

# Discrimination Based on Sexual Orientation and Gender Identity in Montana



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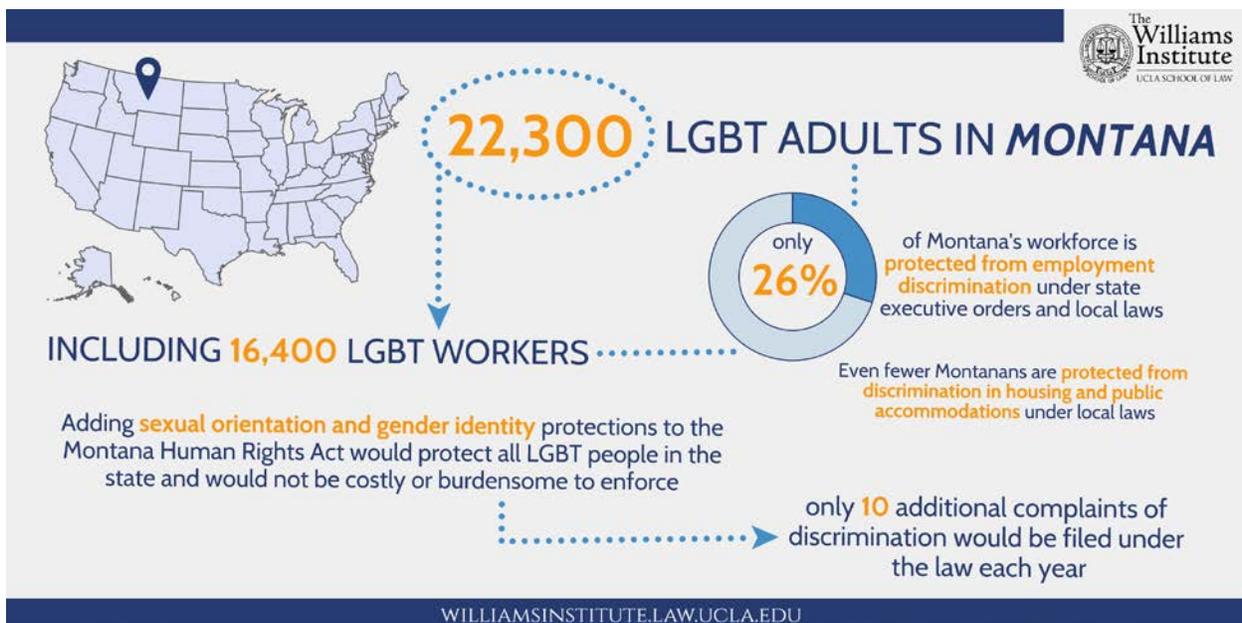
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## Executive Summary

Over 4% of American adults identify as LGBT. Approximately 22,300 LGBT adults live in Montana. Montana does not have a statewide law that expressly prohibits discrimination based on sexual orientation or gender identity.

This report summarizes evidence of sexual orientation and gender identity discrimination in Montana, explains the limited current protections from sexual orientation and gender identity discrimination in the state, and estimates the administrative impact of adding sexual orientation and gender identity to the state's existing non-discrimination law.



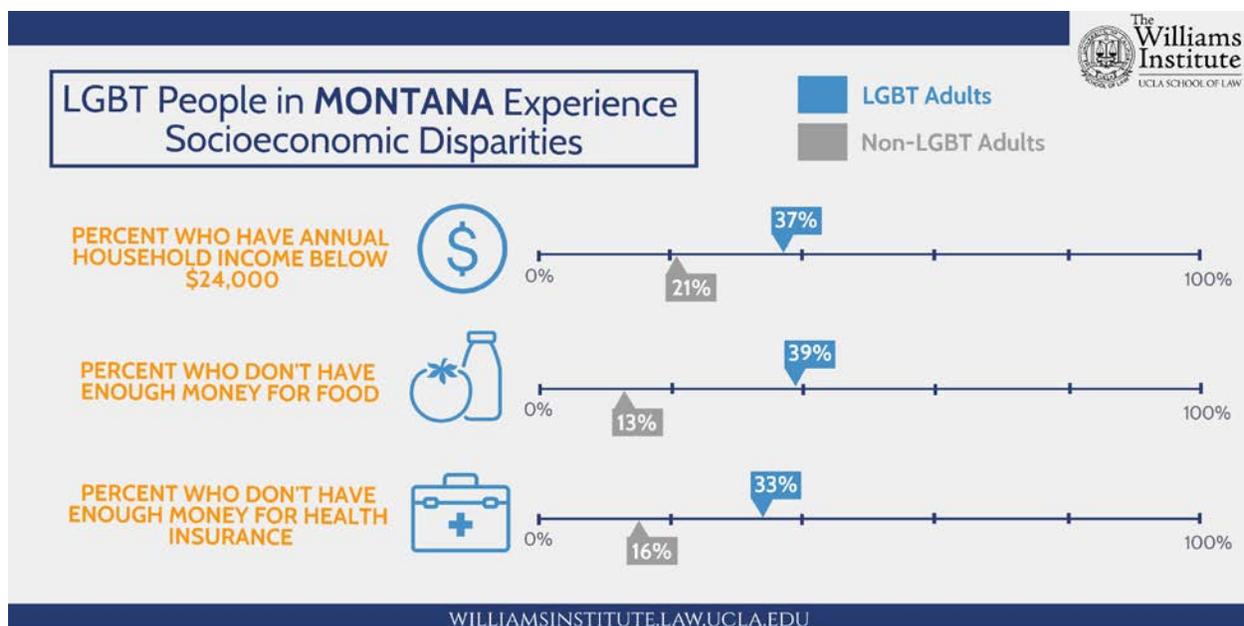
## Key findings of this report include:

### *LGBT People in Montana Report Experiencing Discrimination and Harassment in Employment, Housing, Public Accommodations, and Other Settings*

- An estimated 22,300 LGBT adults live in Montana. There are over 16,400 LGBT people aged 16 and older in Montana's workforce.<sup>1</sup>
- Survey data indicate that discrimination against LGBT people occurs in Montana. For example, a survey of Montana State University students found that 26% of LGBTQ students said they had been harassed in classrooms and 53% felt that they had to conceal their sexual orientation or gender identity to avoid harassment or discrimination.<sup>2</sup> And, a 2014 survey conducted by the State of Montana found that 21% of Montana residents surveyed, including LGBT and non-LGBT residents, reported that they had witnessed housing discrimination based on sexual orientation and 14% reported that they had witnessed housing discrimination based on gender identity in the state.<sup>3</sup>
- In addition, aggregated data from two large public opinion polls conducted between 2011 and 2013 found that 79% of Montana residents thought that LGBT people experienced discrimination in the state.<sup>4</sup> Another public opinion poll conducted in 2016 found that 49% of Montana residents thought that gay and lesbian people experienced a lot of discrimination in the U.S. and 51% of Montana residents thought that transgender people experienced a lot of discrimination in the U.S.<sup>5</sup>
- National survey data on discrimination against LGBT people are consistent with data from Montana. For example, a national survey of LGBT people conducted by Pew Research Center in 2013 found that 21% of respondents said that they had been treated unfairly by an employer in hiring, pay, or promotions and 23% said that had received poor service at a restaurant, hotel, or other place of business because of their sexual orientation or gender identity.<sup>6</sup>
- When transgender people are surveyed separately, they report similar or higher levels of discrimination. For example, the 2015 U.S. Transgender Survey, the largest survey of transgender and gender non-conforming people in the U.S. to date, found that 27% of respondents reported being fired, denied a promotion, or not being hired for a job they applied for in the year prior to the survey because of their gender identity; 23% of respondents reported experiencing some form of housing discrimination in the year prior to the survey because of their gender identity; and 31% reported experiencing some form of mistreatment in a place of public accommodation in the year prior to the survey because of their gender identity.<sup>7</sup>
- Reports of discrimination based on sexual orientation and gender identity in Montana have also been documented in administrative complaints, testimony before the state legislature, and the media.

## ***LGBT People in Montana Experience Socioeconomic Disparities***

- Research has linked greater socioeconomic disparities for LGBT people to region, a lack of legal protections from discrimination, and less supportive social attitudes toward LGBT people. Data from the Gallup Daily Tracking poll indicate that LGBT people in Montana experience socioeconomic disparities compared to their non-LGBT counterparts:
  - 37% of LGBT adults in Montana reported having an annual household income below \$24,000 compared to 21% of non-LGBT adults.
  - 39% of LGBT adults in Montana reported that they do not have enough money for food compared to 13% of non-LGBT adults.
  - 33% of LGBT adults in Montana reported not having enough money to meet their health care needs compared to 16% of non-LGBT adults.



## ***The State Executive Branch, Local Governments, Private Employers, and Public Universities in Montana Have Made Efforts to Protect LGBT People from Discrimination and Harassment, but Coverage Is Incomplete***

- A state executive order prohibits discrimination based on sexual orientation and gender identity against state government employees and employees of state government contractors in Montana.
- Five localities in Montana – Bozeman, Butte, Helena, Missoula, and Whitefish – have enacted local ordinances that prohibit discrimination based on sexual orientation and gender identity in employment, housing, public accommodations, and other areas.
- Over 26% of Montana's workforce is protected from employment discrimination based on sexual orientation or gender identity under the state executive order and local non-discrimination ordinances. Approximately 18% of the state's adult population is covered by

local ordinances that prohibit discrimination based on sexual orientation or gender identity in housing and public accommodations.

- At least half of the 20 largest private sector employers in Montana prohibit employment discrimination based on sexual orientation and gender identity. In addition, the Montana University System prohibits discrimination based on sexual orientation and gender identity throughout its 16 public colleges and universities.

### ***Public Opinion in Montana Supports the Passage of Non-Discrimination Protections for LGBT People***

- In response to a national poll conducted in 2011, 76% of those polled in Montana said that Congress should pass a federal law to prohibit employment discrimination based on sexual orientation and gender identity.<sup>8</sup>
- A poll of Montana residents conducted in 2008 found that 58% supported extending the state's non-discrimination law to protect gay and lesbian people.<sup>9</sup>

### ***A Statewide Law Prohibiting Discrimination Based on Sexual Orientation and Gender Identity in Montana Would Not Be Administratively Burdensome or Costly to Enforce***

- Adding sexual orientation and gender identity to the state's non-discrimination law would result in approximately 10 additional complaints being filed with the Montana Human Rights Bureau each year.
- The additional 10 complaints of discrimination could likely be absorbed into the existing enforcement system with no need for additional staff and negligible costs.

## Evidence of Discrimination

### *Survey Data and Reports of Sexual Orientation and Gender Identity Discrimination in Montana*

Research shows the existence of widespread and continuing discrimination against LGBT people in the U.S. In response to surveys, LGBT people consistently report having experienced discrimination in employment, housing, public accommodations, and other areas. For example, in response to a national survey of LGBT people conducted by the Pew Research Center in 2013, 21% of those surveyed said that they had been treated unfairly by an employer in hiring, pay, or promotions, and 23% said they had received poor service at a restaurant, hotel, or other place of business because of their sexual orientation or gender identity.<sup>10</sup> Additionally, the nationally representative 2008 General Social Survey found that 37% of gay men and lesbians reported that they had experienced workplace harassment in the last five years and 12% had lost a job because of their sexual orientation.<sup>11</sup>

When transgender people are surveyed separately, they report similar or higher levels of discrimination. For example, the 2015 U.S. Transgender Survey, the largest survey of transgender and gender non-conforming people in the U.S. to date, found that 27% of respondents reported being fired, denied a promotion, or not being hired for a job they applied for in the year prior to the survey because of their gender identity, and 15% reported being verbally, physically, or sexually harassed at work in the year prior to the survey because of their gender identity.<sup>12</sup> In addition, 23% of respondents reported experiencing some form of housing discrimination in the year prior to the survey because of their gender identity and 31% of respondents who said that staff at a place of public accommodation knew or thought they were transgender, had a negative experience while obtaining goods or services in the year prior to the survey.<sup>13</sup>

Discrimination based on sexual orientation and gender identity has also been reported in surveys of Montana residents:

- A survey of Montana State University students conducted by the university's Diversity Awareness Office found that 26% of LGBTQ students said they had been harassed in classrooms, and 53% of LGBTQ students felt that they had to conceal their sexual orientation or gender identity to avoid harassment or discrimination.<sup>14</sup>
- A 2014 survey conducted by the State of Montana found that 21% of Montana residents surveyed, including LGBT and non-LGBT residents, said they had witnessed housing discrimination based on sexual orientation and 14% said they had witnessed housing discrimination based on gender identity in the state.<sup>15</sup> In addition, when asked what types of changes to fair housing laws they wished to see, "many respondents cited a need to expand protected class designations to include sexual orientation as a protected class."<sup>16</sup>
- Aggregated data from two large public opinion polls conducted between 2011 and 2013 found that 79% of Montana residents thought that LGBT people experience discrimination in the

state.<sup>17</sup> Another public opinion poll conducted in 2016 found that 49% of Montana residents thought that gay and lesbian people experience a lot of discrimination in the U.S. and 51% of Montana residents thought that transgender people experience a lot of discrimination in the U.S.<sup>18</sup>

Reports of discrimination against LGBT people in the U.S. have also been documented in court cases, state and local administrative complaints, complaints to community-based organizations, academic journals, newspapers, books, and other media. Additionally, a number of federal, state, and local administrative agencies and legislative bodies have acknowledged that LGBT people have faced widespread discrimination.<sup>19</sup>

Documented reports of discrimination based on sexual orientation and gender identity in Montana include:

- In 2016, the owner of a Nissan car dealership in Montana posted a video on YouTube and linked it to his dealership's page in which he said that he would "throw [transgender customers] out of the store" for using the restroom consistent with their gender identity, and that allowing transgender people to access restrooms consistent with their gender identity is "not American."<sup>20</sup> Nissan's corporate office asked him to remove the link from the dealership's page stating that they "adamantly oppose any statements or actions that demean or allow discrimination against lesbian, gay, bisexual and transgender individuals."<sup>21</sup> The link was removed from the dealership's page but remains available on YouTube.<sup>22</sup>
- In 2016, a married same-sex couple in Montana filed a complaint with the Montana Human Rights Bureau alleging that state employees took away their foster son because they are a same-sex couple. The men had been fostering the baby since shortly after his birth and expressed a desire to adopt him. One social worker indicated that they were a suitable long-term placement, but another said that they would "always be on the bottom of her list for placement....And that other social workers wouldn't want to work with [them] because [they are] a gay couple." After three months, the state agency unexpectedly removed the baby from the couple's home because a young single woman described as "a stepdaughter to a stepbrother of the birth father" was willing to adopt him. Although the Montana Human Rights Act does not prohibit discrimination based on sexual orientation, the men filed a complaint stating that they had been discriminated against based on their sex and marital status as two men in a same-sex marriage. The complaint is pending.<sup>23</sup>
- In 2015, a transgender community college student reported to the media that classmates called her "a tranny...a fag...every dirty word that a transgender person could be called," and a classmate called her wife, who attended the same school, a "fag lover." The transgender student said that she reported the bullying to school officials but no action was taken. She later withdrew from the college.<sup>24</sup>

- A 2015 article published in the Great Falls Tribune documented stigma and several reported instances of discrimination against transgender people in Montana. One transgender woman interviewed for the article reported that she thought that when she transitioned, she “would walk out into the world and everybody would be OK with [her] as a woman just as they were when [she] was Robert,” but “that definitely was not the case.” In addition, a transgender man who had recently moved to Billings said that “he lost housing on multiple occasions because roommates or landlords found out he was trans\* and weren’t accepting.” Another transgender man asked the author of the article not to use his last name because his family feared that his father’s business “would be harmed if customers found out his father had a transgender son.” He also said that he had lost a new job when the secretary of the company noticed that his driver’s license had a female gender marker. He moved away from Montana to avoid further discrimination.<sup>25</sup>
- In 2014, a local clerk of court in Yellowstone County refused to issue marriage licenses to same-sex couples after a federal court ruled that the state’s ban on marriage for same-sex couples was unconstitutional.<sup>26</sup>
- In 2014, a young LGBT person from Montana reported to the media that when she came out as a freshman in high school she “experienced a lot of bullying from the other boys in the school.” School officials did not address the problem after her father reported the bullying, so she transferred to another school.<sup>27</sup>
- Examples of discrimination and fear of discrimination based on sexual orientation and gender identity have also been presented in testimony before the Montana Legislature. For example, in a 2015 hearing before the Senate Judiciary Committee on a bill that would have added sexual orientation and gender identity to the state’s non-discrimination law, a transgender resident of Helena testified that he was fired from his job as a restaurant server shortly after he transitioned. The server said that when he notified his manager that he planned to transition from female to male, the manager instituted a dress code requiring female servers to wear skirts and told the server that he would have to comply with the female dress code. When the server refused, he was terminated. The server filed a complaint with the Montana Human Rights Bureau and at the time of the hearing, mediation between the server and the employer was pending.<sup>28</sup> Other Montana residents recounted incidents of discrimination and fear of discrimination in hearings before the House Judiciary Committee in 2011 and 2013.<sup>29</sup>

## **Socioeconomic Disparities for LGBT People**

Research has found that gay men and transgender people experience wage gaps,<sup>30</sup> and has found an association between lower earnings and lack of state-level protections from discrimination for LGBT people.<sup>31</sup> Research also indicates that LGBT people, in general, are disproportionately poor,<sup>32</sup> and that social climate and policy are linked determinants of poverty among LGBT communities.<sup>33</sup>

For example, a 2014 analysis conducted by the Williams Institute using data from the Gallup Daily Tracking poll linked greater socioeconomic disparities for LGBT people to region, a lack of legal protections, and less supportive social attitudes toward LGBT people.<sup>34</sup> The analysis found that LGBT people face greater social and economic disparities in states without statewide laws prohibiting sexual orientation and gender identity discrimination and in regions of the country, such as the Mountain region, with a poorer social climate for LGBT people.<sup>35</sup>

Data collected through the Gallup Daily Tracking poll (2012-2017) indicate that LGBT people in Montana experience socioeconomic disparities compared to their non-LGBT counterparts:

- 37% of LGBT adults in Montana reported having an annual household income below \$24,000 compared to 21% of non-LGBT adults.<sup>36</sup>
- 39% of LGBT adults in Montana reported that they do not have enough money for food compared to 13% of non-LGBT adults.<sup>37</sup>
- 33% of LGBT adults in Montana reported not having enough money to meet their health care needs compared to 16% of non-LGBT adults.<sup>38</sup>

## **Current Protections from Discrimination**

Montana does not have a statewide law that prohibits discrimination based on sexual orientation or gender identity.<sup>39</sup> Efforts have been made to add sexual orientation and/or gender identity to the state's non-discrimination law in nine of the ten most recent legislative sessions,<sup>40</sup> but these efforts have been unsuccessful.<sup>41</sup>

A gubernatorial executive order in Montana provides protection from sexual orientation and gender identity discrimination for state government employees and employees of government contractors. Five localities in Montana have enacted ordinances that prohibit discrimination based on sexual orientation and gender identity in employment, housing, public accommodations, and other areas. Additionally, several private corporations and public universities in Montana have adopted internal policies that prohibit discrimination based on sexual orientation and gender identity.

### ***Montana Human Rights Act***

Montana's existing non-discrimination law, the Montana Human Rights Act, prohibits discrimination in employment, housing, public accommodations, and other areas such as education and government services.<sup>42</sup> Personal characteristics protected under the Act include race, religion, national origin, age, disability, marital status, and sex.<sup>43</sup>

The Human Rights Bureau in the Montana Department of Labor and Industry administratively enforces the Montana Human Rights Act.<sup>44</sup> The Human Rights Bureau is authorized to accept and investigate complaints of discrimination filed within 180 days of the alleged discriminatory act.<sup>45</sup> The Department of Labor and Industry may hold administrative hearings on complaints filed, and may order remedies (with the exception of punitive damages) to complainants if discrimination is found.<sup>46</sup> An individual who has filed a complaint with the Bureau may initiate a civil action in court for relief only if the

administrative complaint is dismissed.<sup>47</sup> Courts may award the same remedies that are available through an administrative hearing with the Department, in addition to attorney fees and costs.<sup>48</sup>

### ***Executive Order Prohibiting Discrimination Based on Sexual Orientation and Gender Identity against State Government Employees***

In 2016, Governor Steve Bullock issued an executive order prohibiting discrimination in state government employment and services, and employment by state government contractors, based on sexual orientation and gender identity, among other characteristics.<sup>49</sup> The order provides for an internal enforcement procedure, but does not permit employees to file lawsuits in court based on violations of the non-discrimination requirements.<sup>50</sup> The order rescinded an executive order issued in 2008 by former governor Brian Schweitzer, which prohibited discrimination based on sexual orientation in state employment and state services, but did not include gender identity or extend to employment by government contractors.<sup>51</sup>

The executive order protects Montana's 35,000 state government workers from discrimination based on sexual orientation and gender identity.<sup>52</sup> The order also protects employees of private companies that hold contracts with the government, but it is not possible to determine, using existing data sources, how many employees are covered by that provision of the order.

### ***Local-Level Protections from Discrimination Based on Sexual Orientation and Gender Identity***

Five localities in Montana – Bozeman,<sup>53</sup> Butte,<sup>54</sup> Helena,<sup>55</sup> Missoula,<sup>56</sup> and Whitefish<sup>57</sup> – have enacted broad local ordinances that prohibit discrimination based on sexual orientation and/or gender identity in employment, housing, public accommodations, and other areas. All of the ordinances require individuals to file complaints of discrimination with the Montana Human Rights Bureau if the type of discrimination they experienced is also prohibited by the Montana Human Rights Act.<sup>58</sup> However, because state law does not prohibit discrimination based on sexual orientation or gender identity, individuals in the five localities may file complaints of such discrimination directly in court. Courts may award civil remedies including injunctive relief, attorney fees, and other equitable relief.<sup>59</sup>

Approximately 26% of Montana's workforce is protected from employment discrimination based on sexual orientation and/or gender identity under the local ordinances or the state executive order.<sup>60</sup> The local ordinances protect approximately 18% of the state's adult population from discrimination based on sexual orientation and/or gender identity in housing, public accommodations, and other areas.<sup>61</sup>

### ***Corporate and University Policies that Prohibit Discrimination Based on Sexual Orientation and Gender Identity***

Research indicates that private companies often adopt internal policies prohibiting employment discrimination based on personal characteristics, including sexual orientation and gender identity, because they make good business sense. For example, one study of corporate motivations behind adopting workplace non-discrimination policies found that 53% of the top 50 Fortune 500 companies and the top 50 federal contractors in the U.S. with LGBT-inclusive policies had adopted the policies for

economic reasons.<sup>62</sup> The specific economic benefits these companies pointed to included improved recruitment and retention of employees, increased employee productivity and customer satisfaction, an expanded customer base, and others. Additionally, a growing body of academic research supports the link between LGBT-inclusive corporate policies and positive business-related outcomes, including greater job commitment, improved workplace relationships, increased job satisfaction, and improved health outcomes among LGBT employees.<sup>63</sup>

A number of Montana's largest employers have adopted internal policies that prohibit employment discrimination based on sexual orientation and gender identity. At least half of Montana's 20 largest private sector employers have such policies, including Albertsons, Bozeman Deaconess Hospital, CHS, Costco, Glacier Bancorp, Kalispell Regional Medical Center, St. Patrick Hospital, UPS, Walmart, and Wells Fargo.<sup>64</sup> In addition, the Montana Board of Regents adopted a policy in 2013 that prohibits discrimination based on sexual orientation and gender identity in employment and education.<sup>65</sup> The policy applies to all 16 public universities and colleges in the Montana University System.<sup>66</sup>

## **Public Support for Non-Discrimination Protections for LGBT People**

Public opinion in Montana supports the passage of non-discrimination protections for LGBT people. In response to a national poll conducted in 2011, 76% of those polled in Montana said that Congress should pass a federal law to prohibit employment discrimination based on sexual orientation and gender identity.<sup>67</sup> Similarly, a poll of Montana residents conducted in 2008 found that 87% of respondents said that no one should be discriminated against in their workplace because they are gay or lesbian, and 58% supported extending the state's non-discrimination law to protect gay and lesbian people.<sup>68</sup>

## **Administrative Impact of Adding Sexual Orientation and Gender Identity to Montana's Existing Non-Discrimination Law**

### ***Complaint Estimate***

Despite the persistence and pervasiveness of discrimination against LGBT people, studies show that enforcing sexual orientation and gender identity provisions in non-discrimination laws has only a minimal burden on state agencies. Complaints of sexual orientation and gender identity discrimination are filed by LGBT people at approximately the same rate as complaints of race and sex discrimination are filed by people of color and women, respectively.<sup>69</sup> However, because the LGBT population is relatively small, the absolute number of sexual orientation and gender identity complaints filed under state non-discrimination laws is low.<sup>70</sup>

The Montana Human Rights Act allows individuals to file complaints with the Human Rights Bureau in the Montana Department of Labor and Industry. We estimate that if sexual orientation and gender identity were added to the non-discrimination law, 10 additional complaints would be filed with the Bureau each year. To reach this estimate, we drew on Gallup polling data and Census data from

Montana to estimate the size of the adult LGBT population and LGBT workforce in the state, and applied national sexual orientation and gender identity complaint rates to the LGBT population and workforce. We have previously used this methodology to estimate the number of complaints that would be filed on the basis of sexual orientation and gender identity in other states.<sup>71</sup>

Results from Gallup polls conducted from 2012 through 2017 show that 2.9% of the adult population and 3.2% of the workforce in Montana identify as LGBT.<sup>72</sup> Applying the percentages to the number of people in Montana's adult population (769,547<sup>73</sup>) and workforce (513,209<sup>74</sup>) indicates that there are an estimated 22,317 LGBT adults and 16,423 LGBT workers in Montana.

Next, we applied the rate of complaints filed on the basis of sexual orientation or gender identity to the number of LGBT adults and workers in Montana to determine how many complaints would be filed annually if these characteristics were added to the Montana Human Rights Act. We used the national average complaint rates from a series of studies that analyzed administrative complaint data from states that prohibited sexual orientation and gender identity discrimination as of 2015.<sup>75</sup> The studies found that across these states, the average rate of employment discrimination complaints filed on the basis of sexual orientation or gender identity was 4.6 per 10,000 LGBT workers;<sup>76</sup> the average rate of housing discrimination complaints was 3 per 100,000 LGBT adults;<sup>77</sup> and the average rate of public accommodations complaints was 4 per 100,000 LGBT adults.<sup>78</sup>

Applying the national complaint rates to the LGBT population in Montana suggests that 10 additional complaints of discrimination in employment, housing, or public accommodations would be filed annually if sexual orientation and gender identity were added to the Montana Human Rights Act.<sup>79</sup> More specifically, applying the national complaint rate for employment discrimination (4.6 per 10,000 LGBT workers) to the number of LGBT workers in Montana (16,423) suggests that 8 complaints of employment discrimination based on sexual orientation or gender identity would be filed annually; and applying the national complaint rates for housing (3 per 100,000 LGBT adults) and public accommodations discrimination (4 per 100,000 LGBT adults) to the number of LGBT adults in Montana (22,317) suggests that 1 complaint of housing discrimination and 1 complaint of public accommodations discrimination would be filed annually.

### ***Cost of Enforcement***

Available data suggest that an additional 10 complaints filed with the Montana Human Rights Bureau each year would not be costly or burdensome to enforce. According to the most recent data available from the Department (FY 2010-2016), the Bureau handled an annual average of 610 discrimination complaints.<sup>80</sup>

The Bureau's reports do not provide enough data to determine the cost of enforcement per complaint, so it is not possible to precisely estimate any added expense associated with the additional 10 complaints. However, the data suggest that the additional complaints would have a minimal impact on the Bureau. The annual number of complaints filed with the Department varied from 27 to 200 complaints over the six fiscal year periods from 2010 through 2016.<sup>81</sup> On average, annual filings from

2010 through 2016 fluctuated by 100 complaints. This information suggests that an additional 10 complaints would be within the range of normal variation and could be absorbed by the Bureau with minimal impact on staff and resources.

Fiscal Year	Number of Discrimination Complaints Filed	Change in Number of Complaints Filed from Prior Year
2016	737 <sup>82</sup>	200
2015	537 <sup>83</sup>	-118
2014	655 <sup>84</sup>	-27
2013	682 <sup>85</sup>	135
2012	547 <sup>86</sup>	33
2011	514 <sup>87</sup>	-89
2010	603 <sup>88</sup>	NA

## Conclusion

Documented evidence indicates that LGBT people face discrimination across the country, including in Montana. There are currently no statewide laws that expressly prohibit discrimination based on sexual orientation or gender identity in Montana. Adding these characteristics to the Montana Human Rights Act would provide new or additional protections from discrimination to approximately 22,300 LGBT adults, including 16,400 workers, in the state. Based on data from other state administrative enforcement agencies, we estimate that approximately 10 complaints of sexual orientation or gender identity employment discrimination would be filed in Montana annually if the law were amended. It is likely that the additional 10 complaints could be absorbed by the Montana Human Rights Bureau with little impact on the staff and negligible costs.

## **About the Williams Institute**

The Williams Institute on Sexual Orientation and Gender Identity Law and Public Policy at UCLA School of Law advances law and public policy through rigorous, independent research and scholarship, and disseminates its work through a variety of education programs and media to judges, legislators, lawyers, other policymakers and the public. These studies can be accessed at the Williams Institute website.

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## Endnotes

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<sup>1</sup> These estimates were reached by applying the percentage of people in Montana that are LGBT (2.9%) to the adult population of Montana (769,547) and the percentage of people in Montana’s workforce that are LGBT (3.2%) to the number of people in the Montana labor force aged 16 and older (513,209), respectively. Special analysis of LGBT population and LGBT participation in the workforce by Dr. Shoshana Goldberg under Dr. Kerith Conron’s licensing agreement using data from the Gallup Daily Tracking Poll (2012-2017) (on file with authors); American Community Survey, U.S. Census Bureau, American FactFinder, 2015 ACS Table DP03: Selected Economic Characteristics, 1-Year Estimates.

<sup>2</sup> Gail Schontzler, *Queer Students Say MSU Campus Intolerant*, BOZEMAN DAILY CHRONICLE, Jan. 27, 2016.

<sup>3</sup> MONT. DEP’T OF COMMERCE & MONT. DEP’T OF PUBLIC HEALTH AND HUMAN SVCS, ANALYSIS OF IMPEDIMENTS TO FAIR HOUSING CHOICE: APRIL 1, 2015 THROUGH MARCH 31, 2020 20 (2015), <http://housing.mt.gov/Portals/93/shared/docs/Renters/FINALHUDAnalysisImpediments.pdf>; MONT. DEP’T OF COMMERCE & MONT. DEP’T OF PUBLIC HEALTH AND HUMAN SVCS, ANALYSIS OF IMPEDIMENTS TO FAIR HOUSING CHOICE: APRIL 1, 2015 THROUGH MARCH 31, APPENDIX A 5 (2015), <https://commerce.mt.gov/Portals/90/shared/CP/docs/CPPlansAndRpts/2015-2020AI%20AppendixA%20FHsurveyFINAL.pdf>.

<sup>4</sup> Andrew Flores & Scott Barclay, Williams Institute Analysis based on public opinion data from Evaluations of Government and Society Study, Survey 3 (2011) & Survey 4 (2012) and Pew Research Center Poll (2013) (data and calculations on file with author).

<sup>5</sup> PRRI, American Values Atlas: Montana, <http://ava.prii.org/#discrimination/2016/States/blkdis/m/US-MT> (under dropdown menu for “Select Question” select “Discrimination against gay and lesbian people” or “Discrimination against transgender people;” under dropdown menu for “Select Response” select “Yes;” under dropdown menu for “Year” select “2016”).

<sup>6</sup> A Survey of LGBT Americans: Attitudes, Experiences and Values in Changing Times, Pew Research Center, June 13, 2013, <http://www.pewsocialtrends.org/2013/06/13/a-survey-of-lgbt-americans/>.

<sup>7</sup> SANDY JAMES ET AL., 2015 U.S. TRANSGENDER SURVEY 11, 12, 14 (2016), <http://www.transequality.org/sites/default/files/docs/USTS-Full-Report-FINAL.PDF>.

<sup>8</sup> Andrew Flores & Scott Barclay, Williams Institute Analysis based on public opinion data from Public Religion Research Institute Survey (2011) (data and calculations on file with author).

<sup>9</sup> John S. Adams, *Poll: Montanans Support Broader Human Rights Laws*, GREAT FALLS TRIBUNE, June 12, 2008.

<sup>10</sup> A Survey of LGBT Americans: Attitudes, Experiences and Values in Changing Times, Pew Research Center, June 13, 2013, <http://www.pewsocialtrends.org/2013/06/13/a-survey-of-lgbt-americans/>.

<sup>11</sup> BRAD SEARS & CHRISTY MALLORY, WILLIAMS INST., DOCUMENTED EVIDENCE OF EMPLOYMENT DISCRIMINATION & ITS EFFECTS ON LGBT PEOPLE 2 (2011), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Sears-Mallory-Discrimination-July-2011.pdf>.

<sup>12</sup> SANDY JAMES ET AL., *supra* note 7 at 12.

<sup>13</sup> *Id.* at 11, 14.

<sup>14</sup> Schontzler, *supra* 2.

<sup>15</sup> MONT. DEP’T OF COMMERCE & MONT. DEP’T OF PUBLIC HEALTH AND HUMAN SVCS, ANALYSIS OF IMPEDIMENTS TO FAIR HOUSING CHOICE: APRIL 1, 2015 THROUGH MARCH 31, 2020 20 (2015), <http://housing.mt.gov/Portals/93/shared/docs/Renters/FINALHUDAnalysisImpediments.pdf>; MONT. DEP’T OF COMMERCE & MONT. DEP’T OF PUBLIC HEALTH AND HUMAN SVCS, ANALYSIS OF IMPEDIMENTS TO FAIR HOUSING CHOICE: APRIL 1, 2015 THROUGH MARCH 31, APPENDIX A 5 (2015),

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<https://commerce.mt.gov/Portals/90/shared/CP/docs/CPPlansAndRpts/2015-2020AI%20AppendixA%20FHsurveyFINAL.pdf>.

<sup>16</sup> MONT. DEP'T OF COMMERCE & MONT. DEP'T OF PUBLIC HEALTH AND HUMAN SVCS, ANALYSIS OF IMPEDIMENTS TO FAIR HOUSING CHOICE: APRIL 1, 2015 THROUGH MARCH 31, 2020 68 (2015),

<http://housing.mt.gov/Portals/93/shared/docs/Renters/FINALHUDAnalysisImpediments.pdf>.

<sup>17</sup> Andrew Flores & Scott Barclay, Williams Institute Analysis based on public opinion data from Evaluations of Government and Society Study, Survey 3 (2011) & Survey 4 (2012) and Pew Research Center Poll (2013) (data and calculations on file with author).

<sup>18</sup> PRRI, American Values Atlas: Montana, <http://ava.prii.org/#discrimination/2016/States/blkdis/m/US-MT> (under dropdown menu for "Select Question" select "Discrimination against gay and lesbian people" or "Discrimination against transgender people;" under dropdown menu for "Select Response" select "Yes;" under dropdown menu for "Year" select "2016").

<sup>19</sup> SEARS & MALLORY, *supra* note 11.

<sup>20</sup> Transgender Bathrooms, youtube.com, Aug. 31, 2016, <https://www.youtube.com/watch?v=64AgFtrWKiw>.

<sup>21</sup> Jesse Chaney, *Car Dealer Scorned for Comments on Transgender Restrooms; Says He Was Misunderstood*, BILLINGS GAZETTE, Aug 29, 2016.

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<sup>23</sup> Gail Schontzler, *Gay Couple's Dream of Adopting Ends in Bias Charge against Montana*, BOZEMAN DAILY CHRONICLE, Aug. 7, 2016, [http://www.bozemandailychronicle.com/news/gay-couple-s-dream-of-adopting-ends-in-bias-charge/article\\_9dde90ec-45d7-5734-82cb-81f0c0f18e17.html](http://www.bozemandailychronicle.com/news/gay-couple-s-dream-of-adopting-ends-in-bias-charge/article_9dde90ec-45d7-5734-82cb-81f0c0f18e17.html).

<sup>24</sup> Keila Szpaller, *Transgender Student Drops Out, Alleges Discrimination at Missoula College*, BILLINGS GAZETTE, Aug. 9, 2015, [http://billingsgazette.com/news/state-and-regional/montana/transgender-student-drops-out-alleges-discrimination-at-missoula-college/article\\_a57b17cd-4b32-5be1-8a61-3201439a137d.html](http://billingsgazette.com/news/state-and-regional/montana/transgender-student-drops-out-alleges-discrimination-at-missoula-college/article_a57b17cd-4b32-5be1-8a61-3201439a137d.html).

<sup>25</sup> John S. Adams, *Trans\* in Montana*, GREAT FALLS TRIBUNE, Feb. 15, 2015, <http://www.greatfallstribune.com/story/news/politics/2015/02/15/trans-montana/23468895/>.

<sup>26</sup> John S. Adams, *LGBT Community Pushing New Legislation*, GREAT FALLS TRIBUNE, Dec. 30, 2014.

<sup>27</sup> Briana Wipf, *Barriers Abound*, GREAT FALLS TRIBUNE, Dec. 14, 2014.

<sup>28</sup> Hearing on S.B. 179 Before the S. Comm. of the Judiciary, 64th Leg., Reg. Sess. (2015) (statement of Natt Walden).

<sup>29</sup> Hearing on H.B. 481 Before the H. Comm. on the Judiciary, 63rd Leg., Reg. Sess. (2013)(statements of Roberta Zenker and Judy Fjell); Hearing on H.B. 514 Before the H. Comm. of the Judiciary, 62nd Leg., Reg. Sess. (2011) (statement of Heather Granbois).

<sup>30</sup> Marieka Klawitter, *Meta-Analysis of the Effects of Sexual Orientation on Earnings*, 54 INDUST. REL. 4, 13 (2014) (finding an average wage gap of -11% and a range of -30% to 0% for gay men); Carpenter et al., *Transgender Status, Employment, and Income* (forthcoming 2017), at 9 (on file with authors); Jamie H. Douglas & Michael D. Steinberger, *The Sexual Orientation Wage Gap for Racial Minorities*, 54 INDUST. REL. 59, 96 (2015).

<sup>31</sup> Amanda K. Baumle & Dudley L. Poston Jr., *The Economic Cost of Homosexuality: Multilevel Analysis*, 89 Soc. Forces 1005 (2011); Marieka M. Klawitter, *Multilevel Analysis of the Effects of Antidiscrimination Policies on Earnings by Sexual Orientation*, 30 J.. POL. ANALYSIS & MGMT. 334 (2011); Gary J. Gates, Cal. Center for Pop. Research, *The Impact of Sexual Orientation Anti-Discrimination Policies on the Wages of Lesbians and Gay Men* (2009), <http://papers.ccpr.ucla.edu/papers/PWP-CCPR-2009-010/PWP-CCPR-2009-010.pdf>.

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<sup>34</sup> AMIRA HASENBUSH, ANDREW R. FLORES, ANGELIKI KASTANIS, BRAD SEARS & GARY J. GATES, WILLIAMS INST., THE LGBT DIVIDE: A DATA PORTRAIT OF LGBT PEOPLE IN THE MIDWESTERN, MOUNTAIN & SOUTHERN STATES 22 (2014), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-divide-Dec-2014.pdf>.

<sup>35</sup> Press Release, Williams Inst., LGBT Americans Face Greater Social and Economic Disparities in the South, Midwest, and Mountain States (Dec. 18, 2014) (available at <http://williamsinstitute.law.ucla.edu/press/press-releases/lgbt-divide/>). In the words of report author Gary Gates: “It’s not just that LGBT people in the Midwest and South are poorer because people in those regions tend to be poorer overall. In some cases the economic disadvantages that LGBT people have relative to non-LGBT people markedly increase in those regions. In others, the advantages that you see for LGBT people in other parts of the country either disappear or reverse.”

<sup>36</sup> Special analysis of LGBT population and LGBT participation in the workforce by Dr. Shoshana Goldberg under Dr. Kerith Conron’s licensing agreement using data from the Gallup Daily Tracking Poll (2012-2017) (on file with authors).

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> MONT. CODE ANN. § 49-2-303 (2014).

<sup>40</sup> H.B. 417, 65th Leg., Reg. Sess. (Mont. 2017) (sexual orientation and gender identity); S.B. 179, 64th Leg., Reg. Sess. (Mont. 2015) (sexual orientation and gender identity); H.B. 481, 63rd Leg., Reg. Sess. (Mont. 2013) (sexual orientation and gender identity); H.B. 514, 62nd Leg., Reg. Sess. (Mont. 2011) (sexual orientation and gender identity); H.B. 252, 61st Leg., Reg. Sess. (Mont. 2009) (sexual orientation and gender identity); S. 371, 60th Leg., Reg. Sess. (Mont. 2007) (sexual orientation and gender identity); S. 199, 59th Leg., Reg. Sess. (Mont. 2005) (sexual orientation); H.B. 438, 57th Leg., Reg. Sess. (Mont. 2001) (sexual orientation); S. 329, 56th Leg., Reg. Sess. (Mont. 1999) (sexual orientation).

<sup>41</sup> Legislative history and bill status for all proposed and enacted legislation in Montana is available at <http://leg.mt.gov/css/Bills/default.asp>.

<sup>42</sup> MONT. CODE ANN. §§ 49-2-301 to 49-2-311; 49-3-201 to 49-3-208 (2015).

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* § 49-2-101(8); Mont. Dep’t of Labor & Ind., Discrimination, <http://dev2.erd.dli.mt.gov/human-rights> (last visited Dec. 17, 2014).

<sup>45</sup> MONT. CODE ANN. § 49-2-501.

<sup>46</sup> *Id.* § 49-2-506.

<sup>47</sup> *Id.* § 49-2-512(3).

<sup>48</sup> *Id.* § 49-2-512.

<sup>49</sup> Mont. Exec. Order No. 04-2016 (2016), available at <https://governor.mt.gov/Portals/16/docs/2016EOs/EO-04-2016%20Anti-Discrimination%20in%20workplace.pdf?ver=2016-01-19-161003-600>.

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<sup>50</sup> *See id.*

<sup>51</sup> Mont. Exec. Order No. 41-2008 (2008), *available at* <http://www.dphhs.mt.gov/Portals/85/amdd/documents/MMHNCC/policymanual/100/119-1.pdf>.

<sup>52</sup> Calculated by authors using data from the American Community Survey (2015).

<sup>53</sup> BOZEMAN, MONT., CODE § 24.10.010 *et seq.* (2016).

<sup>54</sup> BUTTE, MONT., CODE § 5.68.01 *et seq.* (2015).

<sup>55</sup> HELENA, MONT., CODE § 1-8-1 *et seq.* (2016).

<sup>56</sup> MISSOULA, MONT., CODE § 9.64.010 *et seq.* (2016).

<sup>57</sup> WHITEFISH, MONT., CODE § 1-10-1 *et seq.* (2016).

<sup>58</sup> BOZEMAN, MONT., CODE § 24.10.080(B); BUTTE, MONT., CODE § 5.68.090(A); HELENA, MONT., CODE § 1-8-7; MISSOULA, MONT., CODE § 9.64.090(A); WHITEFISH, MONT., CODE § 1-10-7(A).

<sup>59</sup> BOZEMAN, MONT., CODE § 24.10.080(C); BUTTE, MONT., CODE § 5.68.090(B); HELENA, MONT., CODE § 1-8-7; MISSOULA, MONT., CODE § 9.64.090(B); WHITEFISH, MONT., CODE § 1-10-7(C).

<sup>60</sup> Calculated by authors using data from the American Community Survey (2011-2015).

<sup>61</sup> Calculated by authors using data from the American Community Survey (2011-2015).

<sup>62</sup> BRAD SEARS & CHRISTY MALLORY, THE WILLIAMS INST., ECONOMIC MOTIVES FOR ADOPTING LGBT-RELATED WORKPLACE POLICIES (2011), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Mallory-Sears-Corp-Statements-Oct2011.pdf>.

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<sup>64</sup> MT Top 20 Employers, Montana.gov, <https://data.datamontana.us/Business/MT-Top-20-Employers/8zua-exgt> (Aug. 24, 2017) (20 largest private employers in Montana, 2013 data from the U.S. Census Bureau); Albertsons Companies, <https://www.safeway.apply2jobs.com/HVExt/index.cfm?fuseaction=mHVExternal.showMinimumAgeSelection> (last visited Oct. 7, 2016) (job search database); Patient Rights and Responsibilities, Bozeman Health, <http://www.bozemanhealth.org/Patient-Rights-and-Responsibilities.aspx> (last visited Aug. 24, 2017); CHS Equal Opportunity Employment Statement, CHS, [http://www.chsinc.com/~media/chs%20inc/files/pdfs/careers/chs%20eeo%20statement\\_rev.ashx?la=en](http://www.chsinc.com/~media/chs%20inc/files/pdfs/careers/chs%20eeo%20statement_rev.ashx?la=en) (last visited Oct. 7, 2016); Inclusion, COSTCO, <http://www.costco.com/inclusion.html> (last visited Aug. 24, 2017); Employment Opportunities, Glacier Bancorp, <http://www.sn1.com/IRWebLinkX/GenPage.aspx?IID=1023792&GKP=208331> (last visited Aug. 24, 2017); Employment, Kalispell Regional Healthcare, <https://www.krh.org/krhc/about/employment>; IHI Care Team Scheduler/EMR Representative in Missoula, Montana, Providence Health & Services, [http://providence-missoula.jobs/missoula-mt/ih-care-team-scheduleremr-representative/90CA95B67E1E40B3B3B35481B831070B/job/?\\_ga=1.205396752.1438270767.1475862458](http://providence-missoula.jobs/missoula-mt/ih-care-team-scheduleremr-representative/90CA95B67E1E40B3B3B35481B831070B/job/?_ga=1.205396752.1438270767.1475862458) (Last visited Aug. 24, 2017) (equal employment opportunity statement on job posting); Diversity & Inclusion, UPS, <https://sustainability.ups.com/committed-to-more/diversity-and-inclusion/> (last visited Aug. 24, 2017); *Walmart Adds Gender Identity to Non-Discrimination Policy*, LGBTQNATION.COM, Sept. 28, 2011, <http://www.lgbtqnation.com/2011/09/walmart-adds-gender-identity-expression-to-non-discrimination-policy/>; Equal Employment Opportunity and Affirmative Action, Wells Fargo, <https://www.wellsfargo.com/about/careers/equal-employment-opportunity/> (last visited Aug. 24, 2017).

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<sup>65</sup> *MT Board of Regents Adds Sexual Orientation, Gender Identity to Non-Discrimination Policy*, MONTANA.EDU, July 17, 2013, <http://www.montana.edu/news/12038/mt-board-of-regents-adds-sexual-orientation-gender-identity-to-non-discrimination-policy>.

<sup>66</sup> *Id.*; Montana University System, <https://mus.edu/> (last visited Aug. 24, 2017).

<sup>67</sup> Andrew Flores & Scott Barclay, Williams Institute Analysis based on public opinion data from Public Religion Research Institute Survey (2011) (data and calculations on file with author).

<sup>68</sup> John S. Adams, *supra* note 9.

<sup>69</sup> CHRISTY MALLORY & BRAD SEARS, EVIDENCE OF EMPLOYMENT DISCRIMINATION BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY: AN ANALYSIS OF COMPLAINTS FILED WITH STATE ENFORCEMENT AGENCIES, 2008-2014 (2016), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Employment-Discrimination-Complaints-2008-2014.pdf>; CHRISTY MALLORY & BRAD SEARS, EVIDENCE OF HOUSING DISCRIMINATION BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY: AN ANALYSIS OF COMPLAINTS FILED WITH STATE ENFORCEMENT AGENCIES, 2008-2014 (2016), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Housing-Discrimination-Complaints-2008-2014.pdf>; CHRISTY MALLORY & BRAD SEARS, EVIDENCE OF DISCRIMINATION IN PUBLIC ACCOMMODATIONS BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY: AN ANALYSIS OF COMPLAINTS FILED WITH STATE ENFORCEMENT AGENCIES, 2008-2014 (2016), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Public-Accommodations-Discrimination-Complaints-2008-2014.pdf>.

<sup>70</sup> *Id.*

<sup>71</sup> *See Workplace*, THE WILLIAMS INST., <http://williamsinstitute.law.ucla.edu/category/research/workplace/> (last updated Dec. 10, 2013).

<sup>72</sup> Gary J. Gates & Frank Newport, *supra* note 1.

<sup>73</sup> Calculated by authors using data from the American Community Survey, U.S. Census Bureau, 2015.

<sup>74</sup> Calculated by authors using data from the American Community Survey, U.S. Census Bureau, 2015.

<sup>75</sup> “National average” refers to the average of the complaint rates in the states that provided data for the studies. MALLORY & SEARS, *supra* note 69 (all studies cited). The data gathered for the studies included all discrimination complaints filed on the basis of sexual orientation and gender identity; it was not limited to complaints filed by LGBT people. Heterosexual, non-transgender employees may also file complaints under sexual orientation and gender identity non-discrimination laws if they were discriminated against because of their heterosexuality, gender identity, or because they were perceived to be LGBT. However, we use the LGBT population as the underlying population for purposes of our analysis because LGBT people likely file the vast majority of sexual orientation and gender identity discrimination complaints. *See* William B. Rubenstein, *Do Gay Rights Laws Matter?: An Empirical Assessment*, 75 S. CAL. L. REV. 66, 79-81 (2001).

<sup>76</sup> MALLORY & SEARS, EVIDENCE OF EMPLOYMENT DISCRIMINATION BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY: AN ANALYSIS OF COMPLAINTS FILED WITH STATE ENFORCEMENT AGENCIES, 2008-2014, *supra* note 69.

<sup>77</sup> MALLORY & SEARS, EVIDENCE OF HOUSING DISCRIMINATION BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY: AN ANALYSIS OF COMPLAINTS FILED WITH STATE ENFORCEMENT AGENCIES, 2008-2014, *supra* note 69.

<sup>78</sup> EVIDENCE OF DISCRIMINATION IN PUBLIC ACCOMMODATIONS BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY: AN ANALYSIS OF COMPLAINTS FILED WITH STATE ENFORCEMENT AGENCIES, 2008-2014 (2016), *supra* note 69.

<sup>79</sup> We do not include an estimate of the impact of adding sexual orientation and gender identity to the provisions in the Montana Human Rights Act that prohibit discrimination in financing or credit transactions, education, and insurance or retirement plans because we do not have data that would allow for such analysis. Our data allow us to estimate the number of complaints alleging employment, housing, or public accommodations discrimination that would be filed with state administrative enforcement agencies.

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<sup>80</sup> Wyo. Dept. of Workforce Services, *Workstat Program Performance Report*, v1.0 (Aug. 2013) (on file with author).

<sup>81</sup> *Id.*

<sup>82</sup> Mont. Human Rights Bureau, State Fiscal Year 2016 (July 1, 2016 to June 30, 2016): Statistics in Brief, <http://erd.dli.mt.gov/Portals/54/Documents/Human-Rights/dli-erd-hrb74.pdf?ver=2016-12-29-091944-793> (last visited Aug. 24, 2017).

<sup>83</sup> Mont. Human Rights Bureau, State Fiscal Year 2015 (July 1, 2014 to June 30, 2015): Statistics in Brief, <http://erd.dli.mt.gov/Portals/54/Documents/Human-Rights/dli-erd-hr051.pdf> (last visited Aug. 24, 2017).

<sup>84</sup> Mont. Human Rights Bureau, State Fiscal Year 2014 (July 1, 2013 to June 30, 2014): Statistics in Brief, <http://erd.dli.mt.gov/Portals/54/Documents/Human-Rights/dli-erd-hr051.pdf> (last visited Aug. 24, 2017).

<sup>85</sup> Mont. Human Rights Bureau, Fiscal Year 2013 (July 1, 2012 to July 30, 2013): Statistics in Brief, <http://erd.dli.mt.gov/Portals/54/Documents/Human-Rights/dli-erd-hr023.pdf> (last visited Aug. 24, 2017).

<sup>86</sup> Mont. Human Rights Bureau, Fiscal Year 2012 (July 1, 2011 to June 30, 2012): Statistics in Brief, <http://erd.dli.mt.gov/Portals/54/Documents/Human-Rights/dli-erd-hr028.pdf> (last visited Aug. 24, 2017).

<sup>87</sup> Mont. Human Rights Bureau, Fiscal Year 2011 (July 1, 2010 to June 30, 2011): Statistics in Brief, <http://erd.dli.mt.gov/Portals/54/Documents/Human-Rights/dli-erd-hr033.pdf> (last visited Aug. 24, 2017).

<sup>88</sup> Mont. Human Rights Bureau, Fiscal Year 2010 (July 1, 2009 to June 30, 2010): Statistics in Brief, <http://erd.dli.mt.gov/Portals/54/Documents/Human-Rights/dli-erd-hr038.pdf> (last visited Aug. 24, 2017).