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## Civil Rights Law and the Determinants of Health:

### How Some States Have Utilized Civil Rights Laws to Increase Protections Against Discrimination

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Factors outside of healthcare have long been recognized as reasons for disparate burdens of death, disease, and injury in populations.<sup>1</sup> Such determinants of health comprise “the range of personal, social, economic, and environmental factors that influence health status.”<sup>2</sup> Public health interventions that address determinants of health have great potential to affect health outcomes.<sup>3</sup> The Centers for Disease Control and Prevention states that “differences in health are striking in communities with poor [determinants of health] such as unstable housing, low income, unsafe neighborhoods, or substandard education.”<sup>4</sup> One fundamental barrier to eliminating health disparities, particularly with regard to the determinants of health, is the persistence of discrimination.<sup>5</sup> Civil rights law is the primary legal mechanism used to address discrimination. Federal civil rights laws have been the subject of wider analyses as a determinant of health as well as a tool to address health disparities.<sup>6</sup> The research on state civil rights laws, while more limited, is growing.<sup>7</sup> This article will highlight how some states are using civil rights laws to combat discrimination against populations previously excluded from protection by federal laws, presenting tools that can target determinants and address the goal of reducing health disparities.<sup>8</sup>

### How Discrimination in the Determinants of Health Impacts Health

#### Outcomes

Both historical and contemporary discrimination contribute to the health disparities seen today.<sup>9</sup> Even diverse cities like Chicago, where housing was segregated on the basis of race 70 years ago, often reflect the same divisions today.<sup>10</sup> Researchers indicate that reasons for continued segregation include “money, preferences and discrimination.”<sup>11</sup> Residential segregation can be particularly impactful, given that a person’s neighborhood is critical to accessing “economic opportunities, social connections, and social capital,” which all “mediate health status.”<sup>12</sup> As a result, communities or groups that were historically subject

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to discrimination are today often the communities or groups who need resources the most and are the least likely to receive them.<sup>13</sup>

Contemporary discrimination also has negative effects on health disparities. For example, if a person is fired from a job because of race, religion, sex, or disability, job loss could mean loss of insurance, increased risk for domestic violence, and salary loss.<sup>14</sup> Salary loss could mean displacement from housing, as well as the inability to pay for educational opportunities necessary for career mobility.<sup>15</sup> One instance of discrimination can result in increased stress and anxiety.<sup>16</sup> The domino effect created by that discrimination can trigger health impacts across the life span.

At least in part, both historical and contemporary discrimination have contributed to certain groups having increased risks for illness and injury.<sup>17</sup> Although state civil rights laws cannot alone solve the issue of health disparities in the United States, they can be used as tools in working to achieve the goal of health equity.

## How Some States are Using Civil Rights Law to Combat Discrimination

Understanding that discrimination plays a role both historically and contemporaneously in the determinants of health, the public health community has often considered the role of civil rights law as one tool to help move toward the goal of health equity.<sup>18</sup> Civil rights law today is based upon an amalgamation of federal, state, and local laws including the United States Constitution, statutes, regulations, and executive orders among others.<sup>19</sup> Federal civil rights laws make discrimination against protected classes, including but not limited to, race, national origin, religion, sex, and disability, illegal under stated circumstances, in areas such as education, housing, and employment and by recipients of federal financial assistance.<sup>20</sup> Federal laws create minimum standards, but states and territories can enact additional protections regarding the protected classes of individuals, the stated circumstances, and the areas in which discrimination is prohibited. By way of example, some states have gone beyond federal laws to prohibit discrimination on the basis of genetics, gender, and criminal history, parental status, and military service, among others.<sup>21</sup> Bearing in mind the complexity of civil rights as a tool to reduce discrimination and improve the determinants of health, this paper examines how a few states have recently incorporated new protections by expanding protected classes and redefining the scope of preexisting civil rights laws.

One contemporary example of states being at the forefront of civil rights law is in the area of genetic discrimination. As genetics research started becoming more prominent in the early 1990s, there was increasing discussion about how to protect individuals from discrimination on the basis of their genetic information. Before any federal legal protections were put into place, 30 states had passed laws protecting against discrimination on the basis of genetic information.<sup>22</sup> Ultimately, the federal Genetic Information Nondiscrimination Act (GINA) was passed, which protects individuals from discrimination by insurers and employers on the basis of findings that their “DNA may affect their health” outcomes.<sup>23</sup> GINA also established a baseline that all states had to meet.<sup>24</sup> However, states and territories have continued to provide additional protections. For example, Washington, D.C., incorporated “genetic information” into their existing civil rights provision. As a result, in addition to

protections against discrimination by health insurers, it is also illegal to “deny, directly or indirectly, any person the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodations” on the basis of genetic information.<sup>25</sup>

Genetic information protections provide a clear example of how states are using civil rights laws to protect against discrimination. However, genetic information discrimination laws are unique in that they are prospective. These laws were not passed as a result of a long history of discrimination in the same way that protections on the basis of race, sex, religion, and disability were passed.<sup>26</sup> As a result, these new laws seek to prevent the creation of institutionalized barriers.<sup>27</sup>

States are using existing civil rights laws to address contemporary discrimination against groups that have been subject to historical discrimination by adding explicit protections for marginalized groups not previously protected and by clarifying definitions in existing anti-discrimination laws. One such example of a newly protected group is individuals with a criminal record. States have begun to include anti-discrimination protections for individuals with a criminal record. Healthy People 2020, a 10-year agenda for health in United States managed by the US Department of Health and Human Services, indicates that “higher rates of incarceration are often seen among racial/ethnic minorities and people with lower levels of education” and “(w)hen compared to the general population, men and women with a history of incarceration are in worse mental and physical health ...”<sup>28</sup> These individuals often experience difficulty reintegrating into society and face particular problems with “family, employment, housing, and health ...” upon release.<sup>29</sup> In 2008, Wisconsin passed the Fair Employment Act and made it illegal to “deny employment opportunities and discriminate in employment against properly qualified individuals solely because of their... arrest record, conviction record.” The law states that discrimination on the basis of criminal record deprives “those individuals of the earnings that are necessary to maintain a just and decent standard of living.”<sup>30</sup>

A second example that demonstrates how states have drawn upon existing laws to create new anti-discrimination measures is the expansion of protections for lesbian, gay, bisexual, transgender, and queer (LGBTQ) individuals, who Healthy People 2020 notes “face health disparities linked to societal stigma, discrimination, and denial of their civil and human rights.”<sup>31</sup> In some states, LGBTQ individuals now have explicit civil rights protections. As of 2011, Nevada’s Fair Housing Law includes considerations for sexual orientation and gender identity or expression. The law states that “all people in the State have equal opportunity to inherit, purchase, lease, rent, sell, hold and convey real property without discrimination, distinction or restriction because of ... sexual orientation, gender identity or expression.”<sup>32</sup> In Michigan the Elliot-Larsen Civil Rights Act states that “the opportunity to obtain employment, housing and other real estate, and the full and equal utilization of public accommodations, public service, and educational facilities without discrimination because of... sex...as prohibited by this act, is recognized and declared to be a civil right.”<sup>33</sup> In 2018 the Michigan Civil Rights Commission adopted an interpretive statement resolving that “‘discrimination because of... sex’ includes discrimination because of gender identity and discrimination because of sexual orientation.”<sup>34</sup>

While civil rights laws can help achieve health equity by combating discrimination that contributes to health disparities, it is important to note that civil rights laws are often under-enforced.

In order to mitigate health disparities effective enforcement of antidiscrimination laws is critical.<sup>35</sup> At the same time, civil rights laws can create new norms at the population level. For example, one successful case that stops an employer from engaging in racial or gender discrimination in hiring can impact the hiring practices and policies of employers throughout a state. Correspondingly, news coverage highlighting additional LGBTQ protections in housing can change the conversation and the way that people think about the LGBTQ community. These kinds of actions can reduce discrimination and have large-scale social impacts that affect the determinants of health.<sup>36</sup>

## Conclusion

States have been referred to as laboratories of democracy, meaning in part that they can be at the forefront of innovation when it comes to law.<sup>37</sup> Civil rights law is no exception.<sup>38</sup> Some states are using new and preexisting civil rights laws to address those forms of discrimination described above when it occurs. These state laws are possible tools to address health disparities to work toward the goal of health equity in the United States.

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