President Trump's Day 1 Anti-Transgender Executive Order: What You Need to Know

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On President Trump's first day in office, he issued a number of executive actions impacting many communities, including those most at risk in our country such as immigrants and communities of color. One executive action specifically targeted transgender, nonbinary, and intersex communities. This order is an attempt to control people's freedom to be themselves. Trump wants to allow and encourage discrimination against trans people, and that's exactly what this order is intended to do. The intent of this order is to cause chaos, and many of its requirements are inconsistent, unclear, and unworkable.

Although the order isn't law, it's already impacting the lives of trans people across the country.

We know you have questions about what this means for you, your families, and the people you care about. Please know that there are many organizations focused on understanding what this executive order does and doesn't do as well as how to respond with lawsuits, community resources, and more. No matter what the policy of the federal government is, we know the value, dignity, and humanity of our communities and we will do whatever it takes to keep each other safe.

What Does the Order Say?

The executive order targeting transgender, nonbinary, and intersex people includes the following key topics. It directs federal agencies like the Department of Education and the Department of Health and Human Services to take steps such as revising or reviewing old policies, issuing proposed rules and guidance, and changing the goals of important programs and services. Many of these changes will take time, so many parts of the executive order won't have an immediate effect.

What's important to remember about this action by the President is that executive orders don't change laws or court rulings; they call for changes to the ways that federal agencies enforce the laws that Congress passes.

Here are some things that this executive order tries to do:

- **Redefine "sex" and "gender."** The order tries to replace gender with sex, and to redefine "sex" for all federal policy purposes on the ideas that sex is only either male or female, cannot be changed, and is based solely on reproductive cells at conception. This definition ignores the existence of intersex variations, and disregards trans, nonbinary, and intersex people's experience of their own gender.
- **Direct the government to stop providing federal ID documents that reflect trans people's gender.** The order directs the State Department to prevent trans people from updating their passports and other federal

documents or records, and prevents anyone from selecting an "X" marker.

- **Force the federal government to roll back protections—and ignore the law.** This order attempts to force the agencies and employees of the federal government to discriminate against trans people, and tries—but fails—to erase the reality that trans and intersex people exist, will always exist, and have rights under the law. It asks agencies to create policies and regulations that conflict with the nondiscrimination protections trans people continue to have under existing laws.
- **Endanger trans people in federal custody.** The order instructs the Bureau of Prisons and Department of Homeland Security to transfer trans people in federal prisons and other forms of detention from current placements that reflect their gender identity to new placements that don't. It also requires the Bureau of Prisons to stop providing transition-related medical care to trans people in federal prisons.
- **Roll back the recognition of federal government employees' genders.** The order requires the Office of Personnel Management to update employee records to reflect an employee's sex as defined by this EO, regardless of whether their personal identifying documents and records have already been updated.

What is the Impact of the Order on Me and Other Transgender, Nonbinary, and Intersex People?

For many of Trump's orders to go into effect, federal agencies must follow a careful process of proposing changes, asking for public input, reviewing that input, and issuing final rules. Of course, during this process there is also the potential for states and LGBTQI+ advocates to sue to challenge the parts of the order that violate the law.

Bottom line: the landscape of laws for federal recognition of trans, nonbinary, and intersex people, as well as the ways in which the federal government recognizes these communities, will be rapidly changing. Please stay connected with our organizations for more as things evolve over time.

Key Reminders:

1. **This executive order does not change the law or established legal precedent.** Congress passes laws and the Supreme Court interprets the law. The role of the President is to enforce the laws – but something isn't automatically legal just because the President declares it. This means that many of the proposed actions in the executive order may be found to break actual federal law.
2. **You have rights under federal law.** Enforcement agencies, such as the Equal Employment Opportunity Commission, have ruled that discrimination against LGBTQI+ people is a form of illegal sex discrimination under federal law. Nothing in the executive order changes that.
3. **Nothing in the executive order changes state laws**. You may also have protections under state law. This may include existing protections against discrimination at work, when seeking housing, or in education. Some states cover gender-affirming care for people in state prisons and jails. Some states offer X markers. Some states offer protection for providers of gender-affirming care. You can check your state here.

Identity Documents

Passports are legal documents, including those with an X marker or for trans people who have updated their gender marker. Efforts to invalidate legally issued documents will face lawsuits.

The action directs the Department of State, Department of Homeland Security, and the Office of Management and Budget to require that federal government-issued identification documents, including passports, visas, and Global Entry cards, reflect the holder's sex as defined by the action. This means that trans and nonbinary people, and many intersex people, can no longer change their passports to reflect their gender, and no one can get a new passport with an X marker. White House officials have said that **current not-expired passports are still valid, including passports with X markers and those already updated to reflect someone's gender.**

The State Department has said that all applications for gender change are "suspended," with passport offices no longer issuing corrections to gender markers on passports. **Trans people who have a valid, current U.S. passport should not try to renew it or attempt to change their gender marker on it at this time.**

The order does not change state ID laws. You can learn more about your state's policies here.

Healthcare

The action by the White House directs federal agencies to restrict access to affirming medical care for trans people in federal custody, including in prisons and immigration detention.

Agencies interpreting the action may prevent various types of federal funding (e.g., such as Medicare and

Medicaid) and federally funded facilities from covering or providing transition-related healthcare, but nothing in the order can do that immediately. In most cases, changes to federal health programs take months if not years to implement, and will likely be subject to lawsuits. Multiple federal nondiscrimination laws are still in place that protect access to healthcare and health insurance.

Transgender, nonbinary, and intersex people should remain in close contact with their trusted healthcare providers.

It is vitally important that healthcare providers do not stop providing affirming care to trans, nonbinary, and intersex patients unless there's a direct order. Trans-affirming care is lifesaving and necessary. It is just as important that states continue to provide state Medicaid coverage for gender-affirming care, and to fill the gap as the federal government makes it harder to pay for care.

Education

Transgender, nonbinary, and intersex students are still protected from discrimination under a law called Title IX of the Education Amendments of 1972, and teachers and other school staff are also protected under Title IX and other federal laws that cover the workplace. While the executive order can be used to guide federal policy from those agencies, it cannot and does not change students' and educators' rights under these laws, which were created by Congress and can be enforced in court. The order also cannot override what the Supreme Court has explicitly recognized: that discrimination based on sex includes discrimination based on gender identity and sexual orientation. While that decision applied to employment protections, courts since have applied it to education protections.

The order directs the U.S. Department of Education to undo guidance by the Biden administration to help schools ensure transgender students could access sex-separated spaces, such as bathrooms and locker rooms, that match their gender identity. The executive order directs the Department of Justice to issue guidance on sex-separated spaces that will make it harder for schools to support their students. However, some transgender students have already won lawsuits asserting that Title IX protects their right to bathroom access. Since a presidential order like this one cannot override federal laws like Title IX, that means courts might reject guidance that tries to stop trans, nonbinary, and intersex students from using the bathrooms appropriate to their genders.

The order also undoes several specific policy guidance and resource documents issued by the U.S. Department of Education to support schools in meeting the needs of transgender, nonbinary, and intersex students. While important guidance for schools, these resources did not create specific rights or law, and the rollback of these resources does not change the rights that students and teachers have.

If students or educators face scenarios where their school or school district is citing this order to discriminate or harass, check the resources and legal helplines below for support. You can learn more about your state's educational nondiscrimination policies here.

Workplaces

In 2020, the U.S. Supreme Court ruled that the federal law protecting employees from sex discrimination includes protection from discrimination on the basis of gender identity and sexual orientation. Transgender, nonbinary, and intersex people are protected by this law.

However, the executive order directs the Attorney General to issue guidance that permits employees to refuse to respect peoples' pronouns, and generally harass transgender, nonbinary, and intersex people in the workplace. In addition, it orders the Attorney General to make sure that single-sex spaces at work are used by people of the "matching" sex according to the order's definitions. These proposed changes could mean that transgender people would lose protections in these day-to-day workplace scenarios (but they would still have federal employment protections in hiring and firing). The order does not say how this guidance is to be enforced.

Finally, the executive order calls for the Equal Employment Opportunity Commission to undo guidance on workplace harassment, which included direction on when harassing conduct based on gender identity would qualify as employment discrimination (by creating a "hostile work environment" under the meaning of the law).

Military Service

Trump signed another executive order that repeals President Biden's previous order affirming that trans people may serve openly in the military. However, Trump's new order alone does not ban trans people from serving, nor does it say that trans people who are currently serving will be discharged. He signed a separate executive order directing the Department of Defense to adopt policies hostile to trans servicemembers on January 27, however.

Prisons and Immigration Detention

This is an area where the executive order is clearer and more direct. First, it orders the Bureau of Prisons to only house incarcerated people according to their "sex" as defined by the order. These changes may violate federal laws. Second, the order also says that no "federal funding"

can be used for transition-related medical care for trans people who are incarcerated in federal prisons. Again, such sweeping actions violate previous court rulings and the law, and will be subject to lawsuits. That said, the direct impact on incarcerated trans people will be swift.

These same harmful and cruel orders are directed at trans people who are held in immigration detention, which is especially troubling in light of other orders ramping up the arrest, confinement, and deportation of immigrants.

Codifying Discrimination in U.S. Law

The executive order calls for a law to be written that would turn the order's proposed definitions of sex into law. If that law is passed, it would redefine sex in a way that may undercut many of the existing protections for trans and intersex people in education, the workplace and other areas of law, and make it more difficult to get these rights back in the future. It would also invite wider attacks on sex discrimination protections for everyone.

Before this could become law, however, it would need to be passed by both chambers of Congress.

Encouraging Other Discrimination

While some of the executive order's directions to federal agencies have already begun to be put into effect, it may be weeks or months before all agencies have adopted new policies. However, the fact that this order exists might be something that people both inside and outside of the federal government use to justify discriminating against trans, nonbinary, and intersex people. It's important to know what your rights are, and who you can contact for help if you are discriminated against. A list of resources and organizations is at the end of this document.

Other Executive Orders

Trump signed dozens of executive orders in his first few days, many of which targeted migrants living in the United States and/or seeking asylum or refugee status in the United States. Many also threaten the progress of diversity and equity initiatives within the federal government and among federal contractors.

The immigration orders closed the southern U.S. border to migration, leaving thousands of people stranded and seeking services in a community already stretched thin. These orders also attempt to end birthright citizenship for some people born on U.S. soil, and fund and encourage cooperation between law enforcement agencies and immigration authorities to make the persecution and deportation of migrants happen faster.

For more information on these orders and policies, please see the National Immigration Law Center's FAQ and Know Your Rights pages here.

Trans migrants, particularly trans migrants without papers, trans migrants with disabilities, and Black trans migrants, will face the most persecution, discrimination, harassment, and violence encouraged by these orders.

What Happens Next? What Can I Do?

First, please take care of yourself and those around you.
If you're experiencing discrimination, reach out to one of the many legal helplines detailed at the bottom of this page for help. They can advise you about how to file a local, state, or federal civil rights complaint.

Educate those around you about the order and why it matters to you. This can include reaching out to your members of Congress and to state and local lawmakers. You can also help increase understanding about trans, nonbinary, and intersex people by talking to family, friends, and coworkers about what matters to you.

Resources

Informational Resources

- A4TE's Action Centers
- GLSEN's Know Your Rights Guide for students and educators
- Movement Advancement Project's Equality Maps

Legal Resources

- ACLU Intake Email
- GLAD Law Answers
- interACT: Advocates for Intersex Youth
- Lambda Legal Helpdesk
- Nat'l Center for Lesbian Rights Helpline (800-528-6257)
- LGBT National Hotline (888-843-4564)
- Transgender Law Center Legal Information Helpdesk

Talking Resources

If you are having a hard time, there are phone numbers you can call to talk to people who can help you process:

- Trans Lifeline (877-565-8860)
- LGBT National Youth Talkline (800-246-7743)
- LGBT National Senior Hotline (888-234-7243)
- The Trevor Project