

# GLAD

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EQUAL JUSTICE UNDER LAW

## Connecticut

Overview of Legal Issues  
for Gay Men, Lesbians, Bisexuals,  
and Transgender People

January 2012

This document is intended to provide general information only and cannot provide guidance or legal advice as to one's specific situation. Moreover, the law is constantly changing and this publication is based upon the information that is known to us as of this printing. For guidance on your particular situation, you must consult a lawyer. You should not act independently on this information. The provision of this information is not meant to create an attorney-client relationship. Check our website, [www.glad.org](http://www.glad.org), for more information.

If you have questions about this publication, other legal issues or need lawyer referrals, call GLAD's Legal InfoLine weekdays between 1:30 and 4:30pm at:

800.455.GLAD (4523) or 617.426.1350

# Contents

■ CONNECTICUT ANTI-DISCRIMINATION LAW	1
Employment Discrimination	2
Public Accommodations Discrimination	5
Housing Discrimination	6
Credit Discrimination	7
Religious Exemption	7
Pursuing a Complaint	8
■ FAMILY LAW	17
Marriage	17
Civil Unions	20
Legal Protections for Same-Sex Couples	21
Domestic Partnership	27
Adoption	29
Custody and Visitation	33
Domestic Violence	35
■ HATE CRIMES / SEX LAWS / POLICE	39
Hate Crimes & Violence	39
Criminal Sex Laws	42
Police Harassment	47
■ STUDENT RIGHTS	49
Harassment and Discrimination at School	49
Gay / Straight Alliances	52



# **Connecticut Anti-Discrimination Law**

***Does Connecticut have an anti-discrimination law protecting gay, lesbian, and bisexual individuals from discrimination?***

Yes. In 1991, Connecticut became one of a handful of states to pass a comprehensive anti-discrimination law concerning sexual orientation in employment, housing, public accommodations and credit. In 2007, most of the anti-discrimination laws were amended to include “civil union status”<sup>1</sup>—this will be indicated as we discuss the various anti-discrimination laws below.

***Does it also protect people perceived of as gay, lesbian, and bisexual?***

Yes. The non-discrimination law defines “sexual orientation” as “having a preference for heterosexuality, homosexuality or bisexuality, having a history of such preference or *being identified with* such preference...”<sup>2</sup> The language of “having a history of such a preference,” and the language of “being identified with” should allow a person who is fired because they are (inaccurately) perceived to be gay to invoke the protection of the anti-discrimination law to challenge the firing.

***Does it also protect people associated with gay, lesbian, and bisexual individuals?***

Not specifically. But in some situations, if a person is fired from a job or evicted from their home because they hang out with someone who is gay or lesbian, it may be possible to show that they were fired or evicted because the employer or landlord also thought they, too, were gay or lesbian. This would fall under the language in the law which provides protection to people “being identified with” a same-sex sexual orientation.

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<sup>1</sup> Although SB899 abolishes civil unions in Connecticut as of October 1, 2010, the Connecticut General Assembly has not removed “civil union status” as a prohibited basis for discrimination.

<sup>2</sup> Conn. Gen. Stat. sec. 46a-81a

## ***Does it protect transgender people?***

Yes. On July 1, 2011, Governor Malloy signed into law Public Act 11-55, “An Act Concerning Discrimination,” which adds gender identity or expression to Connecticut’s anti-discrimination laws. According to the law, “Gender identity or expression” means *a person's gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth, which gender-related identity can be shown by providing evidence including, but not limited to, medical care, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity or any other evidence that the gender-related identity is sincerely held, part of a person’s core identity or not being asserted for an improper purpose.*<sup>3</sup>

This makes Connecticut the fourth state in New England and the 15<sup>th</sup> state in the United States to provide explicit anti-discrimination protections for transgender people. The law went into effect on October 1, 2011. For more detailed information see GLAD’s and the Connecticut Women’s Education and Legal Fund’s (CWEALF) publication, *Connecticut: Legal Protections for Transgender People*, at: <http://www.glad.org/uploads/docs/publications/ct-trans-legal-protections.pdf>.

## **■ Employment**

### ***What do the employment provisions say? To whom does the law apply?***

The non-discrimination law forbids employers from refusing to hire a person, or discharging them, or discriminating against them “in

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<sup>3</sup> Conn. Gen. Stat. sec. 46a-51(21)

compensation, or in terms, conditions or privileges of employment” because of sexual orientation<sup>4</sup> or gender identity or expression.<sup>5</sup> This covers most significant job actions, such as hiring, firing, failure to promote, demotion, excessive discipline, harassment and different treatment of the employee and similarly situated co-workers.

In addition, employment agencies may not participate in discrimination by refusing to properly classify or refer their customers for employment or otherwise discriminate because of sexual orientation<sup>6</sup> or gender identity or expression.<sup>7</sup> Labor organizations (e.g. unions) may not deny or exclude membership in the union because of sexual orientation or gender identity or expression, or otherwise discriminate against its members because of sexual orientation<sup>8</sup> or gender identity or expression.<sup>9</sup>

The law forbids all of these entities from advertising in such a way as to restrict employment because of sexual orientation<sup>10</sup> or gender identity or expression.<sup>11</sup>

The State of Connecticut and its agencies are forbidden from discriminating based on sexual orientation<sup>12</sup> and gender identity or expression<sup>13</sup> both in their own employment practices as well as in their provision of services. The law imposes an affirmative obligation on state agencies to adopt rules to enforce the non-discrimination provisions and to establish training programs. Contractors who provide services to the state (and any subcontractors they hire) must also certify in writing that they will not discriminate based on sexual orientation<sup>14</sup> or gender identity or expression<sup>15</sup> when fulfilling the contract terms.

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<sup>4</sup> Conn. Gen. Stat. sec. 46a-81c(1)

<sup>5</sup> Conn. Gen. Stat. sec. 46a-60(a)(1)

<sup>6</sup> Conn. Gen. Stat. sec. 46a-81c(2)

<sup>7</sup> Conn. Gen. Stat. sec.c. 46a-60(a)(2)

<sup>8</sup> Conn. Gen. Stat. sec. 46a-81c(3)

<sup>9</sup> Conn. Gen. Stat. sec. 46a-60(a)(3)

<sup>10</sup> Conn. Gen. Stat. sec. 46a-81c(4)

<sup>11</sup> Conn. Gen. Stat. sec. 46a-60(a)(6)

<sup>12</sup> *See generally* Conn. Gen. Stat. secs. 46a-81g to 46a-81o

<sup>13</sup> *See generally* Conn. Gen. Stat. secs 46a-70 & 46a-71

<sup>14</sup> Conn. Gen. Stat. sec. 46a-81i(d)

<sup>15</sup> Conn. Gen. Stat. sec. 46a-60(a)(1)

## ***Does the law apply to every employer in Connecticut?***

No. As broad as the law is, there are several exemptions to its application.

- An employer must employ 3 or more persons in order to be subject to the non-discrimination law.<sup>16</sup>
- An employer, agency or labor organization may defend against a discrimination claim by arguing that a “bona fide occupational qualification” of the particular job is that it has someone in it who is non-gay<sup>17</sup> or non-transgender.<sup>18</sup> But there are no general occupational exemptions from the reach of the non-discrimination law, and this defense is very rarely successful.<sup>19</sup>
- For the scope of an exemption for certain religious employers, see the section below on *Religious Exemption to the Prohibitions on Sexual Orientation*.
- The ROTC (Reserve Officer Training Corps) program, which is established under federal law to provide officers to the U.S. military, may continue to discriminate in its “conduct and administration” at colleges and universities.<sup>20</sup>

## ***Does Connecticut law forbid sexual harassment on the job?***

Yes. Connecticut law defines sexual harassment as:

“unwelcome sexual advances or requests for sexual favors or any conduct of a sexual nature when (a)

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<sup>16</sup> Conn. Gen. Stat. sec. 46a-51(10)

<sup>17</sup> Conn. Gen. Stat. sec. 46a-81c

<sup>18</sup> See generally Conn. Gen. Stat. sec. 46a-60

<sup>19</sup> See, e.g. *The Evening Sentinel et al. v. National Organization for Women*, 168 Conn. 26, 36 (1975) (“A BFOQ exists only if no member of the class excluded is physically capable of performing the tasks required by the job”); *Conn. Institute for the Blind v. CHRO*, 176 Conn. 88 (1978) (“The standard for a BFOQ purposely imposes a heavy burden on an employer whose refusal to hire is prima facie discriminatory”).

<sup>20</sup> Conn. Gen. Stat. sec. 46a-81q

submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (b) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (c) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment."<sup>21</sup>

### ***Can I file a complaint of sexual harassment even if I'm gay?***

It is as unlawful to sexually harass a gay, lesbian or bisexual person as it is to harass a non-gay person. Some harassment is specifically anti-gay, and may be more fairly characterized as harassment on the basis of sexual orientation. Other harassment is sexual in nature and more appropriately categorized as "sexual harassment." Both types of harassment can happen to the same person, and both are forbidden.

Both the United States Supreme Court and several state courts have found same-sex sexual harassment to violate sexual harassment laws.<sup>22</sup>

## **■ Public Accommodations**

### ***What is a "place of public accommodation?"***

A place of public accommodation is "any establishment which caters or offers its services or facilities or goods to the general public . . ." and you are protected by the non-discrimination laws in such places.<sup>23</sup> This definition is intentionally broad.

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<sup>21</sup> Conn. Gen. Stat. sec. 46a-60(a)(8)

<sup>22</sup> Compare *Oncale v. Sundowner Offshore Services*, 523 U.S. 75, 118 S.Ct. 998 (1998)(man can sue for sexual harassment by other men under federal sexual harassment laws); *Melnichenko v. 84 Lumber Co.*, 424 Mass. 285, 676 N.E.2d 45 (1997)(same-sex sexual harassment forbidden under state law)

<sup>23</sup> Conn. Gen. Stat. sec. 46a-63(1)

## ***What does the law say about discrimination in places of public accommodation?***

Such places may not deny full and equal accommodations, or discriminate in any way because of a person's sexual orientation<sup>24</sup> or gender identity or expression.<sup>25</sup> There are a number of irrelevant exemptions in the general law on public accommodation non-discrimination.<sup>26</sup>

A specific law also forbids discrimination at golf clubs on the basis of sexual orientation or gender identity or expression.<sup>27</sup> If a person is denied membership or access to facilities because of sexual orientation (but not civil union status), he or she can file a complaint in Superior Court to restrain further violations and recover actual damages (or at least \$250) as well as costs and attorney's fees.<sup>28</sup>

## **■ Housing**

### ***What is prohibited by the housing anti-discrimination law in Connecticut?***

The housing laws are intended to prohibit discrimination on the basis of sexual orientation<sup>29</sup> or civil gender identity or expression<sup>30</sup> for transactions related to residential housing, whether listing, buying, selling, renting or financing, and whether for profit or not, and whether public or private. Other practices are forbidden, too, such as advertising in a way limited by sexual orientation or gender identity or expression, representing that a dwelling is not available when in fact it is, denying access to a multiple listing service, or altering the terms of a transaction because of sexual orientation or gender identity or expression.

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<sup>24</sup> Conn. Gen. Stat. sec. 46a-81d

<sup>25</sup> Conn. Gen. Stat. sec. 46a-64(a) (1) & (2)

<sup>26</sup> See Conn. Gen. Stat. sec. 46a-64 (b)

<sup>27</sup> Conn. Gen. Stat. sec. 52-571d (b) & (c)

<sup>28</sup> Conn. Gen. Stat. sec. 52-571d (g)

<sup>29</sup> Conn. Gen. Stat. sec. 46a-81e

<sup>30</sup> See generally Conn. Gen. Stat. sec. 46a-64c(a)

## ***Are any landlords exempt from the housing anti-discrimination law?***

The main exemption for sexual orientation to the law allows owners who actually live in a building with not more than four units to disregard the law if they choose,<sup>31</sup> while for gender identity or expression it is a two-family owner-occupied dwelling.<sup>32</sup>

## ■ Credit

### ***What protections exist under Connecticut anti-discrimination law with regard to credit?***

Any person who “regularly extends or arranges for the extension of credit” for which interest or finance charges are imposed (e.g. a bank, credit union, or other financial institution), may not discriminate because of sexual orientation<sup>33</sup> or gender identity or expression<sup>34</sup> in any credit transaction.

**Example:** GLAD brought and settled a claim against a credit union which refused to allow an effeminate looking man from applying for a loan until he came back looking more masculine. A federal court ruled that this stated a claim of sex discrimination.<sup>35</sup>

## ■ Religious Exemption to the Prohibitions on Sexual Orientation and Civil Union Status Discrimination

Religious corporations, associations and educational institutions are sometimes exempt from the law, including the areas of employment, public accommodations, housing and credit discussed above. These anti-discrimination laws “. . . shall not apply to a religious corporation,

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<sup>31</sup> Conn. Gen. Stat. sec. 46a-81e(b)

<sup>32</sup> Conn. Gen. Stat. sec. 46a-64c (b)(1)(B)

<sup>33</sup> Conn. Gen. Stat. sec. 46a-81f

<sup>34</sup> Conn. Gen. Stat. sec. 46a-66(a)

<sup>35</sup> *Rosa v. Park West Bank*, 214 F.3d 213 (1st Cir. 2000)

entity, association, educational institution or society with respect to the employment of individuals to perform work connected with the carrying on by such corporation, entity, association, educational institution or society of its activities, or with respect to matters of discipline, faith, internal organization or ecclesiastical rule, custom or law which are established by such corporation, entity, association, educational institution or society.”<sup>36</sup> Although the exemption is broad, it is not a *carte blanche* for an employer to use his or her religious beliefs as justification for discriminating against a gay or transgender person.<sup>37</sup>

## ■ Pursuing a Complaint

### *How do I file a complaint of discrimination?*

If you wish to file a complaint, you should contact an intake officer at one of the regional offices of the Connecticut Commission on Human Rights and Opportunities (CHRO). The intake worker will discuss your concerns, explain the complaint process and advise you about what help CHRO may be able to provide to you. If CHRO has jurisdiction, you will be given an appointment to come to a regional office to file a complaint. Here is the contact information for CHRO’s administrative headquarters and four regional offices:

- ADMINISTRATIVE HEADQUARTERS  
25 Sigourney Street  
Hartford, CT 06106  
PHONE: (860) 541-3400 OR (800) 477-5737  
FAX: (860) 246-5068

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<sup>36</sup> For sexual orientation, *see* Conn. Gen. Stat. 46a-81p and for gender identity or expression, *see* Public Act 11-55, sec. 37

<sup>37</sup> Compare *Hartwig v. Albertus Mangus*, 93 F.Supp.2d 200, 211, 217 (2000)(gay man who alleged breach of contract because of his sexual orientation could have his claims of breach of contract, defamation and intentional infliction of emotional distress heard without violating free exercise or establishment clause principles). (Note that the statutes pertaining to discrimination based on characteristics other than sexual orientation contain no express religious exemption. See *CHRO v. Archdiocesan School Office*, 202 Conn. 601 (1987)(lower court erred in dismissing case against Catholic School on basis of wholesale religious exemption; issues were not ripe for adjudication)

- **CAPITOL REGION OFFICE**  
999 Asylum Avenue, Second Floor  
Hartford, CT 06105  
PHONE: (860) 566-7710  
FAX: (860) 566-1997
- **EASTERN REGION OFFICE**  
100 Broadway  
Norwich, CT 06360  
PHONE: (860) 886-5703  
FAX: (860) 886-2550
- **WEST CENTRAL REGION OFFICE**  
Rowland State Government Center  
55 West Main Street, Suite 210  
Waterbury, CT 06702-2004  
PHONE: (203) 805-6530  
FAX: (203) 805-6559
- **SOUTHWEST REGION OFFICE**  
350 Fairfield Avenue, 6th Floor  
Bridgeport, CT 06604  
PHONE: (203) 579-6246  
FAX: (203) 579-6950

If you are a state employee, you may file your case directly in court.

For housing complaints only, contact the Housing Discrimination Unit at (800) 477-5737 ext. 3403 or (860) 541- 3403.

The complaint must be in writing and under oath, and it must state the name and address of the individual making the complaint as well as the entity he or she is complaining against (called the “respondent”). The complaint must set out the particulars of the alleged unlawful acts, and it

is advisable also to state the times they occurred.<sup>38</sup> There is no charge to file a complaint.

If you are a state employee, you may file your case directly in court. State employees can skip over the CHRO process entirely.

***Do I need a lawyer?***

No. The process is designed to allow people to represent themselves. However, GLAD strongly encourages people to find lawyers to represent them throughout the process. Not only are there many legal rules governing the CHRO process, but also employers and other defendants are likely to have legal representation.

***What are the deadlines for filing a complaint of discrimination?***

For most people, a complaint must be filed with the CHRO within 180 days of the last discriminatory act or acts.<sup>39</sup> There are very few exceptions for lateness, and GLAD encourages people to move promptly in filing claims.

***Can I file more than one type of discrimination complaint at once, for example, if I believe I was fired both because I am a lesbian and Latina?***

Yes. The state non-discrimination laws for employment forbid taking an action against someone because of sexual orientation as well as civil union status, race, color, religion, creed, age, sex, marital status, national origin, ancestry, present or past history of mental disorder, mental retardation, learning disability or physical disability.<sup>40</sup> In housing, the criteria include most of the above as well as “lawful source of income or familial status.”<sup>41</sup> Protected classes under public accommodations law include those of employment plus “lawful source of income.”<sup>42</sup>

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<sup>38</sup> Conn. Gen. Stat. sec. 46a-82

<sup>39</sup> Conn. Gen. Stat. sec. 46a-82(e)

<sup>40</sup> Conn. Gen. Stat. sec. 46a-60

<sup>41</sup> Conn. Gen. Stat. sec. 46a-64c

<sup>42</sup> Conn. Gen. Stat. sec. 46a-64

### ***What happens after a complaint is filed with the CHRO?<sup>43</sup>***

When you file a complaint with the CHRO, you will be given a packet of information explaining the CHRO procedures and deadlines. Please review these and follow the deadlines.

After filing your complaint, and within 90 days of receiving the answer of the respondent, the CHRO will review the complaint and answer to determine if any further investigation is necessary. This is called a merit assessment review (MAR). Since many cases are dismissed at this stage of the proceedings, it is important that you reply to the respondent's answer within 15 days of receiving it.

After the MAR, if the case is dismissed, you will be given 15 days to request the right to move your complaint from CHRO into the courts. If you do not request to remove your complaint from CHRO, there will be a review of your case, and within 60 days a decision will be made to either reinstate your complaint or to uphold the dismissal.

After the MAR, if the case is not dismissed, an investigator will be assigned and a mandatory mediation conference will be held within 60 days. If negotiations fail to produce a settlement agreeable to all parties, either party or the CHRO can request early legal intervention. The CHRO has 90 days to act upon this request and make one of the following decisions:

1. the investigator will continue to collect evidence and will make a decision of "reasonable cause" or "no reasonable cause."
2. a Hearing Officer will be appointed to decide the merits of the case in a trial-type hearing.
3. the complaint will be dismissed.

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<sup>43</sup> See generally, Public Act 11-237

If there is not a request for early legal intervention, then as in 1. above, the investigator will continue to collect evidence and will make a determination of “reasonable cause” or “no reasonable cause.” If a finding of “reasonable cause” is made, you can request either to have the case heard at the CHRO or to move it to Superior Court. If a finding of “no reasonable cause” is made, you have 15 days to request reconsideration.

Note that in housing discrimination cases, the CHRO must complete its investigation within 100 days of filing and the final disposition within one year, unless it is impracticable to do so.<sup>44</sup>

***What are the legal remedies the CHRO may award for discrimination if an individual wins his or her case there?***

**Employment:** may include hiring, reinstatement or upgrading, backpay, restoration in a labor organization, cease and desist orders, and other relief that would fulfill the purposes of the anti-discrimination laws (e.g. training programs, posting of notices.)<sup>45</sup>

(Note that when cases are filed in court, emotional distress damages and attorneys’ fees are also available to a successful complainant. These are not available from the CHRO.)<sup>46</sup>

**Housing:** damages (expenses actually incurred because of unlawful action related to moving, storage, or obtaining alternate housing); cease and desist orders, reasonable attorney’s fees and costs, and other relief that would fulfill the purposes of the anti-discrimination laws.<sup>47</sup> The CHRO may also order civil fines to be paid to the state.<sup>48</sup>

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<sup>44</sup> For sexual orientation Conn. Gen. Stat. sec 46a-81(e) and for gender identity or expression Conn. Gen. Stat. sec. 46a-64c(f)

<sup>45</sup> Conn. Gen. Stat. sec. 46a-86 (a - c)

<sup>46</sup> See *Bridgeport Hospital v. CHRO*, 232 Conn. 91 (1995); *Delvecchio v. Griggs & Browne Co., Inc.*, 2000 Conn. Super. LEXIS 1149 (April 17, 2000)(“The CHRO is without authority to award a prevailing party attorneys’ fees, punitive or compensatory damages or damages for emotional distress.”)

<sup>47</sup> Conn. Gen. Stat. sec. 46a-86 (a, c)

<sup>48</sup> Conn. Gen. Stat. sec. 46a-81e(f)

**Public Accommodations:** cease and desist orders, and other relief that would fulfill the purposes of the anti-discrimination laws. The CHRO may also order civil fines to be paid to the state.<sup>49</sup>

**Credit:** cease and desist orders, and other relief that would fulfill the purposes of the anti-discrimination laws (e.g. allowing person to apply for credit on non-discriminatory terms).<sup>50</sup>

***Should I take my case away from the CHRO and file in court? How do I do so?***

This is a decision you should make with your lawyer. Greater damages are available to you in state court than at the CHRO, including emotional distress damages and attorney's fees.

To sue an entity in state court as opposed to the CHRO, you must follow several steps and meet various deadlines.<sup>51</sup>

- Your complaint must have been filed on time at the CHRO (i.e., within 180 days of the last act of discrimination);
- Your complaint must have been pending with the CHRO more than 180 days (although if you and your employer agree to request the case's removal to court, you may do so before the 180 days elapse) or the merit assessment review must have been completed;
- You must request a release of your complaint from the CHRO for the purpose of filing a court action (which the CHRO must grant except when the case is scheduled for public hearing or they believe the complaint can be resolved within 30 days);

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<sup>49</sup> Conn. Gen. Stat. sec. 46a-86 (a); sec. 46a-64 (c)

<sup>50</sup> Conn. Gen. Stat. sec. 46a-86 (a); sec. 46a-98 (outlining additional damages available for cases filed in Superior Court within one year of discriminatory act)

<sup>51</sup> Conn. Gen. Stat. sec. 46a-101 to 46a-102

- You must file your court action within 2 years of the date of filing your complaint with the CHRO; and
- You must file your court action within 90 days after you receive a release from the CHRO to file your case in court.

***Are there other agencies at which I can file a complaint for discrimination?***

Depending on the facts of your particular situation, you may be able to file your complaint of discrimination with other agencies. This outline concerns only Connecticut non-discrimination law, and you may well have other rights.

**1. Union:** If you are a member of a union, your contract (collective bargaining agreement) may provide additional rights to you in the event of discipline, discharge or other job-related actions. If you obtain relief under your contract, you may even decide not to pursue other remedies. Get and read a copy of your contract and contact a union steward about filing a complaint. Deadlines in contracts are strict. Bear in mind that if your union refuses to assist you with a complaint, you may have a discrimination action against them for their failure to work with you, or for failure of duty of fair representation.

**2. Federal Agencies:** Sometimes an action states a claim for a violation of federal law in addition to state law. For example, federal law forbids discrimination based on race, sex, age, religion and disability, but not on the basis of gender identity or expression or sexual orientation. Thus, a gay person with HIV who is fired from a job because of HIV status can file with the CHRO as well as the Equal Employment Opportunity Commission. To file claims under federal law, the employer must have at least 15 employees, and complaints must be filed within 180 days of the discriminatory act, but if a person initially institutes his or her complaint with the CHRO, then the time limit for filing with the EEOC is extended to

the earlier of 300 days or 30 days after CHRO has terminated the case. This does not, however, extend the 180 day limit for filing with the CHRO. (People who work for federal agencies are beyond the scope of this publication).

**3. State or Federal Court:** After filing with the CHRO or EEOC, or both, as discussed above, a person may decide to remove his or her discrimination case from those agencies and file in court. There are rules about when and how this must be done as discussed above. In addition, a person may file a court case to address other claims which are not appropriately handled by discrimination agencies. For example, if a person is fired in violation of a contract, or fired without the progressive discipline promised in a handbook, or fired for doing something the employer doesn't like but which the law requires, then these matters are beyond the scope of what the agencies can investigate and the matter should be pursued in court. If a person has a claim for a violation of constitutional rights, such as a teacher who believes his or her free speech or equal protection rights were violated, then those matters must be heard in court.

***What can I do if my employer fires me or my landlord threatens me for filing a complaint of discrimination?***

It is illegal for any employer to retaliate in these circumstances, and the employee could file an additional complaint against the employer for retaliation. "Retaliation" protections cover those who oppose any discriminatory employment practice, as well as those who participate in certain other proceedings.<sup>52</sup> If the employer takes action against an employee because of that conduct, then the employee should be able to state a claim of retaliation.<sup>53</sup>

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<sup>52</sup> Conn. Gen. Stat. sec. 46a-60 (4)

<sup>53</sup> Compare *Provencher v. CVS Pharmacy*, 76 F.E.P. Cases (BNA) 1569 (1st Cir. 1998)(upholding federal retaliation claim of gay man)

Likewise, it is illegal for a landlord to “coerce, intimidate, threaten or interfere with” anyone who file a complaint.<sup>54</sup>

***What can I do to prepare myself before filing a complaint of discrimination?***

Call the GLAD Legal InfoLine at 800-455-4523 (GLAD) any weekday between 1:30 and 4:30 p.m. to talk about options.

As a general matter, people who are still working with or residing under discriminatory conditions have to evaluate how filing a case will affect their job or housing, and if they are willing to assume those possible consequences. Of course, even if a person has been fired, or evicted, he or she may decide it is not worth it to pursue a discrimination claim. This is an individual choice which should be made after gathering information to make an informed choice.

Some people prefer to meet with an attorney to evaluate the strength of their claims. It is always helpful if you bring an outline of what happened on the job that you are complaining about, organized by date and with an explanation of who the various players are (and how to get in touch with them). Try to have on hand copies of your employee handbooks or personnel manuals, any contracts, job evaluations, memos, discharge letters and the like. If you are concerned about a housing matter, bring a copy of your lease, along with any notices and letters you have received from your landlord.

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<sup>54</sup> Conn. Gen. Stat. sec 46a-64c(a)(9)

# **FAMILY LAW**

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## ■ Marriage

### *Can same-sex couples marry in Connecticut?*

Yes. On October 10, 2008, Connecticut's Supreme Court ruled that the state can no longer bar gay and lesbian couples from marrying. Connecticut became the third state, after Massachusetts and California (unfortunately a ballot initiative in November 2008 took away the right for same-sex couples to marry in California), where same-sex couples can wed. This decision was the result of a lawsuit, *Kerrigan & Mock v. Connecticut Dept. of Public Health*, which GLAD filed on August 25, 2004 in New Haven Superior Court on behalf of eight gay and lesbian Connecticut couples who were denied marriage licenses. The plaintiff couples, who at that time had been in committed relationships for between 10 and 30 years, many of them raising children, contended that their exclusion from marriage violated the equal protection and due process provisions of the Connecticut Constitution.

In April 2005, while the *Kerrigan* lawsuit was still ongoing, the Civil Union Law was signed by the Governor granting same-sex couples the state-based legal rights and benefits of marriage. GLAD argued in *Kerrigan* that a separate institution for gay and lesbian couples also violates the Connecticut Constitution.

On June 12, 2006, the trial court ruled for the state, claiming that there was no difference between a marriage and a civil union. GLAD appealed this decision to the Connecticut Supreme Court. After both sides filed lengthy legal briefs, the Connecticut Supreme Court heard oral arguments on May 14, 2007.

The Supreme Court ruling came on October 10, 2008 in a 4-3 decision issued on the basis of equal protection and a determination that sexual orientation-based classifications receive intermediate scrutiny. In its

decision, the Supreme Court ruled that: “Interpreting our state constitutional provisions in accordance with firmly established equal protection principles leads inevitably to the conclusion that gay persons are entitled to marry the otherwise qualified same sex partner of their choice. To decide otherwise would require us to apply one set of constitutional principles to gay persons and another to all others. The guarantee of equal protection under the law, and our obligation to uphold that command, forbids us from doing so.”<sup>55</sup>

Importantly, the Supreme Court found that because of the history of systemic discrimination against gay and lesbian people, laws that discriminate on the basis of sexual orientation must receive a higher level of review or scrutiny than ordinary legislation. This heightened scrutiny means the state must have particularly strong and substantial reasons if it chooses to deny rights to gay and lesbian citizens. The state, according to the Supreme Court, had no sufficient justification for denying marriage to same-sex couples.

The process for getting married in Connecticut basically requires the following basic steps:

1. an eligible couple submits an application for a license in either the town or city in Connecticut where the wedding will take place or where either of the parties lives;
2. the couple must pay the applicable fee and receive a marriage license from the clerk;
3. the couple must have the marriage solemnized (i.e., have a ceremony) within 65 days of filing the application;
4. once the ceremony has been performed, the person who performed it will state the time and place of the wedding on the license, sign it, and send it back to the city or town where the couple married; and
5. the clerk will then register the marriage and the couple can receive an official certificate of their marriage.

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<sup>55</sup> *Kerrigan v. Comm’r of Pub. Health* 289 Conn. 135, 262 (2008).

The detailed process for getting married in Connecticut, whether you should enter a marriage, and what it all means are questions that are addressed in GLAD's publication, *How To Get Married In Connecticut*, at <http://www.glad.org/uploads/docs/publications/how-to-get-married-ct.pdf>.

### ***Can Connecticut same-sex couples get married anywhere else?***

Yes. Within the United States, it is now possible for same-sex couples to legally marry in Massachusetts, Vermont, New Hampshire, Iowa, the District of Columbia and New York. GLAD has publications about how to get married in any of the New England states where same-sex couples can marry at <http://www.glad.org/rights/publications/c/marriage/>. For information about getting married in Iowa, the District of Columbia and New York contact Lambda Legal, [www.lambdalegal.org](http://www.lambdalegal.org).

Canada allows same-sex couples to marry and has no residency requirement. See GLAD's publication on getting married in Canada at <http://www.glad.org/uploads/docs/publications/canada-marriage-faq.pdf>.

In addition, the Netherlands, Belgium, Spain, South Africa, Norway, Sweden, Portugal, Iceland and Argentina allow same-sex couples to marry, but some of these countries have requirements that make it difficult for non-citizens to marry.

### ***How will the marriage of a same-sex couple be respected?***

Connecticut will generally respect the legal marriages of same-sex couples regardless of where the marriage was consecrated, and a Connecticut marriage will be respected as a marriage in Massachusetts, Vermont, New Hampshire, Iowa, the District of Columbia and New York (and possibly in New Mexico and Maryland even though same-sex couples cannot marry there).

A Connecticut marriage will also be treated as a civil union in New Jersey, Illinois and Delaware, and it will be respected as a domestic partnership in the state of Washington.

However, because of the 1996 federal Defense of Marriage Act (DOMA), the federal government will not respect the marriage of any same-sex couple, and so married same-sex couples will not have access to the 1138 federal laws that pertain to marriage.

GLAD has filed two federal lawsuits, *Gill et al. v. OPM et al.* and *Pederson et al. v. OPM et al.*, to challenge Section 3 of DOMA (see [www.glad.org/doma](http://www.glad.org/doma) for detailed information). Should GLAD succeed in these lawsuits, or should Congress repeal DOMA Section 3, some or all of the federal laws where marriage is relevant will be applicable to married same-sex couples who live in states where their marriage is respected.

## ■ Civil Unions

Connecticut was the second state (Vermont was the first) to allow same-sex couples to enter into a civil union, which is a legal status parallel to civil marriage at the state law level. Without any compulsion from a court, the state legislature passed a law, “An Act Concerning Civil Unions,” that was signed by the Governor on April 20, 2005 and became effective October 1, 2005. Civil Unions provide all the benefits, protections and responsibilities that are granted to a spouse under state law.<sup>56</sup> The Connecticut Supreme Court ruling, which enables same-sex couples to marry, did not in any way change the state’s Civil Union Law.

However, on April 23, 2009, the Governor signed into law Public Act 09-13, “An Act Implementing the Guarantee of Equal Protection Under the Constitution of the State for Same Sex Couples,” which provided a process for moving from a system in which both civil unions and marriage are available to gay and lesbian couples to a system in which only marriage is available. All existing Connecticut civil unions were converted into marriages on October 1, 2010.

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<sup>56</sup> California provides a registered domestic partnership system which is nearly as comprehensive and New Jersey and Maine provide more limited protections.

If you have a civil union from another state, Public Act 09-13 clarifies that Connecticut will grant you the same rights and benefits, and hold you to the same responsibilities, as a married couple in Connecticut. So, for example, if you have a civil union from Vermont, New Jersey, Illinois, Delaware or Hawaii, or a registered domestic partnership from California, Oregon, Nevada or the state of Washington, Connecticut law will treat you in the same manner as if you were married in Connecticut.

## ■ Legal Protections for Same-Sex Couples

*Without getting a marriage, what steps can a couple take to legally safeguard their relationship in Connecticut?*

There are various legal documents that can protect a couple's relationship, regardless of whether the couple has no formal legal relationship or is already in a marriage or civil union.

**1. Relationship Agreement or Contract:** In 1987, the Connecticut Supreme Court ruled that an agreement between an unmarried heterosexual couple to share their earnings and the fruits of their labor was an express contract which could be enforced according to the ordinary rules of contract when the couple separated.<sup>57</sup> There is every reason to believe that the same result will apply to the contract of a same-sex couple. While the court held that contracts could be oral or in writing, this ruling provides great incentive for couples to sort out their affairs *in writing* before a separation.

**2. Document Designating a Non-Legally Related Adult to Have Certain Rights and Responsibilities:** In 2002, Connecticut adopted a set of laws,<sup>58</sup> that allows an adult, known as the designator, to name another adult of either sex, known as the designee, to make certain decisions on her or his behalf, or giving the designee certain rights or responsibilities. The protections this

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<sup>57</sup> *Boland v. Catalano*, 2002 Conn. 333, 340-41, 521 A.2d 142, 146 (1987)

<sup>58</sup> Public Act 02-105

law provides fall far short of those associated with marriage, but they may provide some peace of mind for couples under a narrow set of circumstances.

To make this designation, the designator must sign, date and acknowledge a document before a notary public and two witnesses. The designator can revoke the document at any time by destroying the document or by executing a new document.<sup>59</sup> The designation document must be honored in the following circumstances:

- In The Workplace: An employer must notify an employee of an emergency phone call concerning the employee's designee.<sup>60</sup>
- In Court And Administrative Proceedings Involving Crime Victims: The designee of a homicide victim is granted employment protection for missing work in order to attend the court proceedings.<sup>61</sup> The designee is also entitled to request and receive advance notice of the terms of plea agreements with the perpetrator, to make a statement in court prior to the sentencing of the perpetrator, and to make a statement at parole hearings of the perpetrator.<sup>62</sup> The designee, if wholly or partly dependent on the deceased person's income, may seek compensation from the Office of Victim Services.<sup>63</sup>
- In Health Care Settings: With regard to end-of-life decisions, a doctor must attempt to determine the patient's wishes. If a patient's wishes are not written in a living will, the designee is among those with whom the doctor must consult regarding the removal of life support.<sup>64</sup> The doctor must record any such communications with a designee in the

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<sup>59</sup> Public Act 02-105, sec. 3(b)

<sup>60</sup> Conn. Gen. Stat. sec. 31-51jj

<sup>61</sup> Conn. Gen. Stat. sec. 54-85d

<sup>62</sup> Conn. Gen. Stat. secs. 1-1k, 54-91c, 54-126a

<sup>63</sup> Conn. Gen. Stat. sec. 54-201

<sup>64</sup> Conn. Gen. Stat. sec. 19a-571(a)

patient's medical record.<sup>65</sup> Before removing life support, the doctor must make reasonable efforts to notify the patient's designee.<sup>66</sup> In addition, the designee has priority in making anatomical gifts on behalf of a deceased designator over all representatives or family members with the exception of a surviving spouse.<sup>67</sup>

- In Psychiatric Hospitals: The designee is among the list of people who may consent to medical or surgical procedures for involuntarily committed psychiatric patients who are unable to consent themselves.<sup>68</sup>
- In Nursing Homes: The act entitles the designee to (1) receive advance notice of involuntary, non-emergency room transfer, including Medicaid patients' transfer into non-private rooms; (2) participate in any consultations prior to any contested transfer; (3) private visits with the patient; and (4) meet in the facility with family members of other patients.<sup>69</sup>

Other documents, discussed below, allow same-sex partners to share financial, medical, and end of life decisions. The rights and responsibilities to which the designee is entitled under Public Act 02-105 overlap with some of those set forth in the documents discussed below. It is unclear how the law will handle these potential conflicts, and therefore any preference for who should carry out specific obligations should be clearly noted in all relevant documents.

**3. Power of Attorney:** Any competent person may appoint another person as his or her "attorney-in-fact" for financial matters and

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<sup>65</sup> Conn. Gen. Stat. sec. 19a-578(b)

<sup>66</sup> Conn. Gen. Stat. sec. 19a-580

<sup>67</sup> Conn. Gen. Stat. sec. 19a-289h(a)

<sup>68</sup> Conn. Gen. Stat. sec. 17a-543(b)

<sup>69</sup> Conn. Gen. Stat. sec. 19a-550

health care or personal matters, in the event the one becomes incapacitated or disabled.<sup>70</sup>

The law provides a “short form” which allows a person to check off the kinds of transactions he or she would want the “attorney-in-fact” to perform in his or her place. These include (a) real estate matters; (b) chattel and goods transactions; (c) bond, share and commodity transactions; (d) banking transactions; (e) business operating transactions; (f) insurance transactions; (g) estate transactions; (h) claims and litigation; (i) personal relationships and affairs; (j) benefits from military service; (k) records, reports and statements; and (l) all other matters designated by the individual, except health care decisions. Those can be delegated to a “health care representative” that is described below.<sup>71</sup>

It is not clear if the “attorney-in-fact” receives priority for visiting a person in the hospital, so it is important to state whether you want such a preference given in the power of attorney or another document.

The power of attorney can become effective immediately, or upon your disability (called a “springing” power of attorney, because it springs into being upon disability), and it can have a short termination date, long termination date, or no termination date. It should be witnessed by two disinterested individuals and notarized. The notary may also serve as a witness. The power of attorney must stay in possession of the “attorney-in-fact.”

**4. Health Care Representative:** A person age 18 or over may appoint another person to act as his or her health care representative and thereby state his or her wishes regarding health care including withdrawal of life support, preferences for types of medical care, anatomical gifts, or limits on the agent’s authority for end-of-life issues.<sup>72</sup> The document must be executed in accordance

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<sup>70</sup> Conn. Gen. Stat. sec. 1-42

<sup>71</sup> See Conn. Gen. Stat. sec. 1-43(a)

<sup>72</sup> Conn. Gen. Stat. secs. 19a-576

with Conn. Gen Stat. sec. 19a-577 or sec. 19a-575a, and must be witnessed by two adults. Absent a living will, the attending physician will consult the health care representative, the next of kin, the patient's designee under Public Act 02-105, or any other person knowledgeable of the patient's wishes.<sup>73</sup> The representative's designation can be revoked by a written document signed by the person who appointed the representative and two witnesses.<sup>74</sup>

**5. Appointment of Conservator:** Before an individual adult becomes disabled or incompetent, he or she may also designate in writing one or more persons to act as a conservator of his person or estate or both for when the adult is found incapable of managing his or her own affairs.<sup>75</sup> These documents must be treated with the same formality as wills. See generally Conn. Gen. Stat. sec. 45a-645 (b). The appointment of a conservator takes precedence over an attorney-in-fact, health care agent or designee under the new act.<sup>76</sup> A person may also nominate a conservator in accord with the form provided by statute.<sup>77</sup> Note that all nominations are subject to the scrutiny of the probate court at the time a person is deemed incapable or incompetent.

**6. Will:** Without a will, a deceased unmarried person's property passes to: (1) his or her children; (2) his or her family or (3) if next-of-kin cannot be located, to the state. If the person wishes to provide for others, such as his or her partner, a will is essential. Even if a person has few possessions, he or she can name in the will who will administer his or her estate.<sup>78</sup>

In addition, if a person has children, he or she can nominate the future guardian and "trustee for asset management" of the child in the will. That nomination will be evaluated by the Probate Court.

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<sup>73</sup> Conn. Gen. Stat. sec. 19a-571

<sup>74</sup> Conn. Gen. Stat. sec. 191-575a

<sup>75</sup> Conn. Gen. Stat. sec. 45a-645

<sup>76</sup> Conn. Gen. Stat. sec. 45a-650 (g)

<sup>77</sup> Conn. Gen. Stat. sec. 19a-575

<sup>78</sup> See generally Conn. Gen. Stat. secs. 45a-433 – 45a-439

**7. Transfer of Car Ownership to Surviving Partner:** Under Public Act 02-105, a car owner may designate, on the car's registration, a beneficiary to assume ownership of the car upon the death of the owner.<sup>79</sup>

**8. Funeral Planning Documents:** Upon death, a person's body is given to their spouse or their next-of-kin.<sup>80</sup> This can mean that a person's own partner has no right to remove the body, write an obituary, or make plans for a final resting place. To avoid that problem, you can create a document (witnessed and notarized) that designates the person you want to be able to have custody and control of your remains.<sup>81</sup> (Some people include these instructions as part of a will, but since a will may not be found for days after death, it is preferable to give the instructions to the person you want to take care of matters, as well as to family).

**9. Summary:** Some attorneys, particularly if a person is naming the same individual as responsible for his or her welfare, have wrapped together many of the above protections (except the relationship contract, will and the designation under Public Act 02-105) into a document entitled: "Health Care Instructions, Appointment of Health Care Representative, Designation of Conservator for Future Incapacity and Document of Anatomical Gift."<sup>82</sup> It seems likely that the designation under Public Act 02-105 may also be incorporated into such a comprehensive document.

***Does a person need an attorney to get these documents?***

GLAD recommends working with an attorney on these documents. Although forms are available, the form may not be suited to your individual needs and wishes. Moreover, attorneys may be able to help effectuate your goals, for example, by drafting a will in a way which is

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<sup>79</sup> Conn. Gen. Stat. sec. 14-16

<sup>80</sup> Conn. Gen. Stat. sec. 45a-318

<sup>81</sup> Conn. Gen. Stat. sec. 45a-318

<sup>82</sup> Conn. Gen. Stat. sec. 19a-575a

more likely to deter a will contest by unhappy family members, or an appointment of a health care agent with very specific instructions. In addition, an attorney may help to navigate the legal uncertainties flowing from the areas of overlap between these documents.

***If a couple separates, what is the legal status of a relationship or partnership agreement/contract?***

Upon separation, the terms of a Relationship or Partnership Agreement/Contract will come into play if the couple has one. If a couple has a marriage or civil union, divorce laws apply. Absent a marriage, civil union or an agreement, couples can get involved in costly and protracted litigation about property and financial matters but without the divorce system to help them sort through it.

**If a person has changed his or her mind about who should be his or her “attorney-in-fact,” or health care representative, or beneficiary or executor under a will, or funeral planner, or conservator, or designee under Public Act 02-105, those documents should be revoked, with notice to all persons who were given copies of those documents, and new documents should be prepared which reflect the person’s present wishes.**

## ■ Domestic Partnership

***What is domestic partnership?***

Although it is a term used in many contexts, it most often means a status which recognizes an unmarried couple and their children as a family for certain limited purposes. In the workplace context, domestic partnership plans allow an employee to obtain certain fringe benefits for his or her partner, which were previously limited to married spouses. Some states, cities and towns have also enacted domestic partner laws. In other contexts, “domestic partner” is also a shorthand term for family, replacing “lover,” “friend,” and “roommate.” Some people call

cohabitation agreements “domestic partner agreements.” See GLAD’s publications on *Domestic Partnership* for further information.

***Does Connecticut provide same-sex domestic partner benefits to state employees?***

Not any longer. Although Connecticut offered domestic partnership benefits for its state employees for several years, there was an agreement that when marriage became available to same-sex couples those benefits would only be available to married or civil union spouses. Beginning in November 2009 domestic partnership benefits were terminated.

***Can cities and towns in Connecticut provide domestic partner health insurance benefits to their own employees?***

Yes. For example, Hartford has a domestic partnership ordinance providing a means for couples to register as domestic partners.<sup>83</sup>

***What kinds of domestic partner benefits may private employers provide?***

Private employers may provide to domestic partners any benefits they wish -- whether health insurance, family medical or bereavement leave, equal pension benefits, relocation expenses, access to company facilities or any other benefit.

Even when employers provide these benefits, though, sometimes federal laws require different tax or other treatment of the benefits for same-sex partners (even married and civil union partners) as compared to different-sex spouses. For example, an employee must pay income tax on the value of his or her same-sex partner’s health insurance benefits, but an employee with a different-sex spouse does not.<sup>84</sup> For pensions, a same-sex partner has no right to sign off if his or her partner decides to name someone else as the beneficiary of a pension although a different-sex spouse would have that right.

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<sup>83</sup> Hartford, CT Municipal Code, Chap. 2, Art. III, sec. 2-63 (2000)

<sup>84</sup> See Internal Revenue Code, Private Letter Ruling 9603011 (Jan. 19, 1996)

***Can I use the state non-discrimination law to force my employer to provide domestic partnership benefits?***

That is an open question. On the one hand, the non-discrimination law says that an employer can't discriminate on the basis of sexual orientation in terms of compensation, and employee benefits are a form of compensation. But on the other hand, lawsuits in other states have largely failed with these types of claims on the grounds that all unmarried people -- gay and non-gay alike -- are barred from benefits, so there is no sexual orientation discrimination. What is clear is that a private employer may provide domestic partner benefits; the only question is whether the employer could be forced to do so through the non-discrimination law.

## ■ Adoption

***Can a single gay individual adopt a child in Connecticut?***

Yes.

***Can same-sex partners together adopt a child in Connecticut?***

Yes. A couple with a marriage or civil union must adopt a child not born into the relationship as a couple. A couple who does not have a marriage or civil union can both become legal parents of a child through a process, called "second parent adoption," whereby one adopts (or gives birth to the child), and then the second parent adopts. A law which became effective October 1, 2000 creates a process for "second parent adoption" whereby an existing parent (biological or adoptive) may agree to the adoption of the child by another person "who shares parental responsibility for the child."<sup>85</sup>

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<sup>85</sup> Public Act 00-228, amending Conn. Gen. Stat. sec. 45a-724.

### ***What is the advantage of doing a second parent adoption?***

A joint or second parent adoption means that the child now has two legal parents for all purposes. The law will finally reflect the actual family situation, which often gives great comfort and security to everyone involved.

Without an adoption, the non-legal parent needs special permission to seek medical care for the child, or to attend school meetings. With an adoption, the person is a parent entitled to make decisions for the child in day-to-day and emergency matters.

With an adoption, if one parent dies, the other parent will automatically assume custody of the child without a fight from others. In addition, the child would have the automatic right to inherit from the deceased parent, even if there is no will, and possibly to collect social security survivor benefits.

Finally, if the couple separates, then the adoption means that both parents have the right to custody and visitation, and any disputes will be decided based on what is in the best interests of the child rather than on who is the legal parent.

### ***Do we need to do a second-parent adoption if we have a marriage or civil union?***

A child born to a couple with a marriage or civil union is presumed to be the child of both members of the couple. While that is good news, it is still extremely important to adopt because another state might not respect the presumption if the couple moves. Adoption is a court judgment creating a parent-child relationship and is very likely to be respected by other states, even if these states are otherwise hostile to same-sex couples or parenting.

- *Miller-Jenkins Sidebar*

Relying on a partner's good will, or even on the fact that a child was born into a marriage or civil union, is not the best way to

ensure ongoing parental rights of both parents if a couple later separates. A case in point is *Miller-Jenkins v. Miller-Jenkins*. This case has been in litigation since 2004, has involved two state Supreme Courts (Vermont and Virginia), and has already made several trips to the U.S. Supreme Court. Proceedings are ongoing.

In that case, Janet and Lisa had a child, Isabella, while they were in a civil union. Janet did not adopt. After the couple separated, Lisa moved to Virginia and used both the lack of an adoption, and Virginia's laws hostile to same-sex relationships to thwart Janet's contact with their daughter. Finally, however, the Virginia courts agreed that the Vermont courts had the authority to make custody and visitation decisions.

After many attempts to get Lisa to allow Janet visitation rights, in November, 2009, the Vermont Family Court issued an order granting Janet responsibility for the day-to-day care of Isabella while granting Lisa liberal visitation rights. The transfer of custody was to have taken place on January 1, 2010. However, Lisa failed to appear at the appointed time, and an arrest warrant was issued. Lisa and Isabella still have not been found.

GLAD and local counsel represent Janet in the Vermont proceedings. For more information about the case, go to <http://www.glad.org/work/cases/miller-jenkins-v-miller-jenkins>.

***If same-sex parents raise a child together, but only one is the “legal” parent (because of birth or adoption), then what rights does the other parent have vis-à-vis the child?***

As a general matter, the rights of the other parent (non-birth parent or non-adoptive parent) are limited in these circumstances. Whether the couple obtained a marriage or civil union may alter the situation. If there is no marriage or civil union, the law permits persons to petition the Superior Court for visitation but not custody.<sup>86</sup> The threshold

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<sup>86</sup> Conn. Gen. Stat. sec. 46b-59

requirement for a visitation petition is a disruption in a child's family life.<sup>87</sup> As to what "family life" means under the law, see *Michaud v. Wawruck*.<sup>88</sup>

Several courts have allowed lesbian co-parents the right to visit with their children following a separation.<sup>89</sup> Persons awarded visitation have no obligation to support the child, but a legal parent may accept support which is paid.

Regardless of the status of a person's legal rights, it is critical to remember that children form strong attachments to their parental caregivers regardless of legal labels. Separating a child from a person who has acted as their parent can be a devastating loss for a child. Moreover, court proceedings to establish visitation will be painful and costly, so anything people can do outside of court to make decisions together about a child's interests is strongly encouraged. See GLAD's publication: *Protecting Families: Standards for LGBT Families* at <http://www.glad.org/uploads/docs/publications/protecting-families-standards-for-lgbt-families.pdf>

***Short of joint adoption or second parent adoption, how can a family protect the interests of the child vis-à-vis his or her second parent?***

There are a number of steps which can be taken, although none offer the security of a second parent adoption. Among these are:

**Co-parenting Agreement:** An agreement setting out the parents' expectations about each other's roles, and their plans in the event of separation, disability or death. While these agreements may not be given effect, they are important indicators of what the couple believed was in the best interests of the child, and thus may be influential (although not binding) on a court.

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<sup>87</sup> *Castagno v. Wholean*, 239 Conn. 336 (1996)

<sup>88</sup> 209 Conn. 404 (1988) ("traditional models of the nuclear family have come . . . to be replaced by various configurations. . . and we should not assume that the welfare of children is best served by a narrow definition of those who we permit to continue to manifest their deep concern for the child's growth and development")

<sup>89</sup> See e.g. *Antonucci v. Cameron*, 25 Conn. L. Rptr. 509 (Conn. Super. Ct. Dept., Sept. 24, 1999) (allowing visitation to lesbian co-parent where visitation is in the best interests of the child); *Laspina-Williams v. Laspina-Williams*, 46 Conn. Supp. 165, 742 A.2d 840 (1999) (denying motion to dismiss of biological mother in co-parent visitation case)

**Wills:** The legal parent may nominate a guardian of the child upon the parent's death. These wishes are given strong preferences by courts. Of course, if the child has another legal parent living, then that person would likely have priority over the nominated guardian.

**Power of Attorney:** This document is signed by the parent and authorizes another person (the "attorney-in-fact") to make medical or financial decisions for the child (See discussion above).

## ■ Custody and Visitation

*If I have a child from a former heterosexual relationship, and I am now involved with a same-sex partner, can my "ex" use this against me to deny me custody or visitation of my kids?*

This question has never been answered squarely by the Connecticut Supreme Court. As a practical matter, a parent's sexual orientation by itself should not be grounds for denying custody or visitation. A 1988 case decided by a lower court involved a lesbian mother who lost custody of her children to their father, and who was ordered not to have her partner present when the children visited. But the mother did not appeal those rulings and the only matter to reach the Supreme Court was the issue of the financial obligations imposed on her.<sup>90</sup>

It is extremely important that you be honest with your lawyer about your personal circumstances. The information is likely to come to light in any event since a family services officer will be appointed and speak to you, your spouse, your child, and possibly neighbors and people at your child's school. If you don't trust your lawyer with this information, get a new lawyer.

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<sup>90</sup> *Charpentier v. Charpentier*, 206 Conn. 150, 536 A.2d 948 (1988)

### ***What are the factors for making custody determinations generally?***

Upon divorce, the parties may make an agreement about custody and visitation. If they can't reach an agreement, a Superior Court judge will make custody and visitation orders based on the "best interests of the child" standard.<sup>91</sup> As a general matter, the best interests of the child "include the child's interests in sustained growth, development, well-being, and continuity and stability of its environment."<sup>92</sup>

In all contested cases, the judge will appoint a family relations officer to investigate in order to help the judge arrive at a decision. The investigation can touch on matters of "parentage and surroundings of any child, his age, habits and history, inquiry into the home conditions, habits and characters of his parents or guardians and evaluation of his mental or physical condition."<sup>93</sup>

### ***Are there different kinds of custody?***

Yes. "Joint custody" means an order of legal custody of the child to both parents, which allows them joint decision-making for the child and providing that the child shall have continuing contact with both parents.<sup>94</sup> Sole custody means that only one of the parents has those rights.

### ***How is "sexual orientation" used in custody proceedings?***

In a divorce or paternity proceeding, a parent may argue that the other parent's sexual orientation is causing detriment to the child. Any number of reasons can be cited, such as that the gay or lesbian parent's sexual orientation is causing other people to tease or ostracize the child, or that the parent is a bad role model. Or a parent may argue that the ex's new partner is not good for the child. In the overwhelming majority of circumstances, these matters can be answered to the satisfaction of a judge in a way which does not penalize the gay parent or the child.

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<sup>91</sup> Conn. Gen. Stat. sec. 46b-56(b)(1)

<sup>92</sup> *Cappetta v. Cappetta*, 196 Conn. 10, 16, 490 A.2d 996, 999 (1985)

<sup>93</sup> Conn. Gen. Stat. sec. 46b-6

<sup>94</sup> Conn. Gen. Stat. sec. 46b-56a

### ***Does it matter if my “ex” knew or suspected I was gay or lesbian before we separated?***

Whether or not you come out during the divorce process is a personal decision, but there is little to no benefit in keeping it a secret. If a spouse did not know of your sexual orientation at the time of the court proceedings but learns it later, he or she may argue that this is a change of circumstances, which affects the child’s best interests, and that the custody issues should be litigated anew. People can seek to modify court orders for custody when there has been a change in circumstances which alters the child’s best interests. Of course, if your spouse or former heterosexual partner knew of your sexual orientation at the time of the court proceedings establishing custody, a modification petition claiming a “change” would be pointless.<sup>95</sup>

### ***Can a court keep my kids from visiting when my partner is present?***

Courts have the power to do this, but should not do so unless it is clearly in the best interests of the child. Connecticut courts have rejected the notion that any particular lifestyle, in and of itself, will harm a child and insist instead on proof.

## **■ Domestic Violence**

### ***What is domestic violence?***

Under the law, “family violence” means “an incident resulting in physical harm, bodily injury or assault, or an act of threatened violence that constitutes fear of imminent physical harm, bodily injury or assault...”<sup>96</sup> Verbal threats by themselves do not trigger the law’s protections unless there is “a present danger and the likelihood that physical violence will occur.”

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<sup>95</sup> See generally, Conn. Gen. Stat. sec. 46b-56

<sup>96</sup> Conn. Gen. Stat. sec. 46b-38a(1)

### ***Do the domestic violence laws apply to people in same-sex relationships?***

In some circumstances. “Family violence” between family or household members includes, among other things, civil union and same-sex married spouses as well as relationships in which people are or were residing in the same household, people who have a child in common, and people who are in or have recently been in a dating relationship.<sup>97</sup>

### ***How do I get a court order protecting me from an abusive partner?***

You can get a court order from the Family Court, which will prohibit the abuser from coming near you or your home or from harassing you any further. It will only be issued if the court finds you have been subjected to “a continuous threat of present physical pain and injury.”<sup>98</sup> Orders may be granted on an emergency basis.

The process is intended to be simple. You may go to court nearest where you live, or if you have just fled your home, in the town where you used to live. You will need to fill out an application alleging “abuse” as defined above with an affidavit providing the details. The affidavit is signed under oath, so everything you say must be true. Try to demonstrate in as much detail as possible why you feel threatened.

The defendant/abuser must be served with (given a copy of) the court order and notified of his or her right to contest the order in court. At that time, both parties often have attorneys. You should bring with you any witnesses who can substantiate the abuse, as well as copies of threatening letters, medical records, or any other documents that can show how you have been harmed and why you are afraid. Expect to be asked questions by the judge and the attorney for the abuser/defendant. You have the same right to ask questions.

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<sup>97</sup> Conn. Gen. Stat. sec. 46b-38a(2)

<sup>98</sup> Conn. Gen. Stat. sec. 46b-15

Once the order is issued, it is effective statewide. Violation of a court order of which an abuser has notice is a criminal offense.<sup>99</sup> After hearing, the court may grant orders of protection up to 6 months in duration, and those orders may later be extended for up to another 6 months at a time.<sup>100</sup>

If for some reason you decide not to go through with the legal process, you should show up in court anyway and ask that the order be dismissed. If you don't show up, it is possible the court will think of you as unreliable if you need legal help in the future.

There is another type of order available as well called a "protective" order. It is issued automatically when an assailant is arrested and requires no contact to occur between the assailant and victim.

There are other laws that prohibit stalking, harassing and trespassing which may apply to you, but are beyond the scope of this document.

### ***Where can I go to get help?***

In addition to the local police, district attorney, and Superior Court you can contact:

Connecticut Coalition Against Domestic Violence (CCADV)  
(860) 282-7899 or Toll-Free (888) 774-2900 [www.ctcadv.org](http://www.ctcadv.org)

Connecticut Sexual Assault Crisis Services  
(860) 282-9881 or Toll-Free (888) 999-5545  
[www.connsacs.org](http://www.connsacs.org)

INFOLINE (24 hour hotline) Toll-Free (800) 203-1234

Connecticut Women's Education and Legal Fund (CWEALF)  
(860) 524-0601 or Toll-Free (800) 479-2949 [www.cwealf.org](http://www.cwealf.org)

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<sup>99</sup> See generally, Conn. Gen. Stat. sec. 46b-15 (c)

<sup>100</sup> Conn. Gen. Stat. sec. 46b-15(d)

*Does domestic violence play a role in custody decisions?*

It may, but there is no law saying that it should. It is a factor which affects the best interests of the child analysis.

# HATE CRIMES, SEX LAWS & POLICE

## ■ Hate Crimes & Violence

### *Does Connecticut have a hate crimes law?*

Yes, Connecticut has two different types of hate crimes laws. In order to track hate crimes, the State maintains a reporting system so that incidents alleged are centrally recorded.<sup>101</sup> In addition, Connecticut sets out a sliding scale of increased penalties for hate crimes based on actual or perceived race, religion, ethnicity, disability, sexual orientation and gender identity and expression depending on their severity. See “An Act Concerning Intimidation Based on Bigotry or Bias.”<sup>102</sup>

### *How does the law define what is a hate crime?*

Before the law of “intimidation based on bigotry or bias” can be applied to any crime, it must be shown that the attacker acted (1) maliciously and (2) with specific intent (i.e., the attacker specifically chose to attack the person because of their personal characteristics of sexual orientation, gender identity or expression, etc.).

If those prerequisites are shown, the crime takes several forms.

1. Intimidation based on bigotry or bias is a *Class C Felony* when, in addition to the prerequisites above, the attacker “causes serious physical injury” to a person.
2. Intimidation based on bigotry or bias is a *Class D Felony* (less serious than Class C felony) when, in addition to the prerequisites above, the attacker (a) causes physical contact with another person, or (b) damages, destroys or defaces a person’s real or personal property, or (c) threatens to do either (a) or (b) as long as there is also reasonable cause to believe those threatened acts will occur.

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<sup>101</sup> See Conn. Gen. Stat. sec. 29-7m

<sup>102</sup> See Public Act 00-72 and Conn. Gen Stat. sec. 53a 181i-181l.

When no maliciousness can be shown, a person may nonetheless be liable as follows.

3. Intimidation based on bigotry or bias is a *Class A misdemeanor* (less serious than Class D felony) when, with specific intent (there is no maliciousness requirement here), the attacker intimidates or harasses a person or group of persons by (a) damaging, destroying or defacing any real or personal property, or (b) threatens to do so as long as there is also reasonable cause to believe those threatened acts will occur.

Note that actions toward a group -- even if not a specific person -- can trigger the misdemeanor statute.

Another provision of law allows enhanced penalties against people who are “persistent offenders” of crimes involving bigotry and bias.<sup>103</sup>

There are also specific laws concerning desecration of religious sites and cross burning which are beyond the scope of this document.<sup>104</sup>

### ***How do I know if an attack was a hate crime?***

Trust your gut and report to the police all the details of any possible hate crime. If you leave out the details about bias, the police will have no way of knowing that the crime may be a hate crime. Law enforcement officials tend to use the following as guideposts for determining whether or not a crime is a hate crime.

- Did the attacker use anti-gay language or epithets?
- Was the victim in an area associated with gay people (e.g. outside a gay bar or a cruising area)?
- Have there been similar crimes in the area?
- Did the attack occur regardless of economic motive (i.e., person attacked but not robbed)?

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<sup>103</sup> Conn. Gen. Stat. sec. 53a-40a

<sup>104</sup> See e.g. Conn. Gen. Stat. sec. 46a-58

***Where can I call if I think I've been a victim of a hate crime?***

For help and referrals, call the Connecticut Women's Education and Legal Fund (CWEALF) Hate Crimes Project which both records hate incidents and advocates for victims as well. They can be contacted at (860) 247-6090 or Toll-Free (800) 479-2949.

Note that in a typical hate crimes case, the hate crimes violation may be charged along with another criminal statute (such as assault and battery, or assault and battery with a dangerous weapon, or assault with intent to murder and maim), which may be easier to prove.

***What other options do I have if I think I have been a victim of a hate crime?***

In addition to pursuing your rights in the criminal justice system, or instead of going that route, you can pursue a civil action against your attacker if you have been injured or if your property has been damaged.<sup>105</sup> That action must be filed within ONE YEAR of the date of the acts about which you are complaining. If you prevail in court, you can collect damages, and the judge may also decide to award triple damages, equitable relief (such as an injunction ordering the attacker to stay away from you) and attorney's fees.

***In what ways might the recently passed federal hate crimes law help to investigate and prosecute hate crimes?***

The *Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act*<sup>106</sup> was passed by Congress on October 22, 2009 and was signed into law by President Obama on October 28, 2009. It expands 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.

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<sup>105</sup> Conn. Gen. Stat. sec 52-571c

<sup>106</sup> See H.R. 2647 at <http://thomas.loc.gov/cgi-bin/query/D?c111:6:./temp/~c1111UZ0Cx::>

First, and perhaps foremost, the Act allows local and state law enforcement agencies to apply for the following federal assistance from the U.S. Attorney General:

- investigative, technical, forensic or prosecutorial support for criminal investigations and prosecutions,
- grants for extraordinary expenses associated with the investigation and prosecution of hate crimes, and
- grants to combat hate crimes committed by juveniles.

In providing assistance to local and state authorities, the priorities are hate crimes:

- where the offender(s) has committed crimes in more than one state, or
- that occur in rural areas which do not have the resources needed to prosecute such crimes.

Second, for hate crimes that in some way involve crossing state or national borders, or involve or affect interstate commerce, and where a state does not have jurisdiction or has requested federal assumption of jurisdiction, or where the federal government feels that justice has not been served or that U.S. prosecution is in the public interest, the Act authorizes the federal government to prosecute the case.

The Act also requires the Federal Bureau of Investigation to track statistics on hate crimes on the basis of gender and gender identity (statistics for the other groups are already tracked) and on crimes committed by and against juveniles. This is the first federal law to explicitly extend legal protections to transgender persons.

## ■ Criminal Sex Laws

*Does Connecticut have a sodomy law?*

No, Connecticut repealed its former sodomy law, and ever since 1969, acts between consenting adults in private have been legal.

***If it's not illegal for gay people to have sex, why are gay people still getting arrested?***

Gay people are subject to the full range of laws as are non-gay people, so sex in public, or with underage persons, or without consent, or with force, are all illegal. Commercial sex, i.e., prostitution, is also illegal.

Most commonly, though, gay people are sometimes arrested for violating the “public indecency” law.<sup>107</sup> The law targets activity which *occurs in a public place*, whether it is (a) sexual intercourse, or (b) a “lewd exposure of the body with intent to arouse or satisfy the sexual desire of the person,” or (c) a lewd fondling or caress of the body of another person.

The million dollar question is: what is public and what is private? The law says a “public place” is “any place where the conduct may reasonably be expected to be viewed by others.” *Id.* Most people arrested for sexual activity are arrested for activity occurring out of doors. But sex is not illegal simply because it takes place outdoors, in parked cars, or on public lands. **It all depends on the circumstances.**<sup>108</sup>

The State has a legitimate law enforcement interest in protecting the general public from open displays of sex -- whether the sex is between people of the same-sex or of a different-sex. But socializing and expressions of same-sex affection that does not involve the touching of genitals or buttocks or exposure of those is not illegal, *regardless of where it occurs*. No one should be arrested or hassled for foot-tapping, hand-holding, or cruising, or talking, or flirting, or other non-sexual touching.

As a practical matter, regardless of one's rights, having sex outdoors is a risky business. For one, based on numerous reports to us, we believe that some police will overlook sexual activity of non-gay people occurring outdoors, but arrest gay people in the same types of venues.

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<sup>107</sup> Conn. Gen. Stat. sec. 53a-186

<sup>108</sup> See, e.g. *Connecticut v. Vega*, 38 Conn. Sup. 313, 315 (1982)(exposure in front of apartment window seven feet above ground is public); *Connecticut v. Cutro*, 37 Conn. App. 534, 543 (1995)(masturbating in mall parking lot between 9:15 and 9:30 p.m. is public where defendant could be seen by person three cars away)

Another concern is that some police “hunt” for gay people having sex outdoors in park lands and rest areas -- sometimes in uniform and sometimes as undercover decoys. Either way, a person can be charged with a violation of the sex laws.

***Does Connecticut have a “sex offender registry” or “Megan’s” law?***

Yes, every state now has such a law, although the terms differ from state to state.

***What types of crimes are deemed to be “sex offenses”?***

As you would expect with a law designed to ensnare dangerous predators, most of the crimes involve violence or children. If a person is convicted of violating the public indecency law with someone who was under the age of 18 at the time, then that is a registrable “offense against a victim who is a “minor” under Connecticut law.<sup>109</sup>

Specifically, persons who have been convicted or found not guilty by reason of mental disease or defect of a sex offense listed in Connecticut General Statutes 54-250 through 54-261 are required to register.

***What if I was not actually convicted? Or what if my conviction is very old?***

The law only applies to people who were convicted of a sex offense either by a plea of guilty, a jury finding of guilt, or a plea of *nolo contendere*.<sup>110</sup> Any disposition other than a conviction is not a “conviction” for purposes of this law.

The law reaches back in time so that any person convicted of a sex offense who has been released to the community on or after October 1, 1988 is subject to the law.<sup>111</sup>

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<sup>109</sup> Conn. Gen. Stat. sec. 54-250 (2). For a full list of sex offenses, see Conn. Gen. Stat. sec. 54-250 (2)(offenses against minors), (11) (sexually violent offenses)

<sup>110</sup> Conn. Gen. Stat. sec. 54-250 (1)

<sup>111</sup> See e.g. Conn. Gen. Stat. secs. 54-251 (a), 54-252 (a)

### ***How can I find what charges I have been convicted of?***

You can contact the Department of Public Safety, Attn: Bureau of Identification, State Police, 1111 Country Club Road, Middletown, CT 06457 (860-685-8480). For a form (DPS-846-C) and directions for obtaining a copy of your records, go to the following:

<http://www.ct.gov/dps/cwp/view.asp?a=2154&q=294426>. Send a self-addressed, stamped envelope with a \$25 fee made payable to the Commissioner of Public Safety. Also include a short letter explaining your request along with your name, date of birth, maiden name (if applicable) and any aliases.

### ***What obligations are imposed on “sex offenders”?***

Generally, sex offenders must register annually with the Department of Public Safety and provide their name, identifying factors, criminal history record, residence address, and treatment history for mental abnormality or personality disorder (if any). Depending on the type of offense, registration is required for a period of at least 10 years and may continue for life.<sup>112</sup>

There are limited exemptions from the obligation to register.<sup>113</sup>

A person convicted of violating the public indecency law with a minor must register for 10 years, except the person must register for life if he or she has two or more convictions for any such offense.<sup>114</sup>

### ***What information is publicly available about sex offenders?***

In most instances, registration information is available to the public at the offices of the Department of Public Safety, 1111 Country Club Road, Middletown, CT 06457 (ph: 860-685-8060, email: [sex.offender.registry@po.state.ct.us](mailto:sex.offender.registry@po.state.ct.us), Internet:

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<sup>112</sup> Conn. Gen. Stat. secs. 54-251 (a), 54-252 (a)

<sup>113</sup> Conn. Gen. Stat. secs. 54-251 (b), 54-255

<sup>114</sup> Conn. Gen. Stat. sec. 54-251

<http://www.ct.gov/dps/cwp/view.asp?a=2157&Q=294474&dpsNav=%7C>).<sup>115</sup>

The information made public includes the person's name, aliases, date of birth, State Police Bureau of Identification number, registration address, race, color of eyes and hair, sex, height, weight, identifying scars or marks or tattoos, date of registration, date last verified, and date and description of the crime.

In denying a challenge to the posting of information about non-dangerous sex offenders, the United States Supreme Court held in *Connecticut Department of Public Safety v. Doe*, 538 U.S. 1 (2003), that non-dangerous sex offenders do not have a right to a hearing as to their dangerousness before their information is posted, and that further, because the relevant laws have nothing to do with whether the offender is dangerous, such a hearing even after the posting would be irrelevant.

According to the Department of Public Safety Connecticut Sex Offender Registry website:

“The registry is based on the legislature’s decision to facilitate access to publicly available information about persons convicted of sexual offenses. The Department of Public Safety has not considered or assessed the specific risk of re-offense with regard to any individual prior to his or her inclusion within this registry, and has made no determination that any individual included in the Registry is currently dangerous. Individuals included within the registry are included solely by virtue of their conviction record and state law. The main purpose of providing this data on the Internet is to make the information more easily available and accessible, not to warn about any specific individual.”

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<sup>115</sup> Conn. Gen. Stat. sec. 54-258(1).

### ***What is the age of consent for sexual activity?***

Generally, the age of consent for sexual activity is 16.<sup>116</sup> But note that in some circumstances sexual acts with a person under age 18 is a criminal offense (e.g. contact where the actor is the person's guardian or is otherwise responsible for the person's welfare).

## ■ Police Harassment

### ***I am often told by police to “move along” from public areas. Is that legal?***

Not necessarily. If the area is public and not posted as having particular hours, you generally have a right to be there as long as you are engaged in lawful activity. Public places belong to everyone, and are likely also places of public accommodation to which non-discrimination rules apply. Even if police officers want to deter crime, or suspect some kind of unlawful intent, they have no general right to request people to move from one place to another *unless there is unlawful conduct*.<sup>117</sup>

### ***What are the general rules about interaction with police?***

The presence of individuals who appear to be gay, lesbian, bisexual or transgender -- whether because such individuals are displaying symbols such as a rainbow flag or pink triangle or for any other reason should not trigger any special scrutiny by a police officer, other than a concern for the safety and well-being of those persons that the officer would have for any other park or rest area patron.

Police may of course approach a person, and make inquiries. But the fact that a person has been convicted of a past offense, or fails to respond, or responds in a way which does not satisfy the officer, cannot, without more, justify an arrest.

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<sup>116</sup> Conn. Gen. Stat. sec. 53a-71

<sup>117</sup> *Kent v. Dulles*, 357 U.S. 116, 126 (1958).

If an officer has a “reasonable and articulable suspicion” that a crime has been committed or is about to be committed, he or she may briefly detain an individual, or stop the person for purposes of investigation.<sup>118</sup> An arrest can only occur upon “probable cause” that a crime has been committed.

***What can I do if I believe I have been improperly treated by the police?***

Complaints may be made to any individual police department for matters concerning its officers, and complaints to the Connecticut State Police may be made to Department of Public Safety, Attn: Legal Affairs Unit, 1111 Country Club Rd., Middletown, CT 06457. Their general number is (860) 685-8000.

In some cases, an individual may decide to pursue a lawsuit -- because of injuries, improper detainment, or for some other reason. These matters are highly specialized, and GLAD can make attorney referrals.

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<sup>118</sup> *State v. Anderson*, 24 Conn. App. 438, 441, 589 A.2d 372, 373 (1991); *Terry v. Ohio*, 392 U.S. 1, 16 (1968)

# **STUDENTS' RIGHTS**

## ■ Harassment and Discrimination at School

### *Are there any laws protecting gay and transgender students in Connecticut?*

Yes. Conn. Gen. Stat. 10-15c was amended in 1997 to add “sexual orientation” and in 2011 to add “gender identity or expression” to the list of characteristics upon which discrimination is forbidden in public schools.

It provides that:

“The public schools shall be open to all children five years of age and over... and each such child shall have, and shall be so advised by the appropriate school authorities, an equal opportunity to participate in the activities, programs and courses of study offered in such public schools, . . . without discrimination on account of race, color, sex, gender identity or expression, religion, national origin or sexual orientation . . .”

### *What kinds of conduct does the law cover?*

Technically, the law addresses equal opportunity with respect to activities, programs and courses of study. While a school would not likely say, “Don’t come here,” or “You can’t take track,” their actions may imply as much. For example, if a school fails to redress pervasive harassment against you at the school generally or in a particular class or activity, this may violate the letter of the non-discrimination law. At this time, the student rights law does not itself contain a mechanism for lawsuit based on violations of the law, but it may nonetheless prove to be the source of a private right of action. In any event, the law is a

powerful tool in advocating for change in a school to institute training programs and to deal with problems when they arise.

***Are there other laws, which may protect me from discrimination and harassment because of my sexual orientation?***

Possibly. Under federal law, public schools, which receive federal funds, may not discriminate on the basis of sex. Sometimes, the harassment of a gay student will be sexual harassment forbidden by this federal law, known as Title IX. Complaints can be made to your school Title IX coordinator, as well as to the federal Dept. of Education, Office of Civil Rights, in Boston. You may also consult with an attorney and go directly to Court.

***What can I do if I'm being discriminated against at school?***

There are many ways to approach the issue. One is to ask for support from a friend, teacher or counselor and talk to the people who are bothering you. That is not an option, however, if you don't feel safe doing so.

Take a look at your school policies and notify whoever is supposed to be notified -- usually a vice principal or Title IX coordinator. You may wish to document any incidents of harassment or discrimination in writing. Once you meet with the right officials, make a note of what you told them and on what date and ask when they will be getting back to you with a response. If they don't help you or don't follow through, you may wish to write to the superintendent and school board and ask them to end the discrimination.

At the same time, or after contacting the administration as set out above, you may want to send a copy of your complaint to the State Dept. of Education. While they do not have an explicit policy on complaints and they have no obligations under the non-discrimination law, you could request that they intervene on your behalf. Contact Office of Public Information, Conn. State Dept. of Education, 165 Capitol Ave., Hartford, CT 06145. Their phone number is (860) 566-5677 and their website is <http://www.state.ct.us/sde/>

If this fails, you may also wish to consider legal action against the city or town. Contact GLAD for attorney referrals.

***Does Connecticut have a law to protect students from bullying?***

Yes, and the law improved significantly in 2011 with the passage of Public Act 11-232, *An Act Concerning the Strengthening of School Bullying Laws*.<sup>119</sup> Under this law, bullying is defined as:

- repeated written, oral or electronic communication or physical acts or gestures by one or more students directed at another student in the same school district, that
- causes physical or emotional harm or damage to his/her property, places the student in reasonable fear of being harmed, creates a hostile school environment, infringes on the student's rights or substantially disrupts the education process or the school's orderly operation

The Act explicitly lists “characteristics” (including sexual orientation and gender identity or expression) and includes as bullying conduct that targets a student's actual or perceived characteristic or targets someone who associates with an individual or group that has or is perceived to have one or more of these characteristics.

By January 1, 2012, each school board must develop a “safe school climate plan” that:

- enables students to anonymously report acts of bullying
- enables parents to file written reports of suspected bullying
- requires school employees who witness bullying or receive reports of bullying to report it

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<sup>119</sup> See <http://www.cga.ct.gov/2011/act/pa/pdf/2011PA-00232-R00SB-01138-PA.pdf>

- requires schools to investigate all reports of bullying
- has a prevention and intervention strategy
- requires in verified acts of bullying that both the parents of the bully and the parents of the victim be notified and told about the measures taken by the school to ensure the safety of the victim and to prevent further acts of bullying
- prohibits bullying on school grounds, at a school-sponsored or school-related activity, at a school bus stop or on a school bus, through electronic means (i.e. cyberbullying)
- prohibits discrimination and retaliation against an individual who reports or assists in the investigation of an act of bullying
- requires the school to notify the police about any acts of bullying that may constitute criminal conduct
- requires schools to maintain a publicly available list of the number of verified bullying incidents and to report this annually to the Connecticut State Department of Education

requires all school employees to complete annual training on identifying, preventing and responding to bullying and to youth suicide

## ■ Gay/Straight Alliances

*Do students have the right to form Gay/Straight Alliances in their schools even if the principal or community opposes it?*

Students have several legal tools available if they wish to form a GSA or club. A federal law known as the Equal Access Act provides that secondary school students in schools that receive federal funding and

have extra-curricular groups must allow students to form other extra-curricular groups without discriminating based on the religious, philosophical, political or other content of the speech at meetings. According to the law, school administrators must respond consistently to all requests for the formation and funding of extra-curricular clubs, even if they don't agree personally with the content or think the community isn't ready for it. GLAD brought and won a case for students at West High in Manchester, New Hampshire on this very basis. In addition, in some cases, First Amendment principles may be brought to bear on behalf of students wishing to form a club.



Gay & Lesbian Advocates & Defenders (GLAD) is the leading legal rights organization in New England dedicated to ending discrimination based on sexual orientation, HIV status and gender identity and expression. Through impact litigation, education and public policy work, GLAD seeks to create a better world that respects and celebrates diversity—a world in which there is equal justice under law for all.

GLAD's Legal InfoLine and publications are provided *free of charge* to all who need them. We hope that those who are able will make a contribution to ensure that GLAD can continue the fight for equal justice under the law.

To make a tax-deductible contribution, visit us at [www.glad.org](http://www.glad.org), or call us at (800) 455-GLAD (4523) with your credit card, or mail your check, payable to GLAD to 30 Winter Street, Suite 800, Boston, MA 02108. If your workplace has a matching gift program, please be sure to have your donation matched. Please contact us if you would like more information on becoming a GLAD partner.

*Thank You!*



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