

Beacon Hill Byline by Mary Rogeness

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Producing Gender Inclusive Laws

This spring I was asked to organize a celebration of the 60th anniversary of the National Order of Women Legislators (NOWL). The organization is a bipartisan group that has worked to elect and advance the careers of women since 1938. I have benefited from the services of NOWL, so I happily agreed to undertake the task.

Before beginning the planning process, I looked at the celebrations that other states had organized, a collection of receptions, luncheons and teas, and rejected each of them. Our celebration would show that women in legislatures make a difference.

The Massachusetts celebration held this week, marks the anniversary with Governor Cellucci signing of a law that advanced the legal status of women through the insertion of a new word in our statute books.

This is what has changed.

“The commissioner may use his discretion...” Phrases such as these have been a minor irritation to me during my years in the legislature. While sitting on a committee listening to testimony, I once asked a state official to adopt modern usage that did not use the pronoun "his." He responded that he was simply using Massachusetts guidelines, that the state did not look favorably on "his or her" as optional wording. So I started looking into the issue.

Committee staff members agreed that changes could not be made. I talked with other legislators and - called congressional office, but found no answers. Then an additional phone call to a service for state legislators produced results. I discovered that many other states have changed their practices in ways that do not use the awkward "he or she," and likewise reject such words as "chairperson." They approach the issue as an editing challenge. Such lines as "The commissioner may use his discretion..." become "The commissioner has the discretion..." Clarity and legislative intent are preserved; only the words change.

More than 20 states have adopted such gender-inclusive practices by statute or resolution, and through discussions with our counsel's office I have learned that such drafting is now preferred in Massachusetts. (That preference has not, incidentally, been adopted by all petitioners. Our counsel is reluctant to mandate the changes because of concerns that inadvertent inclusion of an inappropriate pronoun might invalidate a law. As an alternative, Counsel suggested the bill signed into law this week.

Governor Cellucci will sign a bill to insert into Massachusetts General Law the specific directive that "he shall include she." Our previously said only that the masculine may include the feminine.

I will continue to advocate the removal of masculine pronouns. In the meantime, our legal office has agreed to minimize such usage and celebrate the milestone that says, when the law says "he," it does not really mean it.