

# What is the status of LGTB rights in Cuba and the U.S. today?

## Cuba

### **Employment**

Cuba's new labor code recognizes sexual orientation as a form of unacceptable discrimination. Gender identity was discussed, but evidently not so far included.



### **Criminalization of Private Sex Acts**

According to Dr. Alberto Roque, private homosexual acts were decriminalized in Cuba in 1997. There had been reports of Cuban law banning open displays of same sex affection (current status unknown to this author), but gay bars and events are regular events in Havana and other cities, including large openly gay parties on the Malecon, and by the National Theatre at the Plaza de Revolución.

### **Gay Marriage**

In Cuba the most common form of committed relationships is the equivalent of common law marriages, for which rights arise based on that lasting relationship, straight or gay. For international and some other ramifications, the marriage status can make a difference, and such a change would require amending the Cuban constitution including by a popular vote of the whole population, according to Ricardo Alarcon, former head of the Cuban National Assembly (June 2013 discussion). And as in other countries, the concrete recognition of these rights in practice may vary from place to place. Adoption remains an issue, although adoptions are not common in Cuba, as virtually all children who are born, are wanted.

## The United States

### **Employment**

There is no national law that consistently protects LGBT individuals from employment discrimination. Only 21 states (starting with Wisconsin), plus the District of Columbia have adopted laws prohibiting employment discrimination based on sexual orientation, and 18 states and D.C. also prohibit discrimination based on gender identity. The Employment Non-Discrimination Act (ENDA) would provide basic protections against workplace discrimination on the basis of sexual orientation or gender identity, but has been languishing in Congress for years.

### **Criminalization of Private Sex Acts**

It was not until 2003 that the U.S. Supreme Court in *Lawrence v. Texas*, 539 U.S. 558, declared that the anti-sodomy law in Texas & by implication in 13 other states, was unconstitutional, but as recently as April 2014, the Louisiana House voted 27-67 to retain its anti-sodomy law, which police still used in 2013 to arrest gay men. Only two states repealed their laws since *Lawrence*; the 12 states that have kept these on the books are Alabama, Florida, Idaho, Kansas, Michigan, Mississippi, North Carolina, Oklahoma, South Carolina, Texas and Utah, according to Sarah Warbelow, legal director for the Human Rights Campaign.

### **Gay Marriage**

Many states have added explicit bans (even on civil unions) to their constitutions often by popular votes in the last 10 years, but at least 16 courts, every one that has ruled since the 2013 U.S. Supreme Court Case in *Windsor*, have ruled that these violate federal constitutional rights, although those rulings have generally been stayed. Currently 19 states, including some of the most populous, recognize same sex marriages, and 31 so far do not. See [www.freedomtomarry.org](http://www.freedomtomarry.org) for the latest on this rapidly changing situation.

## Cuba

### **Transgender Treatment**

The Cuban Ministry of Health now recognizes all health care for trans people. All procedures are universal and free of charge for transsexual people, from medical to psychological treatments.

### **Violence**

We are not aware of serious violence reported against LGTB people in Cuba, although the criminal code does not clearly recognize hate crimes.

### **Other**

The Cuban Communist Party, a leading political and social force in Cuba, mandates in Article 54 that all members must work to combat discrimination, and since early 2013 this specifically includes discrimination based on sexual orientation, as well as based on gender, racial prejudice and other grounds that may limit the rights of people, such as to hold office, participate in organizations, and national defense. However, Dr. Roque indicated that openly gay members of the Army will be dismissed. (S.F. Chronicle interview, in SF Gate, May 26, 2014). The International Day Against Homophobia is widely celebrated and publicized, led by CENSEX, headed by Mariela Castro Espin, and in 2013 very shortly after his return to Cuba, Rene Gonzalez of the Cuban 5 appeared publicly with her to support this movement. Its main celebrations move to different provinces each year, in order to raise consciousness nationally.

### **A note on sources & for more information:**

Films: Gay Cuba; Saul Landau's last film Cuba's Sexual Revolution; In the Wrong Body, documentary on the first Cuban to receive full transgender treatment; *Fresa y Chocolate* (Strawberry and Chocolate, 1993, Academy Award nominee for Best Foreign Film. )

Dr. Alberto Roque's interview with commentary by this author, at <http://wicuba.org>, and Dr. Roque's blog (in Spanish), at: <http://aroqueg.blogspot.com/>. The extensive website for Cuba's National Center for Sex Education (*Centro Nacional de Educación Sexual*, or CENESEX) is <http://www.cenesex.org/> in Spanish and in English

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All comments welcome.

## The United States

### **Transgender Treatment**

In the U.S. such recognition is uneven. E.g. in June, 2014, a class action lawsuit was filed to challenge New York Medicaid's exclusion of transgender healthcare.

### **Violence**



Attacks and murders of LGTB people have continued, from Mathew Sheppard in Wyoming in 2007 to an upsurge of attacks in NYC in early 2013, followed by the murder in August of Islan Nettles, a transgender woman of color. The October 2009 Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act expanded the 1969 United States federal hate-crime law to include crimes motivated by a victim's actual or perceived gender, sexual orientation, gender identity, or disability; and mandates public reporting of such incidents.

### **Other**

In the U.S. we are not aware of any major political party mandating, as in Cuba, that their members combat homophobia, but would be happy to hear of such, maybe in the near future?