

**Policy Paper**  
**Statewide Transgender Anti-Discrimination Protections in Illinois**

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**I. The Problem**

Transgender and gender variant people cross socially constructed gender boundaries with identity, appearance or behavior not typically associated with the sex they were assigned at birth. Included under this umbrella term are transsexuals, intersex people, and cross-dressers.

Transgender individuals simply desire to live, work, learn and conduct business across Illinois like any other person. Unfortunately, transgender individuals experience tremendous discrimination in their daily lives. Not only is tolerating discrimination to transgender individuals demoralizing and dehumanizing to them and those that love them, this discrimination is also damaging to our state's economy. Every year since 1995, Illinois Gender Advocates (formerly, It's Time, Illinois!) has documented a shocking number of discrimination and hate crime incidences in this state.<sup>1</sup>

While some of those documented in the reports identify as transgender, that designation by no means encompasses all gender variant people who have experienced discrimination. Both men and women, straight and gay, have been discriminated against based on the perception of being "too feminine" or "too masculine." In order to assure protection for all those who have been discriminated on this basis, inclusive coverage in the Illinois Human Rights Act is called for.

**II. Current Protections**

Currently, in Illinois, like for gay, lesbian, and bisexual people, there is no statewide law that clearly bans discrimination against transgender individuals. Although the statewide anti-discrimination law covers sex discrimination, which might logically be used to protect transgender people, there has been no case law in Illinois to indicate that "sex" should be interpreted in this manner. In fact, the national trend is that transgender people are not protected under sex discrimination laws. In 1999, the Illinois Human Rights Commission narrowly held that *transsexuals* could be covered by disability anti-discrimination provisions. However, this holding does not protect the entire group of people who need protections because they are

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<sup>1</sup> See for example, *Discrimination 2002, 6<sup>th</sup> Report on Discrimination and Hate Crimes Against Gender Variant People*, It's Time Illinois, published Spring 2002. This and previous reports are available from Illinois Gender Advocates, 47 W. Division St. #391, Chicago, IL 60610 or online at <http://www.genderadvocates.org/>.

transgender. Because the terms “sex” and “disability” are insufficient, explicit language<sup>2</sup> is needed in the Illinois Human Rights Act to protect all transgender Illinoisans from discrimination.

There are seven localities in Illinois that do provide explicit prohibitions of discrimination against transgender people. Champaign and Urbana were two of the first cities in the country to make coverage for transgender people in the late 1970s. Evanston passed protections in 1997 and DeKalb added protections in the 2000. This year, Decatur, Chicago, and Cook County all passed explicit language to protect their transgender citizens from protection. (See Appendix A for a chart of jurisdictions across the country that have explicit protections.) These seven jurisdictions represent approximately 5.7 million of our 12.4 million Illinois residents (46%).

Although these local protections are tremendously important, they do not afford as great of protection as a statewide law because employers, owners, and managers of businesses are not sufficiently aware of the precise provisions of the anti-discrimination laws they are subject to at the local level. Additionally, many of the local ordinances do not have satisfactory remedy provisions.

Nationally, there are two states (Minnesota and Rhode Island), eight counties, and 43 cities that explicitly ban discrimination against transgender people, representing 36.8 million Americans. (See Appendix B.) In addition, many businesses have chosen to adopt non-discrimination policies in order to protect and retain their valuable transgender employees, including a number of Fortune 500 companies that do business in Illinois, such as Walgreen's, American Airlines, IBM and Lucent Technologies.

### **III. Previously Considered Legislative Solutions (House Bill 101)**

To provide statewide anti-discrimination protections for the entire gay, lesbian, bisexual and transgender (GLBT) community, the Illinois legislature has considered numerous measures over the last ten years. In the last legislative session that is now coming to a close, House Bill 101 was passed by the House, but was not brought to a vote in the Senate.

House Bill 101 used a broad definition of “sexual orientation” to cover the entire GLBT community. When the bill was written, the drafters patterned this legislative language after Minnesota’s statewide anti-discrimination law, which was the only state that had such a law at the time.

However, since House Bill 101 was drafted, the Minnesota language has fallen into disfavor by transgender legal experts. Earlier this year, the Minnesota Supreme Court heard a case brought by a transgender plaintiff who experienced discrimination from her employer. The Court

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<sup>2</sup> Explicit language is when the law uses terms like “gender identity” or “gender expression” or “gender variance,” often accompanied with a definition that makes clear that transgender people are covered by this language. Non-explicit coverage is when an anti-discrimination ordinance uses terms like “actual or perceived” paired with “sex,” “gender,” or “sexual orientation” but without any definitions that make clear that transgender people are covered.

interpreted the anti-discrimination statute very narrowly to allow certain types of discrimination against transgender individuals. If Illinois was to use legislative language patterned after Minnesota, it is likely that courts in Illinois would look to Minnesota's narrow interpretation. Because we want *all* discrimination against transgender people to be illegal, we should not pattern our language after Minnesota.

#### **IV. Recommendation**

Instead of patterning our legislative language after Minnesota which was developed 1993, we should instead use language similar to that has been passed more recently, such as in Rhode Island or in Chicago and Cook County. Providing coverage through a broad definition of "sexual orientation" will still be sufficient, but the definition must be updated.

According to national transgender legal experts,<sup>3</sup> the following is the best way to modify House Bill 101's definition of "sexual orientation" to ensure full coverage for transgender individuals:

*"Sexual orientation" means having or being perceived as having an emotional, physical, or sexual attraction to another person without regard to the sex of that person or having or being perceived as having an orientation for such attraction, or having or being perceived as having a gender-related self-identity, appearance, expression or behavior whether or not traditionally associated with the person's designated sex at birth."*

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<sup>3</sup> This language was developed by Lisa Mottet, Legislative Lawyer for the Transgender Civil Rights Project at the National Gay and Lesbian Task Force in consultation with Shannon Minter, Legal Director of the National Center for Lesbian Rights.