



Policy Barriers to  
Ending the HIV Epidemic  
for Transgender People of Color  
in North Carolina & South Carolina:  
TRANSforming the Carolinas

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An [executive summary](#) of this policy research was released on April 27, 2020, in observance of National Transgender HIV Testing Day, and has been updated and incorporated into this final report.

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## Context

TRANSforming the Carolinas is a research project of the University of North Carolina created to learn more about the challenges that transgender people of color in North Carolina and South Carolina regularly face when accessing quality healthcare. The objective of the research is to understand what gets in the way of HIV prevention and care for transgender people of color, to provide information to healthcare providers to better care for transgender people of color by addressing their healthcare needs, and ultimately to change policies and systems. This project is part of “Ending the HIV Epidemic: A Plan for America,” a ten-year initiative to reduce new HIV infections by 90 percent by 2030.<sup>[1]</sup>

At the time of the completion of this report during June 2020, the world looks very different than when planning for the report first began in September 2019. Across the globe, stay-at-home orders and face covering requirements have become the norm in response to COVID-19, the novel coronavirus, a pandemic respiratory disease that can be fatal. In addition to health impacts, there have also been economic impacts resulting from large-scale closures of businesses and institutions. Data trends are beginning to show that marginalized populations have been harder hit, particularly members of the Black and Latinx communities.<sup>[2]</sup> Although most states, including North Carolina and South Carolina, are not reporting data disaggregated by gender identity, national findings can be applied in order to infer that transgender people of color in our two states are disproportionately likely to bear the health and economic costs of the pandemic.

For example, among health indicators of a higher risk and/or more severe impact of COVID-19:

- Age: There are 217,000 transgender people age 65+<sup>[3]</sup>
- Respiratory conditions
  - Smoking: 278,000 transgender people smoke<sup>[4]</sup>
  - Asthma: 208,000 transgender people have asthma<sup>[5]</sup>
- Higher rates of other chronic health conditions
  - Diabetes: 81,000 transgender people have diabetes<sup>[6]</sup>
  - HIV: 75,000 transgender people are living with HIV<sup>[7]</sup>

Because of histories of discrimination, transgender people are also less likely to have access to healthcare when dealing with COVID-19, or even routine primary care:

- 22% of transgender adults and 32% of transgender adults of color are uninsured, compared to 12% non-LGBTQ adults.<sup>[8]</sup>
- 450,000 transgender adults reported that they have not gone to the doctor in the past year because they could not afford to.<sup>[9]</sup>
- Transgender people, and LGBTQ people generally, are less likely to have paid sick leave (29%) or paid family medical leave (20%) that they can use to cope with COVID-19.<sup>[10]</sup>

Among economic indicators of the impact of COVID-19:

- Reduction in work hours: 54% of transgender people and 58% of transgender people of color have had their work hours reduced due to COVID-19, compared to 23% of the general population.<sup>[11]</sup>
- Lost jobs: 19% of transgender people and 26% of transgender people of color have become unemployed due to COVID-19, compared to 12% of the general population.<sup>[12]</sup>
- Unpaid leave: 29% of transgender people and 31% of transgender people of color have had to take unpaid leave due to COVID-19, compared to 7% of the general population.<sup>[13]</sup>

Yet in the midst of this pandemic, the Trump Administration finalized a rule removing explicit protections against discrimination on the basis of gender identity in health care treatment and insurance.<sup>[14]</sup> Just days later, the Supreme Court ruled that employment discrimination because of sex includes discrimination on the basis of gender identity and sexual orientation<sup>[15]</sup>, calling into question the viability of the rollback of transgender health protections. Lawsuits against the U.S. Department of Health and Human Services have already been filed on behalf of transgender women and LGBTQ health clinics.<sup>[16]</sup>

June 2020 also brought increased visibility and awareness of police brutality toward Black and brown people with the deaths of George Floyd<sup>[17]</sup> and Breonna Taylor.<sup>[18]</sup> Black transgender people in the South are not immune to police violence, which became a subject of focus with the death of Black transgender man Tony McDade.<sup>[19]</sup> In the wake of these deaths, community protests brought new visibility and direct action during Pride month celebrating the anniversary of the Stonewall Riots.

## Findings

The first phase of TRANSforming the Carolinas consists of an assessment of policy that may create barriers to ending the HIV epidemic for transgender people of color in North Carolina and South Carolina. This report provides a high-level assessment of policy at the state and municipal<sup>[20]</sup> levels in both states, taking a broad, systems-level approach. This phase of the research does not attempt to capture the lived experience of transgender people in North Carolina and South Carolina, which will be the focus of later phases of the research project.

- Generally
  - About 13,872 transgender people of color live in North Carolina.<sup>[21]</sup> About 6,930 transgender people of color live in South Carolina.<sup>[22]</sup>
  - Both North Carolina and South Carolina have legal and policy barriers to ending the HIV epidemic for transgender people.
  - NC has better state law in some areas but SC has better municipal law in some areas.
- No statewide protections

- Neither state has prohibited discrimination on the basis of sexual orientation, gender identity, HIV status or disability, or gender dysphoria disability, although there are certain pockets of protections.<sup>[23]</sup>
- SC cities have enacted more protections than NC cities.
- Criminalized identities
  - Both states have criminal law based on HIV status. North Carolina's law is relatively more modernized because it accounts for scientific consensus that undetectable viral loads make HIV non-transmissible, and that effective pre-exposure prophylaxis can prevent transmission of HIV.<sup>[24]</sup>
  - North Carolina's law is a misdemeanor and does not include engaging in sex work while living with HIV, whereas South Carolina's law is a felony and does include sex work.<sup>[25]</sup>
  - Both states include shared needle use<sup>[26]</sup> in their HIV criminalization but North Carolina has a legalized syringe exchange program that may make access to syringes easier.<sup>[27]</sup>
  - Any criminalized identity makes someone more vulnerable to intimate partner violence because it creates an opportunity for an aggressor to exert power and control by threatening to report the survivor to authorities.<sup>[28]</sup> Transgender people living with HIV may have multiple criminalized identities because they may share syringes for hormones or silicone if they don't have access to medical sources, and because some transgender people exchange sex for money, goods, or services.
  - The advent of molecular surveillance as a public health tool may create additional criminalization as needle-sharing mutual aid webs and sex worker client networks may be revealed without the knowledge or consent of the people living with HIV.<sup>[29]</sup>
  - It is difficult to know how many transgender people might be arrested or convicted because of their HIV status in either state. Neither state consistently reports HIV data disaggregated by gender and gender identity. Also, some people living with HIV who face other criminal charges may also face HIV penalty enhancements for those violations at the discretion of the prosecutor.
  - While both states maintain corrections policies that provide routes for transgender people to obtain transgender-affirming services while in custody<sup>[30]</sup>, it is beyond the scope of this research to establish the extent to which the policies are being followed.
- Barriers to effective healthcare
  - Neither NC nor SC has expanded Medicaid. Since transgender people are disproportionately likely to be low-income<sup>[31]</sup>, failing to expand Medicaid means some transgender people don't have access to healthcare at all outside of community clinics.
  - The positive news is that neither state prohibits insurance coverage of transition-related healthcare. However, neither state prohibits exclusions of transition-related healthcare

either. Neither state affirmatively requires coverage of transition-related healthcare. Even if transgender people have insurance, they may not be able to get medically necessary care to begin or maintain gender-affirming treatment.

- Social determinants of health
  - **Employment:** There are no statewide protections against discrimination by private employers. However, if a transgender person works for the state in NC<sup>[32]</sup> or for the cities of Charlotte<sup>[33]</sup>, Charleston<sup>[34]</sup>, or Columbia<sup>[35]</sup>, they cannot be fired because of gender identity. Since employment is the primary way people in the U.S. gain health insurance, and since transgender people commonly encounter employment discrimination<sup>[36]</sup>, these policies may keep transgender people from being able to access healthcare.
  - **Housing:** There is no protection against discrimination based on gender identity in housing except in South Carolina cities<sup>[37]</sup>. Without stable housing, it is difficult for transgender people to maintain employment and to safely store medications.
  - **Public accommodations:** There is no protection against discrimination on the basis of gender identity in accessing public spaces except in South Carolina cities.<sup>[38]</sup> In fact, all cities in North Carolina are prohibited from enacting such protections until after December 2020.<sup>[39]</sup> Even after December 2020, NC cities are permanently prohibited from protecting transgender people's access to facilities.<sup>[40]</sup> Since transgender people disproportionately face harassment and discrimination in public spaces,<sup>[41]</sup> including hospitals and healthcare centers,<sup>[42]</sup> it is more difficult for them to participate in public life and have a say about matters that affect their healthcare.
  - **Hate crimes:** The only locations that have laws against hate violence based on gender identity are South Carolina cities.<sup>[43]</sup> The epidemic of lethal hate violence against transgender women threatens the health and well-being of all transgender people in North Carolina and South Carolina. Over the past five years, we remember the North Carolina deaths of Elisha Walker (August 13, 2015), Sherrell Faulkner (May 16, 2017), Derricka Banner (September 12, 2017), Chanel Scurlock (June 6, 2019), Bubba Walker (July 2019), and Monika Diamond (March 18, 2020). We remember the South Carolina deaths of Sasha Wall (April 1, 2018), Regina Denise Brown (October 7, 2018), Denali Berries Stuckey (July 20, 2019), and Pebbles LaDime Doe (August 4, 2019).<sup>[44]</sup>

## Future Research

Transgender people in North Carolina and South Carolina face a number of policy barriers that must be improved upon in order to end the HIV epidemic. Additional research, including the use of mathematical modeling that helps us make projections where data are missing, may help fill in gaps in data and may help provide policymakers with additional arguments for policy that would improve health equity for transgender North Carolinians and South Carolinians living with HIV:

- **Violence prevention**

- How much morbidity is caused by violence against transgender people living with HIV?
- Without intervention, how many transgender people living with HIV will face violence over the next five years?
- What is the most cost-effective intervention to prevent interpersonal violence in the lives of transgender people living with HIV?
- What is the appropriate metric to capture the number of incidents of interpersonal violence among transgender people living with HIV that were prevented by any given intervention?

- **Co-location of HIV treatment and gender transition treatment**

- What is the impact of co-locating HIV treatment and hormone replacement therapy on transgender people who have fallen out of care?
- How many additional transgender people would stay linked to HIV treatment if HIV treatment were provided at the same location that transgender people receive hormone replacement therapy?
- What is the most cost-effective means of reaching transgender people living with HIV who have fallen out of care to let them know that they can now receive HIV treatment at the same place they receive hormone replacement therapy?
- How many transgender people living with HIV would need to participate in a study of co-location in order for us to see a 30% increase in uptake of HIV services?

- **Anti-criminalization**

- What is the impact of repealing laws that criminalize failure to disclose HIV status on incidence of HIV among transgender people?
- If HIV criminalization laws are not repealed, how many transgender people will avoid getting tested for HIV so that they will not be charged with a crime for failing to disclose their status to their partners?
- What is the minimum amount of funding for HIV decriminalization advocacy campaigns that is required to accomplish repeal during one state legislative session?
- Across the entire country, which communities are the top priority for decriminalization, based on potential impact of decriminalization?



## Conclusion

Policy is one of many hurdles that present barriers to effectively ending the epidemic of HIV for transgender people of color in North Carolina and South Carolina. To see a detailed table of the provisions of policy that affect transgender people with HIV, please see the appended tables divided between state policy and local policy. Eradicating HIV is a goal that will take science but will also require political will.

Policy that is based on deep relationships with community-based organizations presents the best opportunity to make meaningful change to end the HIV epidemic for transgender people of color in North Carolina and South Carolina.

# State Law and Policy

## Civil Rights & Non-Discrimination

### North Carolina

### South Carolina

<ul style="list-style-type: none"><li>● Although some categories are protected in the state constitution (such as race, color, religion, and national origin), sexual orientation and gender identity are not recognized as protected categories in the state constitution.<sup>[45]</sup></li><li>● There is no civil rights statute of general applicability protecting gender identity or sexual orientation.</li><li>● Although some categories are protected in the state hate crimes statute (such as race, color, religion, nationality and country of origin), sexual orientation and gender identity are not recognized as protected categories.<sup>[46]</sup></li><li>● The civil rights conspiracy statute recognizes gender as a protected category. The statute prohibits conspiracies between two or more individuals to deprive another of their rights based on gender. Gender is not defined in the statute.<sup>[47]</sup></li><li>● Gender dysphoria is not recognized as a disability under the Persons with Disabilities Protection Act.<sup>[48]</sup></li><li>● HIV is not recognized as a disability under the Persons with Disabilities Protection Act.<sup>[49]</sup></li></ul>	<ul style="list-style-type: none"><li>● Sexual orientation and gender identity are not recognized as protected categories in the state constitution. However, there are <i>no</i> specifically enumerated categories of protection in the state constitution.<sup>[73]</sup></li><li>● There is no civil rights statute of general applicability protecting gender identity or sexual orientation.</li><li>● There is no hate crimes statute of general applicability protecting any categories.</li></ul>
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## HIV Criminalization

### North Carolina

### South Carolina

<ul style="list-style-type: none"> <li>● It is a misdemeanor to violate the HIV control measures in the state administrative code. Misdemeanor violation does not require intent or actual transmission of HIV.<sup>[50]</sup> Control measures require that a person living with HIV:             <ul style="list-style-type: none"> <li>○ Use a condom and disclose their HIV status to sexual partners                 <ul style="list-style-type: none"> <li>▪ UNLESS the person living with HIV has maintained an undetectable viral load for at least 6 months, OR</li> <li>▪ The sexual partner is also living with HIV, OR</li> <li>▪ The sexual partner is taking pre-exposure prophylaxis (also known as PrEP).</li> </ul> </li> <li>○ Not donate blood, tissues, or organs</li> <li>○ Not share needles (note: NC has legalized syringe exchange services<sup>[51]</sup>)</li> </ul> </li> <li>● The state administrative code provides for isolation orders that include “compliance with a plan to assist the individual to comply with control measures.”<sup>[52]</sup></li> <li>● Criminal defendants accused of sexual offenses can be required to submit to full STD panels, including HIV testing, at the request of the victim, subject to a probable cause hearing.<sup>[53]</sup></li> </ul>	<ul style="list-style-type: none"> <li>● It is a felony for a person living with HIV to:<sup>[74]</sup> <ul style="list-style-type: none"> <li>○ Engage in sexual intercourse without informing the other person(s) of their HIV status;</li> <li>○ Engage in prostitution;</li> <li>○ Sell or donate blood, blood products, semen, tissue, organs, or other body fluids;</li> <li>○ Forcibly engage in sexual intercourse (vaginal, anal or oral) without the consent of the other person, including one's legal spouse; or</li> <li>○ Share with another person a hypodermic needle/syringe without first informing that person that the needle or syringe has been used by someone infected with HIV.</li> </ul> </li> <li>● The state administrative code provides for public health orders which could include isolation (i.e., alternatives to incarceration) for “recalcitrant HIV infected persons”:<sup>[75]</sup> <ul style="list-style-type: none"> <li>○ Refuses curative treatment, or</li> <li>○ If while receiving treatment continues to be infectious and engages in behavior which exposes another person or the public to HIV, or</li> <li>○ If no cure is available, refuses to receive counseling or, paraite [<i>sic</i>] counseling, the person continues to engage in behavior, which exposes another person or the public to HIV.</li> </ul> </li> </ul>
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## Healthcare

### North Carolina

### South Carolina

<ul style="list-style-type: none"> <li>● Although some categories are protected in the state health insurance non-discrimination law (such as race, color, national or ethnic origin), sexual orientation and gender identity are not recognized as protected categories.<sup>[54]</sup></li> <li>● There is no statutory prohibition of blanket exclusion of coverage for transition-related healthcare in state-regulated private health insurance.</li> <li>● There is no statutory requirement that state-regulated private insurance companies cover transition-related healthcare. In fact, state law explicitly states that transition-related healthcare does not have to be covered for treatment of mental illness in state-regulated private health insurance.<sup>[55]</sup></li> </ul>	<ul style="list-style-type: none"> <li>● The state does not have a healthcare antidiscrimination law protecting against discrimination on the basis of sexual orientation or gender identity or any other category.</li> <li>● The state does not have a law regarding insurance coverage or access to treatment for transition-related care.</li> <li>● <i>A bill was proposed in the 2019-2020 session of the South Carolina legislature that would have banned “gender reassignment medical treatment” for minors, including puberty blockers, while still allowing for mental health treatment. The session adjourned without the bill being heard in committee.</i><sup>[76]</sup></li> </ul>
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## Employment

### North Carolina

### South Carolina

<ul style="list-style-type: none"> <li>● Although some categories are protected in the employment non-discrimination statute (such as race, religion, color, national origin, age, sex, or handicap), sexual orientation and gender identity are not recognized as protected categories.<sup>[56]</sup></li> <li>● Executive order prohibits discrimination based on sexual orientation, gender identity or expression in:<sup>[57]</sup> <ul style="list-style-type: none"> <li>○ <i>State employment</i> under the jurisdiction of the governor</li> <li>○ <i>State contracting</i> under the jurisdiction of the governor.</li> </ul> </li> <li>● Although HIV status is not a covered <i>disability</i> in the employment context<sup>[58]</sup>, the state prohibits discrimination based on HIV <i>status</i> in some aspects of employment. Employers may not fire an individual because of their</li> </ul>	<ul style="list-style-type: none"> <li>● Although the South Carolina Human Affairs Law protects against employment discrimination on the basis of certain categories including disability, gender dysphoria is not recognized as a disability under the South Carolina Human Affairs Law.<sup>[77]</sup></li> <li>● HIV is not recognized as a disability under the South Carolina Human Affairs Law.<sup>[78]</sup></li> <li>● Sexual orientation and gender identity are not protected categories under the South Carolina Human Affairs Law.<sup>[79]</sup></li> </ul>
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HIV status but may decline to hire someone based on their HIV status. <sup>[59]</sup>	
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**Housing**

**North Carolina**

**South Carolina**

<ul style="list-style-type: none"> <li>• Although some categories are protected in the fair housing statute (such as race, color, religion, sex, national origin, handicapping condition, or familial status), fair housing laws do not recognize sexual orientation or gender identity as protected categories.<sup>[60]</sup></li> <li>• State law prohibits discrimination based on HIV status in housing.<sup>[61]</sup></li> </ul>	<ul style="list-style-type: none"> <li>• Although some categories are protected in the fair housing statute (such as race, color, religion, sex, familial status, or national origin), fair housing laws do not recognize sexual orientation or gender identity as protected categories.<sup>[80]</sup></li> <li>• State law does not recognize HIV status as a protected category in housing.<sup>[81]</sup></li> </ul>
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**Public Accommodations & Public Services**

**North Carolina**

**South Carolina**

<ul style="list-style-type: none"> <li>• Although some categories are covered in discrete provisions of public accommodations law (disability<sup>[62]</sup> and HIV status<sup>[63]</sup>), sexual orientation and gender identity are not recognized as protected categories.</li> <li>• A discrete provision of public services law prohibits discrimination based on HIV status.<sup>[64]</sup></li> <li>• Executive order prohibits discrimination based on sexual orientation, gender identity or expression in access to public services under the jurisdiction of the governor.<sup>[65]</sup></li> </ul>	<ul style="list-style-type: none"> <li>• The state does not have a law prohibiting discrimination in public accommodations or public services.</li> </ul>
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**Miscellaneous Laws**

**North Carolina**

**South Carolina**

<ul style="list-style-type: none"> <li>• <b>Preemption:</b> State agencies are prevented from regulating multiple occupancy restrooms, locker rooms, and changing facilities.<sup>[66]</sup></li> </ul>	<ul style="list-style-type: none"> <li>• <b>Religious Freedom:</b> <ul style="list-style-type: none"> <li>○ The state has its own religious freedom protection bill, which may permit some forms of discrimination against transgender individuals. State laws must serve a compelling state interest if burdening exercise of religion.<sup>[82]</sup></li> </ul> </li> </ul>
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	<ul style="list-style-type: none"> <li>○ Free exercise of religion may be offered as a defense in legal proceedings.<sup>[83]</sup></li> </ul>
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**Incarceration Policies**

**North Carolina**

**South Carolina**

<ul style="list-style-type: none"> <li>● The North Carolina Department of Public Safety maintains a policy related to transgender people who are incarcerated that involves review by a Facilities Transgender Accommodations Review Committee with purview over the following:<sup>[67]</sup> <ul style="list-style-type: none"> <li>○ Safety planning</li> <li>○ Allowance or prohibition of items designed for masculinizing or feminizing personal appearance</li> <li>○ Request or continued hormone therapy or other treatment interventions occurring prior to incarceration</li> <li>○ Request for gender specific clothing items</li> <li>○ Request for private showering, and/or specific housing considerations</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>● The South Carolina Department of Corrections maintains a policy related to transgender people who are incarcerated that involves review by a Multidisciplinary Management and Treatment Team with purview over the following:<sup>[84]</sup> <ul style="list-style-type: none"> <li>○ Medical and mental health evaluations and treatment as appropriate</li> <li>○ Housing assignments</li> <li>○ Search preferences</li> </ul> </li> </ul>
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# Municipal Law and Policy

## Hate Crimes

Charlotte, North Carolina	Charleston, South Carolina	Columbia, South Carolina
<ul style="list-style-type: none"> <li>Charlotte does not have a hate crimes ordinance with protections for sexual orientation or gender identity.</li> </ul>	<ul style="list-style-type: none"> <li>Hate crimes protection applies to sexual orientation and gender identity, and individual is subject to additional fine and/or up to 30 days jail time.<sup>[85]</sup></li> </ul>	<ul style="list-style-type: none"> <li>Hate crimes protection applies to sexual orientation (as defined in public accommodations statute, which includes gender identity).<sup>[89]</sup></li> </ul>

## Employment

Charlotte, North Carolina	Charleston, South Carolina	Columbia, South Carolina
<ul style="list-style-type: none"> <li><b>Private employment:</b> Local governments are prevented from enacting protection from discrimination in private employment until December 2020.<sup>[68]</sup></li> <li><b>Municipal employment:</b> City employees are protected from discrimination on the basis of sexual orientation or actual or perceived gender as expressed through dress, appearance, or behavior.<sup>[69]</sup></li> <li><b>Contracting:</b> The city does not contract with companies that engage in discrimination based on gender, but sexual orientation and gender identity are not included.<sup>[70]</sup></li> </ul>	<ul style="list-style-type: none"> <li><b>Private employment:</b> There is no protection on the basis of sexual orientation or gender identity in private employment.</li> <li><b>Municipal employment:</b> City employees are protected from discrimination on the basis of sexual orientation and gender identity.<sup>[86]</sup></li> </ul>	<ul style="list-style-type: none"> <li><b>Private employment:</b> There is no protection on the basis of sexual orientation or gender identity in private employment.</li> <li><b>Municipal employment:</b> City employees are protected from discrimination on the basis of sexual orientation, gender identity and expression.<sup>[90]</sup></li> </ul>

## Housing

Charlotte, North Carolina	Charleston, South Carolina	Columbia, South Carolina
<ul style="list-style-type: none"> <li>Charlotte does not have a housing ordinance with protections for sexual orientation or gender identity.</li> </ul>	<ul style="list-style-type: none"> <li>Housing discrimination on the basis of sexual orientation or gender identity is prohibited.<sup>[87]</sup></li> </ul>	<ul style="list-style-type: none"> <li>Housing discrimination based on sexual orientation or gender identity is prohibited.<sup>[91]</sup></li> </ul>

## Public Accommodations & Public Services

Charlotte, North Carolina	Charleston, South Carolina	Columbia, South Carolina
<ul style="list-style-type: none"> <li>Local governments are prevented from enacting protection from discrimination in public accommodations until December 2020.<sup>[71]</sup></li> <li>Local governments are prevented from regulating multiple occupancy restrooms, locker rooms, and changing facilities.<sup>[72]</sup></li> </ul>	<ul style="list-style-type: none"> <li><b>Public Accommodations:</b> No discrimination in places of public accommodation on the basis of sexual orientation. Sexual orientation as defined includes gender identity or expression.<sup>[88]</sup></li> </ul>	<ul style="list-style-type: none"> <li><b>Public Accommodations:</b> No discrimination in places of public accommodation on the basis of sexual orientation (which as defined includes gender identity or expression).<sup>[92]</sup></li> </ul>

Note: Other municipalities in South Carolina have enacted ordinances protecting sexual orientation and gender identity that were not included in this analysis.



# Endnotes

## **Context**

- 1 See: <https://transformingthecarolinas.web.unc.edu/>.
- 2 COVID-19 in Racial and Ethnic Minority Groups, Centers for Disease Control and Prevention, accessed June 30, 2020:  
<https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/racial-ethnic-minorities.html>.
- 3 Flores AR, Herman JL, Gates GJ, Brown TNT. How Many Adults Identify as Transgender in the United States? Los Angeles, CA (2016): The Williams Institute, available at:  
<https://williamsinstitute.law.ucla.edu/publications/trans-adults-united-states/>.
- 4 Herman JL and O’Neill K, Vulnerabilities to COVID-19 Among Transgender Adults in the US (Williams Institute, April 2020):  
<https://williamsinstitute.law.ucla.edu/publications/transgender-covid-19-risk/>.
- 5 *Id.*
- 6 *Id.*
- 7 *Id.*
- 8 Human Rights Campaign, The Lives & Livelihoods of Many in the LGBTQ Community Are At Risk Among COVID-19 Crisis (March 20, 2020):  
<https://www.hrc.org/resources/the-lives-and-livelihoods-of-many-in-the-lgbtq-community-are-at-risk-amidst>
- 9 See *supra* note 4.
- 10 See *supra* note 8.
- 11 Human Rights Campaign, The Economic Impact of COVID-19 Intensifies for Transgender and LGBTQ Communities of Color (June 2020):  
<https://www.hrc.org/resources/the-economic-impact-of-covid-19-intensifies-for-transgender-and-lgbtq-commu>
- 12 *Id.*
- 13 *Id.*
- 14 Centers for Medicare and Medicaid Services, Nondiscrimination in Health and Health Education Programs or Activities, Delegation of Authority (June 19, 2020, 85 FR 37160):

<https://www.federalregister.gov/documents/2020/06/19/2020-11758/nondiscrimination-in-health-and-health-education-programs-or-activities-delegation-of-authority>

- 15 **Bostock v. Clayton County, Georgia** (590 U.S. \_\_\_\_ 2020):  
[https://www.supremecourt.gov/opinions/19pdf/17-1618\\_hfci.pdf](https://www.supremecourt.gov/opinions/19pdf/17-1618_hfci.pdf).
- 16 See, *e.g.*, **Whitman-Walker Clinic v. HHS** (1:20-cv-01630, U.S. District Court for District of Columbia, filed June 22, 2020):  
[https://www.lambdalegal.org/in-court/legal-docs/whitman\\_us\\_20200622\\_complaint](https://www.lambdalegal.org/in-court/legal-docs/whitman_us_20200622_complaint), and **Asapansa-Johnson Walker v. HHS** (1:20-cv-02834-FB-SMG, U.S. District Court for Eastern District of New York, filed June 26, 2020):  
[https://assets2.hrc.org/files/assets/resources/Complaint.pdf?\\_ga=2.38014819.1363982088.1593456077-853024608.1590885654](https://assets2.hrc.org/files/assets/resources/Complaint.pdf?_ga=2.38014819.1363982088.1593456077-853024608.1590885654).
- 17 See, *e.g.*, “How George Floyd was killed in police custody,” New York Times, May 31, 2020:  
<https://www.nytimes.com/2020/05/31/us/george-floyd-investigation.html>.
- 18 See, *e.g.*, “Here’s what you need to know about Breonna Taylor’s death,” New York Times, June 28, 2020: <https://www.nytimes.com/article/breonna-taylor-police.html>.
- 19 See, *e.g.*, “LGBTQ community calls for justice after Tony McDade, a black trans man, shot and killed by police,” ABC News, June 2, 2020:  
<https://abcnews.go.com/US/lgbtq-community-calls-justice-black-trans-man-shot/story?id=71022981>.

## **Findings**

- 20 For purposes of this project, the cities whose policies were analyzed include Charlotte, North Carolina, and Charleston and Columbia, South Carolina.
- 21 Approximately 0.6% of North Carolina’s population identifies as transgender, approximately 44,750 people (see *supra* note 3). Approximately 68.87% of North Carolina’s population is white (see <https://worldpopulationreview.com/states/north-carolina-population/>, accessed June 30, 2020), leaving about 31% of North Carolina’s population as non-white.
- 22 Approximately 0.58% of South Carolina’s population identifies as transgender, approximately 21,000 people (see *supra* note 3). Approximately 67.25% of South Carolina’s population is white (see <https://worldpopulationreview.com/states/south-carolina-population/>, accessed June 30, 2020), leaving about 33% of South Carolina’s population as non-white.
- 23 For example, NC prohibits discrimination based on HIV status in some aspects of employment (see *infra* note 59), but does not consider HIV or gender dysphoria to be disabling conditions under the Persons with Disabilities Act (see *infra* note 48).
- 24 See *infra* note 50.
- 25 See *infra* note 74.

- 26 See *infra* notes 50 and 74.
- 27 See *infra* note 51.
- 28 See, *e.g.*, Criminalization as Violence against Women Living with HIV, Positive Women’s Network (2016), available at:  
<https://pwnusa.files.wordpress.com/2016/10/doa-2016-factsheet-criminalization-v2.pdf>.
- 29 See, *e.g.*, Is Molecular HIV Surveillance Worth the Risk?, Center for HIV Law and Policy (2019), available at:  
<https://www.hivlawandpolicy.org/sites/default/files/CHLP%20Molecular%20Surveillance%20Final.pdf>.
- 30 See *infra* notes 67 and 84.
- 31 For example, 29% of transgender North Carolinians reported living at the poverty level in 2015, compared to the U.S. poverty rate of 14% at the time of the survey (2015 U.S. Transgender Survey: North Carolina State Report. (2017). Washington, DC: National Center for Transgender Equality):  
[https://www.transequality.org/sites/default/files/docs/usts/USTS\\_NC\\_state\\_report.pdf](https://www.transequality.org/sites/default/files/docs/usts/USTS_NC_state_report.pdf).
- Likewise, 28% percent of transgender South Carolinians reported living at the poverty level in 2015 (2015 U.S. Transgender Survey: South Carolina State Report. (2017). Washington, DC: National Center for Transgender Equality):  
<https://www.transequality.org/sites/default/files/docs/usts/USTSSCStateReport.pdf>
- 32 See *infra* note 57.
- 33 See *infra* note 69.
- 34 See *infra* note 86.
- 35 See *infra* note 90.
- 36 See *supra* note 31, with 15% of transgender North Carolina respondents and 10% of transgender South Carolina respondents reporting unemployment, when the U.S. unemployment rate at the time was 5%.
- 37 See *infra* notes 87 and 91.
- 38 See *infra* notes 88 and 92.
- 39 See *infra* note 68.
- 40 See *infra* note 66.

- 41 See *supra* note 31, with 16% of transgender North Carolinians reporting verbal harassment in public accommodations, and 24% of transgender South Carolinians reporting verbal harassment in public accommodations and 1% reporting physical attack.
- 42 See *supra* note 31, with 29% of transgender North Carolinians and 37% of transgender South Carolinians reporting mistreatment at a healthcare provider.
- 43 See *infra* notes 85 and 89.
- 44 Addressing Anti-Transgender Violence: Exploring Realities, Challenges, and Solutions for Policymakers and Community Advocates, Human Rights Campaign and Trans People of Color Coalition (2015), available at:  
<http://assets2.hrc.org/files/assets/resources/HRC-AntiTransgenderViolence-0519.pdf>.
- A Time to Act: Fatal Violence against Transgender People in America 2017, Human Rights Campaign and Trans People of Color Coalition (2017), available at:  
[http://assets2.hrc.org/files/assets/resources/A\\_Time\\_To\\_Act\\_2017\\_REV3.pdf](http://assets2.hrc.org/files/assets/resources/A_Time_To_Act_2017_REV3.pdf).
- A National Epidemic: Fatal Anti-Transgender Violence in America 2018, Human Rights Campaign (2018), available at:  
<https://www.hrc.org/resources/a-national-epidemic-fatal-anti-transgender-violence-in-america-in-2018>.
- Dismantling a Culture of Violence, Human Rights Campaign (2019), available at:  
<https://www.hrc.org/resources/violence-against-the-transgender-community-in-2019>.
- Violence against the Transgender and Gender Non-Conforming Community in 2020, Human Rights Campaign, available at:  
<https://www.hrc.org/resources/violence-against-the-trans-and-gender-non-conforming-community-in-2020>.

## **North Carolina Law & Policy**

- 45 **NC Constitution Art 1 Sec 19:** No person shall be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land. No person shall be denied the equal protection of the laws; nor shall any person be subjected to discrimination by the State because of race, color, religion, or national origin. But see complaint, **John Doe v. Cleveland County Board of Education, et al.** (Cleveland County Superior Court Civil Action No. 20-CVS-142, filed January 28, 2020).
- 46 **N.C. Gen. Stat. Section 14-3:** (c) If any Class 2 or Class 3 misdemeanor is committed because of the victim's race, color, religion, nationality, or country of origin, the offender shall be guilty of a Class 1 misdemeanor. If any Class A1 or Class 1 misdemeanor offense is committed because of the victim's race, color, religion, nationality, or country of origin, the offender shall be guilty of a Class H felony.

- 47 **N.C. Gen. Stat. Section 99D-1:** (a) It is a violation of this Chapter if:
- (1) Two or more persons, motivated by race, religion, ethnicity, or gender, but whether or not acting under color of law, conspire to interfere with the exercise or enjoyment by any other person or persons of a right secured by the Constitutions of the United States or North Carolina, or of a right secured by a law of the United States or North Carolina that enforces, interprets, or impacts on a constitutional right; and
  - (2) One or more persons engaged in such a conspiracy use force, repeated harassment, violence, physical harm to persons or property, or direct or indirect threats of physical harm to persons or property to commit an act in furtherance of the object of the conspiracy; and
  - (3) The commission of an act described in subdivision (2) interferes, or is an attempt to interfere, with the exercise or enjoyment of a right, described in subdivision (1), of another person.

- 48 **N.C. Persons with Disabilities Protection Act:**  
**N.C. Gen. Stat. § 168A-3:** The following definitions apply in this Chapter: ...
- (1a) Disabling condition.** -- Any condition or characteristic that renders a person a person with a disability.
- (1b) Discriminatory practice.** -- Any practice prohibited by this Chapter. ...
- (7) Person.** -- Any individual, partnership, association, corporation, labor organization, legal representative, trustee, receiver, and the State and its departments, agencies, and political subdivisions.
- (7a) Person with a disability.** -- Any person who (i) has a physical or mental impairment which substantially limits one or more major life activities; (ii) has a record of such an impairment; or (iii) is regarded as having such an impairment. The following definitions apply in this subdivision:
- a. Physical or mental impairment.** -- Any of the following:
    1. Any physiological disorder or abnormal condition, cosmetic disfigurement, or anatomical loss, caused by bodily injury, birth defect, or illness, affecting a body system, including, but not limited to, neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine.
    2. Any mental or psychological disorder such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disability."Physical or mental impairment" excludes (i) sexual preferences; (ii) active alcoholism or drug addiction or abuse; and (iii) any disorder, condition, or disfigurement which is temporary in nature, lasting six months or fewer, and leaving no residual impairment. A disorder, condition, or disfigurement that is episodic or in remission is a physical or mental impairment if it would substantially limit a major life activity when active.
  - b. Major life activities.** -- Functions, including, but not limited to, caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, eating, sleeping, lifting, bending, standing, breathing, learning, reading, concentrating, thinking,

communicating, and working. A major life activity also includes the operation of a major bodily function, including, but not limited to, functions of the immune system, normal cell growth, and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

**c. Has a record of such an impairment.** -- Has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits major life activities.

**d. Is regarded as having an impairment.** -- Any of the following:

1. Has a physical or mental impairment that does not substantially limit major life activities but that is treated as constituting such a limitation.
2. Has a physical or mental impairment that substantially limits major life activities because of the attitudes of others.
3. Has none of the impairments defined in sub-subdivision a. of this subdivision but is treated as having such an impairment.

The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures, such as (i) medication, medical supplies, equipment, or appliances, low-vision devices, which do not include ordinary eyeglasses or contact lenses, prosthetics, including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies; (ii) use of assistive technology; (iii) reasonable accommodations or auxiliary aids or services; or (iv) learned behavioral or adaptive neurological modifications.

But see complaint, **John Doe v. Cleveland County Board of Education, et al.** (Cleveland County Superior Court Civil Action No. 20-CVS-142, filed January 28, 2020).

49 *Id.*

50 **N.C. Gen. Stat. § 130A-25:** (a) Except as otherwise provided, a person who violates a provision of this Chapter or the rules adopted by the Commission or a local board of health shall be guilty of a misdemeanor.

(b) A person convicted under this section for violation of G.S. 130A-144(f) or G.S. 130A-145 shall not be sentenced under Article 81B of Chapter 15A of the General Statutes but shall instead be sentenced to a term of imprisonment of no more than two years and shall serve any prison sentence in McCain Hospital, Section of Prisons of the Division of Adult Correction and Juvenile Justice, McCain, North Carolina; the North Carolina Correctional Center for Women, Section of Prisons of the Division of Adult Correction and Juvenile Justice, Raleigh, North Carolina; or any other confinement facility designated for this purpose by the Secretary of Public Safety after consultation with the State Health Director. The Secretary of Public Safety shall consult with the State Health Director concerning the medical management of these persons.

(c) Notwithstanding G.S. 148-4.1, G.S. 148-13, or any other contrary provision of law, a person imprisoned for violation of G.S. 130A-144(f) or G.S. 130A-145 shall not be released prior to the completion of the person's term of imprisonment unless and until a determination has been made by the District Court that release of the person would not create a danger to the public health. This determination shall be made only after the

medical consultant of the confinement facility and the State Health Director, in consultation with the local health director of the person's county of residence, have made recommendations to the Court.

(d) A violation of Part 7 of Article 9 of this Chapter or G.S. 130A-309.10(m) shall be punishable as a Class 3 misdemeanor.

**N.C. Gen. Stat. Ann. § 130A-144(f):** (f) All persons shall comply with control measures, including submission to examinations and tests, prescribed by the Commission subject to the limitations of G.S. 130A-148.

**10A N.C. Admin. Code 41A.0202(1):** The following are the control measures for the Human Immunodeficiency Virus (HIV) infection:

(1) Persons diagnosed with HIV infection (hereafter "person living with HIV") shall:

(a) refrain from sexual intercourse unless condoms are used except when:

(i) the person living with HIV is in HIV care, is adherent with the treatment plan of the attending physician, and has been virally suppressed for at least 6 months (HIV levels below 200 copies per milliliter) at the time of sexual intercourse;

(ii) the sexual intercourse partner is HIV positive;

(iii) the sexual intercourse partner is taking HIV Pre-Exposure Prophylaxis (PrEP) – antiretroviral medication used to prevent HIV infection as directed by an attending physician; or

(iv) the sexual intercourse occurred in the context of a sexual assault in which the person living with HIV was the victim;

(b) not share needles or syringes, or any other drug-related equipment, paraphernalia, or works that may be contaminated with blood through previous use;

(c) not donate or sell blood, plasma, platelets, other blood products, semen, ova, tissues, organs, or breast milk, except when:

(i) The person living with HIV is donating organs as part of a clinical research study that has been approved by an institutional review board under the criteria, standards, and regulations described in 42 USC 274f-5(a) and (b); or, if the United States Secretary of Health and Human Services determines under USC 274f-5(c) that participation in this clinical research is no longer warranted as a requirement for transplants, and the organ recipient is receiving the transplant under the criteria, standards, and regulations of USC 274f-5(c); or

(ii) Sperm or ova are harvested under the supervision of an attending physician to be used by the person's spouse or partner for the purpose of achieving pregnancy.

(d) have a test for tuberculosis;

(e) notify future sexual intercourse partners of the infection, unless the person living with HIV meets the criteria listed in Sub-item (1)(a)(i) of this Rule. If the person living with HIV is the victim of a sexual assault, there is no requirement to notify the assailant;

(f) if the time of initial infection is known, notify persons who have been sexual intercourse or needle-sharing partners since the date of infection or give

the names to a disease intervention specialist employed by the local health department or by the Division of Public Health for contact tracing and notification; and

(g) if the date of initial infection is unknown, notify persons who have been sexual intercourse or needle-sharing partners for the previous 12 months or give names to a disease intervention specialist employed by the local health department or by the Division of Public Health for contact tracing of all sexual and needle-sharing partners for the preceding 12 months.

- 51 **N.C. Gen. Stat. Ann. § 90-113.27:** (a) Any governmental or nongovernmental organization, including a local or district health department or an organization that promotes scientifically proven ways of mitigating health risks associated with drug use and other high-risk behaviors, may establish and operate a needle and hypodermic syringe exchange program.
- 52 **10A N.C. Admin. Code 41A.0202(11):** Notwithstanding Rule .0201(d) of this Section, a local or state health director may require, as a part of an isolation order issued in accordance with **G.S. 130A-145**, compliance with a plan to assist the individual to comply with control measures. The plan shall be designed to meet the specific needs of the individual including linkage to care and may include referral to one or more of the following available and appropriate services:
- (a) substance abuse counseling and treatment;
  - (b) harm reduction services;
  - (c) mental health counseling and treatment required to prevent transmission;
  - (d) education and counseling sessions about HIV, HIV transmission, and behavior change required to prevent transmission; and
  - (e) intimate partner violence intervention services.
- 53 **N.C. Gen. Stat. Section 15A-615: (a)** After a finding of probable cause pursuant to the provisions of Article 30 of Chapter 15A of the General Statutes or indictment for an offense that involves nonconsensual vaginal, anal, or oral intercourse; an offense that involves vaginal, anal, or oral intercourse with a child 12 years old or less; or an offense under G.S. 14-202.1 that involves vaginal, anal, or oral intercourse with a child less than 16 years old; the victim or the parent, guardian, or guardian ad litem of a minor victim may request that a defendant be tested for the following sexually transmitted infections: ...
- (4)** HIV; ...
  - (b)** Upon a request under subsection (a) of this section, the district attorney shall petition the court on behalf of the victim for an order requiring the defendant to be tested. Upon finding that there is probable cause to believe that the alleged sexual contact involved in the offense would pose a significant risk of transmission of a sexually transmitted infection listed in subsection (a) of this section, the court shall order the defendant to submit to testing for these infections. A defendant ordered to be tested under this section shall be tested not later than 48 hours after the date of the court



order. A test for HIV ordered pursuant to this section shall use the HIV-RNA Detection Test for determining HIV infection.

**(c)** If the defendant is in the custody of the Division of Adult Correction and Juvenile Justice of the Department of Public Safety, the defendant shall be tested by the Division of Adult Correction and Juvenile Justice of the Department of Public Safety. If the defendant is not in the custody of the Division of Adult Correction and Juvenile Justice of the Department of Public Safety, the defendant shall be tested by the local health department. The Division of Adult Correction and Juvenile Justice of the Department of Public Safety shall inform the local health director of all test results. The local health director shall ensure that the victim is informed of the results of the tests and counseled appropriately. The agency conducting the tests shall inform the defendant of the results of the tests and ensure that the defendant is counseled appropriately. The results of the tests shall not be admissible as evidence in any criminal proceeding.

- 54 **N.C. Gen. Stat. Section 58-65-85:** No person subject to this Article and Article 66 of this Chapter shall refuse to issue or refuse to reissue to an individual any certificate, plan, or contract governed by this Article and Article 66 of this Chapter; limit the amount, extent, or kind of services available to an individual; or charge an individual a different rate for the same services, because of the race, color, or national or ethnic origin of that individual.
- 55 **N.C. Gen. Stat. Section 58-65-90(e):** (e) Nothing in this section requires an insurer to cover treatment or studies leading to or in connection with sex changes or modifications and related care. **See also N.C. Gen. Stat. Section 58-51-55(e). Note:** Employer-sponsored health insurance, also known as self-funded health plans, is exempt from state regulation and covered under the federal Employee Retirement Income Security Act of 1974, 29 U.S.C. ch. 18 sec. 1001 *et seq.*
- 56 **N.C. Gen. Stat. § 143-422.2(a):** It is the public policy of this State to protect and safeguard the right and opportunity of all persons to seek, obtain and hold employment without discrimination or abridgement on account of race, religion, color, national origin, age, sex or handicap by employers which regularly employ 15 or more employees.
- 57 Governor Cooper, Executive Order 24, **Policies Prohibiting Discrimination, Harassment, and Retaliation in State Employment, Services, and Contracts Under the Jurisdiction of the Office of the Governor.**
- 58 See *supra* note 48 and **Burgess v. Your House of Raleigh, Inc.**, 326 N.C. 205, 388 S.E.2d 134 (1990): NC Supreme Court held that the Persons with Disabilities Protection Act does not apply to people living with HIV because the statute has an exclusion for people with a communicable disease in the context of employment.
- 59 **N.C. Gen. Stat. Section 130A-148(i):** Except as provided in this section, no test for AIDS virus infection shall be required, performed or used to determine suitability for

continued employment, housing or public services, or for the use of places of public accommodation as defined in G.S. 168A-3(8), or public transportation. Further it shall be unlawful to discriminate against any person having AIDS virus or HIV infection on account of that infection in determining suitability for continued employment, housing, or public services, or for the use of places of public accommodation, as defined in G.S. 168A-3(8), or public transportation. Any person aggrieved by an act or discriminatory practice prohibited by this subsection relating to housing shall be entitled to institute a civil action pursuant to G.S. 41A-7 of the State Fair Housing Act. Any person aggrieved by an act or discriminatory practice prohibited by this subsection other than one relating to housing may bring a civil action to enforce rights granted or protected by this subsection.

- 60 **N.C. Gen. Stat. Section 41A-4:** (a) It is an unlawful discriminatory housing practice for any person in a real estate transaction, because of race, color, religion, sex, national origin, handicapping condition, or familial status to:
- (1) Refuse to engage in a real estate transaction;
  - (2) Discriminate against a person in the terms, conditions, or privileges of a real estate transaction or in the furnishing of facilities or services in connection therewith;
  - (3) Refuse to receive or fail to transmit a bona fide offer to engage in a real estate transaction;
  - (4) Refuse to negotiate for a real estate transaction;
  - (5) Represent to a person that real property is not available for inspection, sale, rental, or lease when in fact it is so available, or fail to bring a property listing to his attention, or refuse to permit him to inspect real property;
  - (6) Make, print, circulate, post, or mail or cause to be so published a statement, advertisement, or sign, or use a form or application for a real estate transaction, or make a record or inquiry in connection with a prospective real estate transaction, which indicates directly or indirectly, an intent to make a limitation, specification, or discrimination with respect thereto;
  - (7) Offer, solicit, accept, use, or retain a listing of real property with the understanding that any person may be discriminated against in a real estate transaction or in the furnishing of facilities or services in connection therewith; or
  - (8) Otherwise make unavailable or deny housing.

61 See *supra* note 59.

62 See *supra* note 48.

63 See *supra* note 59.

64 *Id.*

65 See *supra* note 57.

- 66 **N.C. Gen. Stat. § 143-761:** State agencies, boards, offices, departments, institutions, branches of government, including The University of North Carolina and the North Carolina Community College System, and political subdivisions of the State, including local boards of education, are preempted from regulation of access to multiple occupancy restrooms, showers, or changing facilities, except in accordance with an act of the General Assembly.  
However, a federal court has approved a consent decree binding NC Governor Cooper from applying this provision in a way “that bars, prohibits, blocks, deters, or impedes transgender people from using public facilities in accordance with their gender identity or subjects transgender people to arrest, prosecution, or criminal sanctions for doing so” (see **Carcano et al. v. Cooper et al.**, (M.D.N.C. No. 1:16-cv-00236-TDS-JEP, entered July 23, 2019)).
- 67 **NC Department of Public Safety Prisons Division Policy E.2700, *Evaluation and Management, Transgender Offenders*** (effective August 22, 2019).

### **Charlotte, North Carolina**

- 68 **Session Law 2017-4**, also known as H.B. 142:  
SECTION 3. No local government in this State may enact or amend an ordinance regulating private employment practices or regulating public accommodations.  
SECTION 4. This act is effective when it becomes law. Section 3 of this act expires on December 1, 2020.  
Note: Municipalities may act to protect their own municipal employees from employment discrimination.
- 69 **Charlotte Equal Employment Opportunity Statement:** The city of Charlotte is an Equal Opportunity Employer and does not unlawfully discriminate on the basis of race, religion, color, sex [sic] national origin, marital status, age, disability, sexual orientation, political affiliation, or on the basis of actual or perceived gender as expressed through dress, appearance, or behavior. Found at <https://charlottenc.gov/HR/Pages/Equal-Employment-Opportunity-and-E-Verify-Notices.aspx>, accessed June 30, 2020.
- 70 **Charlotte Code of Ordinances Ch 2 Art V Sec. 2-151:** It is the policy of the city not to enter into a contract with any business firm that has discriminated in the solicitation, selection, hiring or treatment of vendors, suppliers, subcontractors or commercial customers on the basis of race, gender, religion, national origin, ethnicity, age, or disability, or on the basis of any otherwise unlawful use of characteristics regarding such vendor's, supplier's, or commercial customer's employees or owners in connection with a city contract or solicitation; provided that nothing in this commercial non-discrimination policy shall prohibit or limit otherwise lawful efforts to remedy the effects of discrimination that has occurred or is occurring in the marketplace.
- 71 See *supra* note 68.

72 See *supra* note 66.

### **South Carolina Law & Policy**

- 73 **S.C. Const. Ann. Art. I, § 3:** The privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.
- 74 **S.C. Code Ann. § 44-29-145:** It is unlawful for a person who knows he or she is infected with HIV to:
- (1) knowingly engage in sexual intercourse (vaginal, anal, or oral) with another person without first informing that person of his HIV infection;
  - (2) knowingly commit an act of prostitution with another person;
  - (3) knowingly sell or donate blood, blood products, semen, tissue, organs, or other body fluids
  - (4) forcibly engage in sexual intercourse (vaginal, anal or oral) without the consent of the other person, including one's legal spouse; or
  - (5) knowingly share with another person a hypodermic needle/syringe without first informing that person that the needle or syringe has been used by someone infected with HIV.
- 75 **S.C. Code of Laws § 61-21(K):** Recalcitrant HIV infected persons.
- (1) For purposes of this section, a recalcitrant person is defined as one who is infected with HIV and who either:
    - (a) refuses curative treatment, or
    - (b) if while receiving treatment continues to be infectious and engages in behavior which exposes another person or the public to HIV, or
    - (c) if no cure is available, refuses to receive counseling or, paraite [*sic*] counseling, the person continues to engage in behavior, which exposes another person or the public to HIV.
  - (2) For purposes of this section, counseling is defined as providing information about HIV infection, the significant threat HIV infection poses to other members of the public and methods to minimize the risk to the public.
  - (3) The Department must when feasible attempt to work with the recalcitrant person to modify his or her behavior before seeking isolation of the recalcitrant person. This requirement will be satisfied by the Department's fulfilling the following:
    - (a) Attempting on at least three occasions at various times of day, to set up an appointment for counseling or to meet the person at a designated location and provide counseling. If the person cannot be located, a generic appointment letter, without identifying any infection by name, requiring the person to report to the local health department, may be sent to the person by certified mail, return receipt requested, or may be left at the person's residence. If counseling is obtained at a place other than the local health department, verification of that

counseling in the form of a statement signed by the counselor must be provided to the Department.

- (b) Offering counseling and/or referring to other appropriate professional and/or agencies for support services
  - (c) If the Department has been unable to locate the recalcitrant person or the person has refused counseling, the Department must mail to the person's last known address a certified letter stating the behavior modifications listed below and the recalcitrant person's obligation to follow these modifications. The letter must also state that failure to comply with these control measures may result in the issuance of a public health order and/or petition for isolation. If the recalcitrant person refuses to avail himself of counseling or referral services, the Department will have been deemed to have met its obligation to attempt to work with the recalcitrant person to modify his or her behavior.
- (4) In cases of recalcitrant persons who have HIV infection, modification of behavior must include cessation of behaviors that expose other persons to HIV. The Department may issue a public health order requiring the recalcitrant person to comply with appropriate directives to protect the public health. These directives may include, but are not limited to, any or all of the following:
- (a) Immediately report for counseling, social work assessment, testing, or treatment;
  - (b) Refrain from anal, vaginal or oral intercourse, unless partner is informed of risk of infection and consents to sexual activity;
  - (c) Always use condoms as recommended by public authorities during anal, vaginal or oral intercourse and exercise caution when using condoms due to possible condom failure or improper use;
  - (d) Do not share needles or syringes unless the needle and syringes have been properly cleaned after each person uses them;
  - (e) Have a skin test for tuberculosis;
  - (f) Notify all sexual and/or needle-sharing partners of the infection;
  - (g) If the exact time or general time period of initial infection is known, notify or request the Department to notify sexual and/or needle-sharing partners since the date or time period of infection; (h) If the time of initial infection is unknown, notify or request the Department to notify sexual and/or needle-sharing partners for at least the previous three years;
  - (i) Do not donate or sell body parts or body fluids.
- (5) If the Department has reason to believe that a recalcitrant person has failed to comply with the specified behavior modifications, has forcibly or without forewarning exposed another person to HIV infection, and should be isolated pursuant to Section 44-29-115 South Carolina Code of Laws, the Department may seek isolation of that person. Isolation may be sought after reasonable means of correcting the problem have been exhausted. In order to protect the public health and encourage persons to seek HIV testing and counseling, it may be necessary for the Department and other necessary state agencies to work with persons over time to modify recalcitrant behavior.

- 77 **S.C. Code Ann. § 1-13-30(N):** (N) “Disability” means with respect to an individual:  
    (1) a physical or mental impairment that substantially limits one or more of the major life activities of the individual;  
    (2) a record of an impairment; or  
    (3) being regarded as having an impairment.

The definition of “disability” must be interpreted in a manner consistent with federal regulations promulgated pursuant to the Americans with Disabilities Act of 1990, as amended, Public Law 101-336. Note that the Americans with Disabilities Act of 1990 contains an exclusion related to “transsexualism” and “gender identity disorders not resulting from physical impairments” (42 U.S.C. Sec. 12211).

While certain federal courts have found that the Americans with Disabilities Act can be applied to protect gender identity (see, e.g., *Blatt v. Cabela’s Retail, Inc.* (E.D. Pa. 2017)), there is no controlling precedent in South Carolina.

78 *Id.*

79 *Id.*

- 80 **S.C. Code Ann. § 31-21-40:** It is unlawful: (1) to refuse to sell or rent after the making of a bona fide offer, to refuse to negotiate for the sale or rental of, or otherwise to make unavailable or deny a dwelling to any person because of race, color, religion, sex, familial status, or national origin; (2) to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with it, because of race, color, religion, sex, familial status, or national origin; (3) to make, print, or publish, or cause to be made, printed, or published, any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin or an intention to make the preference, limitation, or discrimination; (4) to represent to any person because of race, color, religion, sex, handicap, familial status, or national origin that any dwelling is not available for inspection, sale, or rental when the dwelling is available; (5) for profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, handicap, familial status, or national origin; (6) to discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of: (a) that buyer or renter; (b) a person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or (c) any person associated with that buyer or renter; (7) to discriminate against a person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with the dwelling, because of a handicap of: (a) that person; (b) a person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or (c) any person associated with that person.

81 *Id.*

- 82 **S.C. Code Ann. § 1-32-40:** The State may not substantially burden a person’s exercise of religion, even if the burden results from a rule of general applicability, unless the State demonstrates that application of the burden to the person is:  
(1) in furtherance of a compelling state interest; and  
(2) the least restrictive means of furthering that compelling state interest.
- 83 **S.C. Code Ann. § 1-32-50:** If a person’s exercise of religion has been burdened in violation of this chapter, the person may assert the violation as a claim or defense in a judicial proceeding. If the person prevails in such a proceeding, the court shall award attorney’s fees and costs.
- 84 **South Carolina Department of Corrections Policy GA-06.09, *Care and Custody of Transgender Inmates and Inmates Diagnosed with Gender Dysphoria*** (effective September 12, 2017).

### **Charleston, South Carolina**

- 85 **Charleston Code of Ordinances Sec. 21-1. - Hate intimidation:** A person who violates another section of this chapter with the intent to intimidate another person or persons in whole or in part because of the actual or perceived race, color, creed, religion, ancestry, gender, sexual orientation, gender identity, physical or mental disability, or national origin of the other person or persons is guilty of the separate offense of hate intimidation and shall be punished as provided by section 1-16. The sentences shall run consecutive to one another unless the court specifies on the record reason why they should run concurrent.
- 86 City of Charleston, *Employee Handbook* § 1.1 (Oct. 24, 2017): The City of Charleston is firmly committed to Equal Employment Opportunity as a fundamental policy to be implemented and observed in our daily operation. We will not tolerate discrimination in employment based on age, sex, race, religion, color, disability, national origin, veteran status, political affiliation, or any other characteristic protected by federal, state, and local laws. For purposes of this policy, the term “sex” includes an individual’s gender, sexual orientation, gender identification and also includes medical needs and/or lactation needs arising from pregnancy, childbirth, or related medical conditions pursuant to the Pregnancy Accommodations Act. Found at <https://www.charleston-sc.gov/1564/Employee-Handbook>, accessed June 30, 2020.
- 87 **Charleston Code of Ordinances Sec. 16-17. - Declaration of policy.:** It shall be the policy of the city to eliminate discrimination in housing based on race, color, religion, sex, sexual orientation, age, disability, familial status or national origin.  
**Charleston Code of Ordinances Sec. 16-20. - Unlawful housing practices.:** It shall be an unlawful practice for a real estate owner or operator, a real estate broker, a real estate salesman, a financial institution, an employee of any of these, or any other person to:

- (a) Refuse to sell, purchase, rent or lease, or otherwise deny to or withhold any housing accommodation from a person, or to evict a person because of race, color, religion, sex, sexual orientation, age, disability, familial status or national origin; or
- (b) To discriminate against a person in the terms, conditions or privileges of the sale, purchase, rental or lease of any housing accommodation, or in the furnishing of facilities or services in connection therewith; or
- (c) To refuse to receive or transmit a bona fide offer to sell, purchase, rent or lease any housing accommodation from or to a person because of race, color, religion, sex, sexual orientation, age, disability, familial status or national origin; or
- (d) To evict or refuse to negotiate for the sale, purchase, rental or lease of any housing accommodation to a person because of race, color, religion, sex, sexual orientation, age, disability, familial status or national origin; or
- (e) To represent to a person that any housing accommodation is not available for inspection, sale, purchase, rental or lease when in fact it is so available, or to refuse to permit a person to inspect any housing accommodation, because of race, color, religion, sex, sexual orientation, age, disability, familial status or national origin when such dwelling is in fact available to persons who are financially qualified; or
- (f) To make, publish, print, circulate, post or mail, or cause to be made, published, printed, circulated, posted or mailed, any notice, statement or advertisement, or to announce a policy, or to sign or to use a form of application for the sale, purchase, rental, lease or financing of any housing accommodation, or to make a record of inquiry in connection with the prospective sale, purchase, rental, lease or financing of any housing accommodation, which indicates any discrimination or any intent to discriminate; or
- (g) To offer, solicit, accept or use a listing of any housing accommodation for sale, purchase, rental or leasing, knowing that a person may be subjected to discrimination in connection with such sale, purchase, rental or lease, or in the furnishing of facilities or services in connection therewith; or
- (h) To induce or discourage, or to attempt to induce or discourage:
  - (1) The sale,
  - (2) The purchase,
  - (3) The rental,
  - (4) The lease, or
  - (5) The listing for subparagraphs (a), (b), (c) or (d) of this section, of any housing accommodations in an area, by means of:
    - a. Causing panic,
    - b. Inciting unrest, or
    - c. Creating or playing upon fear, by representing that the presence or anticipated presence in that area of persons of any particular race, color, religion, sex, sexual orientation, age, disability, familial status or national origin, will or may result in:
      - i. The lowering of property values in the area;
      - ii. The increase in criminal or antisocial behavior in the area;



iii. A decline in the quality of the school serving the area;

- 88 **Charleston Code of Ordinances Sec. 16-29. - Declaration of policy.:** It is the policy of the City of Charleston, South Carolina, that no person shall be discriminated against in the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of any place of public accommodation on the basis of race, color, religion, sex, age, national origin, familial status, disability or sexual orientation.
- Charleston Code of Ordinances Sec. 16-30. - Definitions.:** Except where the context clearly indicates otherwise, the following terms as used in this article shall have the following meanings: *Sexual orientation* means a person's real or perceived heterosexuality, homosexuality or bisexuality or gender identity or expression.

### **Columbia, South Carolina**

- 89 **Columbia Code of Ordinances Sec. 14-8. - Hate intimidation:**
- (a) A person who violates section 10-34, 12-8, 14-5, 14-31, 14-91, 14-92, 14-93, 14-94, 14-97, 14-101, 14-102, 14-104, 14-263, 15-1 or 22-72 with the intent to intimidate a person in whole or in part because of the actual or perceived race, color, creed, religion, ancestry, gender, sexual orientation (as defined in section 11-503), disability (as defined in section 11-503) gender identity, expression or national origin of any person is guilty of the separate offense of hate intimidation and shall be punished as provided by section. 1-5. The sentences shall run consecutive to one another unless the court specifies on the record good cause why they should run concurrently.
- (b) Fines imposed under this section for contemporaneous or concurrent violations of this section shall be assessed for each violation.
- (c) A court may impose community service or participation in an educational program for violation of this section.
- (d) All fines paid and collected pursuant to this section shall be used to support educational programs.
- (e) As used in this section "educational program" shall mean an educational program approved by the city that is conducted by a public or not-for-profit entity within the city limits and that provides training relating to the harm or damage to individuals or society caused by bigotry on the basis of race, color, creed, religion, ancestry, gender, sexual orientation, disability or national origin.
- 90 **City of Columbia Equal Employment Opportunity Statement:** We are an Equal Opportunity Employer committed through responsible management policies to recruit, hire, compensate, train, transfer, promote, and administer all other personnel actions without regard to race, color, ethnicity, national origin, age, religion, disability, marital status, gender, sexual orientation, gender identity or expression, genetic information and any other factor prohibited under applicable federal, state, and local civil rights laws, rules and regulations. Found at <https://columbiasc.csod.com/ats/careersite/search.aspx?site=1&c=columbiasc>, accessed June 30, 2020.

- 91 **Columbia Code of Ordinances Sec. 11-392. - Policy.:** It is the policy of the City of Columbia, South Carolina, that no person shall be discriminated against in the sale or rental of housing on the basis of race, color, religion, sex, age, national origin, familial status, handicap, disability, or sexual orientation.
- Columbia Code of Ordinances Sec. 11-393. - Definitions:...**Sexual orientation means a person's real or perceived heterosexuality, homosexuality or bisexuality or gender identity or expression.
- Columbia Code of Ordinances Sec. 11-395. - Unlawful housing practices.:** It is an unlawful practice for a real estate owner or operator or for a real estate salesman, or any individual employed by or acting on behalf of any of these:
- (1) To refuse to sell, exchange, rent or lease or otherwise deny to or withhold real property from an individual because of his or her race, color, religion, national origin, sex, familial status, or handicap, disability, or sexual orientation;
  - (2) To discriminate against an individual because of his or her race, color, religion, national origin, sex, familial status, handicap, disability, or sexual orientation in the terms, conditions, or privileges of the sale, exchange, rental or lease of real property or in the furnishings of facilities or services in connection therewith;
  - (3) To refuse to receive or transmit a bona fide offer to purchase, rent or lease real property from an individual because of his or her race, color, religion, national origin, sex, familial status, handicap, disability, or sexual orientation;
  - (4) To refuse to negotiate for the sale, rental, or lease of real property to an individual because of his or her race, color, religion, national origin, sex, familial status, handicap, disability, or sexual orientation;
  - (5) To represent to an individual that real property is not available for inspection, sale, rental or lease when in fact it is so available, or to refuse to permit an individual to inspect real property because of his or her race, color, religion, national origin, sex, familial status, handicap, disability, or sexual orientation;
  - (6) To print, circulate, post, or mail or cause to be printed, circulated, posted or mailed an advertisement or sign, or to use a form of application for the purchase, rental, or lease of real property, or to make a record of inquiry in connection with the prospective purchase, rental, or lease of real property, which indicates, directly or indirectly, a limitation, specification, or discrimination as to race, color, religion, national origin, sex, familial status, handicap, disability, or sexual orientation or an intent to make such a limitation, specification, or discrimination;
  - (7) To offer, solicit, accept, use or retain a listing of real property for sale, rental, or lease with the understanding that an individual may be discriminated against in the sale, rental, or lease of that real property or in the furnishing of facilities or services in connection therewith because of race, color, religion, national origin, sex, familial status, handicap, disability, or sexual orientation;
  - (8) To otherwise deny to or withhold real property from an individual because of race, color, religion, national origin, sex, familial status, handicap, disability, or sexual orientation;

- 92 **Columbia Code of Ordinances Sec. 11-502. - Policy.:** It is the policy of the City of Columbia, South Carolina, that no person shall be discriminated against in the full and

equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of any place of public accommodation on the basis of race, color, religion, sex, age, national origin, familial status, handicap, disability or sexual orientation.

**Columbia Code of Ordinances Sec. 11-503. - Definitions.**: Except where the context clearly indicates otherwise, the following terms as used in this article shall have the following meanings:

***Discrimination*** means any direct or indirect act or practice of exclusion, distinction, restriction, segregation, limitation, refusal, denial, or any other act or practice of differentiation or preference in the treatment of a person or persons because of race, color, religion, national origin, age, sex, familial status, handicap, disability or sexual orientation in the aiding, abetting, inciting, coercing or compelling thereof.

***Place of public accommodation*** means any place which serves the public and requires a license or permit issued by the State of South Carolina, its agencies or the City of Columbia to operate, including, but not limited to:

- (1) Any inn, hotel, motel, or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his residence;
- (2) Any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, including, but not limited to, any such facility located on the premises of any retail establishment, or any gasoline station;
- (3) Any hospital, clinic, or other medical facility which provides overnight accommodations;
- (4) Any retail or wholesale establishment;
- (5) Any motion picture house, theater, concert hall, billiard parlor, saloon, barroom, golf course, sports arena, stadium, or other place of amusement, exhibition, recreation, or entertainment; and,
- (6) Any establishment which is physically located within the premises of any establishment otherwise covered by this subsection, or within the premises of which is physically located any such covered establishment, and which holds itself out as serving patrons of such covered establishment.

***Sexual orientation*** means a person's real or perceived heterosexuality, homosexuality or bisexuality or gender identity or expression.