always evolving, so it is essential to use the terminology the individual prefers.

One of the most common barriers for acceptance about transgender minors is the disbelief that children can identify with a gender other than their biological sex. Children's sense of gender begins as young as two years old when a child has a conscious understanding of the differences between a girl and a boy, and identifies toys typically used for boys or girls.<sup>35</sup> By three years old, children begin labeling themselves as a boy or a girl and, by four, have a stable understanding of their identities.<sup>36</sup> Between the ages of three and five, children gravitate towards toys and other children of their same gender, "play gender police," are observed to possess "strong felt pressure for gender conformity," and are capable of "experiencing gender contentedness or dissatisfaction."<sup>37</sup> It is not until age seven or older that many children display an interest in toys or relationships with those outside of their gender identity.<sup>38</sup> Often, children can live happily as gender non-conforming with no distress, but other times, children can become significantly distressed over their assigned biological sex.<sup>39</sup>

A child can be diagnosed with gender dysphoria when they have experienced a strong desire or instance, with persistent preference, to be the other gender lasting for at least six consistent months.<sup>40</sup> Psychiatrists diagnose gender dysphoria in children who meet certain requirements outline in the DSM-5.<sup>41</sup> The diagnosis also requires there be an intense constant discomfort or sense of inappropriateness with the child's biological sex, and "mere tomboyishness

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<sup>30</sup> *Glossary of LGBT Terms for Health Care Teams*, *supra* note 16. There are many additional pronouns an individual can use, including ze, hir/zir, hirs/zirs, hirsself/zirself; ve, ver, vis, vis. It is common practice to ask which pronouns an individual uses when addressing them. Lesbian, Gay, Bisexual, Transgender Resource Center, *Gender Pronouns*, UNIV. OF WISC. MILWAUKEE, <https://uwm.edu/lgbtrc/support/gender-pronouns/> (last visited July 7, 2019).

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> COUPET & MARRUS, *supra* note 19, at 189.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Glossary of LGBT Terms for Health Care Teams*, *supra* note 16.

<sup>40</sup> Other indicators include: in boys, a strong preference for cross-dressing or simulating female attire; in girls, a strong preference for wearing only typical masculine clothing and a strong resistance to the wearing of typical feminine clothing; a strong preference for cross gender roles in make believe or fantasy play; a strong preference for the toys, games, or activities typical of the other gender; a strong preference for playmates of the other gender; in boys, a strong rejection of typically masculine toys, games, and activities and a strong avoidance of rough-and-tumble play; in girls, a strong rejection of typically feminine toys, games, and activities; a strong dislike of one's sexual anatomy; a strong desire for the primary and/or secondary sex characteristics that match one's experienced gender. Melissa MacNish, *Gender Identity Development*, NAT'L LGBT HEALTH EDUC. CTR. (Oct. 2, 2015), <http://www.lgbthealtheducation.org/wp-content/uploads/Gender-Identity-Development.pdf>.

<sup>41</sup> COUPET & MARRUS, *supra* note 19, at 200.

in girls or girlish behavior in boys is not sufficient.<sup>42</sup> Once diagnosed, there are multiple avenues available to transgender children concerning how they and their families will choose to express this gender identity, including the process of social and medical transitioning.

### ***B. Transitioning***

When an individual identifies as transgender, there are multiple ways by which they choose to express their gender identity. Another common misconception is that gender and transitioning have specific steps and a final end goal; instead, gender identity is a constant journey. The process and decisions vary for each person, but generally there are two categories: social and medical transitioning. Oftentimes, young children will only undergo social transitioning. Medical transitioning, involving surgery and hormone therapy, is very rare for children, and most commonly carried out later in life.

Doctors and clinical therapists guiding families through transitioning generally follow standards established by the World Professional Association for Transgender Health (WPATH).<sup>43</sup> The WPATH Standards of Care recommend that an individual immerse in “real life experience” by living full time as the preferred gender.<sup>44</sup> One of the first stages in social transitioning is a name and pronoun change.<sup>45</sup> Children seeking recognition for their gender identity typically request a name change to match their internal sense of self. Altering pronouns is also important, both for the child and others, and must be in accordance with what the child themselves wants. This shows respect for the child and the transition process they are undertaking by supporting their well-being and self-fulfillment.<sup>46</sup> Another major step can be changing or altering clothes, hair, and other forms of personal appearance to better align with their personal gender identity.

Social transitioning is vital for acceptance from the outside world in which the child lives. This entails communicating with teachers, friends, and extended family to ensure they use the child's chosen name and pronouns. Often, parents take a more active role during this time.<sup>47</sup> They discuss with those involved in the child's life how to make a safe and supportive environment for their child.<sup>48</sup> For most young children, social transitions are enough.<sup>49</sup> It is older children and adults who typically choose to alter their bodies physically through medical transitions.<sup>50</sup>

The WPATH Standards outline three categories of medical intervention: fully reversible interventions, partially reversible interventions, and irreversible interventions.<sup>51</sup> The first is for children about to enter puberty. Doctors often utilize puberty-delayed hormones to delay the onset

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<sup>42</sup> *Id.* at 191.

<sup>43</sup> *Id.* at 204. *See also* Skougard, *supra* note 3, at 1170.

<sup>44</sup> Skougard, *supra* note 3, at 1170.

<sup>45</sup> ELI COLEMAN ET AL., STANDARDS OF CARE FOR THE HEALTH OF TRANSEXUAL, TRANSGENDER, AND GENDER-NONCONFORMING PEOPLE (The World Prof'l Ass'n for Transgender Health (WPATH) ed., 7th ed. 2012), *available at* [https://www.wpath.org/media/cms/Documents/SOC%20v7/Standards%20of%20Care\\_V7%20Full%20Book\\_English.pdf](https://www.wpath.org/media/cms/Documents/SOC%20v7/Standards%20of%20Care_V7%20Full%20Book_English.pdf).

<sup>46</sup> Skougard, *supra* note 3.

<sup>47</sup> *Id.*

<sup>48</sup> COUPET & MARRUS, *supra* note 19, at 203.

<sup>49</sup> *Id.*

<sup>50</sup> COLEMAN, ET AL., *supra* note 45.

<sup>51</sup> *Id.*

of puberty for those children entering Tanner Stage 2.<sup>52</sup> For example, those assigned female at birth taking hormone-suppressing medications will not develop breasts or start menstruating, while those assigned male at birth avoid the development of broad shoulders, a deep voice, and facial hair.<sup>53</sup> According to WPATH, there are two goals for puberty-delaying hormones. First, it allows time for the minor to explore and understand their gender identity, and second, it could greatly facilitate a surgical intervention later in life if the individual wishes, as the effects of puberty are difficult or impossible to reverse.<sup>54</sup> These hormones are completely reversible and, the moment the child stops taking them, puberty initiates.<sup>55</sup>

The second and third categories for medical intervention outlined by the WPATH are semi-permanent and may only be undertaken by minors over the age of sixteen with parental consent.<sup>56</sup> Cross-hormones are partially reversible interventions that medically alter and reshape the body, such as testosterone for female-to-male transgender boys and progesterone for male-to-female transgender girls.<sup>57</sup> Not all individuals choose to make their physical anatomy match their gender identity, and some may only choose top or bottom surgery.<sup>58</sup> Surgical transitions are more complicated for adults who completed puberty in their biological sex.<sup>59</sup> However, for children who do take puberty-suppressing or -delaying hormones, followed by cross-hormones, full transition later in life is less traumatic and generally more successful.<sup>60</sup>

A minor's mental health is also vital for a successful transition. Children may wish to explore and understand their gender identity and come to terms for themselves and those around them by participating in therapy. Therapy may include preparation for coming out or understanding during the medical procedures.<sup>61</sup> A child may also have concerns unrelated to

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<sup>52</sup> *Id.*; The Tanner scale (also known as the Tanner stages) is a scale of physical development in children, adolescents and adults. David Feingold, *Pediatric Endocrinology*, in *ATLAS OF PEDIATRIC PHYSICAL DIAGNOSIS* 9.16-19 (Mosby ed., 2nd ed. 1992).

<sup>53</sup> COUPET & MARRUS, *supra* note 19, at 205.

<sup>54</sup> COLEMAN, ET AL., *supra* note 45.

<sup>55</sup> According to the WPATH, a child may only receive puberty-suppressing hormones if the minimum criteria has been met: the child has presented a consistent pattern of gender dysphoria, gender dysphoria emerged or became worse with puberty, any coexisting psychological, social, or medical issues that could complicate treatment have been resolved, and the child (and parents if the child has not reached the age of medical consent) has given consent to the treatment, as well as ensuring the parents or guardians are involved to support the process. *Id.*

<sup>56</sup> COUPET & MARRUS, *supra* note 19, at 205; The WPATH recommends communication with and consent from the parent, patient, and physician, but WPATH is not entitled to restrict access for hormones based on consent. COLEMAN, ET AL., *supra* note 45.

<sup>57</sup> COLEMAN, ET AL., *supra* note 45.

<sup>58</sup> COUPET & MARRUS, *supra* note 19, at 205. There are many varieties of top surgery. In essence, it is procedures that alter the physical characteristics of the chest to appear less like the gender assigned at birth, and more the gender identity to whom one identifies with. This can include removal of breast tissue or breast augmentation (giving the chest the appearance of a female chest). *Introduction to Top Surgery, Transmasculine, Transfeminine and Neutrois procedures*, GENDER CONFIRMATION CTR., <https://www.genderconfirmation.com/introduction-to-top-surgery/> (last visited Apr. 22, 2019). Bottom surgery is a physical reconstruction and surgical procedure to make the male or female genitalia to the genitalia of a female or male, respectively. *Gender Confirmation Surgeries*, AM. SOC'Y OF PLASTIC SURGEONS, <https://www.plasticsurgery.org/reconstructive-procedures/gender-confirmation-surgeries> (last visited Apr. 22, 2019).

<sup>59</sup> Skougard, *supra* note 3, at 1171.

<sup>60</sup> *Id.*

<sup>61</sup> COLEMAN, ET AL., *supra* note 45.



gender identity, including established mental health concerns they wish to discuss.<sup>62</sup> The child could be experiencing bullying or discrimination at school and require support to manage the situation.<sup>63</sup> While the mental health needs of transgender youth are varied and multilayered, they are no less important to the transition process.

Ultimately, the goal of transitioning is for the emotional and psychological well-being of the child. Parents play a significant part in the social and medical transition for transgender children; they communicate with schools and doctors regarding name and environment changes and consent to ongoing hormones as the child explores their gender identity. For some children, the steps taken in coordination and cooperation with their parents have no complications, and they go on to live happy, successful lives. However, for those children without supportive parents, what barriers exist to prevent a child from expressing their gender identity? Are there opportunities available for transgender youth to align their external lives with their internal genders? For many, these answers are unknown, and cause disastrous consequences.

## II. RAMIFICATIONS TO REJECTION OF A GENDER IDENTITY

Ideally, the home is a safe space for families, where parents to raise their children the way they wish, and for children to grow up in loving, warm environments surrounded by those who nurture their development and growth. Unfortunately, transgender youth may experience abuse, harassment, homelessness, or be forced into behavior corrective therapy by their parents after coming out, with severe consequences affecting their mental and physical well-being.<sup>64</sup> Children's journeys to their gender identities are often longer than the parents'. The Internet and the ability to access information immediately is indispensable to youths' understanding of their gender identities. They may have learned and processed through an understanding of their gender identities for years before coming out to their families. No parent reacts the same to learning about their child's gender identity. While many initially react with shock or fear for their children's futures, most eventually build a community of support from doctors and friends, allowing the family to come to terms with their child's identity. However, some parents continue to reject their child's identity even after the initial shock, refuse to join supportive networks to gain an understanding of their child's identity, and act in ways that are ultimately harmful to the child.

In the past, gender non-conformity was associated with mental illness due to the high incidences of depression, anxiety, and other symptoms occurring within the community. In reality, external environment such as parental acceptance or rejection of their child's identity can cause these high symptom rates.<sup>65</sup> Studies have shown the mental health difficulties transgender

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<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> See Caitlin Ryan et al., *Family Rejection as a Predictor of Negative Health Outcomes in White and Latino Lesbian, Gay, and Bisexual Young Adults*, 123 *PEDIATRICS* 346, 346-51 (2009). In a summary published by the Human Rights Campaign, research on 10,000 LGBT youth outlined the many challenges they face. It shows the areas LGBT youth would like to change in their lives, as well as the prevalent issues they encounter within their gender identity. Non-accepting families was stated as the primary problem LGBT youth experience. *Growing Up LGBT in America*, HUM. RTS. CAMPAIGN, [https://hrc.org/files/assets/resources/Growing-Up-LGBT-in-America\\_Report.pdf](https://hrc.org/files/assets/resources/Growing-Up-LGBT-in-America_Report.pdf) (last visited July 7, 2019).

<sup>65</sup> David Alan Perkiss, *Boy or Girl: Who Gets to Decide? Gender-Nonconforming Children in Child Custody Cases*, 25 *HASTINGS WOMEN'S L. J.* 57, 61 (2014).

individuals face “typically arise from conflict with the external environment...rather than from internal pathology.”<sup>66</sup>

In the spring of 2016, the social media hashtag #RiseforRyan began trending<sup>67</sup> as a call for LGBT youth to stand with a high school student whose parents physically and emotionally abused him and forced him to undergo conversion therapy.<sup>68</sup> Ryan lived in a foster home until the age of majority, out of fear for his safety if he was forced to return to his parents.<sup>69</sup> As Ryan recalled, “I wake up in the middle of the night with the same dream, over and over again, with my mom on top of me again, choking me.”<sup>70</sup> Ryan’s GoFundMe page implored donors to hear his story, of his desire to live with a family that loves him, instead of his biological parents who refused to give up custody and spent years tormenting him.<sup>71</sup> In Ryan’s plea to the judge, he said,

...I am standing today...as a 16 year old boy who just wants to live my life happy and feel safe and loved. That’s...all...you want...for every single human being to feel loved and to feel safe and to feel happy...Sadly I did not when I lived with [m]y mother and father. [T]hey were only worried about what people would think of them because their little girl was truly a little boy. So when the[y] found out I was trans the backlash from them was outrageous. They made me believe I was wrong, and so I began feeling depressed, lost, and alone....[but]...I’m not going back to suicidal thoughts and every day self harm. I held a gun to my head in the sixth grade...What 12 year old would rather die than tell their parents that they’re a little different?<sup>72</sup>

This custody request was ultimately denied, as Ryan’s biological parents continued to refuse termination.<sup>73</sup>

Sadly, this is not unusual; transgender youth around the country continue to live in fear.<sup>74</sup> In a study of LGBT youth experiencing rejecting behavior from family members compared to their peers who had experienced little to no family rejection, LGBT were 8.4 times more likely having

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<sup>66</sup> *Id.*

<sup>67</sup> Trending is defined as a topic or story that is currently popular or discussed at length online, especially on social media platforms. *Trending*, DICTIONARY.COM, <https://www.dictionary.com/browse/trending> (last visited Apr. 22, 2019).

<sup>68</sup> Leigh Cuen, *A Trans Teen’s Heartbreaking Story of Being Abused by His Parents Is Going Viral*, MIC NETWORK (Apr. 29, 2016), <https://mic.com/articles/142209/a-trans-teen-s-heartbreaking-story-of-being-abused-by-his-parents-is-going-viral#.NukUQMmxx>.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> Ryan Stalvey, *#RiseforRyan*, GOFUNDME, <https://www.gofundme.com/riseforryan> (last visited Mar. 11, 2019).

<sup>73</sup> Since then, Ryan Stalvey has turned eighteen and the relationship with his mother appears to have improved. Stalvey has become a popular YouTube influencer as an advocate for transgender rights, and his mother has appeared several times on his channel. Stalvey started to undergo hormone replacement therapy sometime in early 2017, and in September 2017 a double incision top surgery was performed on him.

<sup>74</sup> In a survey conducted by the Human Rights Campaign Foundation and advocacy groups, around 12,000 youth aged 13-17 addressed the feelings of anxiety, fears of rejection and their safety, and mental health problems LGBTQ teens face. Amy Ellis Nutt, *Among thousands of LGBTQ teens, a survey finds anxiety and fears about safety*, WASH. POST (May 15, 2018), [https://www.washingtonpost.com/national/health-science/2018/05/14/083b9ae4-57ab-11e8-b656-a5f8c2a9295d\\_story.html?noredirect=on&utm\\_term=.95e765712048](https://www.washingtonpost.com/national/health-science/2018/05/14/083b9ae4-57ab-11e8-b656-a5f8c2a9295d_story.html?noredirect=on&utm_term=.95e765712048).

attempted suicide, 5.9 times more likely to report high levels of depression, 3.4 times more likely to use illegal drugs, and 3.4 times more likely to have engaged in unprotected sexual intercourse.<sup>75</sup> Family rejection has proved to cause long-term psychological, emotional, and lifestyle consequences on transgender youth.

### A. Emotional Abuse

LGBT youth can suffer significant emotional abuse from their families, causing severe stress and trauma.<sup>76</sup> There are five categories of emotional abuse: rejecting, isolating, terrorizing, ignoring, and corrupting.<sup>77</sup> Rejecting is defined as the caregiver refusal to acknowledge the child's worth and legitimacy.<sup>78</sup> This can include name-calling, swearing at the child, verbal humiliation, and constant teasing about their body.<sup>79</sup> Rejecting behavior toward transgender youth also includes a refusal to participate in social transitioning, refusal to use the name associated with their gender non-conforming identity or appropriate pronouns, or refusal to allow the child to change their hair and clothes or make personal expression choices.<sup>80</sup> Isolating is defined as "keeping a child away from family and friends," and terrorizing is defined as "causing a youth...to be terrified by the constant use of threats and/or intimidating behavior, and is characterized by actions such as yelling, extreme verbal threats...threatening abandonment...and threatening to kick the youth out of the home."<sup>81</sup> Ignoring entails denying medical care, not accepting the child, and refusing to discuss youth's interests.<sup>82</sup> Corrupting behavior includes permitting or encouraging a child to do illegal or harmful things to themselves, such as using drugs or alcohol, and encouraging violence.<sup>83</sup>

Emotional abuse causes long-term effects on transgender youth. It often damages a child's sense of personal self-worth and safety, and causes poor relationships with adults and peers later in life.<sup>84</sup> In a study, "80% of young adults who were emotionally abused or neglected as children[sic] were determined to not be meeting the requirements necessary to have what is considered successful psychosocial functioning."<sup>85</sup> This limited functioning prevented youth from fully developing emotional, physical, and mental health, as well as social skills.<sup>86</sup> In a study conducted by the CDC in 2015, 60% of LGBT youth reported feeling so hopeless they were unable to participate in regular activities.<sup>87</sup> Emotional child abuse causes anxiety, phobias, chronic insecurity, mistrust of others, loneliness, failure to maintain clear interpersonal boundaries,

<sup>75</sup> Ryan et al., *supra* note 64, at 346.

<sup>76</sup> *Id.*

<sup>77</sup> Andrew Ford, *State Child Emotional Abuse Laws: Their Failure to Protect Children with Gender Identity Disorder*, 49 FAM. COURT REV. 642, 644 (2011).

<sup>78</sup> *Preventing Emotional Abuse*, PREVENT CHILD ABUSE AM., <https://preventchildabuse.org/resource/preventing-emotional-abuse/> (last visited July 7, 2019).

<sup>79</sup> Ford, *supra* note 77.

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> Ford, *supra* note 77.

<sup>86</sup> *Id.*

<sup>87</sup> *Mental Health and the LGBTQ Community*, HUM. RTS. CAMPAIGN, [https://suicidepreventionlifeline.org/wp-content/uploads/2017/07/LGBTQ\\_MentalHealth\\_OnePager.pdf](https://suicidepreventionlifeline.org/wp-content/uploads/2017/07/LGBTQ_MentalHealth_OnePager.pdf) (last visited July 7, 2019).

disregard for personal safety, self-injury, and can result in suicide.<sup>88</sup> The constant stress of living in fear of rejection, their gender identity being revealed too soon, social ridicule, and potential violence causes youth to make choices severely jeopardizing their psychosocial well-being.

### ***B. Homelessness***

It is not uncommon for parents to force their children from the home after learning of their child's gender identity or sexual orientation. According to a study conducted jointly by the Williams Institute, The Palette Fund, and True Colors Fund on LGBT homeless youth, LGBT youth represent 33% of the overall youth served in drop-in centers, street outreach programs, and housing programs.<sup>89</sup> Ninety percent of transgender youth experience homelessness due to harassment, bullying, and family rejection, as reported by service providers.<sup>90</sup> Additionally, the study estimated that transgender youth experienced bullying, family rejection, and physical and sexual abuse at higher rates than their LGBT peers.<sup>91</sup> Agency staff reported over the last decade an average increase of LGBT youth served, the highest for transgender youth.<sup>92</sup>

Many youth are placed into foster care, resulting in a disproportionate number of LGBT youth in the child welfare system. As many foster homes, parents, and social workers do not have the necessary training to provide the resources needed for LGBT youth, many are mistreated and disproportionately vulnerable.<sup>93</sup> In a study on the experience of LGBT youth in foster care, it was found that:

[P]roblems range from a complete lack of recognition of LGTB youth's very existence and needs by child welfare systems, to insensitive and discriminatory treatment, to outright harassment and violence at the hands not only of peers or foster parents, but also of the child welfare staff responsible for their protection.<sup>94</sup>

Those conducting the study observed youth being beaten by other youth while staff watched; verbally tormented by staff, parents and other youth because of their identities; sexually assaulted; and forced into conversion therapy to teach them they are "repulsive and deviant."<sup>95</sup>

### ***C. Conversion Therapy***

Conversion, corrective, or reparative therapy is a behavioral modification intervention, which attempts to encourage a child to adapt or revert back to their gender-conforming identity

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<sup>88</sup> Ford, *supra* note 77.

<sup>89</sup> SOON KYU CHOI ET AL., *SERVING OUR YOUTH 2015: THE NEEDS AND EXPERIENCES OF LESBIAN, GAY, BISEXUAL, TRANSGENDER, AND QUESTIONING YOUTH IN HOMELESSNESS* 4 (2015), available at <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Serving-Our-Youth-June-2015.pdf>.

<sup>90</sup> *Id.* at 5.

<sup>91</sup> *Id.*

<sup>92</sup> *Id.* at 4, 10.

<sup>93</sup> *Id.* at 6.

<sup>94</sup> Sonja Shield, *The Doctor Won't See You Now: Rights of Transgender Adolescents to Sex Reassignment Treatment*, 31 N.Y.U. L. & SOC. CHANGE 361, 374 (2007).

<sup>95</sup> *Id.*

and biological sex.<sup>96</sup> The theory and use of conversion therapy, especially on children, is one of the largest contested issues within the LGBT community, especially regarding parents' attempts to change or 'cure' their child's gender identity against the child's will.<sup>97</sup> This is expressly opposed by the American Psychoanalytic Association and the American Psychiatric Association, and neither group finds scientific evidence that the therapy works or has any benefits for transgender and gay youth.<sup>98</sup> Methods of the therapy include limiting a child's toys, dress, and activities to better align with traditional stereotypes.<sup>99</sup> In one case, parents were told to remove their biological son's dolls and dress-up clothes and only allow him to play with "boy" toys, such as trucks and action figures, and to forbid him from drawing "feminine" pictures, including flowers and rainbows.<sup>100</sup> More severe methods include electrical shock therapy, chemical aversive therapy, surgery, and psychotherapy, as well as subliminal therapies to instill traditional feminine and masculine behavior.<sup>101</sup> Testimony from those who underwent this process report nervous breakdowns and feelings of guilt, while witnesses report patients attempt suicide or mutilate their genitals.<sup>102</sup> The consequences of conversion therapy are one of the largest ramifications of parental rejection of a child's gender identity, and can lead to children attempting to take their own life.<sup>103</sup>

#### D. Suicide

The greatest tragedy of parental rejection of a transgender youth's gender identity is the high rate of suicide attempts compared to peers who do not identify as transgender. In a survey of fifty-five self-identified transgender youth, forty-five percent reported serious thoughts of suicide and twenty-six percent reported suicide attempts.<sup>104</sup> In contrast, only nineteen percent of their gender-conforming peers reported having serious thoughts of suicide, and nine percent attempted suicide.<sup>105</sup> Of those surveyed, parental rejection and denial was a consistent reason for their self-harming attempts, further reinforcing the importance of parental support and understanding in relation to gender identity.<sup>106</sup>

Youth who live with unsupportive and suppressive parents and are subject to conversion therapy experience psychological trauma and become homeless due to fear of their parents'

<sup>96</sup> There are multiple terms for this type of therapy. In the context of this paper, conversion therapy will be used.

<sup>97</sup> Karolyn Ann Hicks, "Reparative" Therapy: Whether Parental Attempts to Change a Child's Sexual Orientation Can Legally Constitute Abuse, 49 AM. U. L. REV. 505, 513 (1999).

<sup>98</sup> *Id.* at 513-14. The APA coordinated a task force to identify the available scientific research of sexual orientation change efforts (conversion therapy) and make a recommendation based upon this research. The task force concluded there no studies of adequate scientific range to establish an affirmative conclusion regarding sexual orientation change efforts. Therefore, the APA does not support the use of psychological interventions to change sexual orientation. *Resolution on Appropriate Affirmative Responses to Sexual Orientation Distress and Change Efforts*, Am. Psych. Assn., <https://www.apa.org/about/policy/sexual-orientation> (last visited July 7, 2019).

<sup>99</sup> Skougard, *supra* note 3, at 1177.

<sup>100</sup> *Id.*

<sup>101</sup> Hicks, *supra* note 97, at 515.

<sup>102</sup> *Id.*

<sup>103</sup> *Id.* at 518.

<sup>104</sup> Mary Huft, *Statistically Speaking: The High Rate of Suicidality Among Transgender Youth and Access Barriers to Medical Treatment in a Society of Gender Dichotomy*, 28 CHILD. LEGAL RTS. J. 53, 53 (2008).

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

reactions or as a result of their parents denying them a home, and often attempt self-harm.<sup>107</sup> Parental support is clearly vital for the safety and well-being of transgender youth.

Multiple studies prove that transgender youth who are supported in their gender identities and have socially transitioned not only live healthy lives, but show little emotional and social differences compared to their gender conforming peers.<sup>108</sup> In one study conducted in Ontario, Canada, of over four hundred transgender teens, seventy-two percent of those who lived with supportive parents reported satisfaction with life, versus thirty-three percent of teens whose parents are somewhat or not at all supportive.<sup>109</sup> Seventy percent reported very good or excellent mental health, versus fifteen percent of those with unsupportive parents; sixty-four percent of youth with supportive parents reported high self-esteem, as opposed to thirteen percent with unsupportive parents.<sup>110</sup> This data proves how important overall support of transgender youth really is. Developing a sense of self-worth and self-esteem for youth builds the child's inner strength needed to face future discrimination and rejection from society. Legal recognition would reinforce the necessity to accept a child's gender identity; however, many barriers stand in the way of full legal rights.

### III. BARRIERS FOR TRANSGENDER CHILDREN

Parents are considered to have their child's best interest in mind and make decisions to support their family, as children are deemed "too immature" to be able to make informed decisions regarding their own care.<sup>111</sup> As stated above, parental acceptance is a significant factor in the mental health of a transgender youth; if a caregiver is unable or unwilling to consent to a child's needs, notable harm can occur.<sup>112</sup> Transgender children are not automatically granted full legal and medical rights to make decisions regarding their identity, transition and future; multiple barriers stand in their way. While the following examples are not exhaustive, they do provide a clear idea of what a youth must face and overcome to achieve full legal gender recognition beyond the boundaries of parental care. It is essential in a discussion regarding a child's independent rights to evaluate the important role and responsibility parents hold.

#### A. Parental Rights

One of the deeply rooted legal traditions in the Constitution is the parent's fundamental right to make decisions for their child without State interference.<sup>113</sup> This right is held within the Fourteenth Amendment, declaring, "...no State shall deprive any person of life, liberty, or

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<sup>107</sup> Skougard, *supra* note 3, at 1175.

<sup>108</sup> Christine Aramburu Alegría, *Supporting Families of Transgender Children/Youth: Parents Speak on Their Experiences, Identities, and Views*, 19 INT'L J. OF TRANSGENDERISM 132 (2018); Kristina Olson et al., *Mental Health of Transgender Children Who Are Supported in Their Identities*, PEDIATRICS 137, 3 (2016).

<sup>109</sup> Robert Travers et al., *Impacts of Strong Parental Support for Trans Youth: A report prepared for Children's Aid Society of Toronto and Delisle Youth Services*, TRANS PULSE (Oct. 2, 2012), <http://transpulseproject.ca/wp-content/uploads/2012/10/Impacts-of-Strong-Parental-Support-for-Trans-Youth-vFINAL.pdf>.

<sup>110</sup> *Id.*

<sup>111</sup> *See infra* note 129.

<sup>112</sup> Shield, *supra* note 94, at 363.

<sup>113</sup> *Troxel v. Granville*, 530 U.S. 57, 65-66 (2000).

property, without due process of law.”<sup>114</sup> The Due Process Clause within the Fourteenth Amendment “provides heightened protection against government interference with certain fundamental rights and liberty interests.”<sup>115</sup> The State is restricted from interfering with or depriving persons (in this case, parents) of liberty or property, without full legislative authorization.<sup>116</sup> The Supreme Court upheld a parent’s liberty interest in several pivotal cases.

Since the early twentieth century, multiple cases, including *Meyer v. Nebraska*, *Pierce v. Society of Sisters*, and *Prince v. Massachusetts*, set the foundation for parents’ rights within family law.<sup>117</sup> In *Meyer*, the Court found that a Nebraska statute that restricted foreign language education in schools conflicted with the liberty interest guaranteed by the Fourteenth Amendment and exceeded the power of the State to govern how decisions are made for children.<sup>118</sup> The Court declared, “[i]t is the natural duty of the parent to establish a home and bring up children [and] give his children education suitable to their station in life.”<sup>119</sup> In *Pierce*, a compulsory school attendance law in Oregon interfered with the ability of parents to direct a child’s education and granted the State enormous control over children.<sup>120</sup> In this case, the Court reasoned that the liberty interest of parents guaranteed in *Meyer* eliminated the State’s power to standardize the education of all children solely to public schools.<sup>121</sup> The Court determined that it is the parent’s fundamental right to keep their children free from State overrule, as “[t]he child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.”<sup>122</sup> Further cases, including *Prince*, have reinforced the important role parents play in the care of children without State interference.<sup>123</sup> These cases create the backbone of family law within the United States; parents have the fundamental right and responsibility to care for their child.

While parents maintain clear constitutional protection to choose how to raise their child, when parents disagree, the courts use a best interest standard to determine the ideal course for the family.<sup>124</sup> Unfortunately, this standard does not always protect the specific interests of transgender youth. Usually applied in custody decisions, courts settle disputes using state statutes consistent with the Uniform Marriage and Divorce Act (UMDA), utilizing fact-specific criteria in determinations.<sup>125</sup> Courts first consider the wishes of the parents; if the wishes are not aligned, the judge must choose between the two, or a compromise of both.<sup>126</sup> The second factor is the child’s wishes, but the weight is based upon the judge’s discretion concerning the child’s maturity and

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<sup>114</sup> U.S. CONST. amend. XIV, § 1.

<sup>115</sup> *Troxel*, 530 U.S. at 65.

<sup>116</sup> *Prince v. Massachusetts*, 321 U.S. 158 (1944).

<sup>117</sup> See *Meyer v. Nebraska*, 262 U.S. 390 (1923); see also *Pierce v. Soc’y of the Sisters*, 268 U.S. 510 (1925); see also *Prince*, 321 U.S. 158.

<sup>118</sup> *Meyer*, 262 U.S. at 626.

<sup>119</sup> *Id.* at 627.

<sup>120</sup> *Pierce*, 268 U.S. at 534.

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> *Troxel*, 530 U.S. at 65-66; *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972).

<sup>124</sup> Matthew J. Hulstein, *Commentary Recognizing and Respecting the Rights of LGBT Youth in Child Custody Proceedings*, 27 BERKELEY J. GENDER L. & JUST. 171, 178 (2012).

<sup>125</sup> Uniform Marriage and Divorce Act § 402.

<sup>126</sup> *Id.*; Skougard, *supra* note 3, at 1181.

capacity to express his or her needs and wishes.<sup>127</sup> The remaining factors include the relationship and communication between the parents and child, the child's adjustment to their school and community, and the mental and physical health of those involved.<sup>128</sup> However, because best interest standards are based on the judge's discretion, a lack of education regarding transgender issues can lead to an outcome that does not support the child's gender identity.

An example was judicially explored in 2007 in the case *Smith v. Smith*, in which after a dissolution of marriage, the plaintiff, the mother, sought expert advice regarding her son's strong cross-gender identifications.<sup>129</sup> When experts confirmed the diagnosis of gender-identity disorder, the mother attempted to involve the child's father, the defendant, who resisted and, upon learning that the mother wished to enroll the child into a new school as a girl, filed a petition for emergency custody.<sup>130</sup> During the trial, the mother presented testimony from the experts, but the judge chose to rule in favor of the father.<sup>131</sup> The judge determined that the mother was causing and encouraging the child's behavior, and applied the testimony of the father's witness, who never evaluated the child, and who recommended that the child spend more time with his father in order to strengthen his masculine identity.<sup>132</sup> Despite evidence from the court-appointed counselor who stressed the extreme trauma the child would experience being separated from his mother, the judge ordered the child to live with his father, to be referred to by his male name and pronouns, and to wear male underwear.<sup>133</sup> This case demonstrates the importance of advocacy and knowledge on transgender issues within the child welfare system, given the lack of experience and understanding from both the doctor as an expert witness and the judge.<sup>134</sup> This case also reinforces the importance of established legal transgender rights, rights that could have supported the child's gender identity and allowed him to remain with the supportive parent.<sup>135</sup>

The parents' fundamental right to raise their child without State interference and the standards the courts use to determine best interest for a child custody dispute are pivotal to understanding the barriers transgender children face in an argument for their independent gender identity rights. Unlike transgender adults, whose abilities to make independent decisions regarding social and medical transitions are without question, transgender minors must defer to the wishes, decisions,

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<sup>127</sup> Uniform Marriage and Divorce Act, *supra* note 125.

<sup>128</sup> *Id.*

<sup>129</sup> *Smith v. Smith*, No. 01-DR-86 (Common Pleas Ct. of Jefferson Cnty., Ohio, Sept. 4, 2004).

<sup>130</sup> *Id.*; during this time, gender dysphoria was referred to as gender-identity disorder.

<sup>131</sup> *Id.*

<sup>132</sup> *Smith v. Smith*, No. 01-DR-86 (Common Pleas Ct. of Jefferson Cnty., Ohio, Sept. 4, 2004).

<sup>133</sup> *Id.*

<sup>134</sup> David Alan Perkiss, *Boy or Girl: Who Gets to Decide? Gender-Nonconforming Children in Child Custody Cases*, 25 HASTINGS WOMEN'S L. J. 57, 73 (2014). The trial court called upon Mark King, PhD, to conduct a psychological evaluation of the child, who concluded hormone therapy was uncalled for, as the child did not present with gender-identity disorder. Significant weight was placed upon the doctor who only interviewed the child a few times and had no established history of working with other individuals with gender-identity disorder. Additionally, the judge had no history of working with children with gender-identity disorder, the determinations made were based on finding typical gender societal norms and identifying external pressure from the parents to conform to gender norms. The appellate court's confirmation of the details only reinforces the importance of knowledge and experience when working with transgender children, as the court ordered the child to become "disassociated with that lifestyle", in essence condemning the child to conversion therapy, by denying the child the ability to express themselves in conjunction to their gender identity. David Alan Perkiss, *Boy or Girl: Who Gets to Decide? Gender-Nonconforming Children in Child Custody Cases*, 25 HASTINGS WOMEN'S L. J. 57, 73-74 (2014).

<sup>135</sup> *Id.*



and judgments of their parents or guardians. One of the most important decisions a parent makes regarding their transgender child is comprehending and consenting to medical treatment and care. A minor's lack of right to consent to their own medical care is another significant barrier to full legal gender identity recognition.

### ***B. Informed Consent***

The relationship between the patient and doctor is necessary in an individual's transgender journey. It is the physician's responsibility to inform the patient of the risks and benefits of procedures, so the patient can determine if the treatment is the best course of action.<sup>136</sup> Generally, minors are considered legally "incompetent," meaning they lack the capacity to make decisions regarding issues such as health.<sup>137</sup> In *Carey v. Population Services International*, the Court stated, "the law has generally regarded minors as having a lesser capability for making important decisions" and, in *Bellotti v. Baird*, the Court rationalized the limited range of a minor's rights based upon the child's "vulnerability."<sup>138</sup> There are a few exceptions to the informed consent doctrine, discussed further on, but beyond those exceptions, minors are subject to the commonly-held presumption that they are incapable of making sound decisions for themselves, and parents must provide informed consent on their behalf.<sup>139</sup> When parents accept their transgender child's identity, access to required medical and therapy treatment is attainable. Parents and medical professionals can work together to come up with a healthy treatment plan that values the child's wishes and needs.

For transgender children whose parents do not recognize their child's gender identity, their access to medical necessities during transition may be restricted or denied. Youth are told they need to wait until they reach the age of majority in order to live in accordance with their gender identity. Until they are eighteen years old, minors may not acquire trans-related medical resources and care, including puberty-delaying hormones or therapy, without the consent of their parents.<sup>140</sup> A delay in transition has severe ramifications for a transgender youth's physical and mental development.<sup>141</sup> Puberty brings a unique set of challenges; the youth may experience depression and loathing for existing in the 'wrong' body - the symptoms of gender dysphoria - and making transitioning harder later in life.<sup>142</sup> Allowing youth to transition early in life eases the mental health issues that occur.

The emotional well-being of youth is essential; mental health issues for transgender youth are triggered from stress and external social rejection, such as forcing the child to conform to their biological sex, rather than an internal personal struggle.<sup>143</sup> Delayed transition until adulthood causes "collateral mental health and developmental problems [for the youth that knows] they will have to await treatment for many years, [which] engenders feelings of hopelessness and slows

<sup>136</sup> Bryan Murray, *Informed Consent: What Must a Physician Disclose to a Patient?*, 14 AM. MED. ASS'N. J. ETHICS 563 (2012).

<sup>137</sup> Shield, *supra* note 94, at 393.

<sup>138</sup> *Carey v. Population Services International*, 431 U.S. 678, 693 (1977); *see Bellotti v. Baird*, 443 U.S. 622 (1979).

<sup>139</sup> Shield, *supra* note 94, at 395.

<sup>140</sup> *Survival Tips for Trans Youth*, LAMBA LEGAL (last visited June 7, 2019), [http://www.lambdalegal.org/sites/default/files/transgender\\_booklet\\_-\\_youth.pdf](http://www.lambdalegal.org/sites/default/files/transgender_booklet_-_youth.pdf).

<sup>141</sup> *Prince*, 321 U.S. 158.

<sup>142</sup> *See Meyer*, 262 U.S. 390; *see also Pierce*, 268 U.S. 510; *see also Prince*, 321 U.S. 158.

<sup>143</sup> Shield, *supra* note 94, at 382-83; *see COUPET & MARRUS supra* note 19 at 207.

down their social, psychological, and intellectual development.”<sup>144</sup> Youth avoid peer or romantic relationships due to their discomfort with their bodies, causing a delay in the development of interpersonal communication.<sup>145</sup> Poor mental health contributes to risk-taking behavior, such as substance abuse and violence; LGBT youth begin using substances at an earlier age than their gender conforming and heterosexual peers.<sup>146</sup> Much of this risky behavior occurs on the streets, after the child has left the home.

Many youth seek alternate methods of treatment from friends or off the street, without consultation or support from a medical professional.<sup>147</sup> In San Francisco, a study by the Department of Public Health found that twenty-nine percent of male-to-female respondents who used hormones in the last six months obtained them from non-medical sources.<sup>148</sup> HIV is prevalent in dirty needle transmission, and inaccurate dosage of hormones leads to serious side effects, including death.<sup>149</sup> Intervention and alternatives from parental decisions regarding their children’s gender identity is required for the future health and safety of transgender youth.

Transgender youth experience mental and physical ramifications from parental rejection of their gender identity and can have restricted access to the requirements necessary for a healthy transition. Minors deserve the right to live free from fear of parental rejection and that right should be granted within preexisting federal and state laws.

#### IV. POSSIBLE AVENUES TO AN INDEPENDENT GENDER EXPRESSION

Despite the many barriers standing before minors’ rights to an independent gender identity, the law and policies in place can provide a reasonable avenue towards this goal. First, a parent’s rights are not absolute; those who are found to abuse or neglect their child are governed under preexisting state child welfare laws. Behavior modification therapies to cure a child’s gender identity should be considered abuse, and therefore subject to the regulations within the law. Second, there are exceptions to informed consent laws, including a minor’s right to consent to an abortion.<sup>150</sup> These exceptions provide alternative options for minors to make informed decisions about their transgender health, without the fear of their parent’s rejection. Third, transgender minors are protected under federal law in schools,<sup>151</sup> and recognition of their rights in schools should extend past the classroom, so that they can feel safe wherever they are. There is no argument that the State has a responsibility to protect children; for youth who live with the trauma of rejection, depression, and suicidal attempts, additional protections should be provided due to their unique positions.

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<sup>144</sup> See Shield, *supra* note 94, at 383.

<sup>145</sup> *Id.* at 384.

<sup>146</sup> *Id.*

<sup>147</sup> *Id.* at 381.

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

<sup>150</sup> Shield, *supra* note 94, at 396.

<sup>151</sup> A transgender student’s rights are protected in schools from sex discrimination under Title IX. *Know Your Rights | Schools*, NAT’L CTR. FOR TRANSGENDER EQUALITY (last visited June 7, 2019), <https://transequality.org/know-your-rights/schools>.

There are basic rights entitled to all citizens for their personal safety and protection, including children. Should a parent be found abusive or neglectful, the State may intervene and remove the child from the home, a reasonable protection from harm known as *parens patriae*.<sup>152</sup>

The Child Abuse Prevention and Treatment Act (CAPTA) defines child abuse and neglect as “any recent act or failure to act on the part of a parent or caretaker, which results in death, serious physical or emotional harm, sexual abuse, or exploitation, or an act or failure to act which presents an imminent risk of serious harm.”<sup>153</sup> The following summary of state civil statutes of abuse and neglect, including physical, sexual, and emotional abuse, is by no means exhaustive, and focuses on the specific statutes that apply to cases of abuse for transgender children.

Physical abuse is defined as any non-accidental physical injury to a child.<sup>154</sup> This includes inflicting or allowing physical injury, impairment of bodily function, or disfigurement of the child; or allowing the child to enter an environment to be found volatile, toxic, or deemed unreasonably confined for a child.<sup>155</sup> Thirty-eight states also include acts of threatening the child with harm or creating substantial risk of harm to a child’s health or welfare as abuse.<sup>156</sup> Neglect is the failure of the parent or guardian to provide food, shelter, medical care or supervision to the extent the child’s health and welfare are threatened.<sup>157</sup> Ten states specifically include medical neglect within their definitions as failing to provide any special medical treatment or mental health care required for the child.<sup>158</sup>

#### A. Emotional Abuse

Emotional abuse is found in all but two state statutes within the definitions of abuse and neglect.<sup>159</sup> The statute language varies from state to state and covers a wide range of various protections for youth. For example, California’s definition:

A child is considered dependent if he or she is suffering serious emotional damage, or is at substantial risk of suffering serious emotional damage, as evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others; as a result of the conduct of the parent or guardian; or who has no parent or guardian capable of providing appropriate care....<sup>160</sup>

And Iowa’s definition:

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<sup>152</sup> *Paren Patriae*, LEGAL INFO. INST., [https://www.law.cornell.edu/wex/parens\\_patriae](https://www.law.cornell.edu/wex/parens_patriae) (last visited June 9, 2019).

<sup>153</sup> CHILD WELFARE INFORMATION GATEWAY, DEFINITIONS OF CHILD ABUSE AND NEGLECT 1 (Apr. 2016), available at <https://www.childwelfare.gov/pubPDFs/define.pdf>.

<sup>154</sup> *Id.* at 2.

<sup>155</sup> *Id.*

<sup>156</sup> *Id.* (Alabama, Alaska, Arkansas, California, Colorado, Florida, Hawaii, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming.)

<sup>157</sup> *Id.*

<sup>158</sup> *Id.* (Arkansas, Florida, Mississippi, Iowa, North Dakota, Ohio, Oklahoma, Tennessee, Texas, and West Virginia).

<sup>159</sup> CHILD WELFARE INFORMATION GATEWAY, *supra* note 153, at 3. (Georgia and Washington are the only two states without this definition).

<sup>160</sup> *Id.* at 14.

The terms ‘child abuse’ or ‘abuse’ include any mental injury to a child’s intellectual or psychological capacity as evidenced by an observable and substantial impairment in the child’s ability to function within the child’s normal range of performance and behavior as the result of the acts or omissions of a person responsible for the care of the child, if the impairment is diagnosed and confirmed by a licensed physician or qualified mental health professional.<sup>161</sup>

The language in these statutes provide reasonable guidelines as to how best address emotional injury or damage inflicted on a child by a parent or guardian.

On the other hand, some statutory language does not provide any understanding of how to define emotional abuse and leaves many children exposed and vulnerable. This includes Alabama’s definition: “The term ‘abuse’ includes non-accidental mental injury,” and New Jersey’s definition which, skips parental involvement in emotional abuse:

The terms ‘abused child’ or ‘abused or neglected child’ include a child under age 18 who is in an institution and: 1) has been placed there inappropriately for a continued period of time with the knowledge that the placement has resulted or may continue to result in harm to the child’s mental or physical well-being; 2) who has been willfully isolated from ordinary social contact under circumstances that indicate emotional or social deprivation.<sup>162</sup>

This broad range of language between the states leave too much open for independent discretion; if the judge, caseworker, or expert witness had little understanding or experience in transgender needs and concerns, the ambiguous language could support a decision that is not in the best interest of the child’s gender identity.

Emotional abuse is detrimental to the health and well-being of youth. Within the current statutes, there is an opportunity to alter the language to support transgender youth and to include the different forms of emotional abuse experienced. In order to protect the rights of transgender youth, rejecting and terrorizing behaviors should be a violation of emotional abuse and maltreatment laws. Violations should include calling the child by their birth name, a refusal to use pronouns, or forcing the child into clothing associated with their biological sex. Altering the current laws to include specific protections for transgender minors will make significant differences for their mental and emotional well-being and will provide protection from the consequences of a parent’s rejection.

Presently, there are no court cases regarding parental emotional abuse directed at transgender youth. However, there are cases of transgender youth experiencing discrimination and psychological distress in the child welfare system.<sup>163</sup> Establishing specific language within the

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<sup>161</sup> *Id.* at 31.

<sup>162</sup> *Id.* at 50.

<sup>163</sup> In a report collected by the Human Rights Campaign, research showed LGBTQ youth were twice as likely as their gender-conforming peers to experience discrimination within the child welfare system. These findings included 78% of LGBTQ youth were taken from, or fled, their placements due to harassment of their identity; 100% experienced verbal hostility; and 70% experienced physical violence. *LGBTQ Youth in the Foster Care System*, HUM. RTS. CAMPAIGN FOUND., [https://assets2.hrc.org/files/assets/resources/HRC-YouthFosterCare-IssueBrief-FINAL.pdf?\\_ga=2.5034355.1330138989.1559927871-381960675.1559927871](https://assets2.hrc.org/files/assets/resources/HRC-YouthFosterCare-IssueBrief-FINAL.pdf?_ga=2.5034355.1330138989.1559927871-381960675.1559927871) (last visited June 7, 2019).

child welfare system also provides a possible avenue for protecting the minor's gender identity rights. In *R.G. v. Koller*, three youths who identified as LGBT experienced anti-LGBT abuse while in the Hawaii Youth Correctional Facility, including constant verbal, physical, and sexual harassment, and threats by staff and other youth.<sup>164</sup> The facility placed two of the youths in isolation, a common response to complaints, and did not address the abuse.<sup>165</sup> Upon hearing the allegations, the federal judge held that isolation was not within an acceptable professional practice and found that the staff acted against the Due Process protection in allowing the continued abuse by taking no reasonable measures to end it.<sup>166</sup> The judge also held that the facility did not have adequate policies and procedures in place to provide training on LGBT issues.<sup>167</sup> *R.G.* is a prime example of the need for additional protections for gender non-conforming youth; gender-based discrimination could have been avoided with additional trainings and guaranteed rights. There are still significant steps to be made in order to establish legal recognition of a transgender minor's rights, but cases such as *R.G.* can set precedent for the future.

### ***B. Conversion Therapy***

Child abuse and neglect laws also currently protect against another form of rejecting behavior: the use of conversion therapy on minors, which attempts to force youth to 'revert back' to their conforming orientation or identity.<sup>168</sup> Professional medical and mental health organizations renounce the practice of attempting to change a person's sexual orientation or gender identity through coercive or violent therapy.<sup>169</sup> Transgender stigma, discrimination, and misinformation regarding the harmful practice supports the continued use of conversion therapy; however, several states have taken steps to prevent this. Currently, Connecticut, California, Nevada, Illinois, New Jersey, New York, New Mexico, Rhode Island, Washington, Maryland, Hawaii, New Hampshire, Delaware, Oregon, Vermont, and the District of Columbia passed laws preventing the use of conversion therapy by licensed mental health providers.<sup>170</sup> The New Jersey Statute states being lesbian or gay "is not a disease," that "minors who experience family rejection based on their sexual orientation face serious health risks," and that "directed efforts at changing sexual orientation are against fundamental principles of psychoanalytic treatment and often result in substantial psychological pain by reinforcing damaging internalized attitudes."<sup>171</sup> The statute states that "sexual orientation change efforts can pose critical health risks to lesbian, gay...people, including...depression...shame, social withdrawal, suicidality, substance abuse, stress...and a

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<sup>164</sup> *R.G. v. Koller*, 415 F. Supp. 2d 1129, 1133 (D. Haw. 2006).

<sup>165</sup> *Id.* at 1138-39.

<sup>166</sup> *Id.* at 1154-56.

<sup>167</sup> *Id.* at 1157.

<sup>168</sup> Hicks, *supra* note 97, at 509.

<sup>169</sup> *Id.* at 513.

<sup>170</sup> *The Lies and Dangers of Efforts to Change Sexual Orientation or Gender Identity*, HUM. RTS. CAMPAIGN available at <https://www.hrc.org/resources/the-lies-and-dangers-of-reparative-therapy>. These laws and cases only specifically prohibit the use in regard to sexual orientation, and do not include gender identity, however, as the rights of both groups have been combined in legislation and studies in the past, transgender rights should be protected under the same jurisdictions.

<sup>171</sup> N.J. STAT. ANN. § 45:1-54 (West 2013).

feeling of being dehumanized.”<sup>172</sup> The ban by multiple jurisdictions speaks to the importance and necessity of additional protection of an individual’s sexual orientation and gender identity.

### ***C. Informed Consent Exceptions***

Despite the common law practice of minors’ inability to consent to their own medical care, there are some exceptions to specific procedures. One significant exception is a minor’s right to an abortion without parental consent.<sup>173</sup> This right was established in the 1979 case, *Bellotti v. Baird*, which argued the constitutional validity of a parental consent abortion statute.<sup>174</sup> The second exception is the mature minor exception, wherein a minor may consent to medical care if he or she is determined to have the maturity to comprehend the situation and make an independent decision.<sup>175</sup> Both of these exceptions can provide precedent in allowing transgender minors to make independent medical choices when it is in their best interest.

#### **1. Abortion**

*Bellotti v. Baird* held that a minor has the right to seek an abortion without parental consent or notification, a right that could influence the ability of transgender minors to seek medical treatment without parental consent or notification.<sup>176</sup> In 1979, a Massachusetts statute limited a minor’s ability to access an abortion solely with the consent of both parents.<sup>177</sup> The Court held that, while minors are vulnerable and in need of special protections, in certain circumstances females under the age of eighteen could be capable of making informed decisions about their health care.<sup>178</sup> The Court held that the statute provided greater rights to the parent than afforded protection to the minor; the parent’s power to issue an absolute veto without taking into consideration the best interest of the mother or the opinion of the physician unduly burdened the minor.<sup>179</sup> The Court offered four criteria for a bypass provision to override the parent’s veto, in cases where an abortion would be in the minor’s best interest, courts may:

- (i) allow the minor to bypass the consent requirement if she establishes that she is mature enough and well enough informed to make the abortion decision independently; (ii) allow minor to bypass the consent requirements if she establishes that the abortion would be in her best interest; (iii) ensure the minor’s anonymity; and (iv) provide for expeditious bypass procedures.<sup>180</sup>

Significant parallels could be drawn from the opinion in *Bellotti* and the right of transgender minors to make their own medical decisions. Minors, especially young adolescents,

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<sup>172</sup> King v. Christie, 981 F. Supp. 2d 296, 304 (2013).

<sup>173</sup> *Bellotti v. Baird*, 443 U.S. 622, 649 (1979).

<sup>174</sup> *Id.* at 624.

<sup>175</sup> *Id.* at 644.

<sup>176</sup> *Id.* at 647.

<sup>177</sup> *Id.* at 625.

<sup>178</sup> *Id.* at 628.

<sup>179</sup> *Bellotti v. Baird*, 443 U.S. 622, 628 (1979).

<sup>180</sup> This last criterion is especially relevant for transgender rights; *Bellotti*, 433 U.S., at 647-48.

should be provided the opportunity to prove they are capable of making mature, informed decisions regarding their bodies, and show their intent to make decisions regarding their gender identity through rational, mature reasoning.<sup>181</sup> Adolescents, defined as youth between the ages of eleven and twenty-one years, are found to have the capacity for expanded thought, especially with the advent of advanced technology.<sup>182</sup> Youth today have information at their fingertips. The Internet expands their ability to question themselves, gain access to stories and knowledge, and to explore their gender identity.

Another important parallel to draw from *Bellotti* is the importance of time. In this case, the Court held that a female may obtain a hearing and abortion quickly for the health of the mother and child.<sup>183</sup> Many transgender children and doctors may utilize puberty-delaying hormones to prevent the onset of puberty, making it easier for the child to come to terms with their gender identity and come out to family and friends. This timing element is vital; once puberty begins, the hormones are ineffective. In the same vein, just as the Court found a female's right to an abortion constitutional even when against her parent's wishes, a minor's right to seek treatment concerning his or her gender identity should be deemed constitutionally protected. Allowing a minor to prove his or her maturity and comprehension regarding these medical decisions should stand as acceptable practice to allow minors to make their own medical treatments.

## 2. Mature Minor

The first criterion established in *Bellotti* stipulates that a minor may bypass the consent requirement if she can prove she is informed to make the abortion decision independently<sup>184</sup>; today, under the mature minor doctrine, a physician may provide treatment without parental consent if the minor shows they understand the procedure and made the decision with sound mind and judgement.<sup>185</sup> A few states incorporate the doctrine into a statute, and it is commonly recognized in multiple courts.<sup>186</sup> Generally, state statutes allow minors to consent to their own care if they have "sufficient intelligence to understand and appreciate the consequences of the proposed surgical or medical treatment or procedures."<sup>187</sup> As the health care professional assesses the minor's decision-making capabilities, this exception could remove the barrier for transgender youth attempting to acquire treatment, such as puberty-blocking hormones.

The right to seek an abortion and puberty-blocking hormones for a transgender youth carry equally important influence over a minor's future. A female's right to terminate a pregnancy and not reproduce guarantees her the right to make decisions for her own future and live a life without

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<sup>181</sup> Ann Maradiegue, *Minor's Rights Versus Parental Rights: Review of Legal Issues in Adolescent Health Care*, 48 J. OF MIDWIFERY & WOMEN'S HEALTH 170 (2003).

<sup>182</sup> *Id.*

<sup>183</sup> *Bellotti*, 443 U.S. at 642.

<sup>184</sup> *Id.* at 643-44.

<sup>185</sup> ABIGAIL ENGLISH ET AL., STATE MINOR CONSENT LAWS: A SUMMARY, 3 (Center for Adolescent Health & the Law, 3rd ed. 2010).

<sup>186</sup> *Id.*

<sup>187</sup> *Id.* at 26. For example, Indiana law allows minors to consent to their own health care if they are emancipated, age 14 or older living apart from their parents. IND. CODE § 16-36-1-3.; California authorizes emancipated minors and minors 15 years old or older living apart from their parents to consent to their own care. CAL. FAM. CODE § 7050 (Deering 1994), CAL. FAM. CODE § 6922 (Deering 1994).; Minors are able to consent to their own pregnancy care, including contraception. CAL. FAM. CODE § 6925 (Deering 1996).

the burden of caring for a child. A transgender youth seeking puberty-delaying hormones in order to have time to understand his or her gender identity, come out to family and friends, and prevent the trauma of going through puberty in the wrong body ensures they have a healthy future within their gender identity. After proving they are mature and of sufficient intelligence to comprehend their own medical treatment, this exception would allow transgender youth to bypass their parent's authority to refuse treatment. There are also opportunities to expand the law to specifically include provisions for transgender rights.

Washington State offers a comprehensive set of exceptions to parental consent, allowing single, unemancipated minors the right to receive various treatments, creating a catalyst of change for transgender youth.<sup>188</sup> In Washington, the mature minor doctrine allows valid consent if they are "...capable of understanding or appreciating the consequences of a medical procedure."<sup>189</sup> In determining whether the patient is a mature minor, "providers will evaluate the minor's age, intelligence, maturity, training, experience, economic independence or lack thereof, general conduct as an adult and freedom from the control of parents."<sup>190</sup> Washington State allows individuals of any age the fundamental right to refuse or choose birth control and an abortion, without the consent of the parents.<sup>191</sup> For other treatment, the state places an age restriction, so only children over the age of thirteen may consent to outpatient and inpatient mental health treatment, and outpatient substance abuse treatment.<sup>192</sup> These statutes move beyond reproductive rights, granting minors a myriad of options. The next step should be gender identity rights.

#### **D. Schools**

Beyond the rights of parents and the privacy of the home, there exists a growing range of laws protecting the safety and expression of transgender youth in schools. Transgender students are protected from discrimination based on sex through Title IX of the Education Amendments of 1972.<sup>193</sup> While the language does not include the word 'transgender,' courts agree that sex discrimination encompasses all gender expressions: boys, girls, and transgender.<sup>194</sup> It also specifically bans any harassment or discrimination for those whom are seen as failing to conform to traditional gender stereotypes.<sup>195</sup> Some states, including California, Iowa, Maryland, New Jersey, New York, and Vermont, have gone even further, establishing anti-bullying or harassment policies directly protecting LGBT students.<sup>196</sup> School boards in these states are required to create

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<sup>188</sup> *Providing Health Care to Minors under Washington Law: A summary of health care services that can be provided to minors without parental consent*, WASHINGTON.EDU, <https://depts.washington.edu/hcsats/PDF/guidelines/Minors%20Health%20Care%20Rights%20Washington%20State.pdf> [hereinafter *Providing Health Care*].

<sup>189</sup> *Id.*

<sup>190</sup> *Id.*

<sup>191</sup> WASH. REV. CODE ANN. § 9.02.100 (West 2018).

<sup>192</sup> WASH. REV. CODE ANN. § 71.34.530 (West 2006); WASH. REV. CODE ANN. § 71.34.500 (West 2018).

<sup>193</sup> U.S. DEP'T OF EDUC., *Title IX and Sex Discrimination* (Apr. 2015) available at [http://www2.ed.gov/about/offices/list/ocr/docs/tix\\_dis.html](http://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html).

<sup>194</sup> ASAF ORR & JOEL BAUM, *SCHOOLS IN TRANSITION: A GUIDE FOR SUPPORTING TRANSGENDER STUDENTS IN K-12 SCHOOLS* 37-8, <http://hrc-assets.s3-website-us-east-1.amazonaws.com/files/assets/resources/Schools-In-Transition.pdf>.

<sup>195</sup> *Id.*

<sup>196</sup> *Id.* at 38.



forums for complaints, conduct investigations, impose consequences, and protect students from incidents.<sup>197</sup>

Transgender students' rights to express themselves are guarded within the courts. For example, *Doe v. Yunits* protected the right of a transgender minor's personal expression, specifically in her clothing choices.<sup>198</sup> The student chose to express her female identity with make-up and girls' clothes, but was prohibited from doing so, as the school dress code did not allow clothes that would be disruptive to the educational process.<sup>199</sup> She was forced to show her outfit to the principle every day and was sent home to change if her clothes weren't deemed "appropriate."<sup>200</sup> The court reasoned, however, that she was discriminated against based on her gender identity, as her clothing was within the acceptable boundaries of the uniform for the other females at the school, and by disciplining her, the school was restricting her free speech and expression.<sup>201</sup> The student claimed that the school infringed upon her freedom of expression, the liberty interest to her appearance, and discriminated against her based on sex.<sup>202</sup> Ultimately, the court ruled in her favor and, at the end of the opinion, expressed the need for greater exposure at a young age to diversity, respect, and tolerance of others.<sup>203</sup> A student's rights do not end at the schoolyard gate, nor should it end at the entryway into the home; children should be granted the right to express their gender identity without fear, no matter where they are.<sup>204</sup>

### *E. Opposition*

Regardless of the overwhelming need for legal gender identity recognition for transgender youth, opponents to recognized rights are vocal in their dissent.<sup>205</sup> One of the main arguments against children's autonomy relates to parents' rights.<sup>206</sup> Allowing children the choice to decide

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<sup>197</sup> *Id.* at 30.

<sup>198</sup> *Doe ex rel. Doe v. Yunits*, No. 00-1060A, 2001 WL 36648072 (Mass. Super. Feb. 26, 2001).

<sup>199</sup> *Id.*

<sup>200</sup> *Id.* at 279.

<sup>201</sup> *Id.* at 283.

<sup>202</sup> *Id.*

<sup>203</sup> *Id.*

<sup>204</sup> *See Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969).

<sup>205</sup> In response to an article published in *The American Journal of Bioethics*, one news source opposes the recommendations outlined, claiming the proposal allows for unethical human experimentation and unknown long-term health consequences caused by puberty-blocking hormones. The article in the *AJOB* calls for transgender adolescents to have legal right to access puberty-blocking hormones, and the State should provide information regarding gender dysphoria to the public. The article also calls for vulnerable youth without parental support of their gender identity to be provided additional protection from the State. The responding news source suggests to not reinforce gender dysphoria in children, and support children compassionately, stating oftentimes children "move past their other-sex gender identification and go on to live happily as the sex they were born biologically." Wesley J. Smith, *Bioethicist: Block Transgender Puberty Even If Parents Say No*, *THE NAT'L REV.* (Feb. 25, 2019, 11:55 AM), <https://www.nationalreview.com/corner/bioethicist-block-transgender-puberty-even-if-parents-say-no/>; Maura Priest, *Transgender Children and the Right to Transition: Medical Ethics When Parents Mean Well but Cause Harm*, 19 *THE AM. J. OF BIOETHICS* 45 (2019).

<sup>206</sup> In July 2018, HB 658 was proposed in Ohio as the Parents Bill of Rights, requiring education professionals to notify parents if their child identifies as transgender. It also called treatment of gender dysphoria without the written, informed consent of both parents a fourth-degree felony. Multiple LGBTQ advocacy groups opposed the bill. As of the spring 2019, the bill has been introduced, but the status has remained unchanged. Eric Duran, *Ohio bill would require teachers, health providers to 'out' transgender students*, *NBC NEWS* (Jul. 3, 2018, 5:09 PM),

their gender identity is thought to override the parent's fundamental right to care for their child.<sup>207</sup> In fact, providing minors with the opportunity to participate in their own gender identity validates the process the family takes, and erases insecurities parents often experience due to isolation or fear of the unknown.<sup>208</sup> Establishing legal transgender rights does not mean the child will hold more power over the parent, but instead allows them all to understand this gender identity together.<sup>209</sup>

Another considerable argument is related to the mental capacity of the child themselves. Many argue that a child is too young to understand much and are too influenced by peers and the media. But this just is not true; children are not delusional, nor is listening to their opinions pandering.<sup>210</sup> Transgender identity exists around the world, in multiple cultures.<sup>211</sup> Children have not created this identity out of thin air and treating them as such has irreversible consequences. Minors have already been granted certain independent rights, and transgender rights reinforce the protection required for youth to live healthy lives.

Finally, opponents often fear change in societal norms, with the common refrain: *But everything's fine, why does it have to change. Leave well enough alone.* But everything is not fine; it is vital that children's voices are heard in the need and creation for more progressive laws. Youth continue to live their lives in secret and fear, risking emotional and physical abuse simply for speaking up. These laws support inclusion and acceptance, validate transgender journeys, and recognize children's evolving ability to make independent decisions about their own bodies.

## V. EXAMINING GENDER GLOBALLY

The United States has a long way to go for full acceptance, inclusion, and protection for gender non-conforming individuals. International treaties and nation states establish various rights for transgender equality reflect into existing or new legislation within the United States.<sup>212</sup> While the U.S. has not ratified the United Nations Convention on the Rights of the Child, the Articles of

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<https://www.nbcnews.com/feature/nbc-out/ohio-bill-would-require-teachers-health-providers-out-transgender-students-n888751>; Also in July, the Delaware Department of Education altered the language for an anti-discrimination regulation requiring schools to notify parents before recognizing a student's gender identity. In accordance with the new regulation, teachers would be required to use the child's legal name, regardless of personal preference. The previous regulation drew opposition from religious and parent groups, concerned it cut out the parents' rights. The revised regulation is opposed by multiple LGBTQ groups, include Human Rights Campaign, Equity Delaware, and National Center for Transgender Equality. In a statement in August 2018, Delaware Gov. John Carney announced the revised regulation would not be finalized. Katelyn Burns, *Delaware Democrats Bow to Right-Wing Pressure on Rules for Transgender Students (Updated)*, REWIRE NEWS (Jul. 5, 2018, 1:52 PM), <https://rewire.news/article/2018/07/05/delaware-democrats-bow-right-wing-pressure-transgender-kids-frightened-regulation/>.

<sup>207</sup> Gabe Murchison, *Supporting & Caring For Transgender Children*, HUM. RTS. CAMPAIGN (Sept. 2016), [https://assets2.hrc.org/files/documents/SupportingCaringforTransChildren.pdf?\\_ga=2.218391513.1780594102.1555624878-938324249.1555624878](https://assets2.hrc.org/files/documents/SupportingCaringforTransChildren.pdf?_ga=2.218391513.1780594102.1555624878-938324249.1555624878).

<sup>208</sup> *Id.*

<sup>209</sup> *Id.*

<sup>210</sup> *License to Be Yourself: Trans Children and Youth*, OPEN SOC'Y FOUND. 1, 16 (2015), [https://www.opensocietyfoundations.org/sites/default/files/lgr\\_trans-children-youth-20151120.pdf](https://www.opensocietyfoundations.org/sites/default/files/lgr_trans-children-youth-20151120.pdf) [hereinafter *License to Be Yourself*].

<sup>211</sup> *See supra* note 10.

<sup>212</sup> *License to Be Yourself*, *supra* note 210, at 4.

the Convention can become a body of rights aimed at transgender youth.<sup>213</sup> In 2006, a group of human rights experts met in Indonesia to create an international guide on human rights law for sexual orientation and gender identity.<sup>214</sup> Individual countries independently establish transgender rights, paving the way for equality and inclusion.<sup>215</sup> As the world enters a new era of civil rights, it is essential to protect the rights of children to ensure they develop into healthy global citizens.

### A. *United Nations Convention on the Rights of the Child*

The United Nations Convention on the Rights of the Child (CRC) is the first international body of law to outline all the protections, rights, and duties afforded to children and the requirements of the individuals who care for them.<sup>216</sup> It encompasses the full spectrum of law, including civil, criminal, economic, political, and social rights, regardless of the individual's race, religion or abilities.<sup>217</sup> While the United States has not ratified the CRC,<sup>218</sup> the rights present possible approaches to future advocacy for transgender rights.

The CRC's fifty-four articles detail the fundamental rights guaranteed to children and outline how the ratified nations should apply them within their country.<sup>219</sup> This document is the first of its kind to allow children the right to be heard and have a voice in the decisions that impact their lives. These basic human rights include: the right to life, survival and development; protection from violence, abuse and neglect; the right to an education in order to achieve their highest potential; to have a relationship with their parents; and to an identity.<sup>220</sup>

In Article 8, State Parties shall respect the right of a child to preserve his or her identity as recognized by the law without government interference.<sup>221</sup> Article 8.2 requires that, whenever a child is deprived of elements of their identity, the country must provide assistance to reestablish it.<sup>222</sup> Article 12 "assures to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child."<sup>223</sup> Article 13 calls out the right to freedom of expression, including the right to seek, receive and impart information and ideas of all kinds.<sup>224</sup> Article 2 protects children from all forms of discrimination, including sex, and Article 3

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<sup>213</sup> For example, Indiana law allows minors to consent to their own health care if they are emancipated, age 14 or older living apart from their parents. IND. CODE § 16-36-1-3.; California authorizes emancipated minors and minors 15 years old or older living apart from their parents to consent to their own care. CAL. FAM. CODE § 7050 (Deering 1994), CAL. FAM. CODE § 6922 (Deering 1994).; Minors are able to consent to their own pregnancy care, including contraception. CAL. FAM. CODE § 6925 (Deering 1996).

<sup>214</sup> *The Yogyakarta Principles*, Nov. 10, 2017, <http://www.yogyakartaprinciples.org/annex/>.

<sup>215</sup> *Providing Health Care*, *supra* note 188.

<sup>216</sup> Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3.

<sup>217</sup> *See id.*

<sup>218</sup> Lida Minasyan, *The United States Has Not Ratified the UN Convention On The Rights Of The Child*, ATLAS CORPS (Sept. 30, 2018), <https://atlascorps.org/the-united-states-has-not-ratified-the-un-convention-on-the-rights-of-the-child/>

<sup>219</sup> *See* Convention on the Rights of the Child, *supra* note 216.

<sup>220</sup> *Id.*

<sup>221</sup> *Id.* art. 8.

<sup>222</sup> *Id.* art. 8.2.

<sup>223</sup> *Id.* art. 12.

<sup>224</sup> *Id.* art. 13.

states that the best interest of the child should always be of primary concern.<sup>225</sup> When evaluated together, these articles hold member nations responsible for ensuring that children participate in the decisions concerning their lives, and have the freedom to express those decisions. All transgender children would benefit from application of these laws, but they are of special value for those children who require protection outside of the private realm of the home. Using the language of the articles detailed in the CRC would support a transgender youth's right to express their gender identity freely, without fear of abuse or discrimination. They would be able to have a considerable voice in the decisions affecting their identity and lives.

### ***B. Global Transgender Rights***

Other countries utilize the articles outlined within the Convention on the Rights of the Child to enact laws protecting the rights of gender identity for all individuals.<sup>226</sup> These examples are just a small window into the extensive range of law available to transgender individuals around the world. Several countries recognize gender outside of the binary concept of male and female, allowing for wider acceptance of gender non-conforming individuals.<sup>227</sup> In India, the federal government grants an independent distinction of a third gender, "hijras."<sup>228</sup> This third gender is recognized in much of South Asia, including Nepal, Bangladesh, and Pakistan; Germany, Australia, and New Zealand also recognize a third gender on government documents.<sup>229</sup> Malta is a leading country for youths' gender identities, creating the Gender Identity, Gender Expression and Sex Characteristics Act, which affords universal rights to gender identity with no restrictions on age.<sup>230</sup> This Act allows individuals to make legal changes to their identification documents, protecting the legal gender recognition of youth while they come to understand their gender identity.<sup>231</sup> Malta is also the first country in Europe to create an extensive education policy specifically designed to afford protections and inclusion for transgender, gender variant, and intersex children.<sup>232</sup> In Argentina, a gender recognition law requires legal representation for children in court, particularly when the parents' consent is denied.<sup>233</sup> These actions from the global community outline the many ways the United States could change how transgender youth and adults are protected, regardless of their gender identity. The United States still has a long way to go in ensuring liberty and safety for all its citizens.

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<sup>225</sup> *Id.* art. 2-3.

<sup>226</sup> *Yunits, supra* note 198.

<sup>227</sup> *Id.* at 279.

<sup>228</sup> Valentine Pasquesoone, *7 Countries Giving Transgender People Fundamental Rights the U.S. Still Won't*, THE MIC (Apr. 9, 2014) <https://mic.com/articles/87149/7-countries-giving-transgender-people-fundamental-rights-the-u-s-still-won-t#.PocKhFMDL>.

<sup>229</sup> *Id.*

<sup>230</sup> *License to Be Yourself, supra* note 210, at 6.

<sup>231</sup> *Malta Adopts Ground-breaking Trans and Intersex Law- TGEU Press Release*, TGEU (Apr. 1, 2015), <https://tgeu.org/malta-adopts-ground-breaking-trans-intersex-law/>.

<sup>232</sup> Silvan Aguis et. al., *Trans, Gender Variant And Intersex Students In Schools Policy*, RESPECT FOR ALL FRAMEWORK (June 2015), <https://tgeu.org/wp-content/uploads/2015/06/Malta-Education-Policy.pdf>. This policy aims to facilitate an inclusive, safe, and harassment-free environment for the entire school community, promote learning that is inclusive for transgender, gender non-binary, and intersex students, and provide a physically and emotionally safe environment for all students, including transgender, gender non-binary, and intersex students.

<sup>233</sup> *Id.* at 14.

### C. Yogyakarta Principles

Finally, the Yogyakarta Principles plus 10 (YP+10) is an international set of Principles and State Obligations addressing the human rights law standards of abuse and discrimination toward LGBT people.<sup>234</sup> Established in 2006 in Yogyakarta, Indonesia, twenty-nine signatories intended these principles to be adopted as the standard treatment and protection for anyone who identifies as LGBT.<sup>235</sup> In 2017, the YP+10 were adopted to address the violations suffered by individuals based upon their sexual orientation and gender identity, and the continued development of international human rights laws.<sup>236</sup> Principle 3 pertains to the recognition of an individual's gender identity within the law.<sup>237</sup> It states that no person should be forced to undergo medical treatment, sterilization, or hormone therapy in order to protect their legal gender.<sup>238</sup> The Principle holds great value to the individual's identity, as "[e]ach person's self-defined...gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom."<sup>239</sup> Applying the standards set forth by the YP+10 in the United States would allow transgender children full legal recognition to validate and protect their identity and safety. Using examples from international law provides the United States a reasonable road map for establishing universal and comprehensive rights for transgender youth, legislation that is essential in the current political climate.

## VI. A LOOK TO THE FUTURE

There has never been a more unpredictable time for transgender rights. On the one hand, the Human Rights Campaign reports at least twenty-six transgender violence-related deaths in 2018 alone, either by acquaintances or strangers, many of whom are women of color; on the other, fifty-one transgender candidates ran for political office in the last election.<sup>240</sup> Transgender individuals are positively represented in the media and on the internet, but hate crimes directed at this population continue.<sup>241</sup> In 2018, a federal judge ruled in favor of a transgender teen's right to use the bathroom associated with his gender identity at his high school.<sup>242</sup> Beginning in 2014, at

<sup>234</sup> *The Yogyakarta Principles*, *supra* note 214.

<sup>235</sup> Countries represented include the United States, Australia, Moldova, Argentina, South Africa, Brazil, Turkey, New Zealand, Pakistan, Kenya, India, United Kingdom, Botswana, Thailand, Austria, Costa Rica, Ireland, Nepal, Bulgaria, Indonesia, Ireland, Serbia, Finland, China, Poland, and Canada. *Id.*

<sup>236</sup> *Id.*

<sup>237</sup> *Id.* at 3.

<sup>238</sup> *Id.*

<sup>239</sup> *Id.*

<sup>240</sup> *Violence Against the Transgender Community in 2019*, HUM. RTS. CAMPAIGN, <https://www.hrc.org/resources/violence-against-the-transgender-community-in-2019>; *See also* Logan S. Casey, PhD, *Transgender Candidates*, <https://www.loganscasey.com/copy-of-transgender-candidates>.

<sup>241</sup> Advocate Contributors, *Transgender Woman's Car Vandalized in Colorado*, ADVOCATE (Nov. 17, 2016), <http://www.advocate.com/crime/2016/11/17/transgender-womans-car-vandalized-colorado-video>; *Violence Against the Transgender Community in 2018*, HUM. RTS. CAMPAIGN (2018), <https://www.hrc.org/resources/violence-against-the-transgender-community-in-2018>.

<sup>242</sup> Richard Gonzales, *Court Sides with Transgender Student in Bathroom Case*, NPR (May 2018), <https://www.npr.org/2018/05/23/613597040/court-sides-with-transgender-student-in-bathroom-case>. In 2015, Grimm filed suit with the ACLU, and the case went all the way to the Supreme Court. The case was referred back to

age 15, Gavin Grimm, a sophomore at Gloucester High School, came out to his family and school as a transgender man.<sup>243</sup> He was initially permitted to use the boy's washroom, until protests from parent groups caused the school board to bar Grimm from the boy's washroom, and created a policy that required students to use the washroom associated with their biological sex.<sup>244</sup> Eventually, the case went before the federal appeals court in Virginia and the District Court, who ultimately ruled in Grimm's favor: the school board policy "subjected him to sex stereotyping."<sup>245</sup> In Minnesota in 2017, a mother sued her daughter over the minor's transition.<sup>246</sup> The daughter was legally emancipated under Minnesota law and began the medical process of transitioning.<sup>247</sup> The mother alleged she did not receive any notification or provide consent to the treatment and continued to refer to her child as a boy.<sup>248</sup> The case was dismissed, as the judge determined that the argument held no merit.<sup>249</sup> The contentious issues in these cases speak to the vital need for clarification regarding transgender youths' rights versus parental rights, as well as universal rights.

While the future is uncertain, one consistent message from advocates is the importance of support and understanding for transgender youth. By acknowledging their children's identities, parents remain the steady foundation upon which so many children rely to live healthy, successful lives. Aidan Key, Executive Director of Gender Diversity, conveys how important it is for youth to find their authentic paths in their gender identity in trainings intended to teach community leaders to erase the negative and invalidating mindset that a child's gender identity is "wrong," or one "must wait and see."<sup>250</sup> Key implores parents to recognize and love their child, gender identity included, and help them development a core sense of self.<sup>251</sup>

Arguments against youth autonomy for their gender identity are irrelevant for the child living alone in a dark alley, stealing hormone drugs and contemplating ending her own life because she came out to her parents, who promptly threw her out. If every parent accepted and supported their gender non-conforming child, the change in law may not be necessary. However, advocacy for full legal recognition is required to validate and support the needs of transgender youth. Protection against rejecting behavior and violence ensures a healthy transition and successful life within their gender identity.

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the lower court after the Trump Administration rescinded prior protections for students to use restrooms that match their gender identities.

<sup>243</sup> Matt Stevens, *Transgender Student in Bathroom Dispute Wins Court Ruling*, N.Y. TIMES (May 22, 2018), <https://www.nytimes.com/2018/05/22/us/gavin-grimm-transgender-bathrooms.html>.

<sup>244</sup> *Id.*

<sup>245</sup> *Id.*

<sup>246</sup> Katie Mettler, *Why a Minn. Mom is Suing Her Transgender Teen and the Clinic that Gave Her Hormones*, WASH. POST (Nov. 18, 2016), [https://www.washingtonpost.com/news/morning-mix/wp/2016/11/18/why-a-minn-mom-is-suing-her-transgender-teen-and-the-clinic-that-gave-her-hormones/?utm\\_term=.6d01089edfa7](https://www.washingtonpost.com/news/morning-mix/wp/2016/11/18/why-a-minn-mom-is-suing-her-transgender-teen-and-the-clinic-that-gave-her-hormones/?utm_term=.6d01089edfa7).

<sup>247</sup> Minnesota does not have a process for emancipation of minors, however, it does state minors who do not live at home are considered adults in terms of medical care. Included in the emancipation statement in the attorney's possession includes the statement that the mother did not wish to have any contact with her child and has done nothing to prevent the child from running away. *Id.*

<sup>248</sup> *Id.*

<sup>249</sup> *Judge Dismisses Mom's Lawsuit Against Transgender Teen Daughter*, CBS MINN. (May 2017), <https://minnesota.cbslocal.com/2017/05/24/transgender-teenager-lawsuit-dismissed/>.

<sup>250</sup> Telephone Interview with Aidan Key, Executive Director, Gender Diversity (Nov. 26, 2016).

<sup>251</sup> *Id.*

## CONCLUSION

For too many children, they wish for a body that is not their own, and live a life of fear, depression, anxiety, and hopelessness. Children cry themselves to sleep at night, wishing for parents who would love them, accept them, and want them for all they truly are. Transgender children across the country are often denied a home, love and care, and a healthy future when their parents reject their gender identities. For too many parents, this rejection stems from fear and questions for their child's future. However, the lack of understanding of transgender identity means these families will continue to be torn apart. A way for families to stay together and for transgender children to lead healthy lives is to legally recognize gender identity and the process involved. These rights already exist within state child welfare laws, abortion rights, and informed consent laws; they must be extended to protect the health and safety of transgender children. Granting this right provides transgender children a voice for their bodies and how their bodies are treated. These rights respect a youth's privacy and their identity. Balancing the rights of the parent and the protection for the minor is difficult and an evolving issue throughout the courts and legislation. Parents have the responsibility to care for their child—but what if they don't? It is imperative that transgender minors' legal rights are established and protected, not only to ensure successful lives now, but to ensure an inclusive and accepting world for the next generation. No child should ever have to live in fear.