MYTH: THERE IS SUCH A THING AS "LEGAL SEX" AND MINE WILL CHANGE AS SOON AS I CHANGE THE SEX ON MY BIRTH CERTIFICATE/DRIVER'S LICENSE OR UNDERGO SEX REASSIGNMENT SURGERY.

REALITY: In general, people do not have a single “legal sex.” Instead most of us have a patchwork of documents and records — driver’s licenses, birth certificates, passports, Social Security records — each bearing a sex designation. Those designations sometimes conflict with each other. Also, different public entities (like benefits offices and jails/prisons) routinely designate sex in their own records. Changing the sex listed on your documentation or undergoing medical transition might or might not lead a state or local entity to decide that your sex designation should be changed in its records. In general, if you ever need to seek recognition of your gender identity, your claim will have more support if you have already changed the sex designation on your documentation.

MYTH: IF I LEGALLY CHANGE MY NAME, I SHOULD EXPLAIN TO THE COURT THAT I'M CHANGING IT BECAUSE I'M TRANSGENDER.

REALITY: In most states, name changes are permissible for any reason other than fraud. Transgender people seeking to change their name do not need to present a greater amount or a different kind of evidence when filing a name change petition than non-transgender people. “Common usage” and “personal preference” generally are valid and permissible reasons for seeking a legal name change. Although judges or court clerks occasionally demand additional evidence (such as doctors’ letters or proof of surgery) from transgender people, there have been a number of successful legal challenges to such unfair burdens.

MYTH: I HAVE TO GET A COURT ORDER CONFIRMING MY NEW SEX BEFORE I CAN CHANGE THE SEX DESIGNATION ON MY BIRTH CERTIFICATE, PASSPORT OR SOCIAL SECURITY RECORDS.

REALITY: Although the vast majority of states allow transgender people to change the sex designation on their birth certificates, state vital records offices have varying requirements for such changes. Some states require court orders; others do not. A court order is not required to change the sex designation on your passport or Social Security records.

MYTH: TRANSGENDER PEOPLE CANNOT GET MARRIED.

REALITY: When transition takes place after a marriage is solemnized, the marriage continues to be valid. In other words, anything that would affect a person’s ability to enter into a marriage that occurs after the couple is married will not retroactively void the marriage.
The validity of marriages where transition occurred prior to the marriage raises a different question. The opportunity to challenge a marriage’s validity arises in rare circumstances — sometimes in divorce or custody proceedings, or in other legal proceedings where the presence of a valid marriage is significant. Only a handful of courts have considered this issue. Some of them have appropriately recognized that transgender people can marry as members of their post-transition sex. Others, however, have voided marriages entered into after one spouse had transitioned, holding that the sex of a transgender person is fixed at birth.

In general, transgender people should remember that the issuance of a marriage license is not a guarantee that the validity of their marriage will never be challenged in the future. They should take all possible legal steps to make their relationship more secure, such as executing wills naming their spouse as beneficiary.

**MYTH: IT IS CLEARLY ESTABLISHED IN EVERY STATE THAT MY EMPLOYER CANNOT FIRE ME, AND RESTAURANTS AND STORES CANNOT REFUSE ME SERVICE, BECAUSE I'M TRANSITIONING/TOO Masculine/TOO Feminine.**

**REALITY:** A growing number of states, cities and counties ban employment discrimination on the basis of gender identity and expression. Other states lack explicit protections, but transgender employees may be protected by existing sex or disability discrimination laws. For example, a growing number of federal courts have held that the federal law banning sex discrimination in employment, Title VII, prohibits discrimination against transgender and gender non-conforming employees. Similarly, laws that prohibit discrimination in places of public accommodation based on gender identity, sex or disability may offer some protection in these circumstances, although — as with employment discrimination — protections vary from place to place.

**MYTH: MY DOCTOR KNOWS I'M TRANSGENDER, BUT MY MEDICAL RECORDS ARE CONFIDENTIAL, SO NO ONE ELSE WILL EVER SEE THEM.**

**REALITY:** Private medical information is protected by state and federal privacy laws as well as by constitutional law. Federal medical privacy regulations issued under the Health Insurance Portability and Accountability Act (HIPAA) prohibit disclosure of “Protected Health Information” by hospitals, health care providers and insurance companies. Protected Health Information includes information that relates to the past, present or future physical or mental condition of an individual; information about the health care of an individual; or information about payments. However, HIPAA allows for the disclosure of Protected Health Information without patient consent in a number of circumstances, including certain instances of suspected abuse, research, judicial and administrative proceedings and law enforcement. Furthermore, individuals cannot file lawsuits under HIPAA, but can only file complaints with the federal Department of Health and Human Services if they believe their rights have been violated.

Protections offered by your state’s privacy laws may be greater than federal protections. Also, a number of courts have held that medical records and private medical information are covered by constitutional privacy protections.
MYTH: REGARDLESS OF EVOLVING LAWS AND POLICIES AFFECTING IDENTITY DOCUMENTS AND PRIVACY RIGHTS, IT IS POSSIBLE FOR ME TO KEEP MY TRANSGENDER IDENTITY PRIVATE.

REALITY: It is becoming increasingly difficult for transgender people to keep private the fact that they are transgender. Changes in federal law and policy are affecting many facets of personal privacy that transgender people used to take for granted. These changes are often described by legislators as anti-terrorism measures, but they have a disproportionate impact on the transgender community. For example, the Social Security Administration compares employer-provided information with its records and sends out “no-match” letters to some employers if an employee’s reported gender and the gender in the SSA records do not match. These letters often reveal transgender identity to employers without the employee’s consent.

The Real ID Act, signed into law in 2005 but not yet in effect, requires that state Departments of Motor Vehicles maintain digital copies of the documents a person uses to establish their identity when obtaining a driver’s license or state identification card, and provides that all state DMV records (including gender information) be linked into one shared database that will be accessible by law enforcement and others. Some state DMVs are already tightening requirements for transgender people seeking to change information on their driver’s licenses. More familiar tools — such as credit reports, employer background checks and personal information freely available online often out transgender people as well.

People who do not wish to disclose their transgender histories should be aware of these challenges to their privacy and should resist developing a false sense of security. For more information on federal policy changes that affect your privacy, contact the National Center for Transgender Equality.

MYTH: NO INSURANCE POLICIES COVER TRANSITION-RELATED HEALTH CARE.

REALITY: A growing number of private insurance companies, including Aetna and Cigna, offer some form of coverage for transition-related care, including sex reassignment surgeries. But this coverage often comes in the form of riders that must be purchased by employers, and employers are often resistant because they believe, falsely, that the coverage would be cost-prohibitive. The American Friends Service Committee publishes an excellent guide on working with your employer to obtain transgender-inclusive health care.

Unfortunately, insurance coverage for sex reassignment surgery is still uncommon. It is more common that insurance policies exclude coverage for sex reassignment surgery, and sometimes for related treatments as well, such as hormone therapy. Still other insurance policies neither explicitly cover nor exclude coverage for transgender care, but instead follow a general “medical necessity” standard that may allow for coverage of transition-related care in some cases. Coverage under such standards is often dependent on whether the insured person can marshal sufficient medical documentation and support for the medical necessity of the procedure.

Coverage under public assistance programs is often difficult to secure. Medicare currently excludes coverage for sex reassignment surgery. Medicaid coverage varies from state to state, although a
number of states explicitly exclude coverage of sex reassignment surgery from their Medicaid coverage.

**MYTH: I WILL BE ARRESTED IN MY CITY FOR USING THE ‘WRONG’ BATHROOM.**

**REALITY:** Some cities and counties have dated ordinances that purport to ban people from using public restroom facilities “designated for the opposite sex.” These ordinances are the exception rather than the rule, and — where they do exist — are rarely enforced. But biased law enforcement officers have occasionally sought to use these ordinances against transgender people. Other jurisdictions have sought to prosecute transgender people for “trespassing” in a restroom. While it is appropriate for transgender people to use restrooms that match their gender identity, remember to prioritize your own safety and be aware of the possibility of police harassment. If you are arrested or cited due to public restroom usage, contact Lambda Legal right away.

**MYTH: TRANSGENDER PEOPLE ARE INELIGIBLE TO SERVE IN THE U.S. MILITARY.**

**REALITY:** “Don’t Ask, Don’t Tell” does not directly apply to transgender service members because the language of the law and the implementing regulations do not mention transgender service members. But the policy may come into play if a transgender service member is perceived to be gay or lesbian. Additionally, transgender people may be disqualified from enlisting in the military during the physical examination that is a mandatory part of the induction process, either because they have undergone sex reassignment surgery or because they are deemed to have a disqualifying psychiatric condition, although a waiver of a disqualifying condition might be possible. Transgender people who are thinking about transitioning while in the military should be aware that the military medical system will provide no support and that the military may attempt to discharge them. Failure to disclose medical treatment received from civilian providers can result in criminal prosecution. In addition, uniform regulations require service members to wear appropriate dress (including civilian clothing) for their designated gender. For more information on the rights of transgender service members, contact the [Service members Legal Defense Network](http://www.lambdalegal.org/our-work/publications/facts-backgrounds/nothing-but-the-truth.html).

**MYTH: TRANSGENDER PEOPLE CANNOT SUCCESSFULLY IMMIGRATE TO THE UNITED STATES OR BECOME U.S. CITIZENS.**

**REALITY:** No law or policy prevents transgender people from immigrating to the United States. A growing number of people who have been persecuted for being transgender or transsexual have received asylum in the past few years, under the rubric of persecution on the basis of sexual orientation and/or gender. Additionally, if someone suffered persecution in their country in the past because others assumed they were gay or lesbian, this may also be grounds to apply for asylum. However, neither Citizenship and Immigration Services nor the Board of Immigration Appeals (BIA) has expressly recognized transgender people as “a particular social group” for the purposes of asylum. Also, transgender people’s marriages will be recognized for immigration purposes as long as the marriage is valid in the jurisdiction where it was entered into. This was made clear in a 2005 BIA decision.