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RECENT DEVELOPMENTS IN SEXUAL ORIENTATION AND GENDER IDENTITY LAW

IN THE HEADLINES

Senate Committee Approves ENDA, Sends Bill to Senate Floor for Vote. The Senate Health, Education, Labor and Pensions Committee approved the Employment Non-Discrimination Act by voice vote April 24. The bill would bar employers from using a person's sexual orientation as the basis for employment decisions, including hiring, firing, promotion or compensation. ENDA also picked up the support of Sen. Susan Collins, R-Maine, who declared: "I have reached the decision to support ENDA because, in the final analysis, I simply do not believe it is fair to allow discrimination in the workplace against men and women solely because of their sexual orientation." Senate Majority Leader Tom Daschle, D-S.D., has committed to securing a vote on ENDA before the end of this congressional session.

Attorney General Ashcroft Invokes Hate Crimes Sentencing Enhancement Act For First Time in Prosecuting a Hate Crime Based on Sexual Orientation. On June 1, 1996, Julianne Marie Williams and Laura Winans were discovered dead in Virginia's mountainous Shenandoah National Park, bound and gagged with their throats slit. On April 9, 2002, Darrell David Rice was indicted by a grand jury in Charlottesville, Va., charged with four counts of capital murder, two of which allege that he chose his victims because of their gender and sexual orientation. The indictment marks the first time since its passage in 1994 that the Hate Crimes Sentencing Act has been implemented to charge someone with a hate crime based on sexual orientation or gender. The act was only available to Ashcroft because the murders took place on federal land. The Local Law Enforcement Enhancement Act, a measure pending in Congress, would provide federal assistance to states and local jurisdictions to prosecute hate crimes motivated by the actual or perceived race, color, religion, national origin, gender, sexual orientation or disability of the victim.

Rosie O'Donnell Joins Fight to Repeal Florida's Gay Adoption Ban. By coming out as a lesbian, Rosie O'Donnell, a foster parent and adoptive parent of three children, has helped focus nationwide attention on Florida's ban on gay and lesbian adoption. The ACLU's Lesbian and Gay Rights Project has filed an appeal with the 11th Circuit Court of Appeals on behalf of three families legally prohibited from adopting their current foster children, alleging that the ban is unconstitutional and based on anti-gay animus.

EMPLOYMENT

Alaska Bans Sexual Orientation Discrimination in State Employment. Alaska Gov. Tony Knowles, a Democrat, signed an administrative order March 5 that prohibits discrimination based on sexual orientation in state employment, among other protected characteristics.

Ohio Man Wins Health Benefits for His Domestic Partner. Ending a seven-year fight, the Columbus Community Relations Commission ruled that the city of Columbus discriminated against a city health inspector when it refused to provide health benefits to his partner. The commission agreed that city law prohibits treating employees differently because of their sexual orientation. This could mean that the city for the first time would provide the partners of gay employees with the same benefits it provides the spouses of married employees.

ExxonMobil Must Vote on Sexual Orientation Non-Discrimination Policy. The Securities and Exchange Commission denied a request by ExxonMobil Corp. to delete from shareholder ballots a resolution calling on the company to add sexual orientation to its equal employment opportunity policy. The effort is being coordinated by the Equality Project, an organization that brings shareholder pressure upon publicly traded corporations to advance GLBT-friendly workplace policies. HRC is a co-filer of the resolution, which was placed on the ballot by the New York City Employees Retirement System. Other co-filers include the Equality Project and the New York State Employees Retirement System.

MARRIAGE/DOMESTIC PARTNERSHIP/CIVIL UNIONS

Massachusetts Superior Court Judge Denies Marriage Licenses to Gay Couples. A Massachusetts trial court ruled against seven same-sex couples challenging Massachusetts' law denying them the right to marry. In support of his ruling, Suffolk Superior Court Judge Thomas Connolly found that procreation is central to the purpose of marriage, an institution historically defined by heterosexual union. Even though Connolly acknowledged that four of the seven couples have children, he ruled that the issue of same-sex marriage was more appropriately addressed by the Legislature. Gay and Lesbian Advocates and Defenders (GLAD), which is representing the plaintiffs, announced that it will appeal the lower court's decision to the Supreme Judicial Court, Massachusetts' highest court. In a separate hearing before the Supreme Judicial Court, GLAD argued against Attorney General Thomas Reilly's decision to certify two anti-gay constitutional ballot initiatives. GLAD contends that the measures, which would make same-sex marriages unconstitutional in Massachusetts and prohibit state and local governments from extending rights and benefits to unmarried couples and families, violate a state constitutional provision that prohibits ballot questions from infringing upon the power of the courts.

University of Maryland Medical System Sued By Gay Man Prevented from Visiting His Dying Partner. Told by hospital staff in Baltimore that he could not visit his dying life partner because only "family" members were allowed to visit and partners did not qualify as family, Bill Flanigan sued the University of Maryland Medical System in Baltimore City Circuit Court. Flanigan's registered domestic partner of five years, Robert Daniel, was admitted to the medical center with complications arising from AIDS while the couple was traveling from California to visit Flanigan's sister in the Washington, D.C., area. Flanigan is represented by Lambda Legal, which has alleged that the medical center knowingly violated a valid health care power of attorney and national hospital accreditation standards.

Domestic Partners of Sept. 11 and Flight 587 Victims Sue Under New York State Law Against Insurance Companies. Two widowed domestic partners filed claims with the New York State Workers' Compensation Board after being denied spousal benefits by their partners' insurance companies. The insurance companies assert that the surviving domestic partners are not eligible to receive benefits because same-sex domestic partners do not qualify as spouses. Under New York law, same-sex couples can register as domestic partners and share pension savings and life insurance, but they may not marry.

The lack of the right to marry denies same-sex partners recognition under New York state's workers compensation rules, which provide two-thirds of an employee's pay to a surviving spouse, up to about \$20,000 a year, when a worker is killed in the course of doing his or her job. These two cases are the first brought by same-sex partners related to either the Sept. 11 or Flight 587 tragedies, and are also the first cases to be brought by same-sex partners seeking coverage under the New York Workers' Compensation Law. Lambda represents the plaintiffs in this case, as well as a widowed California domestic partner who filed a claim with the federal victim compensation fund. American Airlines Flight 587 crashed Nov. 12, 2001, near Kennedy Airport in Rockaway Beach, N.Y., killing all 260 people aboard as well as five on the ground.

FAMILY LAW

Pennsylvania Court Awards Child Support in Case Between Lesbian Moms. A court of common pleas judge in Cumberland County, Pa., ordered a nonlegal co-parent to pay child support for the five children of her former partner. After the couple separated, the nonlegal co-parent argued that she had no duty to pay child support. The court rejected that argument, noting that she had shared in all child-rearing responsibilities until the couple separated. The Center for Lesbian and Gay Civil Rights and the National Center for Lesbian Rights (NCLR) represented the biological mother. The case is on appeal to the Pennsylvania Superior Court.

Ohio Courts Hear Arguments in Lesbian Name-Change and Custody/Visitation Cases. The Ohio Supreme Court recently heard arguments on whether two women could change their names so that their children would have a mutual family surname. A lower court denied the women's request for name changes stating: "Ohio has a public policy that disfavors ... homosexuality and cohabitation." The Ohio Court of Appeals also denied custody and visitation rights to a nonlegal parent whose former partner, the biological parent of their child, refused to allow her visitation. The court said that it was constrained by Ohio law, which has not recognized *de facto* parenting in the custody context. Given the relatively sparse availability of second-parent and same-sex joint adoption in Ohio, many same-sex couples face situations in which only one of them may be the legal parent of their child. NCLR, Lambda and the ACLU Gay and Lesbian Rights Project filed *amicus* briefs in the case. *In Re: Cheyenne Madison Jones*, 2002 Ohio 2279 (Ohio Ct. App. 2002). T.C. CASE NO. 99-30231.

Nebraska Supreme Court Upholds Denial of Lesbian Co-Parent's Attempt to Adopt Her Partner's Biological Child. In an important case on second-parent adoption, the court rejected an attempt by a nonbiological parent to adopt the biological child of her partner. In a 6-1 ruling, the court declared that in order for a child to be eligible for adoption by an unmarried partner, the biological parent would have to first relinquish her parental rights to her child. The court did not address whether gay couples could adopt children together. The ACLU of Nebraska represented the two women, and Lambda filed an *amicus* brief in the case. *In re Adoption of Luke*, 263 Neb. 365 (Neb. 2002).

Virginia Priest Moves Forward With Adoption. An Episcopal priest in Arlington, Va., is suing the commonwealth of Virginia for refusing to allow her to adopt a District of Columbia foster child because she is a lesbian. Linda Kaufman, already the adoptive mother of one child, was prevented from submitting an application when the Virginia Department of Social Services told a district child welfare agency that it would deny the application. Judge Joanne Alper rejected the commonwealth's attempt to dismiss the lawsuit, and Lambda will continue to represent Kaufman when her case is heard on the merits later this year.

Indiana Court of Appeals Refuses to Deny Custody/Visitation on the Basis of Sexual Orientation. An Indiana mother appealed a lower court's order that prohibits her from living with her same-sex partner while maintaining custody of her children. The Indiana Court of Appeals struck down the restriction, and held that the trial court abused its discretion by imposing a standard overnight restriction without finding an adverse effect on the children as a result of the mother's involvement with a same-sex partner. *Downey v. Muffley*, No. 50A03-0106-CV-197 (Ind. Ct. App., May 15, 2002).

HRC Foundation Releases Report on GLBT Families: 'The State of the Family.' HRC's Foundation program HRC FamilyNet issued a report on March 8 focusing on the legal vulnerability of gay, lesbian, bisexual and transgender families. The report is available at: <http://www.hrc.org/familynet/library.asp?ID=271>.

EDUCATION

University of Pittsburgh Panel Recommends 'Wait and See' Approach to Domestic Partner Benefits. After 10 months of study, a University of Pittsburgh campus advisory committee has recommended that the university take no action on same-sex domestic partner benefits until a new governor is inaugurated, a new state legislative session starts and the university's current health insurance contract expires in 2003. The panel was formed under an agreement aimed at ending a lawsuit by the ACLU of Pittsburgh on behalf of gay and lesbian employees alleging that the university's refusal to grant domestic partner benefits constitutes discrimination under the Pittsburgh Human Relations Act.

Students Protest Anti-GLBT Bias in Schools With National Day of Silence. On April 10, 2002, students at more than 1,900 high schools and colleges chose not to speak in order to draw attention to anti-GLBT bias in schools. The youth-led action grew from 200 schools last year to almost 1,900 schools in 49 states this year. The Gay, Lesbian and Straight Education Network (GLSEN) served as a national sponsor for the first time this year, working in partnership with the U.S. Students Association. HRC Foundation's National Coming Out Project also endorsed the project.

Broward County, Fla., School Board Approves Training Partnership. The Broward County, Fla., School Board voted 6-3 in favor of formalizing a training partnership with GLSEN's Greater Fort Lauderdale chapter. GLSEN will provide sensitivity training on harassment of GLBT students in the county's schools.

Washington Governor Signs School Anti-Bullying Bill. Democratic Gov. Gary Locke signed a law March 27 prohibiting bias-motivated harassment in schools. Washington joins seven other states and the District of Columbia with policies prohibiting anti-gay harassment in public schools. The legislation requires that public school districts adopt policies prohibiting harassment, intimidation and bullying based on sexual orientation and actual or perceived gender, among other categories.

Ohio State University, Universities of Hawaii and California Offer Limited Benefits to Domestic Partners. Ohio State University announced in early March that it will offer limited employee benefits to same-sex domestic partners of faculty and staff. The benefits include life insurance for dependents, financial planning services, employee discounts, doctor referral services for travelers, confidential counseling services, and family and medical leave benefits. The benefit package does not, however, include health insurance. The University of Hawaii indicated that it will expand its health plan to include same-sex partners, but under state law, these benefits can only be offered for a year. The regents of the University of California voted to extend retirement benefits to the domestic partners of university employees. Currently, 164 colleges and universities offer domestic partner health benefits.

West Des Moines High School Adds Sexual Orientation to Employment and Harassment Policies. School board members in West Des Moines, Iowa, noted that their vote to amend the existing employment and harassment policies at West Des Moines High School was due largely to increased pressure by students to promote tolerance of GLBT students. At least five other Iowa school districts, including Ames, Decora, Des Moines, Iowa City and Dubuque, have similar policies.

Fraternity at Michigan State University Suspended for Mocking Gay Students. Pi Kappa Phi's national council evicted all members of its Michigan State University fraternity for using anti-gay slogans as part of a pledging ritual.

HIV/AIDS

Helms Clarifies Position on HIV/AIDS; Voices Continued Disapproval of ‘Homosexual Lifestyle.’

After telling a large group of Christian activists that he was “ashamed” for not having done more to fight HIV/AIDS worldwide, retiring Sen. Jesse Helms, R-N.C., later clarified his remarks to indicate that he had not really changed his mind on the issue and that he remains highly critical of gay rights activists. “I don’t have any idea on changing my views on [homosexual activity], which is the primary cause of the doubling and redoubling of AIDS cases in the United States,” Helms told the *Raleigh News and Observer*.

San Francisco Superior Court Awards \$5 Million to California Man Knowingly Infected with HIV.

In one of the largest awards of its kind, a court has ordered former San Francisco Health Commissioner Ronald G. Hill to pay \$5 million to Thomas Lister for knowingly exposing him to the virus that causes AIDS and lying about it. San Francisco Superior Court Commissioner Loretta M. Norris handed down the award of \$2.5 million in punitive damages and \$2.5 million in general damages. Under California law, it is a felony for someone to knowingly expose someone to HIV with the intent to infect him or her, although Hill wasn’t charged with that offense. Lister’s civil lawsuit charged Hill with civil battery, fraud and deceit for the HIV exposure. Prosecutors have not yet decided whether they will bring criminal charges against Hill. *Lister v. Hill*, Case No. 318443, Superior Court of California, County of San Francisco, Feb. 26, 2002.

Centers for Disease Control and Prevention Release Findings on ‘Down-Low’ Phenomenon in African-American GLBT Community.

Many gay and bisexual African-American men keep their sexual orientation a secret. Some are living what they call the “down-low” lifestyle. Down-low men have sex with other men, but in order to keep appearances, they also maintain relationships with wives or girlfriends. Unfortunately, some of these men do not use condoms, and though much research remains to be done, some experts believe this phenomenon may be a significant factor in the increase in HIV infections among African Americans, and particularly among women. According to a CDC survey conducted in seven cities, 30 percent of black men ages 23 to 29 who have sex with men are HIV-positive. The same study found that among black men ages 15 to 22, one in six who had sex with other men also reported recently having sex with other women. Coincidentally, 64 percent of all new HIV infections arise among African-American women.

IN THE STATES

Dallas City Council Passes Ordinance Prohibiting Discrimination Based on Sexual Orientation and Gender Identity. The strong backing of Democratic Mayor Laura Miller and American Airlines, and the advocacy of the Dallas Gay and Lesbian Alliance and Lesbian/Gay Rights Lobby of Texas helped induce final passage of the ordinance, which prohibits discrimination based on sexual orientation and gender identity in employment, housing and public accommodations.

Cleveland Heights, Ohio, First in State to Offer Health Care Benefits to Same-Sex Partners of City Employees. The new Cleveland Heights, Ohio, ordinance will grant health and dental insurance, family medical leave and bereavement leave benefits to the registered domestic partners of gay and lesbian city employees.

Erie City, Pa., Council Prohibits Discrimination Based on Sexual Orientation in Employment, Housing, Public Accommodations. Allentown, Pa., Follows Lead; Adds Gender Identity. The Erie County Council voted 6-1 on Feb. 26 to approve an anti-discrimination ordinance that would bar employers and landlords from denying jobs, housing or services based on sexual orientation. Eight days later, the Allentown City Council voted to amend the city’s human relations ordinance by adding sexual orientation and gender identity to the human rights law. In passing the ordinance, Allentown became the first city in Pennsylvania to address gender identity in its human rights law.

Montgomery County, Md., Council Votes to Give Partners Real Estate Transfer Tax Breaks On Par with Spouses. Residents in Montgomery County, Md., who transfer property to a domestic partner will no longer have to pay a real estate tax levied when property changes hands. To qualify for the tax

break, same-sex couples will have to prove they share a close personal relationship, are responsible for each other's welfare, have shared the same legal residence for at least 12 months and share joint finances. Only three other jurisdictions have extended real estate transfer tax breaks to gay residents: Philadelphia and Sacramento and Oakland, Calif.

Tacoma, Wash., Adds Sexual Orientation and Gender Identity to Anti-Discrimination Law.

Tacoma, Wash., joined more than 40 municipalities, the District of Columbia and two states — Minnesota and Rhode Island — when the City Council voted 8-1 to prohibit discrimination on based on gender identity.

New York and Philadelphia Prohibit Gender Identity Discrimination in Employment, Housing and Public Accommodations.

New York City Mayor Michael Bloomberg, a Republican, pledged to sign a bill passed in April by the City Council that would extend protection against discrimination in employment, housing and public accommodations to the city's transgender residents. The Philadelphia City Council voted 15-2 on May 16 to add gender identity to a city ordinance prohibiting discrimination in housing, public accommodations and employment. Final passage of Philadelphia's ordinance was secured by the advocacy of local and national organizations, including OutFront, the Center for Lesbian and Gay Civil Rights, the Pennsylvania Gender Rights Coalition and the National Transgender Advocacy Coalition.

INTERNATIONAL

Brazil Claims Highest Number of Reported Hate Crimes in the World. A report by the Brazilian gay rights group Grupo Gay da Bahia (GGB) and funded by the World Bank, the United Nations Educational, Scientific and Cultural Organization (UNESCO), and the Kimeta Society of Canada says that more than 132 GLBT people were killed during violent acts in 2001 targeting gays in Brazil. The report noted that between 1980 and 2001, 2,092 GLBT people in Brazil were killed in hate crimes, an average of 104 deaths a year. According to the GGB, this is the highest rate in the world by far -- Mexico ranks second -- with an average of 25 reported killings a year.

Egyptian Appeals Court Overturns Sentences of Five Men Arrested for 'Suspected Homosexuality Activity.' Five men who were sentenced in March 2002 to three-year prison terms with hard labor for "suspected homosexual activity" have had their sentences overturned in an Egyptian appeals court. The men were convicted March 11 of habitual debauchery — a broad charge that includes consensual gay sex. During November 2001, 23 of the 52 defendants received similar sentences after a four-month trial, which received widespread media attention. The International Gay and Lesbian Human Rights Commission continues to monitor the situation.

Scottish Courts Announce Conflicting Decisions on Parental Rights. In a custody dispute, Scottish Sheriff Laura Duncan granted parental rights March 9 to a gay man who was a sperm donor for the child of a lesbian couple. At the same time, Duncan denied parental rights to the lesbian couple, finding that "a lesbian couple [does not] constitute a family unit," and that it was in the child's best interest to grant his father "full parental rights and responsibilities." On April 8, Scottish Sheriff Noel McPartlin, ignoring Duncan's opinion, granted a nonbiological co-parent parental rights and responsibilities equal to that of her partner, the biological mother of the couple's children. The couple is the first same-sex couple in Scotland known to have parental rights granted, and the children now officially have three parents, as the father of the children chose not to contest the claim of his ex-wife and her partner. Based on this decision, the lesbian parents who were denied parental rights in March filed an appeal seeking reversal of Duncan's decision.

Melbourne, Australia, Family Court Judge Grants Gay Sperm Donor Regular Visitation With His Son Despite Opposition By Biological Mother and Her Lesbian Partner. A family court judge ruled that it is in the best interest of the child to have regular contact with his father, a sperm donor who is gay. The birth mother and her lesbian partner brought proceedings to restrict contact between the sperm donor

father and the child. In his judgment, Justice Paul Guest called for changes to Australia's Family Law Act to reflect the growing phenomenon of gay and lesbian families using sperm donors.

GENDER IDENTITY & EXPRESSION

Kansas Supreme Court Voids Marriage; Awards Estate to Son of Deceased Husband. The Kansas Supreme Court ruled that J'Noel Gardiner, a transgender woman, is a man under Kansas law, thus invalidating her marriage to Marshall Gardiner and preventing her from sharing in the estate of her late husband. Instead, Marshall's son, Joe Gardiner, who contested J'Noel Gardiner's claim to half of his father's estate, will be awarded the entire \$2.5 million estate. In ruling against J'Noel Gardiner, the court found that "a post-operative male-to-female transsexual does not fit the common definition of a female ... [and thus] a marriage between a post-operative male-to-female transsexual and a man is void as against public policy." Attorneys for J'Noel Gardiner plan to appeal the decision and seek review from the U.S. Supreme Court. *In the Matter of the Estate of Marshall G. Gardiner, Deceased*. 2002 Kan. LEXIS 117.

Court TV Airs Florida Child Visitation Battle Between Transgender Man and Wife. A Florida County Circuit Court has become the latest forum for determining when a transgender man is a male under state law. Born Margot, Michael Kantaras underwent gender-reassignment surgery in 1987. His wife, Linda Kantaras, knew Michael was a transgender man when she married him, encouraged him to adopt her son and bore a daughter with sperm donated by Michael's brother. Linda Kantaras now argues, in an attempt to invalidate their marriage, that Michael Kantaras is not legally a male, and she has asked the court to award custody of the couple's children to her. A decision from the court is expected later this summer. Michael Kantaras is represented by NCLR.

10th Circuit Court Dismisses Transgender Woman's Claims of Hospital Harassment. A U.S. district judge in Colorado dismissed state law claims in a lawsuit filed by Cheryl Louise Marchese, a Pennsylvania transgender female, against a hospital for allegedly thwarting her efforts to have gender-reassignment surgery. Marchese claimed that one night before her operation, a hospital nurse told her that most men who seek to become women "look more feminine than you do" and that "maybe it would be better if you came back after you got your face fixed." Such comments led Marchese to cancel the operation and file suit against the hospital for harassment. Prior to this ruling, the 10th Circuit Court of Appeals dismissed federal claims brought by Marchese under the Americans with Disabilities Act and § 1983 of the Civil Rights Act of 1971. The court rejected the § 1983 claim because it found that the actions of the state hospital's employees were not attributable to the state, and it dismissed the ADA claim because Marchese failed to claim an impairment that qualified as a disability under the law. *Marchese v. Mt. San Rafael Hospital*, 2001 U.S. App. LEXIS 26985 (10th Cir. 2001).

Falsification Charge Against Ohio Transgender Man Dismissed. Due to the statute of limitation, Sean M. Brookings, an Akron, Ohio, post-operative transgender man, won't be tried in the Stark County Probate Court on a charge accusing him of lying when he obtained three marriage licenses as a male in the state. But in a case that may have significant legal ramifications for the GLBT community, Brookings remains involved in a legal battle with his deceased wife's children over her estate. According to court records, Brookings was married to his now deceased wife, and in her will, she left the entire estate to him. The children argue that Brookings is "still a female," thus invalidating the marriage license between their mother and Brookings, and negating his claim to the estate.

HATE CRIMES

Indiana Man Convicted of Torturing Gay Men. Marion County Superior Court Judge Patricia Gifford sentenced an Indianapolis man to 120 years in prison for torturing and sexually assaulting two gay men during a robbery in 1999. Indiana does not have a hate crimes statute, but Deputy Prosecutor Richard Plath publicly urged Gifford to consider that the men were targeted because of their sexual orientation.

Gay Man Burned to Death in California. Clint Scott Risetter, a 37-year-old gay man, died Feb. 24 after a man poured gasoline over him as he slept and set him on fire. Police have charged Martin Thomas Hartman with murder, arson and a hate crime in connection with the crime. Police told local media that Hartman said he killed Risetter because he was gay and that Hartman said he “has a lot of hatred” toward gays. California covers sexual orientation in its hate crimes law, as do 26 other states and the District of Columbia.

Lesbian Teen in Colorado Reports Mutilation as Hate Crime. April Mora, a 17-year-old teen-ager from Denver, reported on March 26 that she was attacked by three men who held her down and carved “dyke” and “RIP” into her flesh with a razor. Mora believes she was attacked because of the way she looks, “I don’t look like a girl,” Mora told *The Denver Post*. Reports have indicated that the Denver police asked Mora whether her wounds were self-inflicted, and asked her to take a polygraph test, which she refused. Detectives continue to investigate Mora’s case. Colorado’s hate crimes law does not cover crimes motivated by the victim’s sexual orientation or gender identity.

Transgender Murder in Texas. Hector Arturo “Arlene” Diaz, a 28-year-old El Paso, Texas, transgender woman, was shot twice and left to die near a convenience store April 10. Diaz was wearing women’s clothing when found by authorities. Police believe that the killing was motivated by sexual orientation and have classified the murder as a hate crime.

National Coalition of Anti-Violence Programs (NCAVP) Releases 2001 Report on Anti-GLBT Violence. The NCAVP 2001 report on anti-GLBT violence indicates that the total number of anti-GLBT incidents decreased significantly in the last year. However, the inability of victims to access services and resources of community groups led NCAVP to believe that incidents of GLBT-violence are grossly underreported. NCAVP is a network of 26 anti-violence organizations that monitor and respond to incidents of bias, domestic, HIV-related and other forms of violence affecting the GLBT community. A copy of the report can be found at: <http://www.avp.org/publications/reports/2001ncavpbiasrpt.pdf>.

Older Members of Massachusetts GLBT Community Face Increased Violence. A new study by Fenway Community Health, a Boston-based public health agency, reveals that as the first generation of largely open and out gays is growing older, members of the GLBT community over 45 may face an unforeseen risk of violence. The overwhelming majority of last year’s 143 victims of anti-gay crime in Massachusetts were middle-aged and 14 percent were over 65, according to Fenway’s annual statewide report. Members of the Transgender Aging Network, the Gay and Lesbian Alliance Against Defamation, Boston Aging Concerns and other advocacy groups said this is the first study of its kind to find such a significant increase in anti-gay crimes against the aging.

CRIMINAL LAW

Louisiana Supreme Court Upholds Ban on Sodomy. In an opinion affirming the decision of a Louisiana criminal court in 2000 that upheld the constitutionality of the state’s 200-year-old sodomy law, the state Supreme Court ruled in March 2002 that the law does not violate citizens’ privacy rights under the state constitution. The suit, brought by the Louisiana Electorate of Gays and Lesbians, also attacked the law on other grounds, including state constitutional equal protection claims. The court refused to rule on those issues, though, meaning that they remain alive before a state circuit court of appeals in a separate action. *Louisiana Electorate of Gays and Lesbians v. Louisiana*, 2002 La. LEXIS 726.

Highest Texas Criminal Court Rejects Challenge to ‘Homosexual Conduct’ Law. The Texas Court of Criminal Appeals has refused to hear the appeal of two Houston men convicted of violating the state’s “homosexual conduct” law by having consensual sex in the privacy of one man’s home. The two men had petitioned the court to review their convictions after a Houston court of appeals voted 7-2 to reject their constitutional challenge of the sodomy statute. Because the statute criminalizes conduct based on the sex of the defendants, the two men argued that the statute triggers the heightened protection of the Equal Rights Amendment to the state constitution. Texas has had a sodomy law since 1860 but decriminalized such activities by opposite-sex partners in 1974. Lambda represented the two Houston men in their appeal

and has indicated that it will submit a petition seeking review of the court's decision by the U.S. Supreme Court. *Garner v. State*, 2001 Tex. App. LEXIS 1776 (lower state criminal court opinion).

Ohio Supreme Court: Importuning Statute Unconstitutional. The Ohio Supreme Court voted 7-0 to strike down the state statute prohibiting same-sex solicitation, finding the law violated free speech and equal protection guarantees of the U.S. and Ohio Constitutions. Lambda filed an *amicus* brief in this case, *State v. Thompson*, 95 Ohio St.3d 264 (Ohio 2002).

Detroit City Council Enters \$170,000 Settlement in Gay-Profilng Lawsuit. On May 15, the Detroit City Council entered into a \$170,000 settlement in a lawsuit filed on behalf of six people who alleged police used vague city ordinances to entrap gay men at a Detroit park. The men were charged under an "annoying persons ordinance," a 1964 statute intended to deter obnoxious, indecent or lewd behavior but allegedly used by police to arrest gay men. The Triangle Foundation and the ACLU of Michigan brought the suit.

MILITARY

SLDN Report: Discharges and Anti-Gay Harassment Reach Record Levels. The Servicemembers Legal Defense Network reported March 14 that 1,250 servicemembers were discharged under the "Don't Ask, Don't Tell, Don't Pursue, Don't Harass" policy in 2001, and since issuing the report, revised the number to 1,273 after officials at Fort Bragg, N.C., acknowledged they underreported discharges for fiscal year 2001. This represents the highest number of gay discharges since 1987. The SLDN report found that discharges were due, in large part, to record high incidents of anti-gay harassment – citing 1,075 reported incidents in 2001, up from 871 in 2000. "Ultimately, the ban on gays in the military must be lifted," the report says. "This policy undercuts the very liberties and freedoms our military members fight to protect."

Gay, Lesbian, Bisexual Veterans of America Holds Annual National Convention. Members of the Gay, Lesbian, Bisexual Veterans of America, newly renamed American Veterans for Equal Rights, gathered in San Diego to discuss strategies for lifting the ban on gay service. More than 300 of the 500 nationwide servicemembers, gay and straight, on active duty and retired, attended this year's national convention. The group was formed in 1990 by a small band of Persian Gulf War veterans who were fighting a policy they saw as a way to send gays and lesbians to the war only to discharge them upon their return.

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