

NEW YORK COUNTY LAWYERS' ASSOCIATION

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Report of the New York County Lawyers' Association Committee on Lesbian, Gay, Bisexual and Transgender Issues Regarding the Gender Expression Non-Discrimination Act ("GENDA") (A07438) of 2005 of the New York State Assembly

This Report was adopted by the Board of Directors of the New York County Lawyers' Association at its regular meeting on February 6, 2006.

The Committee on Lesbian, Gay, Bisexual and Transgender Issues of the New York County Lawyers' Association ("NYCLA") approves Assembly Bill A07438 of 2005 (The Gender Non-Discrimination Act or "GENDA") and recommends its passage. The bill would prohibit discrimination based on gender identity or expression, and includes offenses regarding gender identity or expression under the Hate Crimes Statute. This would rectify the omission of gender identity and expression from both the Sexual Orientation Non-Discrimination Act ("SONDA") enacted by the Legislature in 2002 and the Hate Crimes Act of 2000.¹

The Legislation sets forth findings concerning the purpose of the proposed change in the law including, inter alia, that

¹ Senate Bill S04794, the "GENDA" legislation introduced in the New York State Senate in 2005, does not include amendments to the penal law and the criminal procedure law in relation to including offenses regarding gender identity or expression within the list of offenses subject to treatment as hate crimes. Unless the Senate has other legislation contemplated to accomplish this goal, Assembly Bill A07438 is the preferred legislation in this regard.

In addition, Assembly Bill A07438 recites the following important language in its Section 1, which does not appear in Senate Bill S04794:

The legislature further finds that, as court decisions have properly held, New York's sex discrimination laws prohibit discrimination based on gender stereotypes or because an individual has transition or intends to transition from one gender to another. This legislation is intended to codify this principle and to ensure that the public understands that discrimination on the basis of gender identity and expression is prohibited.

(Assembly Bill A07438, S 1.)

For the foregoing reasons, Assembly Bill A07438 is the preferred legislation.

... many residents of this state have encountered prejudice on account of their gender identity or expression, and that this prejudice has severely limited or actually prevented access to employment, housing and other basic necessities of life, leading to deprivation and suffering. The legislature further recognizes that this prejudice has fostered a general climate of hostility and distrust, leading in some instances to physical violence against those perceived to live in a gender identity or expression which is different from that traditionally associated with the sex assigned to that person at birth.

... its purpose is to ensure that individuals who live in our free society have the capacity to make their own choices, follow their own beliefs and conduct their own lives as they see fit, consistent with existing law.

(Assembly Bill A07438, S 1.)

*The committee agrees with these findings and believes that enactment of the legislation is in the public interest.

Transgender and other gender-different people are still not protected from discrimination under New York State (or federal) law. Such people, whose gender identity, appearance, behavior or expression differs from their genetic sex at birth, face discrimination in housing, employment, public accommodations and many other areas of life, and they are particularly vulnerable to hate crimes. There are many documented cases where social antagonism against gender-different (including transgender) individuals and their families, has led to many being denied employment and fired from jobs, harassed in the workplace, faced with a “glass ceiling,” harassed and faced with eviction by their landlords, steered away from certain areas when looking for a home, denied rooms in a hotel, refused service in a restaurant, given inadequate medical care and otherwise treated as second-class citizens, solely because of their gender identity and expression.

Seven states, including California, Illinois and, as of a few days ago, Washington State, and dozens of localities have enacted laws barring discrimination on the basis of gender identity or expression. In New York State, New York City, Albany, Buffalo and Rochester and Tompkins and Suffolk Counties prohibit such discrimination. GENDA would extend these

protections to everyone throughout the State.

When SONDA was before the Legislature in 2002, there was a strong movement to add gender identity and expression to it. The leading proponent of SONDA, the Empire State Pride Agenda (ESPA), endorsed the bill without gender identity and expression. However, at this time ESPA is fully backing GENDA and, in fact, is one of the primary underwriters of the New York State GENDA Coalition.

For these reasons, the Committee recommends that the New York County Lawyers' Association endorse the passage of GENDA in the form reflected in Assembly Bill A07438, by the New York State Legislature.²

Committee on Lesbian, Gay, Bisexual and Transgender Issues
New York County Lawyers' Association
Ivan Dominguez, Chair

Resources:

Empire State Pride Agenda: <http://www.prideagenda.org/pride/genda.html>

NYS GENDA Coalition: <http://www.gendany.org/> (Under construction)

National Gay and Lesbian Task Force:

<http://www.thetaskforce.org/theissues/issue.cfm?issueID=21>

Human Rights Campaign: <http://www.hrc.org/Template.c>

² It should be noted that the following committee members abstained from the vote on this Report: Hon. Barbara Jaffe, Hon. Karen I. Lupuloff and Hon. John E.H. Stackhouse.