



## **Stranded at the Altar**

***The New York State Senate's Willful Inaction on  
Post-Marriage Equality LGBT Legislation***



**New York State Senator Brad Hoylman**

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## Note

My office first published “Stranded at the Altar” in December 2015, following four years of Republican intransigence and their refusal to put forth any legislation to protect and support the LGBT community in New York. Following the Supreme Court’s 2015 decision which established marriage equality across the country, many people think that fight for LGBT rights is over. To the contrary – there is a long way to go. New York State law still allows discrimination on the basis of gender expression, LGBT youth can still legally be subjected to “conversion therapy,” and “gay panic” or “trans panic” can still be used as an extreme emotional disturbance defense in criminal cases. The State Legislature, and especially the Senate, have a lot of work still to do. This update of the 2015 report shows just how deep the intransigence runs, and the work that remains for full LGBT rights in New York.

## Introduction

In June 2011, the New York State Legislature took the monumental step of legalizing same-sex marriage, becoming the most populous state in the country at the time to embrace the cause of marriage equality. New York set the standard for the rest of the country, leading to the Supreme Court’s decision in *Obergefell v. Hodges* just four years later, legalizing same-sex marriage throughout the United States.

Unfortunately, as this report demonstrates, the New York State Legislature’s leadership on LGBT issues came to a standstill after the passage of the Marriage Equality Act in 2011. **One body in particular – the New York State Senate – has failed to act on a single piece of legislation outside the State budget that advances the civil rights of LGBT New Yorkers in the past seven legislative sessions.** By failing to pass any bills aimed specifically at the unique and pressing needs of the LGBT community since the passage of marriage equality, the Senate has demonstrated its willingness to effectively ignore the over 756,000 LGBT individuals who call New York State home.<sup>1</sup> This failure to act is even more stark when considering the Trump Administration’s intentional roll back of protections for LGBT Americans.

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<sup>1</sup> Leonhardt, David, “New York Still Has More Gay Residents than Anywhere Else in U.S.”, New York Times March 23, 2015. <https://www.nytimes.com/2015/03/24/upshot/new-york-still-has-more-gay-residents-than-anywhere-else-in-us.html>

The Senate's inaction on LGBT issues is starkly contrasted by the State Assembly, which has reliably passed a number of the crucially important bills discussed in this report. It is also out of touch with the views of everyday New Yorkers. A 2008 poll by Global Strategy Group found that 78% of New York voters support protections for transgender people, including two-thirds of the Republicans surveyed. The intransigency of the Senate becomes even more baffling and disappointing when viewed in the context of the bills that the Republican leadership actually allows to come to the Senate floor for a vote.

**In the 2018 legislative session alone, the Senate passed 1,542 pieces of legislation. Not a single passed bill specifically addressed the unique needs of the LGBT community.** Instead, we voted on 16 bills creating distinctive license plates; 94 "personalized" bills mostly affecting a single individual or organization; 41 bills regarding sex offenders; 40 bills renaming roads and highways across the state; 28 bills relating to hunting and fishing in the state; 11 bills regarding Lyme disease; 150 bills relating only to particular localities; and 14 ceremonial recognition bills including S.3502, naming the wood frog the official amphibian of New York State, a bill which has inexplicably been taken up in legislative sessions since 2014. The Senate also found the time to pass a bill, S.4288, declaring that baseball is the official sport of New York State.

The dearth of substantive legislation protecting LGBT New Yorkers moving through the Senate since 2011 is no coincidence, and is not for a lack of important bills awaiting a vote. **As this report demonstrates, over the last seven years the Republican majority in the Senate has killed every piece of legislation referring to sexual orientation or gender identity – even when such legislation has bipartisan support.** Legislation as "minor" as a bill making technical corrections to the Domestic Relations Law in the wake of marriage equality to legislation as "major" as the Gender Expression Non-Discrimination Act (GENDA) has been blocked from consideration, even while the Assembly routinely passes them.

In January 2016, Governor Cuomo finalized regulations interpreting the Human Rights Law to include gender identity, after citing the Senate's inaction on GENDA as a reason he was forced to take the matter of anti-discrimination protections for transgender New Yorkers into his own hands. While Governor Cuomo's announcement is to be applauded, it is unfortunate that advancing LGBT rights in New York State requires extraordinary actions outside of the State Legislature. Further, the Governor's action could be reversed by a future administration.

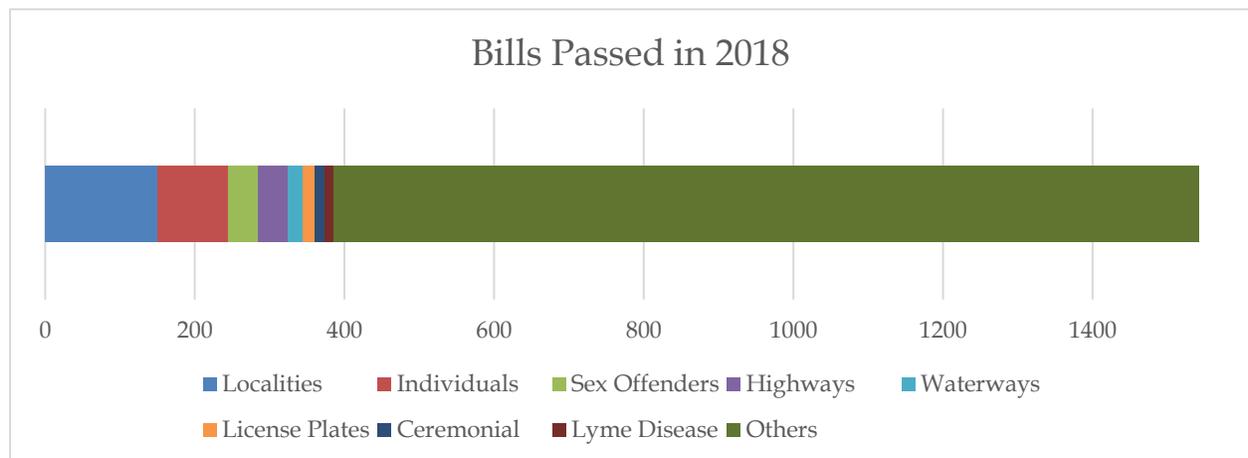
Meanwhile, state legislatures across the country have filled the leadership vacuum on LGBT issues that New York has abandoned, passing comprehensive anti-discrimination

protections, banning harmful conversion therapy for LGBT minors, and banning so-called “gay panic” or “trans panic” extreme emotional disturbance defenses to violent crimes. While other states race ahead to advance LGBT rights, the New York State Senate has left our state’s LGBT residents stranded at the altar.

## 2018 Legislative Session Analysis

The New York State Senate’s legislative session runs from January through June, giving legislators six months to debate and pass laws. In the final weeks of the 2018 legislative session, the State Senate found itself in a stalemate with 31 Senators voting as Democrats and 31 voting as Republicans. Major legislation found itself at a standstill, and anything even remotely controversial was left to languish.

Despite this, the State Senate managed to pass 1,542 bills throughout the legislative session. Unfortunately, the number of bills passed is not a reliable indicator of their importance to New Yorkers’ lives. Dozens of pieces of legislation passed by the Senate during the 2018 legislative session were frivolous, purely ceremonial, or applied to only a single individual or organization (for example, bills granting retroactive pension credits to a specific person or allowing a non-profit to apply for a property tax exemption). Meanwhile, for the seventh year in a row since the passage of the Marriage Equality Act, not a single bill protecting LGBT New Yorkers passed the Senate. Below are several categories of bills that the Republican leadership of the Senate evidently found more pressing than legislation protecting LGBT New Yorkers:



### **Bills Directed at Specific Individuals or Organizations - 94 bills**

The Senate passed 94 bills directed at specific individuals (such as pension sweeteners) or organizations (such as property tax exemptions) in 2018, accounting for 6.1% of the bills passed in this legislative session.

### **Bills Targeting Sex Offenders - 41 bills**

The Senate passed 41 bills targeting sex offenders in 2018, accounting for 2.7% of the bills passed in this legislative session.

### **Highway and Road Renaming Bills - 40 bills**

The Senate passed 40 highway and road renaming bills in 2018, accounting for 2.6% of the bills passed in this legislative session.

### **Sportsman Bills (Hunting/Fishing/Trapping) - 28 bills**

The Senate passed 28 sportsman bills in 201, accounting for 1.8% of the bills passed in this legislative session.

### **Bills Designating Inland Waterways - 19 bills**

The Senate passed 18 bills designating particular lakes and rivers as inland waterways, accounting for 1.2% of the bills passed in this legislative session.

### **Distinctive License Plate Bills - 16 bills**

The Senate passed 16 distinctive license plate bills in 2018, accounting for 1.0% of the bills passed in this legislative session.

### **Ceremonial Recognition Bills - 14 bills**

The Senate passed 14 ceremonial recognition bills in 2018, accounting for 1.0% of the bills passed in this legislative session.

### **Bills about Lyme Disease - 11 bills**

The Senate passed a surprisingly high number of bills pertaining to combating Lyme Disease this legislative session, passing 11 bills and accounting for 0.7% of the bills passed in this legislative session.

### **Bills relating solely to one Locality - 150 bills**

The Senate passed 150 bills relating only to one particular village, school district, town, city, county, or other local government, accounting for 9.7% of the bills passed in this legislative session.

## **Bills Protecting LGBT New Yorkers - 0 bills**

The Senate passed 0 bills protecting LGBT New Yorkers in 2018, accounting for 0% of the bills passed in this legislative session.

## **Stalled LGBT Legislation in New York**

The New York State Senate's failure to pass laws protecting LGBT New Yorkers has not been for want of LGBT-friendly legislation under consideration. Indeed, the Assembly has passed a number of bills enhancing LGBT rights over the past seven years. Similar bills introduced in the Senate have been blocked year after year by the Republican leadership.

A list of LGBT legislation that has been held up by the State Senate is below.

**S.17A (Hoylman) / A.6959A (Paulin):** The Child-Parent Security Act. Allows establishment of a child's legal relationship with his or her parents for children born via in-vitro fertilization or gestational surrogacy and legalizes gestational surrogacy contracts in New York.

The Assembly hosted a public hearing on gestational surrogacy during the 2018 legislative session in order to gather information to support the Child-Parent Security Act.

**S.41 (Hoylman) / A.8344 (Bronson):** Provides for the collection of demographic information on sexual orientation and gender identity by state agencies. Has passed the Assembly three times since 2014.

**S.43A (Hoylman) / A.7153 (O'Donnell):** Requires insurers to cover pre-exposure prophylaxis (PrEP) and post-exposure prophylaxis (PEP) to prevent HIV infections.

**S.50 (Hoylman) / A.5001 (O'Donnell):** Prohibits so-called "gay panic" or "trans panic" being cited as a defense to certain violent crimes.

Governor Cuomo proposed to ban the use of the gay/trans panic defense as part of the proposed Fiscal Year 2018-2019 Executive Budget proposal. It was inexplicably removed from the final negotiated budget.

**S.51 (Hoylman) / A.1243 (Buchwald):** The New York State Restoration of Honor Act. Restores state benefits to veterans who were discharged other than honorably solely as a result of the former federal “Don’t Ask Don’t Tell” policy.

**S.55 (Hoylman) / A.2165 (Bronson):** The New York State Supplier Diversity Act. Establishes a new Division of Supplier Diversity within the Office of General Services to encourage greater diversity in New York’s procurement process by ensuring equal access to contracting opportunities for certified LGBT, disability, and veteran-owned small businesses.

**S.75 (Hoylman):** The Modern Family Birth Certificate Act. Requires that parents have the option of appearing on their children’s birth certificates as either “father,” “mother,” or “parent.”

**S.97 (Hoylman):** Prevents a parent’s gender reassignment from being a factor in making a determination in a child custody case.

**S.262 (Hoylman) / A.3387 (O’Donnell):** Makes technical amendments to the Estates, Powers and Trusts Law and the Surrogate’s Court Procedure Act to reflect to the provisions of the Marriage Equality Act. Has passed the Assembly every year since 2013.

S.262 would update certain sections of law that were mistakenly not included as part of the Marriage Equality Act of 2011, changing words like “husband and wife” to “spouses.” The bill passed through the Senate Judiciary Committee in both 2017 and 2018. In the 2017 legislative session, Senator Hoylman utilized a little-known Senate rule and filed a Motion for Chamber Consideration, which would attempt to force a vote on the full Senate floor of a bill that has already passed through a committee. The Senate voted on strict party lines not to allow the Motion. Republicans argued they voted against the procedural motion itself and not on the substance of the bill, but this weak logic masked what can only be interpreted as a deep institutional fear of doing anything to support LGBT individuals.

**S.263 (Hoylman) / A.3977 (Glick):** Prohibits licensed mental health professionals from conducting so-called “conversion therapy” on LGBT minors. Has passed the Assembly every year since 2014.

In the 2018 legislative session, Senator Hoylman filed a Motion for Committee Consideration to force a vote on S.263 to ban gay conversion therapy in the Higher

Education Committee. With little discussion, the bill passed with 9 votes in favor (including just one Republican vote), 2 “aye without recommendation” votes (effectively a yes vote; including two Republicans), and 7 no votes (all Republicans). Unfortunately, instead of sending the bill to be voted on by the full Senate, the Senate Leadership saw fit to refer the bill to a second committee, Mental Health, where the bill remained for the rest of session.

**S.277 (Hoylman) / A.2662 (Ortiz):** Requires LGBT-specific training for runaway and homeless youth facility employees. Has passed the Assembly three times since 2014.

**S.281 (Hoylman):** The Michael Sandy Act. Establishes that evidence that a defendant and victim belong to the same protected category is inadmissible in hate crime cases.

**S.574 (Hoylman):** Requires public buildings and public places of accommodation to provide equal access to diaper changing tables to parents of either gender. While the Senate failed to act on this legislation since it was introduced in 2015, the bill’s provisions were included as part of the Fiscal Year 2018-2019 State Budget.

**S.3449 (Hoylman) / A.315 (Hevesi):** Establishes a single point of access to benefits and services for people living with HIV/AIDS in each local Department of Social Services.

**S.3545 (Gianaris) / A.5024 (O’Donnell):** Prohibits the Comptroller from paying travel reimbursements to states allowing businesses to assert right of free exercise of religion as a defense to discrimination.

**S.3894 (Hamilton) / A.7437 (Blake):** Enshrines protections for minority, LGBT, elderly, and disabled individuals to vote in the State Constitution.

**S.4843 (Hoylman) / A.10659 (Gottfried):** Requires school districts to develop policies and procedures regarding the treatment of transgender and gender non-conforming students.

**S.5993A (Lanza) / A.6500A (O’Donnell):** Requires all single-occupancy bathrooms in public places be gender-neutral.

**S.6354A (Krueger):** Would enshrine protections for LGBT individuals and other groups not to be discriminated against in the State Constitution.

**S.6620 (Lanza) / A.5137A (Rosenthal):** Requires all single-occupancy bathrooms in state-owned buildings be gender-neutral. Has passed the Assembly twice since 2015.

**S.7010 (Hoylman) / A3558 (Gottfried):** The Gender Expression Non-Discrimination Act (GENDA). Prohibits discrimination based on gender identity or expression and includes violent crimes committed based on the victim's gender identity or expression under the hate crimes statute. In October 2015, Governor Cuomo issued an executive order implementing the anti-discrimination parts of GENDA. Has passed the Assembly every year since 2008.

During the 2018 legislative session, Senator Hoylman filed a Motion for Committee Consideration to force a committee vote on S.7010 (GENDA) in the Senate Investigations and Government Operations Committee. With a 4-5 party-line vote, GENDA was defeated in committee, ending the bill's chances for the rest of the year. During the debate, Republican Senators argued that no one should be discriminated against, and therefore we shouldn't call out special categories of people in law. This weak argument ignores historic mistreatment of not only transgender people, but the targeted and categorical discrimination of people by race, gender, ethnicity, sexual orientation, and other immutable characteristics.

**S.7441 (Hamilton) / A.8524 (Ortiz):** Allows a new gender designation of "X" on driver's licenses for those who do not identify as male or female.

**S.8106 (Hoylman) / A.8685 (Seawright):** Establishes a new holiday of "Edie Windsor Day" in New York, honoring a trailblazing activist whose case *United States v. Windsor* overturned the federal Defense of Marriage Act and led the way for national marriage equality.

**S.8441A (Phillips):** Grants insurance coverage for in-vitro fertilization and other fertility treatments. Instead of voting on this bill, which would support LGBT couples who wish to have children, the Senate advanced and voted on an amended version of the bill, S.8441B, that explicitly removed anti-discrimination language from the original version ("No insurer providing coverage under this paragraph shall discriminate based on a covered individual's expected length of life, present or predicted disability, degree of medical dependency, perceived quality of life, or other health conditions, nor based on personal characteristics, including age, sex, sexual orientation, marital status or gender identity.").

**S.8580 (Hoylman):** Creates an LGBT Long Term Care Facilities Bill of Rights to fight discrimination in these facilities.

**S.8676 (Hoylman):** Instructs the state to develop instructional and curriculum materials for use by schools in the historic treatment of LGBT individuals.

## **Actions on LGBT Issues Have Been Few and Far Between**

The State Senate has managed to take some actions to support LGBT New Yorkers, but each of these actions was cloaked in secrecy or included in broader budget bills as advanced by the Governor and the Assembly.

In 2018, the State budget included the provision of equal access to diaper changing tables in newly constructed or substantially renovated men's and women's public restrooms, similar to the provisions found in S.574 (Hoylman). This proposal was included in the Governor's "Women's Agenda" budget package and marketed as an important gender equality measure. It passed without any public discussion and without mention of the ancillary benefits to LGBT families, many of whom have been forced to change diapers on the floor in men's restrooms.



"I would also like to ask about the proposal by the Senate majority to eliminate the \$1 million capital project appropriation for the construction of a memorial to commemorate the June 12, 2016, terrorist attack targeting the LGBT community in Orlando, Florida. Could the sponsor explain why the Senate majority eliminated this memorial, primarily to LGBT victims -- which, according to the Governor, would honor all victims of hate, intolerance and violence in New York's fight for equal rights?"

-Senator Brad Hoylman on the Senate floor,  
March 15, 2017.

During the 2017 budget process, the Senate Republican Majority took issue with a proposal that would grant \$1 million to build a memorial to the LGBT victims of the Pulse nightclub shooting in Orlando, Florida on June 12, 2016, to be located in Greenwich Village. The measure was inexplicably removed from the Senate's "one-house" budget language, while hundreds of similar grants were included across the state without debate. When pressed for a rationale, Republicans waffled and refused to give any real

response. In the final budget, the funding was not included as a standalone budget line,

but instead was added to a broader fund with the understood intention to use the funds to build the memorial. It was absurd that this move was necessary in order to fund a memorial to murdered LGBT people.

## **LGBT Legislation Passed in New York**

Even prior to the passage of the Marriage Equality Act in 2011, New York had a strong tradition of adopting LGBT-friendly legislation. **At least one bill supporting the rights of LGBT New Yorkers was signed into law almost every year from 2000 to 2011, with five landmark bills passed in 2010 alone** (the only year listed below in which the Democratic Conference controlled the State Senate). These bills included laws establishing hate crime penalties, outlawing discrimination on the basis of sexual orientation, and ensuring that same-sex partners and spouses are entitled to the same legal protections as opposite-sex ones.

“It was specifically removed from the Governor's budget proposal. The amount is 6/10,000ths of 1 percent of the \$152 billion budget. I have to say, Mr. President, that that was a conscious attempt to remove a tribute to the LGBT community. Does the sponsor believe that the public should not have the opportunity to provide such a tribute to the victims of Orlando?”

-Senator Brad Hoylman on the Senate floor, March 15, 2017.

## **LGBT Legislation Passed in Other States Since 2015**

During the almost seven-year period that the New York Senate has gone without passing any new LGBT-friendly bills, other states across the country have adopted a range of measures to protect and support LGBT people and their families (source: Human Rights Campaign). These other states have not been lulled into a false sense of security by *Obergefell*, and are continuing to work to support the LGBT community.

Examples include:

- On September 29, 2017, **California** established the nation's most progressive restroom access law, requiring that single-occupancy restrooms in California businesses, government buildings, and places of public accommodation be universally accessible to all genders. California Governor Jerry Brown also signed the Gender Recognition Act into law in October 2017, which allows for a third, non-binary gender choice on driver's licenses and birth certificates.

- On May 10, 2017, **Connecticut** enacted a bill, by votes of 141-8 and 36-0, to ban conversion therapy on minors.
- On June 7, 2018, **Delaware**'s Legislature passed a bill banning conversion therapy in the State. The bill awaits signing by Governor John Carney (D), and will take effect immediately upon receiving the Governor's signature.
- On July 1, 2018, **Hawaii**'s new law banning conversion therapy will go into effect after being signed by Governor David Ige (D) and passing unanimously in both houses of the Legislature.
- On October 1, 2018, **Maryland**'s new law banning conversion therapy will go into effect after being signed by Governor Larry Hogan (R).
- On May 17, 2017, **Nevada** enacted a law banning conversion therapy on minors following the signature of Governor Brian Sandoval (R) and 15-5 and 31-8 votes in the Legislature.
- As of July 10, 2018, **New Hampshire** law will include "gender identity" in its non-discrimination law. Further, New Hampshire also banned conversion therapy on minors, which will go into effect on January 1, 2019. Notably, New Hampshire's Governor, Chris Sununu, is a Republican, and both houses of the General Court are controlled by Republicans, showing that protecting the LGBT community need not be a partisan issue.
- On April 7, 2017, **New Mexico** Governor Susana Martinez (R) signed legislation that banned conversion therapy on minors. The Legislature had passed the bill by votes of 32-6 and 44-23, and the law went into effect immediately.
- On July 19, 2017, **Rhode Island** Governor Gina Raimondo (D) signed a law banning conversion therapy. It went into effect immediately.
- On July 1, 2016, former **Vermont** Governor Peter Shumlin (D) signed legislation prohibiting conversion therapy into law. It went into effect immediately.
- On March 28, 2018, **Washington** Governor Jay Inslee (D) signed legislation protecting LGBTQ youth from conversion therapy. The law goes into effect on July 1, 2018.

## **Conclusion**

The past seven legislative sessions have revealed nothing short of a blacklist of the LGBT community by the New York State Senate and its Republican leadership. Marriage equality has been the law of the land across the United States for three years. The New York Legislature – the Senate, in particular – can no longer ride on the coattails of the 2011 Marriage Equality Act and continue to believe that our state is a national leader on LGBT issues. It is unacceptable that as other states, including Republican-controlled ones, move forward with greater protections for the LGBT community, a group of Senate Republicans continue to block progress in New York. The State Senate should act quickly in January 2019 to pass LGBT-friendly legislation that has been stalled for years if we truly want to be considered a state that supports and protects all of its residents.

*Cover photo: by Mike Groll, Associated Press*