

## Anti-transgender discrimination in public accommodations: A critical public health issue for Massachusetts



### How the current law falls short

Massachusetts' nondiscrimination law prohibits discrimination on the basis of real or perceived sexual orientation and gender identity in employment, education, credit, and housing.<sup>1</sup> The law also protects against discrimination in public accommodations on the basis of sexual orientation. However, the gender identity provision does not cover public accommodations. Research conducted by the Fenway Institute and the Massachusetts Transgender Political Coalition in 2013 found that nearly two thirds (65%) of transgender residents of Massachusetts reported experiencing discrimination in public accommodations settings, including public transportation, restaurants, retail establishments, and health centers, during the 12 months since the law was implemented in July 2012. Experiencing discrimination had negative physical and mental health effects on transgender people, and it was a barrier to accessing health care.

For these reasons, the Fenway Institute strongly supports the passage of S. 735, An Act Relative to Transgender Anti-Discrimination, and H. 1577, An Act Relative to Gender Identity and Non-Discrimination, in order to ban discrimination on the basis of gender identity in public accommodations.

### The negative health consequences of discrimination

In 2013 the Fenway Institute at Fenway Health and the Massachusetts Transgender Political Coalition (MTPC) conducted a study, Project VOICE, to explore the health and wellbeing of transgender people in Massachusetts. A key goal of the study was to better understand the

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<sup>1</sup> American Civil Liberties Union. Non-Discrimination Laws: State by State Information - Map. (n.d.). Retrieved August 19, 2015, from <https://www.aclu.org/map/non-discrimination-laws-state-state-information-map>

relationship between public accommodations discrimination and health consequences among transgender and gender nonconforming adults in Massachusetts.<sup>2</sup>

The Project VOICE study found that 65% of 452 transgender Massachusetts residents surveyed reported discrimination in one or more public accommodation settings in the past 12 months. Twenty-four percent of subjects reported discrimination in healthcare settings. Discrimination was defined as mistreatment on the basis of one's transgender or gender nonconforming identity/presentation and included verbal harassment and physical assault.

Discrimination in public accommodations correlated with poorer mental health symptoms and outcomes. Transgender people who experienced discrimination in public accommodations within the last 12 months were 30% more likely to report negative emotional symptoms, such as feeling emotionally upset, sad, or frustrated in the past 30 days, when compared to those who did not report discrimination.

The study also documented stress-related physical outcomes. Fifty-five percent of those who were discriminated against reported physical symptoms such as headache, upset stomach, or pounding heart in the last 30 days. Only 37% of those who were not discriminated against reported these symptoms. Public accommodations discrimination was also associated with diagnosis of asthma and gastrointestinal diseases. For example, 28% of those who had been discriminated against in public accommodations were diagnosed with asthma, whereas only 16% of those who had not been discriminated against were diagnosed with asthma. These findings show that public accommodations discrimination was a statistically significant predictor of increased risk for the stress-related physical health outcomes in question.

Public accommodations discrimination was especially detrimental to health outcomes when it occurred in a healthcare setting. Five percent of respondents reported that a health care provider refused to treat them in the past 12 months due to their transgender identity. Nineteen percent of respondents indicated that they postponed or did not try to get medical care when they were sick or injured in the past 12 months because of disrespect or mistreatment from health care providers due to being transgender or gender nonconforming. Twenty four percent did not seek routine health care due to previous experiences of discrimination.

### **Addressing objections to accessing public restrooms**

Opponents of gender identity nondiscrimination legislation have claimed that allowing transgender people to access restrooms consistent with their gender identity will violate other's privacy rights and lead to inappropriate behavior, such as sexual harassment or assault. Media Matters studied 17 school districts throughout the United States that had gender identity nondiscrimination policies in place to see if there was an increase in this type of inappropriate

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<sup>2</sup> Reisner, S., Hughto, J., Dunham, E., Heflin, K., Begenyi, J., Coffey-Esquivel, J., & Cahill, S. (2015). Legal Protections in Public Accommodations Settings: A Critical Public Health Issue for Transgender and Gender-Nonconforming People. *Milbank Quarterly*, 0(0), 1-32. Retrieved August 11, 2015, from [www.milbank.org](http://www.milbank.org)

behavior. Of the 600,000 students in the school districts, none had reported harassment or inappropriate behavior.<sup>3</sup>

Furthermore, in another research study, Media Matters conducted interviews with heads of state police departments and human rights organizations in 12 states that have nondiscrimination laws that protect transgender people in public accommodations.<sup>4</sup> In these interviews, not a single person indicated that there had been an increase in reported sexual harassment or abuse as a result of passing the nondiscrimination laws. For example, Minnesota amended its Human Rights Act to prohibit discrimination against transgender people in public accommodations in 1993. Minneapolis police spokesman John Elder told Media Matters that sexual harassment and assault as a result of the transgender nondiscrimination law have not been “even remotely” a problem.<sup>5</sup>

In fact, it is transgender people who are at risk for harassment and assault while simply trying to use the restroom. The DC Trans Coalition did a citywide survey of 93 transgender and gender nonconforming people and found that 70% of participants experienced denial of entrance, verbal assault, physical assault, or some combination of the three in accessing public restrooms in alignment with their gender identity.<sup>6</sup> In order to reduce bathroom violence, transgender people must be allowed to use the bathroom that aligns with their gender identity, and must also be protected from discrimination under the law.

### **Ending anti-transgender discrimination in Massachusetts**

The Project VOICE study showed that discrimination in public accommodations is significantly associated with a wide array of poorer mental and physical health outcomes as well as healthcare practices that seriously hinder the wellbeing of transgender people in Massachusetts.

Policymakers should pass legislation to protect people from discrimination in public accommodations based on gender identity. Massachusetts has proven to be a leader when it comes to the protection of human rights, including equal rights for LGBT people. We are the first and only state in the nation to have an LGBT Youth Commission and an LGBT Aging Commission. We led the country, and indeed the world, on marriage equality. Please pass the this bill, in the tradition of this leadership, in order to make Massachusetts a better state in which all can work, live, and prosper.

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<sup>3</sup> Percelay, R. (June 3, 2015). “17 School Districts Debunk Right-Wing Lies About Protections For Transgender Students.” Media Matters. Accessed at: <http://mediamatters.org/research/2015/06/03/17-school-districts-debunk-right-wing-lies-about/203867>.

<sup>4</sup> Brinker, L and Carlos, M. (March 20, 2014). “15 Experts Debunk Right-Wing Transgender Bathroom Myth.” Media Matters. Accessed at: <http://mediamatters.org/research/2014/03/20/15-experts-debunk-right-wing-transgender-bathro/198533>.

<sup>5</sup> *Ibid.*

<sup>6</sup> Herman, Jody. (2013). “Gendered Restrooms and Minority Stress: The Public Regulation of Gender and its Impact on Transgender People’s Lives.” *Journal of Public Management and Social Policy*. Spring 2013. p. 65-80.



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*Fenway Health is a federally qualified health center located in Boston, MA. Our mission is to enhance the wellbeing of the lesbian, gay, bisexual, and transgender community and all people in our neighborhoods and beyond through access to the highest quality health care, education, research, and advocacy.*