



NYCLU
NEW YORK CIVIL LIBERTIES UNION

125 Broad Street
New York, NY 10004
212.607.3300
212.607.3318
www.nyclu.org

Testimony of the New York Civil Liberties Union

in support of

Gender Expression Non-Discrimination Act (A.5039 / S.6349)

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My name is Katharine Bodde and I am a Policy Counsel with the New York Civil Liberties Union (NYCLU). I would like to thank Assembly Member Gottfried and Senator Squadron for inviting the NYCLU to provide testimony today in support of the Gender Expression Non-Discrimination Act (GENDA).

Founded in 1951 as the New York affiliate of the American Civil Liberties Union, the New York Civil Liberties Union is a not-for-profit, nonpartisan organization with eight chapters and regional offices and nearly 50,000 members across the state. The NYCLU's mission is to defend and promote the fundamental principles, rights and constitutional values embodied in the Bill of Rights of the U.S. Constitution and the Constitution of the State of New York. This includes the rights to freedom of association and expression, privacy, personal autonomy, and equality that are the foundation of lesbian, gay, bisexual and transgender (LGBT) civil rights.

Currently, gender identity and expression are not recognized as protected classes under New York State's civil rights laws. Thus, transgender and gender non-conforming individuals are denied the basic legal protections that are afforded other vulnerable groups. This results in unchecked discrimination against transgender and gender non-conforming individuals and creates barriers to the most basic of services, including housing, employment and medical care. As discrimination against transgender and gender non-conforming individuals persists, the need for explicit legal protection is imperative.

The Gender Expression Non-Discrimination Act would amend state law to add gender identity and gender expression to the list of protected classes under the state’s civil rights laws; and thereby, provide recourse to individuals that experience discrimination based on their gender identity or gender expression. The NYCLU supports this measure.

GENDA’s Civil Provisions

New York State human rights, civil rights and education laws currently prohibit discrimination on the basis of “age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics, marital status, or domestic violence victim status.” GENDA will amend these laws to bar unlawful discriminatory practices on the basis of gender identity or expression. By adding these protections, transgender and gender non-conforming individuals would have legal recourse when facing discrimination on the basis of their gender identity or expression in the following areas:

- Employment: New York State’s existing Human Rights Law prohibits employers, employment agencies and unions from discriminating in hiring, firing, promotions, training and advertising, among other things. However, New York State law does not explicitly prohibit employers from refusing to hire a qualified person because he or she does not conform to common gender stereotypes. When GENDA is enacted, an employer could not legally fire, refuse to hire or decline to promote an employee because that person identifies as, or is perceived as being, transgender or gender non-conforming.
- Housing: Landlords, lessees and sellers of real estate, including public or subsidized housing and commercial real estate, may not refuse access to housing or property to anyone based on the protected classes listed in the Human Rights Law. However, because this list does not currently include gender expression and identity, many transgender and gender non-conforming individuals face discrimination when trying to obtain housing. For example, landlords, real estate agents, and property sellers sometimes refuse to sell or lease to gender non-conforming applicants and evict tenants on the basis of their gender identity or expression. When GENDA is enacted, the law will grant recourse to transgender and gender non-conforming individuals who face this type of discrimination.¹
- Public Accommodations: Shops, parks, professional offices, restaurants, bus stations and entertainment centers, among other public venues, all fall under the definition of public accommodations in the Human Rights Law. Anyone can access a place of public accommodation if that person meets the venue’s basic entrance requirements, such as paying an entrance fee, being older than 21 or being a paying customer. Discrimination in

¹ Prohibitions on discrimination in housing do not apply to buildings with only one or two units or if the owner also lives on the premises; this exemption will remain in place under GENDA.

these places can take the form of refusal of service, harassment or unequal treatment. When enacted, GENDA will prohibit such places from denying services or access to facilities, or from otherwise treating people differently because of their gender identity or gender expression. GENDA will additionally prohibit businesses or public venues from indicating that they are not open to some people because of their gender identity or expression.

- Health Care: Many transgender and gender non-conforming people face particular discrimination in access to health care. As clinics and hospitals fall within the definition of public accommodations, GENDA will require them to treat patients for routine and specialized care regardless of gender identity or expression (unless, of course, the patient's medical needs fall outside the medical professionals' areas of expertise). Health care professionals without training in health care specifically related to the medical and/or surgical transition process may refer patients with transition-related health needs to more qualified practitioners, but will not be allowed to refuse to provide routine care merely out of bias against transgender patients.
- Education: State Human Rights Law bars discrimination in admissions to schools, colleges and universities or access to their classes or facilities. Thus, when GENDA is enacted, New York schools will not be allowed to deny admissions and access on the basis of gender identity or expression. The Human Rights Law does, however, allow private religious schools to limit admission to students who share their religious denomination or faith. GENDA will not change this exemption.
- Credit: Two separate sections of GENDA prohibit discrimination in financial matters and credit, including an outright ban on discrimination in the extension of credit. Invasive questions intended to reveal a person's gender identity in the mortgage application process, discrimination in lending and in considering sources of income for credit eligibility will also be illegal under GENDA.

Civil Enforcement

The New York State Division of Human Rights (DHR), the agency tasked with enforcing the state Human Rights Law, has jurisdiction to receive, investigate, and resolve complaints of discrimination. Once GENDA is enacted, this agency will be empowered to receive complaints from individuals who are discriminated against based on their gender identity or expression.² As an alternative, a person who has experienced discrimination can file a lawsuit under the New York State Human Rights Law.

² The DHR also has the authority under the Human Rights Law to conduct studies and issue publications about the extent and effects of discrimination, and make recommendations for regulatory policies to help enforce anti-discrimination laws. GENDA will extend this research authority to discrimination based on gender identity and expression.

In conclusion, the NYCLU supports the addition of gender expression and gender identity to the list of protected classes in New York's civil rights laws. GENDA will provide essential recourse for transgender and gender non-conforming New Yorkers who face severe discrimination and harassment in their daily lives. Extending the same legal protections against discrimination in housing, employment, credit, education and access to public accommodations that other New Yorkers already enjoy will help correct this injustice.