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**Documenting Discrimination on the Basis of Sexual Orientation
and Gender Identity in State Employment**

Title

Maryland - Sexual Orientation and Gender Identity Law and Documentation of
Discrimination

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MEMORANDUM

From: Williams Institute
Date: September 2009
RE: **Maryland – Sexual Orientation and Gender Identity Law and Documentation of Discrimination**

I. OVERVIEW

In 2001, Maryland enacted legislation that prohibits discrimination against gays, lesbians, and bisexuals in employment, housing, and public accommodations.¹ The laws of Montgomery County and Baltimore City also include gender identity as a protected class. Similar legislation has been proposed in the Maryland legislature, but has not passed.²

Prior to the passage of Maryland's nondiscrimination law, in October 2000 Governor Glendening created the Special Commission to Study Sexual Orientation Discrimination in Maryland, motivated by the death of his brother, who served for many years in the armed forces and had lived "in the closet."³ The Special Commission held hearings regarding sexual orientation discrimination. Of the 113 oral testimonies at the hearings, 87 were in favor of passage and 26 were opposed. The testimony of proponents of the bills tended to focus on personal stories of discrimination as well as a desire to simply work on "a level playing field."⁴

Chairman of the Special Commission, Geoffrey L. Grief, wrote an article about the hearings in which he recounted:

The most common complaint dealt with employment discrimination. Those testifying discussed fearing that someone at work would discover they were gay, and they would lose their job. For a number of those testifying, this had happened. They had been 'let go' because their employers thought 'they would be happier somewhere else.' One man, who had achieved partner in his law firm, was told it was time to 'move-on, no one here wants to work with a faggot.' Others believed they had been hired at lower salaries or had not received raises because they were

¹ Geoffrey Greif, *When a Social Worker Becomes a Voluntary Commissioner and Calls on the Code of Ethics*, NAT'L ASSOC. OF SOCIAL WORKERS, Oct. 30, 2001, available at <http://bit.ly/1gkdwa>. See MD. CODE ANN. art 49B (2008).

² Md. S.B. 976; Md. H.B. 1598.

³ Geoffrey Greif & Daphne McClellan, *Being Heard on Sexual Orientation: An Analysis of Testimonies at Public Hearings on an Anti-Discrimination Bill*, 8 J. HUMAN BEH. IN SOC. ENVIRON. 2,3 (2003).

⁴ *Id.*

gay. . . . Several people testified about the lack of domestic partner benefits, which in effect meant that they worked for less compensation than work colleagues with legally recognized spouses. Some had lost jobs that were very meaningful to them as well as financially successful. Others remained on the job but were consumed with fear about what would happen if someone found out they were not heterosexual. The net effect for those in this category was that their work lives were seriously compromised.⁵

Documented examples of employment discrimination on the basis of sexual orientation and gender identity by state and local governments in Maryland include:

- A public school teacher who encountered discrimination by the State of Maryland at every step in his career. First, while a student and student teacher at Penn State University, the teacher was suspended for "public acknowledgement of homosexuality." A state court ordered that he be reinstated and he then finished his degree. Next when he applied for a teaching license Penn State officials differed as to his qualifications and forwarded his application to the Pennsylvania Secretary of Education without recommendation. A hearing about whether he should get his certification resulted in a tie because of a dispute about whether he possessed the requisite "good moral character." The Pennsylvania Secretary of Education broke the tie in his favor, but unfortunately did so at a well-publicized press conference. The teacher had already been hired in Montgomery County, but when the County learned that he was gay he was transferred to a non-teaching position. A district court upheld the transfer, holding that while homosexuality *per se* would not justify transfer or dismissal, the teacher's homosexuality suggested a negative effect on his teaching ability, and his actions in talking to the media further had negative effects on the educational process. On appeal, the Fourth Circuit found that his public discussion was protected by the First Amendment, but affirmed the lower court because the teacher had failed to disclose on his teaching application to Montgomery County his affiliation with an LGBT student organization at Penn State -- an affiliation, which had he disclosed, would have kept the Board, by its own admission, from hiring him in the first place.⁶ Acanfora v. Bd. of Educ. of Montgomery County, 491 F. 2d 498 (1974). In 2008, twenty-four years after the Acanfora case, Maryland passed a law to prohibit any discrimination based on sexual orientation in the issuance of occupational licenses.⁷

⁵ Geoffrey L. Greif & Daphne L. McClellan, *Being Heard on Sexual Orientation: An Analysis of Testimonies at Public Hearings on an Anti-Discrimination Bill*, 8 J. HUM. BEHAVIOR IN THE SOC. ENV'T, Issue 2/3 2003, at 15, 21-22.

⁶ Acanfora v. Bd. of Educ. of Montgomery County, 491 F. 2d 498 (1974).

⁷ MD. CODE ANN. Art 49B (2008) (stating that any profession licensed by the state of Maryland cannot discriminate based on sexual orientation.)

- A correctional officer in a state prison who alleged that she was harassed in the workplace by her co-officers, including being subjected to lewd comments, pornography, and sexual advances, and comments that all short haired female guards were lesbians. 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. In 2003, the officer was forced to work under a supervisor who demeaned her and ordered her and another female officer to shower together with "soap on a rope."⁸ In dismissing her complaint in 2005, a United States District court stated that while unpleasant, 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.⁹ *Ensko v. Howard County*, 2005 U.S. Dist. LEXIS 37602 (N.D. Md. 2005).
- When the Maryland sodomy law was overturned in *Williams v. Glendening*, four of the plaintiffs who brought the suit were members of the Maryland bar, including one who wanted to be a judge.¹⁰ For those plaintiffs, loss of state licensure was a real concern.¹¹ The court noted this effect of the law, and relied on the legitimacy of these fears as the basis for the plaintiffs' standing: "Since many of the plaintiffs are lawyers, they express anxiety that a conviction might jeopardize their licenses to practice law and thereby their means of earning a livelihood. . . . This court cannot say that the concerns of these plaintiffs are not real."¹² On the basis of these fears, the court held that "the Plaintiffs' concerns are real and that a justiciable issue, ripe for resolution, is presented."¹³
- In 1994, three female state police trooper candidates who were not hired as state troopers because of alleged inconsistencies in their polygraph examination questions concerning sexual orientation.¹⁴ Two of the officers had previously filed a complaint in state court requesting injunctive and declaratory relief for sexual orientation discrimination while they were at the Maryland State Police Academy. They claimed their treatment at the Academy violated the Maryland Declaration of Rights, the equal protection clause, the due process clause, and a Governor's Executive Order banning sexual orientation discrimination by the state government. The state settled with the two women, agreeing to the injunctive relief requested and offering the positions sought. They then

⁸ Complaint at 17, 18, 20, 26 & 30, *Ensko v. Howard County*, 423 F. Supp.2d 502 (D. Md. 2005) (No. 04 Civ. 03464).

⁹ *Ensko v. Howard County*, 2005 U.S. Dist. LEXIS 37602, at *12 (N.D. Md. 2005) (quoting *Faragher v. City of Boca Raton*, 524 U.S. 775, 788 (1998)).

¹⁰ No. 9803 6031, 1998 WL 965992, at *1 (Md. Cir. Ct.).

¹¹ *Id.* at *1 ("Since all are members of the Maryland Bar, they contend that a conviction would affect their ability to continue to practice law.").

¹² *Id.* at *5.

¹³ *Id.*

¹⁴ GAY & LESBIAN L. NOTES (Dec. 1995), available at <http://www.qrd.org/qrd/usa/legal/lgl/1995/12.95>.

successfully completed their training at the Academy, but were then denied positions as state troopers, along with a third lesbian candidate.

- An inmate at a Maryland state prison who alleged that he was denied a position in the prison's education department because a guard told the head of that department that he was gay and a rapist. Twice the 4th Circuit reversed dismissals of his case by a United States District Court. The first time the Court determined that the inmate had alleged facts constituting a potentially cognizable equal protection claim. The second time the Court held that the inmate had not been presented with adequate notice about presenting his case de novo to the district court after it had been dismissed by a magistrate.¹⁵ Johnson v. Knable, 934 F.2d 319 (4th Cir. 1991).

Part II of this memo discusses state and local legislation, executive orders, occupational licensing requirements, ordinances and policies involving employment discrimination based on sexual orientation and gender identity, and attempts to enact such laws and policies. Part III discusses case law, administrative complaints, and other documented examples of employment discrimination by state and local governments against LGBT people. Part IV discusses state laws and policies outside the employment context.

¹⁵ *Johnson v. Knable*, 934 F.2d 319 (4th Cir. 1991).

II. SEXUAL ORIENTATION & GENDER IDENTITY EMPLOYMENT LAW

A. State-Wide Employment Statutes

1. Scope of Statute

The Maryland non-discrimination law defines sexual orientation as “the identification of an individual as to male or female homosexuality, heterosexuality or bisexuality.” The law applies to private employers with 15 or more employees, state and local public employers, employment agencies, and labor organizations. The law exempts tax-exempt private clubs, religious organizations for work connected with its activities, and religious educational institutions. The Maryland law designates the Maryland Commission on Human Rights to handle discrimination complaints and provides for subsequent judicial enforcement by the Commission.¹⁶ The law also prohibits retaliation against complainants, witnesses, and others who assist in an investigation.

2. Enforcement & Remedies

The Maryland non-discrimination law provides a range of remedies, including cease and desist orders, affirmative action, reinstatement or hiring, with or without back pay, and “any other equitable relief” that is appropriate.

B. Attempts to Enact State Legislation

Various attempts prior to 2001 were made to pass legislation that would add sexual orientation as a protected class to Maryland’s anti-discrimination law. The first such attempt was made in 1976.¹⁷ The Maryland Commission on Human Relations introduced such a bill in the 1995 and 1996 sessions, but it was unfavorably reported by the House Commerce and Governmental Matters Committee.¹⁸ In 1997 and 1998, similar legislation was offered in the House of Delegates, but the House Judiciary Committee similarly gave an unfavorable report.¹⁹ In the 1999 session, then-Governor Glendening included HB 315 as part of his administration package, and for the first time the House Judiciary Committee gave the bill a “favorable with amendments” report.²⁰ However, that bill was not reported out of the Senate Judicial Proceedings Committee. In the 2000 session the legislation was reintroduced in the House of Delegates, but the House Judiciary Committee failed to bring it to a vote.²¹

In October 2000, Governor Glendening created the Special Commission to Study Sexual Orientation Discrimination in Maryland, motivated by the death of his brother,

¹⁶ Md. Comm’n on Hum. Rel., “About Us” Webpage, <http://www.mchr.maryland.gov/AboutUs.html> (last visited Sept. 6, 2009).

¹⁷ G.L. Greif, *Allowing Freedom to Live and Let Live*, BALT. SUN, Jan. 17, 2001, at A11.

¹⁸ *Id.*; see, e.g., Md. H.B. 67; Md. H.B. 325; Md. H.B. 413; Md. H.B. 431; Md. H.B. 1460; Md. H.B. 68.

¹⁹ See, e.g., Md. H.B. 67 (1996) (legislative history), available at <http://mlis.state.md.us/1996rs/billfile/hb0067.htm> (last visited Sept. 6, 2009); Greif, *supra* note 5.

²⁰ Md. H.B. 315 (1999) (legislative history), available at <http://mlis.state.md.us/1999rs/billfile/HB0315.htm> (last visited Sept. 6, 2009); Greif, *supra* note 1.

²¹ Md. H.B. 315.

who served for many years in the armed forces and had lived “in the closet.”²² The Special Commission held hearings regarding sexual orientation discrimination. While 60% of people in Maryland favored a ban on discrimination against gay men and lesbians, 32% were opposed to banning such discrimination.²³ Of the 113 oral testimonies at the hearings, 87 were in favor of passage and 26 were opposed. While the testimony of proponents of the bills tended to focus on personal stories of discrimination as well as a desire to simply work on “a level playing field,” opponents’ testimony was largely based on the belief that homosexuality is immoral and invoked their religious beliefs to support this position.²⁴

Chairman of the Special Commission, Geoffrey L. Grief, wrote an article about the hearings in which he recounted:

The most common complaint dealt with employment discrimination. Those testifying discussed fearing that someone at work would discover they were gay, and they would lose their job. For a number of those testifying, this had happened. They had been 'let go' because their employers thought 'they would be happier somewhere else.' One man, who had achieved partner in his law firm, was told it was time to 'move-on, no one here wants to work with a faggot.' Others believed they had been hired at lower salaries or had not received raises because they were gay. . . . Several people testified about the lack of domestic partner benefits, which in effect meant that they worked for less compensation than work colleagues with legally recognized spouses. Some had lost jobs that were very meaningful to them as well as financially successful. Others remained on the job but were consumed with fear about what would happen if someone found out they were not heterosexual. The net effect for those in this category was that their work lives were seriously compromised.²⁵

After these hearings the Special Commission recommended passage of an anti-discrimination bill including sexual orientation. Rev. Emmett Burns, a state legislator and minister, said of the Maryland anti-discrimination bill, “I don’t want to improve the chances for someone who is of the gay persuasion to ply their behavior.”²⁶ Despite resistance, in April 2001 the Maryland legislature passed the anti-discrimination bill. By

²² Geoffrey L. Greif & Daphne L. McClellan, *Being Heard on Sexual Orientation: An Analysis of Testimonies at Public Hearings on an Anti-Discrimination Bill*, 8 J. HUMAN BEH. IN SOC. ENVIRON. 2,3 (2003).

²³ T.W. Waldron, *Answers Put State Among Progressives*, BALT. SUN, Jan. 10, 2001, at A1, A14.

²⁴ *Id.*

²⁵ Geoffrey L. Greif & Daphne L. McClellan, *Being Heard on Sexual Orientation: An Analysis of Testimonies at Public Hearings on an Anti-Discrimination Bill*, 8 J. HUM. BEHAVIOR IN THE SOC. ENV'T, Issue 2/3 2003, at 15, 21-22.

²⁶ PEOPLE FOR THE AMERICAN WAY FOUNDATION, *HOSTILE CLIMATE: REPORT ON ANTI-GAY ACTIVITY 200* (2000 ed.).

June 30, 2001, opponents of the bill had garnered the requisite number of petition signatures to bring it to referendum (47,000) in the 2002 elections.²⁷ With the bill on referendum, it could not become law on October 1. However, the signatures on the petition and the petitioning process were successfully challenged in court. A judge declared the petition invalid, and on November 21, 2001, the law took effect.

Legislation seeking to add gender identification to the statewide law has been introduced but has yet to pass.²⁸ Maryland House Bill 474 and Maryland Senate Bill 566, both introduced in February 2009, would have added protection of gender identity to the anti-discrimination law, but both bills failed to be acted upon by the end of the session in April 2009.²⁹

C. Executive Orders, State Government Personnel Regulations & Attorney General Opinions

1. Executive Orders

In 2007, Governor O'Malley updated the Executive Order prohibiting discrimination in state personnel decisions to include "gender identity and expression."³⁰ Former Governor Parris Glendening added sexual orientation to the list of characteristics protected from discrimination by executive order on July, 7 1995.³¹

2. State Government Personnel Regulations

In 2006, legislation took effect which prohibited Maryland from entering into a contract with any business entity that has "discriminated in the solicitation, selection, hiring, or commercial treatment of vendors, suppliers, subcontractors, or commercial customers on the basis of...sexual orientation."³² According to the Fiscal and Policy Note on Senate Bill 897, which contained the legislation, no existing statute at that point addressed discrimination by a contractor or subcontractor in a State procurement contract.³³

3. Attorney General Opinions

None.

D. Local Legislation

²⁷ Greif, *supra* note 5.

²⁸ See Press Release, Equality Maryland, Equality Maryland Deeply Disappointed by Defeat of Transgender Equality Legislation (Mar. 23, 2007). <http://bit.ly/2tcVIc>. See also Md. S.B. 976, Md. H.B. 1598.

²⁹ Human Rights Campaign, Maryland HB 474/SB 566, <http://bit.ly/CiHyj> (last visited Sept. 6, 2009).

³⁰ Md. Exec. Order 01.01.2007.16 (2007) (Code of Fair Employ. Practices).

³¹ Md. Exec. Order 01.01.1995.19 (1995) (Code of Fair Employ. Practices).

³² MD. FINANCE & PROCUREMENT CODE ANN. 19-101 *et seq.* See also MD. CODE ANN. Art 49B

³³ Md. Dept. of Leg. Serv., Fiscal & Policy Note (2007), <http://bit.ly/1pA1gZ>. (last visited Sept. 6, 2009).

At the time of the 2000 Special Commission to Study Sexual Orientation Discrimination hearings, four local jurisdictions—Prince George’s County, Montgomery County, Baltimore City and Howard County—encompassing 48.5% of the population of Maryland had already passed laws prohibiting discrimination based on sexual orientation, however citizens in the remaining portions of Maryland were not protected.³⁴ In 2001, Cumberland City added a section prohibiting discrimination based on sexual orientation to its municipal code.³⁵ The Rockville City code has a similar section.³⁶

1. Prince George’s County

Prince George’s County prohibits discrimination based on sexual orientation.³⁷

2. Montgomery County

Montgomery County prohibits discrimination based on sexual orientation and gender identity.³⁸ In November 2007, the Montgomery County Council voted 8-0 to pass County Bill 23-07 which amends the county anti-discrimination laws to include gender identity and expression.³⁹ A petition drive sought to overturn the Bill by submitting the measure to a referendum in the November 2008 election, but a court found that the signatures had not been collected pursuant to the correct procedures and the measure did not end up on the ballot.⁴⁰

In 1994, the Montgomery County Council voted 6 to 1 to repeal a section of the county’s Human Relations Law, known as the Hanna amendment, that allowed employers to refuse a job applicant “on the basis of advocacy of homosexuality or bisexuality” when the job requires “work with minors of the same gender.”⁴¹ The amendment, which was sponsored by County Council President William E. Hanna, Jr., had never been challenged since it was passed in 1984.⁴² Hanna objected to the move to repeal the amendment claiming, “I thought then and I still think [homosexuality] is a perversion.”⁴³ Hanna stated that he believes there is a direct correlation between

³⁴ Greif & McClellan, *supra* note 13, at 17. MONTGOMERY COUNTY CODE § 27-19 (1994); PRINCE GEORGE’S COUNTY CODE § 2-185 (1995), BALTIMORE CODE, Art. 4, §§9(16), 12(8) (1983); HOWARD COUNTY CODE § 12.200 (1978). See Kenneth Lasson, *Homosexual Rights: The Law in Flux and Conflict*, 9 U. BALT. L. REV. 47, 48n.7 (1979).

³⁵ CUMBERLAND CODE §9-26. On August 14, 2001, the Mayor and City Council passed Ordinance No. 3380 adding protection against discrimination based on sexual orientation. See City of Cumberland Hum. Rts. Comm’n, HRC Fact Sheet, *available at* <http://bit.ly/SrFBR> (last visited Sept. 7, 2009) (hereinafter “HRC Fact Sheet”).

³⁶ ROCKVILLE CODE §11-1.

³⁷ PRINCE GEORGE’S COUNTY CODE § 2-185 (1995).

³⁸ MONTGOMERY COUNTY CODE § 27-19 (1994); Montgomery County, Maryland, County Bill 23-07 (2007).

³⁹ Montgomery County, Maryland, County Bill 23-07 (2007).

⁴⁰ *Doe v. Montgomery County Bd. of Elections*, 406 Md. 697 (Md. Ct. App. 2008).

⁴¹ PEOPLE FOR THE AMERICAN WAY FOUNDATION, *HOSTILE CLIMATE: A STATE BY STATE REPORT ON ANTI-GAY ACTIVITY* 42 (1994 ed.).

⁴² *Id.*

⁴³ *Id.*

homosexuality and pedophilia, and justified his vote against the repeal explaining, “I just feel an obligation to protect children.”⁴⁴

3. **City of Baltimore**

The City of Baltimore prohibits employment discrimination based on sexual orientation and gender identity.⁴⁵ In December 2002, Baltimore Mayor Martin O’Malley signed into law Council Bill 02-0857, which adds gender identity as a class in the list of prohibited discriminatory categories in the areas of employment, education, health and welfare agencies, housing, and public accommodations.⁴⁶

4. **Howard County**

Howard County prohibits employment discrimination based on sexual orientation.⁴⁷

5. **City of Cumberland**

In 2001, Cumberland City added a section prohibiting discrimination based on sexual orientation to its municipal code.⁴⁸

6. **City of Rockville**

The Rockville City code prohibits employment discrimination based on sexual orientation.⁴⁹

E. **Occupational Licensing Requirements**

In 2008, Maryland passed a law to prohibit any further discrimination based on sexual orientation in the issuance of occupational licenses.⁵⁰

⁴⁴ *Id.*

⁴⁵ BALTIMORE CITY CODE, Art. 4, §§9(16), 12(8) (1983); BALTIMORE ORD. 02-453 Council Bill 02-0857 (2002).

⁴⁶ BALTIMORE ORD. 02-453 Council Bill 02-0857 (2002).

⁴⁷ HOWARD COUNTY CODE § 12.200 (1978).

⁴⁸ CUMBERLAND CODE §9-26. On August 14, 2001, the Mayor and City Council passed Ordinance No. 3380 adding protection against discrimination based on sexual orientation. *See* HRC Fact Sheet, *supra* note 31.

⁴⁹ ROCKVILLE CODE §11-1.

⁵⁰ MD. CODE ANN. Art 49B (2008) (stating that any profession licensed by the state of Maryland cannot discriminate based on sexual orientation.)

III. DOCUMENTED EXAMPLES OF EMPLOYMENT DISCRIMINATION AGAINST LGBT PEOPLE BY STATE & LOCAL GOVERNMENTS

A. Case Law

1. State & Local Government Employees

Ensko v. Howard County, 2005 U.S. Dist. LEXIS 37602 (N.D. Md. 2005).

A correctional officer in a state prison brought suit under Title VII and Section 1983 of Title 42 of the U.S. Code against her co-officers. She alleged that she had been harassed in the workplace including being subjected to lewd comments, pornography, sexual advances, and comments that short-haired female guards were lesbians. 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 behavior. In 2003, the officer was forced to work under a supervisor who demeaned her and ordered her and another female officer to shower together with "soap on a rope."⁵¹ The court stated that while unpleasant, 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.⁵²

Johnson v. Knable, 862 F.2d 314 (Table), 1988 WL 119136 (4th Cir. (Md.) 1988).
Johnson v. Knable, 934 F.2d 319 (Table), 1991 WL 87147 (4th Cir. (Md.) 1991).

Steven M. Johnson, a Maryland inmate, alleged discriminatory denial of employment in the prison's education department. He alleges that Sgt. Bisser, a guard in the prison, told Dr. Knable, the department head, that Johnson was a homosexual and a rapist. Johnson contends that he was denied the job because of these statements.

The district court dismissed the case, but the Fourth Circuit vacated and remanded because it determined that Johnson alleged facts constituting a potentially cognizable equal protection claim.⁵³ The district court then referred the case to a magistrate. The magistrate found in favor of the defendants. The case was again appealed to the Fourth Circuit by Johnson, who alleged that he did not receive notice that his right to de novo review of the magistrate's decision would be waived absent timely objection. The court, finding that Johnson did not receive notice, remanded the case to the district court for de novo review.⁵⁴

Acanfora v. Bd. of Educ. of Montgomery County, 491 F. 2d 498 (1974).

⁵¹ Complaint at 17, 18, 20, 26 & 30, *Ensko v. Howard County*, 423 F. Supp.2d 502 (D. Md. 2005) (No. 04 Civ. 03464).

⁵² *Ensko v. Howard County*, 2005 U.S. Dist. LEXIS 37602, at *12 (N.D. Md. 2005) (quoting *Faragher v. City of Boca Raton*, 524 U.S. 775, 788 (1998)).

⁵³ *Johnson v. Knable*, 862 F.2d 314 (Table), 1988 WL 119136 (4th Cir. (Md.) 1988).

⁵⁴ *Johnson v. Knable*, 934 F.2d 319 (Table), 1991 WL 87147 (4th Cir. (Md.) 1991).

Acanfora faced discrimination first while still a student at Pennsylvania State University, then while seeking licensure in Pennsylvania, and again after he was employed as a teacher by Montgomery County. While a student teaching at Penn State University, Acanfora was suspended for "public acknowledgement of homosexuality." Though a state court ordered reinstatement, the discrimination did not stop. When Acanfora applied for teacher certification, Penn State officials differed as to his qualifications and forwarded his application to the Pennsylvania Secretary of Education without recommendation. While awaiting a decision on his application by the Pennsylvania Secretary of Education, Acanfora was hired to teach junior high school in Montgomery County. Montgomery County learned that Acanfora was gay when the Pennsylvania Secretary of Education held a widely publicized press conference to announce favorable action on his certification application. At that point, the county demoted Acanfora to a non-teaching position.

When analyzing Acanfora's speech in this case, the district court pointed out that it was necessary to realize the degree to which homosexuality was *sui generis* in American culture-- that it is "peculiarly sensitive" and of special concern to the family--distinguishing it from the race relations, armbands, and long hair that were subjects of First Amendment precedent in the schoolhouse setting. The court decided that the correct standard for unprotected speech in the schoolhouse was that "speech which is likely to incite or produce imminent effects deleterious to the educational process." Applying this special standard, the court found Acanfora's "repeated, unnecessary appearances on local and especially national news media" unprotected speech that rendered Defendants' choice to not reinstate Acanfora or renew his contract neither arbitrary nor capricious.

On appeal, the Fourth Circuit found that Acanfora's public discussion was protected by the First Amendment, but affirmed the lower court decision on other grounds. The Court found the decision not to reinstate acceptable because Acanfora failed to disclose on his teaching application his affiliation with Homophiles, a Penn State student organization—an affiliation which, had it been disclosed on his application, would have kept the Board, by its own admission, from hiring him in the first place.⁵⁵

2. Private Employers

None.

B. Administrative Complaints

All cases of discrimination in Maryland both by the government and private entities covered by statute are processed through the State of Maryland Commission on Human Relations.⁵⁶ Despite repeated attempts to contact the Commission, they have been unwilling to release information regarding the facts or numbers of cases involving

⁵⁵ *Acanfora v. Bd. of Educ. of Montgomery County*, 491 F. 2d 498 (1974).

⁵⁶ Md. Ann. Code art 49B (2008).

discrimination against LGBT individuals. They only provided raw numbers of cases of LGBT discrimination in various areas, and would not break down those numbers by public versus private entities.

The Commission on Human Relations reported the following number of complaints from the years 2004 to 2007:

Year	Employment	Public Accommodations	Housing
2007	28	1	0
2006	22	1	0
2005	22	2	1
2004	22	2	1

⁵⁷

C. Other Documented Examples of Discrimination

1. Maryland State Police

In 1994, two state police trooper candidates filed a complaint in state court requesting injunctive and declaratory relief for discrimination in violation of the Maryland Declaration of Rights, equal protection, due process, and a Governor's Executive Order banning sexual orientation discrimination by the state government. The state settled with the two women, who were lesbians, agreeing to the injunctive relief requested and offering the positions sought. The plaintiffs and a third lesbian successfully completed their training at the Maryland State Police Academy, but then were not hired as troopers because of alleged inconsistencies in their polygraph examination questions concerning sexual orientation.⁵⁸

⁵⁷ See ANNUAL REPORTS (Md. Comm'n on Hum. Rel. 2004, 2005, 2006, 2007 eds.), *available at* <http://www.mchr.state.md.us>.

⁵⁸ GAY & LESBIAN L. NOTES (Dec. 1995), *available at* <http://www.qrd.org/qrd/usa/legal/lgl/1995/12.95>.

IV. NON-EMPLOYMENT SEXUAL ORIENTATION & GENDER IDENTITY RELATED LAW

In addition to state employment law, the following areas of state law were searched for other examples of employment-related discrimination against LGBT people by state and local governments and indicia of animus against LGBT people by the state government, state officials, and employees. As such, this section is not intended to be a comprehensive overview of sexual orientation and gender identity law in these areas.

A. Criminalization of Same-Sex Sexual Behavior

Maryland's sodomy law was invalidated by a court decision in 1998.⁵⁹ Prior to that, case law in the state indicated that the law was not enforced against "private, consensual, non-commercial sexual activity" including homosexual activity.⁶⁰

B. Housing & Public Accommodations Discrimination

Housing and public accommodations discrimination on the basis of sexual orientation is covered under the same law as employment discrimination.⁶¹

C. Hate Crimes

Maryland criminalizes hate crimes motivated by the victim's sexual orientation.⁶² Here, sexual orientation is defined as identification of an individual as to male or female homosexuality, heterosexuality, bisexuality, or gender-related identity.⁶³ This definition is in contrast to other state civil protection laws that do not include gender-related identity in the definition of sexual orientation.

D. Education

In 2008 Maryland enacted legislation to stop schoolyard bullying of gay students.⁶⁴

Citizens for a Responsible Curriculum v. Montgomery County Public Schools

⁵⁹ *Williams v. State*, 1998 Extra LEXIS 260 (Md. Cir. Ct. 1998)(striking down Maryland's sodomy and unnatural or perverted sexual practices laws, Art. 27, §§ 553-554)

⁶⁰ *Id.* at *25. See, e.g., *Acanfora v. Bd. of Educ.*, 359 F. Supp. 843, 852 (D. Md. 1973) (noting that while Maryland criminalizes sodomy and unnatural or perverted sexual practices, "no reported case reveals the enforcement of this law against private homosexuality"); *Hughes v. State*, 14 Md. App. 497, 499 (1972) (defendant convicted of sex with a male minor asserted that his "convictions must be set aside because the statute [Art. 27, § 554] proscribing his conduct is unconstitutional"); *Ross v. State*, 59 Md. App. 251, 269-70 (1984) (holding that defendant's ten-year sentence under Art. 27, § 554 could stand even though his "greater offense" of nonconsensual sex with a fifteen-year-old held a maximum sentence of one year).

⁶¹ MD. CODE ANN. Art 49B (2008).

⁶² MD. CODE ANN., Crim. Law § 10-304 (2008)

⁶³ MD. CODE ANN., Crim. Law § 10-301 (2008)

⁶⁴ MD. EDUC. CODE ANN. 7-424 (2008); Lynsen, *supra* note 3.

The court granted a temporary restraining against an approved health curriculum that contained information that was determined to be overly pro-gay. A private citizens' group sought the injunction and the school district defended the curriculum.⁶⁵

E. Recognition of Same-Sex Couples

1. Marriage, Civil Unions, & Domestic Partnership

The Court of Appeals of Maryland in *Conaway v. Deane* upheld a Maryland law which states that marriage is between a man and a woman.⁶⁶

Some municipal domestic partnership laws in Maryland cover visitation rights in a health facility, sharing a room in a nursing home, private visits, medical decision making, and tax-free property transfer upon death.⁶⁷

2. Benefits

There are no domestic partnership benefits offered to employees of the Maryland state government. Maryland jurisdictions that offer domestic partner benefits include Montgomery County, Howard County and the cities of Baltimore, College Park, Greenbelt, Hyattsville, Mount Ranier, and Takoma Park. The school systems of Baltimore County and Prince George's County also offer domestic partnership benefits.⁶⁸

F. Other Non-Employment Sexual Orientation & Gender Identity Related Laws

Maryland's governor approved House Bill 53 on May 7, 2009. The bill originally contained language prohibiting "discrimination in the leasing of commercial property on the basis of sexual orientation" but that language was taken out.⁶⁹

⁶⁵ *Citizens for a Responsible Curriculum v. Montgomery County Pub. Sch.*, 2005 U.S. Dist. LEXIS 8130 (S.D. Md. 2005).

⁶⁶ See *Conaway v. Deane*, 401 Md. 219; 932 A.2d 571 (Md. 2007).

⁶⁷ Equality Maryland, Health Care Facility Visitation & Med. Decisions FAQ (Nov. 3, 2008) available at <http://bit.ly/Oc03W> (last visited Sept. 6, 2009); Equality Maryland, The Issue: Domestic Partner Benefits (Jan. 15, 2009), available at <http://bit.ly/ye9uE> (last visited Sept. 7, 2009).

⁶⁸ *Id.*

⁶⁹ See Md. Legislature, House Bill 53 Information, <http://mlis.state.md.us/2009rs/billfile/HB0053.htm> (last visited Sept. 6, 2009).