



City of Bloomington
Common Council

Legislative Packet

Regular Session

05 April 2006

Office of the Common Council
P.O. Box 100
401 North Morton Street
Bloomington, Indiana 47402

812.349.3409

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Packet Related Material

Memo

Agenda

Calendar

Notices and Agendas:

City Vision 2006

Legislation for Final Action:

None

Legislation and Background Material for First Reading:

Ord 06-07 To Amend Title 2 Entitled “Administration And Personnel” - Re: Amending Chapter 2.21 Entitled “Department of Law” to Include “Gender Identity” as a Protected Class

- BMC 2.21 (Department of Law) with Changes Highlighted; Minutes of the Human Rights Commission Meeting in September, 2005; *Transgender Americans: A Handbook for Understanding* (from the Human Rights Campaign Foundation); List of Web Sources

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Minutes from Regular Session:

None

Memo

One Ordinance Ready for Introduction on Wednesday, April 5th

There are no items slated for final action and only one item ready for introduction at the Regular Session next week. That item is **Ord 06-07**, which adds “gender identity” as a protected class in the City’s human rights ordinance. It is summarized below and included in this packet.

First Readings – Ord 06-07 – Amending Chapter 2.21 (Department of Law) By Adding “Gender Identity” as a Protected Class in the Human Rights Ordinance

Ord 06-07 is co-sponsored by Councilmembers Sabbagh and Sturbaum. The ordinance amends the City’s human rights ordinance (found in BMC 2.21 under the title of “Department of Law”) by defining gender identity and including it as a protected class in the same manner as discrimination based upon sexual orientation. The purpose of the ordinance is to promote respect for a person’s gender identity and discourage discrimination in the event one’s gender identity or expression does not conform to sexual stereotypes. This ordinance will join ordinances from 78 cities and counties, statutes from nine states, and policies from 82 Fortune 500 corporations and 37 colleges and universities prohibiting discrimination on the basis of gender identity.¹

Why Protect Gender Identity? Sex and Gender: The Difference & Diversity

The Kinsey Institute was kind enough to provide the Council Office with some research literature on sex and gender, including a book by Holly Devor, *Gender Blending: Confronting the Limits of Duality*.² In the book, Devor dispels “the belief shared by most members of society, that there are two and only two sexes (female and male); that every person ... must be either one or the other; and that one cannot be both male and female, cannot be neither male or female, and cannot change sex without the aid of surgery...[and] that there are two and only two genders (girls/women and boys/men), and that whatever a woman does will somehow have the stamp of femininity on it, while whatever a man does will likewise bear the imprint of masculinity.”³ Devor writes, “Not all individuals in society fit within the [culturally-expected] patterns that presume that females will become girls and then women, and that males will become boys and then men. A small but significant number of people fall outside of the standard formula. Not all males are masculine enough to entirely satisfy the gender role demands of social stereotypes, nor are all females feminine enough to do so.”⁴

Advocates for gender identity protection seek acknowledgement of this diversity. As explained in attached publication of the Human Rights Campaign Foundation, “transgender” is often used as an umbrella term to describe “a broad range of

¹ Human Rights Campaign Foundation Database -- http://www.hrc.org/Template.cfm?Section=Search_the_Database&Template=/CustomSource/WorkNet/srch.cfm&searchtypeid=5&searchSubTypeID=1

² Devor, Holly, *Gender Blending: Confronting the Limits of Duality*. (Bloomington, IN: IU Press 1989).

³ *Id.* at vii.

⁴ *Id.*

people who experience and/or express their gender differently from what most people expect – either in terms of expressing a gender that does not match the sex listed on their original birth certificate, or physically changing their sex. It is [a]...term that includes people who are transsexual, cross-dressers or otherwise gender non-conforming.”⁵ Included under this umbrella are: transsexuals – a person who has changed, or is in the process of changing, his or her physical sex to conform to his or her internal sexes of gender identity; cross-dressers – people who wear the clothing and/or accoutrements that are considered by society to correspond to the “opposite sex.” Further examples of this diversity include: gender non-conforming individuals – people who are not transsexuals or cross-dressers, but who still express a non-standard gender identity; and intersexed individuals – people who are born with sex chromosomes, external genitalia or an internal reproductive system that is not considered “standard” for either male or female.⁶ These are just a handful of examples of gender identity diversity; further information can be found at the Kinsey Institute and the list of websites provided in this packet.

Although the Bloomington Human Rights Commission has received only a few reports of gender identity discrimination, a 2003 report from the Transgender Law Center and the National Center for Lesbian Rights indicates that transgender people experience the following rates of discrimination: employment - 49%; public accommodation - 38%; housing - 32% and health care - 31%.⁷

Current Policy and Practice of the City

The City has had a Human Rights Commission (the Commission) for over 40 years. For most of that time, the Commission has declared that equal education and employment opportunities, equal access to and use of public accommodations, and equal opportunity for the acquisition of real estate are civil rights shared by all citizens of the community. Under BMC §2.21.020, the denial of these rights to persons because of race, religion, color, sex, national origin, ancestry, disability, and sexual orientation are considered contrary to the principles of freedom and the policy of the City, and are declared to be discriminatory practices. The purpose of these policies, as a whole, is to promote equal opportunity without regard to those eight protected classes and to protect citizens from unfounded charges of discrimination.

⁵ *Transgender Americans: A Handbook for Understanding* (2006)

⁶ *Transgender issues in the Workplace: A Tool for Managers*, Human Rights Campaign Foundation, p.5 (2004).

⁷ Trans Realities (August 2003) - <http://www.nclrights.org/publications/transrealities0803.htm>

In the course of implementing these policies, the Commission educates the public about the importance of providing equal opportunity and respecting the diversity of our population, collects data on the incidents of discriminatory practices, and is empowered, in most cases, to hear and resolve complaints of discriminatory practices. Because of our interpretation of the limited delegation of powers under the home rule statute, the ordinance provides for the mandatory adjudication of complaints for the seven classes explicitly set forth in the state Civil Rights Statute - race, religion, color, sex, national origin, ancestry, and disability. (I.C. §22-9-1-12.1 et al) Mandatory adjudication occurs when the Commission uses its powers to compel the reluctant respondent to answer the complaint, defend itself at a hearing, and if determined by the Commission, rectify the wrong through changes in practice and the payment of damages.

The one locally-protected class that does not appear in the Civil Rights Statute is “sexual orientation.” Given that absence, the Code provides for a voluntary -- rather than compulsory -- resolution of complaints of discriminatory practices based upon sexual orientation. As a result of a decision made at the time sexual orientation was added to the Code in 1993, the Code does not list sexual orientation on the list of protected classes covered in the affirmative action plans required of entities contracting with the City in amounts over \$10,000.

History and Nature of the Proposal

The outline of the ordinance largely follows that proposed by the Commission in September 2005. At the time the Commission made its recommendation, the Commission Attorney recommended that instead of an ordinance change, complaints of gender identity discrimination should be pursued under the fully-protected category of sex discrimination in order to employ the fully-enforceable remedies accorded that class. However, the Commission and other advocates for gender identity inclusion argued that amending the Code sends an important public message. First, inclusion points out that gender identity warrants protection. Second, it educates the public about this form of discrimination. Third, codification assures that protection of gender identity is consistent from one City Administration to the next. At the request of a number of Council members, the Council Office reviewed the proposal as well as the law regarding gender identity, and recommended additional changes (noted below). These changes are supported by gender identity advocates, including the Commission. On March 27, 2006, the Commission voted to approve these changes and recommended their enactment by the Common Council.

These changes are briefly noted below:

Defining Gender Identity. The definition of “gender identity” proposed in this ordinance is the same as found in many other ordinances, statutes, and policies. Before explaining the definition, it would be worthwhile to differentiate between “sex,” “gender,” and “gender identity.” Sex relates to the biological attributes and gender relates to the social attributes of maleness and femaleness. Gender identity refers to a person’s psychological identification as a male or female. The definition of “gender identity” acknowledges, in particular, that a person’s gender identity may differ from the person’s sex as assigned at birth. The definition also encompasses someone’s perception of another person’s “gender identity, so that acts by someone who discriminates against a person based upon their own perceptions of the person’s gender identity, would be considered discriminatory practices. The full definition is as follows:

“Gender identity” means a person’s actual or perceived gender-related attributes, self-image, appearance, expression or behavior, whether or not such characteristics differ from those traditionally associated with the person’s assigned sex at birth.

Adding Gender Identity as Another Protected Class in the Same Category as Sexual Orientation. The ordinance adds the term “gender identity” to BMC 2.21 everywhere the term “sexual orientation” appears. This means the Commission will educate the public about gender identity discrimination, gather and report incidents of this form of discriminatory practice, and offer to resolve complaints on a voluntary basis.

Filing of Complaints. The ordinance also allows complaints of discrimination based upon gender identity, sexual orientation, or both, to be pursued as forms of sex discrimination in the event the Commission Attorney concludes that the facts of the case and state of the law warrant it and the complainant agrees. Arguments for including these forms of discrimination as a form of sex discrimination flow from the opinion of the U.S. Supreme Court in *Price Waterhouse v Hopkins*, 490 U.S. 228 (1989). Although that case dealt with the definition of sex in a federal anti-discrimination statute (Title VII of the Civil Rights Act of 1964), it is valuable in framing the definition of sex as the term appears in state and local civil rights law. It dealt with a female employee who performed as well or better than her peers, but was held back because her manner was more masculine than her supervisors preferred. The court concluded that holding employees to this form of sexual stereotype was an unlawful form of sexual discrimination.

While some courts have found that gender identity discrimination is a form of sex-stereotyping, and, hence, a form of sex discrimination, no court has yet held discrimination on the basis of sexual orientation is a form of sex discrimination. Should the law change, this ordinance gives the Commission Attorney the ability to pursue a complaint of sexual orientation discrimination as a form of sex discrimination when the facts of the case warrant it. It also authorizes the Commission Attorney to allow a claim of sex discrimination as well as gender identity or sexual orientation discrimination to be stated in one complaint.

Other Minor Changes. The ordinance also corrects some internally inconsistent references in the Section 2.21.030 – Definitions. These references now correctly cite the definition of “state agency.”

Practical Concerns and Possible Solutions

Proposals to recognize and protect gender identity are often faced with questions about the use of restrooms and locker rooms, and the fear that there will be an increase of cross-dressing in the workplace. Fortunately, these issues have been examined and discussed by the many jurisdictions and employers who have enacted gender identity anti-discrimination provisions. The paragraphs below discuss and offer possible solutions to the issues surrounding use of restrooms and locker rooms, and allay fears regarding an increase of cross-dressing in the workplace.

Bathrooms. A common concern connected with the protection of gender identity is that females will have to share bathrooms with males. This ordinance values a person’s gender identity and encourages employers and proprietors to accommodate the gender identity of their work force and users of their services.

The bathroom issue is usually dealt with on a pragmatic, case-by-case basis. For example, some employers have provided unisex bathrooms, some have provided a private bathroom for a transgender person, some have designated a private bathroom for the person(s) uncomfortable with those who are transgender, and others have worked out arrangements whereby a privacy sign is posted on a multiple-stall, sex-segregated bathroom. Whatever the individual solution, this change to the human rights ordinance encourages employers to work with employees to find a solution respectful of one’s gender identity.

According to one expert we consulted, instead of creating new problems regarding bathroom use, this ordinance will actually help solve some existing ones. Notably, people are *already* using the restroom of the gender with which they identify. The ordinance will help prevent the obvious disruptions and problems that arise when a person is required to use a bathroom inappropriate to her/his gender identity (e.g., when transgender women are forced to share bathrooms with men, or transgender men are forced to share bathrooms with women). Furthermore, the ordinance will help members of the community better understand gender identity and encourage employers to work with employees on arriving at a solution. As in other jurisdictions, it is likely that the Bloomington Human Rights Commission will issue compliance guidelines to help employers and members of the public work out solutions.⁸

Locker rooms. In circumstances where nudity is unavoidable, the Transgender Law Center recommends that basic steps such as the installation of curtains be taken in order to create the minimal amount of privacy needed to maintain the comfort and safety of all people using facilities. Such accommodations may include: (A) use of a private area within the public area (a bathroom stall with a door, an area separated by a curtain, an office in the locker room), (B) a separate changing schedule in the private area (either utilizing the locker room before or after the others) and/or (C) designating a space as gender neutral.⁹

On Cross-Dressing. Opposition to cross-dressing in the workplace is perhaps the most commonly-voiced objection to codifying non-discrimination protection on the basis of gender identity. Here, the worry appears to be that providing protection for gender identity will encourage more people to cross-dress in the workplace. However, as mentioned earlier, 87 jurisdictions (consisting of millions of people) have already extended their local non-discrimination ordinances or statutes to cover gender identity or expression. We spoke to Christopher Dailey, Director of the Transgender Law Center, about this issue. According to Chris, the argument is really a red herring – there is no evidence that such protection leads to any increase in the number of employees who cross-dress on the job. Employers in jurisdictions that have passed similar ordinances have not reported or complained of any such increase in cross-dressing, and human rights departments in those jurisdictions have not been inundated with complaints from cross-dressing

⁸ For example, see compliance guidelines issued by: New York City http://www.nyc.gov/html/cchr/pdf/trans_guide.pdf and San Francisco, CA http://www.sfgov.org/site/sfhumanrights_page.asp?id=6274.

⁹ These recommendations were issued as guidance to schools: <http://www.transgenderlaw.org/resources/tlcschools.htm>

employees. The City of Minneapolis has had a gender identity inclusive non-discrimination law since 1975, and there has been no influx of cross-dressers into the workplaces in that jurisdiction.

As pointed out by the Indiana Transgender Rights Advocacy Alliance:

Like non-transgendered people, transgendered people simply want to go to work in clothing that is not at odds with their gender identity. Nothing in [this ordinance] would prevent an employer from enforcing a written dress policy. This legislation simply means that employees may dress in the type of professional clothing that is both consistent with an employer's dress policy and which conforms to their gender identity.

http://www.incoalition.org/gender_identity_fact_sheet.php

It is worth noting that the ordinance prohibits discrimination based on gender identity – it is not a general “appearance discrimination” statute. Nothing in the ordinance precludes an employer from setting dress codes for the employees at work. Instead, employees will be able to dress consistently in clothing appropriate to their gender identity.

**NOTICE AND AGENDA FOR
COMMON COUNCIL REGULAR SESSION
7:30 P.M., WEDNESDAY, APRIL 5, 2006
COUNCIL CHAMBERS
SHOWERS BUILDING, 401 NORTH MORTON**

I. ROLL CALL

II. AGENDA SUMMATION

III. APPROVAL OF MINUTES FOR: None

IV. REPORTS FROM:

- 1. Councilmembers**
- 2. The Mayor and City Offices**
- 3. Council Committees**
- 4. Public**

V. APPOINTMENTS TO BOARDS AND COMMISSIONS

VI. LEGISLATION FOR SECOND READING AND RESOLUTIONS

None

VII. LEGISLATION FOR FIRST READING

1. Ordinance 06-07 To Amend Title 2 Entitles "Administration and Personnel"- Re: Amending Chapter 2.21 Entitled "Department of Law" to Include "Gender Identity" as a Protected Class

VIII. PRIVILEGE OF THE FLOOR (This section of the agenda will be limited to 25 minutes maximum, with each speaker limited to 5 minutes)

IX. ADJOURNMENT

City of
Bloomington
Indiana

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Office of the Common Council
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To: Council Members
From: Council Office
Re: Calendar for the Week of April 3-7, 2006
Date: March 31, 2006

Monday, April 3, 2006

5:00 pm Redevelopment Commission, McCloskey
5:00 pm Utilities Service Board, IU Research Park-North Showers, 501 N. Morton Street Room 210
5:30 pm Bicycle and Pedestrian Safety Commission Work Session, Hooker Room

Tuesday, April 4, 2006

1:30 pm Development Review Committee, McCloskey
4:30 pm Monroe County Solid Waste District Citizen Advisory Council, Kelly
5:30 pm Bloomington Public Transportation Corporation, Transportation Center 130 W. Grimes Lane
4:30 pm Board of Public Works, Council Chambers
6:00 pm Sister Cities, Hooker Room
7:30 pm Telecommunications Council, Council Chambers

Wednesday, April 5, 2006

12:00 pm Bloomington Urban Enterprise Association, McCloskey
7:30 pm Common Council Regular Session, Council Chambers

Thursday, April 6, 2006

5:30 pm *City Vision 2006*, Council Chambers
5:00 pm Arden Place Traffic-Calming Meeting, Hooker Room

Friday, April 7, 2006

1:30 pm Metropolitan Planning Organization Technical Advisory and Policy Committees, McCloskey

Saturday, April 8, 2006

7:00 am Bloomington Community Farmers' Market, Showers Common



City of Bloomington
Office of the Common Council

MEETING NOTICE

Members of the Bloomington Common Council are invited to attend the Mayoral address, *City Vision 2006*, Thursday, April 6, 2006, 5:30 p.m., Council Chambers, City Hall, 401 North Morton.

Because a quorum of the Council may be present, this event may constitute a meeting of the Common Council under Indiana Open Door Law. This notice is intended to inform the public that this meeting will occur and is open for the public to attend, observe and record what transpires.

Dated & Posted: Friday, March 31, 2006

401 N. Morton Street Bloomington, IN 47404

City Hall

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ORDINANCE 06-07

TO AMEND TITLE 2 ENTITLED “ADMINISTRATION AND PERSONNEL”

**Re: Amending Chapter 2.21 Entitled “Department of Law”
to Include “Gender Identity” as a Protected Class**

- Whereas, the City of Bloomington seeks to protect its citizens in the enjoyment of civil rights and to promote mutual understanding and respect among all who live and work within the City; and
- Whereas, prejudice, intolerance and discriminatory practices directly and profoundly threaten the rights and freedom of City of Bloomington residents; and
- Whereas, the City of Bloomington has passed ordinances to protect the civil rights of those who live and work within the City, including the prohibition of discrimination based on sex and sexual orientation; and
- Whereas, despite these protections, there are still citizens who are denied their civil rights because their gender identity, appearance or behavior differs from that traditionally associated with their sex at birth; and
- Whereas, for these reasons, the City of Bloomington Human Rights Commission recommended that the Common Council amend the municipal code in order to include “gender identity” as a protected class and provide for the remediation of those complaints in the same voluntary manner as complaints based upon sexual orientation; and
- Whereas, in *Price Waterhouse v. Hopkins*, the U.S. Supreme Court ruled that sex stereotyping is a form of sex discrimination prohibited by the 1964 Civil Rights Act; and
- Whereas, while the Supreme Court has made this determination, the Court has not ruled on whether discrimination based upon gender identity or sexual orientation are forms of sex discrimination; and
- Whereas, the lower courts disagree whether gender identity discrimination is a form of sex discrimination and no court has held that sexual orientation discrimination is a form of sex discrimination; and
- Whereas, the City looks to interpretations of the 1964 Civil Rights Act in interpreting State and local civil rights law; and
- Whereas, the City of Bloomington intends to provide the greatest level of protection possible to those who are discriminated against based upon either their gender identity or sexual orientation, or both; and
- Whereas, § I.C. 22-9-1-12.1(b) specifically authorizes cities to create ordinances to effectuate within their jurisdiction the State’s public policy to provide equal education and employment opportunities and equal access to public conveniences and accommodations, and acquisition through purchase or rental of real property, including but not limited to housing, and to eliminate segregation or separation based solely on race, religion, color, sex, disability, national origin or ancestry;

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF BLOOMINGTON, INDIANA:

SECTION 1. Section 2.21.020 entitled “Public policy and purpose” shall be amended by deleting the phrase “race, religion, color, sex, national origin, ancestry, sexual orientation or disability” and replacing it with the phrase “race, religion, color, sex, national origin, ancestry, sexual orientation, gender identity, or disability” wherever it appears in the section.

SECTION 2. Part (10) of Section 2.21.030 entitled “Definitions” shall be amended by inserting the phrase “, gender identity” after the term “sexual orientation” wherever it appears in this section.

SECTION 3. Part (11) of Section 2.21.030 entitled “Definitions” shall be amended by striking the term “(24)” and replacing it with the term “(25)”.

SECTION 4. Part (13) of Section 2.21.030 entitled “Definitions” shall be amended by striking the term “(24)” and replacing it with the term “(25)”.

SECTION 5. Part (26) of Section 2.21.030 entitled “Definitions” shall be inserted and shall read as follows:

(26) “Gender identity” means a person’s actual or perceived gender-related attributes, self-image, appearance, expression or behavior, whether or not such characteristics differ from those traditionally associated with the person’s assigned sex at birth.

SECTION 6. Section 2.21.080 entitled “Educational program” shall be amended by adding the term “gender identity,” after the term “sexual orientation” so that the section now reads:

2.21.080 Educational Program

In order to eliminate prejudice among the various groups in the city and to further goodwill among such groups, the commission may prepare educational programs designed to emphasize and remedy the denial of equal opportunity because of a person's race, religion, color, sex, national origin, ancestry, sexual orientation, gender identity, or disability, its harmful effects, and its incompatibility with the principles of equality.

SECTION 7. Section 2.21.140 entitled “Hate crime statistics” shall be amended by adding the term “gender identity,” after the term “sexual orientation” so that the section now reads:

2.21.140 Hate crime statistics.

The Bloomington Human Rights Commission may collect data and issue reports on the incidence of hate crimes in the city. Hate crimes include verbal or physical abuse directed at individuals or groups because of their race, sex, color, disability, age, sexual orientation, gender identity, ancestry, religion or national origin.

SECTION 8. Section 2.21.150 entitled “Complaints of sexual orientation discrimination” shall be amended by: (a) inserting the phrase “and gender identity” after the term “sexual orientation” in the title; (b) inserting the phrase “gender identity, or both” after the term “sexual orientation” in the first sentence; (c) inserting the word “typically” after the phrase “the Commission’s authority shall” in the first sentence; and (d) inserting the following second sentence “However, the Commission attorney may also, with the consent of the complainant, pursue complaints of sexual orientation discrimination, gender identity discrimination, or both, as forms of sex discrimination if warranted by the circumstances and the state of the law.” The entire section shall now read as follows:

2.21.150 Complaints of sexual orientation and gender identity discrimination.

In complaints of discrimination on the basis of sexual orientation, gender identity, or both, the Commission's authority shall typically be limited to voluntary investigations and voluntary mediation. However, the Commission attorney may also, with the consent of the complainant, pursue complaints of sexual orientation discrimination, gender identity discrimination, or both, as forms of sex discrimination if warranted by the circumstances and the state of the law.

SECTION 9. The term “gender identity” shall also be inserted in the title of Section 2.21.150 as it appears in the table of contents at the beginning of Chapter 2.21 (Department of Law).

SECTION 10. If any section, sentence or provision of this ordinance, or the application thereof to any person or circumstances shall be declared invalid, such invalidity shall not affect any of the other sections, sentences, provisions, or applications of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

SECTION 11. This ordinance shall be in full force and effect from and after its passage and signing by the Mayor.

PASSED AND ADOPTED by the Common Council of the City of Bloomington on the _____ day of _____, 2006.

CHRIS STURBAUM, President
Bloomington Common Council

Attest:

REGINA MOORE, Clerk
City of Bloomington

Presented by me to the Mayor of the City of Bloomington, Indiana, this _____ day of _____, 2006.

REGINA MOORE, Clerk
City of Bloomington

Signed and approved by me, the Mayor of the City of Bloomington, Indiana, this _____ day of _____, 2006.

MARK KRUZAN, Mayor
City of Bloomington

SYNOPSIS

This ordinance is co-sponsored by Councilmembers Sabbagh and Sturbaum. It amends Chapter 2.21 of the Bloomington Municipal Code entitled "Department of Law" to recognize "gender identity" and to protect this class from discriminatory practices. The ordinance does this by adding "gender identity" to the list of protected classes which currently include the following: race, religion, color, sex, national origin, ancestry, sexual orientation, and disability. The term "gender identity" is defined as "a person's actual or perceived gender-related attributes, self-image, appearance, expression or behavior, whether or not such characteristics differ from those traditionally associated with the person's assigned sex at birth." This class will be subject to voluntary remediation in the same manner as a discrimination complaint based upon sexual orientation. However, in regard to both of these classes, the Commission Attorney and complainant may agree to file complaints as forms of sex discrimination if the facts of the complaint and state of the law warrant it. The ordinance also corrects two citations within Section 2.21.030 (Definitions).

~~strike~~ – proposed deletion
bold – proposed addition
▶ -- relevant section

TITLE 2 “DEPARTMENT OF LAW”

AS AMENDED BY ORDINANCE 06-07

Section 1 of Ord 06-07 amends §2.21.020, “public policy and purpose” by adding “gender identity” to the list of protected categories in the Bloomington Human Rights Ordinance.

Section 2 of Ord 06-07 amends § 2.21.030(10) by adding “gender identity” to the prohibited forms of “discriminatory practice.”

Section 3 of Ord 06-07 amends § 2.21.030(11) by correcting the numerical reference to “State agency.”

Section 4 of Ord 06-07 amends § 2.21.030(13) by correcting the numerical reference to “State agency.”

Section 5 of Ord 06-07 inserts a definition of “gender identity” at § 2.21.030(26)

Section 6 of Ord 06-07 amends §2.21.080 “Educational Program” to include “gender identity”.

Section 7 of Ord 06-07 amends §2.21.080 “Hate crime statistics” to include “gender identity”.

Section 8 of Ord 06-07 amends §2.21.150 by adding “Gender identity” to the category of complaints typically to be limited to voluntary investigation and remediation. This section also provides that complaints of gender identity discrimination and sexual orientation discrimination may be pursued as forms of sex discrimination, when warranted by the facts of the complaint and the state of the law.

Section 9 of Ord 06-07 adds gender identity to the title of § 2.21.150 as the section appears in the table of contents of Chapter 2.21.

Title 2 -- ADMINISTRATION AND PERSONNEL

Chapters:

2.02	Boards and Commissions
2.04	Common Council
2.08	Executive Branch
2.09	Board of Public Works
2.10	Department of Public Works—Establishment
2.11	Department of Public Works—Divisions
2.12	Boards, Commissions and Councils
2.13	Plan Commission
2.14	Planning Department
2.15	Advisory Board of Zoning Appeals
2.16	Historical Preservation Commission
2.17	Board of Public Safety
2.18	Bloomington Redevelopment Commission
2.19	Housing and Neighborhood Development
2.20	Bloomington Board of Park Commissioners
2.21	Department of Law
2.22	Employee Services Department

- 2.23 Community and Family Resources
Department
- 2.24 Utilities
- 2.25 Information and Technology Services
Department
- 2.26 Controller's Department
- 2.27 Ordinance Violations Bureau
- 2.28 Bloomington Living Wage Ordinance
- 2.29 (Reserved)
- 2.30 Statutory Boards and Commissions
- 2.31 (Reserved)
- 2.32 Police Collective Bargaining
- 2.33 (Reserved)
- 2.34 Firefighters Collective Bargaining
- 2.44 Airports
- 2.52 Property Sales
- 2.56 Miscellaneous Provisions
- 2.76 Bloomington Public Transportation
Corporation

...

Chapter 2.21 -- DEPARTMENT OF LAW

Sections:

- 2.21.000 Establishment—Appointment of Director.
- 2.21.010 Human Rights Commission—Establishment.
- 2.21.020 Public policy and purpose.
- 2.21.030 Definitions.
- 2.21.040 Appointments.
- 2.21.050 Qualifications.
- 2.21.060 Rules and regulations.
- 2.21.070 Powers and duties.
- 2.21.080 Educational program.
- 2.21.090 Relationship with Civil Rights Commission.
- 2.21.095 Housing discrimination—Definitions.
- 2.21.097 Housing discrimination—Exemptions.
- 2.21.100 Establishment—Division of Risk Management.
- 2.21.110 Administration.
- 2.21.120 Establishment—Risk management committee.
- 2.21.130 Claim settlement.
- 2.21.135 Blanket and individual surety bonds.
- 2.21.140 Hate crime statistics.
- ▶ 2.21.150 Complaints of sexual orientation **and gender identity** discrimination.

2.21.000 Establishment—Appointment of Director.

There is hereby created a Department of Law which shall be responsible for all legal matters pertaining to the City and its executive branch pursuant to statute. The Department of Law shall be directed by the Corporation Counsel. The Corporation Counsel's first deputy shall be the City Attorney. The Corporation Counsel's second deputies shall be Assistant City Attorneys. (Ord. 84-45 § 1, 1984).

2.21.010 Human Rights Commission—Establishment.

There is hereby created within the Department of Law a Human Rights Commission pursuant to Section 2.21.020. (Ord. 83-6 § 2 (part), 1983).

2.21.020 Public policy and purpose.

► It is the policy of the city that it does not discriminate in the provision or implementation of its programs and services on the basis of race, religion, color, sex, national origin, ancestry, sexual orientation, **gender identity**, or disability. It is the public policy of the city to provide all citizens equal opportunity for education, employment, access to public accommodations and acquisition through purchase or rental of real property including but not limited to housing, and to eliminate segregation or separation based on race, religion, color, sex, national origin, ancestry, sexual orientation, **gender identity**, or disability, since such segregation is an impediment to equal opportunity. Equal education and employment opportunities and equal access to and use of public accommodations and equal opportunity for acquisition of real property are hereby declared to be civil rights.

► The practice of denying these rights to persons because of race, religion, color, sex, national origin, ancestry, sexual orientation, **gender identity**, or disability is contrary to the principles of freedom and equality of opportunity and is a burden to the objectives of the public policy of the city, and shall be considered as discriminatory practices. The promotion of equal opportunity without regard to race, religion, color, sex, national origin, ancestry, sexual orientation, **gender identity**, or disability is the purpose of this section.

► It is also the public policy of the city to protect employers, labor organizations, employment agencies, property owners, real estate brokers, builders and lending institutions from unfounded charges of discrimination.

► It is hereby declared to be contrary to the public policy of the city and an unlawful practice to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry into the neighborhood of a person or persons of a particular race, religion, color, sex, national origin, ancestry, sexual orientation, **gender identity**, or disability. (Ord. 02-02 § 1, 2002; Ord. 98-22 § 1, 1998; Ord. 93-28 § 1, 1993; Ord. 83-6 § 2 (part), 1983).

2.21.030 Definitions.

As used in this chapter unless the context clearly requires otherwise:

(1) "Acquisition of real property" means the sale, rental lease, sublease, construction or financing, including negotiations and other activities or procedures incident thereto, of:

(a) Any building, structure, apartment, single room or suite of rooms or other portion of a building, occupied as or designed or intended for occupancy as living quarters; or

(b) Any building, structure, or portion thereof, or any improved or unimproved land utilized, or designed or intended for utilization, for business, commercial, or industrial or agricultural purposes; or

(c) Any vacant or unimproved land offered for sale or lease for any purpose whatsoever.

(2) "Affirmative action" means those acts which the Commission deems necessary to assure compliance with the city human rights ordinance.

(3) "Ancestry" refers to both the country from which a person's ancestors came and the citizenship of a person's ancestors.

(4) "Commission" means the human rights commission hereinafter created.

(5) "Commission attorney" means the city attorney, or such assistants of the city attorney as may be assigned to the commission, or such other attorney as may be engaged by the commission or voluntarily lend his services to the commission.

(6) "Compensation" or "compensatory damages" mean actual damages, except that damages to be paid as a result of discriminatory practices relating to employment shall be limited to lost wages, salaries, commissions or fringe benefits.

(7) "Complainant" means any individual charging on his own behalf to have been personally aggrieved by a discriminatory practice or the commission attorney or a commissioner to the Bloomington human rights commission charging that a discriminatory practice was committed against a person, other than himself, or a class of people in order to vindicate the public policy of the state as defined in Indiana Code 22-9-1-2, and the public policy of the city as defined in Section 2.21.020.

(8) "Complaint" means any written grievance filed by a complainant with the legal department. The original shall be signed and verified before a notary public or another person duly authorized by law to administer oaths and take acknowledgments. Notarial service shall be furnished by the legal department without charge.

(9) "Consent agreement" means a formal agreement entered into in lieu of adjudication.

(10) "Discriminatory practice" means the exclusion of a person by another person from equal opportunities because of race, religion, color, sex, national origin, ancestry, sexual orientation, **gender identity**, or disability; or a system which excludes persons from equal opportunities because of race, religion, color, sex, national origin, ancestry, sexual orientation, **gender identity**, or disability or the promotion or assistance of segregation or separation in any manner on the basis of the above categories; provided, it shall not be a discriminatory practice for an employment agency to refer for employment any individual, or for a joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ any individual in such program on the basis of his religion, sex or national origin in those particular instances where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise; further provided, that it shall not be discriminatory practice for a person to refuse to rent for occupancy as living quarters any space in owner occupied multiple dwelling structure on the basis of sex; provided, further, it shall not be a discriminatory practice for an employer to fail to employ or retain as an employee any person who because of a disability is physically or otherwise unable to efficiently and safely perform, at the standards set by the employer, the duties required by that job; provided, further, it shall not be a discriminatory practice to fail to promote or transfer a person with a disability to another job or occupation after he or she is employed unless, prior to such transfer, such person with a disability by training or experience is qualified for such job or

occupation; provided, further, it shall not be a discriminatory practice for an employer to fail to modify physical accommodations or administrative procedures to accommodate a person with a disability.

▶ (11) “Educational institution” includes all public and private schools and training centers, except that the term does not include any state agency as defined in subsection ~~(24)~~ (25) of this section.

(12) “Employee” includes any person employed by another for wages or salary; provided, that it shall not include any individual employed by his parents, spouse or child.

(13) “Employer” includes any person employing six or more employees within the city, except that the term does not include not-for-profit corporation or association organized exclusively for fraternal or religious purposes; nor any school, educational or charitable religious institution owned or conducted by, or affiliated with, a church or religious institution; nor any

▶ exclusively social club, corporation or association that is not organized for profit; nor the city or any department thereof; nor any state agency as defined in subsection ~~(24)~~ (25) of this section.

(14) “Employment Agency” includes any person undertaking with or without compensation to procure, recruit, refer, or place employees.

(15) “Disabled” means (A) with respect to a person: (i) a physical or mental impairment that substantially limits one or more of the person’s major life activities; (ii) a record of having an impairment described in subdivision (i); or (iii) being regarded as having an impairment described in subsection (i).

(B) The term “disabled” does not include the following: current illegal use of or addiction to a controlled substance (as defined in Section 102 of the Controlled Substances Act (21 U.S.C. 802)), homosexuality, bisexuality, transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, compulsive gambling, kleptomania, pyromania or psychoactive substance use disorders resulting from current illegal use of drugs.

(16) “Labor organization” includes any organization which exists for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment, or for mutual aid or protection in relation to employment.

(17) “Lending institution” means any bank, building and loan association, insurance company, or other corporation, association, firm or enterprise whose business consists in whole or part in making or guaranteeing loans secured by real estate or an interest therein.

(18) “National origin” refers to both the country from which a person came and the citizenship of the person.

(19) “Owner-occupied multiple-dwelling structure” includes only structures in which the owner of the premises actually resides, containing not more than three separate dwelling units, apartments, rooms or portions of the building designed or intended for occupancy as living quarters.

(20) “Person” includes one or more individuals, partnerships, associations, organizations, labor organizations, corporations, cooperatives, legal representatives, trustees in bankruptcy, trustees, receivers, any subdivisions of the state, and other organized groups of persons.

(21) “Public accommodation” means any establishment which offers its services, facilities, or goods to the general public.

(22) “Respondent” means one or more persons against whom a complaint is filed under this chapter, and who the complainant alleges has committed or is committing a discriminatory practice.

(23) “Sex” as it is applied to segregation or separation in this chapter, shall apply to all types of employment, education, public accommodations, and housing; provided, that it shall not be a discriminatory practice to maintain separate restrooms or dressing rooms; and that it shall not be an unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify or refer for employment any individual, for a labor organization to classify its members or to classify or refer for employment any individual, or for any employer, labor organization, or joint labor management committee controlling apprenticeship or other training or retraining programs to admit or employ any other individual in any such program on the basis of sex in those certain instances where sex

is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise; and that it shall not be a discriminatory practice for a private or religious educational institution to continue to maintain and enforce a policy of admitting students of one sex only.

(24) "Sexual orientation" means an individual's identity or practice as a lesbian woman, gay male, bisexual person or heterosexual person, whether actual or perceived.

(25) "State agency" means every office, officer, board, commission, council, department, division, bureau, committee, fund, agency, and without limitation by reason of any enumeration herein, every other instrumentality of the state of Indiana, every hospital, every penal institution and every other institutional enterprise and activity of the state of Indiana, wherever located; the universities supported in whole or in part by state funds; and the judicial department of the state of Indiana. "State agency" does not mean counties, county departments of public welfare, cities, towns, townships, school cities, school towns, school townships, school districts or other municipal corporations, political subdivisions, or units of local government.

► (26) **"Gender identity" means a person's actual or perceived gender-related attributes, self-image, appearance, expression or behavior, whether or not such characteristics differ from those traditionally associated with the person's assigned sex at birth.**

(Ord. 98-22 §§ 2, 3, 1998; Ord. 93-28 §§ 2, 3, 1993; Ord. 85-67 § 2, 1985; Ord. 83-6 § 2 (part), 1983).

2.21.040 Appointments.

The seven members of the Human Rights Commission shall be appointed four by the Mayor, three by the Common Council. (Ord. 83-6 § 2 (part), 1983).

2.21.050 Qualifications.

Members of the Human Rights Commission shall be representative of the community and shall be city residents. (Ord. 83-6 § 2 (part), 1983).

2.21.060 Rules and regulations.

The Commission may adopt rules and regulations, both procedural and substantive, to effectuate the purpose of this chapter and to make more specific the procedures deemed necessary for orderly and equitable compliance with this section.

New rules, regulations, and guidelines may be adopted by the Commission after a public hearing by a majority vote of the Commission.

The rules, regulations, and guidelines of the Commission shall be available to the public at the office of the legal department. (Ord. 83-6 § 2 (part), 1983).

2.21.070 Powers and duties.

The commission shall have the following powers and duties:

(1) To create subcommittees and advisory committees as in its judgment will aid in effectuating the purpose of this section.

(2) To issue such publications and such results of investigation and research as in its judgment will tend to minimize or eliminate discrimination because of race, religion, color, sex, national origin, ancestry or disability.

(A) To determine jointly with the legal department whether probable cause exists to believe that discrimination in violation of Bloomington Municipal Code Section 2.21.010 et seq. occurred. A probable cause commissioner shall be assigned to each complaint filed on the date it is filed and shall participate jointly with the legal department and assist in the investigation of the complaint. The legal department shall make a written recommendation of cause or no cause setting forth relevant facts and applicable legal authority and submit it to the designated probable cause commissioner. The commissioner shall review

the legal department's recommended finding, and shall make a written determination of cause or no cause setting forth the relevant facts and applicable law. The probable cause commissioner shall follow applicable legal standards as set forth by the legal department in making the determination.

(3) To schedule complaints for public hearings upon a determination of probable cause. When the recommendation after the investigation is no probable cause, the complainant shall be furnished a copy of the findings of fact and recommendations and shall be given ten days to make a written request, with the reasons therefore, to the chairperson of the commission for review of the finding. Upon the receipt of the request for review, the chairperson or their designee shall review the request and the decision of the reviewing commissioner regarding probable cause shall be final. Whenever a commissioner reviews a decision at the request of a complainant, such commissioner shall be disqualified from any further participation in that case, except as a witness at a public hearing on the complaint. Complaints of discrimination shall be received and investigated by the legal department. To be acceptable to the legal department, a complaint shall be sufficiently complete so as to reflect properly the name and address of the complainant; the name and address of respondent against whom the complaint is made; the alleged discriminatory practice and a statement of particulars thereof; the date or dates and places of the alleged discriminatory practice; if it is of a continuing nature, the dates between which said continuing acts of discrimination are alleged to have occurred; and a statement as to any other action, civil or criminal, instituted in any other form based upon the same grievance as is alleged in the complaint; together with a statement as to the status or disposition of such other action. No complaint shall be valid unless filed within one-hundred-eighty days from the occurrence of the alleged discriminatory practice, or from the date of the termination of a published and meaningful grievance procedure provided by a respondent employer or labor union; provided, that complaints filed only with the Equal Employment Opportunity Commission shall be deemed to have been filed simultaneously with the legal department for purposes of measuring the one-hundred-eighty-day limitation, as long as the complaint is otherwise within the legal department's jurisdiction; provided further, that any person who files a complaint with the Indiana Civil Rights Commission shall have no recourse to the city legal department concerning any of the matters alleged in such complaint; provided, further, that the legal department shall have no jurisdiction over the state or any of its agencies, or over the city or any of its departments. After a complaint is scheduled for a public hearing, the legal department shall make reasonable efforts to conciliate all issues raised during the investigation of the case.

(4) To prevent any person from discharging, expelling, or otherwise discriminating against any other person because he filed a complaint or testified in any hearing before the commission or in any way assisted in any matter under investigation.

(5) To issue a temporary emergency order against any person requiring such person to do an act preserving the possibility of a remedy for a complaint or to refrain from doing an act damaging the possibility of a remedy during the investigation of the complaint; provided, however:

(a) That no emergency order shall be issued unless a time and place for hearing on the temporary order is designated in the order;

(b) That the hearing on the temporary emergency order shall be held within ten days following the issuance of the temporary order, unless contained by the commission at the request of the respondent. At such hearing the complainant shall show that a failure to continue the temporary order would damage his remedy. The commission shall thereupon weigh the comparative hardship to the complainant and respondent and issue a decision continuing or terminating the temporary emergency order, pending final disposition of the complaint. The respondent may waive said hearing without prejudice to his defense of the matters charged in the complaint, in which case the temporary order shall remain in effect pending final disposition of the complaint;

(c) The commission may by rule provide for issuance of its temporary order by a majority of the commission, and it may compel compliance with any such temporary order by bringing in any circuit or superior court for prohibitory or mandatory injunction upon showing that such person is subject to the

court's jurisdiction, resides or transacts business within the county in which the proceeding is brought, and that such injunction is necessary to protect the complainant's rights under this chapter until his complaint is resolved through conciliation or public hearing.

(6) To reduce the terms of conciliation agreed to by the parties in writing, to be called a consent agreement, which the parties and a majority of the commissioners shall sign. When so signed, the consent agreement shall have the same effect as a cease and desist order pursuant to subsection (8) of this section. If the commission determines that a party to the consent agreement is not complying with it, the commission may obtain enforcement of the consent agreement in a circuit or superior court upon showing that the party is not complying with the consent agreement, and the party is subject to the commission's jurisdiction, and resides or transacts business within the county in which the petition for enforcement is brought.

(7) To hold hearings, subpoena witnesses, compel their attendance, administer oaths, take testimony of any person under oath and require the production for examination of all books and papers relating to any matter under investigation or in question before the commission. The commission may make rules governing the issuance of subpoenas by individual commissioners. Contumacy or refusal to obey a subpoena or temporary emergency order issued pursuant to this section shall be a breach of this chapter and such person shall be liable to a penalty therefore, if adjudged by the circuit or superior court, of the payment of a penalty not to exceed three hundred dollars. Each penalty shall be deposited in the general fund of the city; provided, however, that the payment of such penalty by a party shall not impair the commission's ability to grant affirmative relief and compensatory damages to the complainant, should justice so require.

(8) To state its findings of fact after hearing which statement shall be made in a written opinion containing both the findings of fact and the principles of law applied. All written opinions shall be compiled and maintained as public record and, in making decisions, the commission shall give due consideration to its prior decisions which may be applicable. If a majority of the commissioners who hear the case finds that a person has engaged in unlawful discriminatory practice, the commission shall cause to be served on the person an order requiring the person to cease and desist from the unlawful discriminatory practice and requiring such person to take further affirmative action necessary to effectuate the purposes of this section.

If unlawful discrimination is found in the area of employment, an order shall be issued requiring the respondent to take such affirmative action including but not limited to hiring, reinstatement, and upgrading of employees or people deprived of employment, with or without compensatory damages to which the complainants would have been entitled had they not been deprived of equal opportunity; provided, that this subsection shall not be construed to require any employer to modify physical accommodations or administrative procedures accommodate a person with a disability.

If unlawful discrimination is found in the area of housing or acquisition of real property, an order may be issued requiring a respondent to take affirmative action, including but not limited to renting, selling, or leasing to a person deprived of equal opportunity. Compensation for the denial of equal opportunity shall be allowed within the discretion of the Commission.

If unlawful discrimination is found in the area of public accommodation, an order shall be issued requiring respondent to take affirmative action, including but not limited to providing services, goods, or access to property, reinstatement to membership, posting of notice that a facility is a public accommodation, with or without compensatory damages for a complainant's being denied equal opportunity.

If unlawful discrimination is found in the area of education, an order may be issued requiring a respondent to take affirmative action including but not limited to a review and revision of school boundaries, revision of teaching aids, and materials, human relations training for personnel recruitment of minority people for professional staff, with or without compensatory damages to which the complainant would have been entitled except for the denial of equal opportunity.

If upon all the evidence, the commission finds that a person has not engaged in any such unlawful practice or violation of this section, the commission shall state its findings of fact and shall issue and cause to be served on the complainant an order dismissing the said complaint as to such person.

Judicial review of such cease and desist order, or other final order, or other affirmative action or damages as referred to in this chapter may be obtained by filing in the county circuit or superior courts. The scope of review shall be in accordance with the provisions set out in Indiana Code 4-21.5-1 et seq. If no proceeding to obtain judicial review is instituted within thirty days from the receipt of notice by a person that such order has been made by the commission, the commission, if it determines that the person upon whom the cease and desist order has been served is not complying or is making no effort to comply, may obtain a decree of a court for the enforcement of such order in circuit or superior court upon showing that such person is subject to the commission's jurisdiction and resides or transacts business within the county in which the petition for enforcement is brought, or may request the city attorney, commission attorney, or attorney representing the complainant to seek enforcement.

Affirmative Action by City Contractors. All contractors doing business with the city, except those specifically exempted by regulations promulgated by the human rights commission and approved by the common council shall take affirmative action to insure that applicants are employed and that employees are treated during employment in a manner which provides equal employment opportunity and tends to eliminate inequality based upon religion, race, color, sex, national origin, ancestry or disability. Affirmative action shall include but not be limited to the issuance of a statement of policy regarding equal employment and its communication to all personnel involved in recruitment, hiring, training, assignment, and promotion; notification of all employment sources of company policy and active efforts to review the qualifications of all applicants regardless of race, religion, color, sex, national origin, ancestry or disability; recruiting in the minority group community for employees; and establishing an internal system of reporting concerning equal employment, recruiting, hiring, training, upgrading and the like.

Each such contractor shall submit to the human rights commission a written proposal concerning the affirmative action it proposes to take, which proposal must be approved prior to its entering a contract with the city. Said proposal shall be limited to measures similar to those which the city is required to take in its affirmative action with regard to its own employees, as established by the mayor's office and as specified by resolution of the common council.

All contracting agencies of the city or any department thereof shall include in all contracts hereafter negotiated renegotiated by them a provision obligating the contractor to take affirmative action to insure that the applicants are employed and that employees are treated during employment in a manner which provides equal employment opportunity and tends to eliminate inequality based upon race, religion, color, sex, national origin, ancestry or disability.

Such contracts shall provide further that breach of the obligation to take affirmative action shall be a material breach of the contract for which the city shall be entitled, at its option:

- (a) To cancel, terminate, or suspend the contract in whole or in part;
- (b) To declare the contractor or vendor ineligible for further city contracts;
- (c) To recover liquidated damages of a specified sum. (Ord. 98-22 §§ 4, 5, 6, 1998; Ord. 90-23 §§ 1, 2, 1990; Ord. 88-23 §§ 1, 2, 1988; Ord. 85-67 §§ 1 and 3, 1985; Ord. 83-6 § 2 (part), 1983).

2.21.080 Educational program.

In order to eliminate prejudice among the various groups in the city and to further goodwill among such groups, the commission may prepare educational programs designed to emphasize and remedy the denial of equal opportunity because of a person's race, religion, color, sex, national origin, ancestry, sexual orientation, **gender identity**, or disability, its harmful effects, and its incompatibility with the principles of equality. (Ord. 98-22 § 7, 1998; Ord. 93-28 § 4, 1994; Ord. 83-6 § 2 (part), 1983).

2.21.090 Relationship with Civil Rights Commission.

The legal department may enter into a working relationship with the Indiana Civil Rights Commission to perpetuate the mutual objectives set forth in this chapter and the Indiana Civil Rights Law. (Ord. 83-6 § 2 (part), 1983).

2.21.095 Housing discrimination—Definitions.

This section applies only to cases alleging housing discrimination.

(a) Definitions.

(1) “Familial status” means one or more individuals (who have not obtained the age of eighteen years) being domiciled with a parent or another person having legal custody of such individual(s) or the written permission of such parent or other person. The protections against discrimination on the basis of familial status shall apply to any person who is pregnant or in the process of securing legal custody of any individual who has not attained the age of eighteen years.

(2) “Dwelling” means any building, structure, or part of a building or structure, that is occupied as, or designed or intended for occupancy as, a residence by one or more families; or any vacant land which is offered for sale or lease for the construction or location of a building structure or part of a building or structure that is occupied as, or designed or intended for occupancy by one or more families.

(3) “To rent” includes to lease, to sublease, to let or otherwise to grant for consideration the right to occupy the premises not owned by the occupant.

(4) “Discriminatory housing practice” includes: (A) practices prohibited by Section 2.21.030(10) of this code, (B) refusing to rent to an individual or family on the basis of familial status, (C) refusing to allow a tenant with a disability, as defined by Section 2.21.030(15), to make reasonable modifications of the rented premises at the tenant’s expense if such modifications are necessary to afford the tenant full enjoyment of the premises. The landlord may, where it is reasonable to do so, condition permission for the modification(s) on the tenant’s agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted. The landlord may require the tenant to acquire any necessary permits and to perform the modifications in a workmanlike standard, (D) Refusing to make reasonable accommodations in rules, policies, practices or services, when such accommodations may be necessary to afford a tenant with a disability, as that term is defined by Section 2.21.030(15), equal opportunity to use and enjoy a dwelling. (Ord. 98-22 § 8, 1998).

2.21.097 Housing discrimination—Exemptions.

This section applies only to cases alleging housing discrimination.

(a) Nothing in this section requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

(b) Nothing in this section shall prohibit a religious organization, association, or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, nor shall anything in this section prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.

(c) Nothing in this section limits the applicability of any reasonable local, state, or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling.

(d) Nothing in this section regarding familial status apply with respect to housing for older persons, as defined below. As used in this section, “housing for older persons” means housing:

- (1) Provided under any state or federal program that the Secretary of the Federal Department of Housing and Urban Development designed and operated to assist elderly persons (as defined in the state or federal program); or
 - (2) Intended for; and solely occupied by, persons sixty-two years of age or older; or
 - (3) Intended and operated for occupancy by at least one person fifty-five years of age or older per unit if the following requirements are met: (A) the existence of significant facilities and services specifically designed to meet the physical or social needs of older persons, or if the provision of such facilities and services is not practicable, that such housing is necessary to provide important housing opportunities for older persons; and (B) that at least eighty percent of the units are occupied by at least one person fifty-five years of age or older per unit; and (C) the publication of, and adherence to, policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons fifty-five years of age or older.
- (e) Nothing in this section applies to the following:
- (1) The sale or rental of a single-family house sold or rented by an owner if: (A) The owner does not (i) own more than three single-family houses at any one time; or (ii) own any interest in, nor is there owned or reserved on the owner's behalf, under any express or voluntary agreement, title to, or any right to any part of the proceeds from the sale or rental of more than three single-family houses at any one time; and (B) The house was sold or rented without the use of the sales or rental facilities or services of a real estate broker, agent or salesperson licensed under state law.
 - (2) The sale or rental of rooms or units in a dwelling containing living quarters occupied or intended to be occupied by no more than four families living independently of each other if the owner maintains and occupies one of the living quarters as the owner's residence. (Ord. 98-22 § 9, 1998).

2.21.100 Establishment—Division of Risk Management.

There is hereby created a Division of Risk Management which shall be responsible for the implementation of a comprehensive safety/loss prevention program, self-administration of the workers' compensation program, and processing and review of all City insurance-related matters. (Ord. 89-33 § 2 (part), 1989).

2.21.110 Administration.

The Division of Risk Management shall be administered by the Risk Manager who is appointed by the Corporation Counsel, with approval of the Risk Management Committee, and reports to the Corporation Counsel. (Ord. 89-33 § 2 (part), 1989).

2.21.120 Establishment—Risk management committee.

There is created a risk management committee which shall consist of the corporation counsel, city controller, director of employee services, director of utilities, and assistant director of finance/utilities.

The committee shall be convened at least quarterly for the purpose of reviewing claim statistics, and shall serve in an advisory committee to the risk manager in policy and financial decisions, in addition to the approvals of claim settlement authority as defined in Section 2.21.130. The risk manager or his/her designee shall act as the secretary of the committee and shall be responsible for preparing its agendas and providing the committee with all applicable reports and documentation necessary to properly assess matters brought before the committee. (Ord. 97-04 § 7, 1997; Ord. 89-33 § 2 (part), 1989).

2.21.130 Claim settlement.

The Risk Manager is hereby authorized to settle claims for an amount not to exceed five thousand dollars. All claims in excess of five thousand dollars shall be submitted to and approved by the Risk Management Committee prior to payment. (Ord. 89-33 § 2 (part), 1989).

2.21.135 Blanket and individual surety bonds.

(a) The purpose of this section is to authorize the purchase of a blanket bond or crime insurance policy and fix the amount of the surety bond of the city controller.

(b) Pursuant to Indiana Code 5-4-1-18(b), the risk manager is hereby authorized to purchase a blanket bond or a crime insurance policy endorsed to include faithful performance to cover the faithful performance of all employees, commission members, and persons acting on behalf of the city, including employees of the city of Bloomington utilities. The blanket bond or crime insurance policy may include the individual surety bond which must be filed by the city clerk and city controller.

(c) Pursuant to Indiana Code 5-4-1-18(c), the individual surety bond of the city controller is hereby fixed in the amount of three hundred thousand dollars, or such other amount as may hereafter be fixed by amendment to the statute. (Ord. 05-18 § 4, 2005).

2.21.140 Hate crime statistics.

The Bloomington Human Rights Commission may collect data and issue reports on the incidence of hate crimes in the city. Hate crimes include verbal or physical abuse directed at individuals or groups because of their race, sex, color, disability, age, sexual orientation,

▶ **gender identity**, ancestry, religion or national origin. (Ord. 98-22 § 10, 1998; Ord. 90-36 § f, 1990).

▶ 2.21.150 Complaints of sexual orientation **and gender identity** discrimination.

▶ In complaints of discrimination on the basis of sexual orientation, **gender identity, or both**, the Commission's authority shall be limited to voluntary investigations and voluntary mediation.

▶ **However, the Commission attorney may, with the consent of the complainant, pursue complaints of sexual orientation discrimination, gender identity discrimination, or both, as forms of sex discrimination if warranted by the circumstances and the state of the law.** (Ord. 93-28 § 5, 1993).

BLOOMINGTON HUMAN RIGHTS COMMISSION

Minutes of September 26, 2005 Meeting

The Bloomington Human Rights Commission met at 5:30 p.m. on Monday, September 26, 2005, in the McCloskey Conference Room of Showers City Hall. Present at this meeting were commissioners Jeff Harlig, Emily Bowman, Shaunica Pridgen, Carolyn Calloway-Thomas and Byron Bangert. Also present were Sarah Jaramillo, BHRC intern; Barbara E. McKinney, BHRC director; and several members of the public.

Approval of minutes of September 7, 2005 Contract Compliance

Committee Meeting: Bangert moved that the minutes be approved as presented. Bowman seconded. Passed unanimously.

Approval of minutes of July 25, 2005 BHRC Meeting: Calloway-Thomas moved that the minutes be approved as presented. Metz seconded. Passed unanimously.

The BHRC unanimously agreed to rearrange the agenda, discussing gender identity after taking care of other business.

Old Business

Poster update: Bowman said she did not get an email with the current poster draft. She asked for a copy to be sent to her, and she will then ask her friend who has graphics design experience to provide input.

New Business

Election of vice chair: Harlig opened the floor to nominations. Bangert asked who is eligible to serve as vice chair; the commissioners who are not currently officers (Pridgen, Bangert, Metz and Bowman) could serve as vice chair. The commissioners agreed to postpone a vote on this until the next meeting, with the hope that the council vacancy on the BHRC will be filled by then. Calloway-Thomas asked McKinney to find out when the council expects to fill the vacancy.

2006 Meeting Times: After discussion, Bangert moved that the BHRC continue to meet on the fourth Monday of the month, except in December, when the BHRC could meet on December 18 instead of December 25. He also moved that the commission should meet on December 19, 2005, instead of December 26, 2005. Seconded and

passed unanimously. McKinney will notify the council office and will reserve a conference room.

Settlement agreement: McKinney explained that she and Bowman had been working on a case of employment discrimination filed by a Filipina woman. The woman provided services to adults with disabilities. She felt her employer reprimanded her for incidents which would not have led to reprimands for white employees, and she felt her employer did not accommodate her scheduling request when it would have done so for white employees. She quit and filed a complaint. All she asked for was an apology, a neutral reference and fair employment training for the employees. The employer provided documentation showing that it had disciplined white employees for similar incidents and explained why it had not accommodated the complainant's scheduling requests, but was willing to settle on the terms suggested by the complainant. Bangert moved that the settlement be approved; Calloway-Thomas seconded; passed unanimously.

New cases: McKinney said that there could be as many as three new cases in the near future, but none were ready to assign.

Gender identity: Harlig explained the three options he had presented in an email to the commissioners: begin accepting cases of alleged discrimination on the basis of gender identity under the category of sex discrimination; add a definition of gender identity under the category of sex; or, add gender identity as a separate category similar to sexual orientation, with voluntary enforcement. He said the first and second would have legal teeth and the third option would not. McKinney said she was not convinced the second option would have teeth; she said the BHRC has the right to follow precedent set by courts, such as interpreting gender identity discrimination to be a form of sex discrimination, but has no authority to come up with its own definition. Nor does state law give the common council to create its own definition of "sex." Such an amendment would be vulnerable to legal challenge, she said. McKinney said that she had the moral and ethical responsibility to enforce the Bloomington Human Rights Ordinance in the strongest way possible that is legally defensible. She said only Option One met those criteria.

Harlig noted that the BHRC could only recommend amendments to the human rights ordinance; the common council makes the actual amendments.

Calloway-Thomas asked if there was a compelling need to add gender identity as a protected category. McKinney said that she had not

received a huge number of calls about gender identity discrimination over the years, but she had received some, and had given the commissioners information about historical inquiries earlier in the year. She said she had received more questions about sexual orientation discrimination before that amendment passed, and probably more about other categories not protected by current law, such as income level, education level or criminal history. Some people might never have called the BHRC to complain about gender identity discrimination because they knew the BHRC did not have jurisdiction over the issue; it's hard to know. She said that to each person who has been discriminated against on the basis of gender identity, the issue likely is a "compelling" one. She said that the members of the public could probably explain why the issue is compelling to them better than she could. Bowman said that gender identity discrimination does occur and people need help.

Bangert said that he wanted to go on record that he thought it was important to have legal teeth and to have gender identity be specifically included in the ordinance.

Bowman asked if people could file complaints alleging both sex and gender identity discrimination, as people file complaints alleging both race and national origin discrimination. The BHRC would then have legal teeth under the sex discrimination provision. McKinney said that might possibly work, but respondents might argue, with merit, that the BHRC and the council have concluded that sex discrimination and gender identity are not the same thing, by adding gender identity as a separate category, and therefore, how can both be alleged in the same case. Race and national origin are separate, distinct categories. McKinney said that if the BHRC decided on the voluntary option when legally enforceable options are available, it was sending the message that gender identity discrimination was not a serious issue.

Bangert proposed a combination of options two and three, adding "gender identity" to "sex" and adding "gender identity" as a separate category similar to sexual orientation.

Harlig said it was important that there be public notice of the change, that there be political accountability, that the BHRC not use a stealth option. Bangert said that it was important that employers be able to look at the ordinance and know who was protected. McKinney said that very few people, including respondents' attorneys, look at the ordinance. They are more likely to learn about protected categories through newspaper articles, BHRC brochures, etc. She said Option One could be publicized.

Metz said she wanted the language to be included and wanted teeth.

Pridgen said that from what she had learned from talking with people in the transgendered community, they want the language in the ordinance. She said it was important to let the community decide. McKinney said she respects that, but people in the transgendered community who expressed their opinions might not understand the legal pitfalls and might not have had the opportunity to hear all sides of the debate.

Harlig said symbolic protection was better than none. McKinney said that insisting on the symbolic inclusion made no legal sense. She said it would be similar to a person with AIDS wanting to file a case of housing discrimination. She would tell the person he could file a disability discrimination case, and he would say, no, I want to file an AIDS case as it's important to me that AIDS be a protected category. She said she didn't understand why someone would want to file a complaint under a symbolic, toothless category when they could exercise legal rights.

Harlig suggested that gender identity could be added to the ordinance as a category similar to sexual orientation, but the BHRC could announce that it would automatically cross-file any such complaints as also sex discrimination cases pursuant to the Sixth Circuit cases. Jaramillo noted that the cross-filing should not be automatic, as not all cases would meet the elements necessary under the Sixth Circuit cases.

Bree Hartledge, a member of the public, said that not having the words "gender identity" in the ordinance was "not acceptable." She said it would be better not to be voluntary, but if it has to be legally, "so be it." She said she didn't understand why Indiana governors could issue policies against gender identity discrimination but the City of Bloomington could not. McKinney explained that the policies issued by Indiana governors were simply that, policies, not laws, and the policies are not legally enforceable. Any employer can say it won't discriminate on the basis of gender identity, but unless there is a law against it, employees can't sue employers for failing to comply with a policy.

Colin Johnson, a member of the public and a gender studies professor, said that it would be a good to pass the voluntary ordinance and to have a test case. McKinney said that if compliance is voluntary under the law, she couldn't see how someone could sue. A test case would be much more likely under Option 1, which would give local courts a chance to decide if they wanted to follow the Sixth Circuit in extending their interpretation of "sex discrimination" to include "gender identity." Johnson

said that gender identity is not just transgendered issues; it also includes intrasex. McKinney said that people who are intrasex are already protected by the ADA. Johnson said that many people who are intrasex don't consider themselves to have disabilities. Johnson said that he believed Option 3 was the best, as it's both "practical and symbolic." The protection loses something if it's "hidden," he said. He said it was important to include the language so the community was not invisible.

The commissioners reviewed the definition of gender identity that Harlig and Bowman had proposed, modifying it to say, "Gender identity means a person's actual or perceived gender-related attributes, self-image, appearance, expression or behavior, whether or not such characteristics differ from those traditionally associated with the person's assigned sex at birth."

Bowman moved that the BHRC recommend Option 3 to the common council, with the definition cited above. Bangert seconded. Passed unanimously.

Bangert noted that McKinney could give complainants the option to cross-file in appropriate cases.

Members of the public asked who would present this to the council; McKinney said one of the commissioners might need to. Members of the public asked when this would go to the council; McKinney said that would be up to the council.

Meeting adjourned at 6:45.

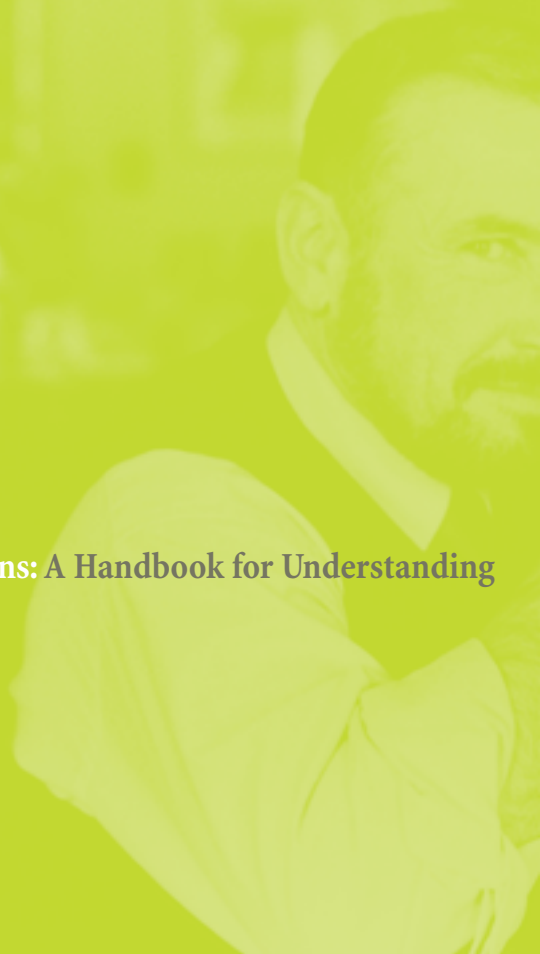
Respectfully submitted,

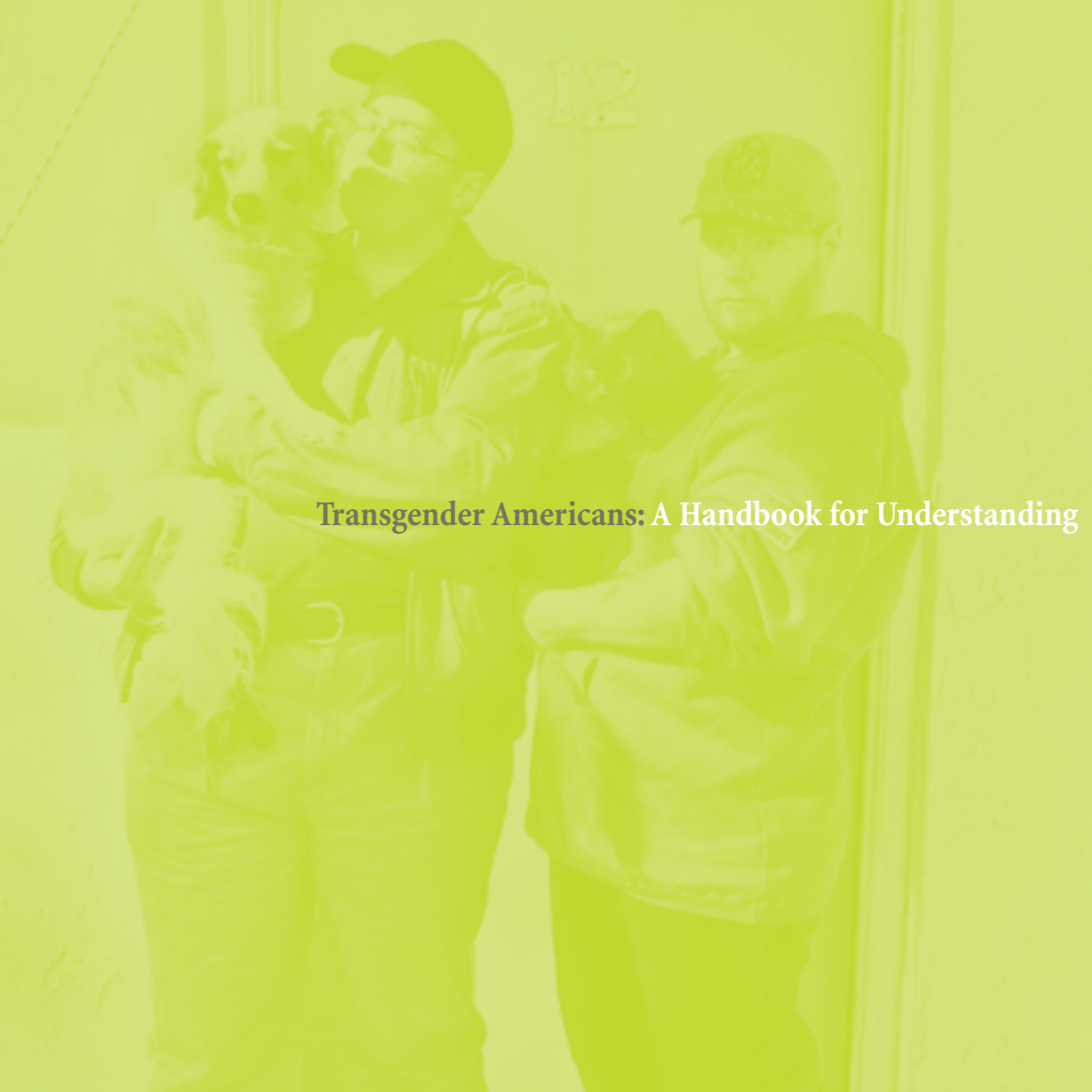
Barbara E. McKinney, BHRC director



HUMAN
RIGHTS
CAMPAIGN

Transgender Americans: A Handbook for Understanding





Transgender Americans: A Handbook for Understanding

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Executive Summary

We hope that readers of *Transgender Americans: A Handbook for Understanding* will find it a useful overview of the issues facing transgender Americans in our society. This handbook aims to help readers become familiar with the range of issues faced by transgender Americans, from the complex process of getting an appropriate birth certificate, to family and parenting issues, to discrimination and hate violence. These issues are not theoretical — they affect real people who are an integral part of our American community.

We start by providing a picture: who transgender people are, how many are simply working to make a life and a living in the United States every day, and what the American people already understand and believe about their transgender neighbors and co-workers. Next, we discuss the numerous issues in which transgender people face discrimination and harassment: in finding and keeping jobs, locating housing and using public accommodations, staying safe in their homes and communities, obtaining critical health care, securing legal documents consistent with their gender identity, having their relationships respected and protected, raising their children, safely attending school and being treated fairly and humanely in the criminal justice system.

For each issue discussed, we define the problem, talk about a few of the real people that this issue affects and describe the current state of law and policy on the issue. More advances have been made in some substantive areas of law and policy than in others. In every area, much more needs to be done to ensure transgender people fair treatment and a level playing field in the United States.

Finally, we highlight what the Human Rights Campaign and the Human Rights Campaign Foundation have been doing, and will continue to do, to advocate for full equality for transgender people.

Special Thanks

Unless otherwise indicated, the photos in this handbook were provided by Mariette Pathy Allen, from her award-winning book *The Gender Frontier* (Kehrer Verlag Heidelberg). We thank Pathy Allen for providing these powerful images for this publication.

A Message from HRC Foundation President Joe Solmonese

This may surprise you, but our own polling shows that most Americans understand what the term *transgender* means. They support fundamental fairness for transgender people, including protection from discrimination on the job. But the challenges that transgender people face remain vast and the protections are few.

Whether your child just came out to you as transgender, a fellow churchgoer is transitioning or a constituent is asking you to sponsor a non-discrimination bill, this handbook serves as a resource for better understanding.

I want to stress how important it is for all of us who believe in fairness to learn more about the challenges faced by transgender Americans — and to do something about it.

Please don't hesitate to contact our organization at www.hrc.org for more information. Several other organizations are also doing important work, including the National Center for Transgender Equality (www.nctequality.org) and the Transgender Law and Policy Institute (www.transgenderlaw.org), and we're honored to work with them side-by-side.

This handbook is only the beginning. With your support, the critical goal of achieving equality for all Americans — including transgender Americans — will become a reality.

Sincerely,



Joe Solmonese
President, Human Rights Campaign Foundation

P.S. Please pass the handbook on to friends, family and co-workers, so they can become even more aware, too.

Antonia

photo: Mariette Pathy Allen



Transgender Americans

When we talk about transgender Americans, who are we talking about? We are talking about regular people who are trying to make a secure living, send their kids to school and pay their bills — just like other Americans. For many transgender people, living in a manner consistent with their gender identity brings them an extraordinary sense of wholeness and well-being. Unfortunately, because they are transgender, they are often treated differently and denied the dignity and equality that every person deserves.

We use the term *transgender* to mean a broad range of people who experience and/or express their gender differently from what most people expect — either in terms of expressing a gender that does not match the sex listed on their original birth certificate, or physically changing their sex. It is an umbrella term that includes people who are transsexual, cross-dressers or otherwise gender non-conforming.

Transsexuals

A *transsexual* is a person who has changed, or is in the process of changing, his or her physical sex to conform to his or her internal sense of gender identity. The term can also be used to describe people who, without undergoing medical treatment, identify and live their lives full-time as a member of the gender opposite their birth sex. Transsexuals transitioning from male to female are often referred to as “MTFs.” Similarly, female-to-male transsexuals are frequently called “FTMs.”

Many transsexual people experience discomfort from the strong internal sense that their true gender identity does not match their physical sex. The medical term for this discomfort, which can be severe, is *gender dysphoria* or *gender identity disorder* (GID) and it remains listed as a mental disorder in the *Diagnostic and Statistical Manual of Mental Disorders*.¹

Often, people with gender dysphoria or GID have experienced this internal conflict since childhood. Many transsexual people suppress or deny this conflict for as long as they can until they literally feel they cannot continue to live in their birth sex and choose to undergo *gender transition*. This transition — possibly including hormone therapy, sex-reassignment surgery and/or other components — is generally conducted under medical supervision based on a set of standards developed by medical professionals.²

Earline



Cross-dressers

Cross-dressers wear the clothing and/or accoutrements, such as makeup and accessories, that are considered by society to correspond to the “opposite sex.” Cross-dressers can be either male-to-female or female-to-male.

Unlike transsexuals, they typically do not seek to change their physical characteristics permanently, or desire to live full-time as the opposite gender. (Cross-dressers are sometimes called *transvestites*, but that term is considered pejorative today.)

Gender Non-Conforming/Genderqueer

There are many people who are not transsexuals or cross-dressers, but who still express a non-standard gender identity or don't conform to traditional gender norms. Often, these individuals identify as *gender non-conforming* or *genderqueer*.

There are gender non-conforming women who act “butch,” or in a stereotypically masculine manner, and men who act “femme,” or in a stereotypically feminine manner, but do not identify as the opposite gender and do not present themselves as such full-time. Not all transgender people fit neatly into one of these subcategories, because the range of expression of gender identity is so great.

A Note on Pronouns

A transgender person who presents herself as a woman should be called “she.” Likewise, a transgender person who presents himself as a man should be referred to with male pronouns. If you are not certain of someone's gender, it is appropriate to respectfully ask his or her name and what pronoun he or she prefers that you use. In general, it is considered insensitive to refer to someone by the wrong pronouns once you have established which set of pronouns he or she prefers.

Maxwell



How Many Transgender People Live in the United States?

Very little statistical data exists on the American transgender population. Most of the available figures are drawn from other countries.

Although the American Psychiatric Association has noted that “data from small countries in Europe with access to total population statistics and referrals suggest that roughly one per 30,000 adult males and one per 100,000 adult females seek sex reassignment surgery,”³ this statistic is not an accurate way of predicting the number of transgender people living in the United States. Studies like this one tend to dramatically undercount the population of transgender people because they only include transsexuals who have completed or are in the process of completing sex reassignment surgery.

Also problematic, according to one scholar who has investigated the prevalence of transsexualism in the United States, is that the aforementioned statistics date back to the 1960s, when far fewer people were aware of the possibility of treatment. Using contemporary data on the annual frequency of sex-reassignment surgery, Lynn Conway has estimated the prevalence of male-to-female transsexuals at as few as one in 500 and as many as one in 250 people born male.⁴

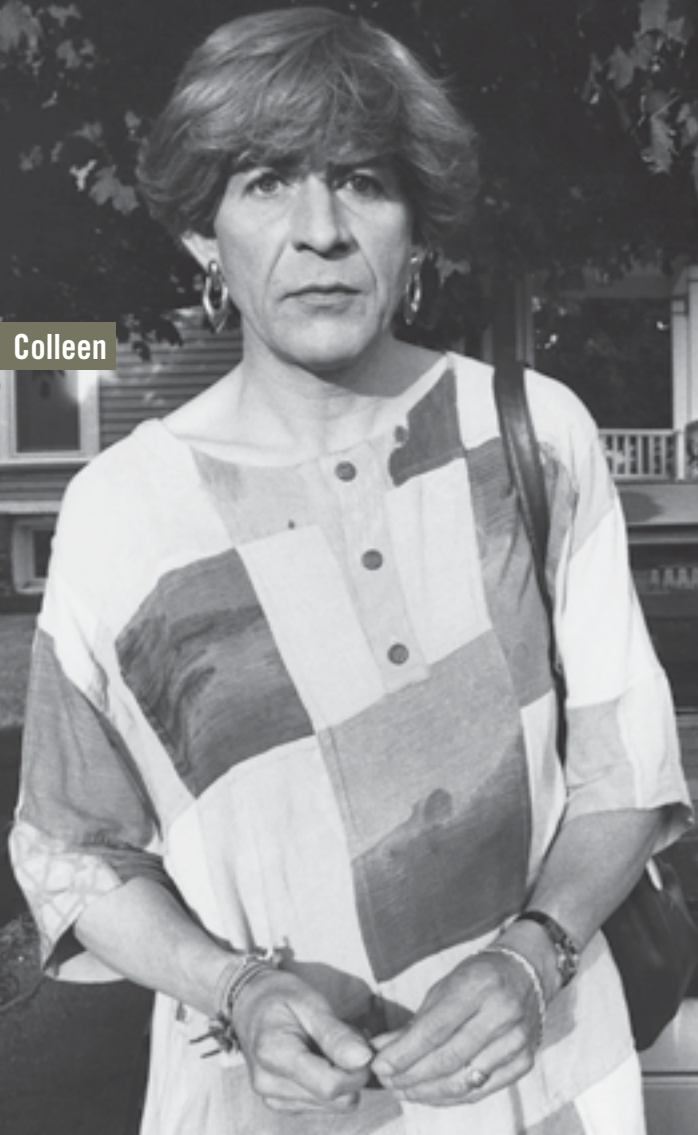
Only one thing is certain: little is known about how many transgender individuals live in the United States, but it is probably much higher than many have believed.

Americans’ Understanding of Transgender Issues

There has been dramatic increase in the visibility of transgender people and the understanding of transgender issues in the past several years. Focus groups and national polls show that Americans know who transgender people are, and believe that our nation’s laws should treat transgender people fairly.

In July 2002, HRC commissioned the first national poll on the attitudes of American voters toward transgender people and public policy issues.⁵ The poll showed a surprisingly high familiarity with transgender issues overall. Seven in 10 of the people surveyed said they were familiar with the term

Colleen



transgender. After being read a brief definition of the word, nine out of 10 voters said they had heard of transgender people. A plurality of voters said they were neutral toward transgender people. However, as other polls have shown regarding gays, lesbians and bisexuals, respondents who know a transgender person are more likely to have positive feelings toward transgender people.

On public policy issues, an overwhelming majority of people felt that our nation's laws should protect transgender people. Sixty-one percent of those polled believed that we needed laws to protect transgender people from job discrimination, a number confirmed in a September 2004 poll, when 65 percent of respondents thought it should definitely be illegal to fire and refuse employment to someone just because they're transgender and 13 percent said it probably should be illegal.⁶ More than two-thirds believed that there should be a federal hate crimes law covering transgender people. Seventy-seven percent believed that transgender students should be allowed to attend public schools.

Employment Discrimination

Unemployment and under-employment are huge issues for transgender people — and particularly for transsexual people who often lose their jobs during or after their gender transitions. Transgender people who transition after working somewhere for an extended period of time often encounter blatant discrimination from people who do not understand or accept them. Later, when looking for a new job, they may run into the same trouble with potential new employers who find out that they've transitioned.

Within the transgender community, it is not uncommon to find people dramatically underemployed regardless of their experience or background. For example, a senior engineer or computer professional might be working at a low hourly wage or patching together a few part-time jobs (without such benefits as basic health insurance). It is not unusual to hear of a high-level consultant being asked, after transitioning genders, to consult only “behind the scenes from now on” rather than directly with clients.



Cas

Access to restroom facilities in the workplace can also be a problem. Many workplaces have resolved this issue by simply working with their transgender employees to permit them to use the restroom that matches their outward gender presentations — for example, a transgender person who presents herself as a woman would use the women’s restroom.

Similarly, the best workplace practice is for an employer to permit an employee to dress appropriately for the job in accordance with the employee’s gender presentation, beginning when the employee begins his or her gender transitioning process.

Without protections from workplace discrimination, many transgender Americans will continue to be pressured to undergo the extreme psychological pressure of hiding their true gender identity if they want to keep their livelihood.

Thanks to the efforts of many individuals and organizations, including HRC, more and more employers have developed specific job protections for transgender employees. For example, in order to achieve a coveted perfect score on the HRC Foundation’s Corporate Equality Index, which rates U.S. businesses on how they treat gay, lesbian, bisexual and transgender people, an employer must include transgender protections in its non-discrimination policy. However, transgender people continue to lose their jobs over issues unrelated to their job performance, and there is much work still to be done.

Polling shows that 65 percent of Americans think we need laws to protect transgender people from job discrimination.



Alex &
Ciaran

Stories

Kristine Holt - *Kristine Holt was fired from her job at a Pennsylvania social services agency after she began a medically supervised male-to-female transition. In denying her claim, the Commonwealth Court of Pennsylvania held that state law did not protect individuals who were discriminated against because of their transsexual status.*⁷

Peter Oiler - *Despite his 20-year record of outstanding service as a truck driver for the Winn-Dixie grocery store chain, Peter Oiler was fired after telling his boss that he sometimes engaged in cross-dressing when not on the job. Although Oiler had never cross-dressed at work, he was fired because his employer disapproved of him. In 2002, a federal district court ruled that federal employment discrimination law offered Oiler no protection because it did not outlaw discrimination against transgender people.*⁸

Advances in Law and Policy

No federal law consistently protects transgender people from discrimination in the workplace. However, recently there have been some promising legal developments. Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination based on sex, has traditionally been interpreted not to protect transgender individuals. But, a recent decision by the U.S. Court of Appeals for the Sixth Circuit (covering Kentucky, Michigan, Ohio and Tennessee) marked a strong departure from that interpretation. In the 2004 case *Smith v. City of Salem*, the court found that a transsexual woman could file suit under Title VII.⁹ In that case, the plaintiff, a firefighter, was unfairly disciplined by her employers when she announced that she was beginning to transition from male to female.

The Sixth Circuit reaffirmed its conclusion in 2005 in *Barnes v. City of Cincinnati*, when it upheld a jury award to a transsexual policewoman discriminated against by the Cincinnati Police Department.¹⁰

In light of the lack of clear federal law on the issue, many state and local jurisdictions have created laws that prohibit discrimination against transgender people in employment, protecting more than 68 million people. Among them are California, Hawaii, Illinois, Maine, Minnesota, New Mexico and Rhode

Jamison

photo: Mariette Paity Allen



Island, as well as the District of Columbia. Indiana, Kentucky and Pennsylvania also prohibit such discrimination in public employment through executive order. Courts, commissions and agencies have extended some employment protections for transgender people in a few other states.

Seventy-eight local jurisdictions, from Key West, Fla., to Scranton, Pa., to Tacoma, Wash., have also adopted employment protections. Among these jurisdictions are some of the largest cities in America, including Chicago, Dallas, Los Angeles and New York, as well as smaller places across the country like Peoria, Ill.; Louisville, Ky.; Ypsilanti, Mich.; and El Paso, Texas. For an up-to-date comprehensive list, see the Transgender Law and Policy Institute's website at www.transgenderlaw.org.

In addition, numerous corporations have added protections for transgender employees to their non-discrimination policies. In fact, 55 of the Fortune 500 companies have adopted policies that include their transgender employees — among them American Airlines, Capital One, ChevronTexaco, Ford Motor Company, IBM, J.P. Morgan Chase, Microsoft and Xerox. Transgender-inclusive policies have also been adopted by many colleges and universities, labor unions and several congressional offices. To see a full list of these employers, see HRC's website at www.hrc.org/worklife.

These changes in law and policy offer hope to transgender people who may face discrimination in the workplace. However, there are still many transgender people who live outside of these jurisdictions and who are not offered these protections.

Housing and Public Accommodations Discrimination

Discrimination in housing and places of public accommodation is also a large problem for transgender people. While a transgender person is in the process of transitioning he or she may be evicted, or forced to leave home because a family member does not understand or accept the process. Landlords may not want to rent to a transgender person. The results can lead to homelessness, and the additional problem of discrimination in sex-segregated homeless shelters.

Antonia



Access to public facilities can also be a problem — specifically in health care, since doctors’ offices may be unwilling to treat transgender people or even to have them in the waiting room for fear they will make other patients uncomfortable. Other public places, such as stores, restaurants and bars, may ask a transgender person to leave so he or she doesn’t upset the other customers, or due to fear of violence against them.

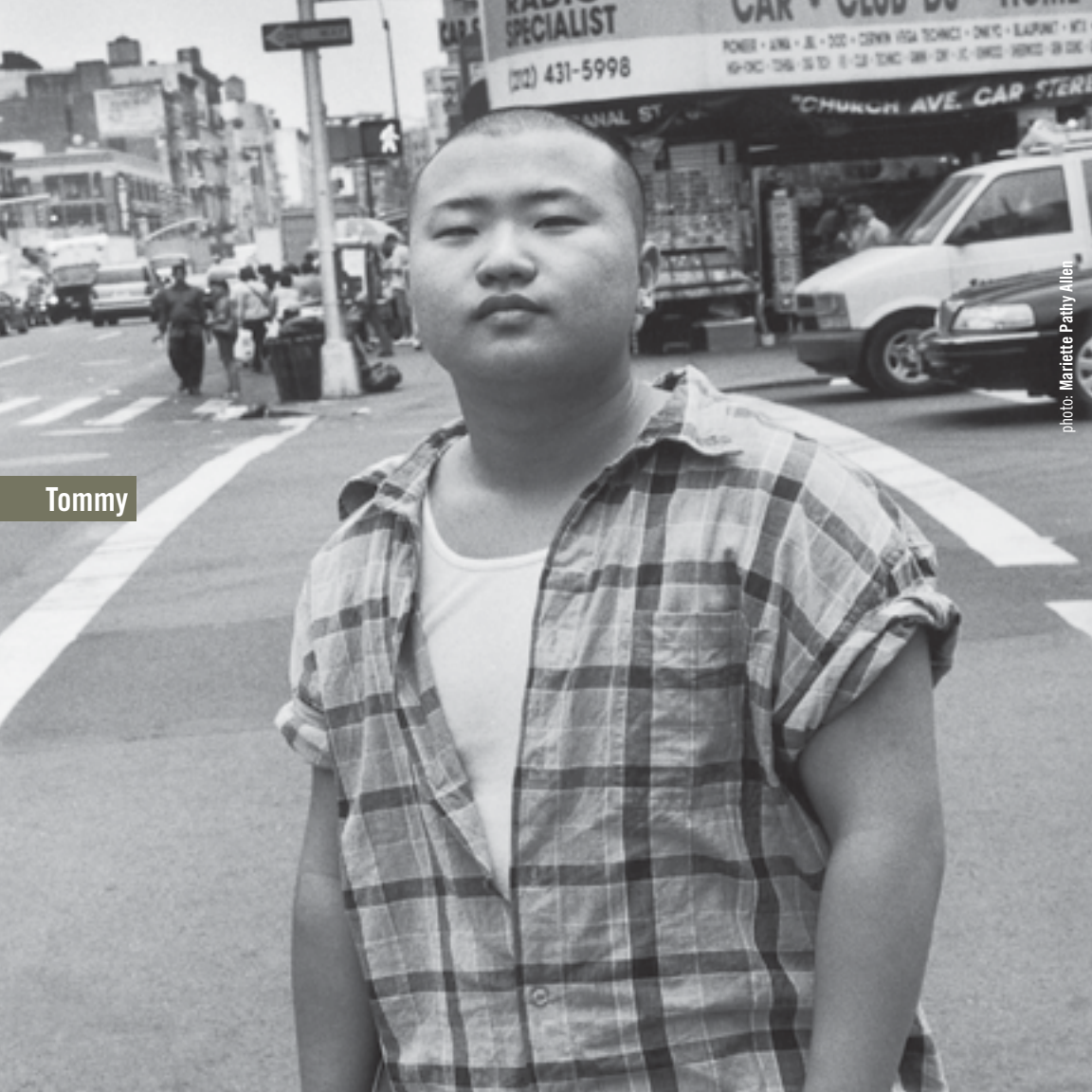
Stories

Hispanic AIDS Forum - *In 2000 the Hispanic AIDS Forum, an HIV/AIDS services organization, was evicted from the Queens location that had been its home for 10 years. The landlord took action against HAF after his other tenants objected to the organization’s transgender female clients using the women’s restrooms in common areas of the building.*

Despite HAF’s efforts to negotiate with the landlord, the organization’s lease was not renewed. Many Latino and Latina clients, transgender and non-transgender alike, were forced to go elsewhere for critical HIV and AIDS treatment. HAF filed suit against the landlord, who argued transgender people have no protection under New York’s city or state laws.

In 2002, New York City amended its human rights law to explicitly protect transgender persons from discrimination. A New York appellate court, however, ruled in March 2005 that the landlord’s actions designating restrooms based on “biological gender” were not illegal under the laws in place at the time of the eviction.¹¹

Toys ‘R’ Us - *Tanya Jinks, Tara Lopez and Donna McGrath, three transgender women, went into a Brooklyn Toys ‘R’ Us on Dec. 13, 2000, to do some Christmas shopping. Instead of receiving assistance from the store’s employees, the women were met with verbal harassment and physical threats. Brandishing baseball bats, two Toys ‘R’ Us staffers approached the women, uttering slurs such as “homos” and “faggots,” and drove them from the store.*



Tommy

photo: Mariette Pathy Allen

When complaints to the store's management and Toys 'R' Us were not satisfactorily answered, Jinks, Lopez and McGrath filed suit under New York City's human rights ordinance. Even though it was not clear at that time that the law would protect transgender individuals, a jury found that the women had been discriminated against. Despite their conclusion the jurors awarded only \$1 in damages, plus attorney's fees.¹²

Advances in Law and Policy

Seventy-four state and local jurisdictions have transgender-inclusive anti-discrimination laws that cover access to housing. Seventy state and local jurisdictions protect transgender people from discrimination in the provision of and access to public accommodations.

Hate Violence

Hate violence against transgender people appears to be epidemic, with hardly a month going by without another story of a transgender person who was beaten up, raped or killed. Furthermore, there is no way to know for certain how many hate crimes are committed against transgender people because statistics are not collected on these incidents of violence. Crimes against transgender people are under-investigated and under-prosecuted by local, state and federal law enforcement officials. This seems to be particularly true for especially marginalized transgender people, such as those who are poor, young, immigrants or people of color.

Polling shows that 68 percent of Americans believe we need a federal hate crimes law protecting transgender people.



photo: Mariette Patry Allen

Marla
& her
daughter,
Vivian

Stories

Brandon Teena - Brandon Teena moved to Falls City, Neb., in 1993, shortly after beginning to live as a man. Teena passed easily as a male until he was discovered to be biologically female by the sheriff's department, who then outed him to a local newspaper. On Christmas Day, 1993, Teena was beaten and raped by two male acquaintances.

Teena reported the rape, despite the fact that his attackers had threatened to kill him if he went to the authorities. The sheriff's department failed to provide protection and informed the rapists of the complaint against them. One week after they had attacked Teena, the two men murdered him and two of his friends. At trial, one of the murderers, who was sentenced to life in prison, testified against the other, who received three death sentences and currently awaits execution.

Teena's mother filed a civil suit against Richardson County for the sheriff's failure to protect him after reporting the rape. The case was appealed to the Nebraska Supreme Court, which found the sheriff's behavior was "extreme and outrageous, beyond all possible bounds of decency" and ordered \$80,000 in damages to Teena's mother.¹³

Amanda Milan - Amanda Milan, a transgender woman in her mid-20s, was hailing a cab outside New York's Port Authority Bus Terminal early one morning when two men began to hurl insults at her. "I know what that is between your legs," one said. "You're nothing but a man." As Milan walked away, one of the men handed a knife to the other, who slit her throat. According to some reports, nearby cabbies cheered as Amanda bled to death in the street.

The man who stabbed her pled guilty in exchange for a sentence of 17 and a half years in prison and five years supervised release. Notably, the New York City Police Department never classified Amanda Milan's murder as a hate crime because, in the department's view, it did not fit the necessary criteria.¹⁴

Robert



Advances in Law and Policy

Seven states have hate crime laws that cover crimes motivated by bias against the victim based on their gender identity and/or expression: California, Connecticut, Hawaii, Minnesota, Missouri, Pennsylvania and Vermont. In addition, at least one local jurisdiction — Ithaca, N.Y. — protects transgender persons under its hate crime law. HRC and other groups continue to advocate for protections for transgender people under federal hate crime laws.

Health Care Issues and Discrimination

Regular medical care by an informed, sensitive physician is central to the lives of many transgender people, especially transitioning transsexuals.

Most transsexuals undergo hormone therapy and/or sex-reassignment surgery. Both procedures have potential complications and associated risks. It is thus imperative that they be supervised by a physician familiar with transgender care. Too often, transgender people, especially those with low incomes, obtain unprescribed hormones that may not have sufficient medical safeguards. Due to discrimination, both in health insurance and in access to basic care, it is difficult for many transgender people to get appropriate treatment.

The exclusion of transsexualism from health insurance policies is a serious problem that exists nationwide. Coverage is usually explicitly excluded for treatment related to transsexualism, even though the claim would be paid if the exact same treatment or procedure were utilized for some other medical reason. For example, testosterone therapy will be paid for by insurance policies if a non-transgender man has a low level of the hormone, but a transsexual man who uses the same hormone as part of his medically supervised gender transition would not be covered. As a result, transgender people must often pay out-of-pocket — for lifelong needs, such as hormone therapy, or for expensive one-time costs, such as sex-reassignment surgery — even when medical experts deem them necessary. Slowly, one company at a time, these discriminatory exclusions are being removed. For example, in early 2005 Aetna began the process of offering policies covering medically necessary treatments for gender transition.¹⁵



Nancy

photo: Mariette Patty Allen

And like gay, lesbian and bisexual people, transgender individuals may face discrimination from medical professionals in the provision of basic health care. Doctors who are ignorant of or hostile to transgender people may fail to ask the right questions when seeing a patient about medical issues seemingly unrelated to any treatment of transsexualism. Some physicians are unwilling to see transgender patients at all, expressing a fear that their presence in the waiting room may disturb other patients.

Stories

Tyra Hunter - *On Aug. 7, 1995, Tyra Hunter, a 24-year-old transgender woman, was involved in a car accident in Washington, D.C. When emergency medical technicians arrived, they began to treat the critically injured Hunter as she lay in the street. However, when one EMT discovered Hunter's male genitalia, he ceased aiding her. Horrified onlookers reportedly screamed at the paramedics to treat her, but the paramedics simply laughed as the injured Hunter tried to crawl away from them.*

Additional medical personnel who subsequently arrived found Hunter and took her to the D.C. General Hospital, but her ordeal was far from over. Doctors first administered Narcan, a drug designed to counteract intoxication by narcotics, apparently on the stereotypical assumption that transgender women are drug addicts. Emergency personnel then failed to administer sufficient care between her early-morning arrival and her death a little over an hour later.

Three years later, a District of Columbia jury awarded Hunter's mother \$1.7 million in a wrongful death suit against the district, the EMT and the supervising emergency room doctor.¹⁶

Marc Mario - *In 1992, Margo Mario began working for P&C Food Markets in western New York. A few years later, Mario announced his intention to undergo gender transition. P&C respected his decision to dress consistently with his gender identity and be referred to as Marc. He began hormone therapy and subsequently underwent sex-reassignment surgery.*

Virginia



However, when Mario sought reimbursement from his employee health insurance for these procedures, P&C informed him that it had concluded they were not “medically necessary” and would not be covered. Mario filed suit but the federal trial court, and subsequently the U.S. Court of Appeals for the Second Circuit, upheld the company’s decision.¹⁷

Advances in Law and Policy

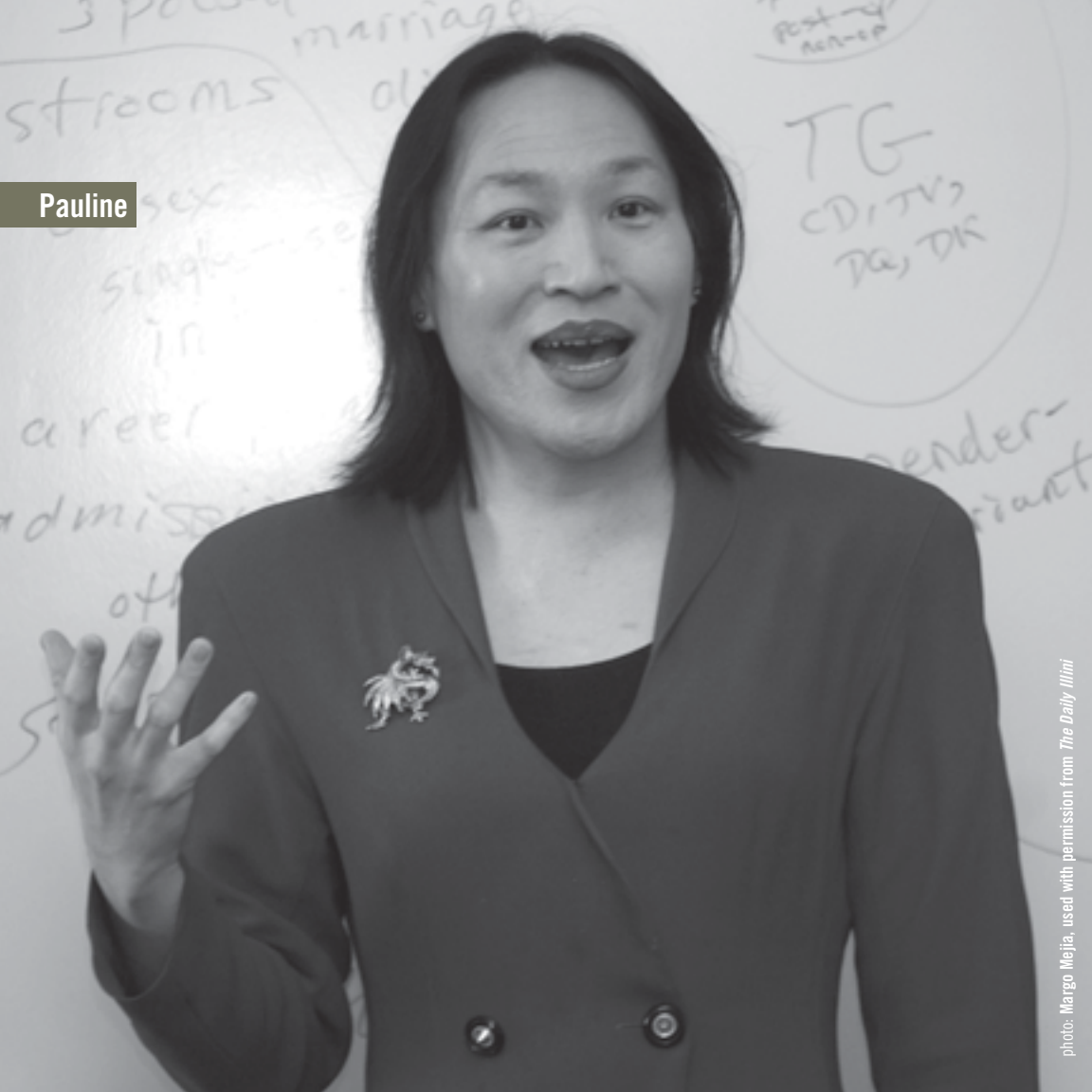
Seventy jurisdictions in the United States, including six states, prohibit discrimination against transgender people in access to public accommodations, including public hospitals and other public health care facilities.

Identity Documents

Obtaining a legal change of sex and new identity documents are critical for many transsexual people. When people undergo a gender transition, they may need to get birth certificates, passports, drivers’ licenses and other identity documents that reflect that transition. Otherwise, they can encounter problems, invasive questions and even discrimination and violence when traveling, and any other time it is necessary to present identification. This is especially important in an era of heightened security concerns, as even minor inconsistencies between a transgender person’s appearance and his or her identity documents and travel information could unfairly label him or her as a security risk.

Perhaps the most important document that requires alteration after gender transition is an individual’s birth certificate. That document is often critical in obtaining subsequent government-issued IDs, such as driver’s licenses and passports. While most states allow the sex designation on a birth certificate to be changed, the difficulty of that process varies among jurisdictions. The granting of new drivers’ licenses with the new gender properly designated is treated similarly in most states.

Pauline



It is also important for federal identity documents, such as Social Security cards and passports, to reflect a transgender person's appropriate gender. Both the Social Security Administration and the United States Passport Service permit changes in gender designation, but they require proof of intended or completed sex-reassignment surgery.

Stories

Beck Fineman - *"I am a 26-year-old transgender man living in Maryland. I changed my name through the courts and subsequently obtained a driver's license with the appropriate name and gender marker. The benefits were immediate. I was no longer anxious when asked to show identification at bars, movies or anywhere else. In order to have the security that the law viewed me properly as male, I also decided to change my birth certificate. Now, all that remains is my passport. I have put this off, because I know that I will need to show a copy of my amended birth certificate, which makes it so obvious that I have undergone gender transition. But, without a passport, I am unable to venture outside of the United States. There also remains that last remnant of my old identity, complete with dated photograph. Even having completed all of these processes and having notified Maryland, the federal government, all of my banks and credit card companies, the magazines that I subscribe to and so on, I still receive mail addressed to the 'old' Beck. I still live with the anxiety that someone in charge will call me out, call me a fraud or deny me my rights."*

Pauline Park - *"Like many transgender people, I carry personal identification documents that do not correspond to my gender presentation. All of my state-issued ID is in my male name with male sex designation, which creates a real challenge when I travel. As a Korean adoptee, I have the added problem that my adoptive family name is a European name, not an Asian name, so my legal name not only does not correspond to my gender presentation, it also does not meet expectations for someone with an Asian face. I'm often asked to present ID here in New York City, where most office buildings now demand it since 9/11. Ironically the only identification that I now have that matches my gender identity is an employee ID card, but this is not sufficient for travel purposes."*

Jake &
Maxwell

12



Advances in Law and Policy

Twenty-three states have laws explicitly authorizing birth certificate amendments for people who have had sex reassignment surgery. Another 24 states generally allow changes to the “sex” designation on a birth certificate, either by statute or administrative process.


Three states — Idaho, Ohio and Tennessee — have refused to allow a person to change the sex designation on his or her birth certificate.

All states allow gender to be changed on a driver’s license, but the requirements for the change vary among jurisdictions and can range from a doctor’s letter to a court order. However, a recently adopted federal law aimed at national security concerns, the REAL ID Act, mandates the types of documentation required for an individual to obtain a driver’s license.¹⁸ The act may, as a result, make the process of changing the gender marker on a license more difficult.

Marriage

Many transsexual people have been married for years, without much incident or controversy. However, new challenges are emerging as the national controversy over marriage for same-sex couples grows.

In some cases, a marriage where one person has changed gender has been found to be a marriage between a same-sex couple and, therefore, impermissible under state law. Some transgender people have also been told by their employers or others, incorrectly, that at the moment their gender transitions are complete, their marriages become null and void. However, no law anywhere in the country has established that to be the case.



Nancy
and her
aunt,
Ida May

Stories

Christie Lee Littleton - *Christie Lee Littleton, a male-to-female transgender woman, and her husband were issued a marriage license by the commonwealth of Kentucky. After Littleton's husband died in 1996, she brought a medical malpractice lawsuit against his doctor. A Texas appeals court upheld the trial court's dismissal of the case and ruled that because Littleton was, in its opinion, a man, her marriage to her husband was not recognized in Texas, and she was therefore not entitled to any spousal benefits.*¹⁹

J'Noel Gardiner - *Marshall G. Gardiner, a businessman of "considerable wealth," was married to J'Noel, a male-to-female transgender woman whose birth certificate, driver's license, passport and health documents indicated that she was female. After Marshall died, his estranged son challenged J'Noel's claim to her share of her husband's \$2.5 million estate. The Supreme Court of Kansas held that, despite her extensive documentation, J'Noel did not "fit the definition of female," and therefore her marriage to Marshall was never valid in Kansas. Thus, the court concluded, she was not entitled to inherit as Marshall's wife.*²⁰

Advances in Law and Policy

Marriage is a largely unsettled area of the law for transgender people. The legal status of a different-sex marriage in which one of the partners has transitioned genders has not been clearly determined in the vast majority of states. However, courts in Florida, Illinois, Kansas, Ohio and Texas have refused to recognize marriages involving transgender individuals because they considered them to be unlawful marriages between same-sex couples.



Robert
with
grandson
and son

Parenting

Transgender parents face tremendous discrimination and bias, particularly in custody and visitation cases. In addition, transgender individuals and couples that include transgender partners may face hostility and even legal impediments when trying to adopt children.

Transgender parents currently face blatant biases and overwhelming ignorance in our courts comparable to that experienced by lesbian, gay and bisexual parents 30 years ago.

Stories

Sterling Simmons - *Sterling Simmons, a female-to-male transsexual, underwent hormone therapy and a hysterectomy and had his birth certificate changed to reflect his correct gender. Sterling married Jennifer in 1985, and Jennifer had a child through artificial insemination. The child had only known Sterling as his father.*

In 1998, the couple divorced and a custody battle ensued. In April 2003, a Cook County, Ill., judge ruled that Jennifer and Sterling had an invalid same-sex marriage, because Sterling was always a woman in the eyes of the law. Therefore, the court found, he had no standing to seek custody of the child, and Jennifer was granted full custody. This discriminatory decision was upheld by the Illinois Court of Appeals in February 2005.²¹ Sterling is now seeking an appeal before the Illinois Supreme Court.

Michael Kantaras - *Michael Kantaras, a female-to-male transsexual, underwent hormone therapy and surgical treatment and changed his name and birth certificate to indicate his gender. He moved to Florida and began dating Linda, who was then pregnant with her former boyfriend's child. Linda was aware of Michael's medical history, but accepted him as a man. The two were married and Michael adopted Linda's child in 1989.*

Antonia



A few years later, Michael's brother provided sperm for artificial insemination, and Michael was listed as father on the second child's birth certificate. The marriage ended in 1998, and so began a difficult divorce and custody proceeding. Linda claimed that Michael was legally a woman and thus their marriage, and the subsequent adoption and legal presumption regarding the second child, were both invalid.

In 2002, the trial judge found Michael to be male under state law and the legal father of both of the couple's children. The judge further decided that Michael was the better suited parent to have primary custody. In July 2004, the Florida Court of Appeals invalidated the lower court's determination on the couple's marriage, sending the custody issue back to the trial court for review.²² In June 2005, Michael and Linda reached a settlement in which Michael retained his parental rights and shared custody of their children.²³

Advances in Law and Policy

Laws for transgender parents lag decades behind the advances for lesbians, gays and bisexuals. During the dissolution of a different-sex marriage, a transgender parent can face serious challenges to his or her custody and visitation rights. Judges may place restrictions on parental access or even go so far as to terminate a transgender person's parental rights. To see how your state's courts have treated transgender parents in custody and visitation cases, see the HRC Foundation's parenting laws database at www.hrc.org/family.

In addition, while there are no state statutory restrictions on the ability of transgender people to adopt, they may still face discrimination from adoption agencies. If a transgender individual is legally considered to be of the same sex as his or her partner, state laws barring gay and lesbian individuals or unmarried couples from adopting may be applied.

Schools

Various issues come up for transgender students in our nation's public schools, including the ability to attend school, to express themselves consistently with their gender identity, to be treated fairly in classes and to use the facilities that match their gender identity and gender presentation.

Problems also arise because transgender students are often accused of lying and are harassed by school officials when they present themselves consistently with their gender identity. There have even been situations in which school officials have failed to protect transgender students from the bias of other students, even when they know it to be a dangerous situation.

Polling shows that 77 percent of Americans believe that transgender students should be allowed to attend public schools.

Stories

Nikki Youngblood - *In the spring of 2001, Nikki Youngblood went to a Tampa, Fla., portrait studio to have her senior picture taken for the Robinson High School yearbook. Youngblood, a lesbian, had long preferred jeans and t-shirts to dresses, and she and her mother agreed that a jacket and tie would be the proper outfit for her photo. However, her high school insisted that every girl photographed for the yearbook wear a scoop-necked, black velvet drape, an outfit that Youngblood felt was "just not me."*

Because she refused to comply with the dress code, Youngblood did not appear in her senior yearbook. Undaunted, she filed a federal lawsuit against the Hillsborough County School Board. After three years in the court system the parties settled, with the school board agreeing to give students the opportunity to show "good cause" for an exemption from the senior photo dress code.²⁴

Alex McLendon - In 1998, 15-year-old Alex McLendon was “invited to withdraw” from the private Georgian Country Day School in Carrollton, Ga., for cross-dressing. McLendon began cross-dressing two years earlier and considered himself “95 percent girl.” Some of McLendon’s fellow students wore ribbons in their hair to show solidarity with him until they were threatened with expulsion.

McLendon refused to comply with administrator’s demands that he “dress as a boy” and was forced to leave school. The school declined to cite the rule or regulation that McLendon had violated.²⁵

Advances in Law and Policy

Three states have laws prohibiting discrimination and harassment of transgender students in schools: California, Minnesota and New Jersey, plus the District of Columbia.

At least one state court has held that a student has the right to present as the gender reflective of his or her gender identity at school. In the 2001 case *Doe v. Yunits*, a Massachusetts Superior Court held that a junior high school could not prohibit a student from expressing her gender identity, even if the expression did not match the gender ascribed to the student at birth. The court noted that disciplining the student constituted sex discrimination and violated her First Amendment right to free expression.²⁶

Federal law has imposed liability on school systems that fail to protect lesbian, gay and bisexual students from harassment, and the logic of these cases may be extended to situations involving transgender students. In the 1996 case *Nabozny v. Podlesny*, the Seventh Circuit held that schools had to provide equal protection against harassment for all students.²⁷ The Ninth Circuit held school officials liable for failing to protect students from anti-gay harassment in the 2003 case *Flores v. Morgan Hill Unified School District*.²⁸ In addition, federal Department of Education guidance regarding Title IX of the Education Amendments of 1972 notes that the sexual harassment provisions of the law extend to students who are harassed in a non-sexual manner based on gender.²⁹

Correctional Facilities

Because housing and employment discrimination leave many transgender people with few income-generating options, some turn to sex work or other criminalized activities. Transgender people may also be the target of harassment and selective prosecution by law enforcement. As a result, the transgender community tends to be overrepresented in the criminal justice system.

The first problem transgender people face upon incarceration is the segregation of prison facilities by gender. It is left to individual prison officials to decide with which sex a transgender inmate should be housed. More often than not, this decision is based on birth sex. For example, a male-to-female transsexual who has undergone hormone therapy and sex-reassignment surgery may nonetheless be placed with an all-male prison population.

Such misassignment can lead to the serious problem of hate violence against transgender inmates. Prisoners who do not conform to the gender norms of the prison's population face the risk of verbal harassment, physical violence and sexual assault. Bias on the part of correctional officials can range from simply looking the other way to actively participating in attacks on transgender prisoners. While many facilities segregate transgender inmates to protect them from violence, the separation may not provide sufficient security — and it may also impose unfair isolation and restrictions on transgender prisoners under the guise of safety.

Another significant problem faced especially by transsexual prisoners involves access to medical treatment. While most courts have found that hormone therapy must be continued at pre-incarceration levels, few correctional facilities will readily allow a transgender inmate to begin such therapy after he or she is imprisoned. Furthermore, no prison system currently allows inmates to undergo sexual reassignment surgery, which is critical to some transsexuals in successfully transitioning genders. Prison officials who may wish to provide adequate care for transgender patients can also face hostility from legislators and the public.

Stories

Dee Farmer - Dee Farmer, a male-to-female transsexual, was sentenced to 20 years in federal prison for credit card fraud. Before incarceration, she had undergone hormone therapy and surgical alterations to her chest and genitals. Despite her gender presentation, federal prison officials assigned her to an all-male prison, although they had the foresight to place her in protective segregation. However, when she was transferred to a second federal prison, Farmer found herself in the general population. Within two weeks, she was brutally beaten and raped by another inmate in her cell.

Farmer filed suit against the prison for failing to prevent the attack. Her case was ultimately heard by the U.S. Supreme Court, which found that prison officials could be liable for disregarding a known risk of serious harm to an inmate. Unfortunately, loss of evidence over the lengthy course of her case resulted in an eventual dismissal, and Farmer never saw a resolution against the prison.³⁰

Kelly McAllister - Kelly McAllister, a pre-operative male-to-female transsexual, was arrested in connection with an alleged public disturbance. Despite her history of hormone treatments, clearly developed breasts and other feminine characteristics, the Sacramento, Calif., sheriff's department classified her as male and placed her in a cell with a male prisoner. At 5'7" and 135 pounds, McAllister was no match for her cellmate, who reportedly violently raped her.

Her jailers did nothing to aid her after the alleged attack. The sheriff's department claimed that gay and transgender prisoners were always separated for their protection. McAllister joined with four other transgender inmates in a suit against the sheriff's department alleging they were used as sex partners for other prisoners in exchange for good behavior.³¹

Advances in Law and Policy

Most courts have found that transgender inmates are not entitled to initiate hormone therapy or any other particular course of treatment while incarcerated. However, the U.S. Bureau of Prisons has adopted a policy that allows a transgender inmate utilizing hormone therapy to continue to do so, but only by proving that he or she was receiving medically supervised therapy at the time of incarceration.³² Because of the many health care hurdles facing transgender people, it is often difficult for an inmate to document that he or she had a regular (or any) health care provider who monitored the hormone therapy.

Courts have also found that unless a transgender prisoner who has undergone sex-reassignment surgery, he or she should be classified according to his or her birth sex for purposes of prison housing. A few jurisdictions, however, have begun to implement policies which assign housing to transgender people based on their gender identity.

What HRC and the HRC Foundation Are Doing to Help Secure Equality for Transgender People

- **Educating Members of Congress.** HRC's public policy advocates meet with hundreds of congressional offices every year and convey the need for full equality for our entire community. HRC, along with our fellow LGBT advocacy groups, strives to educate members of Congress and their staffs about the issues facing transgender Americans and the federal legislation that can help to address those issues.
- **Advocating for Inclusive Federal Legislation.** HRC has long been an advocate of federal employment non-discrimination and hate crimes legislation. Beginning in fall 2004, HRC has pledged to only support a workplace non-discrimination bill that explicitly protects the transgender community. HRC is also advocating for a federal hate crimes bill that explicitly addresses crimes based on gender identity bias.

- **Supporting Inclusive State and Local Legislative Efforts.** HRC’s state legislative and grassroots staff helps state and local groups work for inclusive employment non-discrimination, hate crimes and other legislation before state and local legislative bodies. HRC also provides statewide groups with strategic and grassroots expertise as well as staff and financial support.
- **Supporting Litigation Efforts.** HRC and the HRC Foundation often sign on to amicus (“friend of the court”) briefs in cases that have an impact on the LGBT community. For example, HRC joined on a brief in *RGIS Inventory Specialist v. Hawaii Civil Rights Commission*, asking the Hawaii Supreme Court to interpret the term “sex” in the state’s anti-discrimination law to include transgender individuals.
- **Educating Corporate America.** Employers frequently consult with the HRC Foundation’s Workplace Project about workplace non-discrimination policies and practices, including on how to fairly and respectfully treat their transgender employees. The HRC Foundation recently published *Transgender Issues in the Workplace: A Tool for Managers*, which gives employers information and guidelines in creating a fair work environment for transgender employees. The HRC Foundation also publishes the *Corporate Equality Index*, which is a measure of corporate support for the LGBT community. In order to receive a perfect score of 100 percent on the CEI, employers must have transgender-inclusive non-discrimination policies and practices.
- **Talking to the Gay, Lesbian and Bisexual Community.** Unfortunately, there remains a lack of understanding of the issues facing transgender people, even among other members of the LGBT community. HRC and the HRC Foundation work to educate gay, lesbian, bisexual and transgender people, as well as our straight allies, about transgender issues through publications, e-mail action alerts and updates, town hall meetings and many other means.

About the Authors

Brian Moulton is staff counsel with HRC. He provides legal advice on a variety of issues, including employment discrimination, health care and schools. Moulton also provides counsel on involvement in state and local electoral, lobbying and ballot measure efforts.

During law school, Moulton served as a legal intern to the State Legislative Lawyering and Transgender Civil Rights Projects at the National Gay and Lesbian Task Force, and as a McCleary Law Fellow at HRC. He was also a judicial intern to the Hon. Deborah A. Batts on the U.S. District Court for the Southern District of New York. Moulton is a graduate of The George Washington University Law School and the University of Texas at Austin.

Liz Seaton is legal program director and general counsel to HRC. She manages a team of attorneys on staff as well as external paid and pro bono counsel to meet the legal needs of HRC — the nation's largest political organization dedicated to achieving equality under the law for people regardless of sexual orientation and gender identity and expression. As HRC's lead legal strategist, Seaton oversees a dynamic federal legislative lawyering program that drafts legislation, advises congressional offices and partners with HRC's grassroots staff to build support for federal bills. As general counsel, she serves as the chief legal advisor on a wide variety of issues that affect the everyday operations of the organization.

Seaton previously served as deputy field director and senior counsel at HRC. She formerly served as the first executive director of Free State Justice (now Equality Maryland), Maryland's statewide LGBT group. She also worked for five years — the last two as associate director — in the legal services department at the Whitman-Walker Clinic in Washington, D.C. Seaton also practiced employment and family law with the law firm of Silber & Perlman, P.A., in Takoma Park, Md. She currently chairs the subcommittee on legislation for the Maryland State Bar Association's Special Committee on Discrimination on sexual orientation and gender identity.

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1 American Psychiatric Association, *DSM-IV-TR* (2000), listing 302.85, available at www.mental-health-today.com/gender/dsm.htm.

2 Harry Benjamin International Gender Dysphoria Association, *Standards of Care, Version Six* (2001), at www.hbgda.org/soc.cfm.

3 American Psychiatric Association, *DSM-IV-TR* (2000), p. 579.

4 Lynn Conway, "How Frequently Does Transsexualism Occur?" (2002), available at ai.eecs.umich.edu/people/conway/TS/TSPrevalence.html.

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6 Survey by Hart Research. Conducted Sept. 21-24, 2005, this survey reached a total of 849 registered voters in the United States.

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9 378 F.3d 566 (6th Cir. 2004).

10 401 F.3d 729 (6th Cir. 2005).

11 *Hispanic AIDS Forum v. Estate of Bruno*, 792 N.Y.S.2d 43 (N.Y. App. Div. 2005).

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18 Public Law 109-13, adopted May 11, 2005.

19 *Littleton v. Prange*, 9 S.W.3d 223 (Tx. Ct. App. 1999).

20 *In re Estate of Gardiner*, 273 Kan. 191 (2002).

21 *In re the Marriage of Sterling Simmons*, 825 N.E.2d 303 (Ill. Ct. App. 2005).

22 *Kantaras v. Kantaras*, 884 So. 2d 155 (Fla. Dist. Ct. App. 2004), cert. denied, 898 So. 2d 80 (Fla. 2005).

23 Chris Tisch, "Transsexual, Ex-wife Settle Custody Fight," *St. Petersburg Times*, June 11, 2005. See also the National Center for Lesbian Rights' website at www.nclrights.org/cases/kantarakantaras.htm.

24 Melanie Ave, "No Drape, No Photo Leaves Teen Wondering," *St. Petersburg Times*, Jan. 25, 2002. See also the National Center for Lesbian Rights' website at www.nclrights.org/cases/youngblood.htm.

25 Dan Sewell, "Feminine Boy Forced Out of Georgia Private School," *The Associated Press*, Oct. 30, 1998.

26 *Doe v. Yunits*, 2000 WL 33162199 (Mass. Super.), aff'd sub nom, *Doe v. Brockton School Commission*, 2000 WL 33342399 (Mass. App. Ct. 2000).

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28 324 F.3d 1130 (9th Cir. 2003).

29 U.S. Department of Education, Office of Civil Rights, Revised Title IX Guidance (“gender-based harassment, which may include acts of verbal, nonverbal or physical aggression, intimidation or hostility based on sex, but not involving conduct of a sexual nature, is also a form of sex discrimination to which a school must respond.”).

30 *Farmer v. Brennan*, 511 U.S. 825 (1994).

31 Christine Peek, “Breaking Out of the Prison Hierarchy: Transgender Prisoners, Rape and the Eighth Amendment,” 44 *Santa Clara Law Journal* 1211 (2004).

32 U.S. Bureau of Prisons Program Statement P6031.01 (Jan. 15, 2005).

Supporting Partners:



National Center
for
Transgender Equality

To learn more about gender identity¹

- Transgender Law Center
<http://www.transgenderlawcenter.org/>
- Transgender Law & Policy Institute
<http://www.transgenderlaw.org/>
- Human Rights Campaign
<http://www.hrc.org/>
- The Gay and Lesbian Alliance Against Defamation
<http://www.glaad.org/programs/cim/trans.php>
- Indiana Transgender Rights Advocacy Alliance (INTRAA)
www.intraa.org
- National Center for Transgender Equality
<http://www.nctequality.org>
- Workplace Fairness
<http://www.workplacefairness.org/index.php?page=genderid&agree=yes#1>
- The Kinsey Institute
http://www.indiana.edu/~kisiss/trans_faq.html
- Discovery Health – Q& A with psychotherapist, Carol McCord, MSW, Kinsey Institute Sexual Health Clinic
<http://health.discovery.com/centers/teen/transgender/expertqa.html>

¹ The sites provided here are intended to afford an opportunity for further education on gender identity and transgender issues. These sites do not necessarily reflect the perspectives of members of the Common Council.