

Transgender Employees in Law Enforcement

Captain Chris Barrett



**ORANGE COUNTY
SHERIFF'S OFFICE**

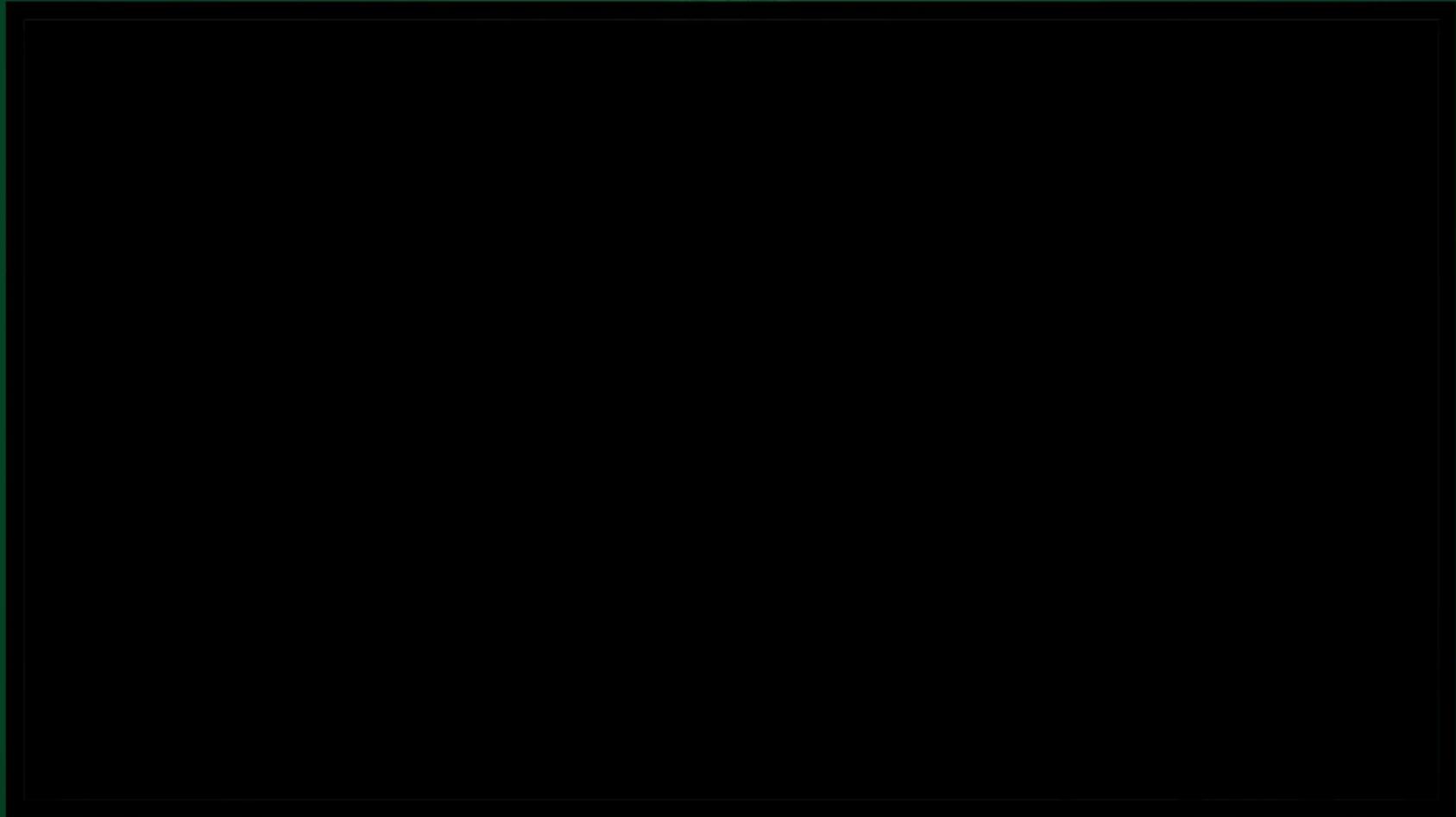
Peter



Rebecca



Rebecca Storozuk



How Did We Get Started?

- Meeting with:
 - Human Resources
 - Labor Relations
 - Employee Services
 - Chain of Command
 - In-House Legal Counsel
 - Quality Assurance
 - Outside Counsel

Planning



- Education
- Researched
 - commonly used terms
 - laws/case law
 - Policies
 - Mental Health Counselor
- Set objectives
- Determined implementation

Implementation

- Agency Awareness
- Training
 - Top down (managers)
 - Front line sworn employees
 - 33 sessions = 1,500
- Transition Plan Developed
- Policy Development
- Training for Civilian Employees
 - 12 sessions
 - 655 Employees

Employee Training



Session Objectives

- Understand the law with regard to LGBT employees in the workplace.
- Understand what issues you may face as an employer working with LGBT employees.
- Understand the policies that will ensure LGBT employees are treated in a nondiscriminatory manner.

Defining Terms

- LGBT – lesbian, gay, bisexual, and transgender
- Gender Identity
 - One's internal sense of being male or female, a blend of both, or neither.
 - How individuals perceive themselves and what they call themselves.
- Gender Expression
 - External appearance of one's gender identity.
 - Includes clothing, hairstyles, voice, behavior, and body characteristics.

Defining Terms

- Transgender
 - Umbrella term for people whose gender identity and/or expression is different from those typically associated with their sex at birth.
- Sexual Orientation
 - Refers to the relative genders of romantic partners (e.g., heterosexual, gay or lesbian, bisexual). Transgender people can have any sexual orientation.

Defining Terms

- Gender Transition
 - Period when a person begins to live as their new gender.
 - May include name change, taking hormones, surgery, and changing documents such as driver's license, social security record, or birth certificate.

What Is The Federal Law?

- There is no federal law that explicitly prohibits discrimination against LGBT employees.
- However, the Equal Employment Opportunity Commission (EEOC), and several federal courts of appeal have interjected Title VII's and Title IX's prohibition against discrimination based on an employee's LGBT status.

Federal Laws

Title VII

- Title VII of the Civil Rights Act of 1964 is a federal law that prohibits employers from discriminating against employees on the basis of sex, race, color, national origin, and religion. It generally applies to employers with 15 or more employees, including federal, state, and local governments.

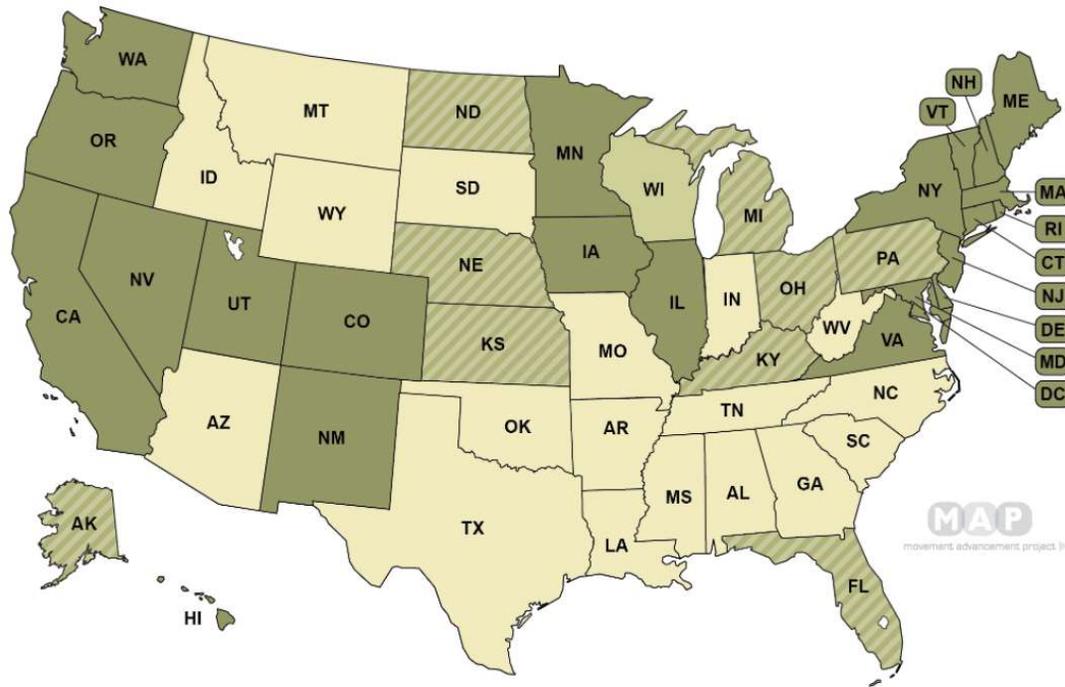
Title IX

- Title IX of the Education Amendments Act of 1972 is a federal law that states: “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.”

State Law

- 22 states, the District of Columbia, and Puerto Rico prohibit employers from discriminating against LGBT employees:

California	Massachusetts	Utah
Colorado	Minnesota	Vermont
Connecticut	Nevada	Washington
Delaware	New Hampshire*	Wisconsin*
Hawaii	New Jersey	
Iowa	New Mexico	* - Law covers
Illinois	New York	only sexual
Maine	Oregon	orientation (not
Maryland	Rhode Island	gender identity)



- State law explicitly prohibits discrimination based on sexual orientation and gender identity (22 states, + D.C.)
- State explicitly interprets existing prohibition on sex discrimination to include sexual orientation and/or gender identity (see note) (9 states)
- State law explicitly prohibits discrimination based on sexual orientation only (1 state)
- No explicit prohibitions for discrimination based on sexual orientation or gender identity in state law (18 states, 5 territories)

U.S. Territories

American Samoa



Commonwealth of the Northern Mariana Islands



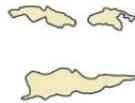
Guam



Puerto Rico



U.S. Virgin Islands



Local Law

- More than 225 cities and counties have enacted ordinances that prohibit public and private employers from discriminating based on an employee's LGBT status, including:

New York City
San Francisco
Miami-Dade County
Orlando
Broward County
Tampa
Seattle
Dallas
New Orleans

Equal Employment Opportunity Commission

- Equal Employment Opportunity Commission (EEOC) enforces Title VII.
- December 2012: EEOC Strategic Enforcement Plan
 - Affirmed coverage for LGBT individuals under Title VII's sex discrimination provisions
 - Listed LGBT discrimination cases as a top EEOC enforcement policy
- Since 2013: Number of cases filed with the EEOC claiming discrimination on the basis of gender identity has increased

Equal Employment Opportunity Commission

- *Smith v. City of Salem*, 378 F.3d 556 (6th Cir. 2004)
- *Barnes v. City of Cincinnati*, 401 F.3d 729 (6th Cir. 2005)
- *Lusardi v. Dept. of the Army*, EEOC Appeal No. 0120133395 (March 27, 2015)
- *EEOC v. Lakeland Eye Clinic, PA.* (M.D. Fla., Civ. No. 8:14-cv-2421-T35 AEP, filed Sept. 25, 2014, settled April 9, 2015)

Equal Employment Opportunity Commission

- The EEOC has explicitly ruled that an employer cannot rely on contrary state laws (such as North Carolina's law known as HB-2, which invalidated a Charlotte city ordinance that would have allowed transgender individuals to use the public bathroom of their choice) as a defense.
- EEOC further held that confusion or anxiety on the part of either supervisors or coworkers cannot justify discriminatory conditions of employment.

Grimm v. Gloucester City School Board

- Holding: Title IX requires educational institutions to give transgender students restrooms and locker room access consistent with their gender identity.
- Ruling is consistent with EEOC interpretation and opens the door for application in the workplace context. The 4th Circuit itself noted the similarities between Title IX and Title VII, saying that courts "look to case law interpreting Title VII" when analyzing Title IX claims.

Grimm v. Gloucester City School Board

- After four years of litigation, including a trip to the Supreme Court and back, the U.S. District Court for the Eastern District of Virginia ruled in favor of Gavin on all his claims. The U.S. Court of Appeals for the Fourth Circuit affirmed the ruling in favor of Gavin on August 26, 2020.
- On June 28, 2021, the Supreme Court denied the school board's petition for a writ of certiorari.

What Does this Mean for Employers?

- Legal landscape changing: While Title VII does not explicitly protect gender identity, several courts have found that sex discrimination includes discrimination based on nonconformance to traditional gender roles and sexual orientation. Furthermore, many counties and cities have expressly prohibited discrimination against LGBT employees.
- EEOC taking action: EEOC has an increased focus on LGBT employees' rights and has pushed to expand the definition of "sex discrimination" under Title VII.
- Employers may be liable for transgender discrimination: employers are increasingly at risk of LGBT discrimination charges and civil penalties.

Implementing Nondiscriminatory Policies

Next Step: Regardless of whether there is a clear statute requiring an employer to be LGBT friendly, employers should consider adopting nondiscriminatory policies.

Situations Needing Policy Solutions

1. Restroom Accessibility
2. Pronoun and Name Changes
3. Official Records and Documents
4. Appearance and Dress Standards
5. Respectful and Confidential Disclosure

Restroom Accessibility

- A transgender employee should be granted use of the restroom which corresponds to his or her gender identity. This rule should apply regardless of amount of surgery or medical treatment a person has had.
- If another employee expresses concern or discomfort about a person who uses a facility that is consistent with the person's gender expression or gender identity, the person expressing discomfort may be directed to a separate or gender-neutral facility, if available.
- Requiring a transgender employee to use specific facilities would segregate transgender employees from fellow coworkers and could be viewed as a discriminatory practice.

Preferred Names and Pronouns

- Transgender employees are often subject to harassment by coworkers or supervisors.
- Employers must be vigilant to ensure that transgender employees are not the subject of harassment or hostile workplace environments.
- Recognize factors contributing to a hostile environment for transgender employees:
 - Refusal to use correct pronouns
 - Refusal to use a person's preferred name

Name Change on Official Documents and Records

- However, unless an employee has a legal name change, employers should not use an employee's preferred name where records must match the employee's legal name, such as on payroll accounts, insurance documents, reports, charging affidavits, and citations.
- In everyday written and oral speech, the new name and pronouns should be used when the employee is ready.

Appearances and Dress Code Standards

- Employers have the right to regulate employee dress or grooming standards that are reasonably related to the job requirements.
- LGBT employees should be permitted to dress in accordance with the dress standard that is appropriate to their gender identity.
- There is no case law that determines how laws prohibiting discrimination on the basis of gender identity and expression affect the application of dress standard to LGBT employees. However, this area has a high risk of future litigation and employers need to be educated and prepared.

Medical Treatments

- Transgender employees may have to undergo a number of medical treatments to support their transition. These may include:
 - Therapist visits
 - Doctor visits
 - Time off for surgery and recovery
- It is unlawful discrimination to treat an employee undergoing reassignment treatment less favorably than someone else absent for other medical reasons.
- Employers should be flexible to meet the employee's needs for appointments.
- Time off for medical procedures should be treated the same as other scheduled, medically-necessary procedures.

Transition Plan

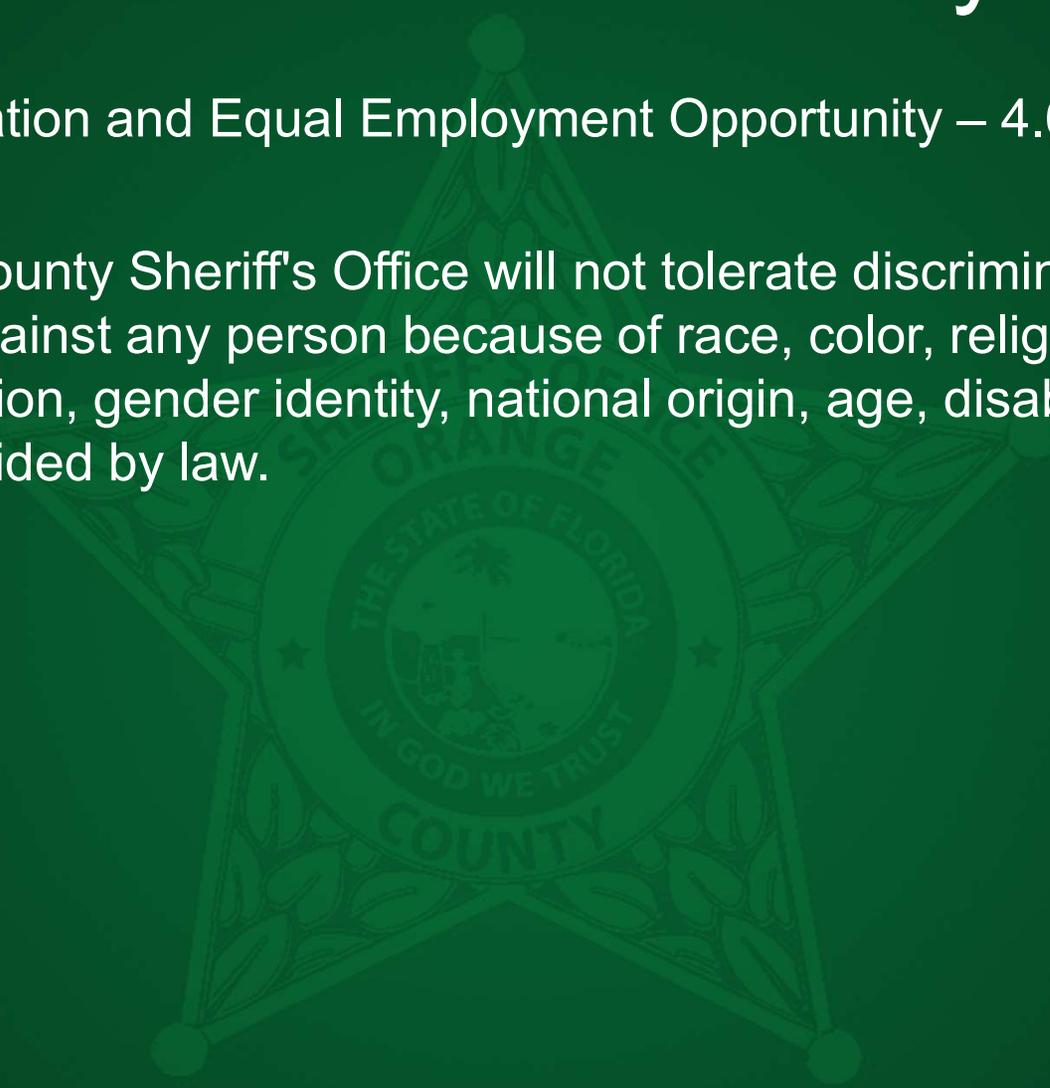
- An employer and a transitioning employee can discuss the employee's transition in advance and agree upon steps to be taken and their timing in a transition plan.
- The transition team will consist of Human Resources, Chain of Command, FOP (if requested), and possibly a licensed therapist.

Plan Topics

- Grooming
- Bathroom and locker room
- Policy
- Public restrooms
- Date of transition
- Legal documents
- Needed items to complete transition
- Name plate/ID badge
- HRD liaison
- Answer any other related questions

Sheriff's Office Policy

- Anti-Discrimination and Equal Employment Opportunity – 4.6.1
- The Orange County Sheriff's Office will not tolerate discrimination or harassment against any person because of race, color, religion, gender, sexual orientation, gender identity, national origin, age, disability, or as otherwise provided by law.



Questions?

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