

I EXECUTIVE SUMMARY

Meetings dating back to 2001 among members of the New Mexico Gender Identity Information Network (NMGAIN), a local gender identity advocacy organization, and the Albuquerque Human Rights Office (AHRO) helped forge a positive working relationship with a goal to increase awareness and understanding of transgender issues in the city.

This awareness campaign began with various NMGAIN presentations to human rights and community organizations. These have proven invaluable because this issue has not been raised widely in Albuquerque while it is one that has been addressed actively across the nation by local and state governments who have enacted related laws.

In order to assist in educating the community about gender identity issues, the AHRO produced and aired a television program as part of its Human Rights Focus series.

The next step was an agreement by the Human Rights Office that it would research other governmental entities on laws prohibiting gender identity discrimination and to undertake to explore laws in this area. With this information the AHRO could advise the human rights board, the mayor and the city council so that the human rights protections of individuals in Albuquerque who are confronted with gender identity discrimination are ensured.

The study undertaken by the AHRO included one state, one county, and 12 municipalities most of whom had enacted some type of gender identity anti discrimination laws within the last two years. In addition to a brief description of their jurisdiction, the entities were asked:

- a. whether they had (city or statewide) anti-discrimination laws that included gender identity and/or an ordinance or policy that applied only to its employment practices, provision of services and or government-funded contracts;
- b. whether the laws/policies include specific definitions of gender identity;

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- c. whether it includes a definition of sexual orientation (due to the fact that several entities combined gender identity with sexual orientation);
- d. whether references are made to sex-specific facilities, and
- e. whether exemptions or exclusions are included

Between 1975 and November 2002, seven states, six counties, and 45 cities enacted gender identity anti discrimination laws. Most have laws that prohibit gender identity discrimination in employment, housing, and public accommodations, and contracting within its state/city limits. A few others have laws, rules or policies limited to the entity itself (employment, provision of services, and contracting). Already, in 2003, at least three more cities have passed gender identity anti discrimination legislation. Also, one state, not in this report, passed a hate crimes law that included gender identity and sexual orientation.

Most of the entities reviewed have some type of gender identity related definition. And more than half are similar in language ranging from basic to detailed. The majority of them make no gender identity related reference to sex-specific facilities in their laws. Those that make such references, do so to establish a prohibited basis of discrimination in the use of sex-specific facilities against individuals on the basis of gender identity. In addition, these few require that in the use of sex-specific facilities, reasonable accommodations be made to individuals who are in transition. It is clear that any legislation that includes gender identity as a protected class, with the appropriate required accommodations and/or necessary minimal exemptions, also should prohibit discrimination in sex-specific facilities. The absence of such language (or a provision that is not clearly stated or defined) might invite legal challenges as well as cause confusion and indecisiveness on the part of enforcement agencies.

About one third of the entities have exemptions/exceptions that relate to sex/gender (male and female) and not specifically to gender identity. However, these

would include gender identity simply because gender identity is a sex/gender issue. An equal number have no gender

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identity related exemptions/exceptions. Those with gender related exemptions/exceptions have one that applies either to work place dress codes or housing accommodations. One city's exemption/exception ensures that gender identity coverage cannot be construed to interfere with or impose any duty on local government in its duties relative to the health and safety of incarcerated people.

By adding gender identity to its sexual orientation definition, one city applied all of its sexual orientation exemptions/exceptions to gender identity whether or not such exemptions/exceptions would appropriately apply. It is important to emphasize that sexual orientation and gender identity are two distinct protected classes. A person's sexual orientation deals directly with his or her preference for a partner. Transgender individuals can be straight, gay, or bisexual but their gender identity leans, in varying degrees, opposite of their birth sex. Sexual orientation, or sexual attraction, is not a contributing factor nor a cause of gender identity. Combining the two is totally inappropriate and should be avoided.

Because of its many facets and because of the complexities and stages of an individual's transitioning, "gender identity" requires more defining than is the norm for other protected classes. It may require additional sub definitions, and a clear definition of what "transitioning" means. Due to potential misconceptions and issues that can arise relative to gender identity and to issues of gender identity discrimination; i.e., dress codes, appearance, and perceptions, it is crucial that the definitions be clear.

In addition to standard and applicable elements of most anti discrimination laws, there are *three primary elements* that need to be considered when developing gender identity anti discrimination legislation, rules, or policies: Definitions for gender identity; access to sex-specific facilities on a non discriminatory basis, ensuring reasonable accommodations as appropriate; and limited and narrowly tailored exemptions for bona fide purposes. With this in mind, a sample model of language, definitions and coverage available would be of great value

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to advocates for gender identity protections as well as for governmental entities who would enact such legislation.

Progress is being made across the country to provide protection to individuals who are victims of discrimination based on their gender identity. The research reflects that there has not been any serious or significant opposition to including gender identity to the various governments' anti discrimination laws. It also reflects somewhat of a unanimous commitment within their government council/commissions and mayors as regards this legislation.