

RESEARCH THAT MATTERS

LEGAL PROTECTIONS FOR LGBT PEOPLE

After *Bostock v.*
Clayton County

August 2020

Christy Mallory
Luis A. Vasquez
Celia Meredith

EXECUTIVE SUMMARY

The U.S. Supreme Court's landmark decision in *Bostock v. Clayton County* affirmed that Title VII protects employees nationwide from discrimination based on their sexual orientation and gender identity.¹ While the case directly addresses discrimination within the employment context, the reasoning adopted by the Court has implications for civil rights laws that prohibit discrimination in other settings. Courts have often looked to Title VII case law when interpreting analogous provisions in other federal and state laws. These decisions indicate that courts will adopt the Court's reasoning in *Bostock* to find that other sex non-discrimination laws also protect LGBT people from discrimination.

State laws remain an important source of protection for LGBT people even though *Bostock* guarantees federal protections in employment because many state non-discrimination laws are broader in scope than Title VII, and many of them protect people from discrimination based on sex in settings where federal law does not, such as in public accommodations. In addition, courts have not yet extended the Court's ruling in *Bostock* to other federal laws that prohibit discrimination based on sex, and the current presidential administration has indicated that it is opposed to such extensions.

This report provides an overview of state sex non-discrimination laws that could be interpreted by courts and executive branch agencies to prohibit discrimination based on sexual orientation and gender identity consistent with the Court's decision in *Bostock*, with a focus on the states without statutes that expressly bar discrimination based on these characteristics. It also provides estimates of the number of LGBT people in each state who stand to gain protections under these laws. The estimates are based on analysis presented in an April 2020 Williams Institute report, [LGBT People in the US Not Protected by State Non-Discrimination Statutes](#).

KEY FINDINGS

Employment

Twenty-seven states have laws that prohibit employment discrimination based on sex, but not based on both sexual orientation and gender identity.

- An additional 3.6 million LGBT employees would gain protections from employment discrimination under state laws if these provisions are interpreted consistent with *Bostock*.
- Eighteen of these states' laws apply to smaller employers than Title VII does. LGBT employees who are not covered under Title VII will gain legal protections from discrimination if these laws are interpreted consistent with *Bostock*.
- Four states' laws offer more robust remedies than Title VII, potentially allowing employees to recover higher monetary damages than they could through a suit brought under federal law.

Housing

Twenty-six states have laws that prohibit housing discrimination based on sex, but not based on both sexual orientation and gender identity.

¹ *Bostock v. Clayton Cty.*, 590 U.S. __ (2020).

- An additional 5.2 million LGBT adults would gain protections from housing discrimination under state laws if these provisions are interpreted consistent with *Bostock*.
- This would close to double the number of LGBT adults protected from housing discrimination under state laws.

Public Accommodations

Twenty-three states have laws that prohibit public accommodations discrimination based on sex, but not based on both sexual orientation and gender identity.

- An additional 4.3 million LGBT people age 13 and older would gain protections from public accommodations discrimination under state laws if these provisions are interpreted consistent with *Bostock*.
- This would be a 66% increase in the number of LGBT people protected from public accommodations discrimination under state laws.

Education

Fourteen states have laws that prohibit education discrimination based on sex, but not based on both sexual orientation and gender identity.

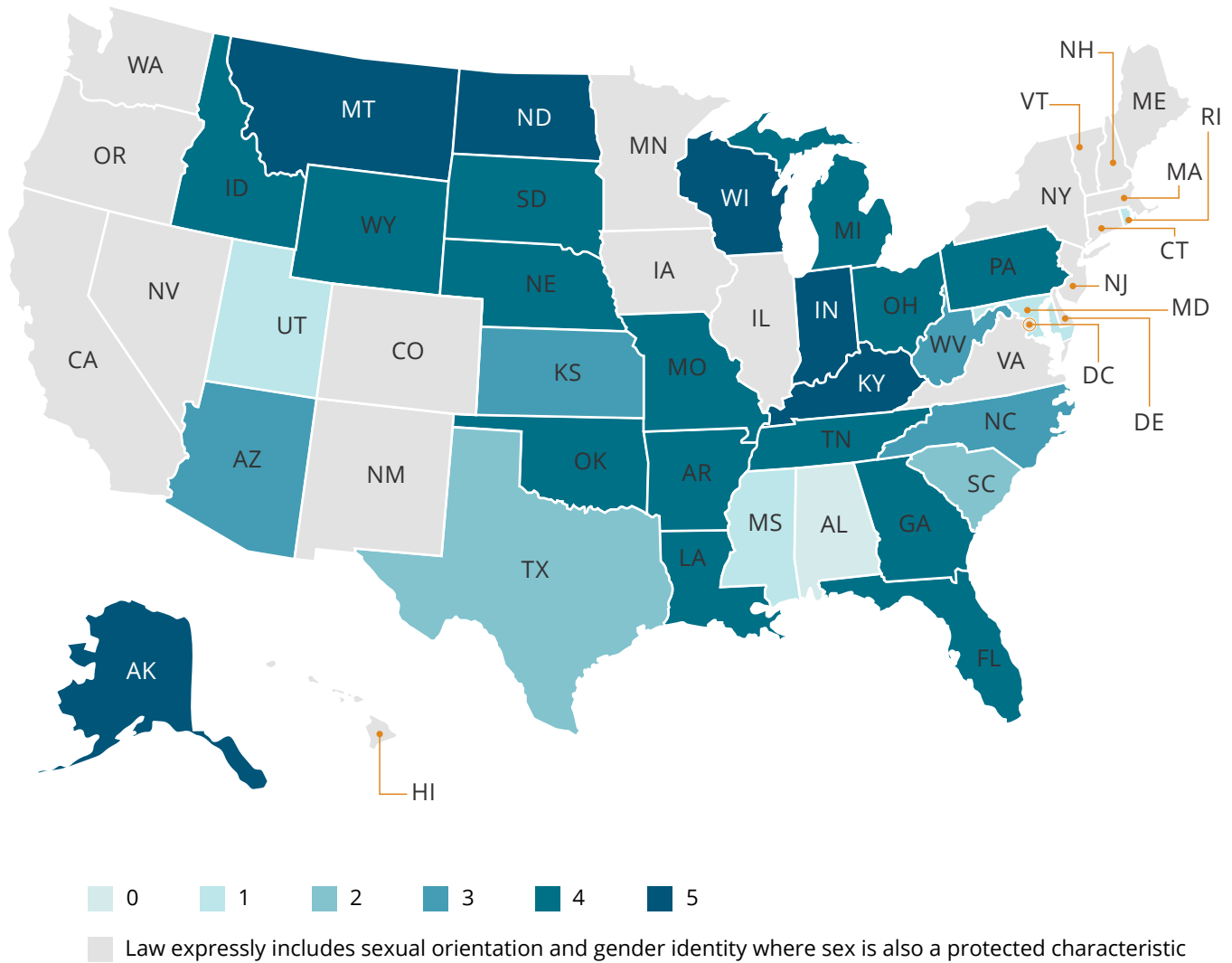
- An additional 790,000 LGBT students age 15 and older would gain protections from education discrimination under state laws if these provisions are interpreted consistent with *Bostock*.
- This would be a 54% increase in the number of LGBT students protected from education discrimination under state laws.

Credit

Fifteen states have laws that prohibit credit discrimination based on sex, but not based on either sexual orientation or gender identity.

- An additional 2.5 million LGBT adults would gain protections from credit discrimination under state laws if these provisions are interpreted consistent with *Bostock*.
- This would be a 76% increase in the number of LGBT adults protected from credit discrimination under state laws.

Figure 1. Number of settings where LGBT people stand to gain non-discrimination protections



IMPLICATIONS OF *BOSTOCK* FOR STATE AND FEDERAL LAWS

The U.S. Supreme Court’s landmark decision in *Bostock v. Clayton County* affirmed that Title VII protects employees nationwide from discrimination based on their sexual orientation and gender identity.² The Court held that discrimination based on these characteristics is a form of sex discrimination prohibited by the law.³ While the case directly addresses discrimination within the employment context, the reasoning adopted by the Court has implications for civil rights laws that prohibit discrimination in other settings.

Title VII is the provision of the groundbreaking Civil Rights Act of 1964 that prohibits employment discrimination, including on the basis of sex.⁴ Since then, Congress has enacted a number of other federal laws that also prohibit discrimination based on sex in a range of settings, such as education, housing, and health care. And, like Title VII, these laws do not include definitions of the term “sex.” As courts have interpreted the meaning and breadth of the term “sex” in these other federal laws, many have looked to Title VII cases for guidance.⁵ Similarly, state courts often look to Title VII cases when interpreting analogous protections in state-level non-discrimination laws.⁶

These federal and state court decisions indicate that courts and policy makers will look to the *Bostock* decision when interpreting sex non-discrimination provisions in other laws. Given the unequivocal result in *Bostock*—that the plain language of a statute prohibiting sex discrimination against individuals by definition bars sexual orientation and gender identity discrimination as well—the same reasoning seems likely to prevail with regard to the interpretation of other laws. The implications are far reaching, given that over 100 federal laws prohibit discrimination based on sex and almost all states prohibit discrimination based on sex in employment, housing, public accommodations, and other settings.⁷

Although *Bostock* guarantees federal protections in employment nationwide, state laws remain an important source of protection for LGBT people for several reasons. First, a number of state laws provide greater protections for employees than Title VII by offering more robust remedies or reaching employees who are not covered by Title VII, such as independent contractors and those who work for small employers. Second, courts have not yet definitively decided that the Court’s ruling in *Bostock* extends to other federal laws that prohibit discrimination based on sex, including Title IX, the Affordable Care Act, and the Fair Housing Act, and the current presidential administration

² *Id.*

³ *Id.* at 2.

⁴ 42 U.S.C.S. § 2000e–2(a) (LexisNexis 2020).

⁵ See, e.g., *Doe v. Univ. of Dayton*, 766 F. App’x 275, 282 (6th Cir. 2019); *Kinman v. Omaha Pub. Sch. Dist.*, 94 F.3d 463, 468 (8th Cir. 1996); *Kappa Alpha Theta Fraternity, Inc. v. Harvard Univ.*, 397 F. Supp. 3d 97, 101 (D. Mass. 2019); *Fox v. Pittsburg State Univ.*, 257 F. Supp. 3d 1112, 1128 (D. Kan. 2017) (citing *Mabry v. St. Bd. of Comm. Colls. & Occupational Educ.*, 813 F.2d 311 (10th Cir. 1987); *Adams by & through Kasper v. Sch. Bd. of St. Johns Cty., Fla.*, 318 F. Supp. 3d 1293, 1325 (M.D. Fla. 2018) (citing *Whitaker By Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034 (7th Cir. 2017) and *Glenn v. Brumby*, 663 F.3d 1312 (11th Cir. 2011)).

⁶ See, e.g., *Heights Indep. Sch. Dist. v. Clark*, 544 S.W.3d 755, 806 (Tex. 2018); *Campbell v. Garden City Plumbing & Heating, Inc.*, 97 P.3d 546, 549 (Mont. 2004); *Radtke v. Everett*, 501 N.W.2d 155, 162 (Mich. 1993).

⁷ *Bostock*, 590 U.S. at 44 (Alito, J., dissenting). State laws with these provisions are discussed in this paper.

has demonstrated an intent to oppose such extensions. As a result, state courts and agencies may offer an alternative route to gaining protections against discrimination based on sexual orientation and gender identity in these domains. Third, state laws prohibiting sex discrimination in public accommodations are particularly important because federal law does not prohibit such discrimination in this area.

STATE NON-DISCRIMINATION LAWS

EMPLOYMENT

Forty-nine states—all but Alabama—and Washington, D.C. have laws that prohibit employment discrimination by at least some employers. Forty-seven of these states and D.C. have broad employment non-discrimination statutes that apply to both private and public sector employers, like Title VII. The two remaining states—Mississippi and Georgia—have more limited statutes that only prohibit discrimination by state government employers.⁸

In 22 states and D.C., existing employment non-discrimination laws include both sexual orientation and gender identity as protected characteristics.⁹ An additional state, Wisconsin, expressly prohibits employment discrimination based on sexual orientation, but not gender identity.¹⁰ An estimated 4.2 million LGBT employees in these states are already expressly protected from employment discrimination under state laws.¹¹

In the other 24 states, existing statutes do not expressly prohibit employment discrimination based on either sexual orientation or gender identity, but do prohibit discrimination based on sex in both public and private sector employment.¹² In addition, Wisconsin's statute does not prohibit employment discrimination based on gender identity, but does prohibit discrimination based on sex.¹³

⁸ GA. CODE ANN. § 45-19-29 (2020); MISS. CODE ANN. § 25-9-103 (2020).

⁹ *Employment Nondiscrimination – State*, Movement Advancement Project, https://www.lgbtmap.org/equality-maps/employment_non_discrimination_laws (last visited July 24, 2020).

¹⁰ WIS. STAT. ANN. §§ 111.321, .322 (West 2020).

¹¹ KERITH J. CONRON & SHOSHANA K. GOLDBERG, WILLIAMS INSTITUTE, LGBT PEOPLE IN THE US NOT PROTECTED BY STATE NON-DISCRIMINATION STATUTES 2–3 (2020) <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-ND-Protections-Update-Apr-2020.pdf> (providing estimates of number of employees protected).

¹² ALASKA STAT. § 18.80.220 (2020); ARIZ. REV. STAT. ANN. § 41-1463 (2020); ARK. CODE ANN. § 16-123-107 (2020); FLA. STAT. § 760.10 (2019); IDAHO CODE § 67-5909 (2020); IND. CODE § 22-9-1-2 (2020); KAN. STAT. ANN. § 44-1009 (2020); KY. REV. STAT. ANN. § 344.040 (West 2020); LA. R.S. § 23:332 (2020); MICH. COMP. LAWS SERV. § 37.2202 (LexisNexis 2020); MO. REV. STAT. § 213.055 (2020); MONT. CODE ANN. § 49-2-303 (2019); NEB. REV. STAT. § 48-1104 (2019); N.C. GEN. STAT. § 143-422.2 (2020); N.D. CENT. CODE § 14-02.4-03 (2019); OHIO REV. CODE ANN. § 4112.02 (LexisNexis 2019); OKLA. STAT. TIT. 25, § 1302 (2020); 43 PA. CONS. STAT. § 955 (2020); S.C. CODE ANN. § 1-13-80 (2020); S.D. CODIFIED LAWS § 20-13-10 (2020); TENN. CODE ANN. § 4-21-401 (2020); TEX. LAB. CODE ANN. § 21.051 (West 2019); W. VA. CODE ANN. § 5-11-9 (2020); WYO. STAT. ANN. § 27-9-105 (2020).

¹³ WIS. STAT. ANN. §§ 111.321, .322 (West 2020).

The final two states—Mississippi and Georgia—have statutes that prohibit discrimination based on sex in state government employment only.¹⁴ Courts and state agencies in these states could interpret their state laws to protect LGBT people from discrimination consistent with the Court’s decision in *Bostock*.

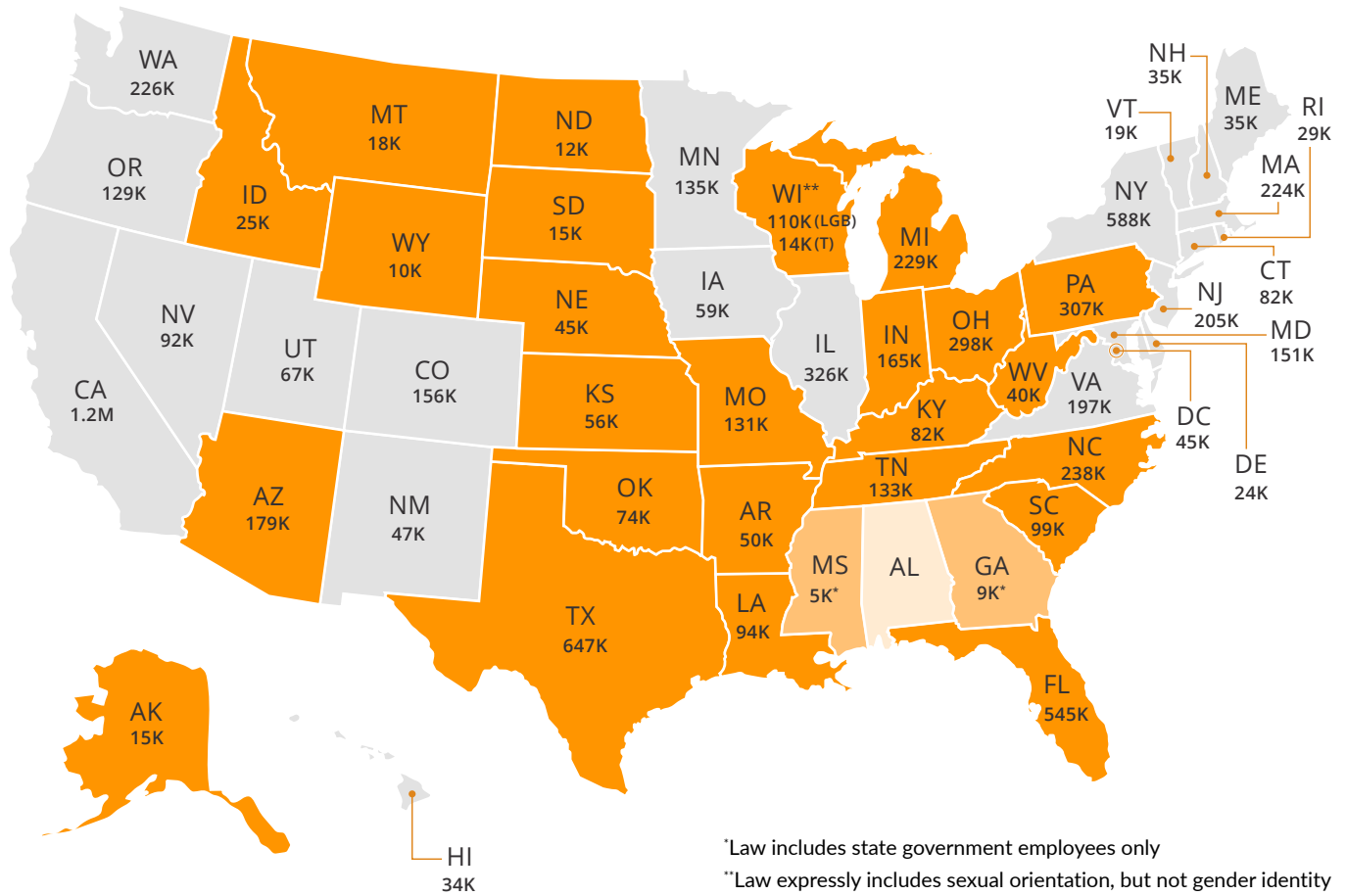
If, even absent explicit mention of sexual orientation and gender identity discrimination, all of these state statutes are interpreted to prohibit such discrimination as a form of sex discrimination, approximately 3.6 million LGBT employees will gain additional protections from employment discrimination under state laws. An estimated 3,570,000 LGBT employees live in the 24 of these states that have broad sex non-discrimination protections that apply to public and private sector workers, in addition to the 14,000 transgender employees living in Wisconsin who would also stand to gain protections under its existing statute.¹⁵ Finally, there are an estimated 14,000 LGBT state government employees in Georgia and Mississippi—the two states with more limited sex non-discrimination statutes—who would also gain these additional protections.¹⁶

¹⁴ GA. CODE ANN. § 45-19-29 (2020); MISS. CODE ANN. § 25-9-103 (2020).

¹⁵ CONRON & GOLDBERG, *supra* note 11.

¹⁶ We estimate that there are 9,000 LGBT state government workers in Georgia (range 9,000–10,000 employees) and 5,000 LGBT state government workers in Mississippi (range 4,000–5,000 employees). To determine the number of LGBT workers employed by state, we used data from the 2016 Gallup Daily Tracking Survey in conjunction with data collected by the U.S. Census Bureau. We estimated the percentage of LGBT adults who reported working for a state government in the U.S. (3.85%, 95% CI 3.47, 4.27), among those in the labor force, and then applied that to 2017 American Community Survey (ACS) estimates of the number of people employed by a state government in each state. (Table S2408 “Class of Worker by Sex for the Civilian Employed Population 16 Years and Over,” last accessed January 19, 2019). These estimates were then rounded to the nearest 1,000. To provide lower- and upper-bound estimates of the number of LGBT adults employed by a state government, the lower and upper 95% confidence intervals for each weighted percentage were applied to the population estimates produced by the U.S. Census Bureau as described above. 95% confidence interval = % LGBT + (1.96 * % LGBT_{STANDARD ERROR}). Ranges reflect the natural imprecision (due to sampling error) in percentages and estimates that are based upon survey samples rather than a census count. Estimates prepared by Kerith J. Conron, Research Director, The Williams Institute. Data on file with the Williams Institute.

Figure 2. LGBT employees in states with employment non-discrimination protections



While *Bostock* affirms that LGBT employees are protected from discrimination nationwide under Title VII, state non-discrimination laws can be another important source of protection for LGBT people. Importantly, many state laws reach small employers that fall outside of the scope of Title VII, providing the only legal recourse for employees who experience discrimination while working for small businesses. Title VII does not apply to employers with fewer than 15 employees.¹⁷ Eighteen of the 27 states that protect employees from discrimination based on sex, but not expressly sexual orientation or gender identity, apply to employers with fewer than 15 employees.¹⁸ A few state laws also protect at least some independent contractors from discrimination,¹⁹ unlike Title VII.²⁰

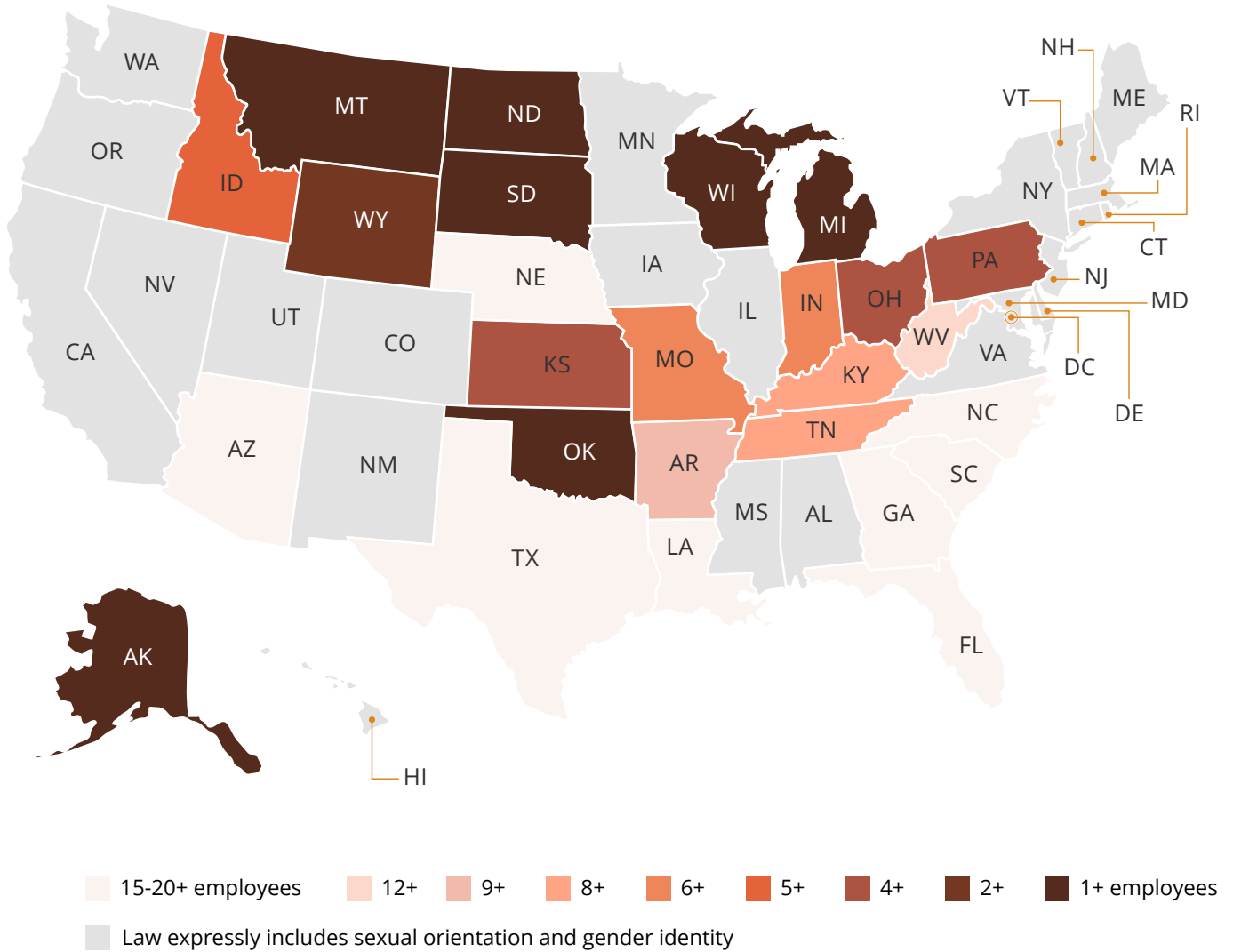
¹⁷ 42 U.S.C.S. § 2000e(b) (LexisNexis 2020).

¹⁸ ALASKA STAT. § 18.80.300 (2020); ARK. CODE ANN. § 16-123-102 (2020); IDAHO CODE § 67-5902 (2020); IND. CODE § 22-9-1-3 (2020); KAN. STAT. ANN. § 44-1002 (2020); KY. REV. STAT. ANN. § 344.030 (West 2020); MICH. COMP. LAWS SERV. § 37.2201 (LexisNexis 2020); MO. REV. STAT. § 213.010 (2020); MONT. CODE ANN. § 49-2-101 (2019); N.D. CENT. CODE § 14-02.4-02 (2019); OHIO REV. CODE ANN. § 4112.01 (LexisNexis 2019); OKLA. STAT. TIT. 25, § 1301 (2020); 43 PA. CONS. STAT. § 954 (2020); S.D. CODIFIED LAWS § 20-13-1 (2020); TENN. CODE ANN. § 4-21-102 (2020); W. VA. CODE ANN. § 5-11-3 (LexisNexis 2020); WIS. STAT. ANN. § 111.32 (West 2020); WYO. STAT. ANN. § 27-9-102 (2020).

¹⁹ Meghan Racklin, Molly Weston Williamson & Dina Bakst, *State Leadership on Anti-Discrimination Protections for Independent Contractors*, A BETTER BALANCE (April 22, 2020), <https://www.abetterbalance.org/state-leadership-on-anti-discrimination-protections-for-independent-contractors/> (noting that Louisiana, Michigan, and Pennsylvania protect at least some independent contractors from discrimination); Ind. Op. Att’y Gen. 49 (Ind. 1964).

²⁰ Coverage, EEOC, <https://www.eeoc.gov/employers/coverage-0> (last visited July 24, 2020).

Figure 3. Size of employer covered by employment non-discrimination laws



In addition, several states' laws offer more robust remedies than Title VII,²¹ potentially allowing employees to recover higher monetary damages than they could in a suit brought under federal law. Four of the 27 states that protect employees from discrimination based on sex, but not expressly sexual orientation or gender identity, either cap compensatory and punitive damages at higher amounts than Title VII or impose no caps on such damages.²² These states are Alaska, Missouri, Ohio, and West Virginia.²³

HOUSING

At the federal level, the Fair Housing Act prohibits discrimination in housing based on race, disability, religion, sex, familial status, and national origin.²⁴ Forty-eight states—all but Alabama and Mississippi—and D.C. have similar laws that prohibit discrimination in housing based on a range of personal characteristics.

In 22 of these states and D.C., existing housing non-discrimination laws include both sexual orientation and gender identity as protected characteristics.²⁵ An additional state, Wisconsin, prohibits discrimination based on sexual orientation, but not gender identity.²⁶ An estimated 5.7 million LGBT people in these states are already expressly protected from housing discrimination under state laws.²⁷

In the other 25 states, existing statutes do not expressly prohibit housing discrimination based on either sexual orientation or gender identity, but do prohibit such discrimination based on sex.²⁸

²¹ 42 U.S.C.S. § 1981a (LexisNexis 2020).

²² See *infra* note 23. In addition, some other states provide for remedies that are more restrictive than Title VII in some ways, but less restrictive in other ways. See, e.g., *Barrios v. Kody Marine, Inc.*, 2000 U.S. Dist. LEXIS 8541, *5 (E.D. La. June 13, 2000) (finding that punitive damages unavailable under state law, but that an award of same can be allocated to a prevailing plaintiff's related Title VII claim, which does allow for such awards); *Mascarella v. CPlace Univ. SNF, LLC*, 2015 U.S. Dist. LEXIS 119049 (M.D. La. September 8, 2015) (finding that punitive damages are unavailable under state law, but compensatory damages are uncapped); *Garcia v. PSI Env'tl. Sys.*, 2012 U.S. Dist. LEXIS 87621, *1 (D. Idaho June 21, 2012) (back pay allowed under state law even in cases where an employee resigned rather than waiting for constructive discharge or termination); *Eide v. Kelsey-Hayes Co.*, 427 N.W.2d 488 (Mich. 1988) (punitive damages not allowed under Michigan law) (compensatory damages not capped under Michigan law); *Schafke v. Chrysler Corp.*, 383 N.W.2d 141, 143 (Mich. Ct. App. 1985) ("any damages which 'flow' from the discrimination" allowed under Michigan law indicating no cap on compensatory damages).

²³ ALASKA STAT. § 9.17.020(h) (no cap on compensatory damages; higher cap on punitive damages than Title VII); MO. REV. STAT. § 213.076 (2020) (higher damages caps than Title VII); W. VA. CODE § 55-7-29(c) (2020) (no cap on compensatory damages; higher cap on punitive damages than Title VII); see *Rice v. CertainTeed Corp.*, 704 N.E.2d 1217 (Ohio 1999) (finding no express caps on damages, though punitive damages must bear some relationship to compensatory damages); *Haynes v. Rhone-Poulenc, Inc.*, 521 S.E.2d 331 (W. Va. 1999) (jury award of punitive damages allowed under state non-discrimination law).

²⁴ 42 U.S.C.S. §§ 3601–3631 (LexisNexis 2020).

²⁵ *Nondiscrimination Laws – Housing*, MOVEMENT ADVANCEMENT PROJECT, https://www.lgbtmap.org/equality-maps/non_discrimination_laws/housing (last visited July 24, 2020).

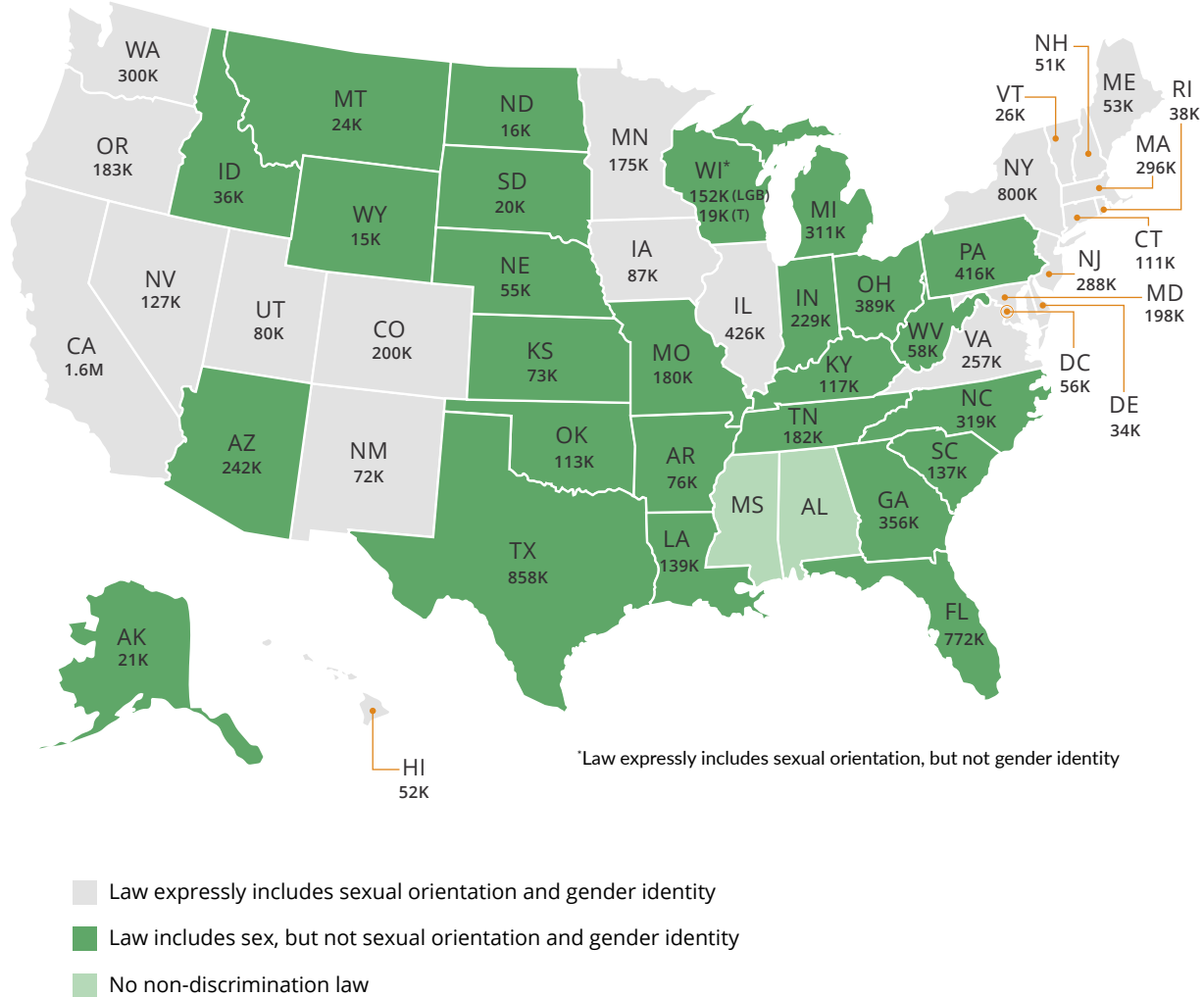
²⁶ WIS. STAT. ANN. § 111.32 (West 2020).

²⁷ CONRON & GOLDBERG, *supra* note 11.

²⁸ ALASKA STAT. § 18.80.240. (2020); ARIZ. REV. STAT. ANN. § 41-1491.14 (2020); ARK. CODE. ANN. § 16-123-107 (2020); FLA. STAT. § 760.23 (2019); GA. CODE. ANN. § 8-3-202 (2020); IDAHO CODE § 67-5909 (2020); IND. CODE § 22-9.5-5-1 (2020); KAN. STAT. ANN. §§ 44-1015 to -1018 (2020); KY. REV. STAT. ANN. § 344.360 (West 2020); LA. R.S. § 51:2606 (2020); MICH.

In addition, Wisconsin's statute does not prohibit housing discrimination based on gender identity, but does prohibit discrimination based on sex.²⁹ If all of these state statutes are interpreted to prohibit discrimination based on sexual orientation and gender identity consistent with *Bostock*, an estimated 5,173,000 LGBT adults will gain protections from housing discrimination under state laws.³⁰ This would close to double the number of LGBT adults currently protected from housing discrimination under state laws.³¹

Figure 4. LGBT adults in states with housing non-discrimination protections



COMP. LAWS SERV. § 37.2502 (LexisNexis 2020); MO. REV. STAT. § 213.040 (2020); MONT. CODE ANN. § 49-2-305 (2019); NEB. REV. STAT. § 20-318 (2019); N.C. GEN. STAT. § 41A-4 (2020); N.D. CENT. CODE §§ 14-02.5-02 to -05 (2019); OHIO REV. CODE ANN. § 4112.02 (LexisNexis 2019); OKLA. STAT. tit. 25, § 1452 (2020); 43 PA. CONS. STAT. § 955 (2020); S.C. CODE ANN. §§ 31-21-40, -60 (2020); S.D. CODIFIED LAWS § 20-13-20 (2020); TENN. CODE ANN. § 4-21-601 (2020); TEX. PROP. CODE ANN. §§ 301.021-.024 (West 2019); W. VA. CODE § 5-11A-5 (2020); WIS. STAT. ANN. § 106.50 (West 2020); WYO. STAT. ANN. §§ 40-26-103 to -105 (2020).

²⁹ WIS. STAT. ANN. § 111.32 (West 2020).

³⁰ CONRON & GOLDBERG, *supra* note 11.

³¹ CONRON & GOLDBERG, *supra* note 11, at 3.

PUBLIC ACCOMMODATIONS

At the federal level, Title II of the Civil Rights Act of 1964 prohibits discrimination in public accommodations based on race, religion, and national origin.³² The federal law does not include sex, sexual orientation, or gender identity as protected characteristics. Many state non-discrimination laws, however, prohibit discrimination in public accommodations based on these characteristics.

Forty-four states—all but Alabama, Georgia, Mississippi, South Carolina, North Carolina, and Texas—and D.C. have laws that prohibit discrimination in public accommodations based on a range of personal characteristics. In 21 of these states and D.C., the public accommodations non-discrimination laws include both sexual orientation and gender identity as protected characteristics.³³ An additional state, Wisconsin, prohibits discrimination based on sexual orientation, but not gender identity.³⁴ An estimated 6.5 million LGBT people age 13 and older in these states are already protected from public accommodations discrimination under state laws.³⁵

In 22 states, state statutes do not expressly prohibit public accommodations discrimination based on either sexual orientation or gender identity, but do prohibit discrimination in public accommodations based on sex.³⁶ One additional state, Wisconsin, does not expressly prohibit public accommodations discrimination based on gender identity, but does prohibit public accommodations discrimination based on sex.³⁷ If all of these state statutes are interpreted to prohibit discrimination based on sexual orientation and gender identity consistent with *Bostock*, an estimated 4,273,000 LGBT people age 13 and older will gain protections from public accommodations discrimination under state laws.³⁸ This would be a 66% increase in the number of LGBT people currently protected from public accommodations discrimination under state laws.³⁹ State-level protections from discrimination in public accommodations are particularly important for LGBT people given that federal law does not provide such protections based on sex, sexual orientation, or gender identity.

³² 42 U.S.C.S. §§ 2000a–2000a-6 (LexisNexis 2020).

³³ *Nondiscrimination Laws – Public Accommodations*, MOVEMENT ADVANCEMENT PROJECT, https://www.lgbtmap.org/equality-maps/non_discrimination_laws/public-accommodations (last visited July 24, 2020).

³⁴ WIS. STAT. ANN. § 106.52 (West 2020).

³⁵ CONRON & GOLDBERG, *supra* note 11.

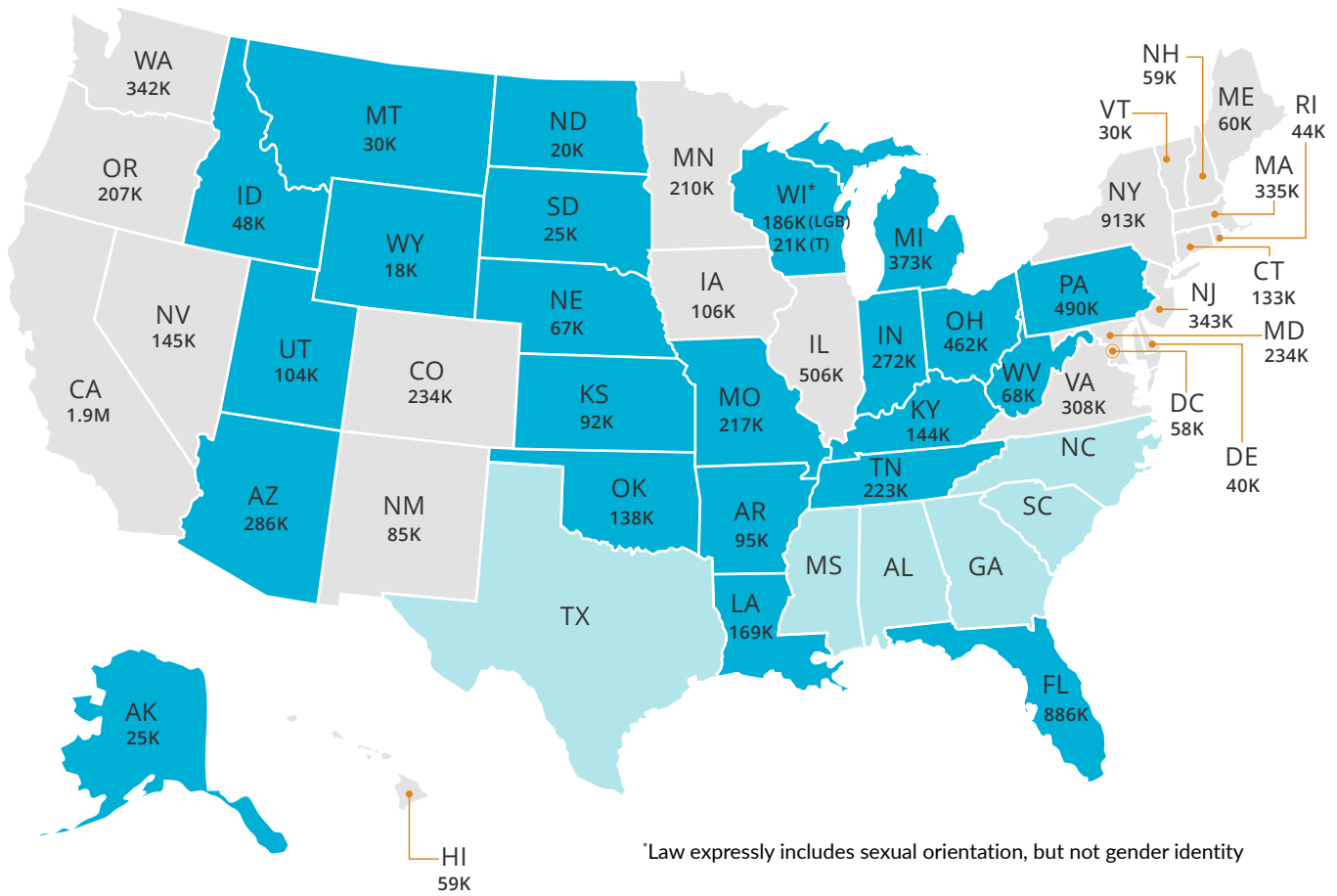
³⁶ ALASKA STAT. § 18.80.230 (2020); ARIZ. REV. STAT. ANN. § 41-1442 (2020); ARK. CODE ANN. § 16-123-107 (2020); FLA. STAT. § 760.08 (2019); IDAHO CODE § 67-5909 (2020); IND. CODE § 22-9-1-2 (2020); KAN. STAT. ANN. § 44-1009 (2020); KY. REV. STAT. ANN. § 344.145 (West 2020); LA. R.S. § 51:2247 (2020); MICH. COMP. LAWS SERV. § 37.2302 (LexisNexis 2020); MO. REV. STAT. § 213.065 (2020); MONT. CODE ANN. § 49-2-304 (2019); NEB. REV. STAT. § 20-134 (2019); N.D. CENT. CODE § 14-02.4-14 (2019); OHIO REV. CODE ANN. § 4112.02 (LexisNexis 2019); OKLA. STAT. tit. 25, § 1402 (2020); 43 PA. CONS. STAT. § 955 (2020); S.D. CODIFIED LAWS § 20-13-23 (2020); TENN. CODE ANN. § 4-21-501 (2020); UTAH CODE ANN. § 13-7-1 (LexisNexis 2020); W. VA. CODE ANN. § 5-11-9 (2020); WYO. STAT. ANN. § 6-9-101 (2020).

³⁷ WIS. STAT. ANN. § 106.52 (West 2020).

³⁸ This estimate is conservative because the statute would also protect younger people from discrimination; however, due to limited knowledge about the size of these groups in the population, they could not be included in the calculation. CONRON & GOLDBERG, *supra* note 11, at 2.

³⁹ *Id.*

Figure 5. LGBT people in states with public accommodations non-discrimination protections



EDUCATION

At the federal level, Title IX of the Education Amendments Act of 1972 prohibits discrimination in education based on sex.⁴⁰ Thirty-one states and D.C. have education non-discrimination laws that either expressly protect or could be interpreted to protect LGBT students.⁴¹

In 17 of these states and D.C., education non-discrimination laws expressly include both sexual orientation and gender identity as protected characteristics.⁴² An additional state, Wisconsin, prohibits discrimination based on sexual orientation, but not gender identity.⁴³ An estimated 1.5 million LGBT students in these states are already expressly protected from education discrimination under state laws.

In the other 13 states, state statutes do not expressly prohibit education discrimination based on either sexual orientation or gender identity, but do prohibit education discrimination based on sex.⁴⁴ In addition, Wisconsin's statute does not prohibit education discrimination based on gender identity, but does prohibit discrimination based on sex.⁴⁵ If all of these state statutes are interpreted to prohibit discrimination based on sexual orientation and gender identity consistent with *Bostock*, an estimated 790,000 LGBT students age 15 and older will gain protections from education discrimination under state laws.⁴⁶ This would be a 54% increase in the number of LGBT students protected from education discrimination under state laws.⁴⁷

⁴⁰ 20 U.S.C.S. §§ 1681–1688 (LexisNexis 2020).

⁴¹ The laws included here expressly prohibit discrimination in education either through a law that is specific to education or by explicitly defining “public accommodations” to include educational entities. To the extent that educational entities are considered public accommodations under other, less specific state laws, the number of states that forbid discrimination in this setting would be larger. In addition, some state education departments prohibit discrimination in educational institutions statewide through administrative regulations. Those states are also excluded from this count.

⁴² *Safe Schools Laws – Nondiscrimination*, MOVEMENT ADVANCEMENT PROJECT, https://www.lgbtmap.org/equality-maps/safe_school_laws/discrimination (last visited July 24, 2020).

⁴³ WIS. STAT. ANN. § 106.58 (West 2020).

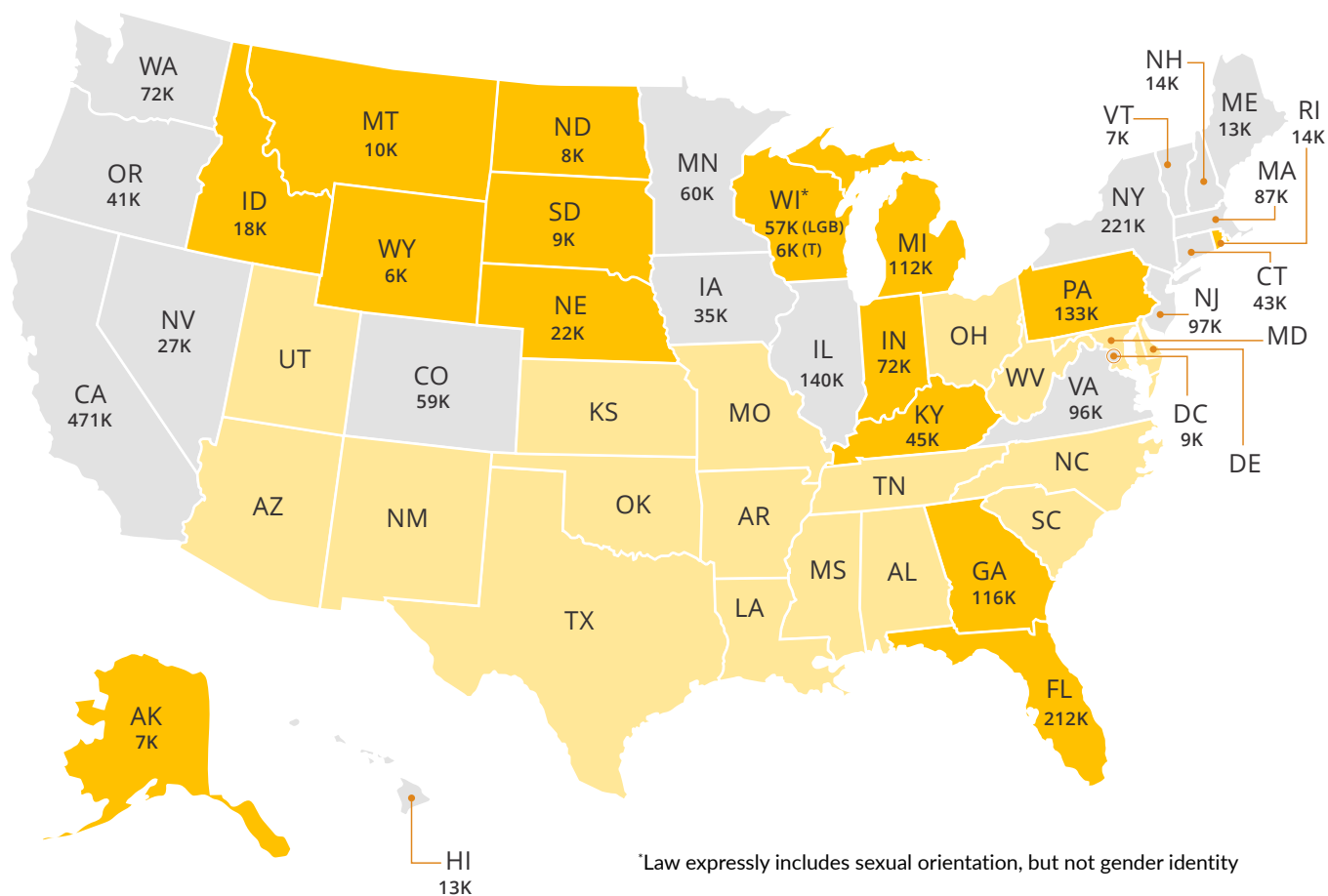
⁴⁴ ALASKA STAT. § 14.18.010 (2020); FLA. STAT. § 1000.05 (2019); GA. CODE ANN. § 20-2-315 (2020); IDAHO CODE § 67-5909 (2020); IND. CODE § 22-9-1-2 (2020); KY. REV. STAT. ANN. § 344.555 (West 2020); MICH. COMP. LAWS SERV. § 37.2402 (LexisNexis 2020); MONT. CODE ANN. § 49-2-307 (2019); NEB. REV. STAT. § 79-2,116 (2019); 43 PA. CONS. STAT. § 954 (2020) (“The term “public accommodation, resort or amusement” [includes] . . . kindergartens, primary and secondary schools, high schools, academies, colleges and universities, extension courses and all educational institutions under the supervision of this Commonwealth”); 43 PA. CONS. STAT. § 955 (2020); 16 R.I. GEN. LAWS § 16-38-1.1 (2020); S.D. CODIFIED LAWS § 20-13-2 (2020); WYO. CONST. art. 7, § 10; WYO. STAT. ANN. § 21-4-303 (2020).

⁴⁵ WIS. STAT. ANN. § 106.58 (West 2020).

⁴⁶ This estimate is conservative because the statute would also protect younger people from discrimination; however, due to limited knowledge about the size of these groups in the population, they could not be included in the calculation. CONRON & GOLDBERG, *supra* note 11, at 2.

⁴⁷ *Id.*

Figure 6. LGBT students in states with education non-discrimination protections



*Law expressly includes sexual orientation, but not gender identity

- ☐ Law expressly includes sexual orientation and gender identity
- ☐ Law includes sex, but not sexual orientation and gender identity
- ☐ No law or law does not include sex, sexual orientation, or gender identity

CREDIT

At the federal level, the Equal Credit Opportunity Act prohibits discrimination in credit based on several personal characteristics, including race, religion, national origin, sex, marital status, age, or because the person receives public assistance.⁴⁸ Thirty states have credit non-discrimination laws that either expressly protect LGBT people or would likely be interpreted to protect LGBT people.

In 15 of these states, credit non-discrimination laws include both sexual orientation and gender identity as protected characteristics.⁴⁹ An estimated 3.3 million LGBT people are already expressly protected from credit discrimination under state laws.⁵⁰

In the other 15 states, state statutes do not expressly prohibit credit discrimination based on either sexual orientation or gender identity, but do prohibit credit discrimination based on sex.⁵¹ If all of these state statutes are interpreted to prohibit discrimination based on sexual orientation and gender identity consistent with *Bostock*, an estimated 2,530,000 LGBT adults will gain protections from credit discrimination under state laws.⁵² This would be a 76% increase in the number of LGBT adults protected from discrimination in credit under state laws.⁵³

⁴⁸ 15 U.S.C.S. §§ 1691–1691f (LexisNexis 2020).

⁴⁹ *Nondiscrimination Laws – Credit*, MOVEMENT ADVANCEMENT PROJECT, https://www.lgbtmap.org/equality-maps/non_discrimination_laws/credit (last visited July 24, 2020).

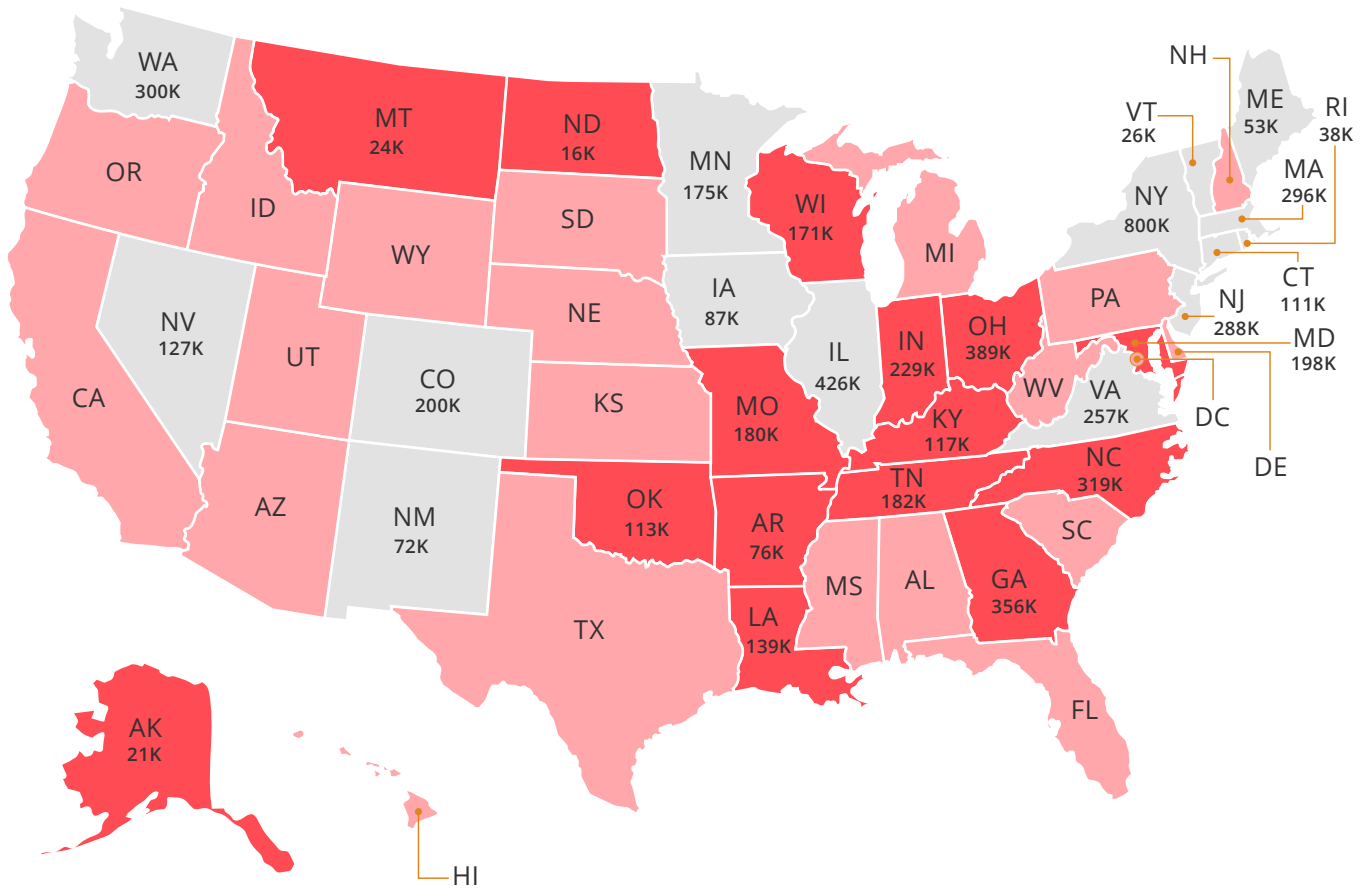
⁵⁰ CONRON & GOLDBERG, *supra* note 11.

⁵¹ ALASKA STAT. § 18.80.250 (2020); ARK. CODE ANN. § 16-123-107 (2020); GA. CODE ANN. § 7-6-1 (2020); IND. CODE § 24-9-3-9 (2020); KY. REV. STAT. ANN. § 344.400 (West 2020); LA. R.S. § 51:2254 (2020); MD. CODE ANN., COM. LAW § 12-704 (LexisNexis 2020); MO. REV. STAT. § 408.550 (2020); MONT. CODE ANN. § 49-2-306 (2019); N.C. GEN. STAT. § 53-180 (2020); N.D. CENT. CODE § 14-02.4-17 (2019); OHIO REV. CODE ANN § 4112.021 (LexisNexis 2019); OKLA. STAT. tit. 14, § 1-109 (2020); TENN. CODE ANN. § 47-18-802 (2020); WIS. STAT. ANN. § 138.20 (West 2020).

⁵² CONRON & GOLDBERG, *supra* note 11.

⁵³ *Id.*

Figure 7. LGBT adults in states with credit non-discrimination protections



- Law expressly includes sexual orientation and gender identity
- Law includes sex, but not sexual orientation and gender identity
- No law or law does not include sex, sexual orientation, or gender identity

CONCLUSION

The U.S. Supreme Court's decision in *Bostock v. Clayton County* extended federal employment non-discrimination protections to LGBT people nationwide under Title VII. Numerous other federal and state laws prohibit discrimination based on sex in other settings, including housing, public accommodations, education, and credit. Millions of LGBT people stand to gain protections from discrimination in these areas if courts and agencies interpret other state and federal sex non-discrimination laws consistent with the Court's decision in *Bostock*.

AUTHORS

Christy Mallory, J.D., is the Renberg Senior Scholar of Law and Legal Director at the Williams Institute.

Luis A. Vasquez, J.D., is the Daniel H. Renberg Fellow at the Williams Institute.

Celia Meredith is the 2020 Haber Summer Fellow at the Williams Institute.

ABOUT THE WILLIAMS INSTITUTE

The Williams Institute is dedicated to conducting rigorous, independent research on sexual orientation and gender identity law and public policy. A think tank at UCLA Law, the Williams Institute produces high-quality research with real-world relevance and disseminates it to judges, legislators, policymakers, media and the public. These studies can be accessed at the Williams Institute website.

FOR MORE INFORMATION

The Williams Institute, UCLA School of Law
1060 Veteran Avenue, Suite 134
Box 957092, Los Angeles, CA 90095-7092
williamsinstitute.law.ucla.edu

RESEARCH THAT MATTERS

