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# Discrimination and Harassment by Law Enforcement Officers in the LGBT Community

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## **Discrimination and Harassment by Law Enforcement Officers in the LGBT Community**

**Williams Institute, March 2015**

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

### **Executive Summary**

Discrimination and harassment by law enforcement based on sexual orientation and gender identity is an ongoing and pervasive problem in LGBT communities. Such discrimination impedes effective policing in these communities by breaking down trust, inhibiting communication and preventing officers from effectively protecting and serving the communities they police. While a patchwork of state, local and federal laws provides some protection against certain forms of discrimination, there is no nationwide federal statute that comprehensively and consistently prohibits discrimination based on actual or perceived sexual orientation and gender identity.

This report presents research demonstrating that LGBT individuals and communities face profiling, discrimination and harassment at the hands of law enforcement officers. Data from a wide range of sources show that such harassment and discrimination is greatest for LGBT people of color, transgender persons and youth. Key findings include:

- The 9.5 million LGBT Americans are a part of every local and state community, and part of the diverse communities that law enforcement seeks to engage to develop stronger community support and trust.
- The United States has had a significant history of mistreatment of LGBT people by law enforcement, including profiling, entrapment, discrimination and harassment by officers; victimization that often was ignored by law enforcement; and discrimination and even blanket exclusions from being hired by law enforcement agencies. The Department of Justice recently summarized this history of discrimination against LGBT people in its brief to the United States Supreme Court in *Windsor v. United States*.
- Discrimination and harassment by law enforcement officers based on sexual orientation and gender identity continues to be pervasive throughout the United States.
  - For example, a 2014 report on a national survey of LGBT people and people living with HIV found that 73% of respondents had face-to-face contact with the police in the past five years. Of those respondents, 21% reported encountering hostile attitudes from officers, 14% reported verbal assault by the police, 3% reported sexual harassment and 2% reported physical assault at the hands of law

enforcement officers. Police abuse, neglect and misconduct were consistently reported at higher frequencies by respondents of color and transgender and gender nonconforming respondents.

- A 2013 report focused on anti-LGBT violence that occurred in the previous year found that of the LGBT violence survivors surveyed who interacted with police, 48% reported that they had experienced police misconduct, including unjustified arrest, use of excessive force and entrapment. Additionally, police officers accounted for 6% of all offenders reported by respondents; of offenders who were personally unknown to the victim, police made up 23%.
- A 2012 report examining the interactions of law enforcement with Latina transgender women in Los Angeles County found that two-thirds of the women reported that they had been verbally harassed by law enforcement, 21% reported that they had been physically assaulted by law enforcement, and 24% reported that they had been sexually assaulted by law enforcement.
- A 2011 study that reported findings from the largest survey of transgender people to date found that 22% of transgender respondents reported that they had been harassed by law enforcement because of bias; and 6% reported having been physically assaulted by an officer. Additionally, nearly half of respondents (46%) reported being uncomfortable seeking police assistance.

Individual complaints of discrimination also document examples of police misconduct against LGBT people. These reports include instances of verbal harassment, physical abuse so severe that it required medical attention, and rape.

Such discrimination, harassment and abuse undermine effective policing by:

- Weakening community trust: A recent study of gay and bisexual identified men found that 40% believed that contacting the police in response to a violent incident from an intimate partner would be unhelpful or very unhelpful, and 59% believed that the police would be less helpful to a gay or bisexual man than to a heterosexual woman in the same situation.
- Reducing reporting of crimes by victims in the LGBT community: A 2013 report on hate violence against the LGBTQ and HIV-affected communities found that only 56% of survivors of hate violence reported such incidents to the police.
- Challenging law enforcement's ability to effectively meet the needs of members of their communities: A 2014 report on a national survey of 2,376 LGBT people and people living with HIV found that over a third of crime victim's complaints to the police were not fully addressed.

Key recommendations to prevent discrimination by law enforcement based on sexual orientation and gender identity include:

- Adopting **internal policies and practices** in state and local police departments, including:
  - Nondiscrimination policies and zero tolerance harassment policies,
  - Policies requiring officers to respect individuals' gender identity and ensure safety in arrest processing, searches, and placement in police custody, and explicitly prohibiting searches conducted for the purpose of assigning gender based on anatomical features;
  - LGBT sensitivity, diversity and specialization trainings,
  - Outreach and liaisons to the LGBT community,
  - Civilian complaint review boards with investigators and adjudicators specifically trained to address the types of police profiling and abuse experienced by LGBTQ people, including sexual harassment and assault and
  - Prohibiting discrimination based on gender, sexual orientation or gender identity against law enforcement personnel.
- Adopting and enforcing **federal level protections**, including:
  - Nondiscrimination requirements in Community Oriented Policing Services (COPS) grants, which provide funding to more than 13,000 of the nation's 18,000 law enforcement agencies across the country, and other sources of government funding
  - Enforcement of new federal bias-based profiling prohibitions that are inclusive of sexual orientation and gender identity and expansion of those provisions to more law enforcement agencies through the passage of the End Racial Profiling Act with sexual orientation and gender identity explicitly included
  - Increased data collection through anonymous surveys such as the Bureau of Justice Statistics Police Contact Survey on police searches and seizures to analyze the scope of bias-based profiling practices and identify target regions and agencies in need of nondiscrimination trainings and policies.
- **Enforcing Existing Legal Protections.** Several existing laws protect LGBT people to some extent, including constitutional provisions and state and local nondiscrimination laws.
- **Adopting New Legal Protections.** Laws explicitly prohibiting sexual orientation and gender identity discrimination can be enacted at the federal, state and local levels.

## **I. Evidence of Discrimination by Law Enforcement based on Sexual Orientation and Gender Identity**

LGBT people are part of every state and local community in the United States. They are both a specific community that needs to be reached to make policing effective, and part of other communities that law enforcement must also engage. In particular, LGBT people of color are part of communities of color who are already independently disproportionately impacted by discriminatory policing. LGBT people have faced a long history of criminalization and discrimination by law enforcement, and that discrimination continues to the present day, especially among LGBT people of color, transgender individuals and youth.

### **A. The 9.5 Million LGBT Americans Are a Part of Every Local and State Community, and Part of the Diverse Communities that Law Enforcement Seeks to Engage**

In a recent survey of adults aged 18 and older in the United States, 4% identified themselves as LGBT.<sup>1</sup> Extrapolating that percentage to the 2009-2013 American Community Survey 5-year population estimates suggests that, out of more than 237 million adults in the United States,<sup>2</sup> more than 9.5 million adults identify as LGBT. The actual number of LGBT American adults is likely higher because evidence suggests that some adults who have a same-sex sexual orientation are reluctant to self-identify as LGBT, due in part to social stigma associated with LGBT identity.<sup>3</sup>

Two recent analyses of the largest population-based survey to have ever included a question asking if respondents identified as LGBT show substantial geographic, demographic and socio-economic variation among LGBT adults.<sup>4</sup> LGBT adults are present in every state in the country, ranging from more than 5% of the adult population in Hawaii to just under 2% in North Dakota, and fully 10% of the residents of Washington, D.C. identify as LGBT.<sup>5</sup> Like LGBT people in general, same-sex couples live in all parts of the country. In the 2010 Census, same-sex couples were identified in all 50 states and in 93% of counties in the United States.<sup>6</sup>

LGBT adults are racially and ethnically diverse in percentages similar to the non-LGBT population. A third of LGBT adults in the United States (33%) are members of racial or ethnic minorities. In fact, the percentage of adults who identify as LGBT is higher among adults who are members of racial and ethnic minorities than among white adults: 4.6% of Black adults, 4.0% of Hispanic adults, and 4.3% of Asian adults identify as LGBT, compared to 3.2% of white adults who are non-Hispanic.<sup>7</sup>

LGBT adults show substantial socio-economic diversity. Of all American adults in households with annual incomes lower than \$24,000, 5.1% identify as LGBT compared to just 2.8% of adults identifying as LGBT in households with annual incomes above \$90,000.<sup>8</sup> More than a third (35%) of LGBT individuals report living in households with incomes below \$24,000 per year. A study using data from Census 2000 found that same-sex female couples had a poverty rate of 6.9% compared to 4.0% for gay male couples and 5.4% for different-sex married couples.<sup>9</sup>

## **B. A Long and Troubled History between LGBT Americans and Law Enforcement Presents Challenges to Effective Policing Within LGBT Communities**

Until relatively recently, LGBT people were guilty of criminal conduct if they engaged in same-sex sexual behavior, forcing them to hide their identity from law enforcement officers as opposed to cooperating with them or even turning to them for protection. Prior to 1961, every state had an anti-sodomy law on the books.<sup>10</sup> Twenty-one states still had sodomy laws on the books in 2003,<sup>11</sup> when the Supreme Court declared such laws unconstitutional in *Lawrence v. Texas*.<sup>12</sup> In fourteen states, the laws were still being enforced at the time *Lawrence* was decided.<sup>13</sup> Even after *Lawrence*, sixteen states still have anti-sodomy laws on the books,<sup>14</sup> with legislators of some states declining to repeal the laws in order to send a message of moral disapproval.<sup>15</sup>

Such criminalization was one of the foundations for a significant history of mistreatment of LGBT people by law enforcement in the United States, which included profiling, entrapment, discrimination and harassment by law enforcement; victimization that often was ignored by law enforcement; and discrimination and even blanket exclusions from being hired by law enforcement agencies. The Department of Justice recently summarized this history of discrimination against LGBT people in its brief to the United States Supreme Court in *Windsor v. United States*:

Gay and lesbian people have suffered a significant history of discrimination in this country. No court to consider the question has concluded otherwise, and any other conclusion would be insupportable.<sup>16</sup>

Perhaps most stark is the history of criminal prohibitions on the sexual intimacy of gay and lesbian people: that history ranges from colonial laws ordering the death of “any man [that] shall lie with mankind, as he lieth with womankind,”<sup>17</sup> to state laws that, until very recently, “demean[ed] the[] existence” of gay and lesbian people “by making their private sexual conduct a crime.”<sup>18</sup> [T]hat declaration in and of itself [wa]s an invitation to subject homosexual persons to discrimination both in the public and in the private spheres.”<sup>19</sup> The federal government, state and local governments, and private parties all have contributed to a regrettable history of discrimination against gay and lesbian people in a variety of contexts:

Employment: By the 1950s, based on Presidential and other directives, the federal government investigated its civilian employees for “sexual perversion,” i.e., homosexuality. Until 1975, “[t]he regulations of the Civil Service Commission for many years ha[d] provided that immoral or notoriously disgraceful conduct, which includes homosexuality or other types of sex perversion, are sufficient grounds for denying appointment to a Government position or for the removal of a person from the Federal service.”<sup>20</sup> Intrusive investigations by the FBI and other agencies forced thousands of federal employees out of their positions based on the suspicion that they were gay or lesbian.<sup>21</sup> The same was true on the state and local government level<sup>22</sup>, and pervasive employment discrimination persists to this day....

Hate crimes: After racial minorities, gay and lesbian people are the most frequent victims of reported hate crimes.<sup>23</sup> From 2007 to 2011 (the latest year for which data has been reported), hate crimes motivated by sexual orientation increased 3%, even as hate crimes overall decreased 19%.<sup>24</sup>....

Police enforcement: Liquor licensing laws were used to raid establishments patronized by gay and lesbian people long before the Stonewall riots of 1969.<sup>25</sup> Police similarly relied on laws prohibiting lewdness, vagrancy, and disorderly conduct to harass gay and lesbian people when congregating in public.<sup>26</sup>

The Stonewall and other bar raids have specifically impacted LGBT people of color, transgender and gender nonconforming individuals.<sup>27</sup> Bar raids have continued to target LGBT people; even as recently as the summer of 2009, four bar raids occurred in LGBT bars throughout the South.<sup>28</sup>

Further, a 2009 Williams Institute study of public sector employment discrimination found a long history of discrimination against LGBT law enforcement officers which was grounded in the use of anti-sodomy laws to deny employment based on sexual orientation. Such discrimination can be traced back to the 1950s, when the federal government implemented a large-scale purge of LGBT civil service employees.<sup>29</sup> After the federal purge began, state and local governments followed suit.<sup>30</sup> Federal, state, and local governments denied law enforcement positions (among other positions) to LGBT people because they were potential felons under state sodomy laws.<sup>31</sup> In some states, blanket policies expressly barred LGBT people from becoming law enforcement officers based on this rationale.<sup>32</sup> These policies, as well as individualized decisions to exclude LGBT people from law enforcement positions, were often upheld by courts.<sup>33</sup>

### **C. Discrimination and Harassment of LGBT Communities by Law Enforcement Continues to Be Widespread Today**

For decades, the LGBT community, and particularly LGBT people of color, youth, and transgender and gender nonconforming members of the LGBT community, has been subjected to profiling, entrapment, discrimination, harassment, and violence by law enforcement. Recent survey data, court cases, and anecdotal evidence appearing in media reports, academic journals, and other scholarship indicate that such mistreatment of LGB, and especially transgender people, is still ongoing. Evidence of discrimination collected from these sources indicates that these experiences make LGBT people less likely to report when they have been victims of crimes, as well as less likely to cooperate with law enforcement more generally.

#### **1. Survey Data**

Recent findings of discrimination in studies and reports by governmental and non-governmental organizations include:

- A 2014 report on a national survey of 2,376 LGBT people and people living with HIV found that 73% of respondents had face-to-face contact with the police in the past five years.<sup>34</sup> Of those respondents, 21% reported encountering hostile attitudes from officers,



14% reported verbal assault by the police, 3% reported sexual harassment and 2% reported physical assault at the hands of law enforcement officers.<sup>35</sup> Of those who were victims of crime, many reported inadequate police response to their reports: 62% of those who experienced physical assault, 49% of those who were a victim of property crime, 41% of those who experienced intimate partner violence, and 39% of those who were victims of sexual assault reported that the police failed to fully address their complaint.<sup>36</sup> Additionally, 205 respondents reported that they had filed a complaint about police misconduct in the past five years. Of those, 71% said that their complaint was not fully addressed by those they reported it to.<sup>37</sup> Police abuse, neglect, and misconduct were consistently reported at higher frequencies by respondents of color and transgender and gender nonconforming respondents.<sup>38</sup>

- A 2013 report focused on anti-LGBT violence that occurred in the previous year found that many LGBT violence survivors reported having negative interactions with police. Of the LGBT violence survivors surveyed who interacted with police, 48% reported that they had experienced police misconduct. More specifically, 57% reported unjustified arrest, 28% reported use of excessive force, 12% reported entrapment, and 3.3% reported being involved in a police raid.<sup>39</sup> Additionally, respondents reported that they had experienced verbal abuse, physical violence, and sexual violence perpetrated by police officers.<sup>40</sup> Police officers accounted for 6% of known offenders reported by respondents; of offenders who were personally unknown to the victim, police made up 23%.<sup>41</sup> Of respondents who went to the police to report a crime, 27% reported that the police were “hostile,” and 31% reported that the police were “indifferent.”<sup>42</sup> The report was based on data collected across 18 states.<sup>43</sup>
- A 2012 report by the Center for Constitutional Rights regarding the New York City Police Department’s stop and frisk practices found that “LGBTQ/GNC [Gender Nonconforming] communities are heavily impacted by stops and frisks. Several people interviewed for this report described stops where police treated them in a cruel or degrading manner because of their actual or perceived sexual orientation, or gender identity, or expression, or because they were gender non-conforming.”<sup>44</sup> Transgender women in particular were found to be “a huge target for NYPD discrimination.”<sup>45</sup>
- A 2012 report found that members of LGBTQ communities of color in Jackson Heights, Queens, New York, reported high rates of abuse from law enforcement.<sup>46</sup> The report surveyed more than 300 Queens residents about their interactions with police officers. Fifty-four percent of all LGBTQ respondents reported that they had been stopped by police, compared to 28% of non-LGBTQ respondents.<sup>47</sup> Of transgender respondents, 59% reported that they had been stopped by police. According to the report, “many transgender interviewees reported being profiled as sex workers when they were conducting routine daily tasks in the neighborhood. They commonly reported stops that seem to be without basis but in which the police officers later justified the stop by charging the person with prostitution-related offenses because condoms were found in their possession. These arrests were frequently accompanied by verbal and physical abuse.”<sup>48</sup> Among those individuals who reported being stopped by police, 51% of all LGBTQ respondents and 61% of just transgender respondents reported that they had been physically or verbally harassed by the police during the stop, compared with 33% of non-

LGBTQ respondents.<sup>49</sup> Some respondents also reported “sexual abuse perpetrated...by police officers,” including individuals who reported that they were “forced to perform sexual acts under threat of arrest.”<sup>50</sup>

- A 2012 report examining the interactions of law enforcement with Latina transgender women in Los Angeles County found that these women reported experiencing high rates of discrimination and mistreatment. Two-thirds reported that they had been verbally harassed by law enforcement, 21% reported that they had been physically assaulted by law enforcement, and 24% reported that they had been sexually assaulted by law enforcement.<sup>51</sup> Additionally, they reported baseless stops and mishandling of complaints that they had filed.<sup>52</sup>
- In 2011, the DOJ’s Civil Rights Division released a report finding that LGBT people were often the victims of “discriminatory policing” by the New Orleans Police Department (NOPD). LGBT citizens as well as NOPD officers agreed that LGBT community members in particular were subject to “harassment and disrespectful treatment, and unfairly target[ed] for stops, searches, and arrests.”<sup>53</sup> More specifically, LGBT community members reported “harassment and even sexual and physical abuse by law enforcement,” as well as a “long-standing failure by NOPD to take complaints by LGBT individuals seriously.”<sup>54</sup> The LGBT community reported that these tactics “serve to drive a wedge between the police and the public, antagonizing and alienating members of the community.”<sup>55</sup>
- A 2011 study that reported findings from the largest survey of transgender people to date found that 22% of transgender respondents reported that they had been harassed by law enforcement because of bias; and 6% reported having been physically assaulted by an officer.<sup>56</sup> Additionally, nearly half of respondents (46%) reported being uncomfortable seeking police assistance.<sup>57</sup>
- A 2011 study of the National Longitudinal Study of Adolescent Health found that young adults who identified as LGB or not 100% heterosexual reported greater police interaction and sanctions than their straight-identified counterparts, even when controlling for transgressive behaviors, race and socioeconomic status.<sup>58</sup> LGB youth and young adults were 53% more likely to be stopped by the police, 60% more likely to be arrested before the age of 18, 90% more likely to have had a juvenile conviction, and 41% more likely to have had an adult conviction than their straight peers.<sup>59</sup> These disparities were even greater for LGB young women, who were 2.5 times more likely to be arrested before age 18, three times more likely to have a juvenile conviction, more than four times more likely to have been arrested after the age of 18 and more than twice as likely to have an adult conviction than their straight female counterparts.<sup>60</sup>
- A 2011 report on the Polling for Justice survey of New York City youth aged 14 to 21 found that LGBQ youth reported experiencing negative police contact more often than their straight counterparts (61% versus 47%, respectively).<sup>61</sup> This was especially true for negative verbal experiences with the police, where 54% of LGBQ youth and 39% of non-LGBQ youth reported having such an experience and negative sexual experiences with police (28% versus 10%, respectively). Additionally, more than half of LGBQ youth

reported feeling stressed or worried to some extent by police.<sup>62</sup>

- A 2009 report based on a survey of LGBT youth who had been involved with the juvenile justice system found that almost 70% of the youth respondents reported that police mistreatment was a problem for LGBT youth.<sup>63</sup> Many transgender respondents reported that they were profiled as sex workers by police.<sup>64</sup> Additionally, several professionals in the juvenile justice system who were interviewed for the study agreed that LGBT youth were targeted by police because of their sexual orientation or gender identity.<sup>65</sup>
- A 2005 study which included surveying police departments, interviewing individuals, and reviewing media reports, found that LGBT people reported that they had experienced mistreatment by law enforcement in localities across the country within the previous few years.<sup>66</sup> LGBT respondents reported incidents of sexual abuse by law enforcement in Chicago; Los Angeles; New York; San Antonio, Texas; Philadelphia; Washington D.C.; Athens, Georgia; Montgomery, Alabama; and San Francisco.<sup>67</sup> The incidents reported included rape, sexual assault, threatened sexual assault, sexual contact, and sexually explicit language and gestures.<sup>68</sup> The data collected also showed that respondents commonly reported being physically assaulted and verbally harassed, with reports from individuals in Los Angeles; Chicago; New York; San Antonio, Texas; Pennsylvania; Washington D.C.; Oakland, California; Lincoln, Rhode Island; and Connecticut.<sup>69</sup>

## **2. Other Evidence of Discrimination and Harassment**

In addition, examples of discrimination and harassment that have been documented in recent court cases, academic journals, and media sources include:

- In 2014, a lesbian woman filed suit against the city of Portland, Oregon for false arrest and excessive force.<sup>70</sup> According to her complaint, she was a passenger in a vehicle as it was leaving a well-known LGBT center.<sup>71</sup> A police car followed them from the center to a nearby gas station and turned on its overhead lights after they had turned off their vehicle.<sup>72</sup> The passenger stated that the officer referred to her as a white male mockingly, even though she is a mixed race woman, and the officer asked the driver, “How can you be gay if you have kids?”<sup>73</sup> The officer allegedly cited the passenger for failure to wear a seatbelt even though she stated that she had removed it after they stopped at the gas station.<sup>74</sup> In the course of the arrest, the passenger alleged that the officer slammed her to the ground, chipped her tooth and handcuffed her so tightly that she was left with bruises.<sup>75</sup> When she asked for a female officer to search her, the male officer refused and pulled up her shirt and pulled down her pants to search her.<sup>76</sup> Once she was in the station, the passenger reported that officers laughed at her and took pictures with their cell phones while she cried in the holding cell.<sup>77</sup> All charges against her were later dismissed.<sup>78</sup>
- In 2013, a transgender woman with mental illness in Berkeley, California was killed when her friend called the police to provide mental health assistance for her.<sup>79</sup> Despite the officers’ knowledge of her mental illness, they sought out arrest warrants in the trans woman’s name rather than conducting a mental health evaluation to put her in a seventy-two hour “5150” hold.<sup>80</sup> When they found an arrest warrant with the trans woman’s birth

name, though with a description of a person 20 years older than she was, the officers proceeded to arrest her.<sup>81</sup> In the course of the arrest, six officers allegedly piled on top of her, exacerbating her mental health emergency and restricting her airways.<sup>82</sup> Despite her screaming, they continued to restrain her, until she lost consciousness.<sup>83</sup> The complaint alleged that the officers called her “it” throughout the incident.<sup>84</sup> She died that day.

- In 2013, the Boston Police Department settled a case against them with a transgender woman.<sup>85</sup> She alleged that the police arrested her for using the women’s restroom at a homeless shelter where she was staying.<sup>86</sup> After taking her to the police station, she alleged that the officers forced her to remove her shirt and bra and jump up and down to humiliate and laugh at her.<sup>87</sup>
- In 2013, three gay men reported that they were attacked by NYPD officers in Brooklyn, New York.<sup>88</sup> A witness reported that the officers called one of them “faggot” as they beat him.<sup>89</sup> The man’s injuries had to be treated at a hospital.<sup>90</sup>
- In 2013, a transgender Arizona State University student and activist was arrested in Phoenix, Arizona for “manifesting prostitution” after she accepted a ride to a bar from two undercover police officers.<sup>91</sup> She is not a sex worker, but reports that police have suspected her of engaging in sex work on four separate occasions while she was walking down the sidewalk or having conversations with friends.<sup>92</sup>
- In 2011, a Philadelphia man filed complaints based on mistreatment he and his partner experienced when police were called during a domestic dispute.<sup>93</sup> During their visit to the home, police began beating the man’s partner, repeatedly calling him “nigger” and “faggot.”<sup>94</sup> When the man complained of pain due to being handcuffed, the officers said to him, “Shut up, you pussy faggot,” and “Let me hear you squeal, faggot.”<sup>95</sup> Both men had to be treated at hospitals for their injuries.<sup>96</sup>
- In 2011, a gay Latino man was stopped for a traffic offense in Oakland, California, when the arresting officer noticed his pink socks, which he called “faggot socks,” and slammed the man’s ankle in the car door.<sup>97</sup> The man required medical treatment for his injury.
- In 2009, a transgender woman was arrested by the NYPD for using her father’s discount subway card.<sup>98</sup> Officers asked her “whether she had a penis or a vagina” and, she was chained to a fence for 28 hours.<sup>99</sup> They repeatedly called her “faggot” and “transvestite” and refused to let her go to the bathroom.<sup>100</sup>
- In 2009, police entered a gay bar in Fort Worth, Texas, for a planned inspection, and began forcibly arresting men for intoxication.<sup>101</sup> One patron suffered brain hemorrhaging as a result of being attacked by the officers. A witness said that officers “choked [the man’s] head back, pulled him back and then slammed him against the wall.”<sup>102</sup> The city reached a \$400,000 settlement with the man in 2011.<sup>103</sup>
- In 2009, several LGBT youth reported in interviews conducted by NGOs and legal groups that they had been discriminated against and harassed by the police because of their sexual orientation or gender identity. One youth reported that after he told police

that he was bisexual during an arrest, they repeatedly told him that he was “sick and disgusting.”<sup>104</sup> Two interviewees described situations in which they were approached by police while walking down the street because they were assumed to be sex workers.<sup>105</sup>

- In 2009, police officers allegedly physically attacked two lesbians outside of a club in Brooklyn, New York.<sup>106</sup> The women reported that the police had gone to the bar to break up a fight, and threw them to the ground and began hitting them, even though they were not involved in the fight. The women and a witness reported that the police “beat them with nightsticks while shouting anti-lesbian epithets and taunts.”<sup>107</sup> One of the women was later treated for her injuries at a hospital.
- In a 2007 case, a gay man brought suit against the Fresno Police Department (California) for assaulting him prior to his arrest on suspicion of possessing drugs.<sup>108</sup> According to the man, one officer said to him, “I know where you faggots keep your shit” and then performed an anal cavity search for drugs.<sup>109</sup> In the course of the search, he ruptured the lining of the man’s rectum.<sup>110</sup> The man began to “bleed profusely” and was taken to a medical center for treatment.<sup>111</sup>
- In 2003, a Native American transgender woman was raped in an alley by two officers of the Los Angeles Police Department.<sup>112</sup> During the encounter, the officer yelled at her, “You fucking whore, you fucking faggot,” and slapped her across the face.<sup>113</sup> Before they left, the second officer told her, “That’s what you deserve.”<sup>114</sup>
- In 2003, the Wayne County Sheriff’s Department (Michigan) raided a private club in Detroit whose members were primarily African-American gay men, lesbians, and transgender women.<sup>115</sup> Between 50 and 100 officers entered the club and “[o]ver 350 people...were handcuffed, forced to lie down on the floor, and detained for up to twelve hours, left to ‘sit in their and others’ urine and waste.’ Some were kicked in the head and back, slammed into walls, and verbally abused. Officers on the scene were heard saying things like ‘it’s a bunch of fags’ and ‘those fags in here make me sick.’”<sup>116</sup>
- In 2002, when a transgender woman in Sacramento, California was arrested, “she was pulled from [her] truck and thrown to the ground,” beaten, pepper-sprayed, and dragged across hot pavement by deputies.<sup>117</sup> Later, when she was returned to her cell after being treated for injuries caused when she was raped by another inmate, staff “taunted [her]...with accusations that she enjoyed being the victim of a sexual assault.”<sup>118</sup> The victim brought suit against the Sacramento Sheriff’s Department, which settled in 2006.<sup>119</sup>

As these studies and examples indicate, widespread discrimination on the basis of sexual orientation and gender identity against law enforcement personnel and against LGBT community members by law enforcement continues to the present day.

## **II. Sexual Orientation and Gender Identity Discrimination Against LGBT People by Law Enforcement Adversely Impacts Effective Policing**

For decades, the LGBT community has been subjected to entrapment, discrimination, harassment, and violence by law enforcement. Recent research indicates that such mistreatment of LGB people, and especially transgender people, is still ongoing. Tensions between law enforcement and the LGBT community can hinder effective policing in several ways.

First, when communities are persistently targeted, profiled and harassed by law enforcement, trust will be lost between the police and the communities they are supposed to protect. For example, a recent study asked gay and bisexual identified men to report how helpful they thought that police would be if called in response to an intimate partner violence incident involving gay or bisexual men. Forty percent of respondents indicated that they believed that contacting the police in such a situation would be unhelpful or very unhelpful, and 59% reported that police would be less helpful to gay or bisexual men experiencing intimate partner violence than to heterosexual women.<sup>120</sup>

Second, lack of trust due to fear of discrimination, harassment, and violence likely discourages LGBT citizens from working in cooperation with law enforcement. Community willingness to engage with law enforcement is helpful to effective policing, which may seek to combat crime and improve the criminal justice system by involving the community in crime control strategies. For example, the federal Community Oriented Policing Services (COPS) grant program has stated goals of “establish[ing] and implement[ing] innovative programs to increase and enhance proactive crime control and prevention programs involving law enforcement officers and young persons in the community,”<sup>121</sup> and developing “programs designed to increase the level of access to the criminal justice system enjoyed by victims, witnesses and ordinary citizens.”<sup>122</sup> Such innovative programming and access to the justice system are hindered when law enforcement is unable to build trust within the communities it serves.

Third, when communities lack trust and positive interactions with law enforcement, individuals within those communities will likely not come forward to report crimes that they have been a victim of. For example, a 2013 report on hate violence against LGBTQ and HIV-affected communities found that only 56% of survivors reported such incidents to the police.<sup>123</sup> A 2012 report on intimate partner violence in the LGBTQ and HIV-affected communities found that of the 17% of intimate partner violence survivors who reported information about interacting with the police, 54% said that they reported such incidents to law enforcement.<sup>124</sup> This both prevents the effectiveness of policing and puts individuals and communities at risk of continued victimization.

Fourth, law enforcement departments that are hostile towards LGBT citizens are most likely unable to meet the needs of the members of their communities, even if individuals do report crimes to the police. For example, research has found that police officers often will not understand how to react to reports of intimate partner violence between same-sex couples and will therefore arrest the partner who is surviving the abuse or both individuals. A 2012 national report on intimate partner violence in LGBTQ and HIV-affected communities found that among those people who reported intimate partner violence to the police, 28% of the time, the survivor

was arrested instead of the abuser.<sup>125</sup> Officers also will sometimes arrest survivors of homophobic or transphobic assaults rather than the attackers. For example, in 2011, CeCe McDonald used deadly force to defend herself against transphobic attacks against her and her friends.<sup>126</sup> Despite having injuries that may have demonstrated that she was acting in self-defense, she was arrested on the scene and charged with two counts of second degree murder.<sup>127</sup> Additionally, as mentioned above, over a third of crime victims in Lambda Legal's survey of LGBT people and people living with HIV reported that their complaints to the police were not fully addressed.<sup>128</sup> When police officers exhibit explicit or underlying homophobia and transphobia, they will not be able to support and help the communities they are supposed to protect and serve.

### **III. Recommendations**

#### **A. State and Local Law Enforcement Actions**

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

Statewide and local law enforcement and corrections departments should consider implementing their own internal nondiscrimination and nonharassment policies that protect citizens based on their sexual orientation and gender identity. Several major metropolitan police forces have already taken this step in establishing bias-based profiling prohibitions that include sexual orientation and gender identity, including the Chicago Police Department,<sup>129</sup> the Los Angeles Police Department,<sup>130</sup> New York City Police Department,<sup>131</sup> the Phoenix Police Department,<sup>132</sup> and the San Francisco Police Department.<sup>133</sup> The New York City Council has also passed legislation prohibiting bias-based profiling that creates the first enforceable ban on profiling based on sexual orientation and gender identity.<sup>134</sup>

Additionally, several major metropolitan police departments have set internal policies regarding police interactions with transgender community members. Such policies establish standards for using preferred pronouns as requested by the individual, transporting and housing people based on safety and gender identity, and requirements that personal searches be conducted only when appropriate, which in some versions includes a requirement that physical searches never be conducted for the purpose of assigning gender based on anatomical features. Boston,<sup>135</sup> Chicago,<sup>136</sup> Los Angeles,<sup>137</sup> Miami,<sup>138</sup> New York City,<sup>139</sup> Philadelphia,<sup>140</sup> and the District of Columbia<sup>141</sup> all have such policies in place. 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. Additionally, many of these policies were informed by substantial input from community organizations and individuals directly impacted by discriminatory policing, making them more likely to effectively address the harms that those individuals experience. This could lead to more LGBT people working with police forces and higher community collaboration and acceptance from LGBT people.

Consistent enforcement of comprehensive law enforcement policies against sexual harassment and sexual assault would also likely protect many LGB and especially transgender people. A 2012 report examining the interactions of law enforcement with Latina transgender women in Los Angeles County found that nearly one in four (24%) reported that they had been sexually assaulted by law enforcement.<sup>142</sup> The International Association of Chiefs of Police

executive guide to addressing sexual offenses and misconduct by law enforcement provides comprehensive guidance on the development and implementation of such policies, including: taking specific measures to foster professional behavior; implementing monitoring and early intervention systems to identify and stop troubling patterns of behavior; establishing a structured, comprehensive, accessible, fair, thorough and transparent process for accepting, documenting, investigating and responding to reported incidents; protecting from retaliation any employees who report allegations; and enforcing disciplinary action against employees who fail to report sexual misconduct of which they are aware.<sup>143</sup> Additionally, the Prison Rape Elimination Act (PREA) includes prohibitions against sexual assault in all lockup facilities, which extends beyond prisons to “holding cells...[p]rimarily used for the temporary confinement of individuals who have recently been arrested, detained, or are being transferred to or from a court, jail, prison, or other agency.”<sup>144</sup> Those PREA mandates apply with equal force to police officers as they do to corrections officers. Establishment of policies in line with those published by the International Association of Chiefs of Police and enforcement of PREA lockup prohibitions could provide protection to members of all communities, but could be especially helpful to LGBT people who interact with the police.

## **2. Trainings**

Police department trainings focused on reducing discrimination and harassment of community members based on sexual orientation and gender identity would likely increase tolerance and respect for LGBT individuals. Such trainings can include general sensitivity and diversity issues or can focus on more specific issues that impact LGBT individuals and communities differently, such as hate violence or intimate partner violence. Such trainings should be a standard part of all police academy education or continuing officer education and could also be implemented specifically when they may be especially salient, like around the time of Pride Parades. Police Departments in Chicago,<sup>145</sup> Philadelphia,<sup>146</sup> Santa Barbara,<sup>147</sup> and Michigan<sup>148</sup> have implemented sexual orientation and gender identity specific trainings in a variety of contexts. 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 all LGBT individuals. Therefore, these trainings could have a double impact by both improving the department’s ability to assist LGBT victims of crimes and improving the work environment for LGBT and non-LGBT police officers alike.

## **3. Outreach and 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>149</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>150</sup> In the year following the appointment of LGBT liaison officers, the reporting of hate crimes against LGBT people in Washington, D.C. doubled.<sup>151</sup> Additionally, the GLLU has been credited with raising awareness of same-sex intimate partner violence in the city.<sup>152</sup> In 2000, just before the unit was created, no cases of same-sex intimate partner violence had been reported.<sup>153</sup> As of



2012, the department had investigated 460 such cases.<sup>154</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>155</sup> Atlanta,<sup>156</sup> Dallas,<sup>157</sup> Cincinnati,<sup>158</sup> Boise,<sup>159</sup> and Fargo, Minnesota,<sup>160</sup> and New York City.<sup>161</sup> These examples of direct 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 improve policing and increase overall safety.

#### **4. Citizens Complaint Review Boards**

A 2014 report on a national survey of 2,376 LGBT people and people living with HIV found that 205 respondents reported that they had filed a complaint about police misconduct in the past five years.<sup>162</sup> Of those, 71% said that their complaint was not fully addressed by those they reported it to.<sup>163</sup> Independent citizen complaint boards run by local agencies separate from the police or by community volunteers offer the opportunity for unbiased review of complaints filed against law enforcement agents and agencies. Such independent boards, especially if given necessary investigative powers, including subpoena power, the resources and mandate to investigate and document patterns of discriminatory policing and abuse, along with proper guidelines, trainings, and representation from the LGBT community, are more likely to be fully responsive to complaints of profiling, discrimination or harassment because of sexual orientation or gender identity. Additionally, if complainants were given the option to identify, on an anonymous, voluntary, and informed basis whether they believe their sexual orientation and gender identity played a role in their interaction with police, such data could be analyzed to determine whether there are patterns of abuse or harassment against LGBT community members. Independent review boards are also likely to have greater community buy-in and higher levels of reporting of police misconduct, because they are separate entities from the police departments themselves. Many cities throughout the nation already have independent review boards in place, including Charlotte,<sup>164</sup> Cleveland,<sup>165</sup> New York City,<sup>166</sup> Oakland,<sup>167</sup> and San Diego.<sup>168</sup> By implementing these boards, local communities demonstrate their dedication to maintaining proper standards in their police departments and improving relations between the community and law enforcement.

#### **5. Prohibiting Discrimination Against Law Enforcement Personnel**

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... prostitution, hate and bias crimes, bullying and gay youth homelessness when openly lesbian and gay officers are integrated into policing.”<sup>169</sup>

The DOJ indicated that LGBT diversity is important to policing when it entered into a consent decree with the Los Angeles Police Department. The consent decree required the LAPD

to “mak[e] greater use of community-oriented policing training models that take into account factors including...cultural diversity, which shall include training on interactions with persons of different...sexual orientations” and to “continue to prohibit discriminatory conduct on the basis of...sexual orientation.”<sup>170</sup>

## **B. Federal Level Protections**

### **1. Nondiscrimination Requirements in 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>171</sup> For example, the COPS Hiring Program provides funds to hire law enforcement officers that specialize in community policing;<sup>172</sup> and the Community Policing Development program provides funds for development of effective community policing strategies.<sup>173</sup> Through its grant programs, the COPS Office has “provided funding to more than 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>174</sup> From 1993 to 2010, COPS programs funded approximately 120,000 police officers.<sup>175</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>176</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 community policing policies and practices in police forces throughout the nation. This would likely not only lead to better treatment of LGBT community members but also greater safety and community buy-in from LGBT people in the communities that are policed.

### **2. Enforcement of Federal Bans on Bias-Based Profiling**

In December 2014, DOJ released new guidance on bias based profiling that expanded the definition of profiling to include a variety of characteristics other than race, including sexual orientation and gender identity.<sup>177</sup> Such a ban on bias based profiling applies to federal Department of Justice law enforcement agencies, such as the FBI and the Drug Enforcement Administration. Enforcing such federal prohibitions on this new more inclusive bias based profiling could not only reduce disproportionate harassment and profiling of LGBT communities by federal police agencies, but it could also signal to state and local agencies that such profiling tactics are not acceptable in law enforcement in general.

The End Racial Profiling Act seeks to expand the prohibition of racial profiling to include requirements that state and local law enforcement agencies that apply for grants under the Edward Byrne Memorial Justice Assistance Grant Program and the Cops on the Beat Program certify that they both have policies prohibiting racial profiling and that they have eliminated any practices that condone or encourage such profiling.<sup>178</sup> It also would authorize grants for data collection related to racial profiling and for establishment of best practices to eliminate it.<sup>179</sup> Passage of this act with the explicit inclusion of sexual orientation and gender identity in the definition of racial profiling would expand the current Department of Justice Guidance and

impact state and local law enforcement agencies across the country, expanding the prohibitions against profiling and protecting LGBT people, particularly LGBT people of color and transgender individuals, from being stopped and profiled by police simply because of their appearance.

### **3. Increased Data Collection on Police Searches and Seizures**

Federal administrative agencies could include questions about sexual orientation and gender identity in surveys that provide information about citizens' interactions with police. For example, the National Crime Victimization Survey (NCVS)<sup>180</sup> and its supplemental survey, the Police-Public Contact Survey (PPCS),<sup>181</sup> together provide information about citizens who have had contact with law enforcement and the circumstances of that contact. Adding questions about sexual orientation and gender identity to the demographic section of the NCVS would allow for data collected by the PPCS to be analyzed according to the respondents' LGBT-status. These analyses could provide important information about where and what types of interventions are needed to reduce discrimination, harassment, and profiling of LGBT communities by police

#### **C. Enforcing Existing Legal Protections**

Statutes in twenty-one states<sup>182</sup> and many local ordinances in cities and counties across the country<sup>183</sup> explicitly prohibit discrimination on the basis of sexual orientation and/or gender identity. These statutes and ordinances protect LGBT people from various forms of discrimination, such as discrimination in employment, and in access to public accommodations and government services. For example, statutes in California<sup>184</sup> and local ordinances in places like Albany, New York<sup>185</sup> prohibit sexual orientation and gender identity discrimination in employment, public accommodations and government services, in addition to other areas such as housing and education. However, the extent to which such laws are enforced varies from place to place. Many localities with inclusive nondiscrimination ordinances lack the funding or mechanisms to uphold the law. Some refer complaints to state nondiscrimination agencies, even if the state law does not prohibit such discrimination.<sup>186</sup> Additionally, some laws exclude police departments from the scope of their coverage. Even though such laws and ordinances exist, consistent enforcement of existing laws could provide greater protection to many LGBT individuals and communities.

#### **D. Adopting New Legal Protections**

Twenty-nine states do not explicitly prohibit discrimination based on sexual orientation by state statute and 32 states do not explicitly prohibit discrimination based on gender identity by state statute.<sup>187</sup> Absent federal protections, statutes could be passed in these states to extend nondiscrimination protections for people across the country. Additionally, ordinances prohibiting sexual orientation and gender identity discrimination can be passed at the local level. Such statutes and ordinances can be comprehensive in terms of the types of discrimination prohibited, including discrimination in public and private sector employment, government services and activities, education, and public accommodations, explicitly including local law enforcement agencies. Prohibiting discrimination in these areas will reduce discrimination and harassment against both LGBT law enforcement officers and LGBT community members.

#### **IV. Conclusion**

Research indicates that LGBT individuals and communities face profiling, discrimination, and harassment at the hands of law enforcement. While many states and localities have set up their own nondiscrimination laws, there is no explicit nationwide comprehensive nondiscrimination law that protects members of the public from police discrimination based on actual or perceived sexual orientation or gender identity. The legal protections and policies recommended in this paper would ensure that LGBT individuals and communities would be protected from such discrimination and harassment, thus encouraging greater community engagement and cooperation with law enforcement, and allowing such agencies to better protect the communities they serve.

## Endnotes

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<sup>1</sup> GARY J. GATES, THE WILLIAMS INST. UNIV. OF CAL. L.A. SCH. OF LAW, LGBT DEMOGRAPHICS: COMPARISONS AMONG POPULATION-BASED SURVEYS (2014), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/lgbt-demogs-sep-2014.pdf>. The Gallup data do not allow for separate estimates or analyses of the lesbian, gay, and bisexual population from the transgender population. Gates' analysis of multiple studies estimating the LGBT population in the United States suggests that approximately 0.3% of adults in the U.S. identify as transgender and 3.5% as lesbian, gay, or bisexual. See GARY J. GATES, THE WILLIAMS INST. UNIV. OF CAL. L.A. SCH. OF LAW, HOW MANY PEOPLE ARE LESBIAN, GAY, BISEXUAL, AND TRANSGENDER? (2011), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Gates-How-Many-People-LGBT-Apr-2011.pdf>.

<sup>2</sup> U.S. CENSUS BUREAU, 2009-2013 5-YEAR AMERICAN COMMUNITY SURVEY, (2013), available at <http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=CF>.

<sup>3</sup> Gary J. Gates, *LGBT Identity: A Demographer's Perspective*, 45 LOY. L.A. L. REV. 693, 712 (2012), available at <http://digitalcommons.lmu.edu/llr/vol45/iss3/2>.

<sup>4</sup> Gary J. Gates & Frank Newport, *Special Report: 3.4% of U.S. Adults Identify as LGBT*, GALLUP (Oct. 18, 2012), <http://www.gallup.com/poll/158066/special-report-adults-identify-lgbt.aspx>; Gary J. Gates & Frank Newport, *LGBT Percentage Highest in D.C., Lowest in North Dakota*, GALLUP (Feb. 15, 2013), <http://www.gallup.com/poll/160517/lgbt-percentage-highest-lowest-north-dakota.aspx>. The analyses were of polling data based on Gallup Daily Tracking Survey responses from more than 121,000 adults in the United States from June through September 2012 plus 85,000 more respondents from October through December 2012.

<sup>5</sup> Gates & Newport, *LGBT Percentage Highest in D.C., Lowest in North Dakota*, *supra* note 4.

<sup>6</sup> GARY J. GATES & ABIGAIL M. COOKE, THE WILLIAMS INST. UNIV. OF CAL. L.A. SCH. OF LAW, UNITED STATES, US CENSUS SNAPSHOT 2010 (2011), available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Census2010Snapshot-US-v2.pdf>.

<sup>7</sup> Gary J. Gates & Frank Newport, *Special Report: 3.4% of U.S. Adults Identify as LGBT*, *supra* note 4. The racial and ethnic identifications used here (Non-Hispanic White, Black, Hispanic, Asian) are those used in the Gallup report.

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

<sup>9</sup> RANDY ALBELDA, MV LEE BADGETT, ALYSSA SCHNEEBAUM, & GARY J. GATES, THE WILLIAMS INST. UNIV. OF CAL. L.A. SCH. OF LAW, POVERTY IN THE LESBIAN, GAY, AND BISEXUAL COMMUNITY ii (2009), available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Albelda-Badgett-Schneebaum-Gates-LGB-Poverty-Report-March-2009.pdf>.

<sup>10</sup> *Supreme Court Strikes Down Texas Law Banning Sodomy*, N.Y. TIMES (June 26, 2003), available at <http://www.nytimes.com/2003/06/26/politics/26WIRE-SODO.html>. Illinois was the first state to repeal its sodomy law in 1961. *History of Sodomy Laws and the Strategy that Led Up to Today's Decision*, ACLU (June 16, 2013), [http://www.aclu.org/lgbt-rights\\_hiv-aids/history-sodomy-laws-and-strategy-led-todays-decision](http://www.aclu.org/lgbt-rights_hiv-aids/history-sodomy-laws-and-strategy-led-todays-decision).

<sup>11</sup> ALA. CODE § 13A-6-65(a)(3) (2003); ARK. CODE ANN. § 5-14-122 (2003); FLA. STAT. ANN. § 800.02 (West 2003); GA. CODE ANN. § 16-6-2 (West 2003); IDAHO CODE ANN. § 18-6606 (West 2003); KAN. STAT. ANN. § 21-3505 (West 2003); KY. REV. STATE. ANN. § 510.100 (West 2003); LA. REV. STATE. ANN. § 14:89 (2003); MD. CODE ANN. CRIM. LAW § 3-321 (West 2003); MASS. GEN. LAWS ANN. ch. 272 §§ 34, 35 (West 2003); MICH. COMP. LAWS ANN. § 750.158 (West 2003); MINN. STAT. ANN. § 609.293 (West 2003); MISS. CODE ANN. § 97-29-59 (West 2003); MO. ANN. STAT. § 566.09 (West 2003); MONT. CODE ANN. § 45-5-505 (West 2003); N.C. GEN. STAT. ANN. § 14-177 (West 2003); OKLA. STAT. ANN. tit. 21 § 886 (West 2003); S.C. CODE ANN. § 16-15-120 (2003); TEX. PENAL CODE ANN. § 21.06 (West 2003); UTAH CODE ANN. § 76-5-403 (West 2003); VA. CODE ANN. § 18.2-361 (West 2003).

<sup>12</sup> 539 U.S. 558 (2003).

<sup>13</sup> *Supreme Court Strikes Down Texas Law Banning Sodomy*, *supra* note 10.

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<sup>14</sup> ALA. CODE § 13A-6-65(a)(3) (2014); FLA. STAT. ANN. § 800.02 (West 2014); GA. CODE ANN. § 16-6-2 (West 2014); IDAHO CODE ANN. § 18-6606 (West 2014); KY. REV. STATE. ANN. § 510.100 (West 2014); LA. REV. STATE. ANN. § 14:89 (2014); MD. CODE ANN. CRIM. LAW § 3-321 (West 2014); MASS. GEN. LAWS ANN. ch. 272 §§ 34, 35 (West 2014); MICH. COMP. LAWS ANN. § 750.158 (West 2014); MINN. STAT. ANN. § 609.293 (West 2014); MISS. CODE ANN. § 97-29-59 (West 2014); N.C. GEN. STAT. ANN. § 14-177 (West 2014); OKLA. STAT. ANN. tit. 21 § 886 (West 2014); S.C. CODE ANN. § 16-15-120 (2014); TEX. PENAL CODE ANN. § 21.06 (West 2014); UTAH CODE ANN. § 76-5-403 (West 2014).

<sup>15</sup> *E.g.*, Ken Cuccinelli: Attorney General of the Tea Party, PEOPLE FOR THE AMERICAN WAY, <http://www.pfaw.org/rww-in-focus/ken-cuccinelli-attorney-general-tea-party> (last visited Sept. 30, 2013).

<sup>16</sup> *See, e.g.*, Massachusetts v. United States Dept of Health & Human Servs., 682 F.3d 1, 11 (1st Cir. 2012) (“[G]ays and lesbians have long been the subject of discrimination.”), petitions for cert. pending, Nos. 12-13 (filed June 29, 2012), 12-15 (filed July 3, 2012), and 12-97 (filed July 20, 2012); High Tech Gays v. Defense Indus. Sec. Clearance Office, 895 F.2d 563, 573 (9th Cir. 1990) (“[W]e do agree that homosexuals have suffered a history of discrimination.”); BenShalom v. Marsh, 881 F.2d 454, 465 (7th Cir. 1989) (“Homosexuals have suffered a history of discrimination and still do, though possibly now in less degree.”), cert. denied, 494 U.S. 1004 (1990).

<sup>17</sup> Public Statute Laws of the State of Connecticut, 1808 tit. LXVI, ch. 1, § 2, 294-295 & n.1 (enacted 1642; rev. 1750).

<sup>18</sup> *Lawrence*, 539 U.S. at 578.

<sup>19</sup> *Id.* at 575.

<sup>20</sup> Employment of Homosexuals and Other Sex Perverts in Government, Interim Report submitted to the Committee by its Sub-committee on Investigations pursuant to S. Res. 280, S. Doc. No. 241, 81st Cong., 2d Sess. 8 (1950).

<sup>21</sup> *See, e.g., id.* at 6-8; 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 5-7 (2009), available at <http://williamsinstitute.law.ucla.edu/research/workplace/documenting-discrimination-on-the-basis-of-sexual-orientation-and-gender-identity-in-state-employment/>.

<sup>22</sup> SEARS, HUNTER & MALLORY, *supra* note 21 at 5-34.

<sup>23</sup> *See* FBI, *Incidents, Offenses, Victims, and Known Offenders by Bias Motivation*, HATE CRIME STATISTICS 2011, <http://www.fbi.gov/about-us/cjis/ucr/hate-crime/2011/tables/table-1> (last visited Dec. 10, 2014) (hate crimes motivated by victim’s sexual orientation constituted second highest category reported with 1508 offenses or over 20% of total).

<sup>24</sup> Compare *id.* with FBI, *Incidents, Offenses, Victims, and Known Offenders by Bias Motivation*, HATE CRIME STATISTICS 2007, [http://www2.fbi.gov/ucr/hc2007/table\\_01.htm](http://www2.fbi.gov/ucr/hc2007/table_01.htm) (last visited Dec. 10, 2014)

<sup>25</sup> *See* William N. Eskridge, Jr., *Privacy Jurisprudence and the Apartheid of the Closet, 1946-1961*, 24 FLA. ST. U. L. REV. 703, 761-766 (1997).

<sup>26</sup> *See, e.g.*, Pryor v. Municipal Court, 599 P.2d 636, 644 (Cal. 1979); Steven A. Rosen, *Police Harassment of Homosexual Women and Men in New York City, 1960-1980*, 12 COLUM. HUM. RTS. L. REV. 159, 162-164 (1980); FLORIDA STATE LEGISLATIVE INVESTIGATION COMMITTEE, REPORT: HOMOSEXUALITY AND CITIZENSHIP IN FLORIDA 14 (1964).

<sup>27</sup> Sunnive Brydum October, *Does the Stonewall Commemorative Plaque Erase Trans People's Role in Riots?*, ADVOCATE.COM, Oct. 24 2013, <http://www.advocate.com/politics/transgender/2013/10/24/does-stonewall-commemorative-plaque-erase-trans-peoples-role-riots>.

<sup>28</sup> James C. McKinley, Jr., *A Raid at a Club in Texas Leaves a Man in the Hospital and Gay Advocates Angry*, N.Y. TIMES, July 4, 2009, [http://www.nytimes.com/2009/07/05/us/05texas.html?ref=us&\\_r=0](http://www.nytimes.com/2009/07/05/us/05texas.html?ref=us&_r=0); Omar Villafranca, *TABC Raids Dallas Gay Club: Second TABC raid of a gay club in DFW*, NBCDFW.COM, July 15, 2009,

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<http://www.nbcdfw.com/news/local/TABC-Raids-Dallas-Gay-Club.html>; Bianca Phillips, *Backstreet Owner Arrested; Club Shut Down*, MEMPHIS FLYER, Sept. 8, 2009, <http://www.memphisflyer.com/MemphisGaydar/archives/2009/09/08/backstreet-owner-arrested-club-shut-down>; *Six Police Officers Fired, Nine Disciplined Over Botched Raid of Atlanta Gay Bar*, LGBTQ NATION, July 10, 2011, <http://www.lgbtqnation.com/2011/07/six-police-officers-fired-nine-disciplined-over-botched-raid-of-atlanta-gay-bar/>.

<sup>29</sup> SEARS, HUNTER & MALLORY, *supra* note 21 at 5-1 to 5-18.

<sup>30</sup> *Id.* at 5-18.

<sup>31</sup> *Id.* at 5-49.

<sup>32</sup> *See, e.g.*, Childers v. Dallas Police Dep't, 513 F. Supp. 143 (N.D. Tex. 1981) (challenging Texas's policy which expressly excluded LGBT applicants from officer positions).

<sup>33</sup> *E.g.*, Padula v. Webster, 822 F.2d 97 (D.C. Cir. 1987); Todd v. Navarro, 698 F. Supp. 871 (S.D. Fla. 1988); Childers v. Dallas Police Dep't, 513 F. Supp. 134 (N.D. Tex. 1981); City of Dallas v. England, 846 S.W.2d 957 (Tex. App. 1993).

<sup>34</sup> Lambda Legal, *Police, PROTECTED AND SERVED?*, <http://www.lambdalegal.org/protected-and-served-police> (last visited June 19, 2014).

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

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

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

<sup>39</sup> NAT'L COAL. OF ANTI-VIOLENCE PROGRAMS, LESBIAN, GAY, BISEXUAL, TRANSGENDER, QUEER AND HIV-AFFECTED HATE VIOLENCE IN 2012 39 (2013), [http://www.avp.org/storage/documents/ncavp\\_2012\\_hvreport\\_final.pdf](http://www.avp.org/storage/documents/ncavp_2012_hvreport_final.pdf).

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at 46-47.

<sup>42</sup> *Id.* at 38.

<sup>43</sup> *Id.* at 15.

<sup>44</sup> CENTER FOR CONSTITUTIONAL RIGHTS, STOP AND FRISK: THE HUMAN IMPACT 11 (2012), <http://stopandfrisk.org/the-human-impact-report.pdf>.

<sup>45</sup> *Id.* at 12.

<sup>46</sup> MAKE THE ROAD NEW YORK, TRANSGRESSIVE POLICING: POLICE ABUSE OF LGBTQ COMMUNITIES OF COLOR IN JACKSON HEIGHTS (2012), [http://www.maketheroad.org/pix\\_reports/MRNY\\_Transgressive\\_Policing\\_Full\\_Report\\_10.23.12B.pdf](http://www.maketheroad.org/pix_reports/MRNY_Transgressive_Policing_Full_Report_10.23.12B.pdf).

<sup>47</sup> *Id.* at 4.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* at 4-5.

<sup>50</sup> *Id.* at 5.

<sup>51</sup> FRANK H. GALVAN & MOHSEN BAZARGAN, INTERACTIONS OF LATINA TRANSGENDER WOMEN WITH LAW ENFORCEMENT 1 (2012), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Galvan-Bazargan-Interactions-April-2012.pdf>.

<sup>52</sup> *Id.* at 8.

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<sup>53</sup> CIVIL RIGHTS DIV., U.S. DEP'T OF JUSTICE, INVESTIGATION OF THE NEW ORLEANS POLICE DEP'T ix (2011), [http://www.justice.gov/crt/about/spl/nopd\\_report.pdf](http://www.justice.gov/crt/about/spl/nopd_report.pdf).

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