



## **Discrimination against Law Enforcement Officers on the Basis of Sexual Orientation and Gender Identity: 2000 to 2013**

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**By Christy Mallory, Amira Hasenbush, and Brad Sears**

### **Executive Summary**

Employment discrimination and harassment based on sexual orientation and gender identity is an ongoing and pervasive problem in law enforcement and corrections departments. Ninety-five documented cases of discrimination since 2000 show that this discrimination not only impacts LGBT officers, but those who are perceived to be LGBT, associate with LGBT officers or community members, or who have spoken up against such discrimination. In addition, such discrimination not only harms law enforcement and corrections officers, but impedes effective community policing, in particular in protection of and cooperation with the LGBT community. While a patchwork of state, local and federal laws provides some protection against certain forms of discrimination, there is no nationwide federal law that comprehensively and consistently prohibits employment discrimination based on actual or perceived sexual orientation and gender identity.

This report updates a 2009 Williams Institute report on discrimination in public employment, which found that over 40 percent of the reported cases of discrimination occurred against law enforcement and corrections department personnel. This report reviews evidence of discrimination against police and corrections officers since 2000 as well as the current state of the law. Key findings include:

- Discrimination and harassment against law enforcement and corrections officers based on sexual orientation and gender identity continues to be pervasive throughout the United States.
- Officers continue to report high levels of discrimination in recent surveys.
  - For example, a 2009 study found that over two-thirds of LGBT law enforcement officers reported hearing homophobic comments on the job and over half reported being treated like an outsider by their colleagues. Moreover, one in five reported having experienced discrimination in promotions, 8% reported having been discriminated against in hiring, and 2% reported being fired because of their sexual orientation or gender identity.

- A recent survey of 60 members of TCOPS, an organization for transgender law enforcement officers, found that over 90% reported negative experiences with their departments. Of those who reported negative experiences, 15% reported being terminated, 37% reported being threatened with termination, 68% reported being verbally harassed by their co-workers, 43% reported being threatened with violence, 18% reported being physically attacked by co-workers, and 53% felt that their safety was jeopardized due to isolation by peers.
- Surveys on non-LGBT officers also document high rates of discriminatory attitudes. For example, a 2008 study found that of police chiefs in Texas surveyed, over one in four “indicated that they would have difficulty working with a gay man,” and approximately 50% would have difficulty working with a lesbian officer. In addition, 62% of chiefs expressed the belief that “homosexuality constitutes ‘moral turpitude,’” and 56% said they viewed “homosexuality as a ‘perversion.’”
- Williams Institute research identified 57 recent (2000-present) court cases and administrative complaints filed by law enforcement personnel who alleged that they had experienced discrimination based on sexual orientation or gender identity.
- In addition to these cases and administrative complaints, we identified 38 recent (2000-present) anecdotal reports of sexual orientation and gender identity discrimination against law enforcement personnel.
- These 95 cases of documented discrimination come from 28 states and the District of Columbia. In reviewing these cases, we found that:
  - The discrimination encountered often went beyond firing or demotion and included severe verbal harassment and sexual harassment, including a death threat, discriminatory slurs, indecent exposure and inappropriate touching.
  - Many of the reports revealed physical harassment or violence towards the officers. These included officers’ reports of being slammed into a concrete wall, beaten with a chair, and repeated reports of officers being refused back-up, placing their personal safety in danger while protecting the public.
  - Since most law enforcement and corrections officers are public employees, much of the conduct alleged in these complaints has been found to be, or is likely to be, unconstitutional - -in violation of the Due Process Clause, the Equal Protection Clause, and/or the First Amendment. For example, courts have unanimously found, in all published decisions to address the issue, that employment discrimination based on sexual orientation violates the Equal Protection Clause.
  - In addition, courts are increasingly finding that such discrimination is sex discrimination in violation of Title VII. In addition, some state and local governments prohibit such discrimination. These existing laws, while providing some protections, leave many workers without recourse when they face

discrimination and create confusing and inconsistent laws for employers to follow across different states and localities.

- For example, state non-discrimination laws do not provide protection for the 56 percent of Americans who live in states that do not prohibit sexual-orientation discrimination in the workplace, and the 77 percent who live in states that do not explicitly prohibit employment discrimination based on gender identity.
- The Employment Non-Discrimination Act (ENDA) would be the most comprehensive and consistent way to prohibit discrimination based on actual or perceived sexual orientation or gender identity against all American workers.
- While ENDA would be the clearest and most inclusive way to protect all Americans against employment discrimination, state and local governments can also protect workers through trainings and local nondiscrimination laws and policies.
- In addition, local law enforcement and corrections departments can decrease discrimination and enhance community policy by adopting departmental policies prohibiting sexual orientation and gender identity discrimination and zero tolerance harassment policies and conducting periodic trainings for all officers and personnel on these policies. In addition, designating specific officers as liaisons to the LGBT community is a way to send a clear message of support and inclusion to LGBT officers as well as improving community policing.

## **I. Introduction**

In 2009, the Williams Institute published an extensive report on sexual orientation and gender identity discrimination in public employment.<sup>1</sup> The report estimated that there were slightly more than one million state and local government employees in the United States and just over 200,000 LGBT people working for the federal government.<sup>2</sup> Through analyzing almost 400 examples of individual discrimination, the report revealed that there were especially high levels of discrimination in law enforcement and corrections departments: over 40 percent of the examples of discrimination recorded involved law enforcement or corrections officers.<sup>3</sup> These incidents included reports of severe verbal, physical and sexual harassment against officers. Stigma, harassment and discrimination persist in public employment, particularly in law enforcement and corrections departments. This report adds to and updates the previous findings, focusing particularly on discrimination against law enforcement and corrections department personnel.

## **II. Evidence of Discrimination against Law Enforcement and Corrections Officers based on Sexual Orientation and Gender Identity**

Research shows that widespread discrimination on the basis of sexual orientation and gender identity, particularly in law enforcement, continues to the present day. Such discrimination likely results in underrepresentation of LGBT people in law enforcement, and pressure on LGBT law enforcement personnel to conceal their sexual orientation and gender identity. These outcomes likely reduce diversity among law enforcement personnel, which likely presents barriers to effective community policing. Individual cases and reports have also documented that discrimination based on sexual orientation and gender identity is not limited to LGBT employees. Several cases and complaints have arisen based on one's perceived sexual orientation, even when the person enduring the discrimination did not identify as LGBT. Additionally, numerous cases have been reported of discrimination based on a person associating with LGBT people or based on retaliation in response to a non-LGBT person fighting against discrimination based on sexual orientation and/or gender identity.

Recent survey data and studies, court cases, administrative complaints, and anecdotal reports gathered from media sources and community-based organizations, show that LGBT officers still experience discrimination based on their sexual orientation or gender identity. The evidence of discrimination gathered from these sources is summarized below:<sup>4</sup>

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<sup>1</sup> BRAD SEARS, NAN D. HUNTER & CHRISTY MALLORY, THE WILLIAMS INST. UNIV. OF CAL. L.A. SCH. OF LAW, DOCUMENTING DISCRIMINATION ON THE BASIS OF SEXUAL ORIENTATION AND GENDER IDENTITY IN STATE EMPLOYMENT (2009), <http://williamsinstitute.law.ucla.edu/research/workplace/documenting-discrimination-on-the-basis-of-sexual-orientation-and-gender-identity-in-state-employment/>.

<sup>2</sup> *Id.* at 2.

<sup>3</sup> *Id.* at 8.

<sup>4</sup> This review in this paper is limited to discrimination that took place from 2000 to the present. Older examples can be found on the Williams Institute website. *Id.* at 12-1 to 12-189, *available at*

## A. Survey Data

The following survey data and qualitative research studies show evidence of discrimination against law enforcement personnel in departments across the country.

- A 2009 study found that of LGBT officers surveyed, 22% reported having experienced discrimination in promotions, 8% reported having been discriminated against in hiring, and 2% reported being fired because of their sexual orientation or gender identity.<sup>5</sup> Additionally, 67% reported hearing homophobic comments on the job, 51% reported being treated like an outsider by their colleagues, and 48% reported social isolation at work.<sup>6</sup>
- A 2008 study found that of police officers in Milwaukee surveyed, LGB officers reported significantly higher perceptions of vulgar language than heterosexual officers.<sup>7</sup>
- A 2008 study found that of police chiefs in Texas surveyed, 27% “indicated that they would have difficulty working with a gay man,” and approximately 50% would have difficulty working with a lesbian officer.<sup>8</sup> In addition, 62% of chiefs expressed the belief that “homosexuality constitutes ‘moral turpitude,’” which is grounds for denying employment as an officer in some states; and 56% said they viewed “homosexuality as a ‘perversion.’”<sup>9</sup>
- A recent survey of members of TCOPS, an organization for transgender law enforcement officers, showed that of 60 organization members who were contacted about their experiences related to transitioning on the job, “56 [93%] reported negative experiences with their departments.”<sup>10</sup> Of those who reported negative experiences, 15% reported being terminated, 37% reported being threatened with termination, 68% reported being verbally harassed by their co-workers, 43% reported being threatened with violence, 18% reported being physically attacked by co-workers, and 53% felt that their safety was jeopardized due to isolation by peers.<sup>11</sup>

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<http://williamsinstitute.law.ucla.edu/research/workplace/documenting-discrimination-on-the-basis-of-sexual-orientation-and-gender-identity-in-state-employment/>.

<sup>5</sup> Roddrick Colvin, *Shared Perceptions Among Lesbian and Gay Police Officers: Barriers and Opportunities in the Law Enforcement Work Environment*, 12 POLICE QUARTERLY 86 (2009).

<sup>6</sup> *Id.*

<sup>7</sup> Kimberly D. Hassell and Steven G. Brandl, *An Examination of the Workplace Experiences of Police Patrol Officers: The Role of Race, Sex, and Sexual Orientation*, 12 POLICE QUARTERLY 408, 419-20 (2008).

<sup>8</sup> Phillip M. Lyons et al., *Texas Police Chiefs’ Attitudes Toward Gay and Lesbian Police Officers*, 11 POLICE QUARTERLY 101, 102 (2008).

<sup>9</sup> *Id.* at 110.

<sup>10</sup> Email from Patrick Callahan, Public Information Officer, TCOPS International Inc., to Joshua Fiveson (May 31, 2013, 12:37 EST).

<sup>11</sup> Analysis of raw data gathered by TCOPS performed by Jonathan Homer, Latham & Watkins (on file with author).

- In a qualitative study focused on the workplace experiences of 14 gay or lesbian law enforcement officers in the Midwest, the three officers who were not “out” at work reported hostile environments for sexual minorities.<sup>12</sup> One officer shared that it was “very, very tough” to be gay in law enforcement.<sup>13</sup> Another said that if a LGBT person came to his department, he would encourage him or her to go somewhere “more accepting of diversity.”<sup>14</sup>

## **B. Individual Reports of Discrimination**

Williams Institute research identified 57 recent (2000-present) court cases and administrative complaints filed by law enforcement personnel who alleged that they had experienced discrimination based on sexual orientation or gender identity. In addition to these cases and administrative complaints, we identified 38 recent (2000-present) anecdotal reports of sexual orientation and gender identity discrimination against law enforcement personnel. These anecdotal reports were gathered from media sources and community-based organizations. These individual cases and stories paint a vivid portrait of the day-to-day experiences of many LGBT law enforcement personnel. Summaries of 57 court cases and administrative complaints documenting discrimination on the basis of sexual orientation and gender identity in law enforcement can be found in Appendix A. Summaries of 38 anecdotal reports gathered from media sources and community-based organizations can be found in Appendix B.<sup>15</sup> Recent examples of such discrimination include:

- In 2013, seven Princeton police officers filed suit against a recently retired police chief, the borough, and the department, alleging the chief created a hostile workplace through gender, sexual orientation, and disability discrimination and sexual harassment. The complaint alleged 40 incidents of harassment, including misconduct toward two lesbian officers and lewd comments regarding an officer investigating a sexual assault involving two gay students at Princeton.<sup>16</sup>
- In 2012, a Cook County, Illinois sheriff filed suit against the department, claiming ongoing harassment since 1999 because he is gay.<sup>17</sup> His allegations included anti-gay references about him in front of jail inmates, thus placing his safety at risk, refusal to

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<sup>12</sup> Mark W. Charles and Leah M. Rouse Arndt, *Gay- and Lesbian-Identified Law Enforcement Officers: Intersection of Career and Sexual Identity*, 41 COUNSELING PSYCHOLOGIST 1153, 1167 (2013).

<sup>13</sup> *Id.* at 1173.

<sup>14</sup> *Id.* at 1170.

<sup>15</sup> It is unclear whether the incidents resulted in any formal legal action.

<sup>16</sup> Jon Offredo, *Seven Princeton police officers file suit against former chief, town, alleging harassment, discrimination*, THE TIMES OF TRENTON, September 6, 2013, available at [http://www.nj.com/mercer/index.ssf/2013/09/princeton\\_police\\_officers\\_sue\\_town\\_retired\\_police\\_chief\\_over\\_alleged\\_harassment\\_and\\_discrimination.html](http://www.nj.com/mercer/index.ssf/2013/09/princeton_police_officers_sue_town_retired_police_chief_over_alleged_harassment_and_discrimination.html).

<sup>17</sup> *Cook County sheriff's deputy suing over anti-gay harassment at work*, SUN-TIMES MEDIA September 25, 2012, updated October 27, 2012, available at <http://southtownstar.suntimes.com/news/15370539-418/cook-county-sheriffs-deputy-suing-over-anti-gay-harassment-at-work.html>.

respond to calls for back-up, and retaliation in response to his filing a complaint with the Illinois Department of Human Rights.<sup>18</sup>

- In 2011, two lesbian officers in the Los Angeles Police Department (“LAPD”) filed a lawsuit against the LAPD claiming that their sergeant exposed himself to them, poked and touched their rear ends, and called them “my two angry lesbians,” and “fucking crack whores.”<sup>19</sup>
- In 2010, police officer in North Carolina, who was a lesbian, reported that she was told that her department “would not promote lesbians.”<sup>20</sup>
- In 2009, a police officer with the police department at the University of California, Davis, filed suit against the university alleging that when other officers discovered he was gay, they subjected him to homophobic slurs and a death threat, and his supervisor referred to him as a “fucking fag.”<sup>21</sup>
- In 2008, a police officer in Oklahoma transitioned from male to female while on the job.<sup>22</sup> She reported that after transitioning, she experienced severe harassment, was subjected to unnecessary psychological evaluations, and that she was transferred to an unfavorable position.<sup>23</sup>
- In 2007, a former police officer with a New Jersey Police Department filed a sexual orientation discrimination suit against the department.<sup>24</sup> The officer alleged that, because he was gay, he was ridiculed by his chief and other officers and was refused back-up when a woman he was apprehending bit his finger to the bone.<sup>25</sup> He settled the suit with the department for \$415,000.<sup>26</sup>

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<sup>18</sup> *Id.*

<sup>19</sup> Complaint, *Gotham v. Los Angeles Police Department*, (Super. Ct. Cal. L.A. Cnty., filed July 18, 2011) (No. BC465451), 2011 WL 6481849.

<sup>20</sup> Email from Ming Wong, Law Clerk, National Center For Lesbian Rights, to Joshua Fiveson (June 13, 2013, 08:42 EST).

<sup>21</sup> David Greenwald, *Lawsuit by former UCS Officer Alleging Race and Sexual Orientation Discrimination Moves Forward after Two Years*, VANGUARD COURT WATCH (Feb. 11, 2011), [http://davisvanguard.org/index.php?option=com\\_content&view=article&id=4097:lawsuit-by-former-ucd-officer-alleging-race-and-sexual-orientation-discrimination-moves-forward-after-two-years&catid=74:court-watch&Itemid=100](http://davisvanguard.org/index.php?option=com_content&view=article&id=4097:lawsuit-by-former-ucd-officer-alleging-race-and-sexual-orientation-discrimination-moves-forward-after-two-years&catid=74:court-watch&Itemid=100).

<sup>22</sup> E-mail from Jon Davidson, Legal Director, Lambda Legal, to Nan D. Hunter, Legal Scholarship Director, the Williams Institute (Feb. 11, 2009, 12:18:00 EST) (on file with the Williams Institute).

<sup>23</sup> *Id.*

<sup>24</sup> Complaint, *Colle v. City of Millville*, (Super. Ct. N.J. Cumberland Cnty. filed Oct. 11, 2007) (No. CUM L 001063 07).

<sup>25</sup> *Id.*

<sup>26</sup> Negotiated Settlement and General Release, *Colle v. City of Millville*, D. Conn., Civil Action No. 07-5834.

- In 2005, an applicant for a position as a police dispatcher in Guilford, Connecticut filed suit against the town alleging discrimination based on sexual orientation.<sup>27</sup> She received a conditional offer of employment pending a background check and a home visit to be conducted prior to the start of her employment.<sup>28</sup> According to the applicant, after the department discovered that she was in a romantic relationship with her female roommate during the home visit, she was informed that she would no longer be hired.<sup>29</sup>
- In 2004, two police officers with the New York Police Department (NYPD) filed suit alleging that they were retaliated against because they opposed sexual orientation discrimination against a fellow officer.<sup>30</sup> Their commanding officer had harassed the fellow officer, including saying that he “wouldn’t want him around children.”<sup>31</sup> In 2011, the New York Court of Appeals affirmed a jury verdict in their favor.<sup>32</sup>

Many of the cases summarized in Appendices A and B included allegations of repeated and demeaning anti-LGBT comments and slurs. For example, an Illinois police officer was compared to “pedophiles” and told he “was like a criminal” due to his sexual orientation;<sup>33</sup> a sheriff’s deputy in California was called a “protected-class bitch;”<sup>34</sup> two officers in Washington D.C. were called “the butch one” and “the femme one;”<sup>35</sup> a lieutenant with the Erie County Sheriff’s Office (New York) reached a settlement in a case where she alleged her fellow officers referred to her as having “balls...and a penis,” a “cancer” to the department, and said that she was “the worst person, or dog, that has ever lived;”<sup>36</sup> a UC Davis police officer settled his case in which he alleged fellow officers subjected him to a death threat and called him a “fucking fag;”<sup>37</sup> and a trial court awarded a Massachusetts corrections officer over \$620,000 in back pay and damages after he attempted suicide, in part, as a result of his co-workers calling him “fucking fag” and “sissy,” and sent children’s toy blocks spelling “FAG” to his home.<sup>38</sup>

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<sup>27</sup> Skorzewski v. Town of Guilford, No. CV054012161S, 2011 WL 4447273 (Conn. Super. Ct. Sept. 7, 2011).

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Albunio v. City of New York*, 947 N.E.2d 135, 135-37 (2011).

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at 136.

<sup>33</sup> *Shankle v. Village of Melrose Park*, No. 12 C 6923, 2013 WL 1828929 (N.D. Ill. April 30, 2013).

<sup>34</sup> *Perez v. Alameda County Sheriffs’ Office*, No. C 10-04181 JSW, 2012 WL 273732 (N.D. Cal. Jan. 30, 2012).

<sup>35</sup> *Jones v. District of Columbia*, 879 F. Supp. 2d 69 (D.D.C. 2012).

<sup>36</sup> *Kretzman v. Erie County*, No. 1:11-CV-0704, 2013 WL 636545 at \*1 (W.D.N.Y. Feb. 20, 2013).

<sup>37</sup> David Greenwald, *Lawsuit by former UCS Officer Alleging Race and Sexual Orientation Discrimination Moves Forward after Two Years*, VANGUARD COURT WATCH (Feb. 11, 2011), [http://davisvanguard.org/index.php?option=com\\_content&view=article&id=4097:lawsuit-by-former-ucd-officer-alleging-race-and-sexual-orientation-discrimination-moves-forward-after-two-years&catid=74:court-watch&Itemid=100](http://davisvanguard.org/index.php?option=com_content&view=article&id=4097:lawsuit-by-former-ucd-officer-alleging-race-and-sexual-orientation-discrimination-moves-forward-after-two-years&catid=74:court-watch&Itemid=100).

<sup>38</sup> *Salvi v. Suffolk County Sheriff’s Dep’t*, 67 Mass App 596, 597 (Mass. App. Ct. 2006).



In addition, these examples show that the harassment of LGBT law enforcement is often not only verbal, but physical and sexual. For example, a jury found in favor of a New York police officer whose fellow officers revealed their naked body parts to him and “pressed him against a table and humped him” in front of others;<sup>39</sup> a police detective in California settled a case in which he alleged that fellow officers harassed him by “simulating anal sex on him during a training class, insinuating that he masturbates in front of young boys, [and] suggesting that he was infected with HIV;”<sup>40</sup> a police cadet with the Oakland California Police Department filed suit against the department alleging that he was forced to resign after being called “girl” and “faggot” and having his groin stepped on;<sup>41</sup> a jury awarded \$1.5 million to a correctional officer with the Nassau County Sheriff’s Department whose harassment included the display of simulated pornographic images of him engaged in sex with children and animals, being attacked with a chair, and having his knee injured;<sup>42</sup> and a transgender correctional officer in New Hampshire reported that she resigned after she endured three years of harassment and physical abuse based on her gender identity, including co-workers kicking her, snapping her in the breasts, threatening to handcuff her to a flagpole and take off her clothes, and slamming her into a concrete wall.<sup>43</sup>

### **III. Impact of Sexual Orientation and Gender Identity Discrimination against Law Enforcement and Corrections Officers on Community Policing**

For decades, the LGBT community has been subjected to entrapment, discrimination, harassment, and violence by law enforcement.<sup>44</sup> Recent research indicates that such mistreatment of LGB people, and especially transgender people, is still ongoing.<sup>45</sup> Research supports finding that these experiences make members of the LGBT community less likely to report when they themselves have been victims of crimes, as well as less likely to cooperate with community policing more generally.<sup>46</sup>

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<sup>39</sup> *Pitts v. Onondaga County Sheriff’s Dept.*, No. 5:04–CV–0828 (GTS/GJD), 2009 WL 3165551 (N.D. N.Y. Sept. 29, 2009); *Willis v. County of Onondaga Sheriff’s Dept.*, No. 5:04–CV–828 (GTS/GHL), 2010 WL 6619685 (N.D. N.Y. February 24, 2010).

<sup>40</sup> *Settlement, Bereki v. Huntington Beach Police Department*, No. 07CC09351, 2008 WL 2901945 (Cal. Super. Ct. Apr. 29, 2008).

<sup>41</sup> *Hoey-Custock v. City of Oakland*, No. A094881, 2002 Cal. App. pub. LEXIS 7692 (Cal. App. Aug. 15, 2002).

<sup>42</sup> HUMAN RIGHTS CAMPAIGN, DOCUMENTING DISCRIMINATION: A SPECIAL REPORT FROM THE HUMAN RIGHTS CAMPAIGN FEATURING CASES OF DISCRIMINATION BASED ON SEXUAL ORIENTATION IN AMERICA’S WORKPLACES (2001).

<sup>43</sup> GLAD Hotline Intake Form, Gay & Lesbian Advocates & Defenders, Report of Employment Discrimination (Nov. 26, 2007) (on file with GLAD).

<sup>44</sup> Brief for Petitioner, *U.S. v. Windsor*, 570 U.S. \_\_\_ (2013) (No. 12-207).

<sup>45</sup> AMNESTY INT’L U.S., STONWALLED: POLICE ABUSE AND MISCONDUCT AGAINST LESBIAN, GAY, BISEXUAL AND TRANSGENDER PEOPLE IN THE U.S. (2005); NAT’L COAL. OF ANTI-VIOLENCE PROGRAMS, LESBIAN, GAY, BISEXUAL, TRANSGENDER, QUEER AND HIV-AFFECTED HATE VIOLENCE IN 2012 38 (2013), [http://www.avp.org/storage/documents/ncavp\\_2012\\_hvreport\\_final.pdf](http://www.avp.org/storage/documents/ncavp_2012_hvreport_final.pdf).

<sup>46</sup> See Section V.C.3, *infra*.

Developing a diverse police force increases trust and positive interactions between law enforcement personnel and the diverse communities they serve. Having LGBT law enforcement personnel is an important part of developing a diverse police force which is able to effectively meet the needs of the community—particularly its LGBT members. LGBT law enforcement personnel can “enhance an agency’s understanding of the lesbian, gay, bisexual and transgender (LGBT) community, and of the challenges of policing within this community. A police agency can more effectively respond to issues like intimate partner violence, public sex environments, transgender prostitution, hate and bias crimes, bullying and gay youth homelessness when openly lesbian and gay officers are integrated into policing.”<sup>47</sup>

Discrimination against LGBT law enforcement personnel likely results in underrepresentation of LGBT people in law enforcement, and pressures LGBT law enforcement personnel to conceal their sexual orientation and gender identity. These outcomes likely reduce diversity among law enforcement personnel, which likely presents barriers to effective community policing.

For example, in 2004, a transgender police officer settled her gender identity discrimination and harassment case against the Oklahoma City Police Department.<sup>48</sup> After working as an officer for almost a decade, she transitioned and faced constant harassment from her co-workers, which interfered with her ability to do her job.<sup>49</sup> However, she stated that she continued performing her job and even improved relations between the police department and the Asian, Hispanic, and gay and lesbian communities.<sup>50</sup> Nevertheless, the department removed her from patrol duties, gave her an interim clerical position, and then placed her on paid administrative leave.<sup>51</sup> Her treatment directly undermined the police department’s community policing efforts with LGBT and other communities.

Moreover, without prohibitions against discrimination on the basis of sexual orientation and gender identity, all police officers might run a risk of discrimination and harassment if they reach out to the LGBT community, and therefore are perceived to be LGBT themselves. The examples in Appendices A and B include a number of examples where law enforcement officers are harassed or discriminated against because they associated with LGBT people or are perceived to be LGBT. For example, in 2007, a jury awarded an NYPD officer \$500,000 discrimination based on his perceived sexual orientation.<sup>52</sup> The officer alleged that his application to transfer to the NYPD Office of Community Affairs’ Youth Services Section was denied because he was incorrectly perceived to be a child molester – based solely on the fact that he was perceived to be gay.<sup>53</sup> This example demonstrates that officers who try to engage the

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<sup>47</sup> RODDRICK A. COLVIN, *GAY AND LESBIAN COPS: DIVERSITY AND EFFECTIVE POLICING* 153 (2012)

<sup>48</sup> Resolution, *Schonaur v. City of Oklahoma*, No. Civ-05-104-W (W.D. Okla. Sept. 14, 2005).

<sup>49</sup> Reuters, *Sex-Change Oklahoma Officer Files Harassment Suit*, EXP. INDIA (Dec. 29, 2004), <http://expressindia.indianexpress.com/news/fullstory.php?newsid=40143>.

<sup>50</sup> Richard Green, *Transgender Officer Sues Police in OKC*, TULSA WORLD, Dec. 29, 2004, at A15.

<sup>51</sup> *Id.*

<sup>52</sup> *Sorrenti v. City of N.Y.*, 17 Misc.3d 1102(A), 851 N.Y.S.2d 61, 2007 WL 2772308 at \*1 (N.Y. Sup. Ct. 2007).

<sup>53</sup> *Id.* at \*1.

LGBT community through community policing may be vulnerable without nondiscrimination protections.

#### **IV. Current Legal Protections Against Sexual Orientation and Gender Identity Discrimination in Public Employment**

While a patchwork of state, local and federal laws provides some protection against certain forms of discrimination, there is no nationwide federal law that comprehensively and consistently prohibits employment discrimination based on actual or perceived sexual orientation and gender identity.

##### **A. Constitutional Protections**

###### **1. The Equal Protection Clause**

Courts and scholars have debated whether, based on Supreme Court precedent, sexual orientation discrimination should receive rational basis review or heightened scrutiny for purposes of equal protection analysis.<sup>54</sup> Regardless of what standard the Supreme Court intended to adopt in cases like *Lawrence v. Texas*<sup>55</sup> and *U.S. v. Windsor*<sup>56</sup>, lower courts have made clear that for adverse employment actions by state actors based on sexual orientation to be valid, they must, at the very minimum, be “directed to [an] identifiable legitimate purpose or discrete objective.”<sup>57</sup> This standard has resulted in courts unanimously finding, in all published decisions to address the issue, that employment discrimination based on sexual orientation violates the Equal Protection Clause.<sup>58</sup> Additionally, the Eleventh Circuit has held employment discrimination based on gender identity violates the Equal Protection Clause.<sup>59</sup> In so holding, the court determined that heightened scrutiny was proper based on the rationale that discrimination based on gender identity constitutes discrimination based on sex.<sup>60</sup>

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<sup>54</sup> See, e.g., *Lofton v. Sec’y of the Dep’t of Children & Family Svcs*, 358 F.3d 804, 815-817 (2004); *Lofton v. Sec’y of the Dep’t of Children & Family Svcs*, 377 F.3d 1275, 1285-1296 (denial of a rehearing en banc) (Barkett, J., dissenting)(Anderson J., dissenting); Nan D. Hunter, *Proportional Equality: Readings of Romer*, 89 KY. L. J. 885, 885-86 (2000-2001).

<sup>55</sup> 539 U.S. 558 (2003).

<sup>56</sup> 570 U.S. \_\_ (2013).

<sup>57</sup> *Romer v. Evans*, 517 U.S. 620 (1996).

<sup>58</sup> See *Sears et al.*, *supra* note 1 at 4-7 to 4-8. *But see* *Cunningham v. City of Aravada*, No. 12-cv-00304, 2012 U.S. Dist. LEXIS 116950 at \*15-16 (D. Colo. June 12, 2012) (finding that it would be futile for Plaintiff to amend his complaint to include a cause of action for sexual orientation discrimination in violation of the Equal Protection Clause because “[u]nder no set of facts would Plaintiff have a cognizable discrimination claim in this court under federal law based upon his sexual orientation.”)

<sup>59</sup> *Glenn v. Brumby*, 663 F.3d 1312 (11th Cir. 2011).

<sup>60</sup> *Id.* at 1319-20. Heightened scrutiny applies to claims of sex discrimination claims brought under the Equal Protection Clause. *Miss. Univ. for Women v. Hogan*, 458 U.S. 718 (1982); *United States v. Virginia (VMI)*, 518 U.S. 515 (1996).

Moreover, the Department of Justice (DOJ) has also concluded, based on its own analysis, that discrimination based on sexual orientation should receive heightened scrutiny under the Equal Protection Clause.<sup>61</sup>

## 2. Privacy Rights under the Due Process Clause

Since its 1965 decision in *Griswold v. Connecticut*,<sup>62</sup> the Supreme Court has explicitly recognized that the Constitution upholds a fundamental right to privacy. This privacy right has been held to protect a broad swath of sexuality-related acts, including the use of contraceptives,<sup>63</sup> the possession and viewing of pornography in the privacy of one's own home,<sup>64</sup> and the ability to obtain a safe and legal abortion.<sup>65</sup> The right to privacy has also been held to apply to people's sexual choices, regardless of their marital status.<sup>66</sup> In *Lawrence v. Texas*, the Supreme Court held that this right to privacy also extends to consenting sexual conduct between same-sex couples.<sup>67</sup> In ruling that same-sex sodomy laws were unconstitutional, the Court emphasized the rights of people in same-sex relationships to autonomy and "respect for their private lives." The Court went on to state:

The State cannot demean their existence or control their destiny by making their private sexual conduct a crime. Their right to liberty under the Due Process Clause gives them the full right to engage in their conduct without intervention of the government. "It is a promise of the Constitution that there is a realm of personal liberty which the government may not enter."<sup>68</sup>

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<sup>61</sup> Memorandum from Attorney Gen. Eric Holder for All Department Attorneys (Nov. 14, 2012) (on file with Authors); Letter from Attorney Gen. Eric Holder to House Speaker John Boehner (Feb. 23, 2011), *available at* <http://www.justice.gov/opa/pr/2011/February/11-ag-223.html>. In its brief filed with the Supreme Court in *US v. Windsor*, the DOJ argued that the Section 3 of the Defense of Marriage Act could not withstand either heightened scrutiny, or the more searching form of rational basis review used to strike down the anti-LGBT statute at issue in *Romer v. Evans*. 517 U.S. 620 (1996); Brief for Petitioner, *U.S. v. Windsor*, 570 U.S. \_\_ (2013) (No. 12-207). The Supreme Court agreed, declaring Section 3 unconstitutional on June 26, 2013. *Windsor*, 570 U.S. \_\_ (2013). Moreover, in its amicus brief filed with the Supreme Court in *Hollingsworth v. Perry*, in support of overturning Proposition 8, the California amendment which limited marriage to different-sex couples, the DOJ made the argument that discrimination based on sexual orientation should receive heightened scrutiny. Brief for United States as Amicus Curiae Supporting Respondents, *Hollingsworth v. Perry*, 1333 S. Ct. 2652 (2013) (No. 12-144). The DOJ's position that heightened scrutiny applies to such discrimination further strengthens the conclusion that state actors are already required by the constitution not to discriminate based on sexual orientation.

<sup>62</sup> *Griswold v. Connecticut*, 381 U.S. 479 (1965).

<sup>63</sup> *Id.*; *Eisenstadt v. Baird*, 405 U.S. 438 (1972).

<sup>64</sup> *Stanley v. Georgia*, 394 U.S. 557, 564, (1969).

<sup>65</sup> *Roe v. Wade*,

<sup>66</sup> *Compare* *Griswold v. Connecticut*, 381 U.S. 479 (1965) (upholding a married couple's right to use contraceptives) *with* *Eisenstadt v. Baird*, 405 U.S. 438 (1972) (upholding a single person's right to use contraceptives).

<sup>67</sup> *Lawrence v. Texas*, 539 U.S. 558 (2003).

<sup>68</sup> *Id.* at 578, *citing* *Planned Parenthood v. Casey* 505 U.S. 833, 847 (1992).

Adverse employment actions against LGBT employees violate the rights protected by the Due Process Clause of the Fourteenth Amendment both by discriminating against individuals based on protected activity that they engage in outside the workplace and by subjecting those people to invasive questioning and scrutiny that violates their privacy rights.<sup>69</sup> Since *Lawrence*, the Court has continued to recognize the privacy and equal rights of same-sex couples.

### 3. The First Amendment

Sexual orientation and gender identity are often not visible traits. In those cases, when LGBT individuals encounter discrimination, it is frequently in response to the employee's exercise of their free speech and associational rights guaranteed under the First Amendment. For example, many applicants lose a work opportunity,<sup>70</sup> and many employees face harassment,<sup>71</sup> demotion<sup>72</sup> or termination<sup>73</sup> after they tell someone at work about their sexual orientation or gender identity.<sup>74</sup> LGBT employees have also been fired for attending political rallies in favor of

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<sup>69</sup> See, e.g. *Norton v. Macy* 417 F.2d 1161, 1164 (D.C. Cir. 1969) (holding that former NASA budget analyst could not be fired based on "immoral conduct" unless the conduct impacted his job performance):

The Due Process Clause may also cut deeper into the Government's discretion where a dismissal involves an intrusion upon that ill-defined area of privacy which is increasingly if indistinctly recognized as a foundation of several specific constitutional protections. Whatever their precise scope, these due process limitations apply even to those whose employment status is unprotected by statute.

See also *Woodard v. Gallagher*, 59 Emp. Prac. Dec. (CCH) ¶ 41, 652, 1992 WL 252279 (Fla. Cir. Ct. 1992) (holding that a deputy sheriff's constructive termination based on his sexual orientation was invalid, because it violated his right to privacy); *Eglise v. Culpin*, 2000 WL 232798, at \*1 (2d Cir. Feb. 28, 2000) (holding that police department application that asked "What exactly are your sexual practices and preferences" violated the applicant's right to privacy).

<sup>70</sup> GLAD Hotline Intake Form, Gay & Lesbian Advocates & Defenders, Report of Employment Discrimination (Oct. 15, 2002) (on file with GLAD) (corrections department applicant not hired when asked during a polygraph test of her marital status and responded that she was a lesbian).

<sup>71</sup> *In re Harrington*, No. 106075/2010, 2010 N.Y. Misc. LEXIS 5912 (N.Y. Sup. Ct. Dec. 3, 2010) (police officer faced such pervasive harassment after disclosing to his co-worker that he was gay that he ultimately resigned).

<sup>72</sup> Charge of Discrimination, [Redacted] v. State of New Mexico Department of Public Safety- State Police Division, New Mexico Department of Labor, Human Rights Division, Charge No. 05-07-28-0434 (July 18, 2005) (patrol officer alleged that his supervisor unfairly disciplined him after he told him he was gay and encouraged his lieutenant to file false charges against him).

<sup>73</sup> *Weaver v. Nebo Sch. Dist.*, 29 F. Supp. 2d 1279 (D. Utah 1998); *Miller v. Weaver*, 66 P.3d 592 (Apr. 4, 2003) (tenured public school teacher and volleyball coach was removed from her coaching position by the school after admitting to a player that she was gay in response to a direct and unsolicited question).

<sup>74</sup> See generally *Hurley v. Irish-American Gay, Lesbian, and Bisexual Group of Boston*, 515 U.S. 557, 570 (1995) (dictum) (LGBT people's expression of pride in their sexual orientation is expression protected against state action by the First Amendment). The state cannot condition continued employment on employees' willingness to forego protected expression, including identity speech. *Gay Law Students Ass'n v. Pacific Tel. & Tel. Co.*, 595 P.2d 592, 610 (Cal. 1979) (—coming out speech by gay people is protected —political expression); *Bianchi v. City of Philadelphia*, 183 F. Supp. 2d 726, 745-47 (E.D. Pa. 2002) (finding that a firefighter's complaints concerning the workplace harassment he endured were entitled to First Amendment protection because the mistreatment was a matter of public concern and the value of the complaints was not outweighed by the Department's interest in effective functioning).

LGBT rights, writing about important court cases or political issues dealing with LGBT rights or displaying symbols in support of equality based on sexual orientation and gender identity.<sup>75</sup>

## **B. Sex Discrimination Under Title VII of the Civil Rights Act**

### **1. Gender Identity**

The Supreme Court held in *Price Waterhouse v. Hopkins*<sup>76</sup> that an employer impermissibly engages in sex discrimination under Title VII of the Civil Rights Act of 1964<sup>77</sup> if the employer takes an adverse action against an individual based on his or her failure to conform to gender stereotypes.<sup>78</sup> Court of Appeals cases following *Price Waterhouse* widely have held, in both constitutional and statutory contexts, that employers discriminate “because of” or based on sex when they require employees—including transgender employees—to conform to gender expectations or stereotypes.<sup>79</sup> The Ninth Circuit has noted that, “under *Price Waterhouse*, ‘sex’ under Title VII encompasses both sex—that is, the biological differences between men and women—and gender” and that “[d]iscrimination because one fails to act in the way expected of a man or woman is forbidden under Title VII.”<sup>80</sup> The Sixth Circuit similarly has observed that “[t]he Supreme Court made clear that in the context of Title VII, discrimination because of ‘sex’ includes gender discrimination.”<sup>81</sup>

### **2. Sexual Orientation**

In keeping with the Supreme Court’s holding in *Price Waterhouse*, numerous federal courts have held that conduct that constitutes discrimination based on sexual orientation often is based on gender stereotyping and constitutes sex discrimination, as well.<sup>82</sup> Federal courts have

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<sup>75</sup> See Sears et al., *supra* note 1 at 13-37 – 13-40.

<sup>76</sup> 490 U.S. 228 (1989).

<sup>77</sup> 42 U.S.C. § 2000e-2 et seq.

<sup>78</sup> 490 U.S. 228 at 251 (plurality); *id.* at 272 (O’Connor, J., concurring in the judgment).

<sup>79</sup> See, e.g., Glenn v. Brumby, 663 F. 3d 1312, 1320 (11th Cir. 2011) (holding that a government employer “violates the Equal Protection Clause’s prohibition of sex-based discrimination when he or she [takes adverse employment action] against a transgender . . . employee because of his or her gender non-conformity”); Smith v. City of Salem, 378 F.3d 566, 572 6th Cir. 2004 (holding that transgender plaintiff “successfully pleaded claims of sex stereotyping and gender discrimination” under Title VII by “alleg[ing] that his failure to conform to sex stereotypes concerning how a man should look and behave was the driving force behind Defendants’ actions”); Barnes v. City of Cincinnati, 401 F.3d 729, 737 (6th Cir. 2005) (same); see also Schroer v. Billington, 577 F. Supp. 2d 293 (D.D.C. 2008) (holding that Library of Congress violated Title VII by discriminating against transgender job applicant “because her appearance and background did not comport with the decisionmaker’s sex stereotypes about how men and women should act and appear”); cf. Schwenk v. Hartford, 204 F. 3d 1187, 1202 (9th Cir. 2000) (finding transgender plaintiff had stated an actionable claim under the Gender Motivated Violence Act).

<sup>80</sup> *Schwenk*, 204 F.3d at 1202

<sup>81</sup> *Smith*, 378 F.3d at 572.

<sup>82</sup> Prowel v. Wise, 579 F.3d 285, 292 (3rd Cir. 2009) (“[The defendant] cannot persuasively argue that because [the plaintiff] is a homosexual he is precluded from bringing a gender stereotyping claim.”); see also Miller v. City of New York, 177 Fed. Appx. 195 (2nd Cir. 2006); Simonton v. Runyon, 232 F.3d 33, 37-38 (2nd Cir. 2000); Doe v. Belleville, 119 F.3d 563 (7th Cir. 1997).

observed that “[s]tereotypical notions about how men and women should behave will often necessarily blur into ideas about heterosexuality and homosexuality”<sup>83</sup> and that “gender-loaded language can easily be used to refer to perceived sexual orientation and vice versa.”<sup>84</sup> Numerous courts have held that conduct that constitutes both sexual orientation discrimination and sex discrimination includes not only discrimination based on stereotypes about masculinity or femininity,<sup>85</sup> but also discrimination based on disapproval of or hostility toward nonconformity with the gender stereotype that persons form (or should form) intimate, romantic, or spousal relationships with a person of a different sex, rather than a person of the same sex.<sup>86</sup>

### **C. State Nondiscrimination Laws Prohibiting Sexual Orientation and Gender Identity Discrimination**

Currently, twenty-one states<sup>87</sup> and the District of Columbia<sup>88</sup> prohibit employment discrimination on the basis of sexual orientation and/or gender identity by statute. Of these, three states do not prohibit discrimination on the basis of perceived sexual orientation,<sup>89</sup> and five

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<sup>83</sup> *Howell v. N. Cent. College*, 320 F. Supp. 2d 717, 723 (N.D. Ill. 2004).

<sup>84</sup> *Henderson v. Labor Finders of Virginia, Inc.*, No. 3:12cv600, 2013 U.S. Dist. LEXIS 47753 (E.D. Va. Apr. 1, 2013).

<sup>85</sup> *See, e.g., Koren v. Ohio Bell Tel. Co.*, 894 F. Supp. 2d 1032 (2012) (finding that discrimination against a male plaintiff based on his adoption of his husband’s surname—“a ‘traditionally’ feminine practice”—could constitute a failure to conform to gender stereotypes).

<sup>86</sup> *See, e.g., Heller v. Columbia Edgewater Country Club*, 195 F. Supp. 2d 1212, 1124 (D. Or. 2002) (finding that a claim for discrimination based on gender stereotypes was actionable where an employer did not approve of a lesbian employee because she “is attracted to and dates other women, whereas [the employer] believes that a woman should be attracted to and date only men”). As one district court explained:

Sexual orientation harassment is often, if not always, motivated by a desire to enforce heterosexually defined gender norms. In fact, stereotypes about homosexuality are directly related to our stereotypes about the proper roles of men and women. While one paradigmatic form of stereotyping occurs when co-workers single out an effeminate man for scorn, in fact, the issue is far more complex. The harasser may discriminate against an openly gay co-worker, or a co-worker that he perceives to be gay, whether effeminate or not, because he thinks, “real men don’t date men.” The gender stereotype at work here is that “real” men should date women, and not other men.

*Centola v. Potter*, 183 F. Supp. 2d 403, 410 (D. Mass. 2002) (citation omitted).

<sup>87</sup> These states are: California (Cal. Gov’t Code §12900 (West 2003)); Colorado (Colo. Rev. Stat. §24-34-401 (2008)); Connecticut (Conn. Gen. Stat. §46a-51 (2007)); Delaware (Del. Code Ann. tit. 19, §710 (2009)); Hawaii (Haw. Rev. Stat. §378-1 (1991)); Illinois (775 Ill. Comp. Stat. Ann. 5/1-101 (2007)); Iowa (Iowa Code §216.1 (2008)); Maine (Me. Rev. Stat. Ann. tit. 5, §4551 (2007)); Maryland (Md. Code Ann. art. 49B, §15 (West 2008)); Massachusetts (Mass. Gen. Laws ch. 151B, §4 (2008)); Minnesota (Minn. Stat. §363A.08 (2008)); Nevada (Nev. Rev. Stat. §613.310 (2008)); New Hampshire (N.H. Rev. Stat. Ann. §354-A:7 (2008)); New Jersey (N.J. Stat. Ann. §10:5 (West 2008)); New Mexico (N.M. Stat. Ann. §28-1-1 (2008)); New York (N.Y. Exec. Law §292 (McKinney 2008)); Oregon (Or. Rev. Stat. §659A.030 (2005)); Rhode Island (R.I. Gen. Laws §28-5-1 (2008)); Vermont (Vt. Stat. Ann. tit. 21, §495 (2008)); Washington (Wash. Rev. Code §49.60.030 (2008)); and Wisconsin (Wis. Stat. §111.31 (2007)).

<sup>88</sup> D.C. Code §2.1401 (2003).

<sup>89</sup> Delaware, Vermont and Washington.

do not explicitly prohibit discrimination on the basis of gender identity by statute.<sup>90</sup> In other words, twenty-nine states do not have antidiscrimination statutes that prohibit sexual orientation discrimination, and thirty-four do not have statutes that explicitly prohibit gender identity discrimination.<sup>91</sup> This means that 56 percent of Americans live in states that do not prohibit sexual-orientation discrimination in the workplace, and 77 percent live in states that do not explicitly prohibit employment discrimination based on gender identity.<sup>92</sup>

#### **D. Local Nondiscrimination Ordinances that Prohibit Sexual Orientation and Gender Identity Discrimination**

In 2008, the Williams Institute identified over 200 cities and counties located in 35 states that have enacted local ordinances prohibiting employment discrimination on the basis of sexual orientation and/or gender identity.<sup>93</sup> There is no state or local protection against employment discrimination on the basis of sexual orientation or gender identity in Alaska, Arkansas, Mississippi, North Dakota, South Carolina, Tennessee, or Wyoming. Academic studies have found that state and local administrative agencies often lack resources, knowledge, enforcement mechanisms, or willingness to accept and investigate sexual orientation and/or gender identity discrimination complaints.<sup>94</sup> Additionally, local statutes leave states with a patchwork of laws that vary in terms of coverage and remedies. Local statutes are also often less protective than statewide nondiscrimination laws.

#### **V. Recommendations**

The following legal protections and policies would help protect law enforcement and corrections officers from discrimination on the basis of sexual orientation and gender identity discrimination and support effective community policing.

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<sup>90</sup> Delaware, Maryland, New Hampshire, New York and Wisconsin.

<sup>91</sup> However, like Title VII, state nondiscrimination statutes may be interpreted to include gender identity discrimination under sex discrimination. In fact, several state lower courts and administrative agencies have made that ruling. *See, e.g.*, *Rentos v. OCE-Office Sys.*, 95 Civ. 7908, 1996 U.S. Dist. LEXIS 19060, at \*26 (S.D.N.Y. Dec. 24, 1996); *Lie v. Sky Publ'g Corp.*, 01-5117-J, 2002 Mass. Super. LEXIS 402, at \*15 (Mass. Super. Ct. Oct. 7, 2002); *Declaratory Ruling on Behalf of John/Jane Doe* (Conn. Comm'n on Human Rights & Opportunities June 7, 2006), *available at* <http://www.ct.gov/chro/cwp/view.asp?a=2526&Q=315942>.

<sup>92</sup> E-mail from Dr. Gary Gates, Williams Distinguished Scholar, to Jennifer C. Pizer, Legal Dir. & Arnold D. Kassoy Senior Scholar of Law, the Williams Inst., UCLA Sch. of Law (March 19, 2012) (on file with the Williams Institute).

<sup>93</sup> Sears et al., *supra* note 1 at 11-12.

<sup>94</sup> *See, e.g.*, Norma M. Riccucci & Charles W. Gossett, *Employment Discrimination in State and Local Government: The Lesbian and Gay Male Experience*, 26 *Am. Rev. Pub. Admin.* 175 (1996); William B. Rubenstein, *Do Gay Rights Laws Matter?: An Empirical Assessment*, 75 *S. Cal. L. Rev.* 65 (2001).



## **A. Explicit Statutory Protection**

### **1. ENDA**

The Employment Non-Discrimination Act (ENDA) is a federal bill that would prohibit employment discrimination based on sexual orientation and gender identity. ENDA has been introduced in the House and Senate most years since 1994.<sup>95</sup> If ENDA passes, it will provide comprehensive national coverage against employment discrimination. As opposed to judicial rulings, executive interpretations or state or local laws, one federal law would provide clarity and consistency across all jurisdictions. This would protect LGBT people from being fired, demoted or refused employment because of their sexual orientation or gender identity. The law would also protect all people from negative employment consequences based on the sexual orientation or gender identity of a person with whom the employee associates. ENDA would also protect all employees based on their perceived sexual orientation or gender identity, whether or not that perception is accurate. Therefore, while primarily intended to protect LGBT employees, ENDA's passage would be the most comprehensive and complete protection for all people in the workplace against discrimination based on sexual orientation and gender identity.

### **2. Statewide Statutes**

While ENDA would be the easiest and most comprehensive way to prevent employment discrimination, statewide laws have acted and continue to act as basic protections in the interim. Twenty-one states and the District of Columbia currently enforce statewide nondiscrimination laws that include protections based on gender identity and/or sexual orientation.<sup>96</sup> While these laws do provide protection for employees within those states, they do not provide protection for the 56 percent of Americans who live in states that do not prohibit sexual-orientation discrimination in the workplace, and the 77 percent who live in states that do not explicitly prohibit employment discrimination based on gender identity. In addition, passing a law in each state may result in varying enforcement requirements and mechanisms for business owners who employ workers in multiple states. However, until ENDA passes, statewide statutes are an effective way to provide protection on a more local basis.

### **3. Local Level Ordinances**

Local level ordinances protect employees in smaller localities that do not yet have state laws. While local level ordinances may vary in the scope of their protection, available remedies and enforcement capacity, they still establish protection in those localities and enhance education around nondiscriminatory practices among employers. Particularly in localities with more well-resourced administrative enforcement agencies, local ordinances may have a greater impact.

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<sup>95</sup> S. 2238, 103d Cong. (1994); H.R. 4636, 103d Cong. (1994); S. 932, 104th Cong. (1995); H.R. 1863, 104th Cong. (1995); S. 2056, 104th Cong. (1996); S. 869, 105th Cong. (1997); H.R. 1858, 105th Cong. (1997); S. 1276, 106th Cong. (1999); H.R. 2355, 106th Cong. (1999); S. 1284, 107th Cong. (2001); H.R. 2692, 107th Cong. (2001); S. 1705, 108th Cong. (2003); H.R. 3285, 108th Cong. (2003); H.R. 2015, 110th Cong. (2007); H.R. 3685, 110th Cong. (2007); S. 1584, 111th Cong. (2009); H.R. 3017, 111th Cong. (2009); S. 811, 112th Cong. (2011); H.R. 1397, 112th Cong. (2011); S. 815, 113th Cong. (2013); H.R. 1755, 113th Cong. (2013).

<sup>96</sup> See Section III.C., *supra*.

## **B. Executive Agency Requirements**

### **1. Title VII Guidance**

While federal courts and the Equal Employment Opportunity Commission (EEOC) have recognized that many forms of discrimination based on gender identity and sexual orientation fall under sex discrimination prohibited by Title VII,<sup>97</sup> the Department of Justice and other executive agencies could publish official departmental guidance stating that sex discrimination under Title VII of the Civil Rights Act prohibits employment discrimination in all cases based on sexual orientation or gender identity, not just situations that fall under gender stereotyping. This guidance would be in line with the federal missions and purposes of different agencies.<sup>98</sup> For example, the Department of Housing and Urban Development has already promulgated regulations prohibiting sexual orientation and gender identity discrimination in all of their department conducted and department funded programs,<sup>99</sup> to further the Department's purpose of creating "strong, sustainable, inclusive communities and quality affordable homes for all."<sup>100</sup> Other agencies could use their missions and purposes along with judicial and EEOC precedent to issue guidance prohibiting discrimination based on sexual orientation and gender identity in both department funded and department conducted programs.

### **2. Requirements for COPS Grants**

The COPS Office is one of three sub-agencies of the Department of Justice. The COPS Office issues grants under several different programs that advance community policing efforts across the nation.<sup>101</sup> For example, the COPS Hiring Program provides funds to hire law enforcement officers that specialize in community policing;<sup>102</sup> and the Community Policing Development program provides funds for development of effective community policing strategies.<sup>103</sup> Through its grant programs, the COPS Office has "provided funding to more than

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<sup>97</sup> See Section III.B., *supra*.

<sup>98</sup> For example, the United States Department of Agriculture has cited to its mission to be the "people's department" that should serve all Americans, and the Department of Health and Human Services has referred to its mission to "serve all individuals who are eligible for its programs without regard to any non-merit factor," in their civil rights and nondiscrimination policy statements, which both include sexual orientation and gender identity. *Civil Rights Policy Statement*, U.S. DEP'T OF AGRICULTURE. (2012), [http://www.ascr.usda.gov/news\\_cr\\_policy.html](http://www.ascr.usda.gov/news_cr_policy.html); *Non-Discrimination Policy Statement*, U.S. DEP'T OF HEALTH & HUM SVCS. (2012), <http://www.hhs.gov/asa/eo/nondiscrimination/index.html>.

<sup>99</sup> 24 C.F.R. §§ 5.105, 200.300, 203.33.

<sup>100</sup> Equal Access to Housing in HUD Programs, 77 Fed. Reg. 5,662, 5,672 (Feb. 3, 2012) (to be codified at 24 C.F.R. pts. 5, 200, 203, 236, 400, 570, 574, 882, 891 & 982.)

<sup>101</sup> Community Oriented Policing Services (COPS): 2013 Summary, DEP'T OF JUSTICE, <http://www.justice.gov/jmd/2013summary/pdf/fy13-cops-bud-summary.pdf> (last visited July 31, 2013).

<sup>102</sup> Office of Community Oriented Policing Svcs, U.S. Dep't of Justice, COPS FY2012 Application Guide: COPS Hiring Program (CHP), *available at* [http://www.cops.usdoj.gov/pdf/2012AwardDocs/CHP/2012\\_CHP\\_Application\\_Guide.pdf](http://www.cops.usdoj.gov/pdf/2012AwardDocs/CHP/2012_CHP_Application_Guide.pdf) (last visited Sept. 27, 2013).

13,000 of the nation's 18,000 law enforcement agencies. Approximately 81% off the nation's population is served by law enforcement agencies practicing community policing."<sup>104</sup> From 1993 to 2010, COPS programs funded approximately 120,000 police officers.<sup>105</sup> The COPS Office budget for fiscal year 2012 was \$198.5 million; the budget request for fiscal year 2013 was \$289.6 million.<sup>106</sup>

Given the extensive financial and community reach of the COPS Office, implementing nondiscrimination requirements that include sexual orientation and gender identity in COPS grants could have a substantial impact on employment policies and practices in police forces throughout the nation. This would not only bring more equality and justice to the employees of law enforcement departments; it would also likely lead to more LGBT people working in law enforcement, and greater safety and community buy-in from LGBT people in the communities that are policed.

### **C. Police Departments and Corrections Facilities Policies**

#### **1. Nondiscrimination Policies and Zero Tolerance Harassment Policies**

Individual law enforcement and corrections departments should also consider implementing their own internal nondiscrimination and nonharassment policies. Several major metropolitan police forces have already taken this step, including the Los Angeles Police Department,<sup>107</sup> the San Francisco Police Department,<sup>108</sup> the Boston Police Department,<sup>109</sup> and the Denver Department of Public Safety.<sup>110</sup> By building these policies from the inside, they are likely to be more easily implemented and accepted internally, resulting in higher levels of tolerance and equality. Moreover, without prohibitions against discrimination on the basis of sexual orientation and gender identity, all police officers might run a risk of discrimination and harassment if they reach out to the LGBT community, and therefore are perceived to be LGBT themselves. The examples in Appendices A and B include a number of examples where law

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<sup>103</sup> Office of Community Oriented Policing Svcs, U.S. Dep't of Justice, COPS FY2012 Application Guide: Community Policing Development (CPD) (Apr. 2012), *available at* [http://www.coj.net/departments/central-operations/grants-management-office/events-and-deadlines/2012---second-quarter/community-policing-development-\(cpd\)-program.aspx](http://www.coj.net/departments/central-operations/grants-management-office/events-and-deadlines/2012---second-quarter/community-policing-development-(cpd)-program.aspx).

<sup>104</sup> Community Oriented Policing Services (COPS): 2013 Summary, *supra* note 116.

<sup>105</sup> 2010 State Reports, OFFICE OF COMMUNITY ORIENTED POLICING SVCS., <http://www.cops.usdoj.gov/default.asp?Item=2296> (last visited Sept. 27, 2013).

<sup>106</sup> Community Oriented Policing Services (COPS): 2013 Summary, *supra* note 116.

<sup>107</sup> *Department Manual*, L.A. POLICE DEP'T, [http://www.lapdonline.org/lapd\\_manual/volume\\_1.htm#285](http://www.lapdonline.org/lapd_manual/volume_1.htm#285), last viewed Oct. 31, 2013.

<sup>108</sup> *Prohibiting Discrimination, Harassment and Retaliation*, S.F. POLICE DEP'T (2009) *available at* <http://www.sf-police.org/modules/ShowDocument.aspx?documentid=24594>.

<sup>109</sup> *Harassment Policy*, BOSTON POLICE DEP'T (2007), *available at* [http://www.cityofboston.gov/images\\_documents/rule114\\_tcm3-9573.pdf](http://www.cityofboston.gov/images_documents/rule114_tcm3-9573.pdf) (sexual orientation only).

<sup>110</sup> *General Recruitment Standards and Procedures*, DENVER DEP'T OF SAFETY 5 (2010), *available at* <http://www.denvergov.org/Portals/744/documents/recruiting/RctStandardsFinalMay2010.pdf>.

enforcement officers are harassed or discriminated against because they associated with LGBT people or are perceived to be LGBT. This, too, could lead to more LGBT people working with police forces and higher community collaboration and acceptance from LGBT people.

## 2. Trainings

Police department trainings focused on reducing discrimination and harassment of officers based on sexual orientation or gender identity would likely increase tolerance and respect for LGBT officers as well as departmental morale overall. These trainings would be likely to not only help officers to do their jobs more effectively, but would also likely result in higher levels of tolerance and acceptance of LGBT individuals in the community. Therefore, these trainings could have a double impact by both improving the work environment for police officers and improving the department's ability to assist LGBT victims of crimes.

## 3. Liaisons to the LGBT Community

Some localities have taken the additional step of creating LGBT liaison positions within their departments to facilitate interactions between law enforcement personnel and the LGBT community. For example, Washington, D.C.'s Metropolitan Police Department created a Gay and Lesbian Liaison Unit as part of its community policing strategy, which correlated with an increase in the reporting of crimes against the LGBT community.<sup>111</sup> The GLLU was created in response to several incidents of police harassment against LGBT people in the late 90s, and a growing concern that hate crimes against LGBT people were underreported in the city.<sup>112</sup> In the year following the appointment of LGBT liaison officers, the reporting of hate crimes against LGBT people in Washington doubled.<sup>113</sup> Additionally, the GLLU has been credited with raising awareness of same-sex domestic violence in the city.<sup>114</sup> In 2000, just before the unit was created, no cases of same-sex domestic violence had been reported.<sup>115</sup> As of 2012, the department had investigated 460 such cases.<sup>116</sup> Many other cities across the country have also appointed liaisons to the LGBT community including San Francisco (the first city to do so in 1962)<sup>117</sup>, Atlanta<sup>118</sup>, Dallas<sup>119</sup>, Cincinnati<sup>120</sup>, Boise<sup>121</sup>, and Fargo, North Dakota<sup>122</sup>. These examples of direct

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<sup>111</sup> COLVIN, *supra* note 5 at 110.

<sup>112</sup> *Id.* at 110-13.

<sup>113</sup> *Id.* at 113.

<sup>114</sup> *Id.* at 116.

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> Wyatt Buchanan, *Elliot Blackstone – Police Liaison for LGBT Community*, S.F. CHRONICLE (Nov. 17, 2006, 4:00 AM).

<sup>118</sup> *LGBT Liaison*, ATLANTA POLICE DEP'T, <http://www.atlantapd.org/lgbtliaison.aspx> (last visited August 1, 2013).

<sup>119</sup> *GLBT Liaison Officer*, DALLAS POLICE DEP'T, <http://www.dallaspolice.net/community/glbtliaisonofficer.html> (last visited August 1, 2013).

departmental support of LGBT officers and the LGBT community send a message to both employees of the police force and community members that it's okay to openly be who they are. Establishing a culture of acceptance in the police force and the surrounding community is likely to enhance workplace morale, improve community policing and increase overall safety.

## **VI. Conclusion**

Discrimination and harassment based on sexual orientation and gender identity is pervasive in law enforcement and corrections departments. Currently, there is no nationwide comprehensive nondiscrimination law that protects workers from employment discrimination based on actual or perceived sexual harassment or gender identity. While a growing body of judicial and agency decisions have begun to establish protections under federal constitutional and civil rights law, and many states and localities have set up their own nondiscrimination laws, complete protection can only be achieved with an explicit federal nondiscrimination law. ENDA would bring about consistent and clear protection for all American workers.

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<sup>120</sup> Curtis Fuller, *CPD Adds Liaison Officer for LGBT Community*, WLWT.COM (June 6, 2013, 8:04 PM), <http://www.wlwt.com/news/local-news/cincinnati/cpd-adds-liaison-officer-for-lgbt-community/-/13549970/20458824/-/uhpnb3z/-/index.html>.

<sup>121</sup> Steve Martin, *Boise LGBT Liaison Katie Davey: 'Let Me Help'*, PRIDE FOUNDATION BLOG (June 4, 2013, 1:04 PM), <http://www.pridefoundation.org/boise-lgbt-liaison-katie-davey/2013/06/>.

<sup>122</sup> *Gay, Lesbian, Bisexual, Transgender Liaison Officer*, CITY OF FARGO, <http://www.cityoffargo.com/CityInfo/Departments/Police/AboutFargoPolice/FieldServicesDivision/GLBTLiaisonOfficer/> (last visited August 1, 2013).

## APPENDIX A: COURT CASES & ADMINISTRATIVE COMPLAINTS<sup>123</sup>

2013

- A transgender police officer in Middletown Connecticut filed a complaint with the Commission on Human Rights and Opportunities after transitioning on the job.<sup>124</sup> When she first told her police chief of her intention to transition, she claimed that she was given support to do so, but once that transition actually began, her superiors threatened to write her up for wearing earrings and long hair.<sup>125</sup> She also stated that her work performance began to face more scrutiny: “Everything magnified when it came to me...My response times were questioned. I was screamed at over the radio.”<sup>126</sup> She is currently anticipating a response from the city.<sup>127</sup>
- An openly gay police officer with the Philadelphia Police Department filed suit against the city, alleging workplace discrimination and harassment due to his sexual orientation.<sup>128</sup> He alleged that “police officers known to be gay are subject to harassment, held in low esteem and are at an increased risk of harm,” and that, after he lodged an internal anti-bias complaint, he was treated negatively due to anti-LGBT animosity.<sup>129</sup> Two complaints he had previously filed with the Philadelphia Commission on Human Relations alleging discrimination based on race, sex and sexual orientation were dismissed as unsubstantiated.<sup>130</sup>
- Seven Princeton police officers filed suit against a recently retired police chief, the borough and the department, alleging the chief created a hostile workplace at the department with acts of “gender discrimination, sexual orientation discrimination, disability discrimination and sexual harassment.”<sup>131</sup> The 40 alleged incidents of harassment, occurring from 2008 to 2013, include misconduct toward two lesbian

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<sup>123</sup> Summaries include cases that have been decided since 2000. In some cases, it is not possible to determine when the discrimination occurred, so this section may include examples of discrimination that took place before 2000. Most cases are categorized based on the date that the complaint was filed. In instances where the complaint was unable to be located, the case description will indicate what major component of the case occurred in the year in which the case is categorized.

<sup>124</sup> Kaitlyn Schroyer, *Transgender cop files complaint against Middletown Police for “hostile environment,”* THE MIDDLETOWN PRESS NEWS, Dec. 4, 2013, available at <http://www.middletownpress.com/general-news/20131204/transgender-cop-files-complaint-against-middletown-police-for-hostile-environment>.

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> Complaint, Jones v. City of Phila. Police Dep’t, (Pa. Ct. Com. Pl., Phila. Cnty., filed Sept. 17, 2013) (No. 130901842).

<sup>129</sup> Timothy Cwiek, *Gay cop sues city for harassment,* PHILADELPHIA GAY NEWS, September 13, 2013, available at [http://www.epgn.com/view/full\\_story/23644261/article-Gay-cop-sues-city-for-harassment](http://www.epgn.com/view/full_story/23644261/article-Gay-cop-sues-city-for-harassment)

<sup>130</sup> *Id.*

<sup>131</sup> Complaint, Papp v. Dudeck, (Mercer Cnty. Ct., filed Aug. 28, 2013) (No. L 001836 13).

officers and lewd comments regarding an officer investigating a sexual assault involving two gay students at Princeton.<sup>132</sup> The complaint alleges that the town of Princeton hired the police chief knowing of his discriminatory conduct and failed to discipline him for such conduct.<sup>133</sup>

- The City Council of Duluth, Georgia, voted to approve a \$20,000 settlement with an openly gay police officer who has been an officer in Duluth since 2005, and before that worked for another local police department.<sup>134</sup> He filed a complaint in February 2013 with the city of Duluth about alleged discrimination within the police department, which included “constant” gay slurs, sexual comments, and harassment from commanding officers.<sup>135</sup> He has been on paid administrative leave since filing his complaint, and reportedly rejected the \$20,000 settlement deal.<sup>136</sup>
- In 2013, the Transgender Law Center and the Legal Aid Society-Employment Law Center reached a settlement on behalf of a transgender police officer in the Bay Area known only as “Officer T.”<sup>137</sup> Officer T., a 17-year veteran of the police department, was allegedly subjected to serious discrimination and harassment over a period of nearly seven years by other officers after he transitioned from female to male, which included being intentionally called by the wrong gender pronoun and being summoned to incident scenes to pat down female suspects.<sup>138</sup> According to media reports, Officer T. repeatedly notified superior officers of the harassment, yet his station commanders refused to stop it or discipline the officers involved.<sup>139</sup>
- A former police sergeant with the Reno Police Department filed a lawsuit against the Department for sexual harassment and discrimination.<sup>140</sup> Though he is not gay, he alleges other officers made fun of him using homosexual slurs.<sup>141</sup> In 2012, he was

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<sup>132</sup> Jon Offredo, *Seven Princeton police officers file suit against former chief, town, alleging harassment, discrimination*, THE TIMES OF TRENTON, September 6, 2013, available at [http://www.nj.com/mercer/index.ssf/2013/09/princeton\\_police\\_officers\\_sue\\_town\\_retired\\_police\\_chief\\_over\\_alleged\\_harassment\\_and\\_discrimination.html](http://www.nj.com/mercer/index.ssf/2013/09/princeton_police_officers_sue_town_retired_police_chief_over_alleged_harassment_and_discrimination.html).

<sup>133</sup> *Id.*

<sup>134</sup> Justin Gray, *Gay police officer claims discrimination in Duluth*, MY FOX ATLANTA, June 12, 2013, available at <http://www.myfoxatlanta.com/story/22577417/gay-duluth-police-officer-says>.

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

<sup>137</sup> *Transgender Police Officer Settles Claim Against Bay Area Police Department*, LEGAL AID SOCIETY-EMPLOYMENT LAW CENTER AND TRANSGENDER LAW CENTER, June 13, 2013, available at <http://www.las-elc.org/sites/default/files/Officer-T-Press-Release.pdf>.

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

<sup>140</sup> Complaint, *Stegmaier v. City of Reno et al* (D. Nev. filed Aug. 26, 2013) (No. 3:13-cv-00461).

<sup>141</sup> *Stegmaier files lawsuit against RPD*, MY NEWS 4, August 8, 2013, available at <http://www.mynews4.com/news/local/story/Stegmaier-files-lawsuit-against-RPD/Q011EKkLg0uI1XjVw9OP2g.csp>.

accused of pointing his loaded handgun at two fellow officers. He retired in July 2012 after the Chief recommended he be fired, asserting, however, that the allegations against him were retaliation for reporting corruption and misconduct within the department, including an accusation of sexual harassment by his supervisor. Reportedly, he stated that “several members of the department engaged in ‘gay bashing on a regular basis.’”<sup>142</sup> In October 2012, Stegmaier filed a complaint with the Nevada Equal Rights Commission, claiming he was “discriminated against...because of my gender, male and/or my sexual orientation, heterosexual, but perceived as homosexual.”<sup>143</sup>

2012

- A Cook County, Illinois sheriff filed suit against the department, claiming ongoing harassment since 1999 because he is gay.<sup>144</sup> His allegations included anti-gay references about him in front of jail inmates, thus placing his safety at risk, and refusal to respond to calls for back-up.<sup>145</sup> After he filed a discrimination charge with the Illinois Department of Human Rights (“IDHR”), he was allegedly unfairly disciplined and transferred to inferior assignments; IDHR since found substantial evidence to support his allegations.<sup>146</sup>
- A police officer with the Melrose Park Police Department (Illinois) filed suit against the department alleging discrimination and harassment based on sex.<sup>147</sup> Several examples of discrimination and harassment that the officer included in her complaint were related to her sexual orientation.<sup>148</sup> Specifically, the officer alleged that one of her supervisors “compared homosexuals to pedophiles, and said that [the plaintiff] was ‘like a criminal’ due to her sexual orientation.”<sup>149</sup> The officer further alleged that “[s]omeone placed a document referencing a gay dating website on a bulletin board as a purported joke, and other officers wrote offensive comments on the document.”<sup>150</sup>

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<sup>142</sup> *Reno police chief hires investigator for sex harassment case*, WISCONSIN GAZETTE.COM, August 11, 2012, available at <http://www.wisconsin gazette.com/breaking-news/reno-police-chief-hires-investigator-for-sex-harassment-case.html>.

<sup>143</sup> *Stegmaier files complaint with equal rights commission*, RGJ.COM, October 25, 2012, available at <http://renomemo.rgj.com/stegmaier-files-complaint-with-equal-rights-commission/>.

<sup>144</sup> *Complaint, Nardi David v. Cook Cnty. Sherrifs Dep’t* (Ill. Cir. Ct. Cook Cnty. filed Sept. 24, 2012) (No. 2012-L-010820); *Cook County sheriff’s deputy suing over anti-gay harassment at work*, SUN-TIMES MEDIA September 25, 2012, updated October 27, 2012, available at <http://southtownstar.suntimes.com/news/15370539-418/cook-county-sheriffs-deputy-suing-over-anti-gay-harassment-at-work.html>.

<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

<sup>147</sup> *Shankle v. Village of Melrose Park*, No. 12 C 6923, 2013 WL 1828929 (N.D. Ill. April 30, 2013).

<sup>148</sup> *Id.* at \*2.

<sup>149</sup> *Id.*

<sup>150</sup> *Id.* at \*4.



- In July 2012, a former police officer with the West Jordan Police Department filed a civil rights and negligent infliction of emotional distress lawsuit against the city and several members of the police force for retaliation against an earlier harassment complaint that he had filed with the Utah Labor Commission.<sup>151</sup> The officer, who does not identify as gay, claimed the harassment included crude jokes and comments that he was gay, even after he married a woman in 2003.<sup>152</sup> In 2009, the officer received an \$80,000 settlement of his complaint with the Labor Commission, contingent on his resignation from the force.<sup>153</sup> A week after the settlement, the city charged him with felony drug possession and misuse of public money.<sup>154</sup> Those charges were dismissed with prejudice by the Utah County Attorney, and in 2013, the County Attorney began investigating whether the bringing of those charges was an act of criminal retaliation.<sup>155</sup>
- A police officer with the Bogota Police Department (New Jersey) filed suit against the department alleging discrimination and harassment based on sex and sexual orientation, and retaliation.<sup>156</sup> The officer alleged that her “locker [had] been vandalized on numerous occasions...and she suffered retaliation for complaining to her superiors about the harassment and reporting abuses of departmental policies by other officers.”<sup>157</sup> According to the officer, a sergeant at her department told “a resident that she was gay, fail[ed] to assist her when she was assaulted by a resident, threaten[ed] to testify against her when the resident filed an assault claim against [the officer], and harass[ed] her while she was on sick leave.”<sup>158</sup> The officer believed that such treatment was because of her sexual orientation and her sex.<sup>159</sup>

2011

- A lieutenant with the Erie County Sheriff’s Office (New York) filed a lawsuit alleging ongoing harassment, discrimination, and retaliation when her employer violated the terms of a settlement agreement between the parties based on a complaint she had filed with the New York Division of Human Rights in 2007.<sup>160</sup> The employee alleged that she was

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<sup>151</sup> Complaint, *Jensen v. West Jordan City*, (D.Utah C.Div. filed July 27, 2012) (No. 2:12-cv-00736-PMW), 2012 WL 3104651.

<sup>152</sup> Brooke Adams, *Former Police Officer Sues West Jordan (Utah) for Alleged Harassment, Retaliation*, THE SALT LAKE TRIBUNE, July 30, 2012, available at <http://www.lawofficer.com/article/news/former-police-officer-sues-wes>

<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

<sup>155</sup> Chris Jones, *West Jordan Police Internal Harassment Case Settled*, 2|KUTV.COM, June 18, 2013, available at [http://www.kutv.com/news/features/local/stories/vid\\_4106.shtml](http://www.kutv.com/news/features/local/stories/vid_4106.shtml)

<sup>156</sup> Complaint, *Tasca v. Borough of Bogota et al* (D.N.J. filed May 04, 2012) (No. 2:12-cv-02687-CCC-MF).

<sup>157</sup> Denisa R. Superville, *Facing dismissal, Bogota Police Officer Files Discrimination Lawsuit*, NORTHJERSEY.COM (May 10, 2012), <http://www.northjersey.com/bogota/BOGOTACOPSUIT051012.html?c=y&page=1>.

<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

<sup>160</sup> *Kretzman v. Erie County*, No. 1:11-CV-0704, 2013 WL 636545 at \*1 (W.D.N.Y. Feb. 20, 2013).

subjected to various forms of harassment, including being referred to as a “‘pig’, ‘fuck-up’, ‘a shit bag’, ‘a shit deputy, a horrible sergeant, and a scum bag Lt.’, and ‘a pint size piece of shit’ who ‘can’t have more than 3 friends’” on a workplace blog.<sup>161</sup> The lieutenant further alleged that co-workers “referred to [her] as having ‘balls . . . and a penis’, was called a ‘cancer’ to the department, and was called . . . ‘the worst person, or dog, that has ever lived’.”<sup>162</sup>

- Two lesbian officers in the Los Angeles Police Department (“LAPD”) filed a lawsuit against the LAPD claiming that their sergeant exposed himself to them, poked and touched their rear ends, and called them “my two angry lesbians,” “crack whores,” and “fucking crack whores.”<sup>163</sup> According to their complaint, he also made repeated lewd and inappropriate comments, including “Just bend over and let me shove my cock in your ass”; “Why don't you just lick my ballsack?”; and, “Just suck my cock. You can close your eyes and pretended [*sic*] it's a lollipop. I don't take long.”<sup>164</sup> The lawsuit named a second LAPD officer and alleged he stuck his fingers in one of the officer’s ears and repeatedly pulled her hair.<sup>165</sup> The women reportedly made efforts to put a stop to the lewd comments and gestures related to their sexual orientation, but alleged that their complaints were not taken seriously by the department until after the lawsuit was filed.<sup>166</sup> In 2013, the LAPD settled the lawsuit to avoid trial, and the Los Angeles City Council approved the \$1.25 million payout in March 2013.<sup>167</sup>
- On July 8, 2013, the Department of Justice (“DOJ”) Complaint Adjudication Office found that the Bureau of Alcohol, Tobacco, Firearms, and Explosives (“ATF”), in violation of Title VII of the Civil Rights Act of 1964, had discriminated against a transgender applicant “based on her transgender status, and thus her sex, when it stopped complainant’s further participation in the hiring process” for a ballistics expert position.<sup>168</sup> The DOJ ordered ATF to offer the ballistics position to her and awarded her back pay and benefits, with interest, and attorney’s fees.<sup>169</sup> The applicant had applied for the position while still a male and had been offered the position subject to a background check. During the background check she sent the Bureau papers with her new identity,

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<sup>161</sup> *Id.* at \*2.

<sup>162</sup> *Id.* at \*1-2.

<sup>163</sup> Complaint, *Gotham v. Los Angeles Police Department*, (Super. Ct. Cal. L.A. Cnty., filed July 18, 2011) (No. BC465451), 2011 WL 6481849.

<sup>164</sup> *Id.*

<sup>165</sup> *Id.*

<sup>166</sup> Joel Rubin, *Lesbian LAPD officers settle harassment suit for \$1.25 million*, LOS ANGELES TIMES, March 20, 2013, available at <http://latimesblogs.latimes.com/lanow/2013/03/gay-lapd-officers-settle-harassment-lawsuit-for-125-million-.html>.

<sup>167</sup> *Id.*

<sup>168</sup> *Macy v. ATF*, Agency Complaint No. ATF-2011-00751, DJ Number 187-9-149 (Dep’t of Justice, July 8, 2013) (final decision), available at <http://transgenderlawcenter.org/archives/8633>.

<sup>169</sup> *Id.*

and she was then not selected for the position. She was told that the position had been eliminated, but then later learned someone else had been hired for the position. The case history included an appeal to the Equal Employment Opportunity Commission (“EEOC”), in which the EEOC ruled that discrimination based on gender identity is a cognizable claim under Title VII.<sup>170</sup> The DOJ then investigated the complaint on that basis and found in her favor.<sup>171</sup>

- A police officer with the Bob Hope Airport filed a harassment suit against the City of Burbank, California. According to the officer, “a police sergeant made disparaging remarks about him [because of] his sexual orientation and took retaliatory actions against him.”<sup>172</sup> The officer said that he reported the harassment to supervisors, but they failed to correct the problem.<sup>173</sup> In January, 2012, the city settled the suit for \$30,000.
- Two police officers with the Metropolitan Police Department (Washington, D.C.) filed suit against the department alleging discrimination based on sexual orientation.<sup>174</sup> The officers alleged that they became targets for harassment after disclosing that they were in a relationship with each other.<sup>175</sup> Specifically, the officers alleged that sergeants called them names based on their sexual orientation, such as “the butch one” and the “the femme one,” and “harassed plaintiffs about their work performance, leave and attendance, overtime requests, vehicle assignments, and work assignments’... in a way such that they were treated differently from male and heterosexual officers.”<sup>176</sup>

## 2010

- A gay detective facing an internal affairs probe sued the New York Police Department in Fall 2010, saying the probe was in retribution for complaints about being repeatedly harassed for being openly gay.<sup>177</sup> The detective reported that supervisors and officers at

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<sup>170</sup> Macy v. Holder, EEOC Appeal No. 0120120821 (April 20, 2012), 2012 WL 1435995, available at <http://www.eeoc.gov/decisions/0120120821%20Macy%20v%20DOJ%20ATF.txt>.

<sup>171</sup> See *Investigation Concludes Government Agency Discriminated Against Transgender Job Applicant*, TRANSGENDER LAW CENTER, available at <http://transgenderlawcenter.org/archives/8633>; Aaron Sankin, *Mia Macy, Transgender Woman Denied Employment By ATF, Wins Major Victory In Discrimination Case*, HUFFPOST GAY VOICES, July 18, 2013, available at [http://www.huffingtonpost.com/2013/07/18/mia-macy-transgender\\_n\\_3612874.html](http://www.huffingtonpost.com/2013/07/18/mia-macy-transgender_n_3612874.html).

<sup>172</sup> Complaint, Richard Ellis v. Burbank-Glendale-Pasadena Airport Auth. (L.A. Super. Ct. filed Mar. 22, 2011) (No. BC457851).

<sup>173</sup> Mark Kellam, *Officer Who Claimed Discrimination Settles with Airport*, BURBANK LEADER (Feb. 22, 2012), [http://articles.burbankleader.com/2012-02-21/news/tn-blr-0222-officer-burbank-airport-authority-reach-deal\\_1\\_ellis-claims-bob-hope-airport-false-claims](http://articles.burbankleader.com/2012-02-21/news/tn-blr-0222-officer-burbank-airport-authority-reach-deal_1_ellis-claims-bob-hope-airport-false-claims).

<sup>174</sup> Jones v. District of Columbia, 879 F. Supp. 2d 69 (D.D.C. 2012).

<sup>175</sup> *Id.* at 73.

<sup>176</sup> *Id.*

<sup>177</sup> Jose Martinez, *Gay cop says NYPD made his life a living hell, now he's going to 'punch back' with a lawsuit*, NY DAILY NEWS, Oct. 27, 2010, available at <http://www.nydailynews.com/new-york/gay-nypd-made-life-living-hell-punch-back-lawsuit-article-1.190071>

the 103rd Precinct in Jamaica, Queens, taunted him and wrote “PO Snitch” on his locker when he first complained.<sup>178</sup> In May 2007, he asked to be – and was – transferred to Internal Affairs. Once there, a sergeant taunted him by placing two apples near his crotch and calling him a “meat gazer,” and another time by pretending to pleasure a banana.<sup>179</sup> In August 2008, the detective was transferred to a “very undesirable” parking permits job, where he was given an “overly burdensome work load” and drew stares from a supervisor.<sup>180</sup> In 2009, he was charged with illegally duplicating his patrolman’s shield.<sup>181</sup> The suit also alleged that in 2009, the NYPD revealed the names of officers attending a gay officers’ conference in a message sent to every precinct. That list included numerous officers who were not openly gay at the time.<sup>182</sup>

- A sheriff’s deputy with the Alameda County Sheriff’s Office (California) filed suit against the office alleging that she had been penalized with a one year salary reduction for opposing sexual orientation discrimination in her department.<sup>183</sup> The deputy alleged that she had confronted a supervisor who had referred to a gay officer as a “protected-class bitch” and a “member of the pink flamingoes club.”<sup>184</sup> Following an administrative hearing, the Alameda County Civil Service Commission ruled that the reduction in salary was not retaliatory.<sup>185</sup>
- A police officer with the St. Cloud Police Department (Minnesota) filed suit against the department alleging discrimination based on sexual orientation.<sup>186</sup> The officer alleged that when he revealed his sexual orientation to his coworkers in 2009, he suffered harassment and retaliation at work.<sup>187</sup> The case was settled in March of 2012 shortly before it was scheduled to go to trial.<sup>188</sup>
- Three police officers with the Roseville Police Department (California) filed suit against the department alleging harassment based on sexual orientation, and retaliation.<sup>189</sup> The allegations included claims that even the entry code at the gate was based on a

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<sup>178</sup> *Id.*

<sup>179</sup> *Id.*

<sup>180</sup> *Id.*

<sup>181</sup> *Id.*

<sup>182</sup> *Id.*

<sup>183</sup> *Perez v. Alameda County Sheriffs’ Office*, No. C 10-04181 JSW, 2012 WL 273732 (N.D. Cal. Jan. 30, 2012).

<sup>184</sup> *Id.* at \*2.

<sup>185</sup> *Id.* at \*4.

<sup>186</sup> *Lathrop v. City of St. Cloud, Minn.*, No. 10-2361 DWF/LIB, 2012 WL 185780 at \* 1-4 (D. Minn. Jan. 23, 2012).

<sup>187</sup> *Id.*

<sup>188</sup> Hearing on Settlement Conference, *Lathrop v. City of St. Cloud, Minn.*, No. 0:10-cv-02361-DWF-LIB (D. Minn. Feb. 22, 2012), ECF No. 38.

<sup>189</sup> Admin, *Police Officers Sue over Antigay Harassment*, ADVOCATE.COM (Mar. 25, 2010), <http://www.advocate.com/news/news-features/2010/03/25/police-officers-sue-over-antigay-harassment?page=full>.

homophobic joke and that numerous slurs were used to describe the gay men who worked for the department.<sup>190</sup> The case was settled shortly before it was set to go to trial in 2011 for \$490,000.<sup>191</sup>

- A police officer settled with the NYPD for \$80,000 after the department brought internal charges against the officer and forced her to attend domestic abuse counseling.<sup>192</sup> The punishment came after officers were summoned to the house of the officer's friend, by the friend's son, because the two women were fighting over the rules of Scrabble.<sup>193</sup> The officers "reported that the dispute 'involved lesbians' and referred to the dispute as 'some gay thing.'"<sup>194</sup> The women were not romantically involved and there was no evidence that either woman had been hurt in the dispute.<sup>195</sup>
- A prison guard settled his sexual orientation discrimination case with the State of Pennsylvania.<sup>196</sup> The guard alleged that his co-workers subjected him to rumors, innuendo, and other ill treatment based on their perception that he was gay.<sup>197</sup>

2009

- A former state police officer at Purdue University filed suit against the university alleging discrimination based on race, sex, and age.<sup>198</sup> Though former officer's complaint did not assert a claim based on sexual orientation, it did state that the university "believed [the officer] to be 'Gay' and [his supervisor] expressed his strong dislike for 'Gays', which he often expressed in the most vulgar terms such as 'Faggots' and 'Peter Puffers'; . . . [The officer] further allege[d] that the [university] discriminated against him because he was 'Gay'."<sup>199</sup> The court's opinion did not address the sexual orientation-related allegations in

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<sup>190</sup> *Id.*

<sup>191</sup> Warren Peace, *Roseville Settles Sexual Orientation Discrimination Lawsuit for \$490,000*, WEARY WORKER (May 13, 2011), <http://www.wearyworker.com/labor-laws-2/roseville-settles-sexual-orientation-discrimination-lawsuit-for-490000/>.

<sup>192</sup> Complaint, *Glover v. City of N.Y. et al* (E.D.N.Y. filed Feb. 17, 2010) (No. 1:10-cv-00668).

<sup>193</sup> Julie Bolcer, *Lesbian Cop Settles with NYPD for \$80K*, ADVOCATE (June 28, 2010, 10:00 AM), <http://www.advocate.com/news/daily-news/2010/06/28/lesbian-cop-settles-nypd-80k>.

<sup>194</sup> *Id.*

<sup>195</sup> *Id.*

<sup>196</sup> *Pa. Prison Guard Settles Sex Perception Bias Suit*, CBS3 (May 6, 2010), <http://cbs3.com/wireapnewspa/Western.Pa.prison.2.1678589.html>.

<sup>197</sup> *Id.*

<sup>198</sup> *Ervin v. Purdue University Calumet*, No. 2:09-CV-136-PRC, 2010 WL 3021521 (N.D. Ind. July 28, 2010).

<sup>199</sup> Civil Rights Complaint ¶¶ 3, 6, *Ervin v Purdue Univ. Calumet*, No. 2-09CV136 (N.D. Ind. May 7, 2009), ECF No. 1.

the complaint on the basis that they were outside of the scope of Title VII, the law under which the officer brought his claims.<sup>200</sup>

- A bisexual former San Francisco patrol officer filed a discrimination suit against four lesbian police officers and the city and county of San Francisco claiming that she experienced harassment and defamation while working at the Mission Station due to her sexual orientation.<sup>201</sup> The officer testified that she began to experience harassment by her fellow officers because she started a committed relationship with a man in March 2007, thereby making her a “minority within the majority” – a comment relating to the many gay and lesbian officers assigned to the Mission Station serving the Castro area.<sup>202</sup> The officer also testified that “non-lesbian women were treated differently” and tended to leave the station.<sup>203</sup> Despite strong performance evaluations from supervisors, she was suddenly branded by colleagues as “being too emotional” to perform her duties in March 2008, and temporarily transferred to the Behavior Science Unit on Treasure Island.<sup>204</sup>
- A police officer with the police department at the University of California, Davis, filed suit against the university alleging harassment based on sexual orientation.<sup>205</sup> The officer alleged that when other officers discovered he was gay, they subjected him to harassment, including homophobic slurs and a death threat. The officer further alleged that his supervisor referred to him as a “fucking fag” and retaliated against him after he filed complaints in response to the treatment from other officers.<sup>206</sup> The officer and the University of California Regents settled the case in 2008 for \$240,000.<sup>207</sup>

2008

- A police officer with the Pacific Grove Police Department (California) filed suit against the department alleging that he was denied a promotion after being subjected to anti-gay comments by co-workers.<sup>208</sup> The court dismissed his claim, finding that he had been subjected to anti-gay comments but concluding that there was insufficient evidence to

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<sup>200</sup> *Id.* at \*4, \*6 n. 5.

<sup>201</sup> Laura Waxmann and Natalie Leal, *Legal Drama Offers View of Mission Police Station*, MISSION LOCAL, April 28, 2010, available at <http://missionlocal.org/2010/04/lesbian-drama-within-the-mission-district-police-district/>.

<sup>202</sup> *Id.*

<sup>203</sup> *Id.*

<sup>204</sup> *Id.*

<sup>205</sup> David Greenwald, *Lawsuit by former UCS Officer Alleging Race and Sexual Orientation Discrimination Moves Forward after Two Years*, VANGUARD COURT WATCH (Feb. 11, 2011), [http://davisvanguard.org/index.php?option=com\\_content&view=article&id=4097:lawsuit-by-former-ucd-officer-alleging-race-and-sexual-orientation-discrimination-moves-forward-after-two-years&catid=74:court-watch&Itemid=100](http://davisvanguard.org/index.php?option=com_content&view=article&id=4097:lawsuit-by-former-ucd-officer-alleging-race-and-sexual-orientation-discrimination-moves-forward-after-two-years&catid=74:court-watch&Itemid=100).

<sup>206</sup> *Id.*

<sup>207</sup> *Id.*

<sup>208</sup> *Smolinski v. City of Pacific Grove*, No. C-08-1809 RMW, 2009 WL 3353327 (N.D. Cal. Oct. 16, 2009).

find that the workplace had been intolerably polluted.<sup>209</sup>

- A superior court judge denied a motion to dismiss a lawsuit brought by an employee of the Los Angeles Police Department (LAPD).<sup>210</sup> She filed a suit against the department alleging that she was discharged in retaliation for complaining about mistreatment based on her sexual orientation.<sup>211</sup>
- A police officer with the Chicago Police Department filed suit against the department alleging discrimination based on sexual orientation.<sup>212</sup> She alleged that she was subjected to “discipline and mandatory psychological evaluations due to her race, gender, and sexual orientation”.<sup>213</sup> The sexual orientation claim was dismissed because it was outside the scope of Title VII; thereafter plaintiff voluntarily withdrew her case.<sup>214</sup>

2007

- An employee of the Washington Department of Corrections filed an administrative complaint with the Washington Human Rights Commission alleging discrimination based on sex and sexual orientation.<sup>215</sup> The employee stated that she was subjected to hostile treatment by subordinate staff and colleagues.<sup>216</sup> According to the employee, her co-worker told other staff that she was a lesbian who “hated men” and male members of her staff would not get ahead working for her.<sup>217</sup> She further alleged that one supervisor suggested that she use the men’s restroom instead of the women’s, and another supervisor challenged her ability to manage her subordinates.<sup>218</sup> The employee stated that when she complained about her co-worker’s comments, she was told to “pick her battles wisely” and “take the high road.”<sup>219</sup>

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<sup>209</sup> *Id.* at \*1.

<sup>210</sup> LESBIAN & GAY L. NOTES (Mar. 2008).

<sup>211</sup> *Id.*

<sup>212</sup> *Brumfield v. City of Chicago*, No. 08 C 2024, 2008 WL 4181739 (N.D. Ill. Sept. 4, 2008).

<sup>213</sup> *Id.* at \*1.

<sup>214</sup> *Id.* at \*2. Plaintiff subsequently filed two additional cases alleging violations of the Americans with Disabilities Act and the Rehabilitation Act. Court filings of the original case containing the sexual orientation claim are not available but the claim is mentioned in the third suit (which is cited here). The opinion for the third suit did not provide any underlying factual information about the sexual orientation claims that were dismissed in the first suit.

<sup>215</sup> Wash. State Hum. Rights Comm’n Complaint, *Collins v. Wash. State Dep’t of Corr.*, Washington State Human Rights Commission, No. 34ESX-0319-07-8 (Oct. 20, 2007).

<sup>216</sup> *Id.*

<sup>217</sup> *Id.*

<sup>218</sup> *Id.*

<sup>219</sup> *Id.*

- A former police officer with the Millville Police Department (New Jersey) filed a sexual orientation discrimination suit against the department.<sup>220</sup> The officer alleged that, because he was gay, he was ridiculed by his chief and other officers and was refused back-up when a woman he was apprehending bit his finger to the bone.<sup>221</sup> He settled his suit with the department for \$415,000.<sup>222</sup>
- A police officer with the NYPD filed suit against the department alleging discrimination based on sexual orientation, and retaliation.<sup>223</sup> The officer had been employed by the NYPD for seven years before he voluntarily resigned. During his time with the NYPD, the officer filed several complaints of discrimination based on sexual orientation with the NYPD Office of Equal Employment Opportunity.<sup>224</sup> The officer testified “that in February of 2003, he told one of his co-workers that he was gay and that after this disclosure, he was subjected to continuous discrimination and harassment, which led to his ultimate resignation.”<sup>225</sup> In June of 2009, he sought reinstatement with the NYPD, but, despite there being several openings, his request was denied.<sup>226</sup> In June, 2013, the New York trial court dismissed his case, holding that while the court was “highly disturbed by the fact that petitioner’s reinstatement was supported by his former commanding officer, as well as the medical and psychological personnel and the investigator assigned to his reinstatement case and was recommended by the Employee Management Division...[t]his in and of itself...[did] not establish that the grounds for denial relied upon by respondents were pretense.”<sup>227</sup>
- A former detective with the Huntington Beach Police Department (California) filed suit against the department alleging harassment based on sexual orientation.<sup>228</sup> Specifically, the detective alleged “that other officers . . . harassed him from 2002 through 2007 via constant gay jokes and other conduct, including simulating anal sex on him during a training class, insinuating that he masturbates in front of young boys, suggesting that he was infected with HIV, and commenting that he only investigates gay sex crimes. He also alleged that the police department and the city did nothing about the harassment.”<sup>229</sup>

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<sup>220</sup> Complaint, *Colle v. City of Millville*, (Super. Ct. N.J. Cumberland Cnty. filed Oct. 11, 2007) (No. CUM L 001063 07).

<sup>221</sup> Negotiated Settlement and General Release, *Colle v. City of Millville*, D. Conn., Civil Action No. 07-5834.

<sup>222</sup> *Id.*

<sup>223</sup> *In re Harrington*, No. 106075/2010, 2010 N.Y. Misc. LEXIS 5912 (N.Y. Sup. Ct. Dec. 3, 2010).

<sup>224</sup> *Id.* at \*3.

<sup>225</sup> *Id.*

<sup>226</sup> *Id.* at \*4–5.

<sup>227</sup> Unfiled judgment *In re Harrington*, (N.Y. Sup. Ct. June 21, 2013) (No. 106075-2010). *available at* <https://iapps.courts.state.ny.us/webcivil/FCASSearch?param=I> (search for index number 1016075/2010, click “Show Decisions” and then click on motion number 2).

<sup>228</sup> Settlement, *Bereki v. Huntington Beach Police Department*, No. 07CC09351, (Cal. Super. Ct. Apr. 29, 2008).

<sup>229</sup> *Id.*



The case was settled for a lump sum payment of \$150,000 and approximately \$4,000 per month for life as permanent disability payments for a total estimated value of \$2.15 million.<sup>230</sup>

- An employee of the California Highway Patrol filed an administrative complaint with the California Department of Fair Employment and Housing alleging discrimination, retaliation and constructive transfer based on his sexual orientation.<sup>231</sup> The employee alleged that the Department of Highway Patrol took his government-issued computer, halted his overtime, and interrogated the employee when it discovered that he was gay during an internal investigation.<sup>232</sup> The case was closed because the complainant elected court action.<sup>233</sup> A right to sue was issued.<sup>234</sup>
- A Newport Beach Police Department (California) filed suit against the department alleging that he had been denied promotions several times based on his perceived sexual orientation.<sup>235</sup> Despite his outstanding annual evaluations, the sergeant claimed that he was stereotyped as being gay, and denied a promotion on that basis, because he was single and physically fit.<sup>236</sup> The jury ruled for the sergeant on claims of discrimination based on perceived sexual orientation and retaliation, and awarded \$8,000 in past lost earnings, \$592,000 in future earnings, and \$600,000 for noneconomic losses, for a total verdict of \$1.2 million.<sup>237</sup>
- In July 2012, a former policeman and colleague of the Newport Beach officer sued the Newport Beach Police Department and city, alleging retaliation for testifying on behalf of his colleague in his trial. The alleged retaliation included unnecessary internal investigations, demotion and then firing in 2011.<sup>238</sup> That suit is still pending, but meanwhile the litigant's wife, a former dispatcher at the Police Department, filed a suit against the Police Chief, the department and the city, alleging that after her husband's

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<sup>230</sup> *Id.*

<sup>231</sup> Complaint of Discrimination under the Provisions of the California Fair Employment and Housing Act, [Redacted] v. California Highway Patrol, Department of Fair Employment and Housing, Case No. E2000607H0121-00-se (Aug. 10, 2007).

<sup>232</sup> *Id.*

<sup>233</sup> *Id.*

<sup>234</sup> *Id.*

<sup>235</sup> Complaint, Harvey v. City of Newport Beach, (Super. Ct. Cal. Orange Cnty. filed Apr. 7, 2007) (No. 07CC05400), 2007 WL 6183002.

<sup>236</sup> LESBIAN & GAY L. NOTES (May 2009).

<sup>237</sup> *Id.*

<sup>238</sup> Lauren Williams, *Former Newport officer sues department, city*, DAILY PILOT, July 13, 2012, available at <http://www.dailypilot.com/news/tn-dpt-0714-hougan-20120713%2C0%2C1577251.story>.

termination she was sexually harassed and then wrongfully terminated.<sup>239</sup> If all allegations are true, anti-gay bias in the department has led to three wrongful terminations combined with other retaliation or harassment.

2006

- An employee of the Philadelphia Police Department filed a complaint with the City of Philadelphia alleging discrimination based on sexual orientation.<sup>240</sup> The city settled with the employee.<sup>241</sup>

2005

- A cook at the New York Department of Correctional Services filed an administrative complaint with the State Division of Human Rights alleging harassment based on sexual orientation.<sup>242</sup> The cook alleged that his co-workers posted pictures in the department that had been altered to make it look as though the employee was engaging in sexual intercourse with the inmates.<sup>243</sup> Additionally, according to the cook, comments such as, “No more head cooks in the pc unit ha-ha how do you like that fag boy,” were written on the employee bathroom walls.<sup>244</sup> The cook further alleged that co-workers made lewd comments in the presence of other employees and inmates about the employee’s sexual activity, including an accusation “that [the employee] was screwing [a female co-worker] because she was tighter than his boyfriend.”<sup>245</sup> The employee claimed that he reported the harassment to two supervisors, but no corrective action was taken and the harassment continued.<sup>246</sup> The employee reported that he had to take medical leave due to the effects of the harassment.<sup>247</sup> The Division investigated the matter and determined that there was

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<sup>239</sup> Jill Cowan, *Ex-Newport Beach dispatcher claims sexual harassment by chief in suit*, LOS ANGELES TIMES, May 3, 2013, available at <http://articles.latimes.com/2013/may/03/local/la-me-ln-fired-newport-beach-dispatcher-sues-20130503>.

<sup>240</sup> Complaint, [Redacted] v. Philadelphia Police Department, Philadelphia Human Relations Commission, Complaint No. SGEN-6NQLXT (Apr. 10, 2006).

<sup>241</sup> Letter from Christopher R. DiFusco, Divisional Deputy City Solicitor, City of Philadelphia Law Dep’t, to Christy Mallory, the Williams Institute (July 6, 2009) (on file with the Williams Institute).

<sup>242</sup> Verified Complaint, [Redacted] v. New York State Department of Correctional Services, State Division of Human Rights, Case No. 10107432 (Aug. 23, 2005).

<sup>243</sup> *Id.*

<sup>244</sup> *Id.*

<sup>245</sup> *Id.*

<sup>246</sup> *Id.*

<sup>247</sup> *Id.*

probable cause to support the employee's charge.<sup>248</sup> The state of New York settled the matter privately with the employee.<sup>249</sup>

- The employee described above filed a second complaint with the State Division of Human Rights in 2007 alleging that he had been retaliated against for filing his prior complaint.<sup>250</sup> After the settlement was reached in that matter, he was passed over for overtime and was made to perform tasks outside of his job description, and was unfairly issued notices of discipline on multiple occasions.<sup>251</sup> Again, the Division's investigation revealed probable cause to support the employee's charge.<sup>252</sup> Again, the parties entered into a private settlement.<sup>253</sup>
- A patrol officer with the New Mexico State Police Division filed an administrative complaint with the Human Rights Division of the New Mexico Department of Labor alleging discrimination based on sexual orientation.<sup>254</sup> The officer stated that upon transferring to a new location, his new training supervisor began to harass him based on his perception that he was gay.<sup>255</sup> Several months later, the officer told his supervisor he was gay.<sup>256</sup> According to the officer, the supervisor did not speak to him for a month after he disclosed his sexual orientation, and unfairly disciplined him on several occasions.<sup>257</sup> For example, the officer alleged that the supervisor had encouraged a police lieutenant to file false charges against him, including a claim that the officer failed to respond to a call, and that he had accused a motorist of being a drug smuggler during a traffic stop.<sup>258</sup> The officer believed these actions were taken in an effort to set him up for termination.<sup>259</sup> The state of New Mexico settled with the officer.<sup>260</sup>

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<sup>248</sup> *Id.*

<sup>249</sup> Consent to Discontinuance, [Redacted] v. New York State Department of Correctional Services, State Division of Human Rights, Case No. 10107432 (Jan. 28, 2008).

<sup>250</sup> Verified Complaint, [Redacted] v. New York State Department of Correctional Services, State Division of Human Rights, Case No. 10116813 (Mar. 5, 2007).

<sup>251</sup> *Id.*

<sup>252</sup> *Id.*

<sup>253</sup> Consent to Discontinuance, [Redacted] v. New York State Department of Correctional Services, State Division of Human Rights, Case No. 10116813 (Jan. 28, 2008).

<sup>254</sup> Charge of Discrimination, [Redacted] v. State of New Mexico Department of Public Safety- State Police Division, New Mexico Department of Labor, Human Rights Division, Charge No. 05-07-28-0434 (July 18, 2005).

<sup>255</sup> *Id.*

<sup>256</sup> *Id.*

<sup>257</sup> *Id.*

<sup>258</sup> *Id.*

<sup>259</sup> *Id.*

<sup>260</sup> Settlement Agreement, [Redacted] v. State of New Mexico Department of Public Safety- State Police Division, New Mexico Department of Labor, Human Rights Division, HRD No. 05-07-28-0434 (Nov. 12, 2005).

- An applicant for a position as a police dispatcher with Guilford, Connecticut filed suit against the town alleging discrimination based on sexual orientation.<sup>261</sup> The applicant stated that she received a conditional offer of employment pending a background check and a home visit to be conducted prior to the start of her employment.<sup>262</sup> According to the applicant, the department discovered that she was in a romantic relationship with her female roommate during the home visit. The applicant was subsequently informed that she would no longer be hired.<sup>263</sup> The case was dismissed on procedural grounds.<sup>264</sup>
- A former police sergeant with the Dover Police Department (New Jersey) filed a sexual orientation discrimination complaint against the department.<sup>265</sup> A twelve year veteran of the department, she alleged that she had been subjected to “discriminatory, retaliatory or harassing conduct” by the male town supervisor, the police chief, and other department officials because she was a lesbian.<sup>266</sup> She settled her case for \$750,000.<sup>267</sup>
- A former police officer with the Walnutport Police Department (Pennsylvania) filed suit against the department alleging that he was retaliated against for opposing the department’s attempts to pry into his sexual orientation and off-duty conduct.<sup>268</sup> In 2005, the claim was settled for \$5,000.<sup>269</sup>

2004

- Two police officers settled sexual orientation discrimination cases with the City of Los Angeles for \$200,000 and \$450,000.<sup>270</sup> Both officers alleged that they were harassed and had suffered career setbacks due to homophobia in the police department.<sup>271</sup> According to an Associated Press report, these settlements added to others would total nearly \$3 million paid out by the city to settle sexual orientation discrimination claims brought by eight different police officers in recent years.<sup>272</sup>

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<sup>261</sup> Skorzewski v. Town of Guilford, No. CV054012161S, 2011 WL 4447273 (Conn. Super. Ct. Sept. 7, 2011).

<sup>262</sup> *Id.*

<sup>263</sup> *Id.*

<sup>264</sup> *Id.* at \*4.

<sup>265</sup> Complaint, Whitmore v. Town of Dover, (Super. Ct. N.J. Morris Cnty. filed Apr. 14, 2005) (No. MRS L 001088 05).

<sup>266</sup> LESBIAN & GAY L. NOTES (Sept. 2008).

<sup>267</sup> *Id.*

<sup>268</sup> LESBIAN & GAY L. NOTES (Feb. 2005).

<sup>269</sup> *Id.*

<sup>270</sup> LESBIAN & GAY L. NOTES (Jan. 2005).

<sup>271</sup> *Id.*

<sup>272</sup> *Id.*

- A correctional officer with a Maryland state prison filed suit against the prison alleging harassment based on sexual orientation.<sup>273</sup> The officer said that her supervisor and co-workers regularly made comments regarding her own and other officers' sexual conduct, her appearance, the female anatomy, the unfitness of women to serve as police officers, the presumed lesbianism of female officers, prostitution, and other inappropriate sexual references and behaviors.<sup>274</sup> The officer further alleged that she was forced to work under a supervisor who ordered her and another female officer to shower together with "soap on a rope."<sup>275</sup> In dismissing her complaint against individual defendants, the court stated that the stereotyping comments were an example of "the sporadic use of abusive language, gender-related jokes, and occasional teasing" that did not rise to the level of a Title VII action.<sup>276</sup> The court allowed her Title VII hostile environment claim against the county to proceed.<sup>277</sup>
- A police officer with the Oklahoma City Police Department filed a gender identity discrimination and harassment suit against the city.<sup>278</sup> When the officer was first hired by the police department in 1992, she was male; in 2001, she underwent gender reassignment surgery.<sup>279</sup> After the surgery, she allegedly faced constant harassment from her co-workers, which interfered with her ability to do her job.<sup>280</sup> However, she stated that she continued performing her job and even improved relations between the police department and the Asian, Hispanic, and gay and lesbian communities.<sup>281</sup> Nevertheless, the department removed her from patrol duties, gave her an interim clerical position, and then placed her on paid administrative leave.<sup>282</sup> In 2005, she settled her suit against the city.<sup>283</sup>
- Two police officers with the New York Police Department (NYPD) filed suit alleging that they were retaliated against because they opposed sexual orientation discrimination

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<sup>273</sup> Complaint at 17, 18, 20, 26 & 30, *Ensko v. Howard County*, 423 F. Supp.2d 502 (D. Md. 2005) (No. 04 Civ. 03464).

<sup>274</sup> *Id.*

<sup>275</sup> *Id.*

<sup>276</sup> *Ensko v. Howard County*, No. WDQ-04-03464, 2005 U.S. Dist. LEXIS 37602, at \*12 (N.D. Md. June 7, 2005) (quoting *Faragher v. City of Boca Raton*, 524 U.S. 775, 788 (1998)).

<sup>277</sup> *Id.* at \*8.

<sup>278</sup> Complaint, *Schonauer v. Okla. City Police Dep't*, (Dist. Ct. Okla. Cnty. filed Sept. 20, 2004) (No. CJ-2004-7736).

<sup>279</sup> Richard Green, *Transgender Officer Sues Police in OKC*, TULSA WORLD, Dec. 29, 2004, at A15.

<sup>280</sup> Reuters, *Sex-Change Oklahoma Officer Files Harassment Suit*, EXP. INDIA (Dec. 29, 2004), <http://expressindia.indianexpress.com/news/fullstory.php?newsid=40143>.

<sup>281</sup> Green, *supra* note 279.

<sup>282</sup> *Id.*

<sup>283</sup> Resolution, *Schonauer v. City of Oklahoma*, No. Civ-05-104-W (W.D. Okla. Sept. 14, 2005).

in their department.<sup>284</sup> According to the officers, a fellow officer had been subjected to harassment by his commanding officer because he was gay.<sup>285</sup> The officers who filed suit said that the commanding officer accused their fellow officer of having a relationship with another member of the department, and said that he had “found out some fucked up shit about [him] and...wouldn’t want him around children.”<sup>286</sup> The officers involved in the suit voiced opposition to the commanding officer’s treatment of the other officer, and one of them filed a formal complaint alleging sexual orientation discrimination on his behalf.<sup>287</sup> Both officers who opposed the discrimination said that they were treated unfavorably thereafter. In 2011, the New York Court of Appeals affirmed a jury verdict in their favor.<sup>288</sup>

- An Onondaga County (New York) officer filed suit, stating that he was harassed based on his co-workers’ perceptions that he was gay.<sup>289</sup> The officer alleged that his fellow male officers harassed him by “making ‘gay jokes’, revealing their naked bodies (or body parts) to [him] and making vulgar sexual comments.”<sup>290</sup> The officer also alleged that in 2000, another officer “pressed him against a table, and ‘humped’ him in front of other deputies, who laughed at the behavior.”<sup>291</sup> The officer said that he had reported these incidents to a superior who failed to take corrective action.<sup>292</sup> In 2010, a jury found that the plaintiff was subject to a hostile work environment and awarded damages.<sup>293</sup>
- A police sergeant with the Haledon Police Department (New Jersey) filed a discrimination case against the department.<sup>294</sup> The sergeant, who had worked for the department since 1986, came out to his family as gay in 2002.<sup>295</sup> He claimed that soon after word spread about his being gay, he began to suffer on-the-job harassment and discrimination at the hands of various co-workers and local government officials,

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<sup>284</sup> *Albunio v. City of New York*, 947 N.E.2d 135, 135-37 (2011).

<sup>285</sup> *Id.* at 135-36.

<sup>286</sup> *Id.* at 136.

<sup>287</sup> *Id.* at 135-37.

<sup>288</sup> *Id.*

<sup>289</sup> *Pitts v. Onondaga County Sheriff’s Dept.*, No. 5:04-CV-0828 (GTS/GJD), 2009 WL 3165551 (N.D. N.Y. Sept. 29, 2009); *Willis v. County of Onondaga Sheriff’s Dept.*, No. 5:04-CV-828 (GTS/GHL), 2010 WL 6619685 (N.D. N.Y. February 24, 2010).

<sup>290</sup> *Pitts*, No. 5:04-CV-0828 (GTS/GJD), 2009 WL 3165551 at \*7.

<sup>291</sup> *Id.*

<sup>292</sup> *Id.* at \*12.

<sup>293</sup> *Willis v. County of Onondaga Sheriff’s Dept.*, No. 5:04-CV-828 (GTS/GHL), 2010 WL 6619685.

<sup>294</sup> *Complaint, Len v. Borough of Haledon*, (Super. Ct. N.J. Passaic Cnty. filed May 26, 2004) (No. PAS L 002286 04).

<sup>295</sup> *Id.*

including the mayor and a city council member.<sup>296</sup> He settled his case in January 2007 for \$450,000.<sup>297</sup>

2003

- A police officer with the Suffolk County Police Department (New York) filed suit against the department alleging harassment based on sexual orientation.<sup>298</sup> A federal jury awarded the plaintiff \$260,000 in damages.<sup>299</sup>
- An officer with the Hartford Police Department (Connecticut) filed suit against the department alleging discrimination based on gender identity.<sup>300</sup> The case documents several alleged instances of discrimination against the officer, including a posting in her workspace of lewd images and a photograph of her from her high school yearbook which depicted her before she transitioned from male to female.<sup>301</sup> An appeals court reversed the lower courts' decisions in the officer's favor, holding that the harassment did not overcome the burden of proof to show that her failure to be promoted was based on her gender identity.<sup>302</sup> However, the court noted that such harassment would have been relevant for a hostile work environment claim, which the officer had not filed.<sup>303</sup>
- A police officer filed a complaint with the Attorney General against the Hardwick Municipal Police Department (Vermont).<sup>304</sup> The officer alleged that shortly after he began working at the department, town officials found a website that described him as "transsexual," and presumed his inability to do the job.<sup>305</sup> According to the officer, following the dissemination of the information to senior police department personnel, he was subjected to a continuous pattern of harassment and inferior work conditions that became so severe he had to leave his job.<sup>306</sup> In issuing its probable cause ruling, the Attorney General credited testimony of a former police chief that a town official had

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<sup>296</sup> *Id.*

<sup>297</sup> LESBIAN AND GAY L. NOTES (Feb. 2007).

<sup>298</sup> Complaint, *Weeks v. Suffolk Cnty. Police Dep't*, (E.D.N.Y. filed Aug. 29, 2003) (No. CV 03 4294) 2003 WL 23884087.

<sup>299</sup> LESBIAN & GAY L. NOTES (Mar. 2005).

<sup>300</sup> *Comm'n on Human Rights & Opportunities v. City of Hartford*, No. CV094019485S, 2010 Conn. Super. LEXIS 2727 (Conn. Super. Ct. Oct. 27, 2010).

<sup>301</sup> *Id.* at \*3.

<sup>302</sup> *Comm'n on Human Rights & Opportunities v. City of Hartford*, 50 A.3d 917 (Conn. Ct. App. 2012).

<sup>303</sup> *Id.* at 929.

<sup>304</sup> Press Release, *Vermont Attorney General Issues Landmark Ruling Prohibiting Discrimination of Transgender Employees*, GLAD, (Apr. 23, 2004), <http://www.glad.org/current/pr-detail/vermont-attorney-general-issues-landmark-ruling-prohibiting-discrimination>.

<sup>305</sup> *Id.*

<sup>306</sup> *Id.*

directed him to make the transgender officer so uncomfortable that he would leave the force.<sup>307</sup> He settled his gender identity case against the department for \$90,000.<sup>308</sup>

- An officer with the NYPD brought suit against the department alleging discrimination based on his perceived sexual orientation.<sup>309</sup> The officer alleged that his application to transfer to the NYPD Office of Community Affairs' Youth Services Section was denied because he was incorrectly perceived to be a child molester (based solely on the fact that he was perceived to be gay), and he was retaliated against after filing an internal complaint.<sup>310</sup> In 2006, the jury found in favor of the officer and awarded almost \$500,000.<sup>311</sup> A New York supreme court upheld the jury verdict in 2007.<sup>312</sup>
- A correctional officer with the New York State Department of Correctional Services filed suit against the department alleging harassment and discrimination based on sex and sexual orientation.<sup>313</sup> The officer alleged that a co-worker persistently and relentlessly demeaned her, scrawled sexually explicit graffiti in her workplace, and filed a baseless internal complaint against her because she was a lesbian.<sup>314</sup> According to the officer, the department promptly processed the co-worker's claim against the woman, even though they believed it to be "bogus," and failed to take any steps towards remedying her grievances.<sup>315</sup> The officer alleged that she suffered from increased stress, sleeping and eating difficulties, nosebleeds, and she was diagnosed with adjustment disorder with depressive features due to the harassment.<sup>316</sup> The New York Division of Human Rights found in favor of the officer.<sup>317</sup> A unanimous five-judge panel of the New York Appellate Division affirmed in 2008, but reduced her damages from \$850,000 to \$200,000, finding them disproportionate compared to awards based on similar claims.<sup>318</sup>

2001

- A jury found in favor of a police cadet with the Oakland Police Department (California)

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<sup>307</sup> *Id.*

<sup>308</sup> *Id.*

<sup>309</sup> Sorrenti v. City of N.Y., 17 Misc.3d 1102(A), 851 N.Y.S.2d 61, 2007 WL 2772308 at \*1 (N.Y. Sup. Ct. 2007).

<sup>310</sup> *Id.* at \*1.

<sup>311</sup> *Id.* at \*8.

<sup>312</sup> *Id.*

<sup>313</sup> New York State Dep't of Corr. Servs. v. New York State Div. of Human Rights, 861 N.Y.S.2d 494 (July 10, 2008).

<sup>314</sup> *Id.* at 497-98.

<sup>315</sup> *Id.*

<sup>316</sup> *Id.* at 498-99.

<sup>317</sup> *Id.* at 498.

<sup>318</sup> *Id.* at 498-99.



and awarded \$500,000.<sup>319</sup> His suit against the department alleged that he was forced to resign after being harassed by training instructors because of his perceived sexual orientation.<sup>320</sup> The cadet alleged, for example, that officers referred to him as a “fucking faggot” and a “girl,” and that one officer intentionally stepped on his groin during training and then accused him of “playing with himself.”<sup>321</sup> A California Appellate Court affirmed the judgment in 2002.<sup>322</sup>

2000

- A Cincinnati police officer filed a discrimination and harassment suit in federal court based on sex stereotypes. The officer alleged that supervisors began to harass her after she notified them that she would be transitioning from male to female.<sup>323</sup> She was fired on the ground that she “lacked command presence.”<sup>324</sup> A jury awarded the officer \$320,511 on her discrimination and harassment claims, and the court awarded \$527,888 in attorneys’ fees and \$25,837 in costs.<sup>325</sup> In 2005, the Sixth Circuit upheld a jury verdict in favor of the officer.<sup>326</sup>
- A police officer with the NYPD filed suit against the department alleging harassment and discrimination based on sexual orientation.<sup>327</sup> The officer alleged that fellow employees made derogatory comments about her personal life, and called her names such as “butchy” and “dyke”.<sup>328</sup> The court concluded defendants were motivated by their “invidious and discriminatory animus towards homosexuals,” and that they conspired to discriminate against the plaintiff solely on the basis of her sexual orientation.<sup>329</sup> The case was settled for \$130,000.00 in 2001.<sup>330</sup>
- A correctional officer filed an employment discrimination suit against the City Of Boston Suffolk County Sheriff’s Department.<sup>331</sup> The officer had desired to keep his sexual

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<sup>319</sup> Hoey-Custock v. City of Oakland, No. A094881, 2002 Cal. App. pub. LEXIS 7692, \*9 (Cal. App. Aug. 15, 2002).

<sup>320</sup> *Id.*

<sup>321</sup> *Id.* at \*1-4.

<sup>322</sup> *Id.* at \*29.

<sup>323</sup> Barnes v. City of Cincinnati, 401 F.3d 729, 733-35 (6th Cir. 2005).

<sup>324</sup> *Id.*

<sup>325</sup> *Id.* at 733.

<sup>326</sup> *Id.*

<sup>327</sup> Salgado v. City of N.Y., No. 00 Civ. 3667(RWS), 2001 WL 290051, at \*1 (S.D.N.Y. 2001).

<sup>328</sup> *Id.* at \*1-3.

<sup>329</sup> *Id.* at \*4.

<sup>330</sup> Docket, Salgado v. The City of New York, et al, (S.D.N.Y. May 15, 2000) (No. 1:00-cv-03667).

<sup>331</sup> Complaint, Salvi v. City of Bos. Suffolk Cnty. Sheriff’s Dep’t, (Super. Ct. Mass. Suffolk Cnty. filed 2000) (No. 00-3374H).

orientation private, but alleged that a co-worker suspected that he was gay and began telling other officers.<sup>332</sup> According to the officer, he was thereafter shunned, harassed, and subjected to lewd comments based on his sexual orientation.<sup>333</sup> According to the officer, his co-workers and supervisors called him a “fucking fag” and a “sissy,” and sent children’s toy blocks spelling “FAG” to his home.<sup>334</sup> Because of job-related stress, the officer attempted suicide by jumping off a bridge.<sup>335</sup> After the suicide attempt, he went out on medical leave never to return to work.<sup>336</sup> The superior court concluded that the officer had been “subjected to unwelcome, severe, or pervasive conduct by the [Suffolk County House of Correction]...based on sexual orientation that unreasonably interfered with the condition” of his employment.<sup>337</sup> The court further found that the department knew or had reason to know of the hostile environment but failed to take adequate steps to remedy it.<sup>338</sup> The Appeals Court of Massachusetts affirmed a trial court decision awarding him over \$620,000 in back pay and damages because his department failed to take adequate steps to remedy harassment against him.<sup>339</sup>

- A jury awarded a correctional officer \$1.5 million in his suit against the Nassau County Sheriff’s Department (New York) for harassment based on sexual orientation.<sup>340</sup> He alleged that he had encountered almost daily harassment from his co-workers for almost four years, including being called offensive names, and the display of pornographic images depicting him as a pedophile and someone who engaged in bestiality.<sup>341</sup> The deputy said that he repeatedly complained to his supervisors, but they ignored him.<sup>342</sup> Ultimately, a fellow correctional officer allegedly attacked him with a chair and injured his knee.<sup>343</sup> The deputy left work and later went on disability leave.<sup>344</sup> The jury found the harassment at the county jail so widespread that it constituted a “custom and practice” to discriminate against gay men.<sup>345</sup>

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<sup>332</sup> *Salvi v. Suffolk County Sheriff’s Dep’t*, 67 Mass App 596, 597 (Mass. App. Ct. 2006).

<sup>333</sup> *Id.*

<sup>334</sup> *Id.*

<sup>335</sup> *Id.*

<sup>336</sup> *Id.*

<sup>337</sup> *Id.*

<sup>338</sup> *Id.*

<sup>339</sup> *Id.*

<sup>340</sup> HUMAN RIGHTS CAMPAIGN, DOCUMENTING DISCRIMINATION: A SPECIAL REPORT FROM THE HUMAN RIGHTS CAMPAIGN FEATURING CASES OF DISCRIMINATION BASED ON SEXUAL ORIENTATION IN AMERICA’S WORKPLACES (2001).

<sup>341</sup> *Id.*

<sup>342</sup> *Id.*

<sup>343</sup> *Id.*

<sup>344</sup> *Id.*

<sup>345</sup> *Id.*

## Appendix B: Anecdotal Reports

2013

- Members of the Palm Beach Town Council heard testimony from two current officers and one former officer of the Palm Beach Police Department (Florida).<sup>346</sup> The officers testified that a former police Captain who was demoted in 2012 had created a hostile environment by using slurs against women, Jews, minorities, and gays.<sup>347</sup>

2012

- An anonymous person provided written testimony to the Michigan Department of Civil Rights alleging that approximately six years prior, the author's father lost his job as a police officer when the local police chief saw the officer at a gay bar.<sup>348</sup> The officer was unable to find another job, and lived on unemployment benefits until the benefits terminated.<sup>349</sup>
- A police officer in Missouri reported that she experienced discrimination, harassment, and career barriers due to her gender transition.<sup>350</sup> Specifically, she reported expecting to never to get out of patrol or to be advanced to sergeant due to her status as a transsexual woman.<sup>351</sup> She also reported that her biggest obstacle in the workplace was other officers' unwillingness to work with her.<sup>352</sup> She reported that the nondiscriminatory policies enforced by her police chief were the only reason that she had survived in law enforcement as long as she did.<sup>353</sup>

2010

- A police officer in Florida, who was a lesbian, reported that she was terminated for being "too open about her sexuality."<sup>354</sup>

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<sup>346</sup> William Kelly, Council: *Promote Duquette to Sergeant*, PALM BEACH DAILY NEWS (Feb. 12, 2013), <http://www.palmbeachdailynews.com/news/news/national/council-promote-duquette-sergeant/nWMZR/>.

<sup>347</sup> *Id.*

<sup>348</sup> MICH. DEP'T OF CIVIL RIGHTS, REP. ON LGBT INCLUSION UNDER MICH. LAW WITH RECOMMENDATIONS FOR ACTION 80 (2013), *available at* [http://www.michigan.gov/documents/mdcr/MDCR\\_Report\\_on\\_LGBT\\_Inclusion\\_409727\\_7.pdf](http://www.michigan.gov/documents/mdcr/MDCR_Report_on_LGBT_Inclusion_409727_7.pdf).

<sup>349</sup> *Id.*

<sup>350</sup> Chris Brown *et al.*, *The Career Experiences of Male-to-Female Transsexuals*, 40 COUNSELING PSYCHOLOGIST 868 (2012).

<sup>351</sup> *Id.* at 884.

<sup>352</sup> *Id.*

<sup>353</sup> *Id.*

<sup>354</sup> Email from Ming Wong, Law Clerk, National Center For Lesbian Rights, to Joshua Fiveson (June 13, 2013, 08:42 EST).

- The former Atlanta Police Department LGBT Liaison filed a discrimination complaint with the Atlanta Citizen Review Board, an independent agency which investigates police abuse.<sup>355</sup> The officer, who was intersex, alleged that a civilian department employee used derogatory language in reference to her sexual orientation and gender identity.<sup>356</sup>
- A police officer in North Carolina, who was a lesbian, reported that she was told that her department “would not promote lesbians.”<sup>357</sup>

2009

- An Arizona crime scene investigator reported that she was fired because of her sexual orientation.<sup>358</sup>
- A police officer in California reported that she was investigated by internal affairs and placed on administrative leave after she “left her husband and came out as a lesbian.”<sup>359</sup>

2008

- A correctional officer in California reported that she was subjected to a hostile work environment because of her sexual orientation.<sup>360</sup>
- An employee of the Connecticut Police Training Academy, who was a transgender woman, reported that her supervisor harassed her based on her gender identity.<sup>361</sup> She alleged that the supervisor called her into a dorm room, lay down on a bed, and asked her personal questions about her family, their approval, and what she does in her free time.<sup>362</sup> The employee alleged that after the incident, the supervisor cited her for taking too long to change ceiling tiles and stripping the floors.<sup>363</sup> She also reported that she was instructed to use the men's restroom.<sup>364</sup> She filed a complaint, in which she disclosed her

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<sup>355</sup> Dyana Bagby, *Former Atlanta Police LGBT Liaison Alleges Discrimination Based on Sexual Orientation*, GA VOICE (Sept. 10, 2010), <http://www.thegavoice.com/index.php/news/atlanta-news-menu/1078-former-atlanta-police-lgbt-liaison-alleges-discriminated-against-based-on-sexual-orientation>.

<sup>356</sup> *Id.*

<sup>357</sup> Email from Ming Wong, Law Clerk, National Center For Lesbian Rights, to Joshua Fiveson (June 13, 2013, 08:42 EST).

<sup>358</sup> E-mail from Ken Choe, Senior Staff Attorney, American Civil Liberties Union, to Brad Sears, Executive Director, the Williams Institute (Sept. 11, 2009, 14:10:00 PST) (on file with the Williams Institute).

<sup>359</sup> *Id.*

<sup>360</sup> *Id.*

<sup>361</sup> GLAD Hotline Intake Form, Gay & Lesbian Advocates & Defenders, Report of Employment Discrimination (Aug. 27, 2008) (on file with GLAD).

<sup>362</sup> *Id.*

<sup>363</sup> *Id.*

<sup>364</sup> *Id.*

transgender status.<sup>365</sup> She noted that she felt afraid to be alone with her supervisor.<sup>366</sup> According to the employee, she was fired after submitting the complaint.<sup>367</sup>

- A police officer working at a state university in Massachusetts reported that during training, his drill instructor would yell, “Are you looking at me, boy? Do you like me? Are you a faggot?”<sup>368</sup> The officer reported that after several of his co-workers became aware that he was gay, he received phone calls at home from the co-workers, including one who called him and said, “I need a blow job” and then hung up.<sup>369</sup>
- A police officer in Michigan reported that he was forced to resign because of his sexual orientation.<sup>370</sup>
- Two police officers in New York reported that they were subjected to hostile work environments because of their sexual orientation.<sup>371</sup>
- A police officer in Oklahoma transitioned from male to female while on the job.<sup>372</sup> She reported that after transitioning, she experienced severe harassment based on her gender identity.<sup>373</sup> She also reported that the police department insisted that she undergo psychological evaluations and transferred her to an unfavorable position.<sup>374</sup>
- A police officer in Virginia reported that she was harassed by her captain and made to work long shifts without breaks because of her sexual orientation.<sup>375</sup> She reported that when she tried to leave and apply for another job, the captain accosted her future employer in a restaurant and announced that she was a lesbian.<sup>376</sup>

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<sup>365</sup> *Id.*

<sup>366</sup> *Id.*

<sup>367</sup> *Id.*

<sup>368</sup> GLAD Hotline Intake Form, Gay & Lesbian Advocates & Defenders, Report of Employment Discrimination (Jan. 24, 2008) (on file with GLAD).

<sup>369</sup> *Id.*

<sup>370</sup> E-mail from Ken Choe, Senior Staff Attorney, American Civil Liberties Union, to Nan D. Hunter, Legal Scholarship Director, the Williams Institute (Feb. 26, 2009, 17:09:00 EST) (on file with the Williams Institute).

<sup>371</sup> *Id.*

<sup>372</sup> E-mail from Jon Davidson, Legal Director, Lambda Legal, to Nan D. Hunter, Legal Scholarship Director, the Williams Institute (Feb. 11, 2009, 12:18:00 EST) (on file with the Williams Institute).

<sup>373</sup> *Id.*

<sup>374</sup> *Id.*

<sup>375</sup> E-mail from Ming Wong, National Center for Lesbian Rights, to Christy Mallory, the Williams Institute (May 7, 2009, 11:15:00 PST) (on file with the Williams Institute).

<sup>376</sup> *Id.*

2007

- A police officer in California reported that her police chief decided not to promote her to a position she was qualified for, and for which no other qualified person was found, and instead eliminated the position, because the officer was transgender.<sup>377</sup>
- A sheriff's department applicant reported that he was offered positions at two sheriff's offices in Florida which were then rescinded because they found out he was living with a man whom they assumed was his partner.<sup>378</sup>
- A correctional officer in Illinois reported that he was being harassed at work based on his sexual orientation.<sup>379</sup> The officer reported that fellow officers repeatedly referred to him as a "motherfuckin' faggot" in front of other officers and inmates.<sup>380</sup> He also reported that after he filed a union grievance, shift commanders told him to "leave it alone" and warned him that he was "playing with fire."<sup>381</sup> He stated that he was then denied a promotion and the position was awarded to a heterosexual candidate from outside of the department with much less experience.<sup>382</sup> The correctional officer stated that he eventually resigned because of the harassment.<sup>383</sup>
- An employee of the Maine Department of Corrections reported that he had experienced harassment and discrimination based on his sexual orientation at work, causing him to go on medical leave.<sup>384</sup> The employee reported that inmates treated him badly because of his perceived sexual orientation and that his supervisors did nothing to address this harassment.<sup>385</sup> He filed a complaint with the Maine Human Rights Commission and was successful in his case.<sup>386</sup>

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<sup>377</sup> *Id.*

<sup>378</sup> *Id.*

<sup>379</sup> E-mail from Jon Davidson, Legal Director, Lambda Legal, to Nan D. Hunter, Legal Scholarship Director, the Williams Institute (Feb. 11, 2009, 12:18:00 EST) (on file with the Williams Institute).

<sup>380</sup> *Id.*

<sup>381</sup> *Id.*

<sup>382</sup> *Id.*

<sup>383</sup> *Id.*

<sup>384</sup> GLAD Hotline Intake Form, Gay & Lesbian Advocates & Defenders, Report of Employment Discrimination (Oct. 31, 2007) (on file with GLAD).

<sup>385</sup> *Id.*

<sup>386</sup> *Id.*

- A Massachusetts deputy sheriff reported that he experienced two years of harassment by his chief.<sup>387</sup> According to the deputy, the chief “outed” him to his co-workers, and threatened to suspend him if he continued “to see two guys at one time” because it looked bad for the department.<sup>388</sup> The deputy reported that he suffered a minor heart attack and was placed on sick leave due to the harassment.<sup>389</sup> He reported that he was fired during that time for abandonment of post.<sup>390</sup>
- A correctional officer in Michigan reported that she was forced to resign because of her sexual orientation.<sup>391</sup>
- A correctional officer in New Hampshire, who was a transgender woman, reported that she resigned after she endured three years of harassment and physical abuse based on her gender identity.<sup>392</sup> She alleged that her immediate supervisor said to her, “[y]our tits are growing” and “[y]ou look gay when you walk.”<sup>393</sup> She further reported that other co-workers then began physically assaulting her by kicking her, snapping her in the breasts, and threatening to handcuff her to a flagpole and take off her clothes.<sup>394</sup> She stated that one officer grabbed her and slammed her into a concrete wall while her co-workers watched, and no one reported the event.<sup>395</sup> According to the officer, she was later placed on a shift with the abusive officer, and then resigned because of the harassment.<sup>396</sup>
- A corrections department applicant in New Hampshire reported that she was discriminated against based on her sexual orientation.<sup>397</sup> According to the officer, she was required to take a polygraph test when she applied for the position.<sup>398</sup> She stated that

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<sup>387</sup> GLAD Hotline Intake Form, Gay & Lesbian Advocates & Defenders, Report of Employment Discrimination (May 24, 2007) (on file with GLAD).

<sup>388</sup> *Id.*

<sup>389</sup> *Id.*

<sup>390</sup> *Id.*

<sup>391</sup> E-mail from Ken Choe, Senior Staff Attorney, American Civil Liberties Union, to Nan D. Hunter, Legal Scholarship Director, the Williams Institute (Feb. 26, 2009, 17:09:00 EST) (on file with the Williams Institute).

<sup>392</sup> GLAD Hotline Intake Form, Gay & Lesbian Advocates & Defenders, Report of Employment Discrimination (Nov. 26, 2007) (on file with GLAD).

<sup>393</sup> *Id.*

<sup>394</sup> *Id.*

<sup>395</sup> *Id.*

<sup>396</sup> *Id.*

<sup>397</sup> GLAD Hotline Intake Form, Gay & Lesbian Advocates & Defenders, Report of Employment Discrimination (Oct. 15, 2002) (on file with GLAD).

<sup>398</sup> *Id.*

during the test, she was asked twice about her marital status, and disclosed that she was a lesbian in response.<sup>399</sup> She was then not hired for the job.<sup>400</sup>

- An employee of the State of Rhode Island Department of Corrections reported having problems at work because of his sexual orientation.<sup>401</sup> He alleged that his co-workers called him “gay cop,” “cum swallowing pig,” and other derogatory names in front of inmates.<sup>402</sup>
- A police department applicant in South Carolina reported that she underwent a routine polygraph exam and was asked if she was a lesbian.<sup>403</sup> According to the applicant, she responded “yes” and was not selected for the position.<sup>404</sup> She reported that she left the police academy in another state to move to South Carolina for the job, received a good reference from her former employer, and had a clean background and a degree.<sup>405</sup>
- A deputy sheriff in Utah reported that he was subjected to a hostile work environment based on his sexual orientation.<sup>406</sup>

2005

- A probation officer in the Suffolk County (Massachusetts) court system reported that she was harassed based on her sexual orientation.<sup>407</sup> She stated that she received a brochure in her work mailbox that touted a seminar discussing “cures for homosexuality” after she announced her marriage to her female partner.<sup>408</sup> According to the officer, she and two other unmarried women in the department were the only employees to receive the brochure.<sup>409</sup> In response to her complaint filed with the Commissioner of Probation, she reported that the Commissioner asked her if she “expected the whole office to be turned

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<sup>399</sup> *Id.*

<sup>400</sup> *Id.*

<sup>401</sup> GLAD Hotline Intake Form, Gay & Lesbian Advocates & Defenders, Report of Employment Discrimination (Mar. 22, 2007) (on file with GLAD).

<sup>402</sup> *Id.*

<sup>403</sup> E-mail from Jon Davidson, Legal Director, Lambda Legal, to Nan D. Hunter, Legal Scholarship Director, the Williams Institute (Feb. 11, 2009, 12:18:00 EST) (on file with the Williams Institute).

<sup>404</sup> *Id.*

<sup>405</sup> *Id.*

<sup>406</sup> Email from Ken Choe, Senior Staff Attorney, American Civil Liberties Union, to Brad Sears, Executive Director, the Williams Institute (Sept. 11, 2009, 14:10:00 PST) (on file with the Williams Institute).

<sup>407</sup> GLAD Hotline Intake Form, Gay & Lesbian Advocates & Defenders, Report of Employment Discrimination (Aug. 31, 2005) (on file with GLAD).

<sup>408</sup> *Id.*

<sup>409</sup> *Id.*



upside down in order to find the culprit” and he suggested that she take up her grievance with someone else.<sup>410</sup>

- A police officer in Boston reported that she overheard and was the target of harassing comments and slurs based on her sexual orientation.<sup>411</sup> She reported that no action was taken in response to her verbal complaints about the comments.<sup>412</sup>
- A deputy sheriff in Massachusetts reported that he was discriminated against based on his sexual orientation.<sup>413</sup> According to the deputy, his coworkers began targeting him with “usual locker room homo talk.”<sup>414</sup> He also reported that his supervisors excluded him from meetings and that his responsibilities were slowly taken away until he was transferred to an inferior, nonsupervisory position and ultimately terminated.<sup>415</sup> He further reported that one other openly gay person, a lesbian, in the department was also forced out after her sexual orientation was disclosed.<sup>416</sup>

2004

- A police officer with the Tampa Police Department reported that he was terminated when he disclosed that he was gay to his supervisors.<sup>417</sup> He also reported that he was arrested for lewd and lascivious conduct for informing street youth about safe sex.<sup>418</sup>
- An employee of the Florida Department of Corrections reported that he was forced to resign when his supervisors discovered that he occasionally wore women’s clothes outside the office.<sup>419</sup>
- A Rhode Island State Trooper, who was a lesbian, reported that she was harassed and ultimately fired because of her sexual orientation.<sup>420</sup> The trooper reported that she was

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<sup>410</sup> *Id.*

<sup>411</sup> *Id.*

<sup>412</sup> *Id.*

<sup>413</sup> GLAD Hotline Intake Form, Gay & Lesbian Advocates & Defenders, Report of Employment Discrimination (Oct. 13, 2005) (on file with GLAD).

<sup>414</sup> *Id.*

<sup>415</sup> *Id.*

<sup>416</sup> *Id.*

<sup>417</sup> E-mail from Ming Wong, Nat’l Center for Lesbian Rts., to Christy Mallory, the Williams Institute (May 7, 2009, 11:15:00 PST) (on file with the Williams Institute).

<sup>418</sup> *Id.*

<sup>419</sup> *Id.*

<sup>420</sup> GLAD Hotline Intake Form, Gay & Lesbian Advocates & Defenders, Report of Employment Discrimination (Mar. 18, 2004) (on file with GLAD).

concerned that if she filed a complaint, she would not be able to get another job in law enforcement in the state.<sup>421</sup>

2003

- A sheriff's deputy with the Pasco County Sheriff's Department reported that she was harassed based on her gender identity.<sup>422</sup> According to the deputy, her co-workers intentionally used the wrong pronoun when she was out on patrol, hence outing her to officers on the receiving end of police calls.<sup>423</sup> She stated that she complained to superiors, but the conduct continued.<sup>424</sup> The deputy stated that she resigned when her co-workers started a rumor that she had posed topless online.<sup>425</sup>
- An employee of the Vermont State Department of Corrections reported that a co-worker used derogatory language about her and another co-worker because they were lesbians.<sup>426</sup> According to the employee, she filed a formal complaint, but it was not investigated.<sup>427</sup>

2002

- A police officer in Maine reported that he was harassed based on his sexual orientation.<sup>428</sup> The officer reported that his co-workers called him names, including "fudgepacker" and "faggot".<sup>429</sup>
- An officer with the Massachusetts Highway Department reported that he was harassed based on his sexual orientation.<sup>430</sup> According to the officer, his supervisors and co-workers frequently asked him questions about his sexual orientation, including "Are you gay?," "Do you swing both ways?," and "If a girl strapped on a dildo, would that get you excited?"<sup>431</sup> He stated that he was offered a lateral transfer, however the harassment

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<sup>421</sup> *Id.*

<sup>422</sup> E-mail from Ming Wong, Nat'l Center for Lesbian Rts., to Christy Mallory, the Williams Institute (May 7, 2009, 11:15:00 PST) (on file with the Williams Institute).

<sup>423</sup> *Id.*

<sup>424</sup> *Id.*

<sup>425</sup> E-mail from Ming Wong, Nat'l Center for Lesbian Rts., to Christy Mallory, the Williams Institute (May 7, 2009, 11:15:00 PST) (on file with the Williams Institute).

<sup>426</sup> GLAD Hotline Intake Form, Gay & Lesbian Advocates & Defenders, Report of Employment Discrimination (Feb. 12, 2009) (on file with GLAD).

<sup>427</sup> *Id.*

<sup>428</sup> GLAD Hotline Intake Form, Gay & Lesbian Advocates & Defenders, Report of Employment Discrimination (May 16, 2002) (on file with GLAD).

<sup>429</sup> *Id.*

<sup>430</sup> GLAD Hotline Intake Form, Gay & Lesbian Advocates & Defenders, Report of Employment Discrimination (Aug. 8, 2002) (on file with GLAD).

<sup>431</sup> *Id.*

continued.<sup>432</sup> He felt that he could not file a complaint with the union because his steward was one of the harassers.<sup>433</sup>

2000

- A probation officer in Carroll County, Indiana reported that she was discriminated against because of her sexual orientation.<sup>434</sup> The officer alleged that she requested a promotion, but her supervisors, two superior court judges, told her that they would not promote her because she was a lesbian.<sup>435</sup> Further, one judge allegedly told her that she was embarrassing the court by dating a woman, and that he had asked other court employees about her sexual orientation and personal life.<sup>436</sup> According to the officer, a man with no prior probation experience was promoted to the position.<sup>437</sup>
- An undated and anonymous submission to a manners column states, “I started working as a police officer just last year. When I was first hired, pretty much everyone asked me why I’m not married. Then came the gay jokes. I’ve tried to let it go since I’m still a rookie, but it seems like they know I’m gay and want to push me out the door.”<sup>438</sup>

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<sup>432</sup> *Id.*

<sup>433</sup> *Id.*

<sup>434</sup> PEOPLE FOR THE AMERICAN WAY FOUNDATION, *HOSTILE CLIMATE: REPORT ON ANTI-GAY ACTIVITY* 179 (2000 ed.).

<sup>435</sup> *Id.*

<sup>436</sup> *Id.*

<sup>437</sup> *Id.*

<sup>438</sup> *Gay cop faces harassment*, STEVEN PETROW’S GAY & LESBIAN MANNERS, undated, available at <http://www.gaymanners.com/queeries/gay-cop-faces-harassment>.