AN ACT to amend the executive law, the civil rights law and the education law, in relation to prohibiting discrimination based on gender identity or expression; and to amend the penal law and the criminal procedure law, in relation to including offenses regarding gender identity or expression within the list of offenses subject to treatment as hate crimes.

THIS BILL IS APPROVED

The Gender Expression Nondiscrimination Act (“GENDA”) adds “gender identity and expression” to the list of categories protected under various statutes prohibiting discrimination by the state and/or in employment, education, housing, and public accommodations, thus extending nondiscrimination protections to transgender and gender non-conforming people. It further adds “gender identity and expression” to the list of categories in the hate-crimes statute, making crimes motivated by animus toward a person’s gender identity or expression eligible for a penalty enhancement. The bill thus would help to protect transgender and gender non-conforming people from discrimination, harassment, and assault to the same extent such protections are now provided to, e.g., racial minorities and gay and lesbian people under New York law.

Recent studies can provide insight into the pervasive problems this form of discrimination poses. According to a June 2013 national transgender discrimination survey, discrimination is faced by transgender New Yorkers at every turn.2

1 The bill defines “gender identity and expression” as “having or being perceived as having a gender identity, self-image, appearance, behavior or expression whether or not that gender identity, self-image, appearance, behavior or expression is different from that traditionally associated with the sex assigned to that person at birth.” The term “gender identity” generally refers to a person’s innate psychological identification as male or female, which may or may not correspond to the sex assigned to that person at birth based on their physical characteristics and genitalia. The term “gender expression” encompasses all external characteristics and behaviors that are socially defined as either masculine or feminine, including dress, mannerisms, name, physical characteristics and speech patterns.

• **In the workplace:** 74% of respondents reported experiencing harassment or mistreatment at work, with 20% losing their jobs or being denied a promotion and 37% not being hired at all.

• **At school:** Transgender students in grades K-12 reported “alarming rates of harassment (75%), physical assault (35%) and sexual violence (12%).” Harassment was reported as being so severe that it led 14% to leave a school in K-12 settings or leave higher education.

• **In housing:** Only 23% of respondents reported owning their own home, compared to 67% of the general U.S. population and almost 30% reported being evicted or denied housing.

• **In accommodations and services:** Over half of the respondents reported being verbally harassed or disrespected in a place of public accommodation or service, including hotels, restaurants, buses, airports and government agencies.

The national survey found that these issues are particularly devastating for people of color: “people of color in general fared worse than white participants across the board, with African American transgender respondents faring far worse than all others in nearly every area examined.”

Numerous lawsuits have been filed in New York alleging discrimination based on gender identity and expression. These lawsuits are almost uniformly unsuccessful, however, because courts often hold that existing laws banning discrimination based on sex or sexual orientation do not protect transgender people. The New York City Gay and Lesbian Anti-Violence Project, which provides services to LGBTQ violence survivors, reported that 14% of their clients identified as transgender in 2012. It is important to note that this figure only represents transgender individuals who self-reported being victims of violence; recent attacks in New York City against LGBTQ individuals remind us that the true number of victims is likely much larger. Under the current hate-crimes statute, acts of violence motivated by the victim’s transgender or gender non-conforming status are not eligible for a hate-crime penalty enhancement.

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3 Id. at 2.


5 See, for example, Marc Santora & Joseph Goldstein, *In the Shadow of the Stonewall Inn, a Gay Man is Killed*, N.Y. Times, May 18, 2013, available at [http://www.nytimes.com/2013/05/19/nyregion/killing-in-greenwich-village-looks-like-hate-crime-police-say.html?pagewanted=1& r=0](http://www.nytimes.com/2013/05/19/nyregion/killing-in-greenwich-village-looks-like-hate-crime-police-say.html?pagewanted=1& r=0) (last visited June 20, 2013). The article reports that there has been a rise in bias-related crimes in New York City - 22 so far in 2013 compared to 13 during the same period last year.
By passing GENDA, New York would not be breaking new ground; it would, rather, merely be joining the sixteen states and the District of Columbia and at least 174 localities across the country that have enacted laws prohibiting discrimination based on gender identity and expression. The states that already have passed such laws are California, Colorado, Connecticut, Hawaii, Illinois, Iowa, New Jersey, Maine, Massachusetts, Minnesota, Nevada, New Mexico, Oregon, Rhode Island, Vermont and Washington. Within New York, a number of localities already have passed laws prohibiting discrimination based on gender identity and expression, including Suffolk, Tompkins and Westchester counties, and the cities of Albany, Binghamton, Buffalo, Ithaca, New York, Rochester and Syracuse. According to a March 2008 poll conducted by the Global Strategy Group, 78% of registered New York voters support “the passage of a law that protects transgender people from discrimination in employment, housing, and public accommodations.” The bill is also supported by leadership throughout the State, with statements of support coming from former NYPD Commissioner Ray Kelly, Attorney General Eric Schneiderman and Senators Kirsten Gillibrand and Chuck Schumer.

GENDA is an important step in protecting transgender and gender non-conforming people in their employment and housing, and protecting their safety, so that they can enjoy the financial and social stability necessary to become fully integrated and productive members of their communities. This bill is necessary to counteract the pervasive discrimination faced by transgender and gender non-conforming people. Therefore, the Committees support the proposed bill and urge its passage.

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8 See supra, n. 9.
