RESOLVED, That the American Bar Association urges federal, state, local, territorial, and tribal governments to enact legislation or regulations that require all law enforcement entities to meet training standards related to sexual orientation and gender identity similar to those developed by California’s Commission on Police Officer Standards and Training (POST) under California’s AB 2504 (September 30, 2018).
Introduction

The American Bar Association (ABA) adopts this Resolution to support legislation like AB 2504, requiring that police officers be trained about sexual orientation and gender identity (SOGI) minorities to improve law enforcement culture and effectiveness in serving the LGBTQ community. This report will describe the current state of law regarding hate crime, rising tensions between police officers and the LGBTQ community, and legislation adopted by other municipalities requiring SOGI training for law enforcement.

The ABA has adopted policies consistent with this Resolution condemning discrimination on the basis of SOGI in the justice system. The ABA recognized LGBTQ rights as basic human rights condemning laws, regulations, rules and practices that discriminate against individuals based on LGBT status. In 1996, the ABA passed a resolution urging state, territory and local bar associations to study bias against gays and lesbians in the legal profession and the justice system in their community, and make appropriate recommendations to eliminate such bias. In addition, the ABA also urged enactment of legislation to curtail the ‘gay panic’ and ‘trans panic’ defenses, requiring courts to instruct juries that neither non-violent sexual advance, nor the discovery of a person’s gender/sexual identity constitutes legally adequate provocation to mitigate the severity of non-capital crime. In 2017, the call for implicit bias training urges courts to develop plans of action to make anti-bias training an important part of both initial judicial training and continuing educational training.

Existing policies support the initiative recognizing LGBTQ rights and de-stigmatizing their status, especially within the judicial process. This Resolution will stress the importance of educating law enforcement about SOGI, and how this will serve the community. With the rate of hate crimes increasing, minorities must feel protected by their local police force. For law enforcement officers to accomplish this, and change the discriminatory culture toward LGBTQ individuals, they must appreciate their differences and understand how to appropriately serve them.

Background

California Governor Jerry Brown signed AB 2504 into law on September 30, 2018. Under AB 2504, police officers are required to undergo training on SOGI. POST requires

1 ABA Resolution, 14A114B, https://www.americanbar.org/content/dam/aba/uncategorized/GAO/legislativeissueslist.pdf
3 ABA Resolution 14A113A., https://www.americanbar.org/content/dam/aba/uncategorized/GAO/legislativeissueslist.pdf
4 ABA Resolution 17A121, https://www.americanbar.org/content/dam/aba/uncategorized/GAO/legislativeissueslist.pdf

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consultation with SOGI members of law enforcement, as well as those in their community with expertise regarding these issues, including at least one male member, one female member, and one transgender member. The training must include: (1) understanding the differences between sexual orientation and gender identity; (2) the vocabulary used to identify and describe sexual orientation and gender identity; (3) how to create an inclusive workplace within law enforcement for LGBTQ individuals; (4) important milestones in history relating to SOGI minorities and law enforcement, and (5) how law enforcement can effectively respond to domestic violence and hate crimes involving SOGI minorities.5

Hate Crime

A hate or a bias-related crime occurs when the criminal act intentionally targets a victim because of who the victim is. Under the Bias-Related Crimes Act of 1989, a hate crime is defined as “one that demonstrates an accused’s prejudice based on the actual or perceived race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, family responsibility, homelessness, disability, marital status, political affiliation of a victim.” While violent crime is detrimental, prejudice-based acts have a stronger impact because they intend to send a threatening message targeting one community.

Statistical information has shown that lesbian, gay, bisexual and transgender people are attacked more often than heterosexuals in the United States. In a report by the Human Rights Watch, based on data from the Federal Bureau of Investigation (FBI), evidence shows that since 1991, more than 100,000 hate crime offenses have been reported. In 2007, 1,265 LGB-biased hate crimes were reported to the FBI, which is a 6-percentage increase from 2006. The 2017 FBI statistics state 7,175 hate crimes were reported, 1,130 of which were based on sexual orientation bias, and 119 on gender identity bias, demonstrating an increase in reports of hate crimes related to SOGI.7 These statistics highlight the larger issue of violence against marginalized communities.

Police Officers and LGBT Community

It is important for marginalized groups, like the LGBTQ community, to feel protected and adequately served by police officers. Yet, police have targeted LGBTQ individuals and the places they congregate. In a Lambda Legal survey, it was reported among respondents that more than one in eight respondents (14%) who had police contact in the past five years reported verbal assault by police, while, 3% reported sexual harassment and 2% reported physical assault. Of respondents who complained about police misconduct, 71% said their complaint was not fully addressed by those they reported to.8

9 Lambda Legal, “Protected and Served? Survey of LGBT/HIV Contact with Police, Prisons, Courts and Schools” (2014), factsheet with preliminary findings on file with authors.

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9 Lambda Legal, “Protected and Served? Survey of LGBT/HIV Contact with Police, Prisons, Courts and Schools” (2014), factsheet with preliminary findings on file with authors.
In a 2016 study by the National Coalition of Anti Violence Programs, on police response to survivors affected by hate crime within the LGBTQ community, it was reported, of those who interacted with the police, 35% of survivors said police officers were indifferent. 31% said the police were hostile. 52 survivors reported police misconduct after the initial incident of violence, including excessive force, unjustified arrest, and entrapment. Black survivors were 2.8 times more likely to experience excessive force.9

Wagoner v. City of Portland (2014)

In 2014, Ms. Wagoner, a lesbian woman filed suit against the city of Portland, Oregon for false arrests and excessive force. According to Wagoner, she was a passenger in a vehicle leaving a well-known LGBT center. A police car began to follow them from a nearby gas station and turned on its head lights after they turned off their vehicle. The officer alleged Wagoner was not wearing a seat belt despite her stating she was, until the vehicle was stopped. During the arrest, Wagoner alleged that the officer slammed her to the ground which "caused her to chip her tooth and caused bruising and swelling to her wrists" and when being handcuffed the police officer "threatened to use pepper spray or a Taser on Wagoner if she continued to resist," however decided against using either.10 When she asked for a female officer to search her, the male officer refused and pulled up her shirt and pulled down her pants to search her. Once in the station, it was reported by Wagoner that officers placed her in a hazardous holding cell, took photographs of her while crying and handcuffed, causing her severe emotional distress.11 All charges against her were later dismissed.

Incident: Gay Staten Island man says cops beat him outside of home, shouting homophobic slur.

On June 19, 2015, Louis Falcone, a gay man living in Staten Island, was confronted by four police officers at his home. He was arguing with his brother, so neighbors called police about the noise. When they arrived, Falcone asked why they were asking him to come outside. Falcone was yanked outside by police while his barking dog, Falcon said, the police officers threw him to the concrete in front of his house, smashed his face to the ground and yelled homophobic slurs.12 Falcone had recently had surgery on his foot and was wearing a boot, but the officers continued to step on him. According to Falcone, the attack left him with a broken nose, two black eyes, cuts to his face and body, and more foot surgery. Falcone’s version was confirmed by a video shot by his neighbor. He is suing the NYPD for violating his civil rights, and for the injuries he suffered.

The ABA also advocates that police violence towards the LGBTQ community be addressed with a comprehensive training program on cultural competency and the proper

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11 Id at 11.
use of force. While AB 2504 legislates standards for adequate training of police officers, it does not address how to remedy police violence toward the LGBTQ community. The ABA recommends rigorous practical training about how police officers can control their use of force, emphasizing de-escalation, and alternatives to arrest or summonses when appropriate. Also, to further decrease the excessive use of force, mandatory cultural competency training about issues of importance to the LGBTQ community must be implemented. Because police officers hold such powerful roles in the rule of law, they must be trained on how to counter biases against those they are not familiar with. Race, sexual orientation, gender identity and other distinguishing characteristics should not be factors in whether, or how a person is protected and served. Most importantly, trainings should be in a nonjudgmental space where police officers can share inappropriate force used against LGBTQ and other marginalized people, in order to evaluate mistakes and prevent them from recurring.

Federal Legislation

Only recently has the federal government expanded civil rights protections to include victims of bias-motivated crimes based on their actual or perceived gender, sexual orientation and gender identity. In 2009, the Matthew Shepard Hate Crimes Prevention Act was signed into law by President Barack Obama. This gives the “Justice Department the power to investigate and prosecute bias-motivated violence by providing the Justice Department with jurisdiction over crimes of violence where a perpetrator has selected a victim because of the victim’s actual or perceived race, color, religion, national origin, gender, sexual orientation, gender identity or disability.” The Department of Justice (DOJ) published a guide for police officers to recognize and address biases, assumptions, and stereotypes about victims. Although not a requirement, it is a basis for developing trainings, protocols, and improved supervision, and can be especially useful to law enforcement when engaging with LGBT survivors, who may not feel safe coming forward to report violence in their relationships. Despite these advances, bias toward and violence against the LGBTQ community still happens, triggering initiatives that enforce stricter protection.

As recent racial and religious profiling incidents have garnered national attention, profiling LGBTQ individuals continues to be a problem, particularly for transgender people of color. The End Racial and Religious Profiling Act was introduced in the Senate by Sen. Ben Cardin (D-MD) on February 16, 2017 and in the House of Representatives by Rep. John Conyers (D-MI) on March 10, 2017, as the End Racial Profiling Act (ERPA). This requires law enforcement to maintain adequate policies and procedures to eliminate profiling, including increased data collection to accurately assess the extent of the problem. The bill also requires training for law enforcement officials on profiling, and mandates procedures for receiving, investigating, and responding to complaints of alleged transit.

profiling”. Police misconduct, when not checked, impacts the culture of the agency, and fosters mistrust between the community and police.

Local Legislation

Several major metropolitan police departments have set internal policies regarding police interaction with the transgender community. They establish standards for recognizing identity, proper pronoun usage, appropriate housing, and search and seizure. These cities include Boston, Los Angeles, Denver, Washington D.C., Philadelphia, New Orleans, and even West Hartford. In Los Angeles, the LAPD requires “officers to refer to transgender individuals by the name and gender they prefer.” Officers would not be allowed to search such individuals simply to determine their anatomical gender, and must ask if they prefer to be searched by a male or female officer, among other similar directives...”. By building policies from the inside, they are more likely to be implemented and respected. Additionally, it creates a positive collaboration between law enforcement and the LGBTQ community by seeking their input and guidance. This is especially true for those directly impacted by discriminatory policing.

An increasing number of cities have added to their police department policy handbook, how officers should best engage with the LGBTQ community. A challenge for LGBTQ individuals is being discriminated against in the legal process by their SOGI being used against them. In 2012, the Chicago Police Department implemented guidelines to make clear that law enforcement should respect a person’s self-identified gender and use their preferred name and pronoun. In addition, gender identity alone cannot provoke reasonable suspicion of criminal activity. Given the high rates of harassment by police officers towards LGBTQ and individuals, officer training is crucial. Ensuring the safety of transgender inmates goes beyond whether they are placed appropriately, based on birth sex or lived gender, so county and city jails across the country developed policies addressing the broader needs of these inmates. In San Francisco County, California, transgender inmates are placed according to their stated placement preference in collaboration with a review committee. In Cumberland County, Maine, a Transgender Review Committee assesses housing placement, and other services. Additionally, transgender inmates may dress and use the names and pronouns consistent with their gender identity. These policies are vital for the safety of transgender people since the question, whether their basic needs will be met, is constant. Not only will it aid incarcerated transgender individuals, but it will also show a greater respect from police officers, cultivating better relationships between law enforcement and the LGBTQ community.

18 Id. at 17.
Positive Impact
The D.C. Gay and Lesbian Liaison Unit (GLLU) provides outreach to the gay community, educates its police officers, and actively participates in regular crime fighting and prevention. As of August 2005, they investigated over 300 domestic violence cases. More MPD officers were trained to understand the dynamics of same-sex relationships, and the assignment of a GLLU officer to guide the victims through the criminal justice system. In addition, the presence of reliable sources within the gay community resulted in a homicide case closure rate within the GLLU exceeding 95%. The program's most compelling report suggested that much of the city's gay community now views the D.C. Metropolitan Police as a trusted ally.19

Conclusion
For law enforcement officers to effectively serve the LGBTQ community, there should be proper training and education about their unique differences. By supporting regulations similar to those within the POST, the ABA can cultivate a culture change within law enforcement, but also an elimination in bias.

Respectfully submitted,

Wilson A. Schooley
Chair, Civil Rights and Social Justice Section
August 2019

GENERAL INFORMATION FORM

Submitting Entity: ABA Civil Rights and Social Justice Section
Submitted By: Wilson A. Schooley, Chair, Civil Rights and Social Justice Section

1. Summary of Resolution(s).

This resolution urges the enactment of legislation or regulations that require all law enforcement entities to meet training standards similar to those set by the Commission on Police Officer and Standard Training (POST).

2. Approval by Submitting Entity.

The Council of the Section of Civil Rights and Social Justice approved sponsorship of the resolution on April 11, 2019.

The Commission on Sexual Orientation and Gender Identity approved sponsorship of this resolution on April 24, 2019.

3. Has this or a similar resolution been submitted to the House or Board previously?

No.

4. What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?

The ABA has a long history condemning discrimination on the basis of sexual orientation and gender identity to provide better access to justice. In LGBT Rights, the ABA recognizes the rights of LGBTQ individuals as basic human rights, and condemns laws, regulations, rules and practices that discriminate against individuals on the basis of LGBTQ status.\(^{20}\) Sexual Orientation, urges state, territorial and local bar associations to study bias in their community against gays and lesbians within the legal profession, and the justice system, and to make appropriate recommendations to eliminate such bias.\(^{21}\) The enactment of Gay Panic Defense in the effort to curtail the “gay panic” and “trans panic” defenses, including requiring courts to instruct juries that neither non-violent sexual advance nor the discovery of person’s gender/sexual identity constitute legally adequate provocation to mitigate severity of non-capital crime.\(^{22}\)

5. If this is a late report, what urgency exists which requires action at this meeting of the House?

\(^{20}\) Id. at 1.
\(^{21}\) Id. at 2.
\(^{22}\) Id. at 3.

Assembly Bill 2504 was passed in the Senate. The Bill is authored by Assembly member Evan Low (D-Silicon Valley), Chair of the California Legislative LGBT Caucus. It was then approved by Governor Jerry Brown and Chaptered by Secretary of State - Chapter 969, Statutes of 2018.

7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.

An American Bar Association policy urging legislative bodies to adopt regulations similar to the standards set by the Commission on Police Officer and Standard Training (POST) and to California’s AB 2504, will be highly persuasive and offer law enforcement opportunities to improve the public perception regarding their fairness toward the LGBTQ community. It will elevate the standards of conduct of law enforcement and help the LGBTQ community to feel safe and protected.

8. Cost to the Association. (Both direct and indirect costs)

Adoption of this proposed resolution would result in only minor indirect costs associated with staff time devoted to the policy subject matter as part of the staff members’ overall substantive responsibilities.

9. Disclosure of Interest. (If applicable)

There is no known conflict of interest.

10. Referrals.

- Criminal Justice Section
- Standing Committee on Legal Aid and Indigent Defendants
- Section of State and Local Government Law
- Commission on Disability Rights
- Commission on Domestic and Sexual Violence
- Commission on Youth at Risk
- Commission on Hispanic Legal Rights and Responsibilities
- Center on Children and the Law
- Commission on Homelessness and Poverty
- Coalition on Racial and Ethnic Justice
- Section of Alternative Dispute Resolution
- Commission on Racial and Ethnic Diversity in the Profession
- Commission on Women in the Profession
- Section of Litigation

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11. Contact Name and Address Information. (Prior to the meeting. Please include name, address, telephone number and e-mail address)

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12. Contact Name and Address Information. (Who will present the Resolution with Report to the House? Please include best contact information to use when on-site at the meeting. Be aware that this information will be available to anyone who views the House of Delegates agenda online.)
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EXECUTIVE SUMMARY

1. Summary of the Resolution
   This Resolution advocates for the requirement of all law enforcement agencies to adopt regulations similar to the standards set by the Commission on Police Officer and Standard Training (POST).

2. Summary of the Issue that the Resolution Addresses
   This Resolution seeks to elevate standards of training for law enforcement agencies to preserve their function of upholding fairness and equality in providing protection for all. In the effort to do so, police officers should be required to receive specific training on sexual orientation and gender identity to adequately serve their role of providing support and protection for all communities.

3. Please Explain How the Proposed Policy Position Will Address the Issue
   This resolution will be used by the ABA in its advocacy efforts, and by ABA members who wish to engage with members of Congress and other legislative bodies to support the interests expressed in this resolution, in coordination with the Governmental Affairs Office.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified
   None identified