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State Civil Rights Remedies for Gender Violence: a Tool for Accountability

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STATE CIVIL RIGHTS REMEDIES FOR GENDER VIOLENCE: A TOOL FOR ACCOUNTABILITY

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This article focuses attention on state civil rights remedies that provide a civil cause of action against those who commit acts of gender-based violence and frame the harm as a violation of the survivor's civil rights. Though many of these laws long have been on the books, they are not widely used. The #MeToo movement has rightly focused public attention on the ways gender violence persists and on the gaps in legal remedies for survivors. While law and policy-makers work to enact new laws to fill gaps, existing laws should be invoked to promote accountability and provide redress for survivors. State and local civil rights remedies do just that.

In 1994, after four years of hearings, Congress enacted a civil rights remedy as part of the Violence Against Women Act (VAWA) ("VAWA Civil Rights Remedy"), which provided a private right of action against an individual who commits an act of gender violence. The law was modeled after other federal civil rights legislation and authorized a survivor of gender-motivated violence to bring a civil cause of action against the individual who committed the harm. The Supreme Court, in United States v. Morrison, 529 U.S. 598 (2000), struck down the federal law as an unconstitutional exercise of Congress' Commerce Clause powers and of Congress' enforcement powers under the Fourteenth Amendment. While the law provided redress for survivors during the six years it was in effect, both preexisting and later-enacted state and local remedies also provide a private right of action for gender violence as a civil rights violation. This article reviews those state and local statutes and the associated case law interpreting them. It demonstrates that those state and local laws can be more widely used by individuals who

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seek to hold those who commit acts of gender violence accountable.

In the wake of the #MeToo movement, when high-profile and high-net-worth individuals are being held to account, and when reports of sexual violence that occurs outside traditional employment settings are capturing public attention, those laws may be of increased utility. Employment trends leaving fewer workers employed in settings covered by traditional federal and state anti-discrimination laws expose the gaps in existing civil rights frameworks and render additional remedies all the more important. The state laws reviewed here have not been the focus of much advocacy, scholarship, or litigation. This article advances an additional and under-utilized theory of recovery for gender violence survivors that promotes the principles of equality and liberty for which civil rights long has stood.

INTRODUCTION

The current attention to gender violence raises important and challenging questions about the power and limits of the law and about how law and culture interact to produce social change. This moment of outrage and activism follows over 30 years of advocacy that has generated a body of federal and state laws, policies, and practices aimed at prohibiting and providing redress for gender violence. The moment highlights how deeply gender violence is engrained in our culture and serves as a reminder that cultural norms have persisted in allowing gender violence to continue, unmitigated, for years. It provides an opportunity to consider new ways to challenge cultural norms and to critically assess how the law can better promote accountability and provide redress for those who suffer sexual violence and other forms of gender-related abuse.

Legal remedies are but one tool to address gender violence; they are by definition limited in their ability to produce deep cultural change. But law reform remains important as a tool for accountability, as a prod for policy change, and as a means for redress for those harmed as a result. Law reform addressing gender violence advanced significantly when the Supreme Court recognized sexual harassment as a form of workplace discrimination in 1986.[1] However, federal antidiscrimination laws do not reach all employers,[2] do not hold the individuals who commit sexual violence directly accountable,[3] and case law has limited the scope of

1. Meritor v. Vinson, 477 U.S. 57 (1986).

2. *See* 42 U.S.C. § 2000e(b) ("The term 'employer' means a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year.").

3. *See* Julie Goldscheid, *Elusive Equality in Domestic and Sexual Violence Law Reform*, 34 Fla.

discrimination claims even for employers within its reach.[4] Significantly, as discussed more fully below, the Supreme Court, in *United States v. Morrison*, invalidated the civil rights remedy enacted as part of the 1994 Violence Against Women Act ("VAWA"); that provision provided a private cause of action against the person who committed an act of gender-motivated violence.[5]

Much of the #MeToo movement's focus has been directed at the workplace. At the same time, advocates and policymakers know that sexual harassment at work is but one form of gender violence. Gender violence is also prevalent in schools, in public spaces, and in intimate partner relationships that have no relationship to the workplace.[6] Indeed, many of the high-profile cases recently calling attention to the persistence of gender violence fall outside the purview of traditional civil rights laws, which apply primarily to the workplace, to housing, to educational institutions, and to state actors.[7] In response to the #MeToo

St. U. L. Rev. 731, 747 n. 68 (2007); Maya Raghu & JoAnna Suriani, National Women's Law Center, *#MeTooWhatNext: Strengthening Workplace Sexual Harassment Protections and Accountability*, at 3 (last visited July 21, 2018), https://nwlc.org/resources/metoowhatnext-strengthening-workplace-sexual-harassment-protections-and-accountability/ (detailing shortfalls in the law and recommended reform).

4. *See*, e.g., Vance v. Ball State University, 570 U.S. 421 (2013) (holding that an employee is a "supervisor," and therefore may be vicariously liable for sexual harassment under Title VII of the Civil Rights Act of 1964 only if she is empowered by the employer to take tangible employment actions against the victim). For discussion of Title VII's limitations in redressing sexual harassment on the job, *see, e.g.*, Rebecca H. White, *Title VII and the #MeToo Movement*, 68 EMORY L.J. ONLINE (2018), *available at* https://ssrn.com/abstract=3164487 (last visited July 21, 2018).

5. United States v. Morrison, 529 U.S. 598 (2000).

6. *See, e.g.*, Eric Levenson, *Larry Nassar sentenced to up to 175 years in prison for decades of sexual abuse*, https://www.cnn.com/2018/01/24/us/larry-nassar-sentencing/index.html (detailing sexual abuse by former USA Gymnastics and Michigan State University doctor) (last visited July 21, 2018); Olivia Fleming, *Models Share Stories of Sexual Assault in the Fashion Industry*, http://www.harpersbazaar.com/culture/features/a12817440/models-sexual-assault-stories-fashion-industry/ (detailing sexual assault of models and noting that models generally are considered independent contractors and therefore outside of the reach of most workplace antidiscrimination laws) (last visited July 21, 2018); Stephanie Zacharek, Eliana Dockterman & Haley Sweetland Edwards, *The Silence Breakers*, TIME Magazine, Person of the Year 2017, http://time.com/time-person-of-the-year-2017-silence-breakers/?xid=homepage (celebrating survivors who have come forward) (last visited July 21, 2018); Helen Rosner, *The Moral Responsibility of Restaurant Critics in the Age of #MeToo*, The New Yorker (Feb. 15, 2018) https://www.newyorker.com/culture/annals-of-gastronomy/the-role-of-the-restaurant-critic-in-the-age-of-metoo; Kate Rogers, *#MeToo on Main Street: Small businesses can't overlook workplace harassment*, CNBC, Make It (Feb. 21, 2018) https://www.cnbc.com/2018/02/21/metoo-on-main-street-small-businesses-fire-suspend-employees.html, Feb. 21, 2018. *See also, e.g.*, Lesley Wexler, Jennifer Robbennolt, & Colleen Murphy, *#MeToo, Time's Up, and Theories of Justice*, (March 6, 2018), University of Illinois College of Law Legal Studies Research Paper No. 18-14, at notes 2 – 38, and accompanying text, *available at* SSRN: https://ssrn.com/abstract=3135442 (reviewing allegations, including, *inter alia*, those brought against individuals in industries including politics, entertainment and media, chefs and restaurateurs, venture capital, academia and the judiciary).

7. *See, e.g.*, Civil Rights Act of 1964, 42 U.S.C. §§ 2000e-2000e-17 (2018) [hereinafter Title VII]; Fair Housing Act, 42 U.S.C. § 3601 et seq. (2018); 42 U.S.C. § 2000d et seq. ("Title VI") (2018) (prohibiting race discrimination in programs or activities that receive federal funds); 20 U.S.C. § 1681 et

movement, advocates have proposed a number of important reforms to address gaps in the law, many of which are focused on the workplace.[8] As policymakers assess gaps in the law, proposals should take into account the range of contexts in which gender violence occurs. This essay focuses on laws framing gender violence as a civil rights violation and, specifically, on laws that would hold the individual who committed the harm accountable. While proposals to amend workplace discrimination laws to more fully cover the harms of discriminatory harassment at work would go a long way toward advancing workplace accountability, free standing civil rights laws apply regardless of an employment context. If part of the goal of legal remedies is to promote accountability by those who commit harm, individual accountability should be a core component of a comprehensive liability scheme.

In 1994, after four years of hearings, Congress enacted a civil rights remedy as part of the Violence Against Women Act, which provided a private right of action against an individual who committed an act of gender violence.[9] The law was modeled after other federal civil rights legislation that addressed analogous harms.[10] The Supreme Court, in *United States v. Morrison*, struck down the federal law as an unconstitutional exercise of Congress' Commerce Clause powers and of

seq. (2018) ("Title IX") (prohibiting sex discrimination in education programs or activities that receive federal financial assistance); 42 U.S.C. § 1983 (2018) [hereinafter Section 1983] (providing cause of action for violations of constitutional or federal law by state actors).

8. For example, proposals include expanding Title VII to include small businesses, to allow independent contractors to sue, to hold employers accountable for harassment by a low-level supervisor, to address secrecy in a variety of forms, and to hold individuals accountable. *See*, *e.g.*, Raghu & Suriani, *supra* note 3 (detailing shortfalls in the law and recommended reform); Margaret E. Johnson, *Only 1 in 4 women who have been sexually harassed tell their employers. Here's why they're afraid*, THE CONVERSATION (June 5, 2018), http://theconversation.com/only-1-in-4-women-who-have-been-sexually-harassed-tell-their-employers-heres-why-theyre-afraid-97436.

9. Violence Against Women Act of 1994 (VAWA), Pub. L. No. 103-322, § 40302, 108 Stat. 1902, 1941-42 (codified as amended at 42 U.S.C. § 13981 (2000), invalidated by *Morrison*, *supra* note 5, 529 U.S. 598 (2000). Julie Goldscheid, *Gender-Motivated Violence: Developing a Meaningful Paradigm for Civil Rights Enforcement*, 22 HARV. WOMEN'S L. J. 123, 128-180 (1999) [hereinafter *Meaningful Paradigm*]. For accounts of the VAWA Civil Rights Remedy's legislative history, *see*, *e.g.*, Sally Goldfarb, *The Supreme Court, the Violence Against Women Act, and the Use and Abuse of Federalism*, 71 FORDHAM L. REV. 57, 64 – 78 (2002); Sally Goldfarb, *Violence Against Women and the Persistence of Privacy*, 102 Ohio St. L. J. 1 (2000); Victoria F. Nourse, *Where Violence, Relationship, and Equality Meet: The Violence Against Women Act's Civil Rights Remedy*, 11 WIS. WOMEN'S L.J. 1, 1-2 (1996); Fred Strebeigh, EQUAL: WOMEN RESHAPE AMERICAN LAW 309-445 (2009).

10. For summaries of the law's purpose and history, *see*, *e.g.*, *supra* note 9; for additional commentary, *see*, *e.g.*, Catherine A. MacKinnon, *Disputing Male Sovereignty*, 114 HARV. L. REV. 135 (2000); Judith Resnik, *Categorical Federalism: Jurisdiction, Gender and the Globe*, 111 YALE L. J. 619 (2001); Robert C. Post & Reva B. Siegel, *Equal Protection by Law: Federal Antidiscrimination Legislation After Morrison and Kimel*, 110 YALE L. J. 441 (2000); Ruth Colker & James J. Brudney, *Dissing Congress*, 100 MICH. L. REV. 80 (2002); Goldscheid, *Meaningful Paradigm*, *supra* note 3; Julie Goldscheid, *The Civil Rights Remedy of the 1994 Violence Against Women Act: Struck Down but Not Ruled Out*, 39 FAM. L. Q. 157, 158 (2005) [hereinafter, Goldscheid, *Struck Down but Not Ruled Out*].

Congress' enforcement powers under the Fourteenth Amendment.[11] However, both preexisting and later-enacted state and local remedies provide a private right of action for gender violence as a civil rights violation. This article updates a review of those laws published in 2005,[12] and argues that these state laws can be more widely used by individuals who seek to hold those who commit acts of gender violence accountable through civil remedies.

Part I provides a background of the 1994 federal civil rights remedy and of subsequent efforts to introduce a revised federal remedy after the *United States v. Morrison* decision. Part II reviews the state statutes providing civil remedies for gender violence and their associated case law. This article concludes with recommendations about how these laws can be used to promote accountability and provide redress for survivors, as part of the current wave of efforts to end gender violence.

I. Background: The Federal Civil Rights Remedy and Its Aftermath

Since the purpose, history, and use of the VAWA Civil Rights Remedy has been well documented elsewhere,[13] this section will offer only a brief summary. The law was intended to complement Reconstruction-era and other civil rights statutes by providing a civil cause of action for other forms of discrimination and bias-motivated violence, in order to provide a uniform federal law framing gender violence as a civil rights violation.[14] Existing laws would provide at least some measure of redress for gender violence committed at work,[15] committed by state actors,[16] or committed by groups of individuals.[17] Notwithstanding the formidable limitations of the reach of those laws, advocates and Congress recognized that no federal law provided a federal civil rights cause of action for the most common form of gender violence, that committed by private individuals.[18] The goals can be thought of as two-fold: as a practical tool that would provide a cause of action for survivors, and as an aspirational, or symbolic remedy that would more accurately capture the nature of the harm. This re-framing would transform the terms of debate, would bring public attention to its

11. Morrison, 529 U.S. 598 (2000).

12. Goldscheid, *Struck Down but Not Ruled Out*, *supra* note 10. *See also, e.g.*, Andrea Brenneke, *Civil Rights Remedies for Battered Women: Axiomatic & Ignored*, 11 Law & Ineq. 1, 39-43 (1992) (discussing state civil rights remedies for gender violence).

13. *See, e.g.*, *supra* notes 9 and 10.

14. *See, e.g.*, Goldfarb, *supra* note 9, at 72-73.

15. Civil Rights Act of 1964, 42 U.S.C. § 2000e-17 (2018) [hereinafter Title VII].

16. 42 U.S.C. § 1983 (2018).

17. 42 U.S.C. §1985(3) (2018).

18. *See, e.g.*, Goldfarb, *supra* note 9, at 72-73.

severity and impact, and would counter the historic gender subordination that fuels and perpetuates abuse.[19]

The VAWA Civil Rights Remedy, as enacted, provided a private right of action for a "crime of violence" that was "gender-motivated."[20] It made clear that a claim would not be dependent on any associated criminal proceeding and would apply regardless of the relationship between the parties.[21] During the six years the law was in effect, over 60 reported decisions invoked the law.[22] The legislative history of the VAWA Civil Rights Remedy directed courts to analyze the two-part "gender-motivation" requirement in the same way it would assess bias in other civil rights statutes, by evaluating the "totality of the circumstances" for evidence such as epithets, patterns of behavior, statements evincing bias, and other circumstantial as well as direct evidence.[23] Despite concerns before its enactment that the statutory definitions would preclude relief, most courts recognized that claims alleging domestic violence and sexual assault satisfied the statutory elements.[24]

Nevertheless, challenges to the law's constitutionality proved successful, and the Supreme Court struck down the law in *United States v. Morrison*.[25] The Court deemed the law beyond Congress' powers under both the Commerce Clause and under Section 5 of the Fourteenth Amendment.[26] Following that decision, proposals were introduced in Congress that would retain the essence of the private right of action but would include a "jurisdictional element" that would require proof of economic impact in each case, to address the *Morrison* Court's concerns

19. *See, e.g.*, Goldscheid, *Meaningful Paradigm*, *supra* note 3 at 743-45; Goldscheid, *Struck Down but Not Ruled Out*, *supra* note 10, at 160-65.

20. 42 U.S.C. § 13981(b), (d)(1) - (2) (1994), overruled by U.S. v. Morrison, 529 U.S. 598 (2000). The statute contained a two-part definition of the term "crime of violence," under which the plaintiff first would have to establish that the "act or series of acts . . . would constitute a felony against the person" or "against property if the conduct presents a serious risk of physical injury to another," 42 U.S.C. § 13981 (d)(2)(A); and that the act came within the meaning of 18 U.S.C. § 16 (1994), which is a federal statute defining "crime of violence." To establish the "gender motivat[ion]" element, a plaintiff would have to prove that the act was committed "because of gender or on the basis of gender," and "due, at least in part, to an animus based on the victim's gender." 42 U.S.C. § 13981(d)(1) (1994) (subsequently repealed).

21. 42 U.S.C. § 13981(e)(1) & (2).

22. *See, e.g.*, Goldscheid, *Struck Down but Not Ruled Out*, *supra* note 10, at 164-65; Julie Goldscheid & Risa E. Kaufman, *Seeking Redress for Gender-Based Bias Crimes – Charting New Ground in Familiar Legal Territory*, 6 MICH. J. OF RACE & L. 265, 271-83 (2001) (reviewing decisions, including those interpreting the "crime of violence" and "gender motivation" elements, respectively).

23. *See* S. Rep. No. 103-138, at 52-53, 64 (1993); *see also, e.g.*, Julie Goldscheid, *Gender-Motivated Violence: Developing a Meaningful Paradigm for Civil Rights Enforcement*, 22 Harv. Women's L.J. 123, 130, 142-48 (1999); Goldscheid & Kaufman, *supra* note 22, at 271-73.

24. Goldscheid & Kaufman, *supra* note 22, at 261, 271-83.

25. Morrison, 529 U.S. 598 (2000).

26. *Id.* at 617, 627.

that the 1994 remedy, as written, reached beyond Congress' Commerce Clause powers.[27] That proposal did not advance in Congress.[28]

The *Morrison* Court invited local responses. As Justice Rehnquist opined:

> . . . If the allegations here are true, no civilized system of justice could fail to provide [Christy Brzonkala] a remedy for the conduct of respondent Morrison. But under our federal system that remedy must be provided by the Commonwealth of Virginia, and not by the United States.[29]

It further opined that it could:

> . . . think of no better example of the police power, which the Founders denied the National Government and reposed in the States, than the suppression of violent crime and vindication of its victims.[30]

Indeed, a few jurisdictions took up the Court's invitation to enact state and local laws.[31] California, Illinois, New York City, and Westchester enacted state and local civil rights remedies modeled after the federal law.[32] However, the VAWA Civil Rights Remedy was not the first legislative enactment to frame gender violence as a civil rights violation. State civil rights remedies, many of which were on the books before VAWA's enactment, provide civil relief for gender-motivated violence. Some of those laws are freestanding, and some are linked to states' bias crime or civil rights statutes.[33] Nevertheless, those laws have not been widely publicized or widely used.

In the wake of the #MeToo movement, when high-profile and high-

27. *See, e.g.*, Violence Against Women Civil Rights Restoration Act of 2000, H.R. 5021, 106th Cong. (2000).

28. Nothing would preclude reintroduction of the Violence Against Women Civil Rights Restoration Act of 2000 or a modified version of a similar law. The scope and utility of such a proposal is beyond the scope of this essay.

29. Morrison, 529 U.S. at 627.

30. *Id.* at 618.

31. *See* Goldscheid, *Struck Down but Not Ruled Out*, *supra* note 10, at 165.

32. *Id.* at note 45 (citing Cal. Civil Code § 52.4 (West 2004); 740 Ill. Comp. Stat. Ann. 82/10 (West 2004); N.Y.C. Admin. Code § 8-901 (2000); Westchester County, NY, Laws of Westchester County ch. 701 (2001), and noting that New York City's City Council expressly referenced the *Morrison* decision in its legislative findings stating that it enacted this law "[i]n light of the void left by the Supreme Court's decision," to ensure that victims had an "officially sanctioned and legitimate cause of action for seeking redress for injuries resulting from gender-motivated violence." N.Y.C. Admin. Code § 8-902 (2000)).

33. For a review of those laws as of 2005, *see, e.g.*, Goldscheid, *Struck Down but Not Ruled Out*, *supra* note 10. *See also infra* Section II.B.

net-worth individuals are being held to account, and when reports of sexual violence that occur outside traditional employment settings are capturing public attention, those laws may be of increased utility. Employment trends leaving fewer workers employed in settings covered by traditional federal and state antidiscrimination laws expose gaps in existing civil rights frameworks and render additional remedies all the more important.[34]

II. Survey of State Civil Rights Remedies

State civil rights remedies providing a private cause of action against someone who has committed an act of gender-motivated violence take several different approaches. They can roughly be categorized as follows: (1) laws enacted after *United States v. Morrison*, which track the general structure of the VAWA Civil Rights Remedy; and (2) civil remedies provided as part of or in connection with the state's civil rights laws, which are framed as: (a) those providing a civil cause of action for bias-motivated violence or intimidation based on a protected category, including "sex" or "gender;" and (b) those providing a civil cause of action for interference with other state or federal rights, which include the right to be free from gender-based violence.[35] This section will discuss each in turn.[36]

A. Post-Morrison Provisions Modeled on VAWA Civil Rights Remedy[37]

1. California

California's anti-gender violence statute, enacted in response to the *Morrison* decision, provides redress virtually identical to the prior

34. *See, e.g.*, Yuki Noguchi, *Freelanced: The Rise of the Contract Workforce*, https://www.npr.org/2018/01/22/578825135/rise-of-the-contract-workers-work-is-different-now, NPR (Jan. 22, 2018) (discussing NPR/Marist poll finding that one in five jobs in America is held by a worker under contract).

35. This review of state laws includes those that apply to gender violence committed at work or in educational institutions, but that are not limited to those settings. It does not survey the statutory frameworks available in every state specifically providing redress for sex discrimination, including sexual harassment and assault, at work or in educational institutions. Although some of those employment discrimination statutes allow for individual liability, their main focus is on institutional, not individual, accountability.

36. In addition, see the attached Appendix A, listing each state's statute with the associated citation, for easy reference.

37. In addition to the statutes discussed below, Minnesota's statute providing a civil remedy for bias-motivated violence tracks the structure of the VAWA Civil Rights Remedy, even though it was enacted while VAWA was still in effect. *See infra* notes 132 to 135 and accompanying text.

VAWA remedy. The statute affords a right of action for victims of gender violence and authorizes recovery of damages, injunctive relief, and related attorney fees in a civil suit against the individual who committed harm.[38] Though the case law interpreting this statute is limited, it provides some insight into how courts may interpret the statutory requirements.[39] The statute sets out two alternative bases for establishing a claim: either (1) a criminal offense involving the use, attempted use, or threatened use of physical force where the offense was committed, at least in part, based on the gender of the victim; or (2) the physical intrusion of a sexual nature under coercive conditions.[40] A few decisions have interpreted the first definition, in which claims would be based on an underlying criminal offense with physical force that is based in part on gender animus. In *F.P. v. Monier*, the California Supreme Court affirmed a trial court's judgment that the plaintiff had alleged the requisite criminal offense.[41] The decision was based on numerous allegations, including that the 17-year old defendant had molested plaintiff numerous times when she was 10 years old and that he committed acts of unlawful penetration, sodomy, and oral copulation.[42]

Neither of the two other reported decisions analyzing this element found it to be satisfied. In *Harper v. Lugbauer*, the plaintiff alleged that

38. Cal. Civ. Code § 52.4 (2002). The statute defines "gender" to mean sex and also includes a person's gender identity and gender expression. "Gender expression" means a person's gender-related appearance and behavior, whether or not stereotypically associated with the person's assigned sex at birth. The statute defines gender violence as a form of sex discrimination and specifies that a claim be based on either (1) one or more acts that would constitute a criminal offense under state law that has as an element the use, attempted use, or threatened use of physical force where the offense was committed, at least in part, based on the gender of the victim; or (2) the physical intrusion of a sexual nature under coercive conditions. Cal. Civ. Code § 52.4(c). Victims of gender violence may file a claim in either superior court or small claims court within three years of the offense (or for minors, the latter of eight years after the date of majority, or three years from the date that the plaintiff discovers or should have discovered the related injury after reaching majority). The statute also explicitly precludes employer vicarious liability for the actions of their employees. Cal. Civ. Code § 52.4. This enactment complements other bias-crime-related legislation already in effect in California. *See infra* Section II.B.I.a.

39. In a noteworthy decision covering the right of a survivor to bring a gender violence claim in court, though not interpreting the substantive terms of the civil rights statute, a California appellate court held that an arbitration agreement covering "any dispute" between a nurse recruiting company and hospital company arising "out of the services contracted for in" the nurse recruitment contract did not cover claims by the recruiting company and its chief executive officer against the hospital company and its vice president for gender-based violence, gender violence, assault, and false imprisonment, arising from the employees' intimate relationship; possibility of alleged domestic assault by employee of one company against employee of the other could not have been within parties' contemplation at the time of the agreement, even if it would not have occurred but for the business relationship between companies. RN Solution, Inc. v. Catholic Healthcare West, Cal.Rptr.3d 892 (App. 1 Dist. 2008).

40. Cal. Civ. Code § 52.4 (2002).

41. F.P. v. Monier, 3 Cal. 5th 1099, 1115 (Cal. 2017).

42. Id.

several defendants, including some of her neighbors and various city employees, engaged in a criminal conspiracy to sexually assault and rape the plaintiff, which had occurred many years earlier.[43] The court analyzed the web of defendants and found that the plaintiff did not provide any evidence tying defendants' unflattering statements about her to any genuine issue of fact evincing an agreement by the defendants to commit any act defined by the statute.[44] The court ruled that there were insufficient facts to establish an underlying criminal conspiracy and, therefore, granted defendants' motion for summary judgment.[45]

Similarly, in *Greenwald v. Bohemian Club, Inc.*, the plaintiff, a cook at a private club, alleged three criminal offenses based on a purported sexual assault and subsequent harassment by the club's director of human resources and harassment by other employees.[46] The court dismissed her sexual assault and battery allegations because they fell outside of the three-year statute of limitations.[47] The court concluded that the remaining allegation, defendant's threat to overload the plaintiff's work schedule if she filed a complaint, did not satisfy the statutory requirement of a gender-motivated criminal offense with physical force.[48]

With respect to the second means of establishing a claim, courts have upheld claims based on allegations of physical invasions of a sexual nature that occurred under coercive conditions, regardless of a particular showing of gender animus. This showing was established under the particularly appalling facts presented in *F.P. v. Monier*, discussed above.[49] Similarly, a California court found a triable issue of fact as to whether a supervisor coerced the plaintiff into committing sexual acts in *Doe v. Starbucks, Inc*.[50] There, the minor plaintiff was a barista at a local Starbucks and claimed that her shift supervisor coerced her into having repeated sexual encounters with him. The plaintiff alleged that her supervisor repeatedly asked her out and that she finally said "yes" to make him stop asking.[51] Her supervisor kept demanding sexual favors and the plaintiff complied because she felt she had to or she would lose

43. Harper v. Lugbauer, No. 11-CV-01306-JST, 2014 WL 1266305, at *17-19 (N.D. Cal. Mar. 21, 2014).

44. *Id.* at *17.

45. *Id.* at *18-20.

46. Greenwald v. Bohemian Club, Inc., No. C07-05261 WHA, 2008 WL 2331947, at *1, 4, 5 (N.D. Cal. June 4, 2008).

47. *Id.*

48. *Id.*

49. *See supra* note 39, at 1085.

50. Doe v. Starbucks, Inc., No. SACV 08-0582 AG CWX, 2009 WL 5183773, at *1, 4-5 (C.D. Cal. Dec. 18, 2009).

51. *Id.* at *4-5.

her job.[52] Their encounters continued for months and, when a coworker asked the plaintiff about it, her supervisor yelled at the plaintiff for confirming it and claimed there was no coercion.[53] The court denied the defendant's motion to dismiss and the case was later settled out of court.[54] Two additional decisions included Section 52.4 claims based on coercive sexual intrusion, but the reported decisions did not address the Section 52.4 claim.[55]

2. Illinois

The Illinois Gender Violence Act ("IGVA"), enacted in 2004, provides a private civil cause of action for any person who has been subjected to "gender-related violence."[56] Although there is not a large body of case law, a few decisions arose from workplace-related harassment and a few involved assaults by medical professionals. For example, in *Smith v. Farmstand*, the court affirmed a jury verdict for a male former butcher who sued his former employer and other employees for race and sex discrimination.[57] His IGVA claims against two employees were based on testimony involving allegations of

52. *Id.*

53. *Id.* at *5.

54. *Id.* at *17.

55. *See* Kelly v. Cty. of Santa Clara, No. C 04-03676 JW, 2005 WL 588569, at *1-2 (N.D. Cal. Feb. 15, 2005) (plaintiff, who was walking her dog, alleged that police officer ordered her to secure her dog, hit her from behind, arrested her, and placed her in the back seat of his car where he put his hands between her thighs and on her breast; defendant moved to dismiss the federal Section 1983 claim and negligence tort claims and case settled out of court.); Grimes v. Knife River Const., No. CIV. S-13-02225 KJM, 2014 WL 1883812, at *1 (E.D. Cal. May 12, 2014) (plaintiff alleged that her supervisor had subjected her to sexual harassment, ranging from inappropriate sexual comments to sexual contact, accompanied by threats to dissuade her from reporting his behavior; reported decision addressed procedural issues and the case was settled before trial.).

56. 740 Ill. Comp. Stat. Ann. 82/1 (2004), *et seq*. The IGVA authorizes an award of "damages, injunctive relief, or other appropriate relief against a person or persons perpetrating" the gender-related violence. *Id.* § 82/10. The term "gender-related violence" is defined in the IGVA as: (1) one or more acts of violence or physical aggression satisfying the elements of battery under the laws of Illinois that are committed, at least in part, on the basis of a person's sex, whether or not those acts have resulted in criminal charges, prosecution, or conviction; (2) a physical intrusion or physical invasion of a sexual nature under coercive conditions satisfying the elements of battery under the laws of Illinois, whether or not the act or acts resulted in criminal charges, prosecution, or conviction; or (3) a threat of an act described in item (1) or (2) causing a realistic apprehension that the originator of the threat will commit the act. *Id.* § 82/5. Under Illinois law, "perpetrated" is defined to include "either personally committing [,] . . . encouraging or assisting" an act of gender-related violence. *Id.* § 82/10. "Battery" is interpreted to simply include the unauthorized touching of another person. Luss v. Vill. of Forest Park, 377 Ill. App. 3d 318, 331, 878 N.E.2d 1193, 1204 (2007). Accordingly, it appears that any type of direct, assisted, or encouraged gender-based violence involving physical contact is a battery falling within the purview of the IGVA.

57. Smith v. Farmstand, No. 11-CV-9147, 2016 WL 5912886, at *9-11 (N.D. Ill. Oct. 11, 2016) (claim involving harassment by a man of a male).

inappropriate touching of a sexual nature.[58] Similarly, a federal district court in *Zamudio v. Nick & Howard LLC* denied an employer's motion to dismiss IGVA claims based on allegations that "going up the skirts of female employees was [Defendant's] preferred method of harassment," and that other female employees were subjected to similar lewd touching and unwelcome sexual advances.[59]

Other decisions involve sexual assaults by medical professionals. In *Flores v. Santiago*, an appellate court upheld plaintiff's claims for common law battery and violation of the IGVA based on allegations that during her visits to the defendant doctor's office, he doped her with narcotics and engaged in sexual relations.[60] Similarly, in *Johnson v. David*, the court upheld an IGVA claim based on allegations that the pre-employment physical exam to which the plaintiff was subjected was substantially different than what was required, specifically, "because the penile portion of the examination was not a necessary part of the examination and did not relate to anything a correctional officer would be doing in his line of work."[61]

Other decisions confirm that the term "person" under the IGVA is limited to natural persons, meaning that the IGVA does not apply to corporations and that a cause of action may only be brought against an "individual human being."[62] In *Doe ex rel. Smith v. Sobeck*, the guardian of a developmentally disabled female participant in a developmental training program brought an action against the program's management under the IGVA and other federal and state laws.[63] The complaint alleged that the program's management had failed to separate and protect the female participant from the advances and ultimate rape committed by a male participant in the program.[64] After noting that the IGVA does not apply to corporations, the court reasoned that a claim could be alleged against the individual managers if they "personally encouraged or assisted" in an act of gender-related violence, but that

58. Id.

59. Zamudio v. Nick & Howard LLC, No. 15 C 3917, 2015 WL 6736679, at *2 (N.D. Ill. Nov. 4, 2015).

60. Flores v. Santiago, 986 N.E.2d 1216, ¶ 6, (Ill. App. Ct. 2013).

61. Johnson v. David, No. 12-CV-1038-SCW, 2017 WL 1090811, at *3 (S.D. Ill. Mar. 23, 2017).

62. *See* Doe v. Freeburg Cmty. Consol. Sch. Dist. No. 70, No. 14-CV-674-NJR-DGW, 2015 WL 3896960, at *4 (S.D. Ill. June 23, 2015) ("The context surrounding the word 'person' in the Gender Violence Act is sufficient to overcome the presumption under the Statute on Statutes that the term 'person' includes corporations."); Fuesting v. Uline, Inc., 30 F. Supp. 3d 739, 743 (N.D. Ill. 2014) (internal quotations omitted); Doe ex rel. Smith v. Sobeck, 941 F. Supp. 2d 1018, 1026-1027 (S.D. Ill. 2013).

63. 941 F. Supp. 2d 1018 (S.D. Ill. 2013).

64. *Id.* at 1021-1022.

plaintiff had failed to plead such a claim.[65]

3. New York City

In 2000, the New York City Council unanimously passed its Victims of Gender-Motivated Violence Protection Act ("GMVA") to address "the void" left in light of the *Morrison* decision.[66] In significant ways, the GMVA goes further than the civil remedy created as part of the 1994 VAWA. For example, it grants a longer statute of limitations (seven years compared to VAWA's four).[67] It defines a crime of violence to include misdemeanors (as defined by state or federal law) as well as felonies.[68] Additionally, the GMVA, like other state and local remedies, allows for recovery of attorneys' fees and punitive damages, which are not typically available in tort claims under New York law.[69]

Nevertheless, limited case law interprets the GMVA.[70] The first substantive ruling was handed down about two years after it was enacted, in *Cadiz-Jones v. Zambretti*.[71] The decision was notable in that it allowed for pending cases under the VAWA civil cause of action to be continued in state court by interpreting the GMVA to be applicable retroactively.[72] Since then, at least one case differentiated VAWA Civil Rights Remedy cases that were pending when *Morrison* was decided, such as *Cadiz-Jones*, from other cases where the alleged conduct occurred prior to the enactment of Local Law 73, but where no VAWA civil rights claims were pending..[73]

More recently, a trial court questioned the GMVA's seven-year statute of limitations, which was heralded at the act's passage as crucial

65. *Id.* at 1027-28.

66. NYC Administrative Code § 8-902 (2000) (declaring legislative intent). The law, NYC Administrative Code § 8-901 et seq. (2000) [hereinafter "GMVA"], provides for a civil cause of action for "any person claiming to be injured by an individual who commits a crime of violence motivated by gender" and the relief provided includes: (1) compensatory and punitive damages; (2) injunctive and declaratory relief; (3) attorneys' fees and costs; and (4) such other relief as a court may deem appropriate. *See* NYC Administrative Code § 8-904. Violence "motivated by gender" is defined as "a crime of violence committed because of gender or on the basis of gender, and due, at least in part, to an animus based on the victim's gender." *See id.* at § 8-903-b.

67. *Id.* at § 8-905-a.

68. *Id.* at § 8-903.

69. *Id.* at § 8-904(3) (authorizing recovery of attorneys' fees and costs). *See Local Domestic Violence Law Elicits Applause and Questions*, 224 N.Y.L.J. p. 5 col. 6 (Dec. 15, 2000).

70. In addition to the decisions discussed below, the court in Cartright v. Lodge, No. 15-CV-9939, 2017 WL 1194241 (S.D.N.Y. Mar. 30, 2017), granted a default judgment and assessed damages in a case based on allegations of violence and intimidation, including claims under the GMVA).

71. No. 123772/00, 2002 N.Y. Misc. LEXIS 2043, (N.Y. Sup. Ct. Apr. 9, 2002).

72. *Id.* at **7-8.

73. *See* Adams v. Jenkins, No. 115745/03, 2005 WL 6584554 (N.Y. Sup. Ct. Apr. 22, 2005) (refusing to apply Local law 73 retroactively).

since "studies have shown that victims of domestic violence often are not able to share information regarding their injuries with others until years later."[74] In *Cordero v. Epstein*, an alleged child abuse victim brought claims under Local Law 73 along with other civil claims against the alleged perpetrator.[75] The court dismissed the claim as untimely, finding that the City Council's extension of the statute of limitations for certain intentional torts violated the preemption doctrine.[76]

A decision in one case involving claims based on multiple allegations spanning a number of years and several states nevertheless dismissed the claims. In *Gottwald v. Sebert*, recording star, Kesha Rose Sebert ("Ke$ha") brought claims against her recording company's executive and his companies based on allegations of sexual assault, sexual harassment, and contractual violations.[77] The court dismissed the Local Law 73 claims, all of which were based on actions that took place outside of New York City and which would have been time-barred under New York law.[78] The court additionally opined that, "[a]lthough [defendant's] alleged actions were directed to [plaintiff], who is female, the [counter claims] do not allege that defendant harbored animus toward women or was motivated by gender animus" when he allegedly behaved violently toward plaintiff.[79] The court went on to state that "[e]very rape is not a gender-motivated bias crime,"[80] though in so doing it appeared to reference New York State's criminal bias crimes law rather than the VAWA civil rights remedy on which the New York City law was modeled. The court cited a number of general employment discrimination cases but not the extensive and analogous case law interpreting claims of sexual violence and harassment as sex discrimination.[81] Moreover, it ignored the substantial legislative history discussing and case law interpreting, "gender-motivation" under the VAWA Civil Rights Remedy while it was in effect.[82]

Two recent decisions interpreted the New York City law in claims that could be seen as spurred by the #MeToo movement. In *Breest v. Haggis*, a 26-year-old woman who worked as a freelance publicist for a company that hosts film premiers alleged that she was sexually assaulted

74. *See Local Domestic Violence Law Elicits Applause and Question*, 224 N.Y.L.J. p. 5 col. 6 (Dec. 15, 2000).

75. 869 N.Y.S.2d 725 (N.Y. Sup. Ct. 2008).

76. *Id.* at 730.

77. Gottwald v. Sebert, 869 N.Y.S.2d 725 (N.Y. Sup. Ct. 2008).

78. *Id.* at *9-10.

79. *Id.*

80. *Id*.

81. *Id*.

82. *See supra* notes 22 to 24 (tracing decisions under the VAWA civil rights remedy and referencing legislative history).

by the defendant, who was a famous director, producer, and screenwriter.[83] The judge rejected the defendant's motion to dismiss her GMVA claims and concluded that the allegations of sexual assault, of comments indicating "disrespect for women," of the defendant's "enjoyment of some level of violence [as] against women," and lack of provocation or confusion sufficiently alleged "gender-motivation" as required by the statute.[84]

By contrast, the Southern District of New York dismissed claims brought by a former Fox News correspondent against Fox and Charles Payne, one of its anchors, based on allegations of sexual assault, rape, sexual harassment, and other claims.[85] With respect to the GMVA claims, the trial court concluded that the allegations failed to state any facts showing defendant's "hostility based on gender" or any allegations that the defendant "harbored or expressed any animosity toward women."[86] In employing that reasoning, the court disregarded the City Council's legislative history that the GMVA was enacted to fill the void left by *Morrison*.[87] Additionally, it ignored the VAWA civil rights remedy's extensive legislative history directing courts to interpret the "gender motivation" requirement in the same way it would assess bias in other civil rights statutes.[88] That case law makes clear that the statutory language requiring "animus" was not to be equated with "malicious" motivation, but instead, confirms that "animus" requires "at least a purpose that focuses upon women *by reason of their sex*."[89] Congress explicitly rejected suggestions to require proof of "animosity;" instead, it sought, through the "animus" requirement, to dispel suggestions that disparate impact claims could be brought under the statute.[90] Notably, defendants initially challenged the law's constitutionality, which led Public Advocate Letitia James to call for the New York City's Corporation Counsel to defend defendant Payne's constitutional challenge to Local Law 73; after the Corporation Counsel sought to intervene to defend the law's constitutionality, Mr. Payne announced his decision to drop his constitutional challenge, though he continues to defend himself on the merits.[91]

83. Breest v. Haggis, No. 161137/2017 (Sup. Ct. N.Y.) (Complaint) (on file with author).

84. Breest v. Haggist, No. 161137/2017 (Sup. Ct. N.Y. Jul. 26, 2018) (transcript p. 71 line 12- p. 73 line 7) (on file with author).

85. Hughes v. Twenty-First Century Fox, Inc., 304 F. Supp. 3d 429, 438 (S.D.N.Y. 2018).

86. *Id.* at 454-56.

87. *See supra* note 66 (referencing City Council's legislative history).

88. *See* S. Rep. No. 103-138, at 52-53, 64 (1993); *see also, e.g.*, Goldscheid, *supra* note 9 at 130, 142-48; Goldscheid & Kaufman, *supra* note 22 at 271-73.

89. Bray v. Alexandria Women's Health Clinic, 506 U.S. 263, 270 (1993).

90. *See* NOURSE, *supra* note 9, at 29-33 (recounting legislative history).

91. *See* Kelly Mena, *PA James Victory: City's Victims Protection Law Upheld*, KINGS COUNTY

4. Westchester County

Following New York City's lead, in 2001, the County of Westchester enacted a Victims of Gender-Motivated Violence Protection act ("VGVP")[92] that is very similar to New York City's Local Law 73, although unlike Local Law 73, the VGVP does not expressly provide for a longer statute of limitations. To date, there are no reported decisions interpreting the Westchester law.

5. Rockland County

Like New York City and Westchester County, Rockland County also enacted a civil rights remedy for gender violence, modeled after the federal law.[93] In the sole publicly-available decision interpreting the law, a federal district court held that the law was not unconstitutionally vague.[94] Critical to the court's conclusion was the defendant's failure to offer authority in support of his argument that gender animus, or motivation, cannot be determined as a factual matter.[95]

B. Civil Remedies for Gender Violence in State Bias Crime Provisions

State statutes providing a private right of action for bias-motivated violence often are part of the state's civil rights laws. Those laws can roughly be grouped into two categories: (1) those framed in terms of civil remedies enacted as part of the state's anti-bias crime provisions and civil rights statutes encompassing violence or intimidation motivated by "sex" or "gender;" and (2) those framed more generally in terms of civil remedies for damage resulting from violations of, or interfering with, state or federal rights. This section reviews those laws and the caselaw interpreting them. It does not address statutory provisions providing civil remedies for bias-motivated violence based on characteristics other than gender.[96] Nor does it review laws providing

POLITICS (Feb. 21, 2018), https://www.kingscountypolitics.com/pa-james-victory-citys-victims-protection-law-upheld/; *see also* Hughes v. Twenty-First Century Fox, Inc., No. 1:17-cv-07093-WHP (S.D.N.Y. filed Feb. 19, 2018), https://www.bloomberglaw.com/product/blic/document/X1Q6NTAUQ282?documentName=60.pdf&fmt=pdf (withdrawing defendant's constitutional challenge following City of New York's request to intervene in support of the law's constitutionality).

92. *See* Westchester County, NY., Code of Ordinances § 701.01 (2001).

93. Rockland County, N.Y., Admin. Code § 279-3 (2001).

94. *See* Fierro v. Taylor, No. 11 Civ. 8573, 2012 WL 6965719, *2 (S.D.N.Y. Oct. 22, 2012).

95. *Id.* at *2-3.

96. Notably, a few states provide civil remedies as part of their bias-crime statutes for bias-motivated violence based on protected characteristics, including race, color, gender identity and sexual

a criminal remedy or that authorize sentence enhancement for criminal prosecutions based on bias-motivated violence, even when the violence is based on gender.[97]

1. Private right of action for gender-based violence or intimidation

a. California

In addition to and preceding the post-*Morrison* legislation discussed above,[98] California law provides a civil remedy for bias-motivated violence as part of its "hate crime" law. In 1976, the California Legislature enacted the Ralph Act as Section 51.7 of its civil code, thereby providing civil redress for gender violence and also creating a new right to be free from violence.[99] Approximately 50 written decisions consider gender bias-based claims under this statute; however, only a few decisions interpret the key statutory elements: (1) the act of violence, or intimidation by threat of violence, and (2) whether the act was motivated by the victim's identity in a listed protected class.

A recent decision easily found that allegations of sexual abuse and rape satisfy both elements of the statute. In *Roe v. California Department of Developmental Services,* the court upheld the civil rights claims on behalf of a woman with developmental disabilities and mental illnesses who had been sexually assaulted by the "psychiatric

orientation, but not sex or gender. *See, e.g.*, Conn. Gen. Stat. § 52-571c (2017); Nev. Rev. Stat. § 41.690 (2014); Or. Rev. Stat. §§ 166.155, 166.165 (2013); R.I. Gen. Laws § 9-1-35(a) (2014).

97. For examples of statutes providing criminal penalties or sentence enhancements, but not civil remedies, for "hate crimes" based on sex or gender, *see, e.g.*, Ariz. Rev. Stat. §41-1750(A)(3) (2018); Haw. Rev. Stat. § 706-662 (1972); La. Rev. Stat. Ann. 9:2799.2 (2017); Md. Crim. Law Code § 10-304 (2009); Mo. Ann. Stat. § 537.523 (2016); Mo. Ann. Stat. § 574.085 (2017); N.H. Stat. § 651:6 (2018); N.M. Stat. Ann.§ 31-18B-3 (2007); N.D. Stat. § 12.1-14-04 (2017); Tex. Code Crim. Proc. Art. 42.014 (2017); Wy. Stat. Ann. §6-9-102 (2001); *see also, e.g.*, M.G.L.A. ch. 265 §39 (2014) (providing sentence enhancement for bias crimes based, *inter alia*, on gender identity and sexual orientation, but not "sex" or "gender").

98. *See supra* Section II.A.1.

99. Cal. Civ. Code 51.7(a) (2015). The law provides, in pertinent part, that: "All persons within the jurisdiction of this state have the right to be free from any violence, or intimidation by threat of violence, committed against their persons or property because of political affiliation, or on account of any characteristic listed or defined in subdivision (b) or (e) of Section 51, or position in a labor dispute, or because another person perceives them to have one or more of those characteristics. The identification in this subdivision of particular bases of discrimination is illustrative rather than restrictive." *Id.* Section 51, subdivision (b) also provides: "All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever." Cal. Civ. Code 51(b). A person aggrieved by a violation of the Ralph Act may bring a civil action within three years of the alleged act to recover actual damages, a civil penalty of $25,000, exemplary damages, and an award of attorney fees. Cal. Civ. Code 52(b).

technician" assigned to work with her in her residential facility.[100] The court concluded that "rape is considered a 'violent' offense . . . regardless of whether the defendant employed physical force."[101] It dismissed arguments that the rape was not "because of gender" as "a silly argument," citing Title VII and VAWA civil right remedy cases similarly recognizing sexual assault and rape as gender based crimes.[102]

Courts analyzing other allegations of gender violence have parsed the elements more closely. For example, courts have found the first element satisfied where facts alleged violence or threats of violence. For example, in *Winarto v. Toshiba America Electronics Components, Inc.*, a female employee brought a claim against her employer alleging gender violence on the basis that her coworker often kicked her, feigned kicking her, called her "chick," said "I'm going to hurt you again, Chick," messed up her hair claiming it was a "girl thing," and grabbed handkerchiefs from her pocket.[103] The court found that violence was committed where at least one instance of kicking was undisputed and where several more acts were alleged.[104] Although the acts of violence in *Winarto* involved acts of kicking, the court confirmed: "there is no requirement that the violence be extreme or motivated by hate in the plain language of the sections, or in the cases construing them; there is also no requirement that the act constitute a crime."[105]

The *Winarto* court articulated a "reasonable person" standard for determining whether a plaintiff was intimidated by a threat of violence.[106] There, the court found that the plaintiff was intimidated by a threat of violence from the fact that she was injured while trying to run away from the defendant after the defendant said, "Chick, you'd better walk faster or I am going to hurt you again."[107] The court also noted that after being exposed to the defendant's acts of violence, it was reasonable for her to be intimidated by his later, less violent acts of invading her personal space and touching her.[108]

Similarly, in *Hern*, the plaintiff claimed gender violence based on several incidents of her neighbor spitting in her direction, following her, telling her that he was "watching" her, and leaving decapitated rats on her patio.[109] The court found that the jury was permitted to consider the

100. No. 16-cv-03745, 2017 WL 2311303 (N.D. Cal. May 26, 2017).
101. Id. at 9.
102. Id. at 10-11.
103. Winarto v. Toshiba Am. Elec. Components, Inc., 274 F.3d 1276, 1290 (9th Cir. 2001).
104. *Id.* at 1289.
105. *Id.*
106. *Id.*
107. *Id.* at 1290.
108. *Id.*
109. Hern v. McEllen, No. A125358, 2011 WL 2112538, *4-5 (Cal. Ct. App. May 21, 2011)

defendant's entire course of conduct as it relates to the plaintiff's gender—it need not limit its consideration to acts that contemporaneously referenced plaintiff's gender.[110]

Notwithstanding the *Winarto* court's caution, at least one court interpreted the case to require a threatened use of physical force in order to establish "intimidation by threat of violence." In *Greenwald*, a former catering employee filed Section 51.7 gender violence claims alleging sexual harassment by her supervisor, based on allegations including: battery from an incident where her coworker rammed her with a serving cart; harassment based on management's intentional duties to perform physically demanding tasks after knowing about a work-related injury; and harassment by her supervisor threatening to overload her work schedule.[111] However, the statute of limitations had run on all claims except for those based on the supervisor's threat to overload her work schedule, which the court found did not satisfy the statutory requirement.[112]

Another court rejected a claim based on allegations that a landlord's manager entered a tenant's apartment and sniffed her underwear.[113] The court rejected plaintiff's contention that "a jury should decide whether they 'could reasonably fear rape or other sexual attack by [the landlord's] resident male manager' as a result of his conduct."[114] The court found that although the defendant entered the apartment and sniffed her underwear, the defendant did not express any intention to inflict injury on plaintiffs or their property.[115] The court ruled that "[t]here can be no 'threat of violence' without some expression of intent to injure or damage plaintiffs or their property."[116]

Similarly, a court rejected a claim where there was no indication of violence. In *Gabrielle A.*, a married couple sued the county and individual social workers for claims including negligent supervision, hiring, intentional infliction of emotional distress, and violation of their civil rights after their two children were detained while waiting for their juvenile dependency case to be transferred to a different venue.[117] With respect to their civil rights claims, the court concluded that plaintiffs

(finding evidence of intimidation by threat of violence when the defendant followed the plaintiff, warned her that he was "watching" her, and left a decapitated rat on her patio).

110. *Id*. at *4-5.

111. Greenwald v. Bohemian Club, Inc., No. C 07-05261 WHA, 2008 WL 2331947, *16 (N.D. Cal. June 4, 2008).

112. *Id.* at *25-26.

113. Ramirez v. Wong, 188 Cal. App. 4th 1480 (Cal. Ct. App. 2010).

114. *Id*. at 1486.

115. *Id*.

116. *Id*.

117. Gabrielle A. v. Cty. of Orange, 10 Cal. App. 5th 1268, 1281 (Cal Ct. App. 2017).

offered no evidence to establish defendants discriminated against them and consequently dismissed their claims.[118]

When examining the second element of motivation, courts have recognized circumstantial evidence to support claims that the defendant directed his actions based on the victim's class-based identity. A single statement made during an incident may be enough. In *Myers*, the court determined that plaintiff's testimony that a police officer's reference to her as an "ugly white bitch" during an incident was sufficient evidence for a jury to conclude that race and sex were motivating factors for the police officer's conduct.[119]

In *Hern*, described above, the court found that a jury could have inferred that a neighbor's repeated threatening interactions and demeaning gender-based comments confirmed that plaintiff's gender was a principal motivation for his conduct.[120] The court ruled that jurors could consider the defendant's entire course of conduct towards a plaintiff, apart from the defendant's conduct committed contemporaneously with the act.[121] Similarly, in *Winarto*, the Ninth Circuit Court of Appeals ruled that it was reasonable to infer that gender was a motivating factor because it was undisputed that the defendant derisively called the plaintiff a "chick" and messed with her hair claiming that it was a "'girl thing.'"[122] Conversely, courts have rejected claims where the complaint contained only conclusory allegations of discriminatory prejudice.[123]

b. Illinois

The Illinois Hate Crime Act ("IHCA") provides that, independent of any criminal prosecution, anyone suffering personal injury or property damage as a result of a bias crime may bring a civil suit for actual damages, punitive damages, attorneys' fees, costs, and injunctive relief.[124] Thus, under the IHCA, a plaintiff states a civil claim if he or

118. *Id.* at 1291.

119. Myers v. City and Cty. of San Francisco, No. C 08-1163 MEJ, 2012 WL 4111912, *31 (N.D. Cal. Sept. 18, 2012).

120. Hern, *supra* note 109, at *14.

121. *Id.* at *12.

122. Winarto, *supra* note 103, at 1290.

123. *See* Sullivan v. City of San Rafael, No. C 12-1922 MEJ, 2012 WL 3236058, *9 (N.D. Cal. Aug. 6, 2012) (finding no claim where plaintiff did not plead any facts to support allegations that police officers were motivated by animus against the plaintiff's homosexuality); Rodriguez v. City of Fresno, 819 F. Supp. 2d 937, 953 (E.D. Cal. 2011) (finding that although the complaint alleged in conclusory manner that plaintiff was subjected to unreasonable force because of her "race and/or gender," the complaint did not allege any facts to substantiate the claim).

124. 720 Ill. Comp. Stat. Ann. 5/12-7.1(c) (1995). *See* Ill. Comp. Stat. Ann 12-7.1 (2018) for full text of civil provision of Illinois' bias crime law. Courts interpreting the state's bias crime law have held

she alleges injury from an assault or battery that was motivated because of his or her actual or perceived gender.[125] No reported decisions apply the civil provision to gender-based violence claims.

c. Iowa

Iowa grants a civil remedy for gender violence that violates its bias crime statute.[126] However, no reported decisions apply the civil provision to gender-based violence claims.[127]

d. Michigan

In Michigan, individuals who violate the state's ethnic intimidation statute may be civilly liable to their victims.[128] The statute encompasses bias crimes based on gender[129] and can be brought "regardless of the existence or result of any criminal prosecution."[130] A gender violence survivor bringing a civil claim under Michigan's ethnic intimidation statute may seek an injunction, actual damages (including damages for emotional distress), or other applicable relief.[131] Despite the availability of a civil cause of action for gender-violence survivors, no reported decision addresses claims brought by such survivors under the ethnic intimidation statute.

e. Minnesota

In Minnesota, gender violence survivors have a civil cause of action

that bias need not have been the sole motive for the conduct. *See, e.g.*, People v. Davis, 674 N.E.2d 895, 898 (Ill. App. Ct. 1996) (affirming battery conviction of white defendant who uttered racial slur, despite evidence that black victim had provoked the defendant); In re Vladimir P., 670 N.E.2d 839 (Ill. App. Ct. 1996).

125. Abdoh v. City of Chicago, 930 F. Supp. 311, 313 (N.D. Ill. 1996).

126. *See* Iowa Code Ann. § 729A.5 (1992). Accordingly, "[a] victim who has suffered physical, emotional, or financial harm as a result of a violation of this chapter due to the commission of a hate crime is entitled to and may bring an action for injunctive relief, general and special damages, reasonable attorney fees, and costs" within two years after the date of the violation. *Id.* Iowa's bias crime statute provides that, *inter alia*, "[p]ersons within the state of Iowa have the right to be free from any violence, or intimidation by threat of violence, committed against their persons or property because of their race, color, religion, ancestry, national origin, political affiliation, sex, sexual orientation, age, or disability."

127. *Cf., e.g.*, Arrington ex rel. Arrington v. City of Davenport, 240 F. Supp. 2d 984, 993 (S.D. Iowa 2003) (granting summary judgment for defendants for civil claim under § 729A.5 alleging racially biased violence by police officer where court found no evidence of racial motivation).

128. Mich. Comp. Laws § 750.147b(3) (2014).

129. *Id.* at § 750.147b (1).

130. *Id.* at § 750.147b (3).

131. *Id.* (the amount of damages may include both the greater of triple the actual damages or $2,000.00 and reasonable attorney's fees and costs).

for damages against their aggressors under the state's bias-offense statute.[132] This statute, which was enacted before the *Morrison* decision, tracks the structure of the VAWA civil rights remedy, though it also encompasses civil claims for violence based on a number of protected categories in addition to "sex."[133] Survivors may bring civil claims regardless of whether a criminal proceeding was pursued.[134] To prevail, a gender-violence survivor must prove by a preponderance of the evidence that the aggressor's violence constitutes a crime and that this violence was committed "because of" the survivor's gender.[135] Despite the availability of a civil cause of action for gender violence survivors, no reported decision addresses claims brought by such survivors under the bias-offense statute.

f. Nebraska

In Nebraska, individuals who violate the state's discrimination-based offenses statute, which includes gender, may be civilly liable to their victims.[136] Despite the availability of a civil cause of action for gender violence survivors, no Nebraska case law addresses claims brought by such survivors.[137]

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132. The bias crime statute provides, *inter alia*, for a civil cause of action against those who committed a bias crime; it defines a "bias offense" as "conduct that would constitute a crime and was committed because of the victim's or another's actual or perceived race, color, religion, sex, sexual orientation, disability[,] . . . age, or national origin"; the statute authorizes compensatory damages, including emotional distress damages, as well as injunctive or other appropriate relief, and has a six-year statute of limitations. Minn. Stat. § 611A.79 (2014).

133. *Id.*

134. *Id.* at § 611A.79.3.

135. *Id.* at § 611A.79.1, .79.3. *Cf., e.g.*, Disability Support All. v. Billman, No. 15-3649 (JRT/SER), 2016 WL 755620, *7 (D. Minn. Feb. 25, 2016) (employment case dismissed where plaintiffs pleaded no facts suggesting that defendant's "alleged conduct in violation of the ADA and the MHRA was committed because of [plaintiff's] disability. The 'because of' language in the statute required plaintiffs to prove at least something about the defendant's state of mind at the time he committed the act in question.").

136. *See* Neb. Rev. St. § 28-113 (2014) (providing, *inter alia*, for general and special damages, reasonable attorney's fees and costs, based on proof by a preponderance of the evidence "that the defendant committed the criminal offense against the plaintiff or the plaintiff's property because of the plaintiff's race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of the plaintiff's association with a person of a certain race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability"; and providing a four-year statute of limitations).

137. *Cf.* State v. Duncan, 293 Neb. 359, 370-72 (2016) (phrase "because of," in statute providing enhanced penalties for third-degree assault and other offenses committed because of a person's association with a person of a certain sexual orientation requires state to prove that defendant would not have assaulted victim but for victim's association with person of a certain sexual orientation, and evidence was sufficient to support verdict that defendant would not have assaulted victim but for victim's association with people who were homosexual, as would support application of sentencing enhancement.).

g. New Jersey

New Jersey's bias crime law, enacted in 1993, authorizes a victim of gender violence to bring a civil lawsuit for damages against the perpetrator.[138] The sole decision to address the law's substantive elements is *Hunt v. Callahan*.[139] The court affirmed the dismissal of an employment-based harassment claim after concluding that the plaintiff's supervisor "did not use offensive language" and therefore did not intend to "intimidate" her based on her gender.[140] In addition, the court opined that "[the supervisor] was merely voicing his opinion regarding acts he believed [the plaintiff] had engaged in and a political philosophy to which he believed she subscribed."[141] The only other reported decision addressing gender-based claims dismissed the "bias crime" allegations since the plaintiffs also brought claims under New Jersey's Law Against Discrimination.[142]

h. New York State

In New York, individuals who commit bias-motivated violence may be civilly liable to their victims.[143] Only one publicly-available case invokes this provision. In *Friedlander v. Waroge Met. Ltd.*, a lesbian woman alleged that she was assaulted by a restaurant's manager and patrons due to her perceived sexual and gender identities.[144] No

138. N.J. Stat. § 2A:53A-21(a) (2015) provides in relevant part that a "person, acting with purpose to intimidate an individual or group of individuals because of . . . gender [or] gender identity or expression . . . who engages in conduct that is an offense under [New Jersey's criminal code] . . . commits a civil offense" and that "any person who sustains injury to person or property as a result of a violation" of the statute "shall have a cause of action against the person or persons who committed the civil offense resulting in the injury." *Id.* at § 2A:53A-21(b). The statute requires proof by a preponderance of the evidence and allows for damages, including emotional distress damages, punitive damages, and attorney's fees and costs. *Id.* at § 2A:53A-21(d)(1). The Attorney General for the State of New Jersey may bring a civil claim against any person who violates the law in addition to the survivor/victim. *Id.* at § 2A:53A-21(c). In addition, the law provides for "injunctive relief as the court may deem necessary to avoid the defendant's continued violation." *Id.* at § 2A:53A-21(d)(3).

139. Docket No. A-2780-11T3, 2012 N.J. Super. Unpub. LEXIS 2458, at *10 (App. Div. Nov. 5, 2012).

140. *Id.* at *10-11.

141. *Id.*

142. *See, e.g.*, Gibbs v. Massey, No. 07-3604 (PGS), 2009 U.S. Dist. LEXIS 23578, *20-21 (D. N.J. Mar. 26, 2009).

143. *See* N.Y. Civ. Rights L. § 79-n (McKinney 2015) (providing that a person who suffers damages to property, physical injury, or death "in whole or in substantial part" because of a belief or perception on the part of a perpetrator regarding the victim's race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation of a person, regardless of whether the belief or perception is correct, may bring a civil action for injunctive relief, damages, or any other appropriate relief in law or equity against the person who "intentionally selects" the person or property for harm).

144. No. 017910/2011, (Sup. Ct. Queens Cty.).

responsive pleadings were filed, and a default judgment of $25,000 was eventually granted in Ms. Friedlander's favor.[145]

i. Tennessee

In Tennessee, gender violence survivors have a civil cause of action for damages against their aggressors under the state's malicious harassment statute.[146] Despite the availability of a civil cause of action for gender violence survivors, no Tennessee case law addresses claims brought by such survivors under the malicious harassment statute.

j. Vermont

In Vermont, gender violence survivors have a civil cause of action against the individual who committed a gender-based bias crime.[147] Vermont case law has not yet addressed gender violence survivors' civil claims against their aggressors under the state's bias-motivated crime statute.

k. Washington

In Washington, in addition to a criminal penalty,[148] gender-violence survivors have a civil cause of action for damages against their aggressors under the state's malicious harassment statute.[149] Despite the

145. *See Friedlander v. Waroge Met, Ltd. d/b/a/ Sizzler*, LAMBDA LEGAL, https://www.lambdalegal.org/in-court/cases/friedlander-v-waroge-met (last visited Mar. 6, 2018); *Court orders Sizzler to pay assault victim*, THE TIMES LEDGER (June 20, 2012, 7:25 PM), http://www.timesledger.com/stories/2012/25/sizzlerbeatdownsettle_fh_2012_06_21_q.html.

146. *See* Tenn. Stat. § 4-21-701 (2017) (providing for a civil cause of action for malicious harassment, for both special and general damages, including damages for emotional distress, reasonable attorney's fees and costs, and punitive damages). *See* Washington v. Robertson Cty., 29 S.W.3d 466, 471 (Tenn. 2000) (recognizing that claims of malicious harassment are "found within the Tennessee Human Rights Act, which, in general, addresses discrimination based on race, . . . sex, gender[.]").

147. *See* Vt. Stat. Ann. tit. 13, § 1457 (2014) (providing civil cause of action for injunctive relief, compensatory and punitive damages, costs and reasonable attorneys' fees, and other appropriate relief, "[i]ndependent of any criminal prosecution or [its] result[s]" against perpetrator of bias crime). Vt. Stat. Ann. tit. 13, § 1455 (2014) prohibits bias-motivated offenses and specifies criminal liability for crimes "maliciously motivated by the victim's actual or perceived race, color, religion, national origin, *sex*, ancestry, age, service in the U.S. Armed Forces, disability[,] . . . sexual orientation or gender identity[.]" In addition, the Attorney General may seek a civil penalty of up to $5,000.00, plus costs and reasonable attorney's fees for violation of the state's bias crime laws. Vt. Stat. Ann. tit. 13, § 1466 (2017).

148. *See* Wash. Rev. Code Ann. § 9A.36.080 (2010) (providing, *inter alia*, that a person is guilty of malicious harassment if "he or she maliciously and intentionally" causes physical injury or damage, or threatens a specific person or group, because of his or her perception of the victim's race, color, religion, ancestry, national origin, gender, sexual orientation, or mental, physical, or sensory handicap).

149. *See* Wash. Rev. Code Ann. § 9A.36.083 (2017) (providing a civil cause of action for malicious harassment against the harasser for actual damages, punitive damages of up to ten thousand

availability of a civil cause of action for gender-violence survivors, no Washington case law addresses claims brought by survivors under this statute.

l. Washington, D.C.

Washington, D.C. provides a civil remedy to persons incurring an injury based on an act that demonstrates the accused's prejudice based on gender, among other protected categories.[150] The sole reported decision applying the civil remedy denied the claim for lacking any allegations of bias-based criminal activity.[151]

2. Private right of action for interference with state or federal rights, including right to be free from gender-based violence.

a. Maine

Maine provides a private right of action for violence or the threat of violence that interferes with a person's rights under state or federal constitutional or statutory laws.[152] In sum, this law establishes a civil cause of action for any person whose state and federal constitutional and statutory rights have been intentionally interfered with through actual or threatened violence, damage, destruction of property, or trespass. A gender-violence survivor bringing a civil claim under Maine's civil action statute may seek an injunction, restraining order, and other

dollars, and reasonable attorneys' fees and costs incurred in bringing the action).

150. *See* D.C. Code §22-3704 (2009) (providing, *inter alia*, a civil cause of action "[i]rrespective of any criminal prosecution or the result of a criminal prosecution," to a person who incurs injury as a result of an intentional act that demonstrates an accused's prejudice based on the actual or perceived race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, family responsibilities, homelessness, physical disability, matriculation, or political affiliation of a victim, and providing for actual or nominal damages, including damages for emotional distress, punitive damages, attorneys' fees and costs, and injunctive relief). *See also* D.C. Code § 22-3703 (criminal sentencing enhancements for bias crimes); Shepherd v. United States, 905 A.2d 260, 263 (D.C. 2006) (not construing the civil remedy, but holding that for the bias crime sentencing enhancement to apply, the assault had to be based on "the actual or perceived sexual orientation . . . of the victim" and as applied to the facts of this case appellant's animus against his victims' sexual orientation was evident).

151. *See* Uzoukwu v. Metro. Wash. Council of Gov'ts, 983 F. Supp. 2d 67, 94-96 (D.C. 2013) (declining to exercise jurisdiction over § 22-3704 claim as to certain defendants and separately holding that plaintiff failed to allege any facts indicating bias-based criminal activity against council).

152. 5 M.R.S.A. § 4682 (2014) (providing private right of action against individuals who intentionally interfere or attempt to intentionally interfere "by physical force or violence against a person, damage or destruction of property or trespass on property or by the threat of physical force or violence against a person, damage or destruction of property or trespass on property," of a person whose rights are secured by the US Constitution or federal law, or rights secured by the Maine Constitution or state law for legal or equitable relief).

equitable and legal relief.[153] Plaintiffs also have a right to jury trial, except for hearings regarding preliminary injunctions or temporary restraining orders.[154] The two reported decisions interpreting this provision have rejected claims based on the absence of cognizable allegations.[155]

b. Massachusetts

Massachusetts' Civil Rights Act ("MCRA") authorizes civil damages for bias-motivated threats, intimidation, and coercion that interfere with civil rights.[156] A number of decisions have been brought based on harassment and assault in the workplace. Although Massachusetts' workers' compensation statute precludes a claim in tort for sexual assault and rape,[157] survivors have successfully brought claims arising from sexual assaults and batteries that violate the employee's civil rights.

For example, in *O'Connell v. Chasdi*, an employee brought civil rights claims as well as claims of assault, battery, and intentional inflection of emotional distress against her employer based on a fellow employee's sexual harassment on a business trip.[158] The Supreme Court of Massachusetts reversed a judgment in favor of the defendants on the MCRA claim and found the sexual harassment claim was cognizable under the MCRA. Similarly, in *Wood v. U.S.*, the court upheld a plaintiff's MCRA claim for sexual harassment by an Army major she worked for as a secretary.[159] In *Rinsky v. Boston University*, the plaintiff

153. *Id.*

154. *Id.*

155. *See, e.g.*, Caldwell v. Fed. Express Corp., 908 F. Supp. 29, 32 (D. Me. 1995) (granting defendants' motion to dismiss in case alleging that job applicant was rejected for a permanent position because of her gender and also in retaliation with regard to charges she had filed alleging sexual harassment, concluding that to prevail, a plaintiff "must at a minimum identify a threat of force or violence"); Curtis v. Ryder Truck Rental, Inc., No. 05-130-P-H, 2006 WL 662395, **10-11 (D. Me. Mar. 13, 2006) (granting defendant's motion for summary judgment in hostile environment sexual harassment claim alleging harassment and concluding that allegations that Plaintiff was teased about the length of his hair by his coworkers were insufficient to sustain a claim).

156. M.G.L.A. 12 §§ 11H, I, J (2014). Massachusetts civil rights law prohibits, among other things, bias based on gender, gender identity, and sexual orientation. *See, e.g.*, M.G.L.A. ch. 93 § 102 (providing equal rights to, *inter alia*, contract, inheritance, convey real estate, to sue and be sued, and "to the full and equal benefit of all laws and proceedings for the security of persons and property" based on, e.g., "sex"). Massachusetts also provides civil remedies as well as sentence enhancement for criminal penalties for bias crimes based, *inter alia*, on gender identity. *See* M.G.L.A. ch. 265 § 39 (2014) (providing for sentence enhancement); M.G.L.A. ch. 266 § 127B (2014) (authorizing civil claims for violations of section 39).

157. *See* Doe v. Purity Supreme, Inc., 422 Mass. 563, 566 (1996).

158. 400 Mass. 686 (1987).

159. 760 F. Supp. 952 (D. Mass. 1991), *aff'd on other grounds*, 995 F.2d 1122 (1st Cir. 1993) (en banc).

also asserted assault and battery, intentional infliction of emotional distress, and a claim under the MCRA based on sexual harassment by a client while working for her employer as a social work intern.[160] The court denied the defendants' motion to dismiss the MCRA claim, finding that the plaintiff had sufficiently pled allegations showing that the defendants threatened, intimidated, or coerced the plaintiff into continuing to subject herself to constant sexual harassment from her client.

c. New York

New York State's anti-discrimination statute prohibits discrimination and harassment based on sex, as well as race, creed, color, national origin, marital status, sexual orientation or disability.[161] This statute applies the broad anti-discrimination principle to contexts not explicitly covered by other statutory provisions.[162] A federal district court upheld claims that a high school student and his sister were subjected to harassment and discrimination based on the student's sexual orientation.[163] The only other decision invoking this law to address gender violence dismissed the claim.[164]

d. North Carolina

In North Carolina, a gender-violence survivor has a civil cause of action against the aggressor only when the aggressor's conduct was a part of a gender-motivated conspiracy of two or more persons to interfere with the survivor's constitutional rights and the conduct "interfere[d], or [was] an attempt to interfere" with the survivor's exercise or enjoyment of such rights.[165] To prove a conspiracy, a survivor must show (1) an agreement to commit a crime or wrongful act,

160. No. 10cv10779-NG, 2010 WL 5437289, *1 (D. Mass. Dec. 27, 2010).

161. N.Y. Civil Rights Law § 40-c (2018).

162. *See* Wilson v. Hacker, 101 N.Y.S.2d 461, 472-73 (N.Y. Sup. 1050) (applying civil rights statute to discrimination by labor unions notwithstanding lack of explicit prohibition of sex discrimination in applicable statute).

163. Pratt v. Indian River Cent. Sch. Dist., 803 F. Supp. 2d 135, 149 (N.D.N.Y. 2011).

164. *See* Caballero v. First Albany Corp. 654 N.Y.S.2d 866, 868 (3d Dep't 1997) (rejecting claims of sex harassment and discrimination when plaintiff's own affidavit stated that the cause of her workplace difficulties was her complaints about smoking).

165. *See* N.C. Gen. Stat. Ann. § 99D-1(a)-(b) (2014) (providing, *inter alia*, for civil cause of action and providing for compensatory and punitive damages, court costs and attorneys' fees to the prevailing party, with the provision that a prevailing defendant may be awarded reasonable attorneys' [sic] fees only upon a showing that the case is frivolous, unreasonable, or without foundation). The North Carolina Human Relations Commission may also bring a civil action on behalf of any gender-violence survivor, subject to his or her consent. *Id.* at § 99D-1(b)(1).

(2) the alleged conspirators' wrongful acts in furtherance of the conspiracy and pursuant to a common scheme, and (3) a resultant injury.[166]

North Carolina case law addressing claims brought by gender-violence survivors against their aggressors is limited. One decision held that in order to sustain a claim, the plaintiff must allege and prove the defendant's intent to interfere with his or her constitutional right.[167] However, in *Zenobile v. McKecuen*, the North Carolina Court of Appeals ruled that the plaintiff had alleged sufficient facts to state an interference-with-civil-rights claim based on the plaintiff's "civil rights as a woman."[168] The court recognized that the defendants conspired to render the plaintiff physically helpless, stripped her naked, and filmed her. They also destroyed evidence and harassed the plaintiff in an attempt to make her drop the investigation.[169]

RECOMMENDATIONS AND CONCLUSION

As this review demonstrates, state civil rights remedies provide tools to hold those who commit sexual violence accountable. They can apply to cases of workplace sexual violence, since Title VII has been interpreted not to apply to individuals.[170] They can also hold those who commit sexual and other forms of gender violence accountable in the myriad other settings in which sexual violence causes economic, psychological, and other harms to its targets. These laws can provide relief for those who do not wish to engage with, or those who have not been afforded relief through, the criminal justice system, although engaging with the criminal justice system would not bar a civil claim.[171]

Yet the survey also reveals the relative dearth of reported decisions

166. *See, e.g.*, State ex rel. Cooper v. Ridgeway Brands Mfg., LLC, 666 S.E.2d 107, 115 (N.C. 2008). The aggressor's prohibited conduct may include "use [of] 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." N.C. Gen. Stat. Ann. § 99D-1(a)(2) (2017).

167. For example, in Alexander v. Diversified Ace Servs. II, Luanesha Alexander, an employee of Diversified Ace Services II, brought a civil action alleging sexual harassment and gender-based violence as well as allegations of a conspiracy to "interfere with" her right to work in an environment "free of sexually abusive and discriminatory conduct". No. 1:11CV725, 2014 U.S. Dist. LEXIS 15508, *2-4, 31-33 (M.D.N.C. Feb. 7, 2014). The court rejected the claim for failure to "sufficiently identif[y]" the survivor's constitutional right that the aggressor had conspired to violate. *Id.* at *33-38.

168. 548 S.E.2d 756, 760 (N.C. App. 2001).

169. *Id.*

170. *See supra* note 3.

171. Notably, a number of the statutes enacted as part of their state's "bias-crime" laws explicitly provide a civil cause of action regardless of whether the case led to a criminal prosecution or conviction. *See, e.g.*, D.C. Code § 22-3704 (2018); 720 Ill. Comp. Stat. Ann. § 5/12-7.1(c) (2018); Mich. Comp. Laws § 750.147b(3) (2018); Minn. Stat. § 611A.79(3) (2018); Vt. Stat. Ann. Tit. 13 § 1457 (2018).

interpreting those laws. Some of the reported decisions interpret procedural issues, such as the statute of limitations or whether the suit was precluded by the state's employment discrimination law, and do not shed much light on their substance.[172] Importantly, a number of decisions easily recognize that allegations of sexual assault, or comments and epithets reflecting gender bias, stated a claim.[173] By contrast, other decisions dismissed claims for failing to adequately allege a predicate act of violence sufficient to satisfy the statute.[174] This case law suggests that statutes seeking to fill gaps and provide relief for gender-based violence define the predicate act broadly to capture the range of acts or series of acts that are the basis for gender-based violence and intimidation.

Although suits seeking individual liability may not be a feasible strategy in all cases,[175] they remain a critical component of a comprehensive accountability scheme. At least some of the barriers to private suits against individuals in tort law do not apply since, for example, most of these laws provide attorneys' fees to the prevailing party.[176] Moreover, these laws hold transformative power to shift norms

172. For cases dismissing claims based on, *inter alia*, a conclusion that the predicate acts fell outside the applicable statute of limitations, *see, e.g.*, Adams v. Jenkins, No. 115745/03, 2005 WL 6584554, (N.Y. Sup. Ct. Apr. 22, 2005); Cordero v. Epstein, 869 N.Y.S.2d 725 (N.Y. 2008); Gottwald v. Sebert, No. 653118/2014, 2016 N.Y. Misc. LEXIS 5202 (N.Y. Apr. 6, 2016). For cases concluding that workplace sexual harassment claims must be brought under state antidiscrimination laws, *see* Doe v. Purity Supreme, Inc., 422 Mass. 563 (1996).

173. *See, e.g.*, F.P. v. Monier, 405 P.3d 1076 (Cal. 2017); Doe v. Starbucks, Inc., No. SACV 08-0582 AG CWX, 2009 WL 5183773 (C.D. Cal. Dec. 18, 2009); Smith v. Farmstand, No. 11-CV-9147, 2016 WL 5912886 (N.D. Ill. Oct. 11, 2016); Zamudio v. Nick & Howard LLC, No. 15 C 3917, 2015 WL 6736679 (N.D. Ill. Nov. 4, 2015); Flores v. Santiago, 986 N.E.2d 1216 (Ill. App. Ct. 2013); Johnson v. David, No. 12-CV-1038-SCW, 2017 WL 1090811 (S.D. Ill. Mar. 23, 2017); Myers v. City and Cty. of San Francisco, No. C 08-1163 MEJ, 2012 WL 4111912 (N.D. Cal. Sept. 18, 2012); Hern v. McEllen, No. A125358, 2011 WL 2112538 (Cal. Ct. App. May 21, 2011); O'Connell v. Chasdi, 400 Mass. 686 (1987); Wood v. U.S., 760 F. Supp. 952 (D. Mass. 1991), *aff'd on other grounds*, 995 F.2d 1122 (1st Cir. 1993) (en banc); Rinsky v. Boston University, No. 10cv10779-NG, 2010 WL 5437289 (D. Mass. Dec. 27, 2010); *but cf, e.g.*, Gottwald, 2016 N.Y. Misc. LEXIS 5202 (finding insufficient allegations of gender-motivation); Hughes v. Twenty-First Century Fox, Inc., 304 F. Supp. 3d 429 (S.D.N.Y. 2018) (finding the same).

174. *See, e.g.*, Monier, 405 P.3d 1076; Harper v. Lugbauer, No. 11-CV-01306-JST, 2014 WL 1266305 (N.D. Cal. Mar. 21, 2014), *aff'd*, 709 F. App'x 849 (9th Cir. 2017); Greenwald v. Bohemian Club, Inc., No. C 07-05261 WHA, 2008 WL 2331947 (N.D. Cal. June 4, 2008); Ramirez v. Wong, 188 Cal. App. 4th 1480 (2010); Gabrielle A. v. Cty. of Orange, 10 Cal. App. 5th 1268 (2017); Caldwell v. Fed. Express Corp., 908 F. Supp. 29 (D. Me. 1995).

175. *See* Goldscheid, *Meaningful Paradigm*, *supra* note 3, at 768-70 (explaining that suits against individuals may be less frequently made than those against institutions due to, *inter alia*, defendants' limited financial resources, survivors' lack of interest in re-engaging with an abuser, lack of access to counsel).

176. *See, e.g.*, Cal. Civ. Code § 52(b), 52.4(a) (2015); D.C. Code §22-3704 (2009); 740 Ill. Comp. Stat. Ann. 82/15 (2004); 720 Ill. Comp. Stat. Ann. 5/12—7.1(c) (1995); 5 M.R.S.A. § 4683 (2018) (Maine); M.G.L.A. ch. 12 § 11H (2014) (Massachusetts' civil rights act); Mich. Comp. Laws § 750.147b(3)(b) (2018); Neb. Rev. St. § 28-113(1) (2018); N.J. Stat. § 2A:53A-21(d)(1) (2015); N.Y.

by framing gender violence in terms of civil rights, rather than private, individualized harm.[177]

The recent rise in visibility of sexual abuse by individuals holding powerful positions highlights the importance of creating meaningful legal schemes for accountability and of framing sexual and other forms of gender-based violence as the civil rights violations that they are. State civil rights remedies can be more widely used to redress harm and advance accountability–they should not be overlooked as we advance legal and social change to promote equality, dignity, and justice for all.

Civ. Rights L. § 79-N (4) (2014); N.Y.C. Admin. Code Tit. 8, Ch. 9 § 8-904 (2000); N.C. Gen. Stat. Ann. § 99D-1(a)-(b) (2014); Rockland Cty. Admin. Code 279-4(A)(3) (2001); Tenn. Stat. § 4-21-701 (2017); Vt. Stat. Ann. tit. 13, § 1457 (2014); Wash. Rev. Code Ann. § 9A.36.083 (2017); Westchester County, NY., Code of Ordinances § 701.01 (2001).

177. Goldscheid, *Meaningful Paradigm*, *supra* note 3, at 756-67.

APPENDIX A

	States (or local jurisdictions) modeled after VAWA civil rights remedy with Morrison-style civil rights remedy	States (or local jurisdictions) with Civil Action for Gender Violence as Part of Bias-Crime or civil rights Statute	States (or local jurisdictions) with Civil Action for Violating other Civil Rights
California	Cal. Civil Code § 52.4 (2002)	Cal. Civ. Code 51.7 (2015)	Cal. Civ. Code 51.7(a) (Ralph Act)
		Cal. Civ. Code 52(b)	
Illinois	740 ILCS 82/1, *et seq.* (West 2004)	ILCS 5/12-7.1(c) (2018)	720 ILCS 5/12-7.1 (1995)
Iowa		I.C.A. § 729A.5 (West 1992)	
Maine			5 M.R.S.A. § 4682 (2014)
Massachusetts		M.G.L.A. 12 § 11H, I, J (2014)	M.G.L.A. 12 § 11H, I, J (2014)
		M.G.L.A. ch. 266 § 127B (2018)	
		M.G.L.A. ch. 93 § 102 (2018)	
Michigan		M.C.L.A. § 750.147b (2014)	
Minnesota	M.S.A. § 611A.79 (2014)	M.S.A. § 611A.79 (2014)	
Nebraska		Neb.Rev.St. § 28-113 (2014)	
New Jersey		N.J.S.A. § 2A:53A-21 et seq. (2015)	
New York	New York City, N.Y., Code Tit. 8, Ch. 9 §§ 8-901 et seq. (2000)	N.Y. Civ. Rights L. § 79-n (McKinney 2015); N.Y. Civ. Rights L. § 40-c	
	County of Westchester, § 701.01 et seq. (2001)		
	Rockland Cty. Admin. Code 279-3 (2001)		

	States (or local jurisdictions) modeled after VAWA civil rights remedy with Morrison-style civil rights remedy	States (or local jurisdictions) with Civil Action for Gender Violence as Part of Bias-Crime or civil rights Statute	States (or local jurisdictions) with Civil Action for Violating other Civil Rights
North Carolina			N.C.G.S.A. § 99D-1(a)-(b) (2014) (conspiracy to interfere with civil rights)
Tennessee		Tenn. Stat. § 4-21-701 (2017) (malicious harassment statute)	
Vermont		Vt. Stat. Ann. Tit. 13, § 1457 (2014)	
Washington		RCWA § 9A.36.083 (2017)(malicious harassment)	
Washington, D.C.		CS ST § 22-3704 (2009)	