



U.S. Department of Justice
Civil Rights Division
Protecting the Rights of LGBTI Individuals

Protecting the Rights of Lesbian, Gay, Bisexual, Transgender, and Intersex (LGBTI) Individuals

LGBTI Working Group
Civil Rights Division
U.S. Department of Justice
June 2014



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“Just as our forebears came together to overcome tremendous adversity – and to forge the more just and more equal societies in which we now live – so, too, must the current generation rise to the causes that have become the struggles of our day; the defining civil rights challenges of our time. I believe one of these struggles is the fight for equality for our lesbian, gay, bisexual, and transgender – or LGBT – citizens.”

--Attorney General Eric Holder, delivering remarks at the Parliament of Sweden, February 4, 2014



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The Division's LGBTI Working Group

- Advises Division leadership on legal and policy issues relating to sexual orientation, gender identity, and discrimination based on HIV/AIDS;
- Explores how existing civil rights laws might address discrimination experienced by LGBTI individuals and identifies matters and cases for potential Division participation;
- Provides technical assistance to other Department components and federal agencies, and conducts outreach to relevant stakeholders; and
- Assists the Department with various diversity and education initiatives.

To contact the Division's LGBTI Working Group, email CRT-LGBTI@usdoj.gov.



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Fighting Sex Discrimination

- The Division enforces a number of federal laws that prohibit discrimination in areas covering education, employment, housing, police practices and other Department-funded programs.
 - Although these laws do not explicitly refer to sexual orientation or gender identity, they prohibit **sex discrimination**.
 - **Sex discrimination:** protects all people (**including LGBTI people**) from **gender-based discrimination**
 - **Gender-based discrimination:** includes discrimination based on a person's **nonconformity with stereotypes** associated with that person's real or perceived gender
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Discrimination Against LGBT Students

The Division enforces:

- Title IV of the Civil Rights Act of 1964, which prohibits discrimination on the basis of sex (among other factors) in public schools, colleges, and universities
- Title IX of the Education Amendments of 1972, which prohibits sex discrimination in federally funded educational programs and activities

Both laws prohibit discrimination, including harassment, based on a student's gender (including nonconformity with gender stereotypes).

- **It Gets Better:** www.justice.gov/crt/about/edu/it_gets_better.php
 - **Additional Federal Resources:** StopBullying.gov
 - **To file a complaint:** www.justice.gov/crt/about/edu/
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Recent DOJ Enforcement Actions

In March 2012, the Department settled *Doe, et al. v. Anoka-Hennepin School Dist., et al.*, with a consent decree resolving the Department's investigation into gender nonconformity and LGBT harassment in the Anoka-Hennepin School District.

- The consent decree requires the district to hire an expert consultant to assist in revising policies and procedures and to conduct training for staff and students.
 - The consent decree also requires the district to hire a mental health expert to help address the needs of students targeted by harassment.
 - The Department will monitor and enforce the decree for five years.
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Recent DOJ Enforcement Actions

In July 2013, the Department entered into a settlement agreement with the **Arcadia Unified School District in Arcadia, Calif.**, to resolve an investigation into allegations of discrimination against a transgender student based on the student's sex.

- Under the agreement, the school district will take a number of steps to ensure that the student, whose gender identity is male, will be treated like other male students while attending school in the district.
 - In addition to the student-specific relief, the district agreed to adopt district-wide measures to create a safe, nondiscriminatory learning environment for students who are transgender or do not conform to gender stereotypes.
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Fighting Employment Discrimination

The Division enforces Title VII of the Civil Rights Act of 1964 against public employers. Title VII prohibits:

- Discrimination in the workplace, including sex discrimination in recruitment, hiring, assignments and promotions, and pay and benefits; and
- Gender-based harassment and retaliation for complaining about discrimination.

The Equal Employment Opportunity Commission (EEOC) investigates employment discrimination, including complaints of discrimination against LGBTI individuals as sex discrimination complaints.

To file a complaint, contact the EEOC at 1-800-669-4000 or 1-800-669-6820 (TTY).



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Fighting Housing Discrimination

The Division enforces the Fair Housing Act and the Equal Credit Opportunity Act, which prohibit discrimination – including based on sex and disability (which includes HIV/AIDS status) – in the sale or rental of housing and in other residential real-estate transactions.

To file a housing or mortgage discrimination complaint,

visit the Department of Housing and Urban Development's website at
portal.hud.gov/hudportal/HUD?src=/topics/housing_discrimination
*or call **1-800-669-9777 | 1-800-927-9275 (TTY).***

To file a lending discrimination complaint,

visit the Consumer Financial Protection Bureau's website at
consumerfinance.gov/fair-lending
*or call **1-855-411-2372 | 1-855-729-2372 (TTY).***



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Recent DOJ Enforcement Actions

- The Department filed *United States v. Wren* in the Northern District of Illinois, alleging that the owner and property manager of a two-unit building in Chicago violated the Fair Housing Act on the basis of disability and/or familial status by refusing to rent to a woman because she was HIV+ and/or because she had a minor child. The defendant also engaged in a pattern or practice of similar discrimination based on familial status.
 - This case is based on an investigation by the Department of Housing and Urban Development (HUD).
 - This case is still pending in federal court as of June 2014.
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Recent DOJ Enforcement Actions

- The Department filed a Statement of Interest in ***Gomez v. Quicken Loans***, a case in the Central District of California in which a man who is HIV positive alleged that he was discriminated against on the basis of disability.
 - The brief related to disparate treatment claims and disparate impact claims under the Fair Housing Act and Equal Credit Opportunity Act.
 - The district court granted the motion to dismiss and the plaintiff has appealed to the Ninth Circuit Court of Appeals.
 - The Department filed an amicus brief in the Ninth Circuit arguing that the district court erred in dismissing the claim of disparate treatment under the Fair Housing Act.
 - This case is still pending in federal court as of June 2014.
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Protecting the Rights of Intersex Persons

- The Division enforces the **Americans with Disabilities Act (ADA)**, as amended, which guarantees equal opportunity for individuals with disabilities.
 - Under the ADA, an individual is considered to have a “disability” if the individual is **substantially limited** in a **major life activity or major bodily function**.
 - This covers most of the over three dozen **intersex conditions**, including, for example, substantial limitations in the major life activity of reproduction or the major bodily function of the endocrine system.
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Protecting the Civil Rights of Persons Living with HIV/AIDS

- The ADA guarantees equal opportunity for individuals with disabilities, **including persons with HIV/AIDS**, in:
 - Public accommodations
 - Employment
 - State and local government services
 - These protections are intended to ensure that persons living with HIV/AIDS live free of **stigma and discrimination** on the basis of disability.
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Recent DOJ Enforcement Actions

- **Milton Hershey School:** School refused to consider a child for enrollment after his mother disclosed that he has HIV.
 - \$700,000 damages | \$15,000 civil penalty
 - Under the agreement, the school is required to adopt a policy prohibiting discrimination and requiring equal opportunity for students with disabilities in school programs and services.
 - The school must also provide training to staff on the ADA.
 - Hershey reports to the DOJ each time a student known to have HIV applies to the school, and the outcome.
- DOJ has also settled with a dentist, podiatrist, eating disorder clinic, pain clinic, bariatric surgery center, chiropractor, and pharmacy.

For more information or to file a complaint, visit ada.gov/AIDS.



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Defending the Constitutional Rights of People in Institutions

Under the **Civil Rights of Institutionalized Persons Act (CRIPA)**, the Division has authority to investigate constitutional violations in state or local prisons, juvenile detention centers, nursing facilities, and other institutions. Examples of constitutional violations include:

- Failure of prison officials to protect LGBTI inmates from violence
 - Denial of certain kinds of medical treatment to individuals diagnosed with gender dysphoria (formerly referred to as Gender Identity Disorder or GID)
 - Unjustified segregation of LGBTI individuals
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Recent DOJ Enforcement Actions

- **Pittsburgh, Pennsylvania:** In 2014, the Division resolved an investigation after criminal prosecutions were brought against officers for assaulting and sexually abusing vulnerable prisoners.
 - After 2 years of working cooperatively with DOJ, the jurisdiction had significantly improved security policies and practices, particularly aimed at protecting gay, transgender, and gender nonconforming prisoners, from harm and discrimination.
 - These improvements included statewide reforms to oversight and accountability measures, abuse and misconduct investigations, prisoner screening procedures, and the grievance system.
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Prison Rape Elimination Act of 2003

- In 2012, the DOJ issued a final rule to prevent, detect, and respond to sexual abuse in confinement facilities, in accordance with the **Prison Rape Elimination Act of 2003 (PREA)**.
 - This landmark rule sets national standards for four categories of facilities: adult prisons and jails, lockups, community confinement facilities, and juvenile facilities.
 - This is the first-ever federal effort to set standards aimed at protecting inmates in all such facilities at the federal, state, and local levels.
 - The Division played a key role in developing this rule, including developing provisions **to protect LGBTI prisoners from abuse and discrimination**, and continues to be heavily involved in providing interpretive guidance, training PREA auditors, and providing frequent input on implementation.
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Prison Rape Elimination Act (cont.)

- The standards require, among other things, that:
 - Facilities must screen all individuals at admission and upon transfer to assess their risk of experiencing or perpetrating abuse, including **identifying those who may be at risk because of their transgender status, gender nonconformity, sexual orientation, or intersex condition.**
 - In deciding whether to assign a transgender or intersex inmate to a facility for male or female inmates, and in making other housing and programming assignments, **an agency may not simply assign the inmate to a facility based on genital status or assigned gender at birth.**
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Discrimination by Law Enforcement

The **Violent Crime Control and Law Enforcement Act of 1994**, 42 U.S.C. § 14141, allows the Division to review the practices of law enforcement agencies that may be violating people's federal rights.

- The Division can also use the anti-discrimination provisions of the Omnibus Crime Control and Safe Streets Act of 1968, and Title VI of the Civil Rights Act of 1964, which forbid discrimination on the basis of race, color, sex, or national origin by agencies receiving federal funds.
 - The Division may act if we find a pattern or practice by the law enforcement agency that systemically violates people's rights.
 - The problems addressed in our cases include use of excessive force; unlawful stops, searches, or arrests; and discriminatory policing.
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Recent DOJ Enforcement Actions

- **New Orleans, Louisiana:** In 2012, the Department entered into a consent decree with the City of New Orleans to resolve findings of a pattern or practice of constitutional violations by the New Orleans Police Department.
 - This agreement includes provisions specifically aimed at eliminating policing practices that discriminate on the basis of sexual orientation, gender identity, or gender expression.
 - **Puerto Rico:** In 2013, the Department entered into a consent decree with the Commonwealth of Puerto Rico to resolve findings of a pattern or practice of constitutional violations by the Puerto Rico Police Department.
 - This agreement also includes provisions specifically aimed at eliminating policing practices that discriminate on the basis of sexual orientation, gender identity, or gender expression.
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Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act of 2009

- Criminalizes violent conduct *because of* actual or perceived:
 - Race, Color, Religion, National Origin; or
 - Gender, Sexual Orientation, Gender Identity, or Disability (IF the offense is in or affecting interstate/foreign commerce).
- What is violent conduct?
 - Willfully causing bodily injury, or
 - Attempting to do so with a dangerous weapon

To report a hate crime, contact your local FBI field office, which can be found at: [fbi.gov/contactus/field/field-offices](https://www.fbi.gov/contactus/field/field-offices)



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Recent DOJ Prosecutions

- **Atlanta, Georgia:** A federal prosecution stemming from the assault of an Atlanta man resulted in the first conviction in Georgia under the sexual orientation provision of the Shepard-Byrd Act.
 - In this case, two men pleaded guilty to assaulting a 20-year-old gay man as he left a grocery store in Atlanta's Pittsburgh neighborhood.
 - A video taken by the perpetrators and their friends caught both the physical violence and the use of anti-gay slurs.
 - The two men were sentenced to serve 10 months in prison on federal hate crimes charges and were sentenced to additional time on state charges.
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Shaping Federal Civil Rights Laws

- The Division also files *amicus curiae*, or “friend of the court,” briefs in cases in the federal courts of appeals to advise on issues involving the interpretation or application of one of the federal civil rights laws mentioned above, including in cases involving the rights of LGBTI individuals.
 - For more information, visit the Appellate Section’s website at www.justice.gov/crt/about/app/.
 - Information on how to suggest a federal appellate case as a candidate for *amicus curiae* participation by the Division is available at www.justice.gov/crt/about/app/curiae.php.
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Contact Information

To contact the Division's LGBTI Working Group, or to report acts of violence or discrimination described in this presentation:

- Send an email to the Division at CRT-LGBTI@usdoj.gov; or
- Visit justice.gov/crt/complaint.

You also may file complaints with the other agencies mentioned in this presentation that have responsibility for investigating particular claims.
