

Anti-LGBT Violence
& Harassment
Massachusetts



July 2003

Introduction

This publication was jointly created by Gay & Lesbian Advocates & Defenders (GLAD) and the Violence Recovery Program at Fenway Community Health Center.

GLAD is New England's leading legal rights organization dedicated to ending discrimination based on sexual orientation, HIV status and gender identity and expression.

Fenway's Violence Recovery Program (VRP) provides counseling, support groups, advocacy, and referral services to Lesbian, Gay, Bisexual and Transgender (LGBT) victims of bias crime, domestic violence, sexual assault and police misconduct.

This publication aims to provide information and resources regarding violence and harassment experienced by lesbians, gay men, bisexuals, and transgender people.

Please note that the information contained in this publication is not intended as legal advice. Contact GLAD for a referral to an attorney if you need legal advice about a specific situation.

CONTENTS:

◆ **Anti-LGBT Violence**

- Prevalence
- Types of Violence
- Selected Indications
- Responding to an Incident
- The Effects

◆ **Victims' Legal Rights**

- Overview
- Criminal Prosecution
- Injunctive Relief
- Civil Suits
- Victim Compensation
- Hate Crime Reporting Laws

◆ **Resources for Victims of Violence**

ANTI-LGBT HARASSMENT & VIOLENCE

◆ Prevalence

How pervasive is anti-gay, lesbian, bisexual, and transgender harassment and violence?

Violence against individuals because of real or perceived sexual orientation is one of the most prevalent forms of hate-motivated violence in the US.¹ In one survey of gay, lesbian, bisexual and transgender people in Massachusetts, over 80% reported having been subjected to verbal harassment based on sexual orientation at some point in their lives. In the same survey, as many as 45% of women and 64% of men also reported having been subjected to physical threats of assaults based on sexual orientation at some time in their lives.²

It is also well established that anti-gay violence can strike heterosexuals who associate with or support LGBT people, or who diverge from expected sex-role appearance or behavior.³ Though underreported, violence against transgendered individuals may in fact be the most prevalent of all anti-LGBT violence.

¹ "The Response of the Criminal Justice System to Bias Crime: An Exploratory Review," National Institute of Justice, US Department of Justice, 1987.

² "8 in 10: Violence, harassment and discrimination against lesbians, gay men and bisexuals in Massachusetts." A report of Fenway Community Health Center, Boston, MA. p. 4, 1990.

³ "Anti-lesbian, gay, bisexual and transgendered violence in 1996." A report of the National Coalition of Anti-Violence Programs and Fenway Community Health Center, Boston, MA. p. 14, March 1997.

◆ Types of Violence

What kinds of anti-LGBT violent crimes exist?

‘Violence’ can take both verbal and physical forms. Harassment, threats, intimidation, vandalism, physical assault, robbery, arson and homicide are all considered to be forms of violence. With the exception of some kinds of verbal harassment, all of these also constitute crimes under Massachusetts law.

When does harassment rise to the level of a crime under Massachusetts law?

In Massachusetts, verbal harassment can be prosecuted as a crime only when it occurs over the phone (at least twice) or when it occurs in such a way as to threaten someone or interfere with constitutionally protected rights. In some cases, verbal harassment that does not meet Massachusetts criminal standards may still be a violation of Massachusetts civil laws, such as laws barring sexual orientation discrimination in housing, public accommodations, employment and school settings.⁴

◆ Selected Indications of Anti-LGBT Bias

What can a victim of violence or harassment use to show that the crime was motivated by anti-LGBT bias?

- Verbal or written slurs (e.g., “faggot”, “dyke”, “freak”, etc.)
- Location of the incident (e.g., outside a LGBT bar, at a Pride Day parade)

⁴ For information on discrimination law in New England states, contact GLAD (see number on the last page).

- Victim identified and targeted because of appearance or behavior (e.g., holding hands with same-sex partner, wearing a pink triangle)
- No other apparent motivation for the crime (e.g., person is beaten up but not robbed.)

◆ Responding to Anti-LGBT Violence

What should a victim do immediately after an incident?

- Seek medical attention if needed.
- Consider reporting the incident to police if you are comfortable doing so on your own. Report any indications of anti-LGBT bias the first time you talk to police, if possible. If you wish to press charges, a police report will be required and investigation will be necessary to positively identify the perpetrators, unless they are already known to you. Police should (but may neglect to) advise you of what will be required to investigate and bring charges.
- Call the Violence Recovery Program (VRP) for emotional support and/or advocacy (see Resources section). VRP advocates provide emotional support and practical assistance to victims of anti-LGBT violence. The VRP will discuss your options for responding to the incident and make referrals as needed. The VRP can assist you in reporting the incident, pursuing an investigation, or pursuing a case in court. The VRP also can provide ideas for responding to an incident that don't necessarily involve the police and courts, such as filing complaints or seeking mediation. All calls are confidential, and you will not be required to give your name.
- Write or tape record a detailed and orderly account of the incident. Describe with as much detail as possible exactly what happened, including anything that was said and the

names or descriptions of any witnesses. Details that may be important to an investigation can fade quickly in the memory.

- If you have visible injuries from the attack, take pictures of them and go to a doctor so you will have medical records to document the injuries.
- Keep all documentation (e.g. notes, medical records, photos, police reports) in a safe place.

◆ The Effects of Hate Crime

What can be some of the negative after effects of anti-LGBT violence?

Because of the nature of hate crimes, they can affect people in certain ways. In addition to general post-traumatic symptoms that affect victims of any trauma (such as difficulty sleeping; appetite changes; hyper-vigilance or jumpiness; flashbacks or intrusive thoughts; increased depression, irritability or difficulty concentration; a shattered sense of faith or trust in the world)⁵, victims of anti-LGBT bias crimes may experience additional disruption in the form of:

- shame, guilt, self-blame and/or an increase in negative feelings about oneself
- an increase in internalized homophobia (negative attitudes toward LGBT people)
- a desire to retreat from LGBT identity or behavior
- lack of trust in authorities or service providers who are supposed to help

⁵ Acute forms and combinations of these symptoms are sometimes referred to as “post-traumatic stress disorder” (PTSD). For further information on this topic see: Herman, Judith. *Trauma and Recovery*. New York: Basic Books, 1992.

- acute awareness of society's oppression:
homophobia, sexism, racism or anti-transgenderism

No two people experience trauma in the same way, but if you are experiencing any of the above, it's important to remember that such symptoms are a normal response to a traumatic event.

Where can a victim turn for help?

If you are troubled with feelings in the aftermath of an incident, you may want to consider talking with a LGBT-friendly counselor. Free crisis counseling is available through the Violence Recovery Program. For longer-term counseling, you can see ads in the LGBT press or call the Fenway Community Health Center Mental Health Department (see Resources section).

VICTIMS' LEGAL RIGHTS

◆ Overview

What legal options do victims of anti-LGBT violence have?

Victims of anti-gay, lesbian or bisexual violence have three general types of legal recourse if they decide to take legal action against their attackers:

- 1) criminal prosecution,
- 2) injunctive relief,
- 3) civil suits for damages.

Transgender victims are not specifically named in any Massachusetts laws, but still have access to some of the same options. Victims of hate crimes should also be aware of the Massachusetts Victim Compensation Program and of state and federal hate crime reporting laws.

◆ **Criminal Prosecution**

Does a law have to mention anti-LGBT violence to help a victim?

No. All laws that criminalize violence can obviously be applied to anti-LGBT violence. For example, slashing tires is malicious destruction of property, whether or not motivated by anti-lesbian bias. Punching someone is assault and battery, whether or not the person was struck because they were seen to be a 'man dressed as a woman.' Hate crimes law in Massachusetts, however, provides for 'criminal civil rights' charges to be brought *in addition* to such standard charges.

What are the relevant Massachusetts Criminal Civil Rights (Hate Crimes) statutes?

Mass. General Laws, Chapter 265, section 37:
Passed in 1979, provides that:

- Whoever, by force of threat of force
- Willfully injures, intimidates, interferes with, oppresses or threatens a
- Person in the exercise of a right secured by constitution or law (examples of secured rights include the right to be free from discrimination in a place of public accommodation, the right to free speech, and the right to associate freely with others of one's own choosing.)
- Stands subject to a maximum ten-year prison sentence if bodily injury occurs; one year in a house of correction if no injury occurs.

Mass. General Laws, Chapter 265, section 39:

Passed in 1983, amended in July, 1996 to include "sexual orientation or disability", provides that:

- Whoever commits an assault and/or battery or property damage
- With the intent to intimidate a person because of that person's race or ethnicity, religion, national origin, sexual orientation or disability
- Without bodily injury, stands subject to a maximum of two and a half years in a house of correction, a fine of up to \$10,000, and/or restitution to the victim in the amount of up to three times resulting property damage.
- With bodily injury, stands subject to the above fine and a maximum of five years in state prison.

How are criminal charges initiated?

Criminal charges can be initiated by the police or by a citizen him or herself. The Clerk Magistrate in the relevant court determines whether there is sufficient cause to charge a defendant for each proposed charge.

How can a victim help initiate criminal charges?

- File a police report.
- Police may investigate, then file a complaint in court on your behalf.
- If they do not, you can file an application for a complaint at the Clerk's Office in the courthouse that has jurisdiction over the area where the crime occurred. In order to do this, you must know the perpetrator's name and address (or have obtained it via a police investigation). You may want the assistance of an advocate or an attorney before taking this step.

Why might civil rights charges not be filed?

In some cases, sufficient cause is found for base charges such as assault and battery, but not for the civil rights (hate crime) charge. Reasons for the failure to issue hate crimes charges can range from the lack of strong evidence of bias indicators, to ignorance or indifference about hate crimes laws on the part of the police or court personnel involved in the case.

Does a victim need to hire an attorney to help prosecute a civil rights charge?

If it files charges, the District Attorney's Office prosecutes the case on behalf of the victim and the State; the victim is not required to hire an attorney. The victim participates as a witness if called to do so.

What are the possible penalties if the defendant is found guilty or accepts a plea agreement?

The sentence may include a fine, restitution paid to the victim, a prison term or probation.

Where can victims turn for help navigating the criminal justice system?

The criminal justice system can seem overwhelming and confusing even to people who are used to dealing with it. Most courthouses have a Victim Witness Advocate assigned to offer some help to people in the system. Advocates work out of the DA's office and are most available for cases that have already resulted in formal charges. For additional help negotiating the system, you may want to contact the VRP or GLAD (see Resources section).

◆ **Injunctive Relief**

What is an injunction?

An injunction is a court order that restrains an individual from doing certain things because he or she is believed to have harassed or abused another person and because the victim is fearful that s/he will be harmed again. Injunctions may include orders to stop abuse, cease all contact with the victim or the victim's family, or vacate a shared dwelling. Stay-Away Orders, Civil Rights Injunctions, and Domestic Violence Restraining Orders (to be discussed shortly) are all types of injunctions frequently used by victims of violence and harassment.

Is there a way to prohibit a defendant from contacting the victim while not in custody?

Yes, a **Stay-Away Order**. When criminal charges are pending, a judge may issue verbal or written orders that require the defendant to stay away from the victim as a condition of the defendant's release from custody. Orders may be issued when the defendant is formally charged, or at a later stage of the criminal prosecution. Violations of these orders should be brought to the attention of the District

Attorney's Office immediately and may affect the defendant's release or bail conditions.

You may request a stay-away order through the prosecutor and advocate handling your case.

Are there other methods of ensuring that a perpetrator does not interfere with the victim's civil rights?

The Civil Rights Act of 1979 includes a provision for injunctions in hate crime cases.⁶ In situations where the perpetrator has interfered with or attempted to interfere with secured rights, and the victim is fearful of future intimidation, a victim can ask the State Attorney General's Office to petition the court on his or her behalf for the protection of an injunction. This kind of '**Civil Rights Injunction**' can even stipulate that an attacker stop harassing not only the victim, but also anyone in the same protected class (for example, all African Americans, or all gay men and lesbians).

How can a victim obtain a Civil Rights Injunction?

You can seek this kind of injunction through the police detectives working on your case, or by directly calling the Attorney General's office (see number on back page) and asking for the Civil Rights Division or the Attorney General's Liaison to the lesbian and gay community. Indicate that you would like to pursue an injunction. The Violence Recovery Program can also help you work with the Attorney General's Office. There is no fee.

What are the penalties for violating a Civil Rights Injunction?

Violations of these injunctions are criminal offenses and may be punished with fines, imprisonment or both.⁷ One

⁶ Chapter 12, section 11H.

⁷ Chapter 12, section 11J, a 1983 amendment.

drawback of this type of injunction is that it can take several months to obtain.

Can a victim petition for an injunction directly?

Yes. Massachusetts law provides for individuals to petition the court for injunctions directly.⁸

What are the advantages of petitioning for an injunction directly?

The major advantage to this option is that the injunction can be in place much sooner than if the Attorney General's Office were to handle the petitioning process.

What are the disadvantages petitioning for an injunction directly?

There are several disadvantages though. First, the court charges fees for this. (However, if you prevail in this action you are entitled to an award including costs and attorney's fees.) Second, though not required, the process may feel daunting without an attorney. Third, the violation of this type of injunction is considered a civil matter rather than a criminal offense. This means that if there is a violation of the order, you or your attorney must file a civil complaint for contempt of court and present the evidence of the violation yourselves.

How does a victim petition to bring an injunction?

To get this kind of injunction, you or your attorney must file a petition at the Civil Clerk's Office at the **Superior Court** having jurisdiction over your town of residence. There is a \$185 filing fee which must be paid by the complainant before a judge will consider the case, though this may be waived by the clerk if you can demonstrate low income. If a judge decides to issue the injunction, the complainant must pay an additional fee of \$50 for the Sheriff to serve the order to the

⁸ Chapter 12, section 111.

defendant (also may be waived). In some cases, a judge might order the person served to reimburse the complainant for these expenses.

*What about **Domestic Violence Restraining Orders** (also known as 209A's)?*

Under Mass. General Law Chapter 209A, these are available when the perpetrator and victim have either lived together (this includes roommate situations), are or were married to each other, are family members, have a child in common (who is under 18 years old), or have been in a substantial dating relationship with one another (this applies equally to different-sex and same-sex couples).

What is a 'substantial dating relationship'?

In determining whether a dating relationship was substantial or not, the judge will look at the length of the relationship, the type of relationship (whether it was sexual or not), the frequency of interaction between the parties and the length of time since the relationship ended if it has ended.

What are the possible penalties for violating a Domestic Violence Restraining Order?

Violations are criminal offenses and can result in the immediate arrest of the abuser.

How does a victim file for a Domestic Violence Restraining Order?

Victims can file an application for a temporary restraining order (specifying 'domestic violence' or '209A') in the clerk's Office at the District Court with jurisdiction over the neighborhood in which they live, or at Boston Municipal Court, or at a Superior Court. In emergency situations after normal business hours, orders may be obtained through a police officer or at a police station.

How does the victim keep his or her new address secret?

In order to keep an abuser from learning the new address of a victim, the victim needs to request that their address be “impounded”. This will not be available, however, with a ‘stay away’ order, since a stay away order needs to specify where the abuser is not supposed to go. A victim’s address is always kept confidential from the public.

How long does a temporary restraining order last?

Temporary orders are good for ten days, and are generally issued upon request, providing a relationship between victim and offender that is covered by the law and a credible allegation of abuse, threats of abuse, or sexual assault.

How does a victim extend the temporary order?

A hearing to extend the order for up to one year is scheduled for ten days after the order is granted. There is no fee. The defendant can choose not to show up at the extension hearing, but the victim is required to be present at that hearing for the order to be extended. A lawyer is not needed for the temporary order; in certain cases, it may be helpful to have one for the extension hearing if you think the order is going to be contested by the abuser.

Does the restraining order restrict the victim’s activities or contacts?

No. Restraining orders do not restrict the activities or contacts of the victim. A 209A is not voided if the victim contacts the restrained person, though once in contact the restrained person would be in violation of the order.

◆ Civil Suits for Damages

What damages need to have occurred for a victim to be eligible to seek financial compensation by filing a civil suit against the attacker?

If you have suffered severe physical or emotional distress or financial loss (e.g. medical bills, lost wages) as a result of an attack, you may be able to file a civil suit seeking financial compensation from your attacker.

Does the victim need an attorney?

To be successful in most civil suits, the victim will need an attorney in order to file and argue a case.

Do the police and/or district attorney become involved in a civil suit?

The police and DA's office do not become involved in civil cases. Responsibility for filing a complaint and presenting evidence rests with the victim.

What financial obligations might a victim incur in bringing a civil suit?

An attorney may spend a considerable amount of time preparing a civil case. This can be expensive since the fee for an attorney's services is often based on an hourly rate. Attorneys may be willing to take a case on a contingency basis (that is, they will take a percentage of any damage awards instead of an hourly fee) but this is likely only if the victim has suffered significant demonstrable financial losses and the defendant has enough assets to pay a substantial amount in damage and the case is a strong one. Even if the attorney can take the case on contingency, up front money will still be needed for certain expenses required to prepare the case (filing fees, private investigator expenses, witness depositions, etc.)

How does a victim initiate a civil suit?

The victim should contact a civil attorney to discuss the specific details of your case. Attorney referrals are available from Gay & Lesbian Advocates & Defenders (see Resources section).

◆ **Victim Compensation**

Are there additional ways to seek financial compensation?

Yes. In addition to the ways mentioned above—1) having the perpetrator be found guilty of criminal charges and ordered by a judge to pay restitution to the victim; or 2) by suing the perpetrator in civil court—a victim may seek financial reimbursement through the **Massachusetts Victim Compensation Program** administered by the Attorney General's Office.

This fund is available to reimburse victims or surviving family members for out-of-pocket expenses (e.g., medical, dental, counseling, lost wages, funeral expenses) related to crime. In order to qualify, you must report the crime to police within five days (or have a reasonable excuse for not having done so), you must cooperate with authorities in their investigation and prosecution, you must apply within three years of the crime's occurrence, and your expenses must exceed \$100.

What if the perpetrator was never caught or was not found guilty?

It's very important to note that this fund is available even when your perpetrator is not caught or when he or she is found not guilty in court. As long as you report the crime and cooperate with authorities, you are eligible. For more information, contact the Victim Compensation and Assistance Division (see Resources section).

◆ Hate Crimes Reporting Laws

Are police required to keep track of hate crimes?

Massachusetts law requires the State Police to collect hate crime statistics from police departments throughout the State, and to compile them into an annual hate crimes report. Compliance by local police departments is voluntary, however, and participation has varied from year to year. Though many departments do a very good job of tracking hate crimes, several relatively large police departments have—rather implausibly—reported zero hate crimes in certain years, which may indicate a lack of ability, effort or will to properly identify, investigate and track hate crime.

Where can I find Hate Crime reports?

Copies of the most recent Hate Crime report can be obtained through the Governor's Hate Crimes Taskforce (see Resources section).

Doesn't the FBI track hate crimes?

Yes. There is also a federal hate crimes reporting law which requires the FBI to track hate crimes, including those motivated by anti-gay/lesbian bias. However, local police compliance is again voluntary and reporting is spotty.

Do any private organizations track anti-LGBT hate crimes?

Yes. The Violence Recovery Program has for many years released its own annual report of anti-LGBT violence in Massachusetts. The report is prepared in collaboration with the National Coalition of Anti-Violence Programs (NCAVP). The VRP/NCAVP report includes incidents that were

reported directly to member programs throughout the country, even if they were not reported to police.

Why is the VRP report important?

The VRP report provides an important barometer for the incidence of anti-LGBT crime, and valuable data for comparison to the State report. For a copy of the latest report, contact the VRP (see back page).

The VRP report has been instrumental in drawing attention to the realities of anti-LGBT violence and has over the years been influential in lobbying for some of the legislative advances the LGBT community has obtained. All victims or witnesses of anti-LGBT violence should report incidents to the VRP, even if no other assistance is desired, and regardless of whether the incident is reported to police. This will help create a clear and accurate picture of the problem.

Do victims or witnesses of anti-LGBT violence need to identify themselves?

No. Reports can be made anonymously, if preferred.

RESOURCES FOR VICTIMS OF VIOLENCE

Violence Recovery Program (VRP)

The Violence Recovery Program at Fenway Community Health Center provides counseling, support, advocacy, and referral services for LGBT victims of bias crime, domestic violence, sexual assault and police misconduct. In addition, the VRP compiles statewide statistics on anti-gay hate crime and same-sex domestic violence. Long-term counseling is available through Fenway's Mental Health Department.

Violence Recovery Program (VRP)

1-800-834-3242

Mental Health Department

617-927-2000

GLAD's Legal Information Hotline

The bilingual hotline provides free, confidential legal information and referrals to people who have legal questions relating to sexual orientation, gender identity, and HIV status. The hotline can help victims of violence understand what legal options may be available to them and connect callers to sensitive, LGBT-friendly lawyers.

1-800-455-GLAD

617-426-6156 – TTY line

The Hotline is open every weekday afternoon, 1:30-4:30, in English and Spanish.

Gay Men's Domestic Violence Project (GMDVP)

The GMDVP provides community education and direct services to gay, bisexual, and transgender male victims and survivors of domestic violence.

Crisis Line

1-800-832-1901

Business Line

617-354-6056

The Network / La Red

The Network works to end domestic violence in the lesbian, bisexual women's, and transgender community. It offers a bilingual hotline, free support group in the Boston area, legal and other referrals and community education. It seeks to create a culture in which domination, coercion, and control are no longer accepted and operative social norms.

617-423-7233

Attorney General's Office

The Massachusetts Attorney General is the head law enforcement officer in the Commonwealth who enforces hate crime laws and other criminal statutes. The Attorney General is charged with protecting the "people's interest." The Attorney General's office may advocate on behalf of an individual crime victim if compelled to do so by broad civil rights concerns.

617-727-2200

Governor's Hate Crimes Task Force

The Task Force aims to prevent hate crimes, and improve responses and reporting when they occur, through programs that promote awareness and education.

617-660-4600



Gay & Lesbian Advocates & Defenders
30 Winter Street, Suite 800
Boston, MA 02108
Tel: (617) 426-1350
Fax: (617) 426-3594

www.glad.org