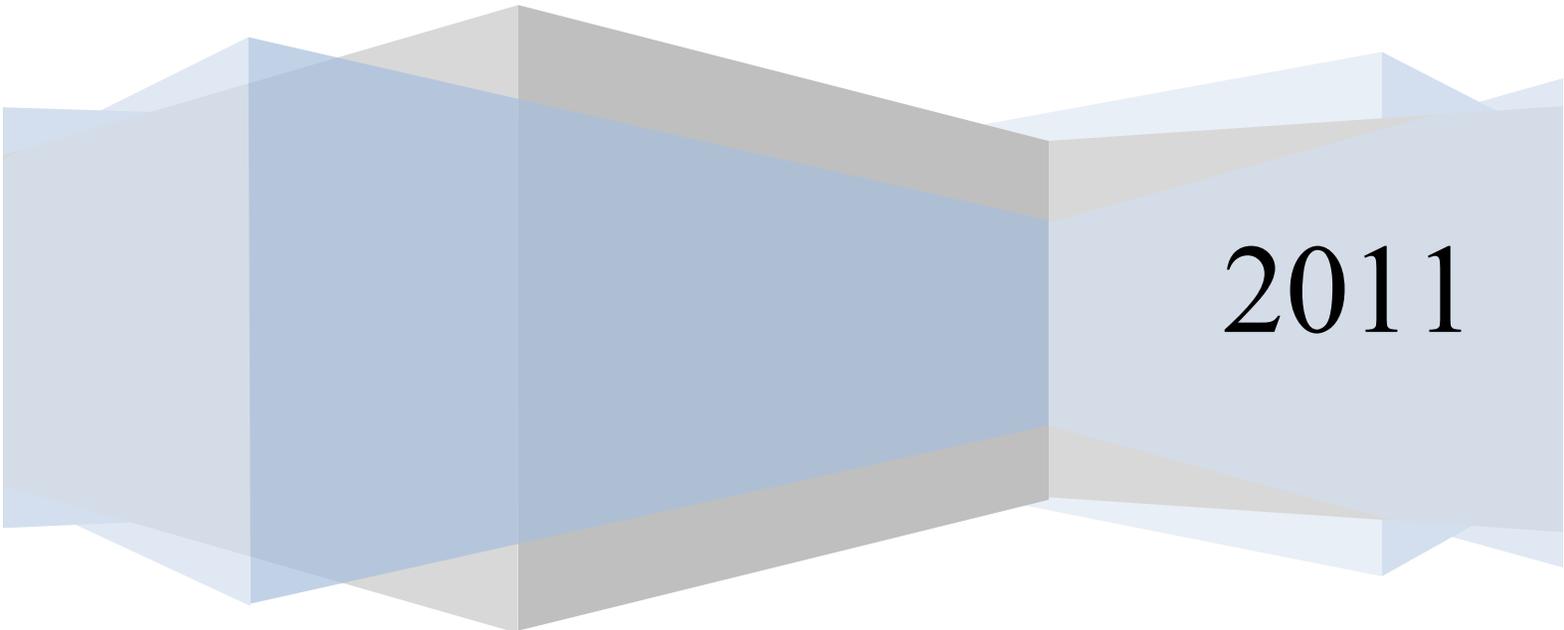


**The Anti-Violence Project of  
Massachusetts**

**Anti-Transgender  
Hate Crimes:  
The Challenge for Law  
Enforcement**

**Donald Gorton, Esq.**



**2011**

# ANTI-TRANSGENDER HATE CRIMES: THE CHALLENGE FOR LAW ENFORCEMENT

## Table of Contents

ABOUT THE ANTI-VIOLENCE PROJECT OF MASSACHUSETTS .....	3
ACKNOWLEDGEMENTS .....	4
EXECUTIVE SUMMARY .....	5
I. INTRODUCTION .....	8
II. METHODOLOGY .....	14
III. RESULTS .....	20
IV. DISCUSSION OF RESULTS .....	28
V. RECOMMENDATIONS TO IMPROVE LAW ENFORCEMENT EFFECTIVENESS IN RESPONDING TO ANTI-TRANSGENDER CRIMES.....	38
1. DEVELOP BETTER INFORMATION USEFUL TO LAW ENFORCEMENT .....	38
2. INCLUDE GENDER IDENTITY AND EXPRESSION BIAS AS AN ENUMERATED CATEGORY IN HATE CRIMES LAWS.....	40
3. TRAIN POLICE OFFICERS TO UNDERSTAND AND SERVE THE TRANSGENDER POPULATION .....	41
4. BETTER ACCOMMODATE TRANSGENDER VICTIMS OF HATE CRIME WHO REPORT .....	43
5. STEP FORWARD TO REPORT TO LAW ENFORCEMENT IF YOU HAVE BEEN THE VICTIM OF A GENDER-IDENTITY-RELATED HATE CRIME .....	44
6. CHALLENGE BINARY NOTIONS OF GENDER IDENTITY IN PUBLIC PERCEPTION .....	46

*This Report is published by the Gay and Lesbian Anti-Violence Fund, Inc., db/a The Anti-Violence Project of Massachusetts in Boston in April, 2011*

## **ABOUT THE ANTI-VIOLENCE PROJECT OF MASSACHUSETTS**

Incorporated in 1990, the Anti-Violence Project of Massachusetts (“AVPM”) is the successor to the Public Safety Committee of the Greater Boston Lesbian/Gay Political Alliance, which was formed amidst a historic wave of community organizing against anti-gay hate crimes in Boston in 1986. The Public Safety Committee successfully advocated that the Boston Police Department Community Disorders Unit investigate attacks on lesbians and gay men as civil rights crimes, and was instrumental in having acts of anti-gay/lesbian violence prosecuted under Massachusetts General Laws (“G.L.”) chapter (“c.”) 265, § 37.

An “advocacy organization” under 501 CMR 4.02, the AVPM (formerly known as the Gay and Lesbian Anti-Violence Project) fights hate crimes against the lesbian, gay, bisexual, and transgender (“LGBT”) communities using two distinct strategies. First, the AVPM has given financial and legal assistance to victims of anti-LGBT crimes who are using the justice system to hold their attackers accountable. Since 1986, the group has sponsored the cases of roughly 25 victims of hate violence who were willing to go public to demand justice. Second, the AVPM researches, develops, and advocates improved law enforcement countermeasures against hate crimes. The AVPM strives to enhance trust and cooperation between law enforcement professionals and the LGBT community toward the shared objective of ending bias crime. In the 21<sup>st</sup> century, the group has emphasized bullying prevention and intervention as a mechanism to head off hate crimes before they occur.

The group has been led since 1994 by attorney Don Gorton, who co-chaired the Massachusetts Governor’s Task Force on Hate Crimes throughout the twelve years of its

existence from 1991-2003. The Board of the AVPM includes former Government officials, survivors of violence, public health and safety advocates, and new and longtime activists for full LGBT equality.

## **ACKNOWLEDGEMENTS**

This study would not have been possible without the participation and support of a great many people. The Board members of the AVPM have had principal oversight of this project since its inception, and reviewed and approved both the research findings and recommendations in this report. AVPM Board members include Jim Brinning, Rich Johnson, Harold DuFour Anderson, David Rudewick, Brad Reichard, Ethan St. Pierre, Richard Penwell, and David Mailloux.

The Massachusetts Transgender Political Coalition (“MTPC”) collaborated in the design and execution of this survey and recruited most of the transgender victims of violence who participated. Special thanks go to the MTPC’s dynamic Executive Director Gunner Scott, who has forcefully brought the grievances and aspirations of transgender people to the forefront of the public debate in Massachusetts since 2001. Other groups serving the transgender community, including advocacy organizations and anti-violence programs around the country, also helped generate participation in this study. The author also thanks the membership of the AVPM’s sibling organization Join the Impact MA for the support they gave this study and the fervor they bring to the cause of transgender civil rights. Join the Impact MA Co-Chair Matthew Dimick assisted in the research entering into this study.

The Commonwealth of Massachusetts is also fortunate to have many dedicated public servants whose commitment to the transgender community is exemplary. Governor Deval

Patrick and Attorney General Martha Coakley have both prioritized transgender civil rights. Particular thanks are owed members of their respective administrations, including Secretary of Public Safety and Security Mary Elizabeth Heffernan, Greg Massing her general counsel, and Maura Healey, Chief of the Civil Rights Division in the Office of the Attorney General. The City of Boston, led by Mayor Thomas Menino, and the Boston Police Department under Commissioner Ed Davis and Superintendent-in-Chief Dan Linskey, and with the Community Disorders Unit, have also demonstrated strong support for the public health and safety needs of the LGBT communities. We know we can count on them to carry the fight against gender-identity-related hate crimes to new heights of effectiveness. Finally, the administrations of two former Governors, Paul Cellucci and Jane Swift, deserve credit for taking executive action to expand the scope of the Massachusetts Hate Crimes Reporting Act to include transgender victims.

Finally, the AVPM acknowledges the courage and perseverance of transgender Americans who have carried on through pervasive prejudice, discrimination, and violence to challenge society to a deeper understanding of Shakespeare's call "[t]o thine own self be true, and it must follow, as the night the day, thou canst not then be false to any [person]" Particular thanks go to the brave individuals who took the time to complete the survey. Transgender survivors of violence, who have maintained dignity and poise through extreme cruelty, are propelling social change that will shatter the divisions and stereotypes holding back the fullest realization of human potential.

## **EXECUTIVE SUMMARY**

The Commonwealth of Massachusetts has since 2001 recognized gender-identity-bias as a motive for crime to be tracked and reported by law enforcement. However, to date, no anti-transgender hate crimes have appeared in the official Massachusetts Annual Report on Hate Crimes. With the exception of the Metropolitan Police Department in Washington, D.C., virtually no police departments in the United States have ever reported occurrences of hate crimes against transgender individuals. Existing data collection by LGBT advocacy organizations conflates information about the characteristics of hate crimes against transgender people with data on the more numerous occurrences of hate crimes motivated by bias against gays, lesbians, and bisexuals. The best existing data come from a handful of self-report surveys focused on violence against transgender people, but research has not addressed dimensions of the problem most relevant to law enforcement needs.

A self-report Internet-based survey was conducted using a convenience sample of victims of anti-transgender violence recruited through the MTPC and its contacts. Surveyed were the aspects of anti-transgender crimes identified as relevant for purposes of hate crimes reporting under Massachusetts law. 32 individuals responded and described the circumstances of one or more acts of anti-transgender violence that they had suffered. While results from a small convenience sample will not support conclusions, three provisional findings are warranted given corroboration through other social science resources. First, anti-transgender crimes go largely unreported to law enforcement agencies. Victims fear the possibility of physical or verbal abuse by law enforcement personnel and doubt that reporting will lead to favorable law enforcement outcomes. Second, anti-transgender bias expressed through violence is rooted in gender ideology which regards gender expression as acceptable only to the extent it adheres to binary patterns. While anti-transgender crimes often present sexual-orientation-related bias indicators,

homophobia and prejudice against transgender people are analytically distinct albeit related phenomena. Third, anti-transgender victimization includes an unusually high incidence of sexual violence as compared to hate crimes generally. In addition, existing information suggests the possibility that anti-transgender violence (short of murder) may be more brutal than other hate crimes, but this hypothesis has not yet been proven.

There are a number of steps available to policymakers, law enforcement personnel, academics, and advocates to improve the interdiction and deterrence of anti-transgender violence. Better information needs to be developed about gender-identity-related crimes, with a view to assisting police in detecting, classifying, reporting and clearing individual cases. Laws prescribing heightened penalties for hate crimes must include gender-identity bias as an enumerated category. Police need to be trained in recognizing prejudice against transgender people and following protocols for hate crimes investigation and reporting attuned to the particular characteristics of anti-transgender violence. Police departments should actively strive to build the trust and cooperation which will induce transgender victims to report episodes of violence in higher numbers. Transgender victims of hate crime in turn need to step forward to report crime occurrences, despite concerns about secondary victimization. Finally, larger social change is needed to deconstruct rigid gender role conventions, the perceived violation of which can be an impetus to violence.

## I. INTRODUCTION

After long being conflated with hate crimes against gays, lesbians, and bisexuals, acts of anti-transgender violence are increasingly becoming understood as a distinct phenomenon<sup>1</sup>. In Massachusetts, anti-transgender bias crimes were recognized as a separate category for purposes of the Massachusetts Hate Crimes Reporting Act of 1990 (“MHCRA”)<sup>2</sup> by regulations adopted in 2001.<sup>3</sup> Anti-transgender prejudice was enumerated as a crime motivation derivative of gender bias rather than sexual-orientation bias, and defined as follows:

Anti-Transgender Bias is hatred, hostility, or prejudice towards a person who, in dress, speech, and general appearance, visibly:

- (a) “identifies” with the gender opposite to his or her biological or birth gender; or
- (b) does not conform to conventional gender role expectations for his or her biological or birth gender. Bias is usually attributed to the circumstance of traditional gender role conventions being openly violated. This bias constitutes gender bias because a “transgender person” is regarded differently and less favorably than would a person of the opposite biological sex, for engaging in similar conduct.

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<sup>1</sup> As Professor Rebecca Stotzer observes in her landmark survey of United States data on anti-transgender (or gender-identity-related) hate crimes, “transgender’ is coming to represent an umbrella term under which resides anyone who bends the common societal constructions of gender, including cross-dressers, transsexuals, genderqueer youth, drag queens, and a host of other terms that people use to self-identify their gender. The term is ‘gender neutral’ in that it includes both people born as males who express or identify their gender as female (male-to-female transgender, or MTFs), and people born female who express or identify their gender as male (female-to-male, or FTMs.)” Yet distinct identities are conflated to the some extent by use of a “catch-all” term. “Transsexual” refers to individuals who medically transition from their assigned gender to the self-identified gender based on a well-recognized and established medical protocol. The term “transgender” is broader. Because “the number of transgender individuals in the United States is unknown ... estimates of victimization risk [are] uncertain.” Stotzer, R. (2009). Violence against transgender people: A review of United States data. *Aggression and Violence Behavior* 14, 170-179.

<sup>2</sup> Massachusetts General Laws (“G.L.”) c. 22C, §§ 32 *et seq.*

<sup>3</sup> The regulations which implement the MHCRA under authority of G.L. c. 22C, § 33 appear at 501 CMR 4.00. The regulations were available at this web link on February 2, 2011:  
<http://www.lawlib.state.ma.us/source/mass/cmr/cmrtext/501CMR4.pdf>

Since 2001, the MHCRA has called on law enforcement agencies to classify and report anti-transgender hate crimes to the State Police through the Crime Reporting Unit, for inclusion in the Annual Report on Hate Crimes in Massachusetts mandated by Massachusetts General Laws (“G.L.”) chapter (“c.”) 22C, § 34.<sup>4</sup> However, no anti-transgender hate crimes have been reported to the Massachusetts State Police through 2008, the most recent year for which official hate crimes statistics have been published. At the same time, the Office of Massachusetts Attorney General Martha Coakley advises that civil injunctions have been obtained in attacks based on gender-stereotyping under the Massachusetts Civil Rights Act.<sup>5</sup> Moreover, the author was advised that the Boston Police Department Community Disorders Unit has classified two instances of anti-transgender violence for the year 2010.<sup>6</sup> Previously anti-transgender crimes were classified with sexual-orientation-related crimes.

Professor Rebecca L. Stotzer of the University of Hawaii at Manoa, in her comprehensive review of existing United States data on violence against transgender people published in 2009, notes that none of the ten states that include “gender identity” bias as a recognized category in their hate crimes laws have ever reported any such crimes.<sup>7</sup> Stotzer (2009) notes that gender-identity-bias crimes appear “sporadic[ally]” elsewhere: Connecticut in 2001 and New York in 2002 each reported a single hate crime against a transgender victim.<sup>8</sup> The Metropolitan Police Department in Washington, D.C. is the national leader in tracking hate crimes involving

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<sup>4</sup> Annual Reports for the years 2003-2008 are available online at [http://www.mass.gov/?pageID=eopsmodulechunk&L=1&L0=Home&sid=Eeops&b=terminalcontent&f=eops\\_hate\\_crimes\\_reporting&csid=Eeops](http://www.mass.gov/?pageID=eopsmodulechunk&L=1&L0=Home&sid=Eeops&b=terminalcontent&f=eops_hate_crimes_reporting&csid=Eeops) at the web site of the Executive Office of Public Safety and Security.

<sup>5</sup> See G.L. c. 12, § 11H. This information was provided to the author by Maura Healey, Esq., Chief of the Civil Rights Division in an email to the author dated Monday, February 7, 2011.

<sup>6</sup> The information was provided to the author by Officer Javier Pagan, the liaison from the Boston Police Department to the LGBT community in an email dated Wednesday, February 16, 2011.

<sup>7</sup> Stotzer, R. (2009, *supra*, at Note 1.

<sup>8</sup> *Ibid.*

transgender victims, having reported 16 bias-related crimes based on gender identity since 2007.<sup>9</sup> The federal government does not track hate crime occurrences related to gender identity, so the Uniform Crime Reports published by the FBI contain no information about anti-transgender hate crimes.<sup>10</sup>

Accordingly, anti-transgender hate crimes have been invisible in official hate crimes statistics generated by law enforcement sources in Massachusetts and elsewhere (with the exception of the District of Columbia.) Since gender-identity-bias-related crimes have independently been found to exist,<sup>11</sup> observers have reason to suspect that a systemic failure of hate crimes reporting-- by victims to law enforcement and by police to data collectors--hides the true incidence. Massachusetts is arguably falling short of the statutory directive that law enforcement agencies make available credible and accurate information about the incidence of hate crimes in the Commonwealth.

The National Coalition of Anti-Violence Programs (“NCAVP”) is a network of lesbian, gay, bisexual, and transgender (“LGBT”) community social service providers from across the country. Some of the constituent programs receive and tabulate victim-reported data about hate crimes and hate incidents<sup>12</sup> against LGBT people.<sup>13</sup> The NCAVP publishes an annual report collecting statistics from LGBT programs which submit their hate crime/hate incident data

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<sup>9</sup> Amanda Hess, March 18, 2010 *The State of Transgender Hate Crimes in D.C.*, in the Washington City Paper, retrieved on November 26, 2010 from <http://www.washingtoncitypaper.com/blogs/sexist/2010/03/18/the-state-of-transgender-hate-crimes-in-d-c/>

<sup>10</sup> Stotzer (2009), *supra*, at Note 1.

<sup>11</sup> Stotzer, R. (2008), Gender Identity and Hate Crimes: Violence against Transgender People in Los Angeles County, in *Sexuality Research and Social Policy* 5(1) 43-52.

<sup>12</sup> Definitions of “hate crimes” and “hate incidents” appear at 501 CMR 4.02.

<sup>13</sup> The Massachusetts affiliate of the NCAVP is the Violence Recovery Program (“VRP”) of Fenway Health, which offers mental health and advocacy services to victims of anti-LGBT hate crimes. Previously known as the Victim Recovery Program, the VRP grew out of the same wave of community organizing that launched the Alliance Public Safety Committee. The VRP’s first director, Joyce Collier, was a co-chair of the Alliance Public Safety Committee.

according to uniform standards.<sup>14</sup> 15 agencies covering specific metropolitan areas so reported in 2009, the most recent year for which information is available.

In 2009, the NCAVP reported that 15% of the 1983 victims of hate crimes reported to a data-collecting anti-violence program were transgender. That statistic works out to about 300 transgender victims of violence whose cases were reported to one of 15 LGBT community social service providers in 2009. Tellingly, of 22 anti-LGBT murders the NCAVP tracked for 2009, half or 11 involved transgender victims.

However, the NCAVP does not report crime, victim, and offender characteristics for anti-transgender crimes separately from information about crimes motivated by sexual-orientation-related bias. That is, the data streams for anti-transgender hate crimes are conflated with data descriptive of the much larger incidence of sexual-orientation-bias-related crimes tracked by the NCAVP. Accordingly, the NCAVP reports tell us little about characteristics of anti-transgender hate crime occurrences. Since anti-transgender and homophobic hate crimes are distinct categories, conflated information about crime type, location, victim-offender relationships, and other data points canvassed by the NCAVP is not particularly useful to policy-makers and law enforcement personnel concerned with transgender victims of hate crimes specifically.

The best available data about transgender hate crime victimization come from self-report surveys.<sup>15</sup> However, the information developed through self-report surveys has tended to approach anti-transgender bias from the perspective of the public health needs of this

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<sup>14</sup> Reports are available through the NCAVP web site at <http://www.avp.org/ncavp.htm>.

<sup>15</sup> Stotzer (2009), *supra*, at Note 1.

population.<sup>16</sup> No self-report survey studies have evaluated hate crimes based on gender-identity bias in the aspects most relevant to law enforcement.

Stotzer (2009) in Table 1 of her article gathers incidence data from all self-report surveys bearing on the “prevalence of violence against transgender people motivated by their gender identity or gender expression (as reported by victims.)”<sup>17</sup> Yet all the studies that she collated involved “convenience samples” of transgender respondents which do not allow for extrapolations about the prevalence of hate violence in the larger transgender population. Indeed, the studies Professor Stotzer cites reflect widely divergent levels of prevalence (from a low of 20% of respondents surveyed to a high of 86%). Moreover, these studies tend not to record bias indicator information systematically enough to support classification of crimes against transgender victims as hate-motivated under legal definitions.

Professor Stotzer offers the most penetrating insights into bias motivations for violence against transgender people in a study of data from 2002-2006 collected by the Los Angeles County Commission on Human Relations.<sup>18</sup> The reports she relied on are unique in having been collated according to evidence of a gender-identity bias motive by a governmental entity.

Law enforcement professionals concerned with improving detection, classification, reporting, and clearance of hate crimes against the transgender community face a chicken and egg problem. Anti-transgender hate crimes may escape the law enforcement net because so little is known about gender-identity-related victimization. Yet until law enforcement professionals are better equipped to detect and classify such crimes the problem of non-reporting in the official

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<sup>16</sup> *Ibid.*

<sup>17</sup> *Ibid.*

<sup>18</sup> Stotzer, R. (2008), *supra*, at Note 11.

hate crime statistics will likely persist. As Stotzer (2008)<sup>19</sup> emphasizes in the conclusion to her report, “this violence cannot be prevented without a better understanding of the problem.”

Provisional information is needed to give law enforcement personnel and policy-makers better insights into the characteristics of hate crimes against transgender victims, if progress is to occur in the absence of official crime statistics.

The Anti-Violence Project of Massachusetts (“AVPM”) has prioritized implementation of the MHCRA since its passage in 1990, and actively collaborated in the hate crimes training and awareness programs of the former Massachusetts Governor’s Task Force on Hate Crimes. Since 2006, the AVPM has focused increased attention on the phenomenon of anti-transgender violence and the need to improve police compliance with the inclusion of gender-identity bias in the categories covered in the MHCRA. To assist policy-makers and law enforcement agencies, the AVPM in 2009 undertook a study of anti-transgender violence. The main component of the study was to be a survey—necessarily of a convenience sample—of victims of anti-transgender hate crimes. Inquiry would focus on aspects of these crimes relevant to detection and reporting by police. The survey methodology and results are described in the upcoming two sections of this report.

Secondarily, the study would examine the available social science literature and other research-based resources to ferret out existing knowledge of anti-transgender violence germane to law enforcement. Using the information available from these two methods of inquiry, the AVPM would report on what is presently known about anti-transgender hate crimes. The information would then be utilized to generate recommendations for further research and

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<sup>19</sup> *Ibid.*

improvements in policy and practice to strengthen law enforcement effectiveness in assisting transgender crime victims, who are at considerable risk<sup>20</sup>.

## II. METHODOLOGY

This study examined episodes of hate-motivated violence against self-identified transgender individuals. An Internet survey instrument was developed using the “SurveyMonkey” web-based application. Survey respondents were solicited to complete the survey through the Internet, with primary outreach occurring through the Boston-based statewide organization the Massachusetts Transgender Political Coalition (“MTPC”).

Although the study is grounded in Massachusetts law, *i.e.* the MHCRA for purposes of standardization, responses were also solicited through transgender community organizations outside the Commonwealth including the Tennessee Transgender Political Coalition, the California-based Transgender Law Center, the New York Association for Gender Rights Advocacy, Transgender Health Empowerment based in the District of Columbia, and Wisconsin-based FORGE. In addition, the survey link was sent to all the member organizations of the NCAVP. The author assumed that the characteristics of anti-transgender violence do not vary by state of occurrence, so that attacks anywhere in the United States would be equally illustrative. This wider outreach was suggested by members of the MTPC and intended to generate response levels sufficient for analysis. With leaders of the MTPC promoting the survey, the intent was to recruit respondents through word-of-mouth or so-called “snowball sampling.”<sup>21</sup>

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<sup>20</sup> Clements-Nolle, K., Marx, R., Katz, M. (2006) Attempted Suicide Among Transgender Persons; The Influence of Gender-Based Discrimination and Victimization, *Journal of Homosexuality*, 51(3) 53-69.

<sup>21</sup> Stotzer, R. (2009), *supra*, at Note 1.

Like other self-report surveys designed to gather data about the victimization of transgender people, this study utilized a non-probability “convenience sample.” Participation was voluntary and not incentivized, which lowered the extent of respondent participation. The survey results accordingly cannot be said to reflect the totality of anti-transgender violence. The survey was available largely to individuals affiliated with transgender community organizations, who may not represent the experiences of transgender individuals who are socially isolated or outside a major metropolitan area. The distribution of the survey over the Internet also raises the possibility of class bias in that only those transgender individuals with Internet access could participate. Respondents’ completion of the survey was unsupervised.

The survey was available through a link to the SurveyMonkey website throughout calendar years 2009 and 2010, though active solicitation of responses occurred primarily following initial publication of the survey on the web in March and April of 2009. While only crimes committed in the United States were surveyed, no further geographical restrictions were imposed on responses. There were no restrictions as to time frame of hate crime occurrences which might be reported.

The survey instrument was designed to elicit information about certain characteristics of hate crimes identified as relevant for law enforcement in the regulations implementing the MHCRA. The following data points were covered: date; location: city, state, and setting;<sup>22</sup> whether the vicinity has a recognizable association with the LGBT community;<sup>23</sup> type of criminal act;<sup>24</sup> verbal bias indicators;<sup>25</sup> whether the perpetrator was known to the victim; whether

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<sup>22</sup> 501 CMR 4.07(3)(b) & (i).

<sup>23</sup> 501 CMR 4.04(1)(o).

<sup>24</sup> 501 CMR 4.07(3)(c).

<sup>25</sup> 501 CMR 4.04. While a particularly relevant bias indicator is automatically present in cases of violence against a perceptibly transgender victim, 501 CMR 4.04(1)(s), survey respondents were asked to report bias-related oral

a weapon (as defined under Massachusetts law) was used;<sup>26</sup> whether there was bodily injury sufficient to elevate a hate-motivated assault and battery to felony status<sup>27</sup>; whether medical attention was sought;<sup>28</sup> whether the crime was reported to law enforcement; and respondent perceptions of police responsiveness. In addition “narrative ... elaboration”<sup>29</sup> was requested for each case reported to assist the researchers in making the necessary qualitative judgments. The survey did not otherwise explore victim or perpetrator characteristics.<sup>30</sup>

The survey was specific to acts of gender-identity-related violence short of murder. Crimes involving hate-motivated property damage were not studied. Nor was information sought about so-called “hate incidents” which did not rise to the level of crime.<sup>31</sup> Definitions were based on Massachusetts criminal statutes as interpreted by the courts of the Commonwealth. While respondents were free to report multiple instances of hate-motivated violence, they were not asked to describe each and every episode of anti-trans violence that occurred over their lifetimes, out of concern over the traumatic impact such lengthy disclosures via an Internet survey might entail.

Some survey questions sought binary responses, *e.g.*, “was a weapon used.” Other questions elicited open-ended answers, *e.g.* “briefly describe the attack (i.e. circumstances, severity, modus operandi).” While the survey specifically covered acts of “assault and battery ... related to ... gender identity or expression,” responses were acceptable to the extent they described a criminal act. The minimum required for a hate crime under Massachusetts law is

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comments accompanying an attack, 501 CMR 4.04(1)(b) since verbally-expressed prejudice is often sufficient standing alone as a basis for classifying violence as hate-motivated. 501 CMR 4.04(3).

<sup>26</sup> 501 CMR 4.07(3)(g).

<sup>27</sup> G.L. c. 265, §§ 37 & 39.

<sup>28</sup> 501 CMR 4.07(3)(d)

<sup>29</sup> 501 CMR 4.07(3)(i)

<sup>30</sup> 501 CMR 4.07(3)(e)-(f).

<sup>31</sup> 501 CMR 4.02. Hate incidents are of concern to law enforcement indirectly, in that they demonstrate a climate of intolerance that may presage hate crime occurrences.

“threats of force” which interfere with a right secured by constitution or statute.<sup>32</sup> Assaults unaccompanied by battery are also criminalized,<sup>33</sup> and subject to enhanced penalties when motivated by enumerated types of bias.<sup>34</sup>

The survey also invited respondents to self-identify according to types of transgender identity which were suggested by the MTPC:

- Transgender male-to-female
- Transgender female-to-male
- Transsexual male-to-female
- Transsexual female-to-male
- Gender queer
- Cross-dresser
- Intersex
- Other

Respondents were also asked to rate on a scale of one to five the degree to which they had transitioned from their assigned birth gender to their self-identified gender identity or expression at the time of attack. “One” signified a gender presentation based on assigned birth gender while “five” represented a fully self-defined gender presentation. Otherwise the survey was anonymous, although participants were asked to volunteer personal information if they wanted to receive a copy of the report.

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<sup>32</sup> G.L. c. 265, § 37; 501 CMR 4.02.

<sup>33</sup> G.L. c. 265, § 13A.

<sup>34</sup> G.L. c. 265, § 39.

At the threshold, respondents were asked the following question: “Were you the victim of an assault and battery (*i.e.* apprehension of imminent harmful physical contact coupled with actual harmful physical contact) related to your gender identity or expression.” Respondents were asked to complete the survey only if they answered “yes” to that question. Reports of victimization without completion of the survey were not considered in the results, as this study makes no attempt to gauge overall prevalence of anti-transgender violence.

Survey-based studies offer the advantage of low cost, but also involve certain methodological complications that may affect the reliability of response information. These issues are canvassed in a prior study of anti-transgender violence in San Francisco and in a study of hate crimes against lesbians, gay men, and bisexuals.<sup>35</sup> The trauma of experiencing hate-motivated violence makes self-reported crime information difficult for respondents to convey and constrains after-the-fact data-gathering. The study relied exclusively on victim report data by their nature incapable of third-party verification.

On the other hand, available data on violence involving transgender victims are largely confined to information gleaned from self-report surveys of convenience samples of transgender people known or connected in some way to the organized LGBT community. Methodological difficulties described by Stotzer (2009)<sup>36</sup> put representative samples of the transgender

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<sup>35</sup> Sousa, A., (2001) A Victimization Study of Transgendered Individuals in San Francisco, California, A Master’s Thesis Presented to the Faculty of the Administration of Justice Department of San Jose State University, Retrieved on February 1, 2011 from [http://scholarworks.sjsu.edu/cgi/viewcontent.cgi?article=3241&context=etd\\_theses](http://scholarworks.sjsu.edu/cgi/viewcontent.cgi?article=3241&context=etd_theses) ; Herek, G.M., Gillis, J.R., Cogan, J.C., & Glunt, E.K. (1997). Hate crime victimization among lesbian, gay and bisexual adults: Prevalence, psychological correlates, and methodological issues. *Journal of Interpersonal Violence* 12, 195-215.

<sup>36</sup> Stotzer (2009), *supra*, at Note 1.

population in the United States out of researchers' reach. The lack of useful data from other sources such as social service organizations and law enforcement is the reason for this study.<sup>37</sup>

A copy of the survey instrument appears as Exhibit B in the appendix to this Report. Survey responses were individually evaluated and compiled by the Chairperson of the AVPM, report author Don Gorton, who is also the principal researcher. The author is a 25-year member of the Massachusetts Bar and served as Co-Chair of the Massachusetts Governor's Task Force on Hate Crimes throughout the twelve years of its existence.<sup>38</sup> Massachusetts definitions of crime as well as the criteria relevant to hate crimes data-gathering under the MHCRA were used for purposes of study standardization, even though survey responses were solicited from outside Massachusetts. The MHCRA elicits more extensive information about hate crime occurrences than does the federal Hate Crimes Statistics Act<sup>39</sup>, and accordingly allows a fuller picture of anti-transgender violence to emerge. Qualitative judgments were made as to whether survey responses described acts fitting the definition of a crime under Massachusetts law and whether crime locations had some recognizable association with the LGBT community.

The author also made subjective judgments in grouping response categories on the basis of similarity, for convenience of data interpretation, in the following areas of inquiry: type and severity of criminal act; date of crime occurrence; city and state of crime occurrence; location of crime occurrence; words used by perpetrator(s) during the commission of the crime; victim relationships to perpetrators (where known); and the quality of the police responses to reported episodes of crime.

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<sup>37</sup> *Ibid.*

<sup>38</sup> The author's curriculum vitae appears as Exhibit A in the appendix to this report.

<sup>39</sup> 28 USC 534.

Reported criminal acts were grouped according to the following categories: threats, assaults without battery, “simple” assaults and batteries; assaults and batteries with dangerous weapons; and “indecent” or sexual assaults and rapes. Crimes were grouped according to whether they occurred in 2006 or later; from 2001 through 2005; or the year 2000 or earlier; whether they occurred in Massachusetts; other New England states; the Northeastern United States (*i.e.* New York, New Jersey, or Pennsylvania); Ohio, California, or other American states; whether they occurred on sidewalks, streets, alleys; in parking lots or garages; at a shopping venue such as a store or a mall; at a night club; at a private residence (either indoors or outdoors); on public transportation; at a school; or at a remote location such as the woods or a site not frequented by members of the public. Verbal comments accompanying acts of hate violence were grouped according to whether they stated epithets relating to sexual orientation (*e.g.* “faggot” or “queer”); epithets relating to gender identity (*i.e.* “tranny” or “shemale”); whether they made non-specific references such as “freak,” “abomination;” whether they mentioned religion (*i.e.* “God”); whether they conveyed the perpetrator’s perception of inappropriate gender expression, gender confusion, or gender “deception” without use of a recognizable gender-identity-related epithet; and other; whether the perpetrator, if known to the victim, was a friend, acquaintance, or neighbor; someone whom the victim had dated; a family member; or a police officer; and whether, in cases where crimes drew law enforcement attention, police followed up or responded in a negative manner as viewed by the victim; and whether the perpetrator(s) were caught.

### **III. RESULTS**

A total of 148 individuals responded to Survey Question 1. 90 (61%) answered “yes” that they had been the victim of an assault and battery related to gender identity or expression. 58

individuals (39%) indicated that they had not been so victimized. However, only 32 of the 90 individuals disclosing hate crime victimization went on to complete the full survey to describe the circumstances of the attack(s). Given that this study was not focused on prevalence of anti-transgender violence, the responses of the 58 who reported assaults and batteries but did not complete the survey were disregarded. The sample used for purposes of data analysis consisted of the 32 individual respondents to the survey who supplied information about crime characteristics.

Not every survey respondent supplied answers to every question (*e.g.* only 27 respondents gave the date of the crime(s) they experienced.) Some survey responses fit multiple answer categories. For example, verbal statements made by perpetrators during specific crimes might include both sexual-orientation and gender-identity-related epithets.

31 respondents reported experiencing a total of 37 occurrences which could be classified by distinct crime type. Two respondents (5%) reported being threatened. Three (8%) reported assaults without battery (one involving a dangerous weapon.) 16 (43%) reported “simple” assaults and batteries. Nine (24%) reported experiencing assaults and batteries by means of dangerous weapons. Seven (19%) reported “indecent” or sexual assaults or rape.

27 respondents reported on 31 hate crimes according to date of occurrence. The majority, 16 (52%) indicated that they had been victimized in 2006 or later. Six (19%) reported crimes occurring between 2001 and 2005 inclusive. Nine respondents (29%) reported episodes of violence in 2000 or earlier.

32 respondents gave information on city and state locations for hate crimes occurrences. Eight (25%) of the hate crimes occurred in Massachusetts. Three (9%) reported hate crimes that

happened in other New England states. Five (16%) reported crimes occurring in other Northeastern states. Two (6%) crimes were reported for California; three (9%) for Ohio; and 11 (34%) for other states.

Of 35 reported crime vicinities, seven (20%) bore some recognized association with the LGBT community (*i.e.* towns with heavy concentrations of LGBT people like Northampton, MA or a gay bar.) 28 (80%) crime vicinities occurred in areas without any distinct association to the LGBT community.

Of 36 reported crime location-types, 12 (33%) occurred on a sidewalk, street or alley. Eight crimes (22%) were reported to have occurred at private residences. Five crimes (14%) took place in parking lots or garages. Four crimes (11%) were reported for night clubs. Two crimes (6%) occurred inside shopping venues (*i.e.* a mall and a grocery store). Three crimes (8%) occurred in remote locations (*i.e.* wooded areas and a warehouse.) One crime (3%) was reported to have occurred at a school, while another single crime (3%) took place on public transportation.

Verbal statements made by perpetrators during 31 distinct criminal episodes fit into 44 defined categories.<sup>40</sup> 16 comments (36%) included sexual-orientation-related epithets; nine comments (20%) included gender and gender-identity-related slurs; 14 comments (32%) reflected the perpetrator's perception that the victim was transgressing binary gender boundaries but did not necessarily involve a gender or gender-identity-related slur; three comments (7%) involved non-specific slurs like "freak" or "abomination;" and two comments (5%) referred to God. No comments were categorized as "other."

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<sup>40</sup> Some statements made in the course of particular crimes fit both gender-identity and sexual orientation bias categories. In two additional cases there was insufficient detail given to categorize perpetrator verbalizations. Those cases are not included in the above analysis.

Of particular interest are verbal statements categorized as expressing the perpetrators' perceptions that the victim was transgressing binary gender boundaries. An illustrative selection of such victim-reported verbal statements appears below:

1. "‘You’re really a woman. You shouldn't show your breasts.’ (I had had chest surgery and am very hairy). Called a fag as well.”
2. "They called me a ‘dyke’ and when they fucked my asshole they said since I wanted to look like a man I should be fucked like one.”
3. "‘Faggot,’ ‘Liar,’ Told me how I was deceiving society.”
4. I was told he would prove that I was a girl and that real guys had dicks and that he would show me that and also that I was just a faggot who wished I was a man because they are better.
5. "Just checking to make sure you're real"
6. "OH MY GOD, you're a MAN!"  
Exchange: Them, angrily/accusatorily, as they trap me against the wall: ‘Why are you crying!’  
Me: ‘he called me a man’  
Them: ‘You ARE a man.’”
7. "‘So you want to be a Man. I am a Man.’ Over and over while pounding my head. Then grabbing his genitals and telling me he was a man and ‘this’ is God given.”
8. "They started by yelling ‘Hey, that's a guy’”
9. "This occurred after several weeks of dating and having had sex on several different occasions without incident. After receiving a phone call he suddenly and without any prelude asked me angrily ‘Are you a transsexual?’ My honest answer apparently triggered the assault. He walked to a cabinet and pulled out a revolver which he loaded and pointed at me. He then demanded item by item to know if things I had told him about myself were the truth. I answered honestly that they were. He asked me if I had been HIV tested and what was the result. Again I answered honestly that I had and I was negative. He continued pointing the gun at my head while obviously thinking things over and very agitated. During this time I nearly decided to try jumping out the 3rd story window but decided I would be shot before I could reach it. Finally he said loudly ‘get your shit and get out now.’ I quickly grabbed all my belongings and ran out the door wearing nothing but a t-shirt I had slept in. I ran to my car and drove to the nearest rest stop where I parked until I was able to stop shaking enough to dress properly and make the 3

hour drive home. I can only assume the phone call he received was from someone who knew or suspected that I was transsexual.”

10. “I was a pre-pubescent tomboy with a gender-neutral name and acted and dressed in a stereotypically male fashion. Explicit statements of ‘If you want to be a boy so badly, you can take it like one.’ Told to ‘man up’ and not to cry. Predominantly penetrated me anally. Said ‘good boy’ when I did what he wanted. Called me ‘boy’ and ‘fag’ but only during the abuse.”

For 33 reported episodes of crime victimization, 11 respondents (33%) said they knew their attacker(s), while 22 victims (67%) said the perpetrators were strangers. For 12 crimes in which the victim reported knowing a perpetrator, eight (67%) described the assailant as a friend, acquaintance, or neighbor. In two instances (17%) perpetrators were family members. In one instance (8%) the perpetrator was in a dating relationship with her victim, and in one instance (8%) the perpetrator was a police officer.

Of 32 respondents to the question about whether a weapon was used, ten (31%) said their attack involved a weapon, while 22 (69%) said no weapon was used. In three instances of reported weapon use, the weapon was identified as “fists,” which are not considered a “dangerous weapon” under Massachusetts law. Those three instances of claimed weapon use were recategorized as not involving weapons. Moreover, two respondents described the use of a dangerous weapon only in the narrative accounts of their victimization. These two instances of reported weapons use were counted as such. The adjusted data indicate that nine crimes (28%) involved a weapon defined as dangerous under Massachusetts law, while 23 crimes (72%) did not involve a weapon. In two instances, the weapon reported was a shod foot; in another two

cases metal or glass objects were used. In one instance each, a large truck, a “blackjack,” a knife, a baseball bat, rocks, and a gun were used.<sup>41</sup>

25 of 33 reported episodes of anti-transgender violence (76%) did not result in physical injury to the victims. Eight hate crimes (24%) did result in physical injury to victims. The reported injuries included cuts, bruises, scrapes, scars, inflammation of the genital and anal regions of the body, a neck and back injury, a broken nose, a broken cheekbone, a pulled muscle, and facial paralysis. Nine of 31 respondents to the question about whether medical attention was sought following the attack (29%) answered in the affirmative. 22 (71%) said they did not seek medical attention.

Of 33 hate crime occurrences, victims said that they reported to police in ten (30%). 23 (70%) of anti-transgender crimes surveyed were not reported to police. In three cases, victims indicated that the police followed through on the complaint of a hate crime. In four instances, victims described negative encounters with police. The survey responses of these four victims in answer to the question “how did police respond” appear below:

1. “At first, they were responsive and then they interviewed the neighbors who claimed that I was a pedophile after their children.”
2. “Horribly. First they tried to cite me for being in a work zone. They refused to take my statement or let me file a complaint against the assailant (a construction worker with a police detail). They mocked me, made fun of me and the witness, and testified against me in court although they had no firsthand knowledge of the incident.”
3. “The perp was never caught, because [police] refused to go after him while the perp was actually running down the street in full view in broad day light.”
4. “I first was reporting it without relating it to trans stuff, because I was scared of their reaction if I did. They refused to believe I was helpless for a long time, intimated that if I filed a report they'd arrest me. Eventually I did file a report, and they listened, but didn't classify it as a hate crime even after it was made clear that it was trans related. (I live in IL.) They were patronizing and rude, too, though

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<sup>41</sup> Some information about weapons used was supplied in the narrative elaboration of the circumstances of the attack.

mostly at first.

“If I'd been alone, I wouldn't've [sic] called the cops, for fear they'd arrest me for walking while trans/looking like a sex worker (I was at a queer dance party! Really...), and if for some reason I had, I'd've [sic] been too intimidated to actually file a report--they really tried to scare me out of it.

“The perpetrator was never caught.”

35 individuals responded to the question about self-identification as transgender. Identity categories suggested in the survey overlap, so 48 gender identities were reported. 13 individuals (37%) identified as “transgender male-to-female. Ten (29%) identified as transgender female-to-male;” nine (26%) as “transsexual male-to-female;” four (11%) as “transsexual female-to-male;” five (14%) as “genderqueer;” three (9%) as “crossdresser;” and two (6%) each as “intersex” and “other.” 33 individuals rated themselves on a five point scale as to the degree to which they had transitioned from their assigned birth-gender expression to their self-defined gender expression at the time of the crime. Three respondents (9%) said they expressed their assigned birth gender at the time of the attack. Two (6%) rated themselves a two out of five in terms of their transition. Eight (24%) rated themselves at the midway point in their transitions, while three (9%) said they had progressed to the point of four out of five. 17 (52%) said they were expressing their self-defined gender while they were attacked.

The author selected victims' narrative elaborations regarding the following 13 illustrative incidents for full inclusion in this report:

1. “A teenage male waited for me to get off the bus and dragged me into the woods where he raped me. He called me his ‘sissy bitch.’ He would pull my hair and made me suck him and then he raped me.”
2. “I was walking approx.4:30 AM on a Sunday morning. 2 men rode by me in a pickup truck and yelled ‘hey you fucking queer.’ I shouted back [and] stuck up [my] middle finger. They stopped [and] backed up. [B]oth got out of [the] truck and jumped [me.]

- [O]ne started swinging at me. When I was getting the best of him the other jumped me. [T]hen the two of them were punching. I fell to the sidewalk and covered my face. [They} started kicking and punching me. After about a minute they ran to [the] truck and left. I did not report it to police.”
3. “Was on Hampton beach when a group of girls said “you are so fu&&ing [sic] gay” and [I] said “what are you saying” so the girls started to push me and insult me [.] The police shows up, stop[ped] the show and ask me if I wanted to present charges: I said no.”
  4. “I was at the store... Shop n Save grocery shopping. Two guys noticed the way I was dressed (I was dressed as a woman at the time, and am anatomically male) and started making rude comments. I tried to get away from them by walking down aisles, but they seemed to be following me. After leaving the store, I drove home, but didn't realize the[y] pull[ed] in behind me. I was on the porch about to open the door when they attacked me from behind. I was thrown to the ground and repeatedly kicked until my fiancé at the time came out and they ran off.”
  5. “I was raped by 2 men. They called me derogatory names, "dyke" and such. Even raped my asshole while saying that since I looked like a man I should be fucked like one.”
  6. “Attacked and raped by two white men in their 20s. Attacked from behind and accosted for being perceived as gay man. During course of the rape, my trans status was discovered. Only one of the men actually raped me, the other taunted, kicked and acted as look out.”
  7. “I was walking minding my own business when 3 African-American males attacked me. I was first hit in the head from behind. I fell to the ground and was then kicked in the ribs and face repeatedly. I was left bl[ee]ding on the ground while people just watched.”
  8. “There were two major attacks: in one I was jumped by three people and beaten, I received bruises, cuts, and a broken rib...in another attack I was beaten, cut with a knife, and raped anally and vaginally.”
  9. “I was trapped against a wall, shouted transphobic shit at, and then punched in the face by two attendees of a queer/trans dance party (presumably regulars of the bar, which is generally for cis gay men. They followed me out of the bar, so they weren't random passerby.)”
  10. “I'll just pick one. There ha[ve] been many. I was read at the mall by a group of teenage gangster looking boys. I was asked if I had a few spare dollars and when I said no one of them wouldn't leave me alone. I got really nervous and my voice slipped back to my male voice a little while I was answering them. After harassing

me while people just walked by one finally got mad and started to call me a ‘fag’ and ‘shemale.’ He reached out and grabbed my groin and my breast. The names kept coming, they were all saying stuff and someone in the group hit me in the stomach so hard I folded in half. I never saw it coming. People saw it, no one stopped them, no one tried to help me when they walked away laughing about. I feel less than human when I think about it.”

11. “I was punched by a man, for being a ‘fag in a dress.’”
12. “[B]y the police in Elizabeth, New Jersey. I was handcuffed and repeatedly beaten with fists and a blackjack. The left side of my face was caved in, with a broken cheekbone and orbit. The left side of my face remained paralyzed for over a year, and I have never regained full use of the facial muscles.”

One respondent declined to elaborate on the attack s/he reported, stating “can’t. Not making difficulties, just can’t.”

#### **IV. DISCUSSION OF RESULTS**

Given the small sample size, the survey data will not support generalizations about anti-transgender violence. Yet the details of 32 anti-transgender crime occurrences are suggestive in some relevant respects, and permit a number of tentative findings where the results are corroborated by other data in the social science literature. These findings must be regarded as provisional. The objective of this study is to equip law enforcement personnel with adequate information to more accurately classify reported anti-transgender hate crimes and generate more comprehensive and reliable hate crime statistics.

One conclusion is already well-supported by existing data: victims underreport gender-identity-related hate crimes to police.<sup>42</sup> The same is true of hate crimes generally.<sup>43</sup> Most transgender victims—70% in this survey—do not go to the police when they have experienced a gender-identity-related hate crime. Subjective analysis of narrative elaborations and responses to open-ended questions suggests that victims are afraid that police will be hostile or at best unresponsive. The fear of secondary victimization by law enforcement personnel is pronounced.<sup>44</sup> Victims who do not report sexual assaults to law enforcement have given reasons including fear of retaliation from the perpetrators; fear of abuse by police; a perception that reporting “would not make a difference”; and a desire to protect the perpetrator.<sup>45</sup> 7.7% of respondents to one survey indicated that they had suffered unjustified arrests.<sup>46</sup> In another study 37% of perpetrators of anti-transgender verbal abuse were identified as police officers.<sup>47</sup> In one focus group study of transgender victims from Australia, the observation was made of “an almost universal reluctance to report violence to the police due to perceptions and prior experiences of police attitudes.” This study gave as “[t]he most common reason ... for non-reporting[:] ‘I wouldn’t because there’s no point, they don’t take you seriously.’”<sup>48</sup>

In Massachusetts, there is an additional reason for concern. While Massachusetts tracks anti-transgender hate crimes for purposes of data collection, such crimes are not eligible for the

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<sup>42</sup> Hate Violence against the Lesbian, Gay, Bisexual, Transgender and Queer Communities in the United States in 2009 at 25 (2010) *Report from The National Coalition of Anti-Violence Programs*, retrieved February 1, 2011 at <http://www.avp.org/documents/NCAVP2009HateViolenceReportforWeb.pdf>

<sup>43</sup> McDevitt, J. et al. (2003) *Improving the Quality and Accuracy of Bias Crime Statistics Nationally*. In Barbara Perry (ed.), *Hate and Bias Crime/A Reader*. 77-89. Routledge, New York.

<sup>44</sup> Sousa (2001), *supra*, at Note 35.

<sup>45</sup> Stotzer (2009), *supra*, at Note 1.

<sup>46</sup> Lombardi, E., Williams, R.A., Priesing, D., and Malouf, D. (2001) Gender Violence: Transgender Experiences with Violence and Discrimination, *Journal of Homosexuality*, 42(1) 89-101.

<sup>47</sup> Reback, C.J., Simon, P.A., Bernis, C.C. & Gatson, B. (2001), *The Los Angeles Transgender Health Study: Community Report*, Los Angeles, cited in Stotzer (2009), *supra*, at Note 1.

<sup>48</sup> Sharpe, A. & Moran, L. (2000) Reporting Transgender Violence/Encounters with Police from The Gender Centre, Inc.; article retrieved at <http://www.gendercentre.org.au/39article2.htm> February 1, 2011.

enhanced penalties prescribed for other types of bias crimes.<sup>49</sup> Hate crime laws have been enacted because without them police have not given these cases sufficient time and resources.<sup>50</sup>

It should be emphasized that these survey data do not substantiate victim expectations of uniformly negative police responses to reported gender-identity-based hate crimes. Examples of positive law enforcement treatment of anti-transgender violence are recorded in this study and corroborated in an exhaustive review of 1896 detailed hate crime/incident reports collected by anti-violence advocacy organizations in Minnesota from 1990 to the year 2000.<sup>51</sup>

Nevertheless, studies—not Massachusetts-specific—consistently show that LGBT victims of violence who report to police relate more negative than positive interactions.<sup>52</sup> Wolff and Cokely (2007), the NCAVP 2009 report, and some of the survey responses indicate that in many cases reported to law enforcement, police either refused to file a crime incident report or failed to investigate or classify an anti-LGBT attack as bias-motivated.<sup>53</sup> Wolff and Cokely indicate that “[o]ver the course of the 9 years [studied], officers refused in 31% of the cases to file a general incident report . . . .”<sup>54</sup> These researchers also state that in 25% of cases reported to police which victims believed to be bias-related, police refused requests that perceived bias motivations be recorded, notwithstanding Minnesota state law which requires that police flag cases the victim deems hate-motivated for further investigation.<sup>55</sup> The NCAVP reports that “[e]ighteen percent of survivors and victims attempted to make a report to police but the

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<sup>49</sup> G.L. c. 265, § 39.

<sup>50</sup> Gorton, D. (1999) “Why Hate Crimes Laws Are Needed,” in *Hate Crimes in Massachusetts Annual Report 1998*, published by the Executive Office of Public Safety in Boston.

<sup>51</sup> Wolff, K.B., Cokely, C.L., (2007) “To Protect and Serve?” An Exploration of Police Conduct in Relation to the Gay, Lesbian, Bisexual, and Transgender Community. *Sex Cult* (2007) 11:1-23.

<sup>52</sup> Stotzer (2009), *supra*, at Note 1; Wolff and Cokely (2007), *supra*, at Note 51.

<sup>53</sup> Wolff and Cokely, *supra*, at Note 51; *Hate Violence against the Lesbian, Gay, Bisexual, Transgender and Queer Communities in the United States in 2009* at 25 (2010), *supra*, Note 42.

<sup>54</sup> Wolff and Cokely, *supra*, at Note 51.

<sup>55</sup> *Ibid.*

complaint was refused ....”<sup>56</sup> Neither Wolff and Cokely (2007) nor the NCAVP separate information about anti-transgender violence from information about anti-LGBT crimes overall, so no finding is made regarding actual law enforcement responses to reported cases of transgender victimization. Even so, recommendations are offered to change both perceptions and realities of unsatisfactory police unresponsiveness to anti-transgender hate crimes.

Analysis of perpetrators’ verbal statements during acts of anti-transgender violence affords unique insight into the content of their bias motivations. Especially interesting are the 32% of verbal statements reportedly made during crimes that allege a transgression of gender boundaries but do not include epithets, according to victim accounts. Sousa (2001) offers lucid insight into the criminal mindset of such perpetrators: “Variations on gender seem to be interpreted as attempts to dupe others into believing something that is at odds with what most people have been taught to be true about gender—that there are only two genders that those two genders neatly correspond to two distinct groups of physical and secondary sex characteristics.”<sup>57</sup>

In only two other studies have verbal bias indicators for anti-transgender crimes been analyzed.<sup>58</sup> Stotzer (2008) makes this observation about perpetrator verbalizations: “In two incidences, perpetrators openly expressed their general confusion (“What kind of man are you?” “Why do you look like that?”) These verbal statements reported by Stotzer (2008) align with some of the comments made during crimes in this study.<sup>59</sup> A total of 52% of verbal statements

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<sup>56</sup> Hate Violence against the Lesbian, Gay, Bisexual, Transgender and Communities in the United States in 2009 at 25 (2010), *supra*, Note 42.

<sup>57</sup> Sousa (2001), *supra*, at Note 35.

<sup>58</sup> Stotzer, R. (2008), *supra*, at Note 11; Sousa, A. (2001), *supra*, at Note 35.

<sup>59</sup> Stotzer, R. (2008), *supra*, at Note 11.

made during crimes reported in this survey communicate explicit bias related to gender and gender identity, whether expressed in epithets or more descriptively.

36% of reported verbal bias indicators for crimes articulate sexual orientation bias. This finding is consistent with the results of both prior studies<sup>60</sup> and provides an explanation for the observation in Stotzer (2009) that many anti-transgender hate crimes are “subsumed” into reports of sexual orientation-related violence.<sup>61</sup> It is possible that perpetrators use homophobic epithets in attacks on transgender people because they do not understand the difference between sexual orientation and gender identity. And of course assumptions that gays and lesbians are gender non-conforming fuel sexual orientation bias.<sup>62</sup> Gender-identity-related bias indicators are present alongside sexual-orientation-related verbalizations in many of the hate crimes reported in this study. Some reported slurs like “abomination” and “freak” are used against LGBT victims indiscriminately. The overlap between sexual orientation-related violence and hate crimes against transgender people is clear enough.

Yet the social science literature strongly cautions against reducing bias crimes against transgender people to homophobia.<sup>63</sup> The studies reviewed by this author see gender-identity-bias crimes as a function of gender ideology, and analytically distinct from hate crimes rooted in sexual-orientation bias. The results of this study buttress the conclusions of other researchers that gender-identity-related crimes deserve specific law enforcement attention and prioritization.

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<sup>60</sup> Stotzer, R. (2008), *supra*, at Note 11; Sousa, A. (2001), *supra*, at Note 35.

<sup>61</sup> Stotzer, R. (2009), *supra*, at Note 1.

<sup>62</sup> Tomsen, S. and Mason, G. (2001) Engendering homophobia: violence, sexual and gender conformity in *Journal of Sociology* 37(3): 257-273.

<sup>63</sup> Moran, L., and Sharpe A. (2004) Violence, identity and policing: The Case of violence against transgender people, in *Criminal Justice* 2004 (4) at 395-417.

Sound reasons exist for distinguishing sexual orientation prejudice and gender-identity bias. One important factor in homophobic bias is the phenomenon of men with homosexual tendencies who display anti-gay prejudice in connection with denials of their same-sex desires.<sup>64</sup> At most an indirect factor in motivating anti-transgender violence, this influence is mediated by the erroneous equation of sexual orientation and gender identity.

To the extent that some hate crimes against gays, lesbians, and bisexuals stem from stereotypes about gender expression, an additional step is needed for the “logic” of perpetrators attacking gay, lesbian, and bisexual victims whose gender identities are conventional. Perpetrators must presume that gays, lesbians, and bisexuals unacceptably transgress gender-role boundaries even when a prospective victim is not perceptibly gender variant. In cases of anti-transgender violence, by contrast, perpetrators perceive clear and palpable gender variance.

Attributing crimes expressing sexual orientation bias in part to assumptions about gays and lesbians “doing gender inappropriately”<sup>65</sup> raises a troubling possibility. There may be a proclivity to even greater hate violence when the percept of gender-role conventions being violated is direct and immediate.<sup>66</sup> To be sure, the proposition queried by Sousa (2001) that transgender victims are in comparatively greater danger has yet to be established.<sup>67</sup> Yet the fact that 50% of 22 anti-LGBT hate murders reported for 2009 involved a transgender victim while only 15% of the 1983 victims of anti-LGBT crimes and incidents overall were transgender<sup>68</sup> is

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<sup>64</sup> Adams, H.E., Wright, L.W., & Lohr, B.A., (1995) Is Homophobia Associated with Homosexual Arousal? *Journal of Abnormal Psychology* 105(3) 440-445.

<sup>65</sup> Barbara Perry (2001), *In the Name of Hate/Understanding Hate Crimes*, at 110. Routledge, New York.

<sup>66</sup> Lombardi, E. et al. (2001), *supra*, at Note 46; Sousa (2001), *supra*, at Note 35.

<sup>67</sup> Sousa (2001), *supra*, at Note 35.

<sup>68</sup> Hate Violence against the Lesbian, Gay, Bisexual, Transgender and Queer Communities in the United States in 2009 (2010) at 18, *supra*, at Note 42.

suggestive, and points out a need for further research into the relative ferocity of anti-transgender violence.

Another aspect of anti-transgender hate crimes illuminated in this report and corroborated by other social science research contrasts with characteristics of hate crimes generally as reported by law enforcement agencies and published in the 2008 Massachusetts Hate Crimes Annual Report.<sup>69</sup> While the State Police logged one hate-motivated rape for the entire Commonwealth in 2008, 19% of anti-transgender crimes surveyed involved indecent or sexual assault or rape. A judgment that anti-transgender crimes are more likely than other hate crimes to involve sexual assault is consistent with the observation in Stotzer (2009) “that there is a high prevalence of sexual assault and rape [against transgender victims] starting at a young age.”<sup>70</sup> Kenagy (2005) also emphasizes the frequency of sexual assaults and non-consensual sex among transgender subjects in her study.<sup>71</sup> Some of the narrative elaborations of crimes surveyed in this study provide support for the thesis of Sloop, R. (2000) and Lombardi et al. (2001) that sexual assaults represent perpetrators’ attempts to forcibly impose sex-role compliance.<sup>72</sup> In this respect anti-transgender sexual assaults may be similar to anti-lesbian rapes.<sup>73</sup>

These data do not suggest that anti-transgender bias crimes differ appreciably from reported hate crimes generally in the type of place where they occur. 33% of crimes in this survey took place on sidewalks, streets, or alleys; 14% occurred in parking lots or garages; and 22% were reported to have happened at private residences. The comparative percentages for

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<sup>69</sup> The 2008 Annual Report, the most recent available, can be retrieved at <http://www.mass.gov/Eeops/docs/eops/HateCrimes2008.pdf>.

<sup>70</sup> Stotzer, R. (2009), *supra*, at Note 1.

<sup>71</sup> Kenagy, G.P. (2005). Transgender health findings from two needs assessment studies in Philadelphia, *Health and Social Work*, 30(1), 19-26.

<sup>72</sup> Sloop, R. (2000) Disciplining the Transgendered : Brandon Teena, Public Representation, and Normativity, in *Western Journal of Communications* 64(2) 165-189; Lombardi, E. et al. (2001), *supra*, at Note 46.

<sup>73</sup> Tomsen and Mason. (2001), *supra*, at Note 62.

these location types in the 2008 Massachusetts Hate Crimes Annual Report are 29.6%; 4%; and 29.3%.<sup>74</sup> This survey included a slightly higher percentage of crimes occurring in night clubs (12%) than was the case for hate crimes generally in 2008 (2.2%). A slightly smaller percentage of anti-transgender crimes surveyed occurred in schools (3%) than among 2008 hate crimes overall (12.3 %).<sup>75</sup> The patterning of locations for anti-transgender violence in this study is roughly comparable to, though different in a few respects from the locational data reflected in Stotzer (2008).<sup>76</sup> Stotzer (2009) suggests that violence against transgender people is especially likely to take place at home, citing two studies where 56.3% and 66% of transgender respondents reported experiencing violence at home.<sup>77</sup> With available data so sparse no firm conclusions can be drawn about the types of locations where anti-transgender crime are most likely to occur.

We cannot tell from these data whether perpetrators of anti-transgender violence seek out their victims at locations which are recognizably associated with the LGBT community.<sup>78</sup> While 20% of hate crimes surveyed occurred in locations prominently associated with the LGBT community in the public mind, one of these crimes involved perpetrators their victims assumed were gay or lesbian themselves.

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<sup>74</sup> Massachusetts Hate Crimes 2008, *supra*, at Note 69.

<sup>75</sup> *Ibid.* The low incidence of reports of crimes at schools may reflect a sample underrepresentative of younger transgender victims. Other studies suggest that there is a high incidence of gender-identity-related violence in the “full contact hallways” of American high schools. Wyss, S. ‘This was my hell’: the violence experienced by gender non-conforming youth in U.S. high schools, *International Journal of Qualitative Studies in Education* 17(5) 709-730.

<sup>76</sup> Stotzer (2008), *supra*, at Note 11.

<sup>77</sup> Stotzer (2009), *supra*, at Note 1, *citing* Kenagy, G.P. and Bostwick, W.B. (2005). Heath and social service needs of transgender people in Chicago. In Walter Bockting & Eric Avery (Eds.), *Transgender health and HIV prevention: Needs assessments studies from transgender communities across the United States* Binghamton, New York: Haworth Medical Press; Kenagy, G.P. (2005). Transgender health findings from two needs assessment studies in Philadelphia, *Health and Social Work*, 30(1), 19-26.

<sup>78</sup> *Compare* Gary David Comstock (1991) *Violence Against Lesbians and Gay Men* at 48-50, Columbia University Press: New York.

These data do not point in the direction of perpetrators of anti-transgender crimes differing strikingly from the “thrill-seeking” and “mission” offenders who are strangers to their victims.<sup>79</sup> 67% of survey respondents reported that they did not know their attackers. However, other information suggests that transgender victims are especially likely to know the perpetrators of sexual violence against them.<sup>80</sup> There is some indication that perpetrators of anti-transgender violence may be more likely to be known to their victims than is the case with sexual-orientation-bias-related crimes.<sup>81</sup> Still, in the 49 cases of anti-transgender hate crime examined in Stotzer (2008), 87.2% of perpetrators were strangers to their victims. The data are inconclusive at present. Still it can be said that transgender hate crime victims are subject to attack by strangers, acquaintances, partners and dates, and family members to unknown degrees.

Weapons were reported to have been used against transgender victims at a rate (28%) roughly comparable to the frequency reported for Massachusetts hate crimes generally.<sup>82</sup> However, the official hate crimes statistics appear to overstate actual weapons use, as they confusingly treat “fists” as weapons and group them together with feet.<sup>83</sup> By that logic the vast majority of simple assaults and batteries would involve weapons use. In Massachusetts, fists are not considered to be dangerous weapons while a shod foot is.

Meanwhile, this survey reflected a slightly higher percentage of gender-identity-related hate crimes that result in bodily injury (24%) than is the case with 2008 reported hate crimes

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<sup>79</sup> Levin, J. and McDevitt, J., (2002) *Hate Crimes Revisited* 67-77; 91-114. Boulder, Colorado: Westview Press.

<sup>80</sup> Stotzer (2009), *supra*, at Note 1.

<sup>81</sup> Compare Stotzer (2009) with Herek, G., Cogan, J., and Gillis, J.R. (2002) 58(2) 319-339. The conception of the stranger as perpetrator is less true in instances of anti-lesbian bias crime than in cases of anti-gay male crimes.

Mason, G. (2005) *Hate Crime and the Image of the Stranger*, *British Journal of Criminology* 45, 837-859.

<sup>82</sup> Massachusetts Hate Crimes 2008, *supra*, at Note 69.

<sup>83</sup> *Ibid.*

generally (16.5%).<sup>84</sup> However, the small sample size in this survey precludes any conclusion that anti-transgender crimes are more likely to result in bodily injury to victims. Yet the theory that anti-transgender crimes are particularly violent and hence more injurious, based on the observed intensity of perpetrators' reactions to gender variance, merits consideration. The question of the extent of physical injury suffered by transgender victims of hate violence is one requiring closer examination in future research.

While this study did not examine the relative victimization of MTF versus FTM people, there were more FTM victims participating in this survey than were reported in Stotzer (2008).<sup>85</sup> The narrative elaborations of attacks provided by identifiably FTM victims suggest parallels to the case of Brandon Teena, who was raped (and later murdered) after he was discovered to have female genitalia.<sup>86</sup> Slightly more than half of respondents (52%) reported being fully transitioned to their self-defined gender identity, which suggests that for many or most transgender victims, "passing" as described in Sousa (2001) is not an option.<sup>87</sup>

In summary, the survey results can be corroborated by other available social science in three important respects, so that tentative findings can be made. First, most transgender victims do not report the hate crimes they experience to police, out of fear of secondary victimization or a pervasive assumption that the police will not take these reports seriously. Second, the verbal bias indicators accompanying acts of anti-transgender violence suggest that gender-identity-bias is a category distinct from sexual orientation-bias, despite the fact that hate crimes against transgender people often present sexual orientation-related epithets. Anti-transgender bias, a function of gender bias, should not be conflated with homophobia as a motive for crime. Third,

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<sup>84</sup> *Ibid.*

<sup>85</sup> Stotzer (2008), *supra*, at Note 11.

<sup>86</sup> Sloop (2000), *supra*, at Note 72.

<sup>87</sup> Sousa (2001), *supra*, at Note 35.

transgender victims appear to suffer from sexual assault and rape more often than hate crime victims generally, which is probably attributable to perpetrators' intention to enact binary gender-role conventions.

## **V. RECOMMENDATIONS TO IMPROVE LAW ENFORCEMENT EFFECTIVENESS IN RESPONDING TO ANTI-TRANSGENDER CRIMES**

### **1. DEVELOP BETTER INFORMATION USEFUL TO LAW ENFORCEMENT**

Given the present state of the research there are more questions than answers about gender-identity-related crimes. Are anti-transgender hate crimes more likely than other hate crimes to take place in private residences and involve a known perpetrator? Are anti-transgender crimes more brutal than other hate crimes? How often are dangerous weapons used? Do transgender victims suffer bodily injury more frequently than other hate crime victims? How prevalent are individual propensities to violence in response to unconventional gender expression? What function does anti-transgender sexual violence serve in the minds of perpetrators and how is that different from bias-motivated assaults and batteries? These are but a few questions the answers to which require further inquiry from academics and advocacy organizations.

Additional research can supply law enforcement personnel with more extensive information on anti-transgender violence useful to detection and prosecution.

While it is difficult to make generalizations about the phenomenon when only convenience samples are accessible to researchers, the widest possible

participation of potential victims in a self-report survey looking at dimensions of interest to law enforcement would bring our picture of anti-transgender violence into sharpest focus. To this end, a well-funded research study where participants are compensated for taking part would offer a more broad-based understanding of this type of crime. Inquiries should assess both quantitative and qualitative characteristics of anti-transgender bias crimes.

It also possible to better analyze existing data on anti-transgender crimes. It is highly recommended that the National Coalition of Anti-Violence Programs modify its data collection and reporting model to capture and report the characteristics of anti-transgender crimes, victims, and perpetrators separately from data about sexual-orientation-related violence. Sexual orientation and gender identity bias, while related phenomena, are distinct categories for purposes of classifying and understanding hate crimes. The research suggests that there may be subtle differences between these separate types of bias crime which are important to law enforcement.

The NCAVP should report hate crime and incident data for lesbian, gay, and bisexual victims separately from data about transgender victims. It is acknowledged that there will be overlap between the categories of gender-identity-related and sexual-orientation-related bias motivations for particular acts of violence. Ideally crimes presenting both anti-gay and anti-transgender bias would be included in both data streams. If “either/or” classifications are thought necessary to avoid double counting, attacks involving self-identified transgender victims should presumptively be classified as gender-identity-bias-related.

Gender-non-conformity is a potent and readily perceptible trigger for violence rooted in gender ideology.<sup>88</sup> Indeed, Sousa (2001) opines that “gender might be considered to have primacy [citation omitted] over other attributes ....”<sup>89</sup> Treating hate crimes against transgender victims as gender-identity-related accords with indications that homophobic verbal comments frequently accompany anti-transgender attacks.

## **2. INCLUDE GENDER IDENTITY AND EXPRESSION BIAS AS AN ENUMERATED CATEGORY IN HATE CRIMES LAWS.**

Research establishes that anti-transgender victimization poses unacceptable risks to public health and safety.<sup>90</sup> Currently Massachusetts law directs data collection regarding anti-transgender crimes but does not make perpetrators eligible for the enhanced penalties the legislative deems proportionate to the damage hate crimes cause. The Supreme Court’s observation in *Wisconsin v. Mitchell*, is no less salient with respect to gender-identity-related hate crimes:

[T]he Wisconsin statute singles out for [penalty] enhancement bias inspired conduct because this conduct is thought to inflict greater individual and societal harm. For example, according to the State and its *amici*, bias motivated crimes are more likely to provoke retaliatory crimes, inflict distinct emotional harms on their victims, and incite community unrest.<sup>91</sup>

If deterrence of hate crimes is to be the law enforcement priority intended by G.L. 22C, § 32 *et seq.* and G.L. c. 265, § 37 and 39, anti-transgender crimes should be treated like other recognized types of hate crimes. G.L. c. 265, § 39 and c. 272, §

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<sup>88</sup> Wyss, S. (2004), *supra*, at Note 75.

<sup>89</sup> Sousa (2001), *supra*, at Note 35.

<sup>90</sup> Clements-Nolle et al. (2006), *supra*, at Note 20; Lombardi (2001), *supra*, at Note 46.

<sup>91</sup> 508 U.S. 476,487-88 (1993).

92A should be amended as proposed in the bill *An Act Relative to Transgender Equal Rights* to ensure that deterrence operates comprehensively.

Moreover, the Federal Hate Crime Statistics Act, 28 USC 534, does not cover gender identity bias, which exacerbates the existing data collection problem. The FBI statistics should track gender identity bias crimes, which would require that Congress amend 28 USC 534 to add this category of crime motivation.

### **3. TRAIN POLICE OFFICERS TO UNDERSTAND AND SERVE THE TRANSGENDER POPULATION**

Sharpe and Moran (2000) conclude the report on their focus group study by emphasizing the importance of police training about transgender victimization.<sup>92</sup>

As a component of the MHCRA, Massachusetts law directs that all police training programs subject to the the Municipal Police Training Committee “*shall* include [hate crimes] instruction in all curricula for recruits and in-service trainees and in all police academies operated or certified by said committee.”<sup>93</sup> (Emphasis added.) Theoretically police training in how to respond to anti-transgender hate crimes should have been taking place since 2001. In reality, the lack of available resources—research-based law enforcement curricula or the funds needed to develop them—has delayed implementation of the police training mandate with respect to anti-transgender hate crimes.

In 2010, the Municipal Police Training Committee began developing a law enforcement curriculum to address anti-transgender hate crimes. This initiative is

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<sup>92</sup> Sharpe and Moran (2000), *supra*, at Note 48.

<sup>93</sup> G.L. c. 6, § 116B.

laudable: at present one searches the Web in vain for a training model for presenting information necessary for effective gender-identity-related hate crime law enforcement. Hopefully, the planned gender-identity-bias curricula coming out of Massachusetts will serve as a national model, as has happened with anti-hate crimes resources created here in the past.

Curricula need to cover three distinct areas of instruction. First, law enforcement personnel need to be made aware of the pervasive yet insidious character of gender-identity-bias. This bias may be present in law enforcement personnel and color perceptions of and hinder responsiveness to transgender crime victims.<sup>94</sup>

Police officers need to be non-confrontationally educated about the heterogeneity of gender identities in the populations they serve.

Police officers should also be trained in the manner in which gender identity bias operates when it motivates crimes of violence and the severe victim impact that it causes. Trainees should be gently challenged to develop ordinary human empathy for transgender people who are so often dismissed as the “Other” on sight. To this end, police recruit and in-service classes alike should include presentations from transgender victims of violence and/or transgender community advocates.

Second, police officers need to be trained in the relevant protocols of hate crimes law enforcement as they relate to acts of anti-transgender violence and transgender victims of crime. They should be educated to recognize the data dimensions which the MHCRA deems relevant to hate crimes detection, classification, reporting, and clearance. They should also be informed as to known

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<sup>94</sup> Moran and Sharpe (2004), *supra*, at Note 63.

characteristics of anti-transgender hate crimes, such as the higher frequency of sexual assault and rape.

Third, law enforcement personnel need to be educated about the importance of the name a transgender person uses (which may or may not be their current legal name) and pronoun use, which is consistent with transgender identity. Pronouns should reflect self-identified gender expression, not assigned gender. One survey respondent eloquently expressed the sense of disrespect transgender people feel when their self-defined gender identity is disregarded: “Exchange: Them, angrily/accusatorily, as they trap me against the wall: ‘Why are you crying!’ Me: ‘he called me a man’ Them: ‘You ARE a man.’” Incorrect pronoun use is a serious obstacle to fostering confidence among transgender victims that law enforcement personnel will respond to hate violence sensitively and effectively.

#### **4. BETTER ACCOMMODATE TRANSGENDER VICTIMS OF HATE CRIME WHO REPORT**

While they do not address anti-transgender crimes separately from sexual-orientation-related crimes, Wolff and Cokely (2007) and the NCAVP suggest that too many victims of anti-LGBT hate crimes who report to police have negative experiences.<sup>95</sup> That is, police officers either fail to file a crime incident report or fail to record victim perceptions of bias motivation for further investigation or classification.<sup>96</sup> Without making a similar observation,<sup>96</sup> the International

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<sup>95</sup> Stotzer (2009), *supra*, at Note 1; Wolff and Cokely (2007), *supra*, at Note 50.

<sup>96</sup> Anyone familiar with LGBT history in the United States is aware of the role police officers played prior to and through the 1969 Stonewall Riots in repressing the LGBT communities. See David Carter (2004) *Stonewall/The Riots That Sparked the Gay Revolution passim*, St. Martin’s Griffin Press: New York. This history is still vivid in the minds of LGBT people generally.

Association of Chiefs of Police has recognized the need for law enforcement personnel to earn the trust of the LGBT community.<sup>97</sup> The Leadership Conference offers detailed advice to police officers on how to work effectively with hate crimes victims; the information is apropos to dealing with transgender victims.<sup>98</sup>

To meet the challenge of improving law enforcement effectiveness in combating anti-transgender violence, police agencies need to do more than simply comply with the state's training requirement, although that is an essential first step to wider reporting by victims. Police departments should reach out to the organized transgender community and demonstrate a commitment to assisting victims of violence in getting justice. The Boston Police Department has a liaison for the Lesbian, Gay, Bisexual, and Transgender community, as do other communities in Massachusetts. Any city or town with transgender residents should do the same. Liaisons should give specific attention to transgender issues and maintain regular communication with victim advocates and community leaders. As was noted in Sharpe and Moran (2000), police efforts to cultivate an image of being “transgender friendly” will build a foundation for the greater victim cooperation necessary to boost levels of hate crimes reporting.<sup>99</sup>

## **5. STEP FORWARD TO REPORT TO LAW ENFORCEMENT IF YOU HAVE BEEN THE VICTIM OF A GENDER-IDENTITY-RELATED HATE CRIME**

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<sup>97</sup> Bune, K. (2004) Law Enforcement Must Take Lead on Hate Crimes, *The Police Chief* 71(4).

<sup>98</sup> The Leadership Conference, “Fight Hate: Victim Care and Assistance,” retrieved on February 5, 2011 from this link: [http://www.civilrights.org/hatecrimes/fight-hate/victim\\_care.html](http://www.civilrights.org/hatecrimes/fight-hate/victim_care.html)

<sup>99</sup> Sharpe and Moran (2000), *supra*, at Note 48.

This recommendation is addressed to transgender victims of hate crime specifically and is problematic given the researchers' prediction that there will be secondary victimization at the hands of law enforcement officers will in a significant number of cases. It is difficult to overstate the trauma a hate crime victim experiences when police officers respond in an unprofessional or even abusive manner. It is foreseeable that many, if not most police officers, will make incorrect pronoun references while interacting with transgender victims—based on assigned rather than self-identified gender—which make a victim feel disrespected. Additionally, if the transgender victim asks to be addressed by a name different from their legal name and the request is not honored, again the victim will feel disrespected. Yet without greater cooperation between transgender hate crime victims and police, it is difficult to imagine how these crimes can be punished and deterred.

Transgender victims should be prepared to educate police officers about gender-variant identities and the importance of respecting self-defined gender expression. Moreover, transgender victims need places to turn if they have suffered unprofessional or abusive conduct by law enforcement personnel. As episodes of substandard police responses to anti-transgender crimes come to light, advocates will be better equipped to focus demands for training, and pursue, where appropriate, disciplinary redress. Transgender victims who do report to law enforcement but face unprofessional or abusive treatment should accordingly follow up with an advocacy organization so that action can be taken to challenge poor responsiveness in specific circumstances. In Massachusetts,

victims who have had bad experiences in reporting anti-transgender hate crimes to police should contact the Massachusetts Transgender Political Coalition at 617-778-0519 and/or the Violence Recovery Program of Fenway Health at 1-.800-834-3242. Each victim who steps forward to report violence to the police plays a part in improving law enforcement responsiveness to anti-transgender violence going forward.

## **6. CHALLENGE BINARY NOTIONS OF GENDER IDENTITY IN PUBLIC PERCEPTION**

In the conclusion to his report, Sousa (2001) makes the following observation which applies with equal force to the findings of the present study:

Changes in perceptions of the transgendered will also have to come from within society at large. These changes may be most difficult to attain because gender variance is probably one of the least tolerated social violations—homosexuality seems to have attained a higher level of mainstream tolerance than gender variance. ...[T]hose whose gender was called into question were often subject to some form of harassment or victimization. Gender variance seems to be viewed as a threat to some individuals. In other words, gender variance raises the question of what it means to be a man or a woman specifically and may cloud the distinction between the genders and the privileges historically bestowed upon those genders, particularly privileges bestowed upon males.

Wyss (2004), who documents the most graphic and pervasive anti-transgender violence studied, echoes Sousa in asserting the need for “broader cultural change” to break down binary conceptions of gender identity.<sup>100</sup>

Lombardi et al. (2001) draws attention to how gender-based violence “acts to maintain conformity to the traditional gender system, and many people may

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<sup>100</sup> Wyss (2004), *supra*, at Note 75.

experience a small aspect of it whenever they transgress certain gender norms.” Similarly, Barbara Perry (2001)<sup>101</sup> describes how violence comes to be bound up in perpetuating dichotomous norms of gender expression. Clearly, the impetus to violence will diminish as people come to feel less threatened by gender diversity and less invested in rigid gender differences, however such change may be achieved. It is critical that law enforcement personnel in particular be able to look past common prejudices about gender expression to focus on their mission to prevent and deter violence.

The advances of the movement for gay, lesbian, and bisexual equality may have diminished adverse reactions to differences in sexual orientation, but this progress has not been matched in the transgender equality movement. Indeed, it seems as though acceptance of gay and lesbian identities owes a lot to movement successes at debunking old stereotypes that gay men are effeminate and lesbians are masculine in their secondary gender characteristics. There seems to be a premium on highly masculine portrayals of gay men, like the leading characters of the movie *Brokeback Mountain*. Gay men who are gender-role-conventional are ubiquitous in the media, while the transgender and gay gender non-conformists most responsible for the 1969 Stonewall Riots are barely visible. The poseurs who reportedly frequent the web site StraightActing.com reveal something unpleasant about some gay men’s attitudes toward gender variance.<sup>102</sup>

Wider acceptance of gays, lesbians, and bisexuals has been negotiated on terms that leave the transgender community behind and perilously exposed to the sort of

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<sup>101</sup> Perry (2001), *supra*, at Note 65.

<sup>102</sup> Clarkson, J., (2006) “Everyday Joe” versus “Pissy, Bitchy, Queens”; Gay Masculinity on Straight.Acting.com, *The Journal of Men’s Studies* 14(2) 191-207.

gender prejudice that might have been acted out with equal blatancy before Stonewall. Despite the deconstruction of the old homophobic stereotypes the hostile assumptions about gender non-conformity that they embodied remain robust.

To achieve full equality, the lesbian, gay, and bisexual communities must counteract “gender fundamentalism [which] operates by denying and stigmatizing any form of gender non-conformity, in the same manner heterosexism denigrates nonheterosexual relationships.”<sup>103</sup> If as leading experts contend sexual orientation bias has roots in patriarchal gender constructs like gender bias generally,<sup>104</sup> homophobia cannot fully be dismantled without a wider reconceptualization of gender identity.

Anyone who might ever be thought wanting in the conventionality of his/her gender expression and met with the concomitant hostility has an interest in overhauling societal understandings of gender. More immediately, law enforcement personnel have the duty to detect cases and arrest perpetrators where gender-identity-bias has flared into violence. To carry out this responsibility they need to remove the sociologically-based impediment that rigid sex role assumptions pose to effective cooperation with victims. Transgender people have the same claim on the rule of law as any citizen, although this aspiration is yet to be realized in everyday life in Massachusetts and throughout America.

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<sup>103</sup> Lombardi et al. (2001), *supra*, at Note 46.

<sup>104</sup> Perry (2001), *supra*, at Note 65.



- ☛ Junior Phi Beta Kappa

## COMMUNITY SERVICE

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- ☛ 1994-present: Chair of the Gay and Lesbian Anti-Violence Project
  - Researching and advocating better law enforcement solutions to hate crimes affecting the LGBT community.
  - Assisting victims of anti-LGBT violence who are using the legal system to hold their attackers accountable.
- ☛ 2008-present: Clerk, Join the Impact MA 1991-2003
  - Organizing events with grassroots activists in Boston promoting full LGBT equality.
- ☛ 1998-present: Clerk, the Gay and Lesbian Review, Inc.
  - Acting as corporate counsel to publication covering LGBT literature, culture, history and politics.
  - Contributing feature articles and opinion pieces.
- ☛ 1991-2003: Co-Chair, the Governor's Task Force on Hate Crimes
  - Administering agency responsible for coordinating policy, research and training about hate crimes in Massachusetts.
- ☛ 1988-1994: Chair of the Greater Boston Lesbian/Gay Political Alliance
  - Leading metropolitan Boston's premier LGBT membership-based advocacy organization for civil rights.
  - Overseeing operations including lobbying, electoral campaigns, and community organizing, (*i.e.*, LGBT town meeting, community recognition dinner).

## PUBLISHED WRITINGS (SELECTION)

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- ☛ *Direct from the Field: A Guide to Bullying Prevention* (co-author with Laura Parker-Roerden and David Rudewick), published by the Massachusetts Department of Public Health in 2008.
- ☛ "Maurice and Gay Liberation," *The Gay & Lesbian Review Worldwide* Vol. 16, Issue 6 (2009-11-01)
- ☛ "Why Stonewall Matters After Forty Years," *The Gay & Lesbian Review Worldwide* Vol. 16, Issue 4 (2009-07-01)
- ☛ "Why Romney's Campaign Collapsed," *The Gay & Lesbian Review Worldwide* Vol. 15, Issue 4 (2008-07-01)
- ☛ "The Hate Crime", *The Gay & Lesbian Review Worldwide*, Vol. 13, Issue 3 (2006-05-01)
- ☛ "A Literature of Hope for GLBT Youth," *The Gay & Lesbian Review Worldwide* Vol. 12, Issue 6 (2005-11-01)
- ☛ "What really happened at the Stonewall Inn?," *The Gay & Lesbian Review Worldwide* , Vol. 11, Issue. 6 (2004-11-01)
- ☛ "Wilde Paid for Henry VIII's Sins, " *Harvard Gay And Lesbian Review*, Fall 1999
- ☛ "Why Hate Crimes Laws Are Needed," in *Hate Crime in Massachusetts Annual Report 1998*, published by the Massachusetts Executive Office of Public Safety in 1999.
- ☛ "The Origins of Anti-Sodomy Laws," *Harvard Gay And Lesbian Review*,

Winter 1998