



## MEMORANDUM

**From:** Williams Institute  
**Date:** September 2009  
**RE:** **Rhode Island – Sexual Orientation and Gender Identity Law and Documentation of Discrimination**

### I. OVERVIEW

In 1995, Rhode Island’s General Assembly added protection from discrimination based on sexual orientation to the state civil rights law, initially passed in 1949.<sup>1</sup>

The bill took eleven years to enact, and was at times hotly contested in the legislature.<sup>2</sup> A proponent of the legislation described the antipathy toward the gay community in the Rhode Island legislature in the mid 1980’s as such:

“In the last session you had the extreme of [Senator Robert Motherway] saying that if such a bill passed you could potentially have a rescue worker with gonorrhea of the throat giving you mouth-to-mouth resuscitation, the implication being that we are dirty people and are going to spread disease.”<sup>3</sup>

As the debate continued on the House Floor, in 1995 Representative Metts used such derisive phrases as “mankind shall not lie with mankind” and “immoral sexual behavior is an abomination to God,” in voicing his opposition to the bill.<sup>4</sup>

In the Senate debate in 1995, Senator Graziano argued that the bill would be construed to protect those with a “sexual orientation toward children.”<sup>5</sup> Also in opposition, Senator Lawrence echoed the opponents in the House, noting that if Rhode Island has a right to criminalize sodomy, it should not be required to adopt legislation protecting homosexuals from discrimination.<sup>6</sup>

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<sup>1</sup> R.I. GEN. LAWS. § 28-5.1-5.2 (1949).

<sup>2</sup> R.I. GEN. LAWS § 28-5-3 (1995), R.I. GEN. LAWS § 28-5-7 (1995), R.I. GEN. LAWS § 34-37-4 (1995), R.I. GEN. LAWS § 34-37-4.3 (1995), R.I. GEN. LAWS § 11-24-2 (1995).

<sup>3</sup> Thomas Morgan, *Gay Alliance Champions the Silent 10%*, PROV. J., Jul. 24, 1985, at 06.

<sup>4</sup> Floor Statement of R.I. Rep. Metts, R.I. House of Rep., Mar. 29, 1995.

<sup>5</sup> Floor Statement of R.I. Sen. Graziano, R.I. Sen., May 19, 1995.

<sup>6</sup> Floor Statement of R.I. Sen. Lawrence, R.I. Sen., May 19, 1995. Senator Lawrence’s 1995 statements preceded the Supreme Court’s decision in *Lawrence v. Texas*, 539 U.S. 558 (2003) (holding that state sodomy laws violate the federal constitution).

In 2001, the General Assembly voted to prohibit discrimination based on gender identity.<sup>7</sup>

The city of Providence also has had an anti-discrimination ordinance that prohibits sexual orientation discrimination since 1995, that has been interpreted to also prohibit discrimination on the basis of gender identity. When the Providence City Council voted against adding sexual orientation as a protected basis in its anti-discrimination ordinance in 1985,<sup>8</sup> One former city councilman, Thomas Pearlman, stated: “These courageous councilmen have relieved organizations such as nursery schools, Girl Scouts, Boy Scouts and . . .Day-Care Centers from being required to hire sexual perverts...”<sup>9</sup>

Since the enactment of the Rhode Island law prohibiting sexual orientation discrimination, public employees have filed claims alleging sexual orientation discrimination. From 2000 to the present, seven such complaints have been filed against public employers with the Rhode Island Commission for Human Rights (“RICHR”). In five of these complaints, employees alleged harassment and/or discriminatory termination. In the other two complaints, employees claimed they were denied benefits.

Documented examples of employment discrimination on the basis of sexual orientation and gender identity by state and local government employers in Rhode Island include:

- In 2007, a gay man working for the State of Rhode Island Department of Corrections reported having problems at work because of his sexual orientation. He was called "gay cop," "cum swallowing pig," and other derogatory names in front of inmates by his coworkers.<sup>10</sup>
- A gay male public employee was terminated from his job as a beach manager after three years. His employer publicly informed him that he was under investigation for sexual harassment, due to a complaint made by a male ex-employee. In the past, his employer had referred to homosexuals as “fags.” The employee stated that similarly situated heterosexuals were not accused of sexual harassment.<sup>11</sup>
- In 2004, a Rhode Island State Trooper, who was a lesbian, reported that she was harassed and ultimately fired because of her sexual orientation.

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<sup>7</sup> *Law Now Bans Transgender Bias*, PROV. J., Jul. 20, 2001, at B5; R.I. GEN. LAWS § 28-5-3 (2001), R.I. GEN. LAWS § 28-5-7 (2001), R.I. GEN. LAWS § 34-37-4 (2001), R.I. GEN. LAWS § 34-37-4.3 (2001), R.I. GEN. LAWS § 11-24-2 (2001).

<sup>8</sup> Russell Garland, *Gay Rights Out, Anti-Bias Law Passed by Council ‘Sexual Orientation’ Clause Removed by a Vote of 8 to 6*, PROV. J., Sept. 6, 1985.

<sup>9</sup> Richard C. Dujardin & Russell Garland, *Gay Rights Vote Satisfies Bishop Gelineau*, PROV. J., Sept. 6 1985 at C1.

<sup>10</sup> GLAD Hotline Intake Form, Gay & Lesbian Advocates & Defenders, Report of Employment Discrimination (Mar. 22, 2007) (on file with GLAD) (hereinafter “GLAD Intake Form” ([date])).

<sup>11</sup> Charge of Discrimination Form, R.I. Comm’n on Human Rts. (Aug. 16, 2006, as amended) (on file with the Williams Institute) (hereinafter “R.I. Charge of Discrimination” ([date(s)], [any amendments thereto])).

The trooper was concerned that if she filed a complaint, she would not be able to get another job in law enforcement in the state.<sup>12</sup>

- A teacher who alleged that the Cranston Public Schools unlawfully discriminated against her based on sexual orientation in violation of Rhode Island's anti-discrimination law. The Rhode Island Commission for Human Rights found probable cause to believe that teacher had been unlawfully discriminated against before the case was transferred to the Superior Court. The teacher was denied family medical leave when she took time off work to care for her ill same sex partner. The Superintendent stated that family medical leave could only be granted where there is an "illness in the family" and not for "non-related individuals living in the household."<sup>13</sup> The hearing on the teacher's motion for summary judgment is scheduled for March 3, 2009.<sup>14</sup>
- A lesbian public employee was terminated from her job as a certified nursing assistant. Her employer's stated reason for her termination was that her sexual orientation made other employees uncomfortable.<sup>15</sup>
- In 2003, a woman working for a state agency overheard a conversation in the cafeteria at work in which an employee made derogatory comments about gay people, such as "homosexuals are pedophiles." She complained to her supervisor, who scheduled a mediation session. However, the person who made the comment refused to participate, and the matter was dropped. She feared retaliation if she filed another complaint.<sup>16</sup>
- In 2002, a teacher at a Rhode Island public school, who is gay, reported that several of his coworkers made anti-gay comments to him, such as "What, are you a homo?" "Where are your wife and kids?" and "We can't deal with this gay and lesbian shit." In response to his complaints, the teacher's classroom and teaching schedule was changed without notice, he has been screamed at, and he was warned to "not get into a pissing match" with them. The teacher reported that he felt intimidated and was treated differently and passed over for other work opportunities because of his sexual orientation. After filing a complaint with his union and the school district, union officials and the principal wrote the teacher up for insubordination. The teacher spoke to someone in the Rhode Island Department of Education, but he feared that if he filed an official complaint, the Department of Education would take the school's side.<sup>17</sup>

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<sup>12</sup> GLAD Intake Form (Mar. 18, 2004).

<sup>13</sup> See Plaintiff's Memorandum of Points and Authorities In Support of Motion for Summary Judgment, *D'Amico v. Cranston Sch. Comm.*, P.C.C.A. No. 06-5997 (R.I. Super. Ct. 2009).

<sup>14</sup> See R.I. Charge of Discrimination (May 26, 2004); *infra* Section III.A.1.

<sup>15</sup> See R.I. Charge of Discrimination (Nov. 1, 2004).

<sup>16</sup> GLAD Intake Form (July 17, 2003).

<sup>17</sup> GLAD Intake Form (Oct. 30, 2002).

- In 2002, a science teacher came out to his colleagues and his principal began to harass him. As the harassment continued, the teacher became more depressed and anxious and began to stay out of school and then was fired.<sup>18</sup>
- A lesbian public employee was harassed and subjected to discriminatory terms and conditions of employment by her supervisor. Since her supervisor learned of her sexual orientation, she has been treated in a demeaning/harassing manner. She was constantly questioned about time, work assignments, and her manner of dress and was the only employee not allowed to wear jeans to work.<sup>19</sup>
- A lesbian public employee was subjected to discriminatory terms and conditions of employment. The employee stated that her supervisor was jealous of her relationship with a female coworker and so harassed her and issued inappropriate disciplinary actions. The supervisor also harassed her outside of work, following her home and to her partner's house on numerous occasions.<sup>20</sup> A public employee was terminated and her supervisor stated that the reason for termination was that employee threw a snack at a patient. However, prior to termination, her supervisor told her that she would not tolerate the employee's homosexuality.<sup>21</sup>

Part II of this memo discusses state and local legislation, executive orders, occupational licensing requirements, ordinances and policies involving employment discrimination based on sexual orientation and gender identity, and attempts to enact such laws and policies. Part III discusses case law, administrative complaints, and other documented examples of employment discrimination by state and local governments against LGBT people. Part IV discusses state laws and policies outside the employment context.

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<sup>18</sup> E-mail from Lee Swislow, Executive Director, GLAD, to Brad Sears, Executive Director, the Williams Institute (Sept. 16, 2009 8:08:00 PST) (on file with the Williams Institute).

<sup>19</sup> See R.I. Charge of Discrimination (June 1, 1999); R.I. Charge of Discrimination (Apr. 28, 2000).

<sup>20</sup> See R.I. Charge of Discrimination (Dec. 1, 1997); R.I. Charge of Discrimination (June 13, 1998).

<sup>21</sup> See R.I. Charge of Discrimination (Oct. 18, 1997); R.I. Charge of Discrimination (Nov. 5, 1997).

## II. SEXUAL ORIENTATION & GENDER IDENTITY EMPLOYMENT LAW

### A. State-Wide Employment Statutes

#### 1. Scope of Statute

In 1995, the Rhode Island General Assembly amended the Fair Employment Practices Act (“FEPA”) to include sexual orientation as a protected basis, joining race, religion, sex, disability, age, and country of ancestral origin.<sup>22</sup> In 2001, the General Assembly also voted to prohibit employment discrimination based on “gender identity or expression.”<sup>23</sup> The bill defines “sexual orientation” as “[H]aving or being perceived as having an orientation for heterosexuality, bisexuality, or homosexuality.”<sup>24</sup> The language in the bill directly following this definition reflects the contentiousness in the debate leading up to passage: “[t]his definition does not confer legislative approval of said status, but is intended to assure basic human rights of persons to obtain and hold employment, regardless of such status.”<sup>25</sup>

The bill further defines “gender identity or expression” as “a person’s actual or perceived gender, as well as a person’s gender identity, gender-related self image, gender-related appearance, or gender-related expression; whether or not that gender identity, gender related self image, gender-related appearance, or gender-related expression is different from that traditionally associated with the person’s sex at birth.”<sup>26</sup>

The FEPA, which covers public and private employers, employment agencies and labor organizations, prohibits intentional discrimination and practices or policies that have a disparate impact on the basis of sexual orientation and/or gender identity.<sup>27</sup>

While the bill is relatively broad in scope, it contains several exemptions. First, employers with fewer than four employees are exempt.<sup>28</sup> Second, the statute does not apply “to a religious corporation, association, education institution, or society with respect to the employment of individuals of its religion to perform work connected with the carrying on of its activities.”<sup>29</sup> Third, public and private employers may defend against a discrimination claim by arguing that a “bona fide occupational qualification” for the particular position is that it be held by someone who is non-gay or non-transgender.<sup>30</sup> Finally, owners who live in units housing three families or less are not covered by the corresponding Fair Housing Practices Act.<sup>31</sup>

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<sup>22</sup> R.I. GEN. LAWS § 28-5-7 (1995).

<sup>23</sup> R.I. GEN. LAWS § 28-5-7 (2001).

<sup>24</sup> R.I. GEN. LAWS § 28-5-6(13).

<sup>25</sup> R.I. GEN. LAWS § 28-5-6(13).

<sup>26</sup> R.I. GEN. LAWS § 28-5-6(14).

<sup>27</sup> See R.I. GEN. LAWS § 28-5-7; R.I. GEN. LAWS § 28-5-7.2.

<sup>28</sup> R.I. GEN. LAWS § 28-5-6(7)(i).

<sup>29</sup> R.I. GEN. LAWS § 28-5-6(7)(ii).

<sup>30</sup> R.I. GEN. LAWS § 28-5-7(4).

<sup>31</sup> R.I. GEN. LAWS §§ 34-37-4.4, 34-37-4.5.

Rhode Island's FEPA was intended by the legislature as an analog to Title VII.<sup>32</sup> Thus, when analyzing a discrimination claim under the FEPA, courts will apply the same three part burden shifting analysis applicable under Title VII.<sup>33</sup>

## 2. Enforcement & Remedies

Individuals alleging discrimination on the basis of sexual orientation or gender identity have one year from the date of the alleged harm to file a complaint with the RICHR, the agency that enforces the antidiscrimination laws.<sup>34</sup> Once an individual files a complaint, the RICHR will typically conduct a preliminary investigation to determine whether there is probable cause to believe that unlawful discrimination has occurred.<sup>35</sup>

If the RICHR finds probable cause, then it must first attempt to settle the matter with "informal methods of conference, persuasion, and conciliation."<sup>36</sup> Where informal methods of settlement have failed, the RICHR will conduct a formal hearing and upon a finding of unlawful discrimination, must issue an order requiring the employer to

"cease and desist ... and to take such further affirmative action ... including, but not limited to, hiring; reinstatement, or upgrading of employees with or without back pay[,] admission or restoration to union membership or to training practices with utilization of objective criteria for admission ...."<sup>37</sup>

Additionally, attorneys' fees may be awarded to the prevailing plaintiff and, if the Commission finds intentional discrimination, then it may award compensatory damages as well.<sup>38</sup>

There are two ways in which a case may be heard in Rhode Island state court. First, if the RICHR is unable to secure a settlement agreement, and has not begun a hearing on the complaint, then the complainant may ask for a right to sue in state court "if not less than one hundred and twenty days and not more than two years have elapsed from the date of filing of a charge ...."<sup>39</sup> Once the complainant makes a request, the RICHR must grant the right to sue within thirty days. Second, if the RICHR finds probable cause to believe that unlawful discrimination occurred, then the complainant "may elect within twenty days ... to terminate by written notice ... all proceedings before the commission and have the case heard in the superior court ...."<sup>40</sup>

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<sup>32</sup> *Tardie v. Rehabilitation Hosp.*, 6 F. Supp. 2d 125, 133 (R.I. Dist. Ct. 1998).

<sup>33</sup> *Id.*

<sup>34</sup> R.I. Comm'n for Human Rts. Rules & Reg., Rule 4.5.

<sup>35</sup> Rule 5.01.

<sup>36</sup> R.I. GEN. LAWS § 28-5-16; R.I. Comm'n for Human Rts. Rules & Reg., Rule 5.02.

<sup>37</sup> R.I. Comm'n for Human Rts. Rules & Reg., Rule 12.02(B)(1).

<sup>38</sup> See R.I. GEN. LAWS § 28-5-24(a)-(b); R.I. Comm'n for Human Rts. Rules & Reg., Rule 16.01.

<sup>39</sup> R.I. GEN. LAWS § 28-5-24.1(a).

<sup>40</sup> R.I. GEN. LAWS § 28-5-24.1.

A Rhode Island state court may award punitive damages if it finds that the employer's conduct was motivated by "malice or ill will" or "involve[d] reckless or callous indifference to the statutorily protected rights of others."<sup>41</sup>

## B. Attempts to Enact State Legislation

On March 29, 1995, the Rhode Island House of Representatives passed the amendment prohibiting discrimination on the basis of sexual orientation in employment, housing, public accommodations, and granting credit.<sup>42</sup> The amendment was passed in the Senate on May 19, 1995.<sup>43</sup> Civil rights activist Julie Pell attributed the bill's passage to "a cumulative effect of testimony about discrimination from men and women who were openly gay."<sup>44</sup>

Bills prohibiting discrimination on the basis of sexual orientation were introduced in the legislature for eleven consecutive years before passage in 1995.<sup>45</sup> A proponent of the legislation described the antipathy toward the gay community in the Rhode Island legislature in the mid 1980's as such:

"In the last session you had the extreme of [Senator Robert Motherway] saying that if such a bill passed you could potentially have a rescue worker with gonorrhea of the throat giving you mouth-to-mouth resuscitation, the implication being that we are dirty people and are going to spread disease."<sup>46</sup>

In the debate on the House Floor on March 29, 1995, two principal arguments emerged against passage of the bill: one based on religion and the other on the constitution. Representative Metts spearheaded the religious argument, invoking such phrases from the Bible as "mankind shall not lie with mankind," and "immoral sexual behavior is an abomination to God." His general point was that anyone whose behavior could be described as an "abomination" in the Bible should not be granted civil rights.<sup>47</sup> The constitutional argument against the bill was put forth by Representative Knowles, who maintained that civil rights legislation should only extend to certain protected classes based on immutable factors such as race and gender. Representative Knowles believed

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<sup>41</sup> R.I. GEN. LAWS § 28-5-29.1.

<sup>42</sup> H.B. 6678 (1995).

<sup>43</sup> R.I. Sen. J., May 19, 1995.

<sup>44</sup> David Dunlap, *Rhode Island's Senate Sends Gay-Rights Bill to Governor*, N. Y. TIMES, May 20, 1995, at 10.

<sup>45</sup> See generally Morgan, *supra* note 3; *Panel OKs Scaled-Down Bill Prohibiting Bias*, PROV. J., Apr. 08, 1988, at C20; Russell Garland, *Judiciary Again Takes Up a Gay Rights Bill*, PROV. J., Mar. 26, 1993 at B6; Lynn Ardit, *Gay Shoppers Boycott R.I.*, PROV. J., Dec. 6 1992, at I2; Scott MacKay, *Gay Rights Go Before Assembly for 11th Year*, PROV. J., Mar. 14, 1995 at C4.

<sup>46</sup> Morgan, *supra* note 45.

<sup>47</sup> Floor Statement of R.I. Rep. Metts, R.I. House of Rep., Mar. 29, 1995.

that sexual orientation was not an immutable characteristic, and thus opposed granting “special rights” to gays and lesbians.<sup>48</sup>

Another stated concern in the debate was fear of the teaching of the “gay lifestyle.” The original version of the bill contained a provision directing the Commission and the State Department of Education to prepare a comprehensive educational program addressing protecting students from bullying and harassment on the basis of sexual orientation in the schools.<sup>49</sup> Representative Pires moved to strike this provision, which the majority of the House supported.<sup>50</sup> Representative McDevitt, a vocal opponent of an anti-discrimination educational program, argued that it would be tantamount to forcing an “abhorrent sexual philosophy” on people, stating “I don’t have to live with people flaunting a lifestyle that I don’t agree with [sic].”<sup>51</sup>

Several senators expressed opposition to various aspects of the bill by moving to amend it. Senator Lawrence introduced an amendment that would exempt the Boy Scouts from the bill; it was ultimately rejected.<sup>52</sup> Senator Walaska introduced two amendments, which also failed. His first proposed amendment exempted small businesses with 25 or fewer employees.<sup>53</sup> His second proposed amendment was to insert the following provisions in the bill:

“Nothing in this chapter shall be construed to: (1) mean the state of Rhode Island condones homosexuality or bisexuality or any equivalent lifestyle; (2) authorize or permit the promotion of homosexuality or bisexuality in education institutions or require the teaching in education institutions of homosexuality or bisexuality as an acceptable lifestyle; (3) authorize or permit the use of numerical goals or quotas, or other types of affirmative action programs, with respect to homosexuality or bisexuality in the administration or enforcement of the provisions of this chapter; or (4) authorize the recognition of or the right of marriage between persons of the same sex.”<sup>54</sup>

Senator Polisena introduced an amendment that was also rejected, urging the Senate to defer voting on the bill and instead to submit it to a referendum. Several

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<sup>48</sup> Floor Statement of R.I. Rep. Knowles, R.I. House of Rep., Mar. 29, 1995.

<sup>49</sup> See R.I. H. J., Mar. 29, 1995. A similar section, designed to eradicate sexual orientation discrimination in the schools was later passed in 1997. See R.I. GEN. LAWS § 28-5-14 (1997).

<sup>50</sup> See R.I. H. J., Mar. 29, 1995.

<sup>51</sup> Floor Statement of R.I. Rep. McDevitt, R.I. House of Rep., Mar. 29, 1995.

<sup>52</sup> See R.I. SEN. J., May 19, 1995.

<sup>53</sup> See R.I. SEN. J., May 19, 1995.

<sup>54</sup> R.I. SEN. J. (May 19, 1995).

senators argued that the bill presented emotional issues that must be left for the voters to decide.<sup>55</sup>

In the floor debate on the bill as a whole, several themes emerged. In opposition to the bill, Senators Graziano, Flynn, Walaska, and Mathieu all questioned the need for the bill.<sup>56</sup> Senator Graziano argued that the bill would be construed to protect those with a “sexual orientation toward children” and that the bill would make radical feminists very happy because it would result in straight, white males being the only unprotected group.<sup>57</sup> Also in opposition, Senator Lawrence echoed the opponents in the House, arguing that homosexuals do not constitute a suspect or quasi-suspect class deserving of protection, and further noting that if Rhode Island has a right to criminalize sodomy, it should not be required to adopt legislation protecting homosexuals from discrimination.<sup>58</sup>

On May 1, 2001 the House passed a bill prohibiting discrimination on the basis of “gender identity or expression” in employment, housing, public accommodations, and in granting credit.<sup>59</sup> The Senate passed the bill on Thursday, June 28, 2001, and it became law without the Governor’s signature on July 13, 2001.<sup>60</sup> Upon passage, Rhode Island became the third state in the nation to prohibit discrimination against transgender individuals.<sup>61</sup>

In contrast to the heated debate surrounding the 1995 law prohibiting sexual orientation discrimination, the gender identity bill passed quietly. The House Minority Leader, Robert Watson, also opposed the bill, posing the question: “Could boys say they feel more comfortable in the Girl Scouts?”<sup>62</sup> Only one other Representative and one Senator made floor statements in opposition.<sup>63</sup>

## **C. Executive Orders, State Government Personnel Regulations & Attorney General Opinions**

### **1. Executive Orders**

In 1985, Governor Edward DiPrete issued the first executive order prohibiting employment discrimination by state agencies on the basis of sexual orientation.<sup>64</sup>

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<sup>55</sup> Floor Statements of R.I. Sen. Holland, Palazzo, & Celona, R.I. Sen., May 19, 1995.

<sup>56</sup> Floor Statements of R.I. Sen. Graziano, Flynn, Walaska & Mathieu, R.I. Sen., May 19, 1995.

<sup>57</sup> Floor Statement of R.I. Sen. Graziano, R.I. Sen., May 19, 1995.

<sup>58</sup> Floor Statement of R.I. Sen. Lawrence, R.I. Sen. May 19, 1995. Senator Lawrence’s 1995 statements preceded the Supreme Court’s decision in *Lawrence v. Texas*, 539 U.S. 558 (2003) (holding that state sodomy laws violate the federal constitution).

<sup>59</sup> H.B. 5920 (2001).

<sup>60</sup> See R.I. SEN. J., June 28, 2001.

<sup>61</sup> *Law Now Bans Transgender Bias*, PROV. J., Jul. 20, 2001, at B5.

<sup>62</sup> Ariel Sabar, *House Extends Civil Rights Protection*, PROV. J., Apr. 29, 2001 at 1B.

<sup>63</sup> See Floor Statement of R.I. Rep. Corvese, R.I. House of Rep., May 1, 2001; Floor Statement of R.I. Sen. Polisena, R.I. Sen., Jun. 28, 2001.

<sup>64</sup> R.I. Exec. Order No. 11 (1985) (Equal Opportunity and Affirmative Action Policy, amending R.I. Exec. Order No. 9 (1985)).

Governors Sundlun, Almond, and, most recently, Carcieri, have issued similar orders.<sup>65</sup> Only Governor Carcieri's Order also offers protection for gender identity.<sup>66</sup>

## 2. State Government Personnel Regulations

The Rhode Island State Equal Opportunity Office accepts “[F]rom both State employees and applicants for State employment, complaints of discrimination that are based on . . .sexual orientation .”<sup>67</sup>

## 3. Attorney General Opinions

None.

## D. Local Legislation

### 1. City of Providence

The city of Providence is the only locality in Rhode Island with a comprehensive anti-discrimination ordinance. Providence prohibits discrimination on the basis of sexual orientation in housing, education, employment, public accommodations, and in granting credit.<sup>68</sup> Sexual orientation was added as a protected basis in 1995, thus joining race, color, sex, religion, marital status, disability, age, and country of ancestral origin.<sup>69</sup> Exemptions mirror those in the FEPA.<sup>70</sup> Complaints under the ordinance are filed with the Providence Human Relations Commission, the local analog to the RICHR.<sup>71</sup>

Unlike the FEPA, the Providence antidiscrimination ordinance does not include language prohibiting discrimination on the basis of gender identity or expression.<sup>72</sup> However, the Providence Human Relations Commission's website clearly states that it protects individuals who have been discriminated against because of their gender identity.<sup>73</sup>

The Providence City Council voted against adding sexual orientation as a protected basis in its anti-discrimination ordinance in 1979 and again in 1985.<sup>74</sup> One

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<sup>65</sup> See R.I. Exec. Order No. 11 (1993) (Equal Opportunity Affirmative Action Policy Statement, Handicapped); R.I. Exec. Order No. 14 (1996) (Promotion of Equal Opportunity by State Government); R.I. Exec. Order No. 11 (2005) (Promotion of Equal Opportunity and The Prevention of Sexual Harassment in State Government), *available, respectively, at* <http://bit.ly/jXgGe>.

<sup>66</sup> See R.I. Exec. Order No. 1 (2005) (Promotion of Equal Opportunity and the Prevention of Sexual Harassment in State Government), *available at* <http://bit.ly/pxcet>.

<sup>67</sup> R.I. Equal Opportunity Office Rules & Reg. (Hearings on Discrimination Complaints).

<sup>68</sup> PROVIDENCE CODE OF ORD., Art. II, § 16, *et seq.*

<sup>69</sup> PROVIDENCE CODE OF ORD., Art. II, § 16, *et seq.*

<sup>70</sup> PROVIDENCE CODE OF ORD., Art. II, §§ 16-54(d)-16-54(h).

<sup>71</sup> PROVIDENCE CODE OF ORD., Art. II, §§ 16-62-16-84.

<sup>72</sup> PROVIDENCE CODE OF ORD., Art. II, § 16-57.

<sup>73</sup> City of Providence, Providence Human Relations Commission, <http://providenceri.com/phrc> (last visited Sept. 8, 2009).

<sup>74</sup> Russell Garland, *Gay Rights Out, Anti-Bias Law Passed by Council “Sexual Orientation” Clause Removed by a Vote of 8 to 6*, PROV. J., Sept. 6, 1985.

former city councilman, Thomas Pearlman, speaking in support of the 1985 decision, stated:

“These courageous councilmen have relieved organizations such as nursery schools, Girl Scouts, Boy Scouts and . . . Day-Care Centers from being required to hire sexual perverts regardless of whether they are heterosexual, bi-sexual or homosexual, and subjecting themselves to lawsuits for failure to hire them.”<sup>75</sup>

## 2. **City of Richmond**

A personnel regulation states that Richmond strives to ensure a system of personnel administration based on merit and without regard to “sexual orientation” or “gender identity or expression.”<sup>76</sup>

## 3. **City of Warwick**

The Director of the Warwick Personnel Department issued a statement declaring that “The City of Warwick is an Equal Opportunity Employer where there shall be no discrimination based on . . . sexual orientation.”<sup>77</sup>

## 4. **Town of Burrillville**

An employment application for the town of Burrillville states that “We consider applicants for all positions without regard to . . . sexual orientation . . . or any other legally protected status.”<sup>78</sup>

## 5. **City of Coventry**

A Coventry ordinance states that “There shall be no discrimination against any person seeking employment or employed in the classified service . . . because of . . . sexual orientation. . . or any other grounds upon which discrimination is prohibited.”<sup>79</sup>

## 6. **City of Gloucester**

The Gloucester Sexual Harassment Policy states that “[t]he Town of Gloucester will administer all provisions of this policy without regard to . . . sexual orientation....”<sup>80</sup>

## 7. **City of Johnston**

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<sup>75</sup> Richard C. Dujardin & Russell Garland, *Gay Rights Vote Satisfies Bishop Gelineau*, PROV. J., Sept. 6 1985 at C1.

<sup>76</sup> RICHMOND CODE OF ORD. § 2.20.010(B) (Personnel Chapter).

<sup>77</sup> Statement of Oscar Shelton, Director, City of Warwick Personnel Department.

<sup>78</sup> Town of Burrillville Application for Employment, <http://bit.ly/pIo8N> (last visited Sept. 6, 2009)..

<sup>79</sup> COVENTRY, CODE OF ORD., Personnel, Art. 51-11.

<sup>80</sup> GLOUCESTER CODE OF ORD. § 399-1 (Sexual Harassment Policy).

The Johnston Personnel Policy states that “no person shall be discriminated against because of any ... sexual orientation [or] gender identity or expression...”<sup>81</sup>

**8. Town of Little Compton**

The Little Compton Sexual Harassment Policy states that “[t]he Town will administer all provisions of this policy without regard to ... sexual orientation....”<sup>82</sup>

**9. Town of South Kingston**

The South Kingston Sexual Harassment Policy states that “[t]he Town will administer all provisions of this policy without regard to ... sexual orientation....”<sup>83</sup>

**E. Occupational Licensing Requirements**

Several occupational licenses in Rhode Island require a showing of “good moral character,” or proof that an individual has not been convicted of a “crime of moral turpitude.”<sup>84</sup>

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<sup>81</sup> JOHNSTON, CODE OF ORD. § 47-3 (Personnel Policies).

<sup>82</sup> LITTLE COMPTON CODE OF ORD. § 10-1.16 (Sexual Harassment Policy).

<sup>83</sup> S. KINGSTON CODE OF ORD., Art. III., § 13-51 (Sexual Harassment Policy).

<sup>84</sup> See Rhode Island Government, R.I. Licensing, <https://www.ri.gov/Licensing> (last visited Sept. 8, 2009).

### III. DOCUMENTED EXAMPLES OF EMPLOYMENT DISCRIMINATION AGAINST LGBT PEOPLE BY STATE & LOCAL GOVERNMENTS

#### A. Case Law

##### 1. State & Local Government Employees

D'Amico v. Cranston Sch. Comm., P.C.C.A. No. 06-5997 (R.I. Super. Ct. 2009).

Attorneys from New England-based Gay & Lesbian Advocates & Defenders (“GLAD”) recently filed a motion for summary judgment in the Rhode Island Superior Court on behalf of Debra D’Amico, who alleged that the Cranston Public Schools unlawfully discriminated against her based on sexual orientation in violation of the FEPA. The RICHR found probable cause to believe that D’Amico had been unlawfully discriminated against before the case was transferred to the Superior Court. D’Amico, a teacher with the Cranston Public Schools, was denied family medical leave when she took time off work to care for her ill same sex partner. The Superintendent stated that family medical leave could only be granted where there is an “illness in the family” and not for “non-related individuals living in the household.”<sup>85</sup> The hearing on D’Amico’s motion for summary judgment is scheduled for March 3, 2009.

##### 2. Private Employers

None.

#### B. Administrative Complaints

##### 1. RICHR

From 2000 to 2008, the RICHR received a total of 49 employment discrimination complaints based on sexual orientation. Seven were filed against public employers. These seven filings are detailed below:<sup>86</sup>

Aug. 16, 2006

Gay male public employee was terminated from his job as a beach manager after three years. Employer publicly informed him that he was under investigation for sexual harassment, due to a complaint made by a male ex-employee. In the past, employer had

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<sup>85</sup> See Plaintiff’s Memorandum of Points and Authorities In Support of Motion for Summary Judgment, *D’Amico v. Cranston Sch. Comm.*, P.C.C.A. No. 06-5997 (R.I. Super. Ct. 2009).

<sup>86</sup> See Sexual Orientation Case Closures (on file with the R.I. Comm’n for Human Rts.). Observers have attributed the relatively low number of complaints to the ongoing stigma attached to being openly gay in the workplace. Scott MacKay, *Gay Rights Complaints Rare Under Fledgling Law*, PROV. J.-BULL., Dec. 10, 1996, at 1A.

referred to homosexuals as “fags.” Employee stated that similarly situated heterosexuals were not accused of sexual harassment.<sup>87</sup>

Nov. 7, 2005 to Jan. 1, 2006

Public Employer declared that it no longer had the responsibility to provide domestic partners with health coverage or job protection granted by the FMLA.<sup>88</sup>

Nov. 1, 2004

Lesbian public employee was terminated from job as certified nursing assistant. Employer’s stated reason for termination was that her sexual orientation made other employees uncomfortable.<sup>89</sup>

May 26, 2004

Cranston school district denied teacher’s request for family leave benefits to care for same sex sick partner. Arbitrator concluded that district’s Master Agreement did not require it to provide teacher with family medical leave because she and her partner were not related by blood or marriage.<sup>90</sup>

June 1, 1999 to Apr. 28, 2000

Lesbian public employee was harassed and subjected to discriminatory terms and conditions of employment by supervisor. Since supervisor learned of employee’s sexual orientation, she has treated employee in a demeaning/harassing manner. Employee was constantly questioned about time, work assignments, and manner of dress. Employee was the only employee not allowed to wear jeans to work.<sup>91</sup>

Dec. 1, 1997 to June 13, 1998

Lesbian public employee was subjected to discriminatory terms and conditions of employment. Employee stated that her supervisor was jealous of her relationship with a female coworker and so harassed her and issued inappropriate disciplinary actions. The supervisor also harassed her outside of work, following her home and to her partner’s house on numerous occasions.<sup>92</sup>

Oct. 18, 1997 to Nov. 5, 1997

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<sup>87</sup> R.I. Charge of Discrimination (Aug. 16, 2006).

<sup>88</sup> R.I. Charge of Discrimination (Nov. 7, 2005 – Jan. 1, 2006).

<sup>89</sup> R.I. Charge of Discrimination (Nov. 1, 2004).

<sup>90</sup> R.I. Charge of Discrimination (May 26, 2004); *see supra* Section III.A.1.

<sup>91</sup> R.I. Charge of Discrimination (June 1, 1999 – Apr. 28, 2000).

<sup>92</sup> R.I. Charge of Discrimination (Dec. 1, 1997 – June 13, 1998).

Public employee was terminated. Supervisor stated that the reason for termination was that employee threw a snack at a patient. Prior to termination, supervisor told employee that she would not tolerate employee's homosexuality.<sup>93</sup>

## 2. EEOO

City of Providence EEO Officer Olayinka Oregduba provided sexual orientation discrimination complaints filed by city employees dating back to March 2005. Out of the five complaints filed, two were filed by heterosexual men claiming same-sex sexual harassment. Probable cause was found in both cases. The other three complainants are gay. The EEO Office did not find probable cause to believe unlawful sexual orientation discrimination had occurred in any of these three cases. The first complainant was a lesbian firefighter who claimed she was discriminated against based on "gender and possibly sexual orientation" in her station placement. Despite a finding of no probable cause, the EEO Office nonetheless negotiated with the fire department to secure her placement in the station that she sought. The second complainant was a gay male employed as a Systems Analyst. He claimed that a heterosexual female office clerk with whom he worked had acted in a demeaning fashion toward him. He stated that she probably knew he was gay, but was "unsure whether her demeaning attitude toward him was because of his sexual orientation or because she was just a rude person." Again, despite its finding of no probable cause, the EEO Office nonetheless gave the clerk warnings about her behavior. The final complaint based on sexual orientation was filed by a gay male lab technician claiming discrimination by two male heterosexual coworkers who he said did not like gay men. While it is a bit unclear from the face of the complaint, it appears that the man was teased by these coworkers after the film "Brokeback Mountain" was released. Each of these heterosexual coworkers later filed their own sexual harassment complaints against the gay male.<sup>94</sup>

### C. Other Documented Examples of Discrimination

#### Rhode Island Department of Corrections

In 2007, a gay man working for the State of Rhode Island Department of Corrections reported having problems at work because of his sexual orientation. He was called "gay cop," "cum swallowing pig," and other derogatory names in front of inmates by his coworkers.<sup>95</sup>

#### Rhode Island State Trooper

In 2004, a Rhode Island State Trooper, who is a lesbian, reported that she was harassed and ultimately fired because of her sexual orientation. The trooper was

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<sup>93</sup> R.I. Charge of Discrimination (Oct. 18, 1997 – Nov. 5, 1997).

<sup>94</sup> See City of Providence, Office of Equal Opp., Complaint Filings (2005-08) (filings indicating discrimination based upon sexual orientation)..

<sup>95</sup> GLAD Intake Form (Mar. 22, 2007).

concerned that if she filed a complaint, she would not be able to get another job in law enforcement in the state.<sup>96</sup>

#### Rhode Island State Department

In 2003, a woman working for a state agency overheard a conversation in the cafeteria at work in which an employee made derogatory comments about gay people, such as “homosexuals are pedophiles.” She complained to her supervisor, who scheduled a mediation session. However, the person who made the comment refused to participate, and the matter was dropped. She feared retaliation if she filed another complaint.<sup>97</sup>

#### Rhode Island Public School

In 2002, a teacher at a Rhode Island public school, who is gay, reported that several of his coworkers made anti-gay comments to him, such as “[w]hat, are you a homo[,]” “[w]here are your wife and kids[,]” and “[w]e can't deal with this gay and lesbian shit.” In response to his complaints, the teacher's classroom and teaching schedule was changed without notice, he has been screamed at, and he was warned to “not get into a pissing match” with them. The teacher reported that he felt intimidated and was treated differently and passed over for other work opportunities because of his sexual orientation. After filing a complaint with his union and the school district, union officials and the principal wrote the teacher up for insubordination. The teacher spoke to someone in the Rhode Island Department of Education, but he feared that if he filed an official complaint, the Department of Education would take the school's side.<sup>98</sup>

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<sup>96</sup> GLAD Intake Form (Mar. 18, 2004).

<sup>97</sup> GLAD Intake Form (July 17, 2003).

<sup>98</sup> GLAD Intake Form (Oct. 30, 2002).

#### **IV. NON-EMPLOYMENT SEXUAL ORIENTATION & GENDER IDENTITY RELATED LAW**

In addition to state employment law, the following areas of state law were searched for other examples of employment-related discrimination against LGBT people by state and local governments and indicia of animus against LGBT people by the state government, state officials, and employees. As such, this section is not intended to be a comprehensive overview of sexual orientation and gender identity law in these areas.

##### **A. Criminalization of Same-Sex Sexual Behavior**

In 1998, Rhode Island repealed its 102-year-old law against sodomy. This law described sodomy as “abominable and detestable crimes against nature” and subjected violators to a maximum prison term of 20 years.<sup>99</sup> In the 1995 legislative sessions, Senator Lawrence invoked the sodomy laws as a reason for why discrimination based on sexual orientation should not be prohibited.<sup>100</sup>

##### **B. Housing & Public Accommodations Discrimination**

As set forth above, in 1995 and 2001, respectively, the Legislature voted to prohibit sexual orientation and gender identity discrimination not just in employment, but also in housing, public accommodations and in granting credit.

An East Greenwich ordinance states that “The recipient of any expenditure of funds from the Affordable Housing Trust Fund shall comply with all applicable federal, state and local law relating to discrimination on the basis of. . .sexual orientation. . .or other prohibited classifications.”<sup>101</sup>

##### **C. HIV/AIDS Discrimination**

In 1988, Rhode Island made it illegal for public and private entities to discriminate on the basis of real or perceived HIV status in employment, housing, granting credit, public accommodation, and the delivery of services.<sup>102</sup> An HIV test may not be required as a condition of employment, “[E]xcept where nondiscrimination can be shown, on the testimony of competent medical authorities, to constitute a clear and present danger of HIV transmission to others.”<sup>103</sup> Discrimination complaints based on real or perceived HIV status may be filed with the RICHR.<sup>104</sup>

##### **D. Hate Crimes**

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<sup>99</sup> See Carey Goldberg, *Rhode Island Moves to End Sodomy Ban*, N.Y. TIMES, May 10, 1998; R.I. GEN. LAWS §11-10-1.

<sup>100</sup> Floor Statement of Senator Lawrence, R.I. Sen. (June 28, 1995).

<sup>101</sup> EAST GREENWICH CODE OF ORD., § 34-33(g)(2).

<sup>102</sup> R.I. GEN. LAWS § 23-6-22.

<sup>103</sup> R.I. GEN. LAWS § 23-6-22.

<sup>104</sup> R.I. GEN. LAWS § 23-6-23. We attempted to get copies of discrimination complaints filed with the RICHR based on real or perceived HIV status. The executive director informed us that these complaints are lumped in with other disability discrimination complaints and would take a very long time to procure.

Rhode Island enacted a hate crime law that addresses violence based on sexual orientation, but not gender identity.<sup>105</sup> An amendment to the hate crime law that would include protection based on gender identity passed the House in 2008 but was defeated in the Senate Judiciary Committee.<sup>106</sup>

#### **E. Education**

There are no state laws in Rhode Island explicitly prohibiting discrimination on the basis of sexual orientation and/or gender identity in the schools.<sup>107</sup> In 1997, the General Assembly did, however, direct the RICHR and the State Department of Education to prepare a comprehensive curriculum emphasizing the harmful effects of prejudice based on sexual orientation.<sup>108</sup> In the same year, the Rhode Island Board of Regents for Elementary and Secondary Education issued a statement announcing that “[n]o student shall be excluded from, discriminated against, or harassed in any educational program, activity or facility in a public school on account of sexual orientation or perception of same.”<sup>109</sup>

#### **F. Health Care**

Rhode Island law does not permit a partner to make medical decisions on behalf of a same-sex partner in the absence of an advance directive.<sup>110</sup>

#### **G. Parenting**

Rhode Island courts have allowed a former same-sex partner to petition for visitation.<sup>111</sup>

#### **H. Domestic Partner Benefits**

The state of Rhode Island extends health benefits to same-sex domestic partners of its employees, provided that both members of the couple are over 18, have lived together for at least one year, and can show that they are financially interdependent.<sup>112</sup>

#### **J. Other Non-Employment Sexual Orientation & Gender Identity Related Laws**

##### City of Warren

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<sup>105</sup> R.I. GEN. LAWS § 12-19-38.

<sup>106</sup> See H.B. 7457 (R.I. 2008).

<sup>107</sup> The city of Providence does, however, prohibit “any school, educational institution or facility” from discriminating on the basis of sexual orientation. See PROVIDENCE CODE OF ORD., Art. II, § 16-56.

<sup>108</sup> R.I. GEN. LAWS § 28-5-14 (1997).

<sup>109</sup> Rhode Island Board of Regents Policy Statement On Discrimination Based On Sexual Orientation, R.I. & Providence Plantations, Dep’t of Ed. (1997).

<sup>110</sup> R.I. GEN. LAWS § 23-4.10-2.

<sup>111</sup> See *Rubano v. DiCenzo*, 759 A.2d 959 (R.I. 2000).

<sup>112</sup> R.I. GEN. LAWS § 36-12-1.

A Warren Ordinance states that City funds may only be allocated to projects and programs that “Do not discriminate on the basis of. . . sexual preference. . . .”<sup>113</sup>

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<sup>113</sup> WARREN CODE OF ORD. § 7-139(a)(1)(a) (Programs & Operations).