the Williams INSTITUTE

MEMORANDUM

From: Williams Institute

Date: September 2009

RE: **Connecticut – Sexual Orientation and Gender Identity Law and Documentation of Discrimination**

I. OVERVIEW

A Connecticut statute bans employment discrimination on the basis of sexual orientation. No Connecticut statutes prohibit discrimination on the basis of gender identity or expression. In November 2000, the Connecticut Commission on Human Rights and Opportunities – the agency responsible for administering the anti-discrimination statutes and for processing discrimination complaints – ruled that statutes prohibiting sex discrimination also banned discrimination on the basis of gender identity. Efforts to reinforce this ruling by adopting a statute covering gender identity discriminaton have so far been unsuccessful.

When a rainbow flag was flown over the state Capitol in 2000 to commemorate a week of lobbying for gay and lesbian rights, several state legislators objected. "Many state residents have strong moral objections to the homosexual lifestyle, and these citizens have a right to expect that the Capitol flagpole will not be used to further the gay agenda," State Representative T.R. Rowe said, while also comparing gay and lesbian rights groups to the Ku Klux Klan.[1]

Documented examples of sexual orientation and gender identity discrimination by state and local employers in Connecticut include:

- In 2009, a Connecticut public school teacher with excellent evaluations was dismissed shortly after mentioning in class when Connecticut began to allow same-sex couples to marry that Spain also allowed this. Although the school said the dismissal was based on poor performance, the teacher felt it was sexual orientation discrimination. The teacher filed a complaint with the Connecticut Commission of Human Rights & Opportunities.[2]

- In 2008, a gay man, working in the Connecticut State Maintenance Department, reported that he had been harassed by his coworkers for being gay. He was tied by his hands and feet and locked in a closet. He filed a complaint, and the

[1] PEOPLE FOR THE AMERICAN WAY FOUNDATION, HOSTILE CLIMATE: REPORT ON ANTI-GAY ACTIVITY 129 (2000 ed.).

[2] E-mail from Lee Swislow, Executive Director, GLAD, to Brad Sears, Executive Director, the Williams Institute (Sept. 16, 2009 8:08:00 PST) (on file with the Williams Institute).

department is investigating this incident as a possible hate crime. His assaulters were placed on administrative leave.[3]

- In 2008, a gay man reported that he had endured harassment and discrimination based on his sexual orientation while working for sixteen years in the State of Connecticut Department of Developmental Disabilities. In 1996, he was given a promotion. Upon telling his new Program Supervisor that he was gay, he was immediately notified that the promotion was going to be given to another staff person instead. Additionally, on the same day he put a rainbow sticker on his car, the employee overheard many inappropriate comments about his sexual orientation, such as "[t]hey put those on their cars so they can spot each other to have sex." In 2007, the employee was promoted and moved to new group home. As part of his job responsibilities, the employee was asked to shave a total care client. However, he was told that it was inappropriate for him to shave another male client because he was gay, and that if were to do that, he would be turned in for abuse. Other staff members, who are heterosexual, were not prohibited from shaving clients of a different-sex. The employee felt "totally isolated and helpless" and had trouble sleeping as a result of this work environment. His attempts to work with supervisors and human resource personnel have resulted in no difference in climate, and he was told to "keep my personal business to myself."[4]

- In 2008, an employee who had worked for the State of Connecticut for just over one year, reported that he had experienced discrimination and harassment based on his sexual orientation. The employee filed a complaint, and based upon the investigation, the State of Connecticut Department of Developmental Services Equal Employment Opportunity Division found sufficient evidence of harassment and discrimination to move forward.[5]

- In 2008, a gay teacher in a Connecticut public school reported that she was one of three gay teachers to be "treated badly" by her coworkers. She was singled out through selective enforcement of rules, such as taking down decorations in her classroom. The principal of the school told the teacher that she would only provide her with a letter of recommendation if she resigned.[6]

- In 2008, a transgender woman working for a Connecticut Police Training Academy reported that her supervisor harassed her based on her gender identity. He called her into a dorm room, lay down on a bed, and asked her personal questions about her family, their approval, and what she does in her free time. This lasted for more than two hours. After the incident, her supervisor cited her for taking too long to change ceiling tiles and stripping the floors, despite her having accomplished the task and receiving praise from others for doing a good

[3] GLAD Intake Form (Sept. 10, 2008).
[4] GLAD Intake Form (Feb. 12, 2009).
[5] GLAD Intake Form (Sept. 29, 2008).
[6] GLAD Intake Form (May 22, 2008).

job. She was also instructed to use the men's restroom. She filed a complaint, in which she disclosed her status as transgender. She noted that she felt afraid to be alone with her supervisor. After submitting this complaint, she was fired.[7]

- In 2005, a teacher brought federal and state claims against his former employer, the Norwalk Board of Education, accusing it of sexual orientation discrimination. The plaintiff taught math and science at one of the defendant's middle schools, and was also the program facilitator for the Connecticut Pre-Engineering Program. The principal told the plaintiff that the Program was primarily aimed at African-American students and that those students should be given preference for admission. When the plaintiff refused to give such preferences, he was subject to various retaliatory actions. The principal gave him a negative job evaluation and insinuated that he had HIV/AIDS when he became ill as a result of the hostile environment he was encountering. When the teacher returned from medical leave, he was terminated. After receiving a release from the Connecticut Commission on Human Rights and Opportunities and a right to sue letter from the EEOC, he brought a lawsuit. His claims survived a motion to dismiss. DeMoss v. City of Norwalk Bd. of Educ., 2007 WL 3432986, at *1-3 (D. Conn. Nov. 14, 2007).

- In 2005, a City of New Haven employee brought a lawsuit against the City of New Haven accusing her supervisor of denying her equal terms and conditions of employment and harassing her based on her sexual orientation. The City moved to dismiss, which the Court denied, finding that the plaintiff had sufficiently alleged facts supporting her discrimination claim.[8] The parties filed a joint stipulation of dismissal on September 10, 2007, but our research was not able to ascertain the substantive terms of the stipulation. Marcisz v. City of New Haven, at *1-2 (D. Conn. June 22, 2005).

- In 2003, a police department applicant filed a complaint with the Connecticut Commission on Human Rights and Opportunities accusing the town and several police department personnel of refusing to hire her because of her sexual orientation. The parties entered into settlement discussions and reached an agreement. Before the plaintiff signed the agreement, the defendants demanded that she sign a statement saying that she was not hired for legitimate non-discriminatory reasons. When the plaintiff refused to sign, the defendants filed suit seeking to enforce the settlement agreement. The Superior Court found that the plaintiff had never agreed to sign the statement and denied the motion to enforce. The Court added that "[i]t has not been demonstrated that plaintiff's sexual orientation is a relevant factor that the defendants could consider in her employment and [to do so] would be contrary to the public policy of the state." Skorzewski v. Town of Guilford, 2007 WL 901822, at *1-2 (Conn. Super. Ct. Mar. 8, 2007).

[7] GLAD Intake Form (Aug. 27, 2008).
[8] *Marcisz v. City of New Haven*, 2005 WL 1475329, at *1-2 (D. Conn. June 22, 2005).

- In 2003, a transgender woman, working as a police officer in Hartford, reported that she suffered harassment as a result of her gender identity. She was denied career advancement, despite being qualified. She approached her chief regarding the situation, but was "brushed off."[9]

- In 2001, a teacher brought a lawsuit against the New Britain Board of Education alleging, among other things, sexual orientation discrimination. The plaintiff, a lesbian, was employed as a special education teacher at a New Britain public school and accused the superintendent of transferring her to a lesser position based on her sexual orientation.[10] The Court eventually dismissed a number of counts arising out of the plaintiff's allegations that she was harassed by several of the defendants.[11] The end result of the litigation is unclear based on our search of several Westlaw databases, including Connecticut state court dockets. Kavy v. New Britain Bd. of Educ., 2001 WL 688622, at *1 (Conn. Super. Ct. May 21, 2001).

- In 1995, an employee of the City of Hartford brought sex and sexual orientation discrimination claims against the city, which had fired him after nine years of employment. Two years prior to his termination, the plaintiff had undergone a sex change operation. Following his termination, he filed a complaint with the Connecticut Commission on Human Rights and Opportunities, and then a lawsuit in state court after receiving a release from the Connecticut Commission on Human Rights and Opportunities. Based on the plaintiff's failure to comply with discovery requests, the trial court entered a judgment of non-suit against the plaintiff, which the appellate court affirmed. Conway v. City of Hartford, 760 A.2d 974, 975-77 (Conn. App. Ct. 2000).

- In 1995, after a police department applicant was denied a job, she filed a right to privacy action against a police official. She alleged that during her application for a job as a police officer, she was questioned about her "marital status and fidelity" and was asked the question, "What exactly are your sexual practices and preferences?" She argued that such inquiries were designed to "elicit information about her sexual orientation," and as such, they violated her right to privacy. The District Court held that such inquiries had, indeed, violated her right to privacy. However, the court held that the police official was entitled to qualified immunity. On appeal to the Second Circuit, the court affirmed, reasoning that public officials are not liable under section 1983 if "their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Since the conduct at issue had occurred in 1995, a reasonable official would not have known the conduct was constitutionally proscribed. Eglise v. Culpin, 2000 WL 232798, at *1 (2d Cir. Feb. 28, 2000).

[9] GLAD Intake Form (June 2, 2003).
[10] *Kavy v. New Britain Bd. of Educ.*, 2001 WL 688622, at *1 (Conn. Super. Ct. May 21, 2001).
[11] *Kavy v. New Britain Bd. of Educ.*, 2003 WL 721565, at *1 (Conn. Super. Ct. Jan. 22, 2003).

- An applicant to police department was denied employment, despite his exceptional test results. His background investigation was said to reveal issues regarding his "integrity" because the applicant was gay.[12]

- In October 1994, John Doe of North Haven took the Hamden Police Department qualifying exam and scored higher than any other applicant. He was in good physical condition and maintained a 3.5 average in a graduate-level criminal justice program. Based on his outstanding record, Doe was offered "conditional employment" as a police officer in March 1995 — subject to the completion of psychological, medical and polygraph examinations. During the polygraph test, Doe was directly asked his sexual orientation. He responded that he was gay. After the revelation, the Hamden police chief told Doe that he was not the "best candidate for the job." "Let's get one thing straight. I'm not going to enter a dialogue with you," the police chief told Doe when he pressed the issue. "The interview process is over and you didn't get the job." Doe asked for a copy of his polygraph report through the state's freedom of information commission. The very first paragraph included the statement, "He is gay."[13]

- In a book published in 1996, one of the only openly lesbian state troopers in Connecticut recounted the harassment and discrimination she faced in her division. During her admittance exam, she was required to take a polygraph exam. Several of the questions asked about sexual practices, including whether she had ever had sex with someone of the same-sex. She approached her department about wearing her uniform in a gay rights parade. She was told that she could not wear her uniform, despite the fact that other officers had worn their uniforms in other parades - a Jamaican/West Indies parade and the St. Patrick's Day parade. In response to writing an article about her experiences as an openly gay state trooper, she was reprimanded and a negative review was placed in her file. She contacted a legal rights organization, whose challenge brought about the removal of the negative review. However, several weeks later, she was transferred to another division.[14]

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

[12] H.R. Hrg. 104-87, pp. 163–165, Prepared Testimony of Michael Proto, Hearing before the House Committee on Small Business, Subcommittee on Government Programs re: H.R. 1863: The Employment Non-Discrimination Act, Wed., Jul. 17, 1996, 104th Congress, 2nd Session, Referenced at 142 Cong. Rec. D 755, D 760. *See In the News*, FED. NEWS SERV., Jul. 17, 1996.

[13] HUMAN RIGHTS CAMPAIGN, DOCUMENTING DISCRIMINATION: A SPECIAL REPORT FROM THE HUMAN RIGHTS CAMPAIGN FEATURING CASES OF DISCRIMINATION BASED ON SEXUAL ORIENTATION IN AMERICA'S WORKPLACES (2001), *available at* http://bit.ly/kThbS.

[14] ROBIN A. BUHRKE, A MATTER OF JUSTICE: LESBIANS AND GAY MEN IN LAW ENFORCEMENT 117-24 (Routledge 1996).

against LGBT people. Part IV discusses state laws and policies outside the employment context.

II. SEXUAL ORIENTATION & GENDER IDENTITY EMPLOYMENT LAW

A. State-Wide Employment Statutes

1. Scope of Statute

In 1991, Connecticut passed "An Act Concerning Discrimination on the Basis of Sexual Orientation," known colloquially as the "Gay Rights Law," which prohibits discrimination based on sexual orientation in public and private employment, housing, public accommodations, associations of licensed persons, credit practices, and by state agencies in their provision of services.[15] With respect to private employment, the law forbids employers from refusing to hire a person, discharging them, or discriminating against them "in compensation, or in terms, conditions or privileges of employment" due to sexual orientation or civil union status.

In addition to its general prohibition against sexual orientation employment discrimination, Connecticut's Gay Rights Law provides that employment agencies may not refuse to properly classify or refer their customers for employment or otherwise discriminate based on sexual orientation or civil union status. Labor organizations, such as unions, may not deny or exclude membership in the union or otherwise discriminate against its members because of sexual orientation or civil union status. The law also forbids all of these entities from advertising employment opportunities in such a way as to restrict employment based on sexual orientation or civil union status.[16]

With respect to public employment, state agencies must guarantee equal employment opportunities at all levels of state government without regard to sexual orientation. State agencies must promulgate written directives to carry out this policy and conduct training programs emphasizing non-discriminatory employment practices.[17] The law also requires state agencies – including educational institutions – that provide employment referrals or placement services to public or private employers to accept job orders on a non-discriminatory basis and to reject job requests that indicate an intention to discriminate based on sexual orientation.[18]

There are, however, several exceptions to the Gay Rights Law. For example, an employer (including the state) must employ three or more persons in order to be subject to the law.[19] Religious organizations are exempt as far as (1) employment of persons who perform work or carry out the activities of the organization and (2) matters of discipline, faith, or internal organization, or rules established by the organization.[20] Finally, the Reserve Officers' Training Corp ("ROTC") program may continue to

[15] 1991 Conn. Legis. Serv. P.A. 91-58 (West) (codified at CONN. GEN. STAT. §§ 46a-81a–81r (2007 & Supp. 2008)).
[16] CONN. GEN. STAT. § 46a-81c (2007 & Supp. 2008).
[17] *Id.* § 46a-81h.
[18] *Id.* § 46a-81j.
[19] *Id.* § 46a-51(10).
[20] *Id.* § 46a-81p.

discriminate on the basis of sexual orientation in its "conduct and administration" at colleges and universities.[21]

On November 15, 2000, the CHRO issued a Declaratory Ruling finding that the Gay Rights Law provision prohibiting employment discrimination based on sexual orientation applied to the Boy Scouts of America's policy of excluding openly gay males from employment. However, the CHRO found that it could not render a decision as to whether the Boy Scouts' policy actually violated the statute on the factual record before it. The CHRO's Ruling also stated that, based on the U.S. Supreme Court's decision in *Boy Scouts of America v. Dale*, the provision of the Gay Rights Law prohibiting public accommodations discrimination based on sexual orientation could not be applied to the Boy Scouts' policy of excluding openly gay adult volunteers.[22]

Subsequently, on February 8, 2001, the CHRO issued another Declaratory Ruling pertaining to the Boy Scouts' policy of discriminating on the basis of sexual orientation. This Ruling was requested by the State Employees' Campaign Committee (the "Committee"), an annual campaign designed to raise funds from state employees for charitable and public health, welfare, environmental, conservation, and service purposes. The funds are administered in part through charitable federations, which are composed of member agencies, some of which include the Boy Scouts. The CHRO concluded that the Committee's inclusion of Boy Scouts member agencies violated various provisions of the Gay Rights Law prohibiting sexual orientation discrimination by state agencies.[23] The Boy Scouts later filed a lawsuit against the Committee to enjoin it from excluding the Boy Scouts from the 2000 campaign and future campaigns. The federal district court granted summary judgment in favor of the Committee, and the Second Circuit affirmed.[24]

Neither the Gay Rights Law, nor any other Connecticut anti-discrimination statute, explicitly prohibits discrimination based on gender identity or expression. On November 9, 2000, the Commission on Human Rights and Opportunities ("CHRO") ruled that discrimination against transgender persons was a form of sex discrimination and that such persons could pursue claims of gender identity discrimination under the sex discrimination statutes.[25] These statutes, including those forbidding sex discrimination in both private and public employment, are similar in scope and coverage to the Gay Rights Law.[26]

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[21] *Id.* § 46a-81q.
[22] Declaratory Ruling on behalf of John/Jane Doe, Nov. 9, 2000 [hereinafter Declaratory Ruling 2000].
[23] CHRO Declaratory Ruling on the Petition Filed by the State Employees' Campaign Committee, Feb. 8, 2001.
[24] *Boy Scouts of America v. Wyman*, 213 F. Supp. 2d 159 (D. Conn. 2002), *aff'd*, 335 F.3d 80 (2d Cir. 2003).
[25] Declaratory Ruling 2000, *supra* note 23. The Ruling permits transgender persons to bring sex discrimination claims grounded in accusations of discrimination based on their gender identity or expression. Some state legislators felt that the ruling provided inadequate protection, and have proposed amending the anti-discrimination statutes to specifically include gender identity discrimination.
[26] *See* CONN. GEN. STAT. §§ 46a-59–78 (2007 & Supp. 2008). Importantly, the CHRO Declaratory Ruling applies to "all statutes outlawing sex discrimination under the CHRO's jurisdiction," not just those barring discrimination in employment. Declaratory Ruling 2000, *supra* note 23, at n.13.

2. Enforcement and Remedies

Any person who believes he or she has suffered unlawful discrimination on the basis of sexual orientation or gender identity may file a complaint with the CHRO within 180 days of the alleged discriminatory act.[27] The respondent must file a written answer within 30 days of receiving the complaint, and the CHRO then has 90 days to review the complaint to determine whether it merits further investigation. If the CHRO decides further investigation is warranted, it has 190 days from the end of its initial review to conduct a factual investigation to determine whether there is "reasonable cause" to believe that the alleged discrimination occurred. Upon a finding of reasonable cause, the CHRO has an additional 50 days to attempt to eliminate the discriminatory practice.[28] If the complaint cannot be resolved through this process, the CHRO will appoint a hearing officer or human rights referee to adjudicate the complaint in a trial-type hearing.[29] Certain decisions, such as the CHRO's decision to dismiss a complaint for lack of reasonable cause or a hearing officer's final order, can be appealed to the superior courts.[30]

Any person who believes they have suffered unlawful discrimination at the hands of a state actor may bypass the CHRO process and file a complaint directly in state court.[31] All others must first file with the CHRO, but can bring an action in superior court if they ask for and receive the appropriate release from the CHRO.[32] Lawsuits brought after obtaining the appropriate release must be filed within two years of the date the complaint was filed with the CHRO.[33]

B. Attempts to Enact State Legislation

Efforts to amend state law to prohibit discrimination based on gender identity have failed. According to a staff attorney for the Gay & Lesbian Advocates & Defenders, some state employers have questioned the validity of the CHRO's decision, and the ruling itself does not require state agencies to address gender identity discrimination in their training or employee manuals.[34] Thus, in January 2007, the Joint Committee on the Judiciary introduced Raised Senate Bill No. 1044, entitled "An Act Concerning Discrimination," which prohibited discrimination on the basis of gender identity or expression in a variety of areas, including public and private employment.[35] State Senator David Cappiello based his opposition to the bill on the fact that he had "a difficult time asking people to try and explain to their seven-year-old son or daughter what is happening with their teacher because they're going through gender identity crisis

[27] CONN. GEN. STAT. § 46a-82 (2007 & Supp. 2008). The CHRO is also empowered to file a complaint whenever it has reason to believe that a person has been or is engaged in discrimination. *Id.*
[28] *Id.* § 46a-83.
[29] *Id.* §§ 46a-84, 46a-86.
[30] *Id.* § 46a-94a. With respect to hearing officer orders, the appeal can be made not only by the aggrieved party, but by the CHRO itself.
[31] *Id.*§ 46a-99.
[32] *Id.* §§ 46a-83a, 46a-100, 46a-101.
[33] *Id.*§ 46a-102.
[34] Brian Lockhart, *A Drive For 'Workplace Equity'*, ADVOCATE, Aug. 30, 2007, at 2.
[35] 2007 Conn. S.B. 1044 (State Net).

or a sex change, or they choose, because of what other reason or ailment, they dress like the opposite sex."[36] State Senator Sam Caligiuri voiced similar concerns, arguing that the law should not be extended to protect teachers.[37] Despite this opposition, the bill passed the State Senate by a vote of thirty to four.[38]

During the debate in the House, State Representative Kevin Witkos objected to the bill on the ground that it did not allow school boards to take protective measures to ensure that teachers did not wear clothing typically worn by the opposite sex.[39] State Representative Richard Belden voiced his reservations about the bill by stating: "[W]hat people do on their private time in their private lives is one thing. But when we get to the norm, and what we do collectively in society, be it employment, I think it's slightly different . . . ."[40] The bill died in the State House of Representatives.[41]

On February 27, 2008, the Joint Committee on the Judiciary introduced a similar bill, Raised House Bill No. 5723, in a second attempt to codify the prohibition of gender identity discrimination.[42] The Joint Committee voted in favor of the bill by a thirty-seven to six margin.[43] However, the bill ultimately failed. The Joint Committee on the Judiciary introduced a nearly identical bill – Raised House Bill No. 6452 – at the beginning of the January 2009 legislative session.[44] That bill is still pending.

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

1. Executive Orders

None.

2. State Government Personnel Regulations

None.

3. Attorney General Opinions

None.

D. Local Legislation

1. City of Hartford

[36] CT S. Tran., May 23, 2007 (statement of State Sen. David Cappiello).
[37] *See* CT S. Tran., May 23, 2007 (statement of State Sen. Sam Caligiuri).
[38] Vote for SB-1044, May 23, 2007, *available at* http://bit.ly/1JlCa5.
[39] CT H.R. Tran., June 4, 2007 (statement of State Rep. Kevin Witkos).
[40] CT H.R. Tran., June 4, 2007 (statement of State Rep. Richard Belden).
[41] *See* Daniela Altimari, *Connecticut to Consider Transgender Anti-Discrimination Proposal*, HARTFORD COURANT, Jan. 6, 2009, at A1.
[42] 2008 Conn. H.B. 5723 (State Net).
[43] Raised H.B. No. 5723, Jud. Comm. Vote Tally Sheet, Mar. 24, 2008, *available at* http://bit.ly/zwA1h.
[44] 2009 Conn. H.B. 6452 (State Net).

The City of Hartford bans sexual orientation discrimination in the recruitment and employment of city employees.[45] In addition, the City has established the "Hartford Commission on Lesbian, Gay, Bisexual and Transgender Issues," the purpose of which is to assist in the elimination of bigotry against these groups and to make recommendations regarding city policies and services that impact lesbian, gay, bisexual, and transgender persons.[46]

2. City of Stamford

The City of Stamford also bans discrimination against city employees based on their sexual orientation.[47]

3. City of New Haven

The City of New Haven prohibits the denial of equal opportunities to any person on the basis of sexual orientation.[48]

4. Town of Greenwich

In 2007, the town of Greenwich adopted a written resolution forbidding discrimination on the basis of sexual orientation.[49]

E. Occupational Licensing Requirements

The Gay Rights Law prohibits state agencies from granting, denying, or revoking a license or charter on the grounds of sexual orientation. Additionally, state agencies may not permit such discrimination by associations of licensed persons.[50] Based on the CHRO's Declaratory Ruling of November 9, 2000, laws (1) prohibiting sex discrimination in state licensing and charter procedures and (2) forbidding state agencies from permitting sex discrimination in professional or occupational associations also ban gender identity discrimination in those areas.[51]

[45] HARTFORD MUN. CODE §§ 2-696(a), 2-232.
[46] *Id.* §§ 2-286-87.
[47] STAMFORD CHARTER AND CODE § 47-23.
[48] NEW HAVEN CODE OF ORD. §§ 12 1/2-2(b).
[49] Martin B. Cassidy, GREENWICH TIME, Sept. 22, 2007, at A1.
[50] CONN. GEN. STAT. §§ 46a-81k, 46a-81*l* (2007 & Supp. 2008).
[51] *Id.* §§ 46a-73, 46a-74; Declaratory Ruling 2000, *supra* note 23.

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

A. Case Law

1. State & Local Government Employees

DeMoss v. City of Norwalk Bd. of Educ., 2007 WL 3432986, at *1-3 (D. Conn. Nov. 14, 2007).

In *DeMoss v. City of Norwalk Board of Education*, the plaintiff, a gay man, brought federal and state claims against his former employer, the Norwalk Board of Education, accusing it of sexual orientation discrimination. The plaintiff taught math and science at one of the defendant's middle schools, and was also the program facilitator for the Connecticut Pre-Engineering Program. The principal told the plaintiff that the Program was primarily aimed at African-American students and that those students should be given preference for admission. When the plaintiff refused to give such preferences, he was subject to various retaliatory actions. The principal gave him a negative job evaluation and insinuated that he had HIV/AIDS when he became ill as a result of the hostile environment he was encountering. When DeMoss returned from medical leave, he was terminated. After receiving a release from the CHRO and a right to sue letter from the EEOC, he brought this lawsuit. His claims survived a motion to dismiss.[52]

Skorzewski v. Town of Guilford, 2007 WL 901822, at *1-2 (Conn. Super. Ct. Mar. 8, 2007).

In *Skorzewski v. Town of Guilford*, the plaintiff filed a complaint with the CHRO accusing the town and several police department personnel of refusing to hire her because of her sexual orientation. The parties entered into settlement discussions and reached an agreement. Before the plaintiff signed the agreement, the defendants demanded that she sign a statement saying that she was not hired for legitimate non-discriminatory reasons. When the plaintiff refused to sign, the defendants filed suit seeking to enforce the settlement agreement. The Superior Court found that the plaintiff had never agreed to sign the statement and denied the motion to enforce. The Court added that "[i]t has not been demonstrated that plaintiff's sexual orientation is a relevant factor that the defendants could consider in her employment and [to do so] would be contrary to the public policy of the state."[53]

Marcisz v. City of New Haven, 2005 WL 1475329, at *1-2 (D. Conn. June 22, 2005).

In *Marcisz v. City of New Haven*, the plaintiff brought a lawsuit against the City of New Haven accusing her supervisor of denying her equal terms and conditions of employment and harassing her based on her sexual orientation. The City moved to

[52] *DeMoss v. City of Norwalk Bd. of Educ.*, 2007 WL 3432986, at *1-3 (D. Conn. Nov. 14, 2007).
[53] *Skorzewski v. Town of Guilford*, 2007 WL 901822, at *1-2 (Conn. Super. Ct. Mar. 8, 2007).

dismiss, which the Court denied, finding that the plaintiff had sufficiently alleged facts supporting her discrimination claim.[54] The parties filed a joint stipulation of dismissal on September 10, 2007, but our research was not able to ascertain the substantive terms of the stipulation.[55]

Kavy v. New Britain Bd. of Educ., 2001 WL 688622, at *1 (Conn. Super. Ct. May 21, 2001).

In *Kavy v. New Britain Board of Education*, the plaintiff brought a lawsuit against the New Britain Board of Education alleging, among other things, sexual orientation discrimination. The plaintiff, a lesbian, was employed as a special education teacher at a New Britain public school and accused the superintendent of transferring her to a lesser position based on her sexual orientation.[56] The Court eventually dismissed a number of counts arising out of the plaintiff's allegations that she was harassed by several of the defendants.[57] The end result of the litigation is unclear based on our search of several Westlaw databases, including Connecticut state court dockets.

Conway v. City of Hartford, 760 A.2d 974, 975-77 (Conn. App. Ct. 2000).

In *Conway v. City of Hartford*, the plaintiff brought sex and sexual orientation discrimination claims against the City of Hartford, which had fired him after nine years of employment. Two years prior to his termination, the plaintiff had undergone a sex change operation. Following his termination, he filed a complaint with the CHRO, and then a lawsuit in state court after receiving a release from the CHRO. Based on the plaintiff's failure to comply with discovery requests, the trial court entered a judgment of non-suit against the plaintiff, which the appellate court affirmed.[58]

Eglise v. Culpin, 2000 WL 232798, at *1 (2d Cir. Feb. 28, 2000).

Diana Eglise filed a right to privacy action against police official John R. Culpin. Eglise alleged that during her application for a job as a police officer, she was questioned about her "marital status and fidelity" and was asked the question, "What exactly are your sexual practices and preferences?" Eglise argued that such inquiries were designed to "elicit information about Eglise's sexual orientation," and as such, they violated her right to privacy. The District Court held that such inquiries had, indeed, violated Eglise's right to privacy. However, the court held that Culpin was entitled to qualified immunity. On appeal to the Second Circuit, the court affirmed, reasoning that public officials are not liable under section 1983 if "their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Since the conduct at issue had occurred in 1995, a reasonable official would not have known the conduct was constitutionally proscribed.[59]

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[54] *Marcisz v. City of New Haven*, 2005 WL 1475329, at *1-2 (D. Conn. June 22, 2005).
[55] *Marcisz v. City of New Haven*, 2007 WL 4448442 (D. Conn. Sept. 10, 2007).
[56] *Kavy v. New Britain Bd. of Educ.*, 2001 WL 688622, at *1 (Conn. Super. Ct. May 21, 2001).
[57] *Kavy v. New Britain Bd. of Educ.*, 2003 WL 721565, at *1 (Conn. Super. Ct. Jan. 22, 2003).
[58] *Conway v. City of Hartford*, 760 A.2d 974, 975-77 (Conn. App. Ct. 2000).
[59] *Eglise v. Culpin*, 2000 WL 232798, at *1 (2d Cir. Feb. 28, 2000).

Gay and Lesbian Law Students Association v. Board of Trustees, 673 A.2d 484 (Conn. 1996).

In *Gay and Lesbian Law Students Association v. Board of Trustees*, the Connecticut Supreme Court found that the Gay Rights Law prohibited the military from recruiting on the campus of the University of Connecticut School of Law due to the military's policy of discriminating on the basis of sexual orientation.[60]

2. **Private Employers**

None.

B. **Administrative Complaints**

Erin Dwyer v. Yale Univ., CHRO Nos. 0130315 & 0230323 (Nov. 29, 2005).

In *Erin Dwyer v. Yale University*, Dwyer filed two complaints with the CHRO accusing Yale University of employment discrimination based on her sexual orientation, transsexual status, and gender dysphoria. Dwyer's complaint was based on derogatory comments and conduct by co-workers and management while working at various Yale dining halls, as well as Yale's decision to suspend and terminate her employment.[61] The human rights referee concluded that Dwyer did not present sufficient evidence to prove most of her allegations. However, the referee did find that the harassment Dwyer was subject to at one of the dining halls created a hostile work environment based on her sexual orientation and that Dwyer was entitled to back pay.[62]

Sandra J. Schoen v. Grace Christian Sch., CHRO No. 0120163 (Dec. 2, 2002).

In *Sandra J. Schoen v. Grace Christian School*, Schoen filed a complaint with the CHRO accusing Grace Christian School of employment discrimination based on her sex and sexual orientation. Schoen alleged that she was fired from her job with Grace Christian because of her opposition to the school's anti-homosexual policies. This opposition consisted of Schoen's refusal to ask her minister, who was not an employee of the school, whether he was a homosexual. The respondent moved to dismiss. The human rights referee found that Schoen's sexual orientation claim failed on three grounds: (1) it failed to allege an employment relationship between her minister and the respondent; (2) the Gay Rights Law did not have a provision against retaliation for

[60] 673 A.2d 484 (Conn. 1996). Whether this decision is still viable after the U.S. Supreme Court's decision in *Rumsfeld v. Forum for Academic and Inst. Rights, Inc.*, 547 U.S. 47 (2006), which upheld the Solomon Amendment, has yet to be litigated.
[61] *Erin Dwyer v. Yale Univ.*, CHRO Nos. 0130315 & 0230323 (Nov. 29, 2005), *available at* http://www.ct.gov/chro. Pursuant to the CHRO's Declaratory Ruling of November 9, 2000, Dwyer's claim of discrimination based on her transsexual status was brought as a sex discrimination claim. *See* Declaratory Ruling 2000, *supra* note 23.
[62] *Id.*

opposing a discriminatory employment practice; and (3) the Gay Rights Law provision exempting religious organizations defeated any claim of discrimination.[63]

C. **Other Documented Examples of Discrimination**

A Connecticut Public School

In 2009, a Connecticut public school teacher with excellent evalutations was dismissed shortly after mentioning in class when Connecticut began to allow same-sex couples to marry that Spain also allowed this. Although the school said the dismissal was based on poor performance, the teacher felt it was sexual orientation discrimination. The teacher filed a complaint with the Connecticut Commission of Human Rights & Opportunities.[64]

Connecticut State Maintenance Department

In 2008, a gay man, working in the Connecticut State Maintenance Department, reported that he had been harassed by his coworkers for being gay. He was tied by his hands and feet and locked in a closet. He filed a complaint, and the department is investigating this incident as a possible hate crime. His assaulters were placed on administrative leave.[65]

Connecticut State Department of Developmental Disabilities

In 2008, a gay man reported that he had endured harassment and discrimination based on his sexual orientation while working for sixteen years in the State of Connecticut Department of Developmental Disabilities. In 1996, he was given a promotion. Upon telling his new Program Supervisor that he was gay, he was immediately notified that the promotion was going to be given to another staff person instead. Additionally, on the same day he put a rainbow sticker on his car, the employee overheard many inappropriate comments about his sexual orientation, such as "[t]hey put those on their cars so they can spot each other to have sex." In 2007, the employee was promoted and moved to new group home. As part of his job responsibilities, the employee was asked to shave a total care client. However, he was told that it was inappropriate for him to shave another male client because he was gay, and that if were to do that, he would be turned in for abuse. Other staff members, who are heterosexual, were not prohibitteed from shaving clients of a different-sex. The employee felt "totally isolated and helpless" and had trouble sleeping as a result of this work enviroment. His

[63] *Sandra J. Schoen v. Grace Christian Sch.*, CHRO No. 0120163 (Dec. 2, 2002), *available at* http://www.ct.gov/chro.
[64] E-mail from Lee Swislow, Executive Director, GLAD, to Brad Sears, Executive Director, the Williams Institute (Sept. 16, 2009 8:08:00 PST) (on file with the Williams Institute).
[65] GLAD Intake Form.

attempts to work with supervisors and human resource personnel have resulted in no difference in climate, and he was told to "keep my personal business to myself."[66]

Connecticut State Department

In 2008, an employee who had worked for the State of Connecticut for just over one year, reported that he had experienced discrimination and harassment based on his sexual orientation. The employee filed a complaint, and based upon the investigation, the State of Connecticut Department of Developmental Services Equal Employment Opportunity Division found sufficient evidence of harassment and discrimination to move forward.[67]

Connecticut Public School

In 2008, a gay teacher in a Connecticut public school reported that she was one of three gay teachers to be "treated badly" by her coworkers. She was singled out through selective enforcement of rules, such as taking down decorations in her classroom. The principal of the school told the teacher that she would only provide her with a letter of recommendation if she resigned.[68]

Police Training Academy

In 2008, a transgender woman working for a Connecticut Police Training Academy reported that her supervisor harassed her based on her gender identity. He called her into a dorm room, lay down on a bed, and asked her personal questions about her family, their approval, and what she does in her free time. This lasted for more than two hours. At a later date, her supervisor cited her for taking too long to change ceiling tiles and stripping the floors, despite have accomplished the task and receiving praise from others for doing a good job. She was also instructed to use the men's restroom. She filed a complaint, in which she disclosed her status as transgender. She noted that she felt afraid to be alone with her supervisor. After submitting this complaint, she was fired.[69]

Hartford Police Department

In 2003, a transgender woman, working as a police officer in Hartford, reported that she suffered harassment as a result of her gender identity. She was denied career advancement, despite being qualified. She approached her chief regarding the situation, but was "brushed off."[70]

Municipal Police Department

[66] GLAD Intake Form (Feb. 12, 2009).
[67] GLAD Intake Form (Sept. 29, 2008).
[68] GLAD Intake Form (May 22, 2008).
[69] GLAD Intake Form (Aug. 27, 2008).
[70] GLAD Intake Form (June 2, 2003).

An applicant to police department was denied employment, despite his exceptional test results. His background investigation was said to reveal issues regarding his "integrity" because the applicant was gay.[71]

Hamden Police Department

In October 1994, John Doe of North Haven took the Hamden Police Department qualifying exam and scored higher than any other applicant. He was in good physical condition and maintained a 3.5 average in a graduate-level criminal justice program. Based on his outstanding record, Doe was offered "conditional employment" as a police officer in March 1995 — subject to the completion of psychological, medical and polygraph examinations. During the polygraph test, Doe was directly asked his sexual orientation. He responded that he was gay. After the revelation, the Hamden police chief told Doe that he was not the "best candidate for the job." "Let's get one thing straight. I'm not going to enter a dialogue with you," the police chief told Doe when he pressed the issue. "The interview process is over and you didn't get the job." Doe asked for a copy of his polygraph report through the state's freedom of information commission. The very first paragraph included the statement, "He is gay."[72]

Connecticut State Police

Stacey Simmons, a lesbian, was considered one of the only open gay state troopers in Connecticut. During her admittance exam, Simmons was required to take a polygraph exam. Several of the questions asked about sexual practices, including whether she had ever had sex with someone of the same-sex. Simmons approached her department about wearing her uniform in a gay rights parade. She was told that she could not wear her uniform, despite the fact that other officers had worn their uniforms in other parades - a Jamaican/West Indies parade and the St. Patrick's Day parade. In response to writing an article about her experiences as an openly gay state trooper, Simmons was reprimanded and a negative review was placed in her file. Simmons contacted a legal rights organization, whose challenge brought about the removal of the negative review. However, several weeks later, Simmons was transferred to another division.[73]

[71] H.R. Hrg. 104-87, pp. 163–165, Prepared Testimony of Michael Proto, Hearing before the House Committee on Small Business, Subcommittee on Government Programs re: H.R. 1863: The Employment Non-Discrimination Act, Wed., Jul. 17, 1996, 104th Congress, 2nd Session, Referenced at 142 Cong. Rec. D 755, D 760. *See In the News*, FED. NEWS SERV., Jul. 17, 1996.
[72] HUMAN RIGHTS CAMPAIGN, DOCUMENTING DISCRIMINATION: A SPECIAL REPORT FROM THE HUMAN RIGHTS CAMPAIGN FEATURING CASES OF DISCRIMINATION BASED ON SEXUAL ORIENTATION IN AMERICA'S WORKPLACES (2001), *available at* http://bit.ly/kThbS.
[73] BUHRKE, *supra* note 14, at 117-24.

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

Connecticut's sodomy law was repealed when Connecticut rewrote its Penal Code in 1971.[74]

B. Housing & Public Accommodations Discrimination

The Gay Rights Law prohibits discrimination based on sexual orientation in a variety of conduct related to the sale or rent of a dwelling.[75] Based on the CHRO's Declaratory Ruling of November 9, 2000, laws prohibiting sex discrimination in housing also ban gender identity discrimination in this area.[76] The CHRO must investigate complaints alleging housing discrimination based on sexual orientation or gender identity within 100 days of the complaint's filing, and a final administrative disposition must be made within one year of filing unless it would be impracticable to do so.[77] Moreover, no state department, board, or agency may permit housing discrimination.[78]

The Gay Rights Law makes it unlawful to deny any person within Connecticut full and equal accommodations in any place of public accommodation, resort, or amusement based on sexual orientation, or to discriminate, segregate, or separate on account of sexual orientation.[79] Based on the CHRO's Declaratory Ruling of November 9, 2000, laws prohibiting sex discrimination in public accommodations also ban gender identity discrimination in this area.[80] Moreover, no state department, board, or agency may permit public accommodations discrimination.[81]

The Gay Rights Law requires that every state agency perform its services without discrimination based on sexual orientation, and no state facility may be used in furtherance of any discrimination.[82] Based on the CHRO's Declaratory Ruling of

[74] *See* Memorandum, Getting Rid of Sodomy Laws: History and Strategythat Led to the Lawrence Decision (ACLU Lesbian & Gay Rts. Project June 26, 2003), *available at* http://bit.ly/nIDtY.
[75] *Id.* § 46a-81e.
[76] *Id.* § 46a-64c; Declaratory Ruling 2000, *supra* note 13.
[77] CONN. GEN. STAT. §§ 46a-64c(f), 46a-81e(e) (2007 & Supp. 2008).
[78] *Id.* §§ 46a-74, 46a-81*l*.
[79] *Id.* § 46a-81d.
[80] *Id.* § 46a-64(a)(1)-(2); Declaratory Ruling 2000, *supra* note 13.
[81] CONN. GEN. STAT. §§ 46a-74, 46a-81*l* (2007 & Supp. 2008).
[82] CONN. GEN. STAT. § 46a-81i (2007 & Supp. 2008).

November 9, 2000, laws prohibiting sex discrimination by state agencies ban gender identity discrimination by those agencies as well.[83]

Connecticut Department of Economic and Community Development regulations state that any recipient of department funds, including sponsors of housing, technical assistance organizations, and subcontractors must adopt a fair housing statement that indicates the recipient's commitment to promoting fair housing choice and not to discriminate on the basis of, amongst other things, sexual orientation.[84]

Several local jurisdictions also prohibit sexual orientation discrimination in housing and public accommodations. The City of Hartford prohibits housing and employment discrimination by city contractors based on sexual orientation.[85] It also prohibits city departments and agencies from denying housing accommodations to any person based on their sexual orientation.[86] In addition to prohibiting the denial of equal opportunities on the basis of sexual orientation, the City of New Haven also specifically prohibits housing discrimination and discrimination by city contractors on the basis of sexual orientation.[87] New Britain, Connecticut, also prohibits housing discrimination on the basis of sexual orientation.[88] Finally, in 2007, the town of Greenwich adopted a written resolution forbidding discrimination on the basis of sexual orientation.[89] The town had previously adopted a policy providing that all town ordinances, regulations, policies, and rules regarding the town's park facilities, beaches, and recreation areas would be applied consistently without regard to sexual orientation.[90]

The Department of Consumer Protection's regulations governing real estate brokers and salesmen include sexual orientation in its definitions of "blockbusting" and "steering."[91] These regulations also prohibit brokers and salesmen from denying services to someone based on their sexual orientation.[92] Home inspectors are also prohibited from discriminating on the basis of sexual orientation.[93]

Department of Human Resources regulations state that shelters may not discriminate in the acceptance of clients based on, among other things, their sexual orientation.[94]

[83] *Id.* § 46a-71; Declaratory Ruling 2000, *supra* note 13.
[84] CONN. AGENCIES REGS. § 8-37ee-311 (2007).
[85] HARTFORD MUN. CODE § 2-558(a).
[86] *Id.* § 2-697(a).
[87] *Id.* §§ 2 1/2-43, 12-1(d).
[88] NEW BRITAIN CODE OF ORD. § 2-199.
[89] Cassidy, *supra* note 40.
[90] *Text of Anti-Discrimination Policy*, GREENWICH TIME, Mar. 3, 2006, at A1.
[91] *Id.* (§ 20-328-1a).
[92] *Id.* (§ 20-328-4a).
[93] *Id.* (§ 20-491-14).
[94] *Id.* (§ 17-590-4).

Alan Couture v. Waterbury Republican, CHRO No. 0630390, at 18-20 (June 12, 2008).

In *Alan Couture v. Waterbury Republican,* Couture filed a complaint with the CHRO accusing the Waterbury Republican, a newspaper, of public accommodations discrimination based on his sexual orientation and civil union status for refusing to print a picture of him and his civil union partner with those of married couples. The newspaper filed a motion to dismiss. The human rights referee granted the motion on the ground that there was no authority in Connecticut to support a finding that the laws against public accommodations discrimination extended to a private newspaper in the gathering and publication of unpaid announcements.[95]

Judy Hartling v. Jeffrey Carfi, CHRO No. 0550116, at 3, 9 (Oct. 26, 2006).

In *Judy Hartling v. Jeffrey Carfi, et al.*, Hartling filed a complaint with the CHRO accusing Carfi, his girlfriend, and his company of retaliating against her for filing a housing discrimination claim against them. Hartling further alleged that the retaliation was motivated in part by her sexual orientation. In an earlier decision, a human rights referee entered a default judgment in favor of Hartling, imposing liability for housing discrimination based on her sexual orientation.[96] The issue before the referee in the instant decision was damages. The referee awarded Hartling $25,000 for the emotional distress she suffered as a result of the respondents' retaliation, as well as other costs.[97]

C. **Hate Crimes**

Connecticut has made it a felony to "maliciously, and with specific intent to intimidate or harass another person because of the actual or perceived race, religion, ethnicity, disability, sexual orientation or gender identity or expression of such other person," cause serious physical injury to that person or a third person.[98] This prohibition was enacted in 2000 without the disability and gender identity categories, which were later added in a 2004 amendment.[99]

Connecticut has also made it a crime to "subject, or cause to be subjected, any other person to the deprivation of any rights, privileges or immunities, secured or protected by the Constitution or laws of this state or the United States" on account of sex or sexual orientation.[100] If the person who violates this law damages property as a consequence of their violation, they will be guilty of a class D felony.[101]

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[95] *Alan Couture v. Waterbury Republican*, CHRO No. 0630390, at 18-20 (June 12, 2008), *available at* http://www.ct.gov/chro. Couture's civil union partner, Robert McDonald, filed the same complaint simultaneously. The referee issued an identical ruling in that case. *Id.*
[96] *Judy Hartling v. Jeffrey Carfi*, CHRO No. 0550116 at 3, 9 (Oct. 26, 2006), *available at* http://www.ct.gov/chro.
[97] *Id.*
[98] CONN. GEN. STAT. § 53a-181j (2007, Supp. 2008).
[99] 2000 Conn. Legis. Serv. P.A. 00-72 (West); 2004 Conn. Legis. Serv. P.A. 04-135 (West).
[100] *Id.* § 46a-58(a).
[101] *Id.* § 46a-58(d).

D. **Education**

Connecticut prohibits sexual orientation discrimination in the public schools, providing children with an equal opportunity to participate in the activities, programs, and courses of study offered in the public schools.[102]

The State Board of Education Codes of Professional Responsibility for Teachers and for School Administrators state that teachers and school administrators shall "[n]urture in students lifelong respect and compassion for themselves and other human beings regardless of . . . sexual orientation."[103]

E. **Health Care**

DCF regulations governing the licensure of outpatient psychiatric clinics for children require clinics to consider for admission all referrals regardless of sexual orientation.[104]

To maintain enrollment in the Connecticut Medical Assistance Program, a provider must abstain from discriminating or permitting discrimination based on sexual orientation.[105] However, the Department of Social Services will not pay for physicians' services or nurse practitioner services for sex reassignment surgery, and will not pay for psychiatric services performed in the process of preparing an individual for transsexual surgery.[106]

F. **Gender Identity**

Connecticut law permits transsexuals who have undergone sex-reassignment surgery to be issued new birth certificates.[107] For more issues related to birth certificates, *see infra* Part IV.G.

Based on the CHRO's Declaratory Ruling of November 9, 2000, laws prohibiting sex discrimination by state agencies ban gender identity discrimination by those agencies as well.[108]

G. **Parenting**

The Gay Rights Law allows the Commissioner of Children and Families or a child-placing agency to consider the sexual orientation of the prospective adoptive or foster parent(s) when placing a child for adoption or in foster care, and "nothing . . . shall be deemed to require . . . place[ment] [of] a child . . . with a prospective adoptive or

[102] CONN. GEN. STAT. § 10-15c(a) (2007, Supp. 2008).
[103] *Id.* §§ 10-145d-400a, -400b.
[104] *Id.* § 17a-20-40.
[105] *Id.* § 17b-262-526.
[106] *Id.* §§ 17b-262-342, -456, -612.
[107] *Id.* § 19a-42.
[108] Declaratory Ruling 2000, *supra* note 13.

foster parent or parents who are homosexual or bisexual."[109] However, it is unlawful for any state agency to discriminate on the basis of sexual orientation,[110] and under the CHRO's November 9, 2000 Declaratory Ruling, laws prohibiting sex discrimination by state agencies also prohibit discrimination based on gender identity.[111] For more on the Department of Children and Families' ("DCF") internal policies regarding adoption by gay, lesbian, bisexual, or transgender individuals.

In 2000, the state legislature enacted "An Act Concerning the Best Interests of Children in Adoption Matters" in response to the Connecticut Supreme Court's decision in *In re Adoption of Baby Z.* In that case, the biological mother submitted an adoption application to the Probate Court to have her same-sex partner declared the adoptive parent of their child. The Court found that, under the adoption laws, only the state, a parent married to the prospective adoptive parent, or a blood relative were allowed to access the probate process.[112] The 2000 law allows the parent of a child to enter into an adoption agreement with one other person who "shares parental responsibility for the child."[113] This permits a parent's unmarried partner – whether same-sex or opposite-sex – to adopt their partner's child.

Beginning October 1, 2008, Connecticut law governing the filing of a birth certificate unambiguously states that gestational surrogacy agreements are enforceable. As a result of this law, couples – including same-sex couples – who enter into a gestational surrogacy agreement where one or both members of the couple are "intentional" parents rather than biological parents, can petition to have a court order the Department of Health to put both parents' names on the birth certificate.[114]

Oleski v. Hynes involved the question of whether a person who was not the biological parent of a child and who had no legal relationship with the biological parent was entitled to have his name placed on the child's birth certificate based on the terms of a gestational surrogacy contract. Here, a same-sex male couple had contracted with a woman to serve as the surrogate mother to a set of twins. The agreement listed one of the men as the biological parent, the other as the "adopting" parent, and the surrogate mother as the "carrier."[115] The identity of the egg donor was not revealed. The Court held, based on Connecticut statutory and case law, that the "adopting" parent would have to go through the regular adoption procedures, after the child's birth, in order to become the child's parent.[116]

In three other cases decided in 2008, however, courts facing the same question reached a different conclusion. In *Griffiths v. Taylor* and *Cassidy v. Williams*, both courts found that Connecticut General Statutes § 7-48a, even prior to the amendment that took

[109] *Id.* § 45a-726a.
[110] *Id.* § 46a-81i(a).
[111] *Id.* § 46a-71(a); Declaratory Ruling 2000, *supra* note 13.
[112] *In re Adoption of Baby Z.*, 724 A.2d 1035, 1038, 1055-56 (Conn. 1999).
[113] 2000 Conn. Legis. Serv. P.A. 00-228 (West) (codified as CONN. GEN. STAT. § 45a-724(a)(3) (2007)).
[114] 2008 Conn. Legis. Serv. P.A. 08-184 (West) (to be codified at CONN. GEN. STAT. § 7-48a).
[115] *Oleski v. Hynes*, 2008 WL 2930518, at *1-2 (Conn. Super. Ct. July 10, 2008).
[116] *Id.* at *11-12.

effect on October 1, 2008, "create[d] yet another statutory manner in which parentage can be established: by being named as an intended parent in a gestational carrier agreement."[117] *Cunningham v. Tardiff* reached a similar conclusion in an opinion that was issued after the amended version of § 7-48a took effect.[118] All three cases involved same-sex male couples.

Generally, Connecticut courts have been willing to award joint or sole legal custody of a child to a gay or lesbian parent.[119] Moreover, courts will allow a former same-sex partner with no legal or biological relationship to the child to petition for visitation. *Lavoie v. MacIntyre* involved a same-sex couple that had been together for nearly a decade and had raised two children together, both of which were the biological children of the defendant, and neither of which had any legal relationship with the plaintiff. After the couple separated and the defendant prevented the plaintiff from seeing the children, the plaintiff sought visitation rights pursuant to Connecticut General Statutes § 46b-59.[120] The court granted visitation, finding that the plaintiff had a "parent-like relationship" with each of the two children and that the denial of visitation would cause the children harm.[121]

In *M. v. M., U v. U.*, the defendant, a male-to-female transsexual father of two children, sought joint custody of her children and requested that they reside primarily with her and her current husband. The plaintiff mother wanted the children to continue living primarily with her. Although the Court expressed some concerns about the father's request to keep her sex change a secret, as well as the children's adjustment to puberty in light of their father's sex change, it nevertheless found that the father was the more organized parent and that the children should live with her. The mother was awarded unrestricted visitation.[122]

In *Zavatsky v. Anderson*, the plaintiff brought a lawsuit against numerous employees of the DCF alleging violations of the plaintiff's rights to family integrity, family association, and equal protection. The plaintiff, who was a lesbian, had a partner who had given birth to a son that suffered from psychological disturbances. When the child was eight years old, the defendants submitted a petition to the juvenile court contending that he was physically and emotionally neglected, and the child was ultimately placed in foster care. The plaintiff contended that the defendants, throughout their handling of the child's case, "refused to acknowledge the existence of the family unit" consisting of the plaintiff, her partner, and the child, thereby depriving the plaintiff

[117] *Griffiths v. Taylor*, 2008 WL 2745130, at *6 (Conn. Super. Ct. June 13, 2008); *Cassidy v. Williams*, 2008 WL 2930591, at *2 (Conn. Super. Ct. July 9, 2008).
[118] 2008 WL 4779641, at *4 (Conn. Super. Ct. Oct. 14, 2008).
[119] *See, e.g., Isch v. Isch*, 2006 WL 1230270, at *2 (Conn. Super. Ct. Apr. 20, 2006) (granting joint legal custody to a gay father); *Zienka v. Zienka*, 2004 WL 1557951, at *7 (Conn. Super. Ct. June 1, 2004) (granting sole legal custody to a lesbian mother); *Campbell v. Campbell*, 2003 WL 23028336, at *5 (Conn. Super. Ct. Dec. 5, 2003) (granting joint legal custody to a lesbian mother).
[120] *Lavoie v. MacIntyre*, 2002 WL 31829964, at *2-3 (Conn. Super. Ct. Nov. 26, 2002). In an earlier and similar case, *Laspina-Williams v. Laspina-Williams*, the Court found that a plaintiff in the *Lavoie* plaintiff's position had standing to seek visitation rights. 742 A.2d 840, 844 (Conn. Super. Ct. 1999).
[121] *Lavoie*, 2002 WL 31829964, at *7-8.
[122] *M v. M, U. v. U.*, 1996 WL 434302, at *23 (Conn. Super. Ct. July 11, 1996).

of various rights.[123] The court dismissed the family integrity claim, finding that the plaintiff's relationship to the child and her partner did not have a legal basis and therefore did not trigger the right to family integrity.[124] The court did not dismiss the plaintiff's equal protection claim, which was based on the allegation that the defendants had treated her differently based on her sexual orientation, finding that "there appears to have been no rational basis" for their consideration of the plaintiff's sexual orientation.[125] However, a few years later, the court granted summary judgment to the defendants, finding that the plaintiff could not show that the defendants were motivated by animus towards her because of her sexual orientation.[126]

In *In re Jacob R.*, the DCF brought petitions to terminate the parental rights of the parents of Jacob R, alleging abandonment, failure to rehabilitate, and no ongoing parent-child relationship. At the time of the petitions, DCF had possessed custody of Jacob R. for nearly four years. In agreeing to terminate parental rights, the Court praised Jacob R.'s current foster parents, a same-sex couple, as "a very good placement" that offered him "the specialized attention and psychological management" that best served his needs.[127]

In *Davis v. Kania*, a same-sex male couple had been domestic partners for thirteen years and had established a paternal relationship with a child under the law of California. Both men were listed on the child's birth certificate. The couple then moved to Connecticut where the relationship ended in 2002. In 2003, the plaintiff filed an application to enjoin the defendant from taking the child out of the country for three months, as well as an application for custody. The defendant then filed a motion to dismiss the plaintiff's application for custody, claiming that the plaintiff was not a "parent" of the minor child.[128] The Court rejected this motion, finding that both men had been listed as parents on the child's birth certificate by a California court, and that the California judgment was enforceable in Connecticut because it did not contravene Connecticut state law or policy.[129]

Chapter 30-9 of the Policy Manual for the DCF deals with discrimination on the basis of sexual orientation and gender identity. The purpose of the policy is twofold: (1) to ensure that gay, lesbian, bisexual, and transgender children under the guardianship of the DCF receive "non-discriminatory, safe, affirming and non-detrimental services"; and (2) to facilitate "recruitment and retention of affirming foster or adoptive parent(s) and mentors" and to ensure that LGBT individuals "are given consideration equal to all other individuals."[130] It further prohibits a child's removal from their biological, foster, or

[123] *Zavatsky v. Anderson*, 130 F. Supp. 2d 349, 351-52 (D. Conn. 2001).
[124] *Id.* at 355.
[125] *Id.* at 356-58.
[126] *Zavatsky v. Anderson*, 2004 WL 936170, at *9 (D. Conn. Mar. 9, 2004).
[127] *In re Jacob R.*, 2001 WL 1231673, at *1, 15 (Conn. Super. Ct. Sep. 21, 2001).
[128] *Davis v. Kania*, 836 A.2d 480, 481-82 (Conn. Super. Ct. 2003).
[129] *Id.* at 483-84.
[130] CONNECTICUT DEPARTMENT OF CHILDREN & FAMILIES POLICY MANUAL, Chptr. 30, at 9, *available at* http://bit.ly/1JMFCh.

adoptive family based solely on the parent(s) gender identity or expression, marital partner or cohabitation status, or actual or perceived sexual orientation.[131]

H. Recognition of Same-Sex Couples

1. Marriage, Civil Unions & Domestic Partnership

In October 2008, the Connecticut Supreme Court decided *Kerrigan v. Commissioner of Public Health*, resolving a lawsuit filed by eight same-sex couples who had applied for and been denied marriage licenses. The Court found that the state statutory scheme permitting opposite-sex couples to marry but forbidding same-sex couples from doing so discriminated on the basis of sexual orientation and violated the state constitutional provisions guaranteeing equal protection of the laws.[132] A key component of the Court's decision was its finding that sexual orientation was a quasi-suspect class under the Connecticut Constitution.[133] With this decision, Connecticut became the third state to permit same-sex marriage.

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

1. Child Care

Department of Social Services regulations state that parents and providers in the Child Care Assistance Program have the right to be treated fairly without regard to sexual orientation.[134]

2. Veterans' Affairs/National Guard

If the Connecticut National Guard wants to lease an armory, it cannot engage in or permit discrimination based on sexual orientation, including employment discrimination.[135]

The Connecticut Department of Veterans' Affairs cannot discriminate against any employee, applicant, veteran, program participant, or visitor because of sexual orientation.[136] In addition, Connecticut veterans discharged from the military due to their admitted homosexuality, absent any homosexual activities during their service, are eligible for the veterans' bonus.[137]

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[131] *Id.*
[132] *Kerrigan v. Comm'r of Public Health*, 957 A.2d 407, 482 (Conn. 2008).
[133] *Id.* at 475-76.
[134] *Id.* (§ 17b-749-02).
[135] *Id.* (§ 27-39-7).
[136] *Id.* (§ 27-102l(d)-72).
[137] *Id.* (§ 27-140c-6).

3. Department of Social Services

The Department of Social Services prohibits any public or private entity receiving funds under the Older Americans Act from discriminating on the basis of sexual orientation.[138] The Department also prohibits sexual orientation discrimination related to loans given as part of the Assistive Technology Revolving Fund.[139]

4. Insurance

Finally, under regulations governing viatical settlements, a viatical settlement agent, broker, or provider may not discriminate in the creation or solicitation of a viatical settlement contract on the basis of sexual orientation.[140]

[138] *Id.* (§ 17b-423-3).
[139] *Id.* (§ 17b-606a-6).
[140] *Id.* (§ 38a-465-7).