

Memorandum in Support

NYSBA #6

May 5, 2011

S. 2873
A. 5039

By: Senator Duane

By: M. of A. Gottfried

Senate Committee: Investigations and Government
Operations

Assembly Committee: Governmental Operations

Effective Date: 30th day after it shall have become
A law

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.

THE NEW YORK STATE BAR ASSOCIATION SUPPORTS THIS LEGISLATION

This bill would prohibit discrimination based on gender identity or expression and includes offenses regarding gender identity and expression under the Hate Crimes Statute. This would rectify the omission of gender identity and expression from both the Sexual Orientation Non-Discrimination Act (“SONDA”) enacted by the Legislature in 2002 and the Hate Crimes Act of 2000.

The Legislature set forth its findings concerning the purpose of the proposed changes in the law in Section 1 of the bill that provides as follows:

“The legislature reaffirms that the state has the responsibility to act to assure that every individual within this state is afforded an equal opportunity to enjoy a full and productive life, and that the failure to provide such equal opportunity, whether because of discrimination, prejudice, intolerance or inadequate education, training, housing or health care not only threatens the rights and proper privileges of its inhabitants, but menaces the institutions and foundation of a free democratic state and threatens the peace, order, health, safety and general welfare of the state and its inhabitants.

The legislature further finds that many residents of this state have encountered prejudice on account of their gender identity or expression, and that this prejudice has severely limited or actually prevented access to employment, housing and other basic necessities of life, leading to deprivation and suffering.

The legislature further recognizes that this prejudice has fostered a general climate of hostility and distrust, leading in some instances to physical violence against those perceived to live in a gender identity or expression which is different from that traditionally associated with the sex assigned to that person at birth. In so doing, the legislature makes clear its action is not intended to promote any particular attitude, course of conduct or way of life. Rather its purpose is to ensure that individuals who live in our free society have the capacity to make their own choices, follow their own beliefs and conduct their own lives as they see fit, consistent with existing law.

The legislature further finds that, as court decisions have properly held, New York's sex discrimination laws prohibit discrimination based on gender stereotypes or because an individual has transitioned or intends to transition from one gender to another. This legislation is intended to codify this principle and to ensure that the public understands that discrimination on the basis of gender identity and expression is prohibited.

The committee agrees with these findings and believes that the enactment of the legislation is in the public interest.

Gender variant individuals are not protected from discrimination under current New York State or federal law. Such individuals, whose gender identity or appearance, dress or roles do not conform to their birth sex face discrimination in all aspects of life including, but not limited to, housing, employment, education and public accommodations and are also particularly vulnerable to hate crimes. There are numerous documented cases where gender variant individuals have been denied employment, fired from jobs, denied advancement in their profession or otherwise harassed in the workplace. They have also been denied housing, rooms in hotels, refused service at restaurants and denied adequate medical care.

Gender variant individuals are the objects of a disproportionately high level of physical and mental violence and abuse. A 1997 survey by the San Francisco Department of Public Health found that on average 84% of gender variant individuals encounter verbal abuse, 34% physical abuse, 52% employment discrimination and 29% housing discrimination.

In the workplace, discrimination can occur if an employer discovers that an applicant or an employee once went under a name synonymous with a different gender, or merely if a male individual does not appear to be sufficiently masculine, or a female sufficiently feminine in appearance or mannerism. Discrimination based on an individual's appearance or mannerism is different from discrimination based on sexual orientation; gender variance is readily observable whereas sexual orientation is not outwardly manifested. Others face termination when they transition from one gender to another, or are treated so poorly by co-workers that they feel they must quit. Gender variant youth can experience bullying or harassment at home or in school. Many are forced out of their homes; 40% of homeless youth identify as lesbian, gay, bisexual or transgender.

Gender variant people also face substantial healthcare challenges. Some physicians will subject transgender patients to ridicule or simply refuse them treatment. It is also difficult, if not at times impossible, for a transgender person to get insurance to cover appropriate healthcare needs.

There are documented cases of gender variant individuals being denied access to social services in shelters or rape crisis centers, or placed in unsafe setting inappropriate for their gender identity or expression. This is also true for youth in foster care, group home or juvenile justice settings, and for prison inmates.

Transgender people face difficulties related to their government issued identifications, such as drivers' licenses. If one's gender expression doesn't match the "M" or "F" on a license, the person can be mocked or harassed. In an age of increased security, something as simple as entering an office building or boarding a plane can lead to a gender variant person being humiliated or denied access.

In adopting this legislation, New York State would not be establishing a new or unique policy. Rather, it would be extending to New York residents rights that are already afforded to citizens in a number of other jurisdictions. Thirteen states and the District of Columbia currently have laws prohibiting discrimination on the basis of gender identity or expression. In New York State, New York City, Albany, Ithaca, Buffalo, Rochester and Tompkins, Suffolk and Westchester Counties prohibit discrimination on the basis of gender identity or expression. Governor Paterson recently issued Executive Order 33 prohibiting New York State agencies and their managers, supervisors and employees from discriminating on the basis of gender identity and expression. The Obama administration has inserted language into the federal jobs website explicitly banning employment discrimination on the basis of gender identity.

Employment policies in the private sector provide some level of protection with over 150 of Fortune 500 companies having policies against gender variant individuals. These include New York-based corporations such as American Express, Citigroup, Corning, Eastman Kodak, Goldman Sachs, IBM, J.P. Morgan Chase, MetLife, Morgan Stanley, PepsiCo, Pfizer and Time Warner.

Gender variant individuals, often in the face of considerable societal obstacles, are productive citizens who contribute their resources and talents to the New York economy. A poll of 600 voters by Global Strategy Group commissioned by Empire State Pride Agenda in February 2008 found that (with a +/-4.0% margin of error) 78% of New York voters support, and only 13% oppose, passage of a statewide transgender non-discrimination law. Support is strong across the state, whether upstate (74%), New York City (79%) or the downstate suburbs (82%), and among Democrats (86%), Republicans (67%) and independent voters (78%).

With this bill, New York State has the opportunity to enact a statewide, comprehensive law to explicitly protect gender variant individuals from discrimination. The Gender Expression Nondiscrimination Act (GENDA) would make it illegal to fire someone from a job, evict them from an apartment, deny them a loan or refuse them service in a restaurant simply because their appearance does not conform to their birth sex. It would also protect gender variant individuals from violence by adding gender identity and expression to New York State's bias crime laws.

GENDA is an important step in protecting transgender and gender variant individuals in employment and housing, and in 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 variant individuals.

Based on the foregoing, the New York State Bar Association **SUPPORTS** the enactment of this important legislation.