



Massachusetts Transgender Political Coalition  
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## House Bill #1722 - An Act Relative to Gender-Based Discrimination and Hate Crimes

### Summary and Background

The Act Relative to Gender-Based Discrimination and Hate Crimes of 2007 clarifies and updates Massachusetts' non-discrimination laws to ensure that they clearly and uniformly protect all people regardless of their gender identity or expression. This bill adds the category of "gender identity or expression" to our hate crime laws as well as to the employment, housing, credit, public accommodations, and public education non-discrimination laws.

The Massachusetts Commission Against Discrimination ("MCAD") has already clarified that state law currently protects all individuals, including transgender persons, from discrimination based on gender identity or expression. This bill makes those protections *explicit, uniform, and visible to the general public*. This bill also amends existing hate crime laws to explicitly protect people targeted for violence and harassment because of their gender identity or expression.

### Why is this bill necessary?

Transgender people in Massachusetts face high levels of discrimination and violence because of widespread prejudice and the assumption that transgender people are "outside" of the law's protections. This bill amends both non-discrimination laws and hate crime laws in order to comprehensively make clear that transgender individuals have equal protection under the law.

#### *Discrimination Faced By Transgender People*

Transgender people are routinely fired by their employers either before or after transitioning from one sex to another; many others remain unemployed or underemployed as a result of discrimination, hostility and misunderstanding about transgender people. Because of widespread prejudices about how "real men" or "real women" should look or act, both transgender and non-transgender people are often harassed in the workplace and treated unfairly in public accommodations, housing, and credit transactions. Both transgender and non-transgender students are often bullied and lose educational opportunities when they don't conform to stereotypes of how boys and girls should look or act.

By addressing critical areas where people experience discrimination, this bill seeks to increase the productivity and safety of employees, consumers, residents, and students.

#### *Violence Faced by Transgender People*

This bill seeks to reduce crime in Massachusetts, especially the disproportionate violence faced by transgender people. Transgender people are often targeted for property crimes, threats, assault, and murder. Hate-motivated violence against transgender people is often characterized by what law enforcement personnel call "overkill": an excess of force. Over five percent of reported hate crime victims from 2002-2005 were transsexual women and men, a number much greater than their percentage of the Commonwealth's population.



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### **What does “gender identity or expression” mean?**

“Gender identity or expression” is defined as “a gender-related identity, appearance, expression, or behavior of an individual, regardless of the individual’s assigned sex at birth.”

This definition is intended to be consistent with MCAD’s interpretation of existing law and reflects the approach taken in a number of other states to ensure that transgender people are covered by the law. In addition to covering transgender people, the law protects people who do not conform to stereotypical views of how “real men” or “real women” should look or act.

### **How would this law affect hate crime laws?**

Perpetrators of crimes that specifically target a person because of their gender identity or expression would face penalties equal to those faced by criminals who target people because of race, religion, ethnicity, disability, or sexual orientation.

Under the amended hate crime laws, individuals experiencing ongoing harassment and threats based on their gender identity or expression would have the same ability to seek a civil injunction to protect themselves as do individuals experiencing, for example, threats because of their race, sexual orientation, or religion.

### **How would this law affect schools?**

Transgender and non-transgender students are often bullied and even assaulted when their gender expressions are different from what's expected of boys and girls. This law would make clear that it is illegal for public schools to discriminate on the basis of a student’s gender identity or expression. It would strengthen the ability of schools to protect students from violence.

### **Is Massachusetts the first place to explicitly protect people from discrimination on the basis of gender identity or expression?**

No. Many local and state governments have already enacted such protections. In Massachusetts, ordinances in Boston, Cambridge, and Northampton prohibit discrimination on the basis of gender identity or expression. Nationwide, 9 states, Washington D.C., and 81 cities and counties have passed non-discrimination laws or ordinances protecting people on this basis. The states are Rhode Island, Maine, New Jersey, Illinois, Minnesota, New Mexico, California, Washington, and Hawaii.

Furthermore, many employers based or operating in Massachusetts have already adopted non-discrimination policies that include gender identity. These employers include:

Bain and Company  
Bank of America  
Best Buy

Borders Group  
Brandeis University  
Bridgespan Group

Bright Horizons Family  
Solutions  
Foley Hoag LLP



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Giant Food  
Gap  
Global Hyatt Corp  
Harvard Pilgrim Health Care  
Harvard University  
Hilton Hotels Corp  
HSBC USA  
John Hancock Financial  
Services

Mass. Mutual Life Insurance  
Merck  
Mintz, Levin, Cohn, Ferris,  
Glovsky & Popeo LLP  
MIT  
Novartis  
Prudential Financial  
Raytheon  
Staples

State Street Corp.  
Toys R Us  
Trillium Asset Management  
Tufts University  
United States Postal Service  
Wainwright Bank and Trust  
Walgreens

Nationwide, at least 446 companies have adopted non-discrimination policies that explicitly protect transgender people.

### **Isn't this kind of discrimination already covered by existing laws?**

*Yes. However, protections for transgender people in Massachusetts derive from MCAD and court rulings and are not explicitly stated in our laws.* In addition to ensuring coverage of individuals who often face prejudice and violence, the inclusion of "gender identity or expression" in our non-discrimination laws achieves three other important goals:

- It makes a clear statement of statewide policy.
- It makes the scope of coverage clear to anyone who reads the laws or encounters training materials related to them. While people with a legal background may already understand that the laws cover transgender people, ordinary individuals may not be aware of this.
- It affirms the Commonwealth's commitment to fair treatment and freedom from crime and violence for all its citizens.

### **Doesn't our Gay Rights Law provide this explicit coverage?**

Not necessarily. Sexual orientation as a legal concept is generally understood to refer only to whether a person is homosexual, heterosexual, or bisexual. When transgender people face discrimination it can be unrelated to their sexual orientation.

Moreover, some courts have said that sexual orientation laws do not prohibit discrimination because of a person's gender identity or expression. For example, the United States Court of Appeals for the First Circuit has twice said that sexual orientation discrimination prohibitions do not extend to protect people who experience discrimination because of their gender identity or expression. *Higgins v. New Balance*, 194 F.3d 252 (1st Cir. 1999); *Rosa v. Park West Bank*, 214 F.3d 213 (1st Cir. 2000).

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