



The Jury

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## A (Short) Primer on Lesbian, Gay, Bisexual, Transgender, and Queer (LGBTQ) Culture in America

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**T**HE LEGAL CLIMATE for LGBTQ rights is now the most fervent and dynamic in recent years. The latest case to garner media attention involves the unfair exclusion of a gay juror in an anti-trust case regarding the pricing of an HIV medication. During *voir dire*, a gay male juror was eliminated through a peremptory strike exercised by the defendant, Abbott Laboratories. Attorneys use peremptory strikes to eliminate jurors that the attorney feels will not be favorable for their client. The strikes are limited so attorneys must use them wisely. Typically, the strikes go unchallenged and attorneys do not have to provide a rationale for striking a particular juror. However, the plaintiff, GlaxoSmithKline (GSK), objected to the strike of this gay male juror and asked for Abbott's rationale. Abbott told the court that it was striking the juror because the juror was a gay male. The judge, however, allowed the juror to be stricken from the panel and the case proceeded. Ultimately, GSK won the case in 2011 but received an award that hundreds of millions of dollars less than what it originally sought. For this reason, GSK appealed the verdict and requested a new trial.

In March 2012, Lambda Legal and 12 other social justice

agencies filed an [amicus brief with the Ninth Court of Appeals](#) asking the court to consider the 1986 U.S. Supreme Court ruling in *Batson v. Kentucky*, 476 U.S. 79 (1986)<sup>[1]</sup> when evaluating the constitutionality of striking a juror because of their sexual orientation. The *Batson* ruling stated that attorneys could not use peremptory challenges to strike jurors according to race. *Batson* also delineated how eliminating jurors through racial group membership violated the Equal Protection Clause of the 14th Amendment of the Constitution. Striking jurors because of certain characteristics was unfair to both the parties involved in the case, as well as to the jurors. GSK and the amicus brief focused on that crucial point from *Batson* to argue that striking the juror because of his sexual orientation was in violation of the Equal Protection Clause proscribed by the 14th Amendment. On January 21st, 2014, the 9th U.S. Circuit Court of Appeals ruled that the peremptory strike used to remove the gay male juror was prohibited by the constitution and the case was remanded to the lower court for a new trial.

The heightened interest and media attention to this case was motivated by a more simplified concern: whether people can be excluded from jury service because of their sexual orientation.

The salaciousness of this case, and the resulting decision, is set in a societal climate in which LGBTQ rights and concerns are in flux. In recent years, citizens in the United States have discussed, promoted, argued against, and implemented laws or policies that affect the daily lives of LGBTQ individuals and American culture as a whole. Despite this increased attention to LGBTQ culture, many Americans still have only superficial knowledge of what “LGBTQ” is. The following article provides an introduction to LGBTQ-related terms and some important constructs. Though informative, this article is not an exhaustive compilation of the issues that are important to LGBTQ people. However, I hope that you find it accessible to your interests and helpful in learning more about where you, LGBTQ or not, fit in the lives of LGBTQ American youth and adults. Ultimately, having non-LGBTQ people becoming more comfortable with and normalizing the LGBTQ culture is another way to help reduce a large source of inequality in our country.

### **The Importance of Labels & Terminology**

Some of the more prevalent research topics in LGBTQ discrimination include, gender, biological sex, gender identity, sexual orientation<sup>[2]</sup>, and gender nonconformity<sup>[3]</sup>. While these constructs are interrelated, some or all of those constructs can be conflated in academic and social conversations about LGBTQ experiences<sup>[4]</sup>. Thus, it is necessary to describe the important details of the variables that influence discrimination to foster an understanding for the unique experiences of LGBTQ and other gender nonconforming people.

Language and labels are very important in LGBTQ culture. The bottom line is that people want to be able to describe themselves using terms that represent their identity. The challenging aspect of that desire is that LGBTQ-related terms and labels are dynamic and can change for different people and for different reasons. For instance, the term “queer” was once considered a derogatory term but now, in appropriate contexts, that term can be used to describe a romantic or sexual orientation that fluctuates or is difficult to characterize. Additionally, queer is also used as a label for gender identity and has been incorporated to produce the word “genderqueer”. Genderqueer describes a gender identity that shifts along the spectrum of male and female and/or may be hard to typify using conventional language. It is not uncommon to hear people in the LGBTQ community to say that they “self-identify” with regard to their gender identity or sexual orientation. That language and practice of self-identification indicates that the person has chosen a label that they believe provides a more accurate representation.

### **Gender as a Construct**

Gender is the concept of behaviors, interests, and socially constructed expectations that society has established for men and women. Gender identity refers to an individual’s conceptualization of their gender as male, female, queer, or

another self-identifying term. Male gender identity is typically associated with having masculine interests and behaviors<sup>[5]</sup>. Individuals stereotypically associate masculinity with ambition, dominance, athleticism, and self-reliance. Female gender identity usually represents an individual whose behaviors and interests are traditionally feminine. Some examples of traditionally female-typed characteristics are compassion, sympathy, loyalty, and sensitivity<sup>[6]</sup>. Regardless of their sex\*, female-identified individuals feel that they are female or a woman, and that “female” is the term that most closely defines how they perceive their gender. Likewise, a male-identified individual feels that they are a man irrespective of their sex.

In contrast, cisgender individuals are people whose self-concept of gender matches their sex. Currently, the word, “cisgender”, is typically used in the context of an LGBTQ-related topic; consequently, many cisgender individuals are unaware of this term. This lack of knowledge and ignorance to the benefits of majority status can typically be described as “cisgender privilege” or “cisprivilege”<sup>[7]</sup>. Similar to the concept of White privilege<sup>[8]</sup>, cisprivilege is defined as societal-level rights, opportunities, and preferential treatment that is exclusive to individuals whose sex, gender identity, and gender presentation match. Additionally, cisprivilege is discernable only through evaluating the treatment disparities between cisgender and non-cisgender individuals (i.e., transgender or genderqueer). Therefore, individuals that are not aware of the discriminatory treatment that transgender and genderqueer people face will also be unaware of their own cisprivilege.

### **The Intricacies of Physical Appearance & Identity**

In the United States, sex is culturally constructed to be binary (i.e., either male or female but not both)<sup>[9]</sup>. However, for some intersex infants, physicians cannot immediately assign a binary sex at birth because that child has “genetic, hormonal, or anatomical sex characteristics” of both genders<sup>[10]</sup>. In the past, physicians resolved the ambiguity of that child’s sex by performing surgeries that enhance one sex and minimize the other. Medical doctors, researchers, and advocacy groups advise the parents of intersex children that the binary sex of their child cannot be resolved through cosmetic surgery alone. In addition to undergoing what some argue are unnecessary surgeries to eliminate or enhance biological sex organs, some intersex individuals must take hormones in order to suppress any unwanted sex characteristics (i.e., breast development or facial hair).

Intersex individuals, regardless of surgical procedures, may have an intersex identity whereas, instead of being both male and female, that individual identifies with a “third gender” that does not conform to society’s understanding of gender. The intersex identity is unique in that it does not represent a “sum” of its parts. One intersex person with male and female sex characteristics may have a male gender identity while another intersex individual with the same type of sex characteristics may have an identity that is neither male nor female. In a

society where binary gender identification is the norm, intersex individuals often have difficulty with navigating their sense of gender identity because their biological sex does not correspond to a single gender<sup>[11]</sup>.

Similar to those with an intersex gender identity, people with a queer gender identity (genderqueer) feel that neither, “male” nor “female” describe their gendered outlook or self-concept. Someone with a queer-identified gender may engage in behaviors that are stereotypical for males and have interests and feelings that are stereotypically associated with females. These genderqueer individuals believe that the binary conceptualization of gender, male or female, does not accurately describe their identity<sup>[12]</sup>. Having a genderqueer identity is sometimes difficult to explain. Others may have misconceptions that genderqueer is the same as intersex (e.g. being born with both male and female sex characteristics) which it is not. Typically, genderqueer people were born with the reproductive anatomy of only one sex but have a gender identity and gender presentation that varies along the spectrum of traditional concepts of male and female, or masculinity, androgyny, and femininity<sup>[13]</sup>.

Transgender studies and advocacy is incorporated into LGBQ (lesbian, gay, bisexual, and queer) issues because transgender people experience similar stigmas and discriminatory experiences to what lesbians, gay men, bisexual men and women, and queer individuals encounter<sup>[14]</sup>. However, the term, “transgender”, does not denote any form of sexual orientation identity. Therefore, transgender people may identify as lesbian, gay, bisexual, asexual, pansexual, and/or heterosexual. It is not their sexual orientation, but the discrepancy between their gender identity and their sex that defines their transgender identity. For example, a transgender woman, also labeled MtF (male to female), is a woman who was born with male sex characteristics, but still identifies her gender as female. Conjointly, a transgender man (female to male (FtM)) is a man who was born with female sex characteristics but his gender self-conceptualization is that of a man. As support and advocacy for transgender people has increased in the United States, the language used to describe a transgender identity has diversified. Some transgender individuals label their identity as gender fluid, gender nonconforming, or gender variant.

Transgender individuals often experience emotional distress if their outward gendered appearance (i.e., clothing, physical form, or facial features) is not in accord with their gender identity. Some transgender individuals will consult a physician to decide what medical (i.e., hormones) or surgical treatments (i.e., facial feminization or a double mastectomy), if any, they should pursue to align their physical appearance with their gender identity. In addition to medical and surgical treatments, there are also behavioral treatments such as cadence, posture, or speech lessons that help transgender people enhance their gendered behaviors appropriately.<sup>[15]</sup>

## Sexual Orientation

The LGBTQ community has illuminated a broad diversity of sexual orientation identities. Sexual orientation is defined as an “enduring physical, romantic, and/or emotional attraction to another person” (pp. 8)<sup>[16]</sup>. Heterosexual men and women prefer opposite-sex relationships and have no desire to engage in same-sex sexual or romantic relationships. For example, a heterosexual, transgender woman is one that is intimately attracted to men. Lesbians and gay men have a stable and singular attraction to people of the same sex. Specifically, lesbians are self-identified women (i.e., cisgender female or MtF) who are only attracted to other women. Likewise, gay males are attracted to and seek out romantic, emotional, or physical relationships with men only.

Bisexuality refers to individuals who experience attraction to both males and females. Bisexual people may choose to be in a long-term relationship with an opposite-sex partner but their sexual orientation and bisexual attraction to same-sex partners is not eliminated. It is sometimes difficult for bisexual people to explain that their sexual orientation is not dependent upon who they are in a relationship with at any given time. Therefore, throughout a bisexual person’s life, they may be attracted to men for two years and then women for 3 months. Their relationship status may change but their sexual orientation does not<sup>[17]</sup>.

Someone with a self-identified queer sexual orientation typically has a pattern of sexual, romantic, or emotional attraction that they believe is not consistent with traditional labels. For example, an individual with a bisexual-like pattern of romantic attraction may refuse that bisexual label and choose instead to label their sexual orientation as queer. As “queer” is an umbrella term, any individual can label their pattern of romantic, relationship-oriented behaviors queer<sup>[18]</sup>.

## Gender Nonconformity (GNC)

Within the transgender community, individuals and their allies understand that gender nonconformity (GNC) is the common and defining characteristic of transgender individuals. However, because GNC can be present in so many realms of behaviors and emotions, almost all people, to some degree, are GNC. Gender nonconformity is defined as, expression of a schema of behaviors, which is typically associated with the opposite sex (i.e., male ballet dancer or female construction worker)<sup>[19]</sup>. GNC can be exhibited through an individual’s physical appearance; but, someone’s personality characteristics, communication style, and social interests or hobbies can also demonstrate GNC.

Gender conforming members of the LGBTQ population are less likely to experience LGBTQ-related discrimination when other individuals are not aware that they are LGBTQ. Therefore, when behaving according to traditional gender norms, the individual’s LGBTQ identity alone may not result in discrimination that LGBTQ-identified individuals typically



experience. Evaluating discrimination and its impact on physical and mental health within LGBTQ populations does not thoroughly ascertain risk factors if research samples include LGBTQ participants who are “passing” as cisgender and/or heterosexual for some or all of their daily interactions, familial relationships, and in professional settings<sup>[20]</sup>. Adolescents cope with sexual orientation based discrimination by passing as heterosexual. They monitor and conform the way that they walk, dress, and speak to traditional gender norms as a precaution to avoid being “outed” as LGB<sup>[21]</sup>.

Gender nonconformity is a prominent correlate to victimization for lesbian<sup>[22]</sup>, gay, bisexual men and women<sup>[23]</sup>. There is evidence that GNC has a compounding effect on sexual orientation-based discrimination such that gay, effeminate males are more likely to encounter discrimination than are gay, masculine males<sup>[24]</sup>. Victimization occurs more frequently with gender nonconformists than with other LGBTQ persons<sup>[25]</sup>. Sandfort and colleagues (2007) reported that GNC is a significant risk factor for verbal, physical, and sexual assault from childhood through adulthood<sup>[26]</sup>. For instance, GNC LGB individuals are more likely than gender conforming LGB individuals are to report suffering physical, verbal, and sexual abuse at the hands of family members or intimate partner. In some ways, GNC is an indication of membership in the stigmatized and marginalized LGBTQ group. This physical or nonverbal indication of minority status is similar to that inherent to people of color. Visual indications of membership to a stigmatized group can promote the salience of differential social statuses and result in discriminatory behaviors enacted by the group that occupies a higher social status. If minority group membership is as salient as an individual’s gender nonconformity, it will be difficult for researchers to conclude, with high degrees of certainty, if the perpetrators of discrimination are responding solely to an individual’s GNC, their sexual orientation, or if there is another motive that is a combination of both factors.

## Why LGBTQ Need Legal Protections

Minority groups vary in the type of privilege and the degree to which privilege is available to them<sup>[27]</sup>. In the United States, social movements such as the Civil Rights Movement and the Women’s Rights Movements consisted of events that led to changes in law and public policy that made it illegal to discriminate against those groups. Historically, the movements have occurred independent of one another but the resulting legislation or policies will broaden to include the minority groups for which the movement was started and for those who, subsequently, have been identified as being in need of similar protections. Cultural movements toward equality typically persist so that more types of equality and previously invisible aspects of inequality are brought to light (i.e., adding gender identity to hate crime laws). The fight for equality for lesbian, gay, bisexual, transgender, and other GNC individuals progresses but some of the cultural movements that involve policy change have not extended to include LGBTQ individuals<sup>[28]</sup>,<sup>[29]</sup>. For example, federal and state discrimination laws that govern how

citizens interact in employment, health care, retail, and housing contexts extend to gender, race, country of origin, ethnicity, and age but many states do not include language that prohibits discrimination against gender identity, gender presentation, or sexual orientation in those same contexts.

Throughout their lifetimes, LGBTQ people encounter systematic discrimination and prejudice, physical and sexual victimization, mental and physical health complications, poverty, academic punishments at rates higher than the averages observed for cisgender, heterosexual people. Counselors and psychologists who work with LGBTQ individuals are aware of these explicit stressors that contribute to an LGBTQ client’s mental health but many are beginning to examine the subtle forms of discrimination that can have a cumulative impact on an individual’s emotional well-being<sup>[30]</sup>. Microaggressions are subtle forms of discrimination that are perpetrated, sometimes unknowingly, by an individual or by a society. Microaggressions against LGBTQ individuals include heterosexist comments about romantic relationships or the use of antigay terms in casual conversations with or without an LGBTQ individual present. Microaggressions and blatant forms of discrimination jeopardize the mental health of youth<sup>[31]</sup> and adults<sup>[32]</sup> who identify as lesbian, gay, transgender, or bisexual. One example of a systematic microaggression is in the courts with the lack of the extension of certain legal rights (i.e., marriage) and the courts’ failure to enforce laws to protect LGBTQ individuals (i.e., employment discrimination).

An increase of media attention on bullying-related suicides in the media has brought emotional support and other resources to aid in the reduction of suicides in the LGBTQ community. Negative mental health outcomes for transgender adults can vary according to the transphobic bullying and victimization that they experienced when they were youth in school<sup>[33]</sup>. In a sample of 6,450 trans-identified and GNC adults, an alarming 41 percent reported having suicidal ideation at least once in their lifetime. This is approximately 25 times higher than the prevalence of suicidal ideation observed in the general population (1.6%)<sup>[34]</sup>. Many factors contribute to an individual’s risk for suicidal ideation but authors found that there were specific antagonizing factors among their transgender sample. In addition to its effect on suicidality, school victimization is also related to higher rates of other negative mental health outcomes for transgender adults. Transgender individuals who experienced school victimization were more likely to stay in jobs that they did not want, use drugs or alcohol to cope with transphobic victimization, and to contract HIV than were transgender individuals who did not report experiencing some form of school victimization.<sup>[35]</sup>

In 2010, as a reaction to LGBTQ youth suicides, Dan Savage and Terry Miller founded the “[It Gets Better Project](#).” Savage and Miller recorded a video to LGBTQ youth to send a message of support to bullying victims<sup>[36]</sup>. The project’s popularity is evidenced by the 50,000 personally recorded messages from individuals all over the world. Since its inception, the It Gets

Better Project expanded to include messages of support to LGBTQ youth as well as messages to the public about the importance of speaking out against LGBTQ-related bullying<sup>[37]</sup>.

Unfortunately, LGBTQ-related bullying continues to affect schoolchildren<sup>[38]</sup>. The most recent statistics from a national sample of LGBTQ youth indicates that almost 85 percent of LGBTQ youth hear antigay remarks “frequently or often” (p. xiv), and that antigay bullying and discrimination is even enacted by teachers and staff members in school systems. In addition to the antigay comments, negative comments about gender nonconformity or gender presentation were reported by approximately 60 percent of the survey participants. The survey revealed that between 12 – 56 percent of the verbal and physical bullying targets the LGBTQ youths’ nonconforming gender expression. Over 81 percent of the LGBTQ youth were verbally harassed, 63 percent felt unsafe in school, 38 percent were physically harassed, and 18 percent were physically assaulted in school because of their sexual orientation. The high rates of sexual orientation based discrimination for LGBTQ youth corresponded with higher rates of self-harm (25% vs. 6.3%) and suicidal ideation (23.9% vs. 7.4%) than for non-LGBTQ youth.

### **Legal and Legislative Momentum toward Equality**


In the United States, the justice system is comprised of entities that are intended to keep citizens safe and to enforce the rights that are afforded to citizens through the Constitution. The courts provide a forum through which civil, family, and criminal legal matters may be resolved. Unfortunately, the laws that govern these legal matters are sometimes flawed in that they do not benefit each demographic equally. Biased judges may implement biased interpretations and order biased enforcements of the law for individuals in stigmatized groups (i.e., ethnic minority). These interpretations and enforcements have lasting impacts on the individual, and sometimes, on the entire demographic<sup>[39]</sup>. The importance of the courts in the United States lies within its power to affect social statuses and change the context of cultural acceptance for marginalized groups.

Fortunately, state and nationwide legal developments related to LGBTQ rights have provided hope that the momentum toward equality is building. The past five years have hosted dramatic shifts in the rights and protections available to LGBTQ people. In 2009, Barack Obama signed an act that added sexual

orientation and gender identity to the hate/bias crime laws. As of January 2014, 17 states had passed some type of marriage equality legislation; recognizing same-sex marriages. Only three states had legislation in place prior to 2009. The remaining 14 states passed their legislation within the five years between 2009 and 2014. President Barack Obama has publicly announced his support of marriage equality and the U.S. Supreme Court ruled that a key part of the Defense of Marriage Act (prohibiting legal same-sex marriage) was unconstitutional. In 2012, the EEOC ruled that discrimination according to transgender identity equated to sex discrimination and provided that transgender claimants could now file Title VII employment discrimination lawsuits. Additionally, the EEOC released a document which outlined the steps that employers should take to make sure that the work environment, policies, and benefits are transgender-inclusive. Also in 2012, the [Juror Non-Discrimination Act](#) and the [Jury Access for Capable Citizens and Equality in Service Selection \(ACCESS\) Act](#) were introduced in Congress and in the Senate. These two bills seek to prohibit sexual orientation and gender identity discrimination in jury selection and during jury service. Unfortunately, to date, those bills have not been passed. However, the January 2014 ruling from the 9th Circuit Court of the United States communicates that legal precedent as another way to curb discrimination against lesbian, gay, bisexual, transgender, and queer citizens in the years to come.

The 9th U.S. Circuit Court’s ruling about discrimination against the gay juror signals that tolerance for discrimination against LGBTQ people is decreasing. This ruling also communicates something even more important: the discrimination against LGBTQ people is rampant and severe enough that legal protections must be proscribed. These landmark cases can help to inform the American people that discrimination against LGBTQ people is similar enough to that experienced by people of color and women that judges must include them in the category of protected groups when it comes to equal protection and the law.

For more information on the challenges that LGBTQ people face in America and why legal protections are necessary, take a look at an informative pamphlet on the Human Rights Campaign’s (HRC) site

For more information on how to be a “straight” ally or supporter of LGBTQ people, check out this brief brochure from PLFAG and HRC. 

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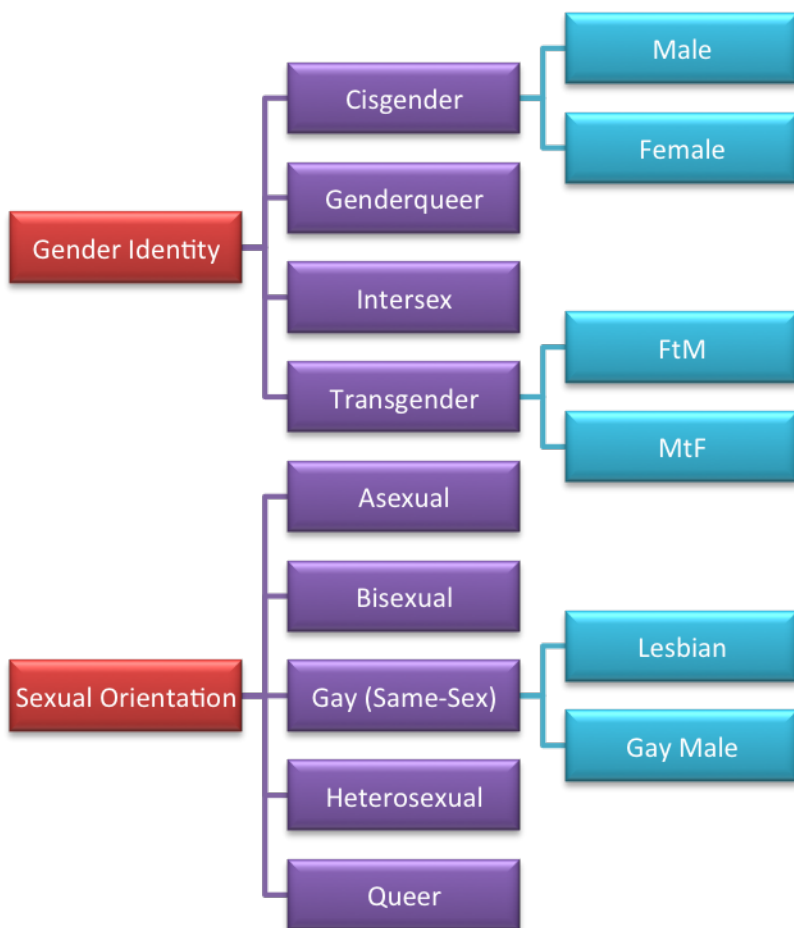
## New Time, New Terms

The terminology or the method of labeling identities is extremely important to LGBTQ people. Describing people in terms that they prefer, however non-traditional these terms are perceived, helps to prevent committing microaggressions or other forms of unintentional disrespect. Below is a list of a few popular terms with the out-dated verbage as well as the currently accepted words. Visit to download GLAAD's media reference guide, which contains a full glossary of appropriate terms as well as some terms to avoid.

Do Not Use These	Use These Instead
Homosexual	Lesbian/Gay
Transvestite	Transgender
Homophobic	Antigay
Hermaphrodite	Intersex
Sexual Preference	Sexual Orientation

## The Basics

LGBTQ is the most common acronym used to describe the sexual orientation, gender identity, and culture of people who identify as lesbian, gay, bisexual, transgender, and queer or questioning. Below is a list of some of the terms that people use to describe their sexual orientation and their gender identity.



## Gender Identity

**Cisgender** – a male or female that identifies with the sex that they were assigned at birth. Cisgender people also identify, to some degree, with the gender norms (excluding sexual orientation) that are associated with their sex.

**Genderqueer** – is used to describe a gender identity when the binary conceptualization of gender, male or female, does not accurately describe an individual's gendered outlook or self-concept.

**Intersex** – describes a variety medical conditions wherein an individual's reproductive anatomy or genitals do not fit the binary definition of male or female.

**Transgender** –an individual whose self-concept and gender identity do not correspond with their natal sex.

**Transgender man/Female to Male (FtM)** – is a man whose sex is female but he lives and identifies as male.

**Transgender woman/Male to Female (MtF)** –is a woman whose sex is male but she lives and identifies as female.

## Sexual Orientation

**Asexual** – refers to the absence of physical or sexual attraction to another human being. An asexual man or woman can have romantic, intellectual, or emotional attractions to other people but they do not engage in physical sexual acts.

**Bisexual** – the sexual orientation that describes either a male or a female who is attracted to both males and females.

**Gay** – Depending on the context, gay can refer to either gay males and/or lesbians. Gay males are self-identified men who are emotionally, physically, romantically, and/or sexually attracted to people who identify as male.

**Lesbian** – a self-identified female who is emotionally, physically, romantically, and/or sexually attracted to other people who identify as female.

**Heterosexual** –an individual who identifies as either male or female (can be cisgender, FtM, or MtF) and is attracted to individuals of the opposite sex.

**Queer** - is an umbrella term that is used to describe an individual's self-concept of their sexual orientation identity.

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