



**NEW YORK
CITY BAR**

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**REPORT ON LEGISLATION
COMMITTEE ON LESBIAN, GAY, BISEXUAL AND TRANSGENDER RIGHTS¹**

**A. 5710-A
S. 2406-A**

**Assembly Member Gottfried
Senator Duane**

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.² 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.

Reliable statistical information concerning discrimination against transgender and gender non-conforming people in New York is nearly nonexistent. There are, however, surveys from transgender populations in cities outside of New York that provide some insight into the pervasive problems such discrimination poses. For example, a survey of transgender people in San Francisco found that:

¹ This report has been revised and reissued to reflect amendments made to the legislation.

² 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.

- nearly 50% of the respondents experienced employment discrimination based on their gender identity or expression;
- more than 33% of the respondents experienced discrimination based on their gender identity or expression in a place of public accommodation;
- nearly 33% of respondents experienced discrimination in housing based on their gender identity or expression;
- more than 30% of the respondents experienced discrimination based on their gender identity or expression when attempting to access health care; and
- approximately 20% of the respondents had suffered discrimination based on their gender identity or expression when attempting to access services from a social service provider.³

Similarly, a survey of the transgender community in Washington, D.C. found that less than 60% of respondents held paying jobs, nearly 30% reported no source of income whatsoever, and an additional 31% reported annual incomes of less than \$10,000; 15% of respondents had lost a job due to discrimination based on their gender identity or expression; and 43% of respondents reported having been a victim of violence or crime, with 75% of them attributing that violence or crime to discrimination based on their gender identity or expression.⁴

It is likely that the experiences of transgender and gender non-conforming people living in New York are similar to those living in San Francisco or Washington, D.C. 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. Further, although statewide data on anti-transgender bias crimes is unavailable, the New York City Gay and Lesbian Anti-Violence Project received 74 reports from transgender people who were victims of a bias-based crime in 2005, 94 reports in 2006 and 63 reports from transgender people in 2007.⁵ 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.

By passing GENDA, New York would not be breaking new ground; it would, rather, merely be joining the thirteen states and the District of Columbia⁶ and more than 103 localities

³ Shannon Minter & Christopher Daley, "Trans Realities: A Legal Needs Assessment of San Francisco's Transgender Community" (Nat'l Ctr. for Lesbian Rights & Transgender Law Center 2003), *available at* <http://www.transgenderlawcenter.org/tranny/pdfs/Trans%20Realities%20Final%20Final.pdf>.

⁴ Jessica M. Xavier, "The Washington Transgender Needs Assessment Survey" (Gender Education & Advocacy and Us Helping Us), *available at* <http://www.glaa.org/archive/2000/tgneedsassessment1112.shtml>.

⁵ Nat'l Coal. of Anti-Violence Programs, "Anti-Lesbian, Gay, Bisexual and Transgender Violence in 2005," at 50; Nat'l Coal. of Anti-Violence Programs, "Anti-Lesbian, Gay, Bisexual and Transgender Violence in 2006," at 32; Nat'l Coal. of Anti-Violence Programs, "Anti-Lesbian, Gay, Bisexual and Transgender Violence in 2007," at 43, *all available at* www.avp.org. Statistical information concerning anti-transgender bias crimes is not systematically collected or reported by any municipal, state or federal agencies.

⁶ Transgender Law Ctr., "Non-Discrimination Laws that include gender identity and expression," *available at* <http://www.transgenderlaw.org/ndlaws/index.htm>.

across the country that have enacted laws prohibiting discrimination based on gender identity and expression.⁷ The states that already have passed such laws are California, Colorado, Hawaii, Illinois, Iowa, New Jersey, Maine, Minnesota, New Mexico, Oregon, Rhode Island, Vermont and Washington.⁸ Within New York, a number of localities already have passed laws prohibiting discrimination based on gender identity and expression, including Suffolk and Tompkins counties, and the cities of Albany, Buffalo, Ithaca, New York, and Rochester. 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.”⁹

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, which was passed by the New York State Assembly on March 2, 2010 (A.5710-A), is necessary to counteract the pervasive discrimination faced by transgender and gender non-conforming people. Therefore, the committee strongly supports the proposed bill and urges that it be passed by the Senate.

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⁷ Human Rights Campaign, “Cities and Counties with Non-Discrimination Ordinances that Include Gender Identity,” (Jan. 1, 2009), available at: http://www.hrc.org/issues/workplace/equal_opportunity/9602.htm.

⁸ See *supra*, n.5.

⁹ Global Strategy Group, “GENDA Survey,” (2008), available at: <http://prideagenda.blogspot.com/2008/03/poll-new-yorkers-overwhelmingly-support.html>.