



Vermont

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

January 2015

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 evolving 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, for more information.

If you have questions about this publication, other legal issues or need lawyer referrals, contact **GLAD Answers** by live chat or email at www.GLADAnswers.org or by phone weekdays between 1:30 and 4:30 pm at (800) 455-GLAD (4523).

Contents

■ ANTI-DISCRIMINATION LAW	1
Sexual Orientation Discrimination	1
Transgender/Gender Identity Discrimination	2
Prohibited Areas of Discrimination	2
Employment	2
Public Accommodations	5
Housing	6
Credit and Insurance	7
Pursuing a Complaint	9
■ FAMILY LAW	19
Marriage and Civil Unions	19
Domestic Partnership	26
Adoption	28
Custody and Visitation	33
Domestic Violence	36
■ HATE CRIMES / SEX LAWS / POLICE	40
Hate Crimes & Violence	40
Criminal Sex Laws	43
Police Harassment	48
■ STUDENT RIGHTS	51
Harassment and Discrimination at School	51
Gay / Straight Alliances	55
Resources	55

Anti-Discrimination Law

■ Sexual Orientation Discrimination

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

Yes. Vermont was among the first states to pass a comprehensive statewide law prohibiting sexual orientation discrimination in 1992.¹

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

Maybe. Although the anti-discrimination laws themselves do not distinguish between actual and perceived sexual orientation, the questionnaire used by the Civil Rights Unit of the Attorney General's Office allows people to complain of discrimination on account of both sexual orientation and perceived sexual orientation. However, the Human Rights Commission does not make this distinction in its employment complaint form. There is no case law on this. (Note: The school harassment law, which is discussed below in the *Students' Rights* section, does explicitly provide protection for students and their family members who are or are perceived of as gay, lesbian or bisexual.)

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

Probably not, but there is no case law on this. The one exception is the school harassment law mentioned in the question above which extends to family members associated with the student.

¹ Public Act 135, An Act Relating to Discrimination on the Basis of Sexual Orientation. The specific laws at issue are addressed in this publication. Vermont laws are available at <http://www.leg.state.vt.us/statutes/statutes2.htm>.

■ Transgender/Gender Identity Discrimination

Do protections exist for transgender people under state anti-discrimination laws?

Yes. In May, 2007, Vermont became the third state in New England to explicitly prohibit discrimination on the basis of gender identity. The law defines gender identity as “an individual’s actual or perceived gender identity, or gender-related characteristics intrinsically related to an individual’s gender or gender-identity, regardless of the individual’s assigned sex at birth.”² Thus, in the case of gender identity discrimination, there is explicit protection both for transgender people and for people who are perceived as transgender.

■ Prohibited Areas of Discrimination

Vermont law prohibits discrimination in employment, places of public accommodation, housing, credit, and a variety of services, each of which is addressed below.

■ Employment

To whom does the non-discrimination law apply and what does it forbid?

The non-discrimination law prohibits any employer, employment agency or labor organization from discriminating against any individual because of his or her sexual orientation or gender identity.³ This applies to both private and government employers and 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.⁴

² Public Act 41, An Act Relating to Prohibiting Discrimination on the Basis of Gender Identity, 2007-2008 Leg., Reg. Sess. (Vt. 2007). *See also*, 1 V.S.A §144.

<http://www.leg.state.vt.us/database/status/summary.cfm?Bill=S%2E0051&Session=2008>.

³ 21 V.S.A. § 495 (a)(1).

⁴ 21 V.S.A. § 495 (a)(3).

Note that these protections cannot be used to compel an employer to provide health insurance or other employee benefits to an employee's domestic partner.⁵ Also, because some employer health plans are governed by federal law or the insurance laws of other states, whether an employer is legally required to add a same-sex spouse to a health plan is complicated. However, an employer can always offer coverage to a domestic partner or same-sex spouse if the employer so chooses.

In addition, employment agencies may not participate in discrimination by refusing to classify or refer their customers for employment or otherwise discriminate because of sexual orientation or gender identity. Unions may not deny union membership or otherwise discriminate against its members because of sexual orientation or gender identity.⁶

The law also forbids these entities from advertising in such a way as to restrict employment or membership because of sexual orientation or gender identity.⁷

Does the law apply to every employer in Vermont?

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

- 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 have someone in it who is non-gay or has a conforming gender identity. There are no general occupational exemptions from the reach of the non-discrimination law, however, and this defense is very rarely successful.
- Religious institutions and their charitable and educational associations are sometimes exempt from the law.⁸ Where an employer is operated or supervised by a religious institution, it

⁵ 21 V.S.A. § 495 (f).

⁶ 21 V.S.A. § 495 (a)(4).

⁷ 21 V.S.A. § 495 (a)(2).

⁸ 21 V.S.A. § 495 (e).

may preferentially hire members of its own religion, and may take employment actions that it “calculate[s will] ... promote the religious principles for which it is established or maintained.” This exemption, however, is not a *carte blanche* for an employer to use his or her religious beliefs as a justification for discriminating against persons because of their sexual orientation or actual or perceived gender identity.

Does the Vermont law prohibit sexual harassment?

Yes. Sexual harassment is specifically prohibited under the law. Vermont law defines sexual harassment as a form of sex discrimination that means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- submission to that conduct is made either explicitly or implicitly a term or condition of employment;
- submission to or rejection of such conduct by an individual is used as a component of the basis for employment decisions affecting that individual;
- the conduct has the purpose or effect of substantially interfering with an individual’s work performance or creating an intimidating, hostile or offensive work environment.⁹

Because sexual harassment is a form of sex discrimination, a claim of harassment can be pursued in the same ways as other discrimination claims, as discussed below.

In addition to prohibiting sexual harassment, Vermont law requires all employers, employment agencies and labor organizations to ensure a workplace free of sexual harassment by adopting a policy against sexual harassment, posting a notice outlining that policy, and providing all employees an individual written copy of the policy.¹⁰

⁹ 21 V.S.A. § 495d (13).

¹⁰ 21 V.S.A. § 495h.

It is as unlawful to sexually harass a gay, lesbian, bisexual or transgender person as it is to harass anyone else. Some harassment is specifically anti-gay and may be more fairly characterized as harassment on the basis of sexual orientation. Other harassment is because of the person's actual or perceived gender identity and may be characterized as harassment on the basis of gender identity. Still other harassment is sexual in nature and more appropriately categorized as sexual harassment. All these types of harassment can happen to the same person, and all are forbidden under Vermont state law.

Both the United States Supreme Court and several state courts have found same-sex sexual harassment to violate sexual harassment laws.¹¹

■ Public Accommodations

What is a “place of public accommodation”?

A place of public accommodation means “any school, restaurant, store, establishment or other facility at which services, facilities, goods, privileges, advantages, benefits, or accommodations are offered to the general public.”¹²

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

Such places may not, on account of a person's sexual orientation, gender identity, marital status, or other protected characteristic, “refuse, withhold from or deny to that person any of the accommodations, advantages, facilities and privileges of the place of public accommodation.”¹³

¹¹ 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).

¹² 9 V.S.A. § 4501.

¹³ 9 V.S.A. § 4502 (a).

The protections based on marital status mean that a place of public accommodation may not discriminate against same-sex couples who are married or in a civil union.¹⁴

There is an exception to this rule, stating that this law does not prohibit an establishment that provides lodging to transient guests (i.e. hotels, inns) with five or fewer rooms from restricting its accommodations based on sex or marital status.¹⁵

Public, independent and postsecondary schools in Vermont are considered public accommodations and so students are protected from discrimination on the basis of sexual orientation and gender identity. See the section on *Students' Rights* for further information about the rights and protections for school students.

■ Housing

What is prohibited by the housing anti-discrimination law in Vermont?

The housing laws prohibit discrimination based on sexual orientation or gender identity in transactions relating to residential housing -- including buying, selling, renting, negotiating, listing, advertising, inspecting, or financing -- and in the terms, conditions, privileges, services or facilities connected to those transactions.¹⁶ Also, mobile home park owners are prohibited from discriminating on the basis of sexual orientation or gender identity.¹⁷

This law also prohibits discrimination based on marital status, and therefore applies to discrimination against same-sex couples who are married or in a civil union.¹⁸

¹⁴ 15 V.S.A. § 1204 (e)(7) (prohibitions against discrimination based on marital status apply equally to parties to a civil union). *See also* discussion of civil unions below.

¹⁵ 9 V.S.A. § 4502 (d).

¹⁶ 9 V.S.A. § 4503 (a).

¹⁷ 10 V.S.A. § 6236 (d)(3).

¹⁸ 15 V.S.A. § 1204 (e)(7).

In addition, it is unlawful to coerce, intimidate, or threaten a person regarding a housing matter, or interfere with a person's ability to exercise their rights to be free from discrimination in housing.¹⁹

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

There are two main exemptions from the law. One allows owners to disregard the law when the owner or a member of the owner's immediate family resides in the building and the building has three units or less.²⁰

The other exemption applies to religious institutions and the nonprofit institutes they operate, supervise or control. When such religious entities own or operate a dwelling for non-commercial purposes, they may give preference to persons of the same religion. These kinds of religious restrictions or preferences must be stated in the written policies and procedures of the religious entity.²¹

■ Credit and Insurance

Financial institutions and insurance companies are places of public accommodation and so the protections listed above under *Public Accommodations* apply. The following questions and answers provide information about further specific protections that exist in credit and insurance.

How does Vermont anti-discrimination law protect people with regard to credit and loans?

Vermont law prohibits a financial institution from discriminating against an applicant for credit services on the basis of sexual orientation, gender identity, marital status or other protected characteristics. This applies to applicants for credit cards, personal loans, mortgages and commercial loans.²²

¹⁹ 9 V.S.A. § 4503 (a)(5).

²⁰ 9 V.S.A. § 4504 (2).

²¹ 9 V.S.A. § 4504 (5).

²² 8 V.S.A. § 10403.

In addition, Vermont law provides specific non-discrimination provisions with regard to the issuance of bank credit cards,²³ retail installment contracts or retail charge agreements (i.e. in-store credit cards),²⁴ motor vehicle retail installment contracts,²⁵ and agricultural finance leases.²⁶

Example: GLAD brought and won a claim against a credit union that refused to allow a feminine appearing man to apply for a loan until he came back looking more masculine. A federal court ruled that this constituted a claim of sex discrimination in violation of the credit non-discrimination laws.²⁷

How does Vermont anti-discrimination law protect people concerning insurance purchases?

Vermont law prohibits discrimination against an applicant for insurance or an insured person based on sexual orientation, gender identity, marital status, or sex with regard to underwriting standards and practices, eligibility requirements, and rates.²⁸

Insurers are also prohibited from directly or indirectly investigating or inquiring as to an applicant's, insured's or beneficiary's sexual orientation or gender identity in an application for insurance coverage or in connection with an application, as well as from using information about sex, marital status, medical history, occupation, living arrangements, beneficiaries, zip codes or other territorial designations to determine sexual orientation.²⁹

Insurers may not use sexual orientation, gender identity, or beneficiary designation in the underwriting process or in determining eligibility for insurance.³⁰

²³ 8 V.S.A. § 14303.

²⁴ 9 V.S.A. § 2410.

²⁵ 9 V.S.A. § 2362.

²⁶ 9 V.S.A. § 2488.

²⁷ *Rosa v. Park West Bank*, 214 F.3d 213 (1st Cir. 2000).

²⁸ 8 V.S.A. § 4724 (7)(B).

²⁹ 8 V.S.A. § 4724 (7)(C)(i).

³⁰ 8 V.S.A. § 4724 (7)(C)(ii).

In addition, state-regulated insurers may not discriminate between married couples and parties to a civil union with regard to offering insurance benefits to a couple, a spouse, a party to a civil union, or their families.³¹

■ Pursuing a Complaint

How do I file a complaint of discrimination?

Where you file a complaint depends on the type of discrimination you have experienced (i.e. employment, housing, credit, etc.) and whether the party you are complaining against is a state agency. Sometimes you have more than one option about where to file. This chart provides a quick guide, and the details are discussed afterwards.

Types of Claims	<ul style="list-style-type: none"> • Employment claims against the state • Public Accommodations • Housing 	Employment claims against parties other than the State of Vermont	<ul style="list-style-type: none"> • Credit Services • Retail Installment Contracts • Insurance 	Agricultural Finance Leases
Where to File?	<p>Human Rights Commission</p> <p>Superior Court</p>	<p>Civil Rights Unit of Attorney General's Office</p> <p>Superior Court</p>	<p>Dep't of Banking, Insurance, Securities & Health Care Admin.</p> <p>Human Rights Commission</p> <p>Superior Court</p>	<p>Consumer Protection Division of Attorney General's Office</p> <p>Superior Court</p>

State Employment, Public Accommodations, or Housing

- If you believe you have been discriminated against in employment by a state agency, or if you believe you have been discriminated against in public accommodations (for example,

³¹ 8 V.S.A. § 4724(7)(E).

denial of service in a retail establishment or other business), or in housing, you may file a complaint with:

The Vermont Human Rights Commission
14-16 Baldwin Street
Montpelier, VT 05633-6301
(800) 416-2010
(802) 828-2480
human.rights@state.vt.us

A complaint may be filed under oath in person, by telephone, in writing or by e-mail stating the facts concerning the alleged discrimination.

- You may also file your case directly in the Superior Court of the county where the alleged discrimination occurred.

General Employment

- If you believe you have been discriminated against by a party other than the state (for example, a private business or a town), you may file a complaint under oath with the

Civil Rights Unit
Office of the Attorney General (CRU)
109 State Street
Montpelier, VT 05609-1001
(888) 745-9195
civilrights@atg.state.vt.us

Complaining parties must complete a questionnaire, which the Civil Rights Unit will send to you or you can find at http://www.atg.state.vt.us/upload/1189535755_Employment_Discrimination_Complaint_Form.pdf.

- You may also file your case directly in the Superior Court of the county where the alleged discrimination occurred.

Credit or Services

- If you believe you have been discriminated against in the provision of credit services, retail installment contracts, or insurance, you may file a complaint in writing with the

Department of Banking, Insurance, Securities and
Health Care Administration:
89 Main Street, Drawer 20
Montpelier, VT 05620-3101

You can contact the Banking Division for complaints involving credit services or installment contracts at (802) 828-3307 and the Insurance Division for complaints involving insurance at (802) 828-3301. In addition, you may want to contact the Vermont Human Rights Commission since these entities are also places of public accommodation. You may also file your case directly in Superior Court of the county where the alleged discrimination occurred.

- If you believe you have been discriminated against with regard to an agricultural finance lease, you may file a complaint with the

Consumer Protection Division of the Office of the
Attorney General
Consumer Assistance Program:
206 Morrill Hall-UVM
Burlington, VT 05405
(802) 656-3183
(800) 649-2424 (Toll-Free in Vermont Only)
consumer@uvm.edu
<http://www.dii.state.vt.us/ccf/index.php>

or with the Superior Court of the county where the alleged discrimination occurred.

Do I need a lawyer?

Not necessarily. The processes at all of these agencies are designed to allow people to represent themselves. However, GLAD strongly encourages people to find lawyers to represent them throughout any of these proceedings, as well as if you choose to file a claim directly in the Superior Court. Not only are there many legal rules governing these processes, but employers and other defendants are likely to have legal representation.

What are the deadlines for filing a complaint of discrimination?

Complaints of discrimination with the Vermont Human Rights Commission must be filed within one year of the last discriminatory act or acts.³² The CRU also has a policy of requiring complaints to be filed within one year. If you are going to bring a case directly in Superior Court, you should file within three years of the last discriminatory act, although under certain circumstances you may be able to file after that time. There are very few exceptions for lateness, and GLAD encourages people to move promptly in filing claims.

What happens after a complaint is filed with the Commission or the CRU?

If you file with the Human Rights Commission, Commission staff will review your complaint to see if it meets the basic requirements for filing a discrimination claim. If they decide to investigate, a copy of your complaint is sent to the party against whom the complaint has been filed -- the respondent -- who has to respond to the allegations within ten days. The Commission then assigns an investigator, who will look into your claims to see if there are reasonable grounds to believe that you have been discriminated against. In doing so, the investigator may examine and copy records and documents, and conduct interviews of all relevant parties and witnesses. The five Commissioners appointed by

³² Vt. Code R. 80 250 001, Rule 1.

the governor then decide whether there are reasonable grounds to credit your allegations.³³

If you file a complaint with the CRU, the process is very similar, and is described in detail on the CRU's website:

<http://www.atg.state.vt.us/display.php?pubsec=4&curdoc=181>.

The Human Rights Commission and the CRU both allow the parties to engage in voluntary settlement discussions to resolve the case at any point during the investigative process. If these efforts fail, at the end of the investigation the Human Rights Commission or CRU issue findings stating whether there was a violation of law.

If reasonable grounds are found, the Commission will send the case for “conciliation” or settlement proceedings, unless the Commission finds an emergency. If negotiations fail to produce a settlement agreeable to all parties within six months, the Commission will either file a claim against the respondent in the Superior Court or dismiss the proceedings, unless the parties agree to an extension in order to complete ongoing negotiations.³⁴

Similarly, if the CRU finds a violation of law, the respondent will be asked to engage in settlement negotiations to try to resolve the case. If these negotiations fail, the CRU may file a complaint against the respondent in Superior Court.

If reasonable grounds or a violation of law are not found, the case is over within the Commission³⁵ or the CRU.

At this point, or at any point in the process at the Commission or CRU, you may decide to file a case in court. It is crucial to always keep in mind the deadlines for filing such a case, as discussed above. If you do so while an investigation is pending at either of these agencies, the agency may close the investigation, unless it determines that there is

³³ 9 V.S.A. § 4554 (a) – (c).

³⁴ 9 V.S.A. § 4554 (e).

³⁵ 9 V.S.A. § 4554 (d).

good cause to continue it and make a final determination.³⁶ If the agency continues its investigation and finds reasonable grounds, the agency may try to intervene in a case you have filed in order to pursue the state's interest in enforcing the antidiscrimination laws.

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

Employment

The remedies for a successful complainant may include, for employment cases, hiring, reinstatement or upgrading, back pay, front pay, restitution of wages or other benefits, damages, including those for emotional distress, civil penalties (where applicable), and punitive damages.³⁷

Public Accommodations and Housing

In public accommodations and housing cases, remedies may include injunctive relief, compensatory damages (expenses actually incurred because of unlawful action), and punitive damages.³⁸ In addition, criminal penalties of fines up to \$1000 may be imposed.³⁹

In all of these cases, the court may grant attorney's fees, costs and other appropriate relief that is consistent with the purposes of the anti-discrimination laws (e.g. training programs, posting of notices, allowing person non-discriminatory access to and use of public accommodation).

Can I also file a complaint a discrimination complaint with a federal agency?

Yes, in many cases. Federal employment non-discrimination law, called Title VII, applies only to employers with at least 15 employees, and complaints must be filed within 180 days of the discriminatory act with the Equal Employment Opportunity Commission (EEOC). But if

³⁶ Vt. Code R. 80 250 001, Rule 23.

³⁷ 21 V.S.A. § 495b.

³⁸ 9 V.S.A. § 4506.

³⁹ 9 V.S.A. § 4507.

you initially institute your complaint with the Commission or CRU and indicate that you wish to have the complaint cross-filed with the EEOC, then the time limit is extended to the earlier of 300 days or 30 days after the Commission or CRU has terminated the case.⁴⁰ (People who work for federal agencies are beyond the scope of this publication.)

Someone who brings a claim of discrimination may sometimes pursue protections under both state and federal law. This is true because there may be overlapping provisions of state and federal law. For example, Title VII forbids employment discrimination based on race, sex, age, religion and disability (which includes HIV status), but does not expressly forbid discrimination based on “sexual orientation” or “gender identity.”

Because a growing number of courts and government agencies have recognized that the root of sexual orientation and gender identity discrimination is sex discrimination, the federal EEOC has recently indicated that it will accept both “gender identity” and “sexual orientation” discrimination complaints in order to investigate whether the complainant may have experienced prohibited “sex” discrimination. For more information go to:

<http://www.eeoc.gov/eeoc/publications/upload/Gender-Stereotyping-LGBT-brochure-OLC.pdf>.

GLAD recommends that, where there may be overlapping state and federal jurisdiction, you explore filing with the Commission or CRU first but keep in mind the possibility of pursuing a federal claim as well. If you have a sexual orientation or gender identity complaint, you should check off “sex” as well as “sexual orientation” or “gender identity” as the bases for your claim and request that the Commission or CRU cross-file your complaint with the EEOC.

LGBT people who are discriminated against in housing may also be able to file a complaint with the federal Department of Housing and Urban Development (HUD) in addition to the Commission. For more information go to:

⁴⁰ United States Code 42 sec. 2000e-5(e)(1).

http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/LGBT_Housing_Discrimination.

Are there other options for filing a complaint for discrimination?

Possibly, depending on the facts of your particular situation. This publication concerns only Vermont anti-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. In fact, if you obtain relief under your contract, you may decide not to pursue other remedies. Get and read a copy of your contract and contact a union representative 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. State or Federal Court:** After or instead of filing with the Commission, CRU or EEOC, you may decide to file the case in court. You may file in state court at any point within the time limitations, as discussed above. In order to file in federal court, however, you must remove your case from the EEOC, and there are rules about when and how you must do this that the EEOC can explain.

In addition, a person may file a court case to address other claims that are not appropriately handled by discrimination agencies, such as when a person is fired in violation of a contract, fired without the progressive discipline promised in an employee handbook, or fired for doing something the employer doesn't like but that the law requires. Also, if a person has a claim for a violation of constitutional rights, such as a teacher or governmental employee 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 evicts me because I filed a complaint of discrimination?

It is illegal to retaliate against someone for filing a discrimination claim, and you could file an additional complaint against the employer or landlord for retaliation. “Retaliation” protections cover those who participate in proceedings, or otherwise oppose unlawful conduct. If the employer or landlord takes action against an employee or tenant because of that conduct, then the employee or tenant can state a claim of retaliation.⁴¹

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

Call the GLAD Answers at 800-455-GLAD (4523) any weekday between 1:30 and 4:30 p.m. or by email or live chat at www.GLADAnswers.org.

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 will be able to handle 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 the information and advice to make an informed decision.

Some people prefer to meet with an attorney to evaluate the strength of their claims before filing a case. It is always helpful if you bring to the attorney an outline of the problems you experienced on the job, organized by date and with an explanation of who the various players are (and how to get in touch with them). Make it as factual as possible, focusing on specific actions, events and exchanges that illustrate the

⁴¹ 9 V.S.A. § 4503 (a)(5) (retaliation prohibited in public accommodations and housing); 21 V.S.A. § 495 (a)(5) (retaliation prohibited in employment). *See also Provencher v. CVS Pharmacy*, 76 F.E.P. Cases (BNA) 1569 (1st Cir. 1998) (upholding federal retaliation claim of gay man).

discrimination. 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.

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 anti-discrimination laws for employment forbid taking an action against someone because of sexual orientation and gender identity as well as race, color, religion, national origin, sex, ancestry, place of birth, age, disability, HIV-related blood testing, family leave, and workers' compensation. In public accommodations, the employment criteria are expanded to include marital status, but do not include age, ancestry and place of birth. In housing, the employment criteria are expanded to include intending to occupy a dwelling with one or more minor children and receipt of public assistance, but do not include ancestry and place of birth. *See also* the exceptions discussed above.

FAMILY LAW

■ Marriage and Civil Unions

Can same-sex couples marry in Vermont?

Yes. On April 7, 2009, Vermont became the first state to obtain marriage rights for same-sex couples through a legislative process rather than a court case. The bill, S.115 An Act to Protect Religious Freedom and Recognize Equality in Civil Marriage⁴² (hereafter referred to as the “Marriage Act”), was passed by the legislature on April 3, 2009, vetoed by the Governor on April 6, 2009 and the veto was overridden by the Senate (23-5) and the House (100-49) on April 7, 2009.

After nearly 15 years of relentless work, Vermont Freedom to Marry, under the leadership of Beth Robinson, succeeded in reaching its goal of marriage equality. GLAD congratulates Vermont Freedom to Marry on their ground-breaking victory and was pleased to have been able to provide some assistance and support. The “Marriage Act” was implemented on September 1, 2009.

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

1. an eligible couple submits an application for a license in either the town or city in Vermont where one of the parties lives (out-of-state couples can go to any town or city clerk)⁴³;
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 60 days of filing the application⁴⁴;
4. once the ceremony has been performed, the person who performed it has 10 days to send the license back to the city or town where it was issued; and

⁴² See An Act Relating to Civil Marriage at: <http://www.leg.state.vt.us/docs/2010/bills/Passed/S-115.pdf>.

⁴³ 18 V.S.A. § 5131 (a) (1).

⁴⁴ 18 V.S.A. § 5131 (b).

5. the clerk will then file the original and the couple can receive an official certificate of their marriage.⁴⁵

The detailed process for getting married in Vermont, 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 Vermont*, at <http://www.glad.org/uploads/docs/publications/how-to-get-married-vt.pdf>. (*NOTE FOR NON-RESIDENT COUPLES WHO WISH TO DISSOLVE A VERMONT CIVIL UNION OR MARRIAGE*: Vermont recently passed a law that allows couples who got a civil union or married in Vermont, and who reside where neither of them is able to dissolve the relationship, to dissolve it in Vermont without needing to meet any residency requirement provided the couple meets certain criteria. See the above publication for details.)

Can Vermont same-sex couples get married anywhere else?

The list of states where same-sex couples can currently marry is found at: <http://www.freedomtomarry.org/states/>. There is information about getting married in Massachusetts, Vermont, Connecticut, New Hampshire, Maine, Rhode Island and Canada (same-sex couples can marry in Canada and there is no residency requirement) on GLAD's website at: www.glad.org/rights/publications/c/marriage/.

For information about getting married outside New England, contact Lambda Legal (www.lambdalegal.org).

Some people may be able to wed outside the United States, but some of these locales have residency and other requirements that make it difficult for non-citizens to marry.

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

Vermont will generally respect the legal marriages of same-sex couples regardless of where the marriage was consecrated, and a

⁴⁵ 18 V.S.A. § 5131 (c).

Vermont marriage will be respected as a marriage anywhere that same-sex couples can marry. For the most up to date list go to: <http://www.freedomtomarry.org/states/>.

The 1996 federal law, the Defense of Marriage Act (DOMA), which prevented same-sex married couples from accessing the 1,138 federal laws that pertain to marriage, was finally ruled unconstitutional by the United States Supreme Court on June 26, 2013. This case, *Windsor v. United States*, was filed by the American Civil Liberties Union. GLAD filed the first challenge to DOMA in 2009, *Gill v. OPM*, and the legal framework developed in that case was used in subsequent cases, including the *Windsor* case. GLAD was also responsible for coordinating the amici briefs in that case.

This means that same-sex married couples living in places that recognize their marriages will have their marriages respected by the federal government for all purposes, e.g. taxes, Social Security (including SSDI and SSI), immigration, bankruptcy, FMLA, federal student financial aid, Medicaid, Medicare, veteran's benefits, TANF and many more.

For same-sex married couples who live in non-recognition states, even though their state will not recognize their marriage, the federal government will for some purposes (e.g. taxes and immigration) and not for others. GLAD and other legal organizations are advocating that the federal government respect the marriages of same-sex couples for all federal programs wherever they reside, but it will take some time to achieve this goal. For more detailed information about various federal programs and whether the program will recognize the marriages of same-sex couples who live in non-recognition states, go to: www.glad.org/doma.

Also, while DOMA was in effect, if an employer granted a spousal benefit to an employee (e.g. allowing the spouse of the employee to be on the company health plan), the employee was taxed on that benefit. Now that DOMA is gone, that is no longer the case. And since the IRS

respects the marriages of same-sex couples wherever they live, this applies to all married same-sex couples regardless of where they reside.

Unfortunately, one issue that was not resolved by taking down DOMA was whether an employer can be legally required to provide health insurance to a same-sex spouse. If the company has a self-insured health plan, that plan is controlled by a federal agency called ERISA, and because the federal anti-discrimination employment law, Title VII, does not explicitly prohibit discrimination based on “sexual orientation,” some employers are claiming that they are not legally required to provide this benefit to same-sex spouses.

Also, if the health plan is insured and the owner of the plan is situated in a state that doesn’t recognize the marriages of same-sex couples, some employers are choosing to discriminate against same-sex spouses.

However, for both self-insured and insured health plans, nothing prevents the employer from offering coverage to same-sex spouses. If your employer is discriminating against same-sex spouses, contact GLAD Answers.

What happens if we need to end our marriage?

Should the couple at some point wish to end the marriage, unless the couple lives in a state or country which does respect the marriage, it may not be possible to dissolve the marriage until one member of the couple moves to a place that does respect the marriage and lives there long enough to meet that state or country’s residency requirement for divorce.

There are a small number of places that will allow a relationship that was granted there to be dissolved without a residency requirement if you can prove that neither spouse can dissolve it where they currently reside (e.g. Vermont, California, Delaware, District of Columbia, Minnesota and Canada).⁴⁶

⁴⁶ See the following publication from the National Center for Lesbian Right: http://www.nclrights.org/wp-content/uploads/2013/07/Divorce_in_DOMA_States_Attorney_Guide.pdf.

Can same-sex couples obtain any other legal recognition of their relationships in Vermont?

Until September 1, 2009, same-sex couples were able to enter into a civil union in Vermont. However, effective September 1, 2009, Vermont no longer issues civil union licenses, but it will continue to recognize civil unions from Vermont and other states and provide those couples with all of the protections and responsibilities of marriage under Vermont state law.

When the legislature enacted the civil unions law, it also established “reciprocal beneficiary” relationships. These allow people who are at least 18 years old, are not parties to a marriage, civil union or other reciprocal beneficiary relationship, and are related by blood or adoption, to receive the protections and responsibilities granted to spouses in the areas relating to medical decision-making, end-of-life decisions, and abuse prevention.⁴⁷ These protections are extremely limited and do not come close to the scope of a civil union.

People enter into a reciprocal beneficiary relationship by presenting a signed, notarized declaration of a reciprocal beneficiaries relationship to the Commissioner of Health, paying a \$10 fee, and receiving a certificate reflecting the filing of the declaration.⁴⁸ This relationship can be terminated either by following the same filing process for entering it, or if one of the parties enters into a civil union or marriage.⁴⁹

Without joining in marriage or a civil union, what steps can a couple take to safeguard their legal relationship in Vermont?

There are far more modest steps available to people who seek certain limited legal protections and do not desire a marriage or civil union. These include:

1. Relationship Agreement or Contract: Cohabitation agreements regarding property and finances provide a way for couples to sort out

⁴⁷ 15 V.S.A. §§ 1301, 1303.

⁴⁸ 15 V.S.A. § 1304.

⁴⁹ 15 V.S.A. § 1305.

their affairs in writing before a separation. This kind of document serves a similar function to a pre-nuptial agreement. As long as the contract is not about sexual services and complies with the requisites for a valid contract, it has a good chance of being upheld as valid. Bear in mind that, as in any state, specific provisions concerning children may not be enforced according to their terms because it is always in the court's power to determine the best interests of children. (See discussion below concerning parenting agreements)

2. Power of Attorney: Any competent person may appoint another person as his or her "attorney-in-fact" for financial matters in the event the one becomes incapacitated or disabled.⁵⁰ If no such appointment is made, then a "family" member will be empowered to make decisions for the disabled or incapacitated individual. A person may also indicate his or her preference regarding the appointment of a guardian -- a longer-term appointment that applies to all areas of a mentally incapacitated person's personal care and financial affairs (court considers preference of incapacitated person in appointing guardian).⁵¹ The document indicating this preference should be executed with all of the formalities of a will and should be updated to keep track of all aspects of a person's personal and financial situation.

3. Advance Directives for Health Care and Disposition of Remains:

Under Vermont law, an individual may appoint an agent to make decisions for him or her upon incompetence, incapacity or death⁵² and provide the agent with an advance directive that, for example, can:⁵³

- direct the type of health care desired or not desired;
- direct which life sustaining treatments are desired or not desired;
- identify persons with whom the agent should not consult or share information;
- authorize release of health information to other persons in addition to the agent;

⁵⁰ 14 V.S.A. §§ 3501-3516.

⁵¹ 14 V.S.A. § 3072 (consideration of ward's preference in appointing guardian).

⁵² 18 V.S.A. §§ 9700-9720.

⁵³ 18 V.S.A. § 9702

- nominate persons to serve (or not serve) as the individual's guardian should that be needed;
- direct the disposition of the person's remains and the funeral arrangements.

Without an advance directive, medical providers and funeral directors look to a spouse or next-of-kin to make decisions. The advance directive can be revoked at any time by creating a new advance directive or by a clear expression of revocation.⁵⁴ People often give a copy of their advance directive to their doctors and sometimes to family members. In addition, instructions regarding anatomical gifts may be included within the advance directive for health care or on a driver's license.⁵⁵

5. Will: If a person is neither married, nor joined in a civil union, without a will, his or her property passes to: (1) his or her children or (2) his or her family.⁵⁶ 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. If a person has children, he or she can nominate the future guardian of the child in a will.

Does a person need an attorney to get these documents?

GLAD recommends working with an attorney on these documents. Although some forms are available, the form may not be suited to your individual needs and wishes. Moreover, an attorney may be able to help you achieve your goals, for example, by drafting a will in a way which is more likely to deter a will contest by unhappy family members, or drafting a health care proxy with your specific instructions.

⁵⁴ 18 V.S.A. § 9704

⁵⁵ 18 V.S.A. § 5239.

⁵⁶ 14 V.S.A. § 314.

If a couple separates, what is the legal status of a relationship/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 civil union, divorce laws apply, and any such agreements will be treated the same as agreements between married couples.⁵⁷ Absent a civil union or an agreement, couples can get involved in costly and protracted litigation about property and financial matters, with no 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 advanced directive agent, or beneficiary or executor under a will, then 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 that 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 that 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."⁵⁸

⁵⁷ 15 V.S.A. § 1205.

⁵⁸ For additional information regarding Domestic Partnership Benefits, please see the Human Rights Campaign website's Workplace Project at <http://www.hrc.org/issues/workplace/benefits/4814.htm>; *see also* HRC website at http://www.hrc.org/issues/marriage/domestic_partners.asp for general information about domestic partners.

Does Vermont provide domestic partner benefits to state employees?

Yes. The State's Personnel Policies and Procedures extend domestic partnership benefits to state employees. The benefits include medical benefits, bereavement and visitation rights. State employees interested in receiving health and dental insurance for their partners should contact the Department of Human Resources at (802) 828-3455 for an application, which can also be found on the state website at: http://humanresources.vermont.gov/sites/dhr/files/pdf/benefits_compensation/DHR-Domestic_Partner_App_Policy.pdf.

In addition, Vermont state employees who are spouses in a marriage or civil union are eligible for the same benefits available to different-sex married state employees.

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

Yes. Some of the cities that offer medical benefits for domestic partners of municipal employees include Burlington and Middlebury.

What kinds of domestic partner benefits may private employers provide?

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

Are there differences in treatment of benefits extended to domestic partnership, civil union, and married spouses?

Yes. Even when employers provide these benefits, federal laws require different taxation or other treatment of the benefits for domestic partners and civil union spouses as compared to married spouses. For example, an employee must pay federal income tax on the value of his or her domestic or civil union partner's health insurance benefits, but a

married spouse does not.⁵⁹ For pensions and survivor benefits, a domestic or civil union partner has no right to sign off if his or her partner decides to name someone other than him or her as the beneficiary of a pension although a married spouse would have that right.

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

No. Although the non-discrimination law says that an employer cannot discriminate on the basis of sexual orientation, and even though employee benefits are a form of compensation, the law states expressly that the law cannot be construed to change the definition of family or dependent in an employee benefit plan.⁶⁰ Thus, an employer *may* provide domestic partner benefits if it chooses to do so, but it cannot be forced to do so through the state non-discrimination law.

■ **Adoption**

Can a single gay individual adopt a child in Vermont?

Yes. Vermont law provides that any person may adopt or be adopted by another person for the purpose of creating the relationship of parent and child between them.⁶¹

Can same-sex partners together adopt a child in Vermont?

Yes. The Vermont Supreme Court allowed a lesbian couple to adopt the biological children of one of the women in 1993.⁶² Subsequently, the Vermont legislature amended the adoption statute and now it provides, “If a family unit consists of a parent and the parent's partner, and adoption is in the best interest of the child, the partner of a parent may adopt a child of the parent.”⁶³

⁵⁹ See Internal Revenue Code, Private Letter Ruling 9603011 (Jan. 19, 1996).

⁶⁰ 21 V.S.A. § 495 (f).

⁶¹ 15A V.S.A. § 1-102.

⁶² *In re B.L.V.B.*, 160 Vt. 368 (1993).

⁶³ 15A V.S.A. § 1-102.

What is the advantage of doing a second parent or joint adoption?

A joint or second parent adoption is a court judgment that the child has two legal parents for all purposes. In addition to providing legal and emotional security, an adoption decree mirrors the actual family situation and thereby provides emotional comfort and security as well.

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 adopting parent is a legal parent entitled to make decisions for the child in day-to-day and emergency matters without special authorization.

With an adoption, if one parent dies, the other parent will automatically assume custody of the child. In addition, the child would have the automatic right to inherit from the deceased parent, even if there is no will. The child could also collect social security survivor benefits based on the deceased parent's work record.

Finally, if the couple separates, then the adoption means that both parents have the right to seek parental rights and responsibilities, and any disputes will be decided based on what is in the best interests of the child.

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

Emphatically yes. A child born to a couple with a marriage or civil union is presumed to be the child of both members of the couple.⁶⁴ 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.

⁶⁴ *Miller-Jenkins v. Miller-Jenkins*, 912 A.2d 951, para. 45-46 (the non-birth parent has standing as a step-parent); para. 47 (as a step-parent by virtue of the civil union); para. 48-56 (based on the circumstances of undertaking to be a family together).

- *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.

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 has been issued.

On March 8, 2010, Liberty Counsel filed on Lisa's behalf an appeal of the custody order with the Vermont Supreme Court, and GLAD has filed a response on behalf of Janet. 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?

In 2006, in the case of *Miller-Jenkins v. Miller-Jenkins*, the Vermont Supreme Court rejected an attack on the parentage of the non-birth parent by that parent's civil union spouse in the context of a dissolution

action. The couple had not adopted, and that gave an opening to the birth parent to argue the issue. The Vermont court ruled that the civil union, as well as the fact that they had undertaken to form a family together with the assistance of artificial insemination, meant that the child was the legal child of both civil union spouses.

While the result in *Miller-Jenkins* is a good one, it came only after years of litigation, uncertainty and one parent's separation from the child that could have been avoided if the couple had adopted in the first place. Moreover, the circumstances of the *Miller-Jenkins* case will not apply to everyone: when one party in a couple relocates, things can change for the worse. Please call GLAD's Legal InfoLine for information on these issues.

In *Miller-Jenkins*, the Vermont Supreme Court did not discuss its former opinion in *Titchenal v. Dexter*.⁶⁵ In that case, the Vermont Supreme Court ruled that the Superior Court had no jurisdiction to entertain the visitation claim of a lesbian parent who had not adopted the child in a conflict between former lesbian partners. That case did not address the jurisdictional power of the Family Court to decide such cases.

With *Miller-Jenkins* in place, it now seems likely that the Vermont Family Court, (rather than the Superior Court whose jurisdiction was at issue in *Titchenal*) determines custody, visitation and support issues upon the dissolution of a civil union or marriage, as confirmed in *Miller-Jenkins*. The reasoning in the *Miller-Jenkins* opinion might also support the possibility of the Family Court having jurisdiction to hear a de facto parenting case in circumstances where a couple has jointly decided to and in fact has parented a child together even though they did not adopt.⁶⁶ This is a developing area of law and you should contact GLAD and Vermont-based practitioners.

⁶⁵ 693 A.2d 682 (Vt. 1997).

⁶⁶ 15 V.S.A. § 1206; *Miller-Jenkins*, 912 A.2d at para. 55-56.

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 that can be taken, although none offers the security of an adoption decree.

- **Co-parenting Agreement:** Couples may enter into 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 by courts, 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.
- **Wills:** The legal parent may nominate a guardian of the child upon the parent's death.⁶⁷ These wishes are given strong preferences by courts. Of course, if the child has another legal parent living, then that person would 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 a wide variety of decisions and arrangements for the child, including matters related to health care, school and finances. Although these authorizations have been generally respected by schools and pediatricians, among others, their validity has not been tested in court.

■ Custody and Visitation

What standards should same-sex couples with children who are breaking up maintain?

Same-sex couples with children who are breaking up should:

1. Support the rights of LGBT parents;
2. Honor existing relationships regardless of legal labels;

⁶⁷ 14 V.S.A. § 2656.

3. Honor the children's existing parental relationships after the break-up;
4. Maintain continuity for the children;
5. Seek a voluntary resolution;
6. Remember that breaking up is hard to do;
7. Investigate allegations of abuse;
8. The absence of agreements or legal relationships should not determine outcome;
9. Treat litigation as a last resort; and
10. Refuse to resort to homophobic/transphobic laws and sentiments.

For more detailed information about these standard see the publication *Protecting Families: Standards for LGBT Families* at: <http://www.glad.org/uploads/docs/publications/protecting-families-standards-for-lgbt-families.pdf>.

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?

The Vermont Supreme Court has not yet addressed a case like this directly, but as a practical matter, one's sexual orientation in itself is not used as grounds for denying a person custody or visitation. Evidence of a parent's conduct can only be introduced if the conduct affects the parent's relationship with the child.⁶⁸

The few lower courts that have addressed the issue have required the parent raising another parent's sexual orientation as an issue to demonstrate that the parent's sexual orientation has an adverse effect on the child's best interests.⁶⁹

⁶⁸ 15 V.S.A. § 667.

⁶⁹ *Medeiros v. Medeiros*, 8 Fam. L. Rep. 2372 (Apr. 8, 1992) (mother's lesbian relationship did not present substantial risk of harm to children); *Barker v. Rawson*, No. F108-5-91 AnDmp (Addison Fam. Ct. Nov. 27, 1991) (grandmother's lesbianism in no way affects her visitation rights).

What are the factors for making custody determinations generally?

Upon divorce or civil union dissolution, a court makes an order concerning parental rights and responsibilities of any minor child of the parties based on the best interests of the child.⁷⁰ If the parties make an agreement about custody and visitation, the court will presume that agreement to be in the best interests of the child.⁷¹ If parents cannot agree, the court determines the way that parental rights and responsibilities will be divided or shared between them. In considering the best interests of the child, the court examines the following factors⁷²:

- the relationship of the child with each parent and each parent's ability to provide the child with love, affection and guidance;
- each parent's ability to assure that the child receives adequate food, clothing, medical care, other material needs and a safe environment;
- each parent's ability to meet the child's present and future developmental needs;
- the quality of the child's adjustment to the child's present housing, school and community and the potential effect of any change;
- each parent's ability to foster a positive relationship and frequent and continuing contact with the other parent;
- the quality of the child's relationship with the primary care provider, if appropriate given the child's age and development;
- the relationship of the child with any other person who may significantly affect the child;

⁷⁰ 15 V.S.A. § 665.

⁷¹ 15 V.S.A. § 666.

⁷² 15 V.S.A. § 665.

- the parents' ability to communicate, cooperate with each other and make joint decisions concerning the children where parental rights and responsibilities are to be shared or divided; and
- evidence of abuse, and the impact of the abuse on the child and on the relationship between the child and the abusing parent.

In addition, the court may not prefer one parent over the other because of the sex of the child, the sex of a parent or the financial resources of a parent.⁷³

How is “sexual orientation” used in custody proceedings?

In a divorce or parentage proceeding, a parent might argue that the other parent's sexual orientation is causing detriment to the child. Any number of reasons could 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 might 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 that does not penalize the gay parent or the child. Contact GLAD for further resources for dealing with such a situation.

Does it matter if my “ex” knew I was gay or lesbian or might be before we separated?

It can make a difference with respect to future modification of court orders for custody. People can seek to modify court orders for custody when there has been a real, substantial and unanticipated change in circumstances. 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 substantial change of circumstances and that the custody issues should be litigated anew. Of course, if your spouse or former heterosexual partner knew of your sexual orientation at the time of the

⁷³ 15 V.S.A. § 665.

court proceedings establishing custody, a modification petition on those grounds would be pointless.⁷⁴

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

The standard for restrictions on visitation, and in all matters, is what is in the best interests of the child with no concern for the adults. Courts have enormous discretion in visitation matters and certainly have the power to restrict visitation, but unless the partner is causing harm to the child -- a very high standard -- visitation should not be restricted.

■ Domestic Violence

What is domestic violence?

Under the laws of domestic relations, “abuse” includes causing or trying to cause physical harm; causing fear of imminent serious physical harm; or abuse to children, which includes physical injury, neglect, emotional maltreatment or sexual abuse.⁷⁵

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

In most situations, yes. These laws apply to abuse between family members, which includes civil union spouses, as well as between “household members,” which includes people who are living or have lived together, but also those who have or had a sexual relationship, or who are dating or have dated. To determine whether a dating relationship exists or existed, the court looks to whether the relationship is/was of a romantic nature, how long it has been/was going on, how often the parties interact/ed, and, if the parties have broken up, how long ago the relationship ended.⁷⁶

⁷⁴ 15 V.S.A. § 668.

⁷⁵ See 15 V.S.A. § 1101.

⁷⁶ 15 V.S.A. § 1101.

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

You can file a complaint seeking relief from abuse with the district, superior or family court in the county in which you live, or, if you have just fled your home, in either your new or old county. There is no fee.⁷⁷

If you are in immediate danger from harm, you can file an application for a temporary order.⁷⁸ All of the courts are required to have procedures for people to file these applications after regular court hours, or on weekends and holidays.⁷⁹ Temporary orders are generally issued upon request, based on the existence of a relationship between victim and offender that is covered by the law and a credible allegation of abuse or threats of abuse. The order can include:

- an order restraining the defendant from abusing you and from contacting you in person, by phone or by mail,
- prohibiting the defendant from coming within a fixed distance of you, your residence, or other designated locations where you are likely to spend time, and
- assigning child custody and requiring child support.

The order, a copy of which must be given to the abuser, will state a time within ten days of its being issued for the defendant to contest it. At the hearing, if the victim proves the abuse, the court will keep the order in effect and make other orders it deems necessary to keep the victim safe.⁸⁰ Once an order is issued, it is filed with the Department of Public Safety's abuse database. Police and sheriff's departments, as well as state police district offices are also required to maintain procedures to make personnel aware of the existence and contents of abuse prevention orders.⁸¹

⁷⁷ 15 V.S.A. § 1103.

⁷⁸ 15 V.S.A. § 1104.

⁷⁹ 15 V.S.A. § 1106.

⁸⁰ 15 V.S.A. § 1104.

⁸¹ 15 V.S.A. § 1107.

The order will stay in effect for a fixed period of time, at the end of which the court may extend it for as long as it deems necessary to protect the victim. The court does not have to find that abuse took place during the time covered by the order to extend it.⁸²

You don't need a lawyer to get the temporary order, but it may be helpful to have one for later hearings if you think the abuser will contest the order. The court administrators may be able to connect you with agencies that help victims seek relief and gain access to the courts.⁸³

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. Failure to show up might make the court think you are unreliable if you need legal help in the future.

Violation of an abuse order is a criminal offense and can result in the immediate arrest of the abuser, as well as imprisonment of up to six months and a fine of up to \$1000.⁸⁴ It is worth noting that restraining orders do not restrict the abuse victim's activities or contacts.

A victim may participate in an address confidentiality program, through which the Secretary of State gives the victim another address to use in order to keep the actual address confidential from the public.⁸⁵

There are other laws that prohibit stalking, harassing and trespassing that may also apply to your situation, but are beyond the scope of this document. For more information, you may wish to consult the Vermont Center for Crime Victim Services at 1-800-750-1213 or <http://www.ccvvs.state.vt.us/>.

If I go to court, will I “out” myself for all purposes?

Not necessarily. The courts try to be sensitive to the fact that some people seeking orders may be closeted, or may be in a same-sex

⁸² 15 V.S.A. § 1103.

⁸³ 15 V.S.A. § 1106.

⁸⁴ 15 V.S.A. § 1108.

⁸⁵ 15 V.S.A. § 1152.

relationship that they do not want revealed. A relief-from-abuse order is a public record, however.

Where can I go to get help?

In addition to the local police and district attorney, you can contact the Vermont Network Against Domestic Violence and Sexual Assault at vtnetwork@vtnetwork.org or 1-800-228-7395. They can provide you with information and assistance and connect you to resources in your area.

Does domestic violence play a role in custody decisions?

Yes. Evidence that a parent has in the past, or is presently, abusing the other parent or the child is a factor showing that that parent is not acting in the best interests of the child.⁸⁶

⁸⁶ 15 V.S.A. § 665.

HATE CRIMES, SEX LAWS & POLICE

■ Hate Crimes & Violence

Does Vermont have a hate crimes law?

Yes. Vermont law imposes increased penalties for crimes committed because of hatred or animus toward the victim's actual or perceived race, color, religion, national origin, sex, ancestry, age, service in the U.S. armed forces, handicap, sexual orientation, or gender identity.⁸⁷

In addition to being subject to criminal prosecution, the Attorney General's office may seek civil penalties from a perpetrator of up to \$5000 (payable to the state) plus costs and attorney's fees for every violation of the criminal hate crimes statute and for violations of any injunctions imposed (see discussion below).⁸⁸

How does the law define what is a hate crime?

The hate crimes law applies to “[a] person who commits, causes to be committed or attempts to commit any crime and whose conduct is maliciously motivated by the victim's actual or perceived race, color, religion, national origin, sex, ancestry, age, service in the armed forces of the United States, handicap..., sexual orientation or gender identity.”⁸⁹

According to the Attorney General's office, assaults, unlawful mischief (damage or destruction of property), telephone harassment and disorderly conduct (by public yelling of threats and abuse) are the most common hate crimes in Vermont.⁹⁰

⁸⁷ 13 V.S.A. § 1455.

⁸⁸ 13 V.S.A. § 1466.

⁸⁹ 13 V.S.A. § 1455.

⁹⁰ <http://www.state.vt.us/atg/hate%20crimes.htm>.

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

In addition to contacting the local police, you may contact the Civil Rights Unit of the Attorney General's Office at (802) 828-5511 or civilrights@atg.state.vt.us. Be sure to explain all of the factors that make you think this was a crime of bias.

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

Victims of hate crimes can also file a civil claim in the Superior Court of the county where they live or where the crime occurred.⁹¹ These claims can seek:

- an order to stop the hate-motivated behavior and restrict the perpetrator's ability to contact you in any way;
- money damages to compensate for the injury caused by the crime;
- money damages to punish the perpetrator;
- costs and attorney's fees; and
- any other relief the court thinks is appropriate.

Through this process, you have the right to obtain very similar protections to those available to domestic violence victims. (See discussion above). If you have been the victim of a hate crime or of a stalker, you can go to Superior Court and quickly obtain a preliminary order providing protection from the perpetrator of the hate crimes. This order may:

- prohibit the perpetrator from committing any crime against you or other people;
- prohibit the perpetrator from contacting you; and
- prohibit the perpetrator from coming near you, your home, or other places where you are likely to be (i.e. workplace, homes of

⁹¹ 13 V.S.A. § 1457.

family members, etc.).

This preliminary order will remain in effect for a period of time set by the court up to 120 days, or until there is a final decision in the case.⁹²

A final order can be issued for up to two years, but the court can extend the order for any amount of time if it finds it is necessary to protect the victim. Violating these kinds of orders is a crime, subject to immediate arrest, imprisonment and fines.⁹³

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*⁹⁴ 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.

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.

⁹² 13 V.S.A. § 1461.

⁹³ 13 V.S.A. §§ 1461, 1465.

⁹⁴ See H.R. 2647 at <http://thomas.loc.gov/cgi-bin/query/F?c111:6:./temp/~c111X7TYvf:e1999565:>

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 Vermont have a sodomy law?

No. Although Vermont once had a “fellation” law,⁹⁵ the legislature repealed that statute in 1977. Consensual, sexual activity between adults in private is not a crime anywhere in the U.S.

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 to which non-gay people are subject, such as those that criminalize sex in public, forcible sex, or sex with minors. Commercial sex, i.e. prostitution, is also illegal.

Most gay people arrested for sexual activity are arrested for activity occurring in a public setting. The law regarding lewd and lascivious conduct prohibits “open and gross lewdness and lascivious behavior.”⁹⁶ This law targets sexual activity that is obvious and not concealed, and requires no more than one witness.⁹⁷ This one witness can be anyone, including the person who complains about the conduct or the police.

⁹⁵ See *State v. La Forrest*, 71 Vt. 311 (1899).

⁹⁶ 13 V.S.A. § 2601.

⁹⁷ *State v. Benoit*, 158 Vt. 359 (1992).

This law has been applied to people having sexual encounters in public. Bear in mind that sexual activity should not be illegal simply because it takes place outdoors, in parked cars, or on public lands. A great deal depends on the overall circumstances (i.e. time of day, level of seclusion).⁹⁸

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

As a practical matter, *regardless of one's rights, having sex in a public venue or outdoors is a risky business*.

Does Vermont have a “sex offender registry” type of law?

Yes. Every state now has such a law, although the terms differ from state to state. The Vermont Criminal Information Center (VCIC) of the Department of Public Safety has maintained a sex offender registry since 1996. It participates in the National Sex Offender Registry Program managed by the Federal Bureau of Investigation.

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

As you would expect with a law designed to ensnare dangerous and violent predators, most of the crimes involve violence or sex with children. **However, if someone is convicted of a *single offense under the lewd and lascivious conduct statute, they are considered a sex offender subject to the registration requirements.***⁹⁹

In addition, Vermont law allows the state to request that a person be designated as a sexually violent predator within ten days after that

⁹⁸ See *State v. Franzioni*, 100 Vt. 373 (1927) (sexual conduct on fairgrounds grandstand at night was not “open and gross” because it was concealed from everyone else).

⁹⁹ For a full list of the offenses, see 13 V.S.A. § 5401.

person is convicted of sexual assault or aggravated sexual assault. The court decides this at the time of sentencing and requires clear and convincing evidence that the convicted sex offender suffers from a mental abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offenses.¹⁰⁰

How can I find out what charges I have been convicted of?

You can contact your local police, or call the VCIC, (802) 244-8727, to request a form to get a copy of your criminal records. You will need to fill out the form and return it to:

VCIC, Department of Public Safety
103 South Main Street
Waterbury, VT 05671

What if my conviction is really old? Or in another state?

The sex offender registration laws only apply to¹⁰¹:

- those convicted of a sex offense in Vermont on or after July 1, 1996;
- those convicted in Vermont or another state before July 1, 1996, but a) released from incarceration on or after that date, or b) being supervised in the community as of that date; and
- those convicted or released from confinement in another state on or after July 1, 1986 and who establish residence in Vermont on or after July 1, 1996.

What obligations are imposed on “sex offenders”?

Upon conviction and prior to sentencing, a sex offender must provide the court with their name, date of birth, general physical description,

¹⁰⁰ 13 V.S.A. § 5405.

¹⁰¹ Public Act 124, § 3 (1995).

current address, social security number, fingerprints, current photograph and current employment.¹⁰²

When a sex offender is sentenced to probation or an alternative sentence under community supervision, or when a sex offender is about to be released from prison, the Department of Corrections forwards to the Department of Public Safety the above listed information, as updated, as well as the address upon release, the name, address and phone number of the local department of corrections in charge of monitoring the sex offender, and documentation of any treatment or counseling received.¹⁰³

A sex offender is required to report to the Department of Public Safety annually within ten days of each anniversary of the person's date of release. A person who has been deemed to be a sexually violent predator must report to the Department every 90 days. If a person in either of these categories changes addresses, s/he must report to the Department within three days. Upon relocating to another state, the person must notify the Department and register with the new state's law enforcement agency within three days if the new state has a registration requirement.¹⁰⁴ The Department will then notify the local law enforcement agency.¹⁰⁵

How long do these registration requirements last?

Except in the circumstances discussed below, this registration requirement continues for a sex offender until ten years have passed since the person was released from prison or discharged from parole, supervised release or probation, whichever is later.¹⁰⁶

The registration requirement continues for the person's life if s/he had at least one prior conviction for a sex offense in another jurisdiction, if s/he was convicted of sexual assault or aggravated sexual assault (unless

¹⁰² 13 V.S.A. § 5403.

¹⁰³ 13 V.S.A. § 5404.

¹⁰⁴ 13 V.S.A. § 5407 (a).

¹⁰⁵ 13 V.S.A. § 5411.

¹⁰⁶ 13 V.S.A. § 5407 (e).

the age of the victim was the basis for the conviction), or if s/he was determined to be a sexually violent predator.¹⁰⁷ After ten years, however, a person required to register for life can petition the district court for a termination of notification such that information about him or her is no longer given to local law enforcement and the surrounding community.¹⁰⁸

Who may obtain information from the registry?

The information in the registry may be disclosed for any legal purpose, including for use by local, state and federal law enforcement agencies for purposes of law enforcement activities; state and federal governmental agencies conducting confidential background checks; and any employer authorized by law to request records and information from the VCIC where the disclosure to such an employer is necessary to protect the public. A person required to register may also access the information contained in the registry for purposes of reviewing the accuracy of any record relating to him or her. The identity of a victim of an offense requiring registration shall not be released.¹⁰⁹

In addition, the public can gain access to information about people required to register as sex offenders from the Departments of Corrections or Public Safety or from local law enforcement agencies when the requestor can state a specific concern about his or her personal safety or that of his or her family.¹¹⁰

What if my conviction is overturned?

A person whose conviction is reversed or dismissed is no longer subject to registration requirements and any information about him or her in the registry relating to that conviction shall be removed and destroyed. Further, anyone to whom that information was sent shall be notified and required to remove and destroy the information as well.¹¹¹

¹⁰⁷ 13 V.S.A. § 5407 (f).

¹⁰⁸ 13 V.S.A. § 5411.

¹⁰⁹ 13 V.S.A. § 5402.

¹¹⁰ 13 V.S.A. § 5411.

¹¹¹ 13 V.S.A. § 5413.

What is the age of consent for sexual activity?

Generally, the age of consent for sexual activity is 16.¹¹² The statutory rape law does not apply, however, to consensual sexual activity between two people under the age of 16.¹¹³

■ Police Harassment

I have been 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. They are also likely to be places of public accommodation to which anti-discrimination laws 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*.¹¹⁴

What should LGBT people expect from interactions with police?

The presence of individuals who appear to be gay, lesbian, bisexual or transgendered -- 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 even if a person has been convicted of a past offense, or fails to respond, or responds in a way which does not satisfy the officer, that alone does

¹¹² 13 V.S.A. § 3252.

¹¹³ *In re G.T.*, 170 Vt. 507, 518 (2000). *See also* 13 V.S.A § 3252(c) (No person shall engage in a sexual act with a child who is under the age of 16, except: (1) where the persons are married to each other and the sexual act is consensual; or (2) where the person is less than 19 years old, the child is at least 15 years old, and the sexual act is consensual.)

¹¹⁴ *See Kent v. Dulles*, 357 U.S. 116, 126 (1958); *see generally* Vt. Const. Ch. 1, art. 11 (search and seizure regulated).

not constitute grounds for the person to be arrested. A police officer may generally only stop a person briefly for purposes of investigation if s/he has “reasonable suspicion” that a crime has been committed or is about to be committed.¹¹⁵ In addition, in some circumstances, police officers without reasonable suspicion of criminal activity are permitted to intrude on a person’s privacy to carry out “community care-taking” functions, such as aiding people in need of assistance.¹¹⁶ These intrusions must be objectively reasonable and based on specific articulable facts.¹¹⁷

An arrest can only occur upon “probable cause” that a crime has been committed.¹¹⁸ When an encounter with the police becomes too intrusive to qualify as an investigatory stop, as described above, the encounter may be deemed a full scale arrest and must be justified by probable cause.¹¹⁹

What can I do if I believe the police have treated me improperly?

Complaints may be made to any individual police department for matters concerning its officers. Many departments have their own Internal Affairs Divisions that receive and investigate civilian complaints against police officers.

Complaints to the Vermont State Police may be made to:

The Office of the Director
Vermont State Police Headquarters
103 South Main Street
Waterbury, VT 05671
(802) 244-7345

¹¹⁵ *State v. Schmitt*, 150 Vt. 503, 507 (1988); *State v. Phillips*, 140 Vt. 210, 215 (1981) (police can make brief investigatory stop based on reasonable suspicion to ask a few questions, but further detention must be based on consent or probable cause); *Terry v. Ohio*, 392 U.S. 1, 16 (1968).

¹¹⁶ *State v. Marcello*, 157 Vt. 657, 658 (1991).

¹¹⁷ *State v. Burgess*, 163 Vt. 259, 262 (1995).

¹¹⁸ Vt. R. Crim. P. 3(a)

¹¹⁹ *State v. Chapman*, 800 A.2d 446, 449 (Vt. 2002).

In addition, complaints about police harassment based on sexual orientation or gender identity may also be filed with the Vermont Human Rights Commission.

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.

STUDENTS' RIGHTS

■ Bullying, Harassment, Hazing and Discrimination at School

As was mentioned in the section on *Anti-Discrimination Law* above, schools (public, independent and postsecondary) are considered places of public accommodation,¹²⁰ and therefore they may not discriminate on the basis of sexual orientation or gender identity in their accommodations, advantages, facilities or privileges.¹²¹ As a result, if you are discriminated against you may be able to pursue a complaint at the Human Rights Commission or in Superior Court.

The questions and answers that follow list other rights and protections for students.

Are there any state laws that protect me from harassment, hazing and bullying at school?

Yes. It is the policy of the state of Vermont that all Vermont educational institutions provide “safe, orderly, civil and positive learning environments. Harassment, hazing and bullying have no place and will not be tolerated in Vermont schools.”¹²²

Bullying is defined as an act (including an electronic one) directed against a student by another student or group of students that:

1. is repeated over time;
2. is intended to ridicule, humiliate or intimidate; and
3. substantially interferes with a student’s right to a safe education regardless of whether it happens on or off school grounds.¹²³

¹²⁰ 9 V.S.A. § 4501.

¹²¹ 9 V.S.A. § 4502.

¹²² 16 V.S.A. § 570.

¹²³ 16 V.S.A. § 11(a)(32).

Harassment is defined as verbal, written, visual or physical conduct (including by electronic means) motivated by a student's or student's family member's actual or perceived characteristic such as sex, sexual orientation, gender identity or expression or HIV status that is intended to:

1. substantially interfere with educational performance or access to school resources; or
2. create an intimidating or hostile environment.¹²⁴

Hazing is defined as any act against a student who is involved with a student organization which is intended to humiliate, intimidate or demean the student or endanger the physical or mental health of the student.¹²⁵

What are schools required to do to prevent bullying, harassment and hazing?

All public and approved independent schools must develop, adopt, ensure the enforcement of and make available to all students, staff and parents bullying, harassment and hazing prevention policies that shall be at least as stringent as the model policies developed by the Vermont Department of Education.¹²⁶ The model policies can be found at: <http://hrc.vermont.gov/Vermont%20Department%20of%20Education%20Documents>.

All of these policies must include:

1. Annually notifying the students, staff and parents about the policies and procedures.
2. A procedure that directs students, staff and parents to report violations and file complaints;
3. A procedure for investigating reports of violations and complaints;
4. A description of the circumstances under which the violation may be reported to a law enforcement agency;

¹²⁴ 16 V.S.A. § 11(a)(26)(A).

¹²⁵ 16 V.S.A. § 11(a)(30)(A).

¹²⁶ 16 V.S.A. § 570(b).

5. Consequences and appropriate remedial action for those who violate the policy;
6. A description of the training that teachers and other staff will receive in preventing, recognizing and responding to violations; and
7. Designation of two or more people at each school to receive complaints.¹²⁷

Harassment is also explicitly prohibited at Vermont postsecondary schools, which are required to establish policies and enforcement procedures to address harassment complaints.¹²⁸

Are there federal laws that protect me?

Possibly. Under federal law, public schools that receive federal funds may not discriminate on the basis of sex. Sometimes, the harassment of a gay or transgender student will be sexual harassment or harassment based on a student's failure to conform to a particular gender stereotype, both of which are forbidden by this federal law, known as Title IX. Complaints can be made to your school Title IX coordinator, as well as to:

The U.S. Department of Education:
Office of Civil Rights
33 Arch Street, Suite 900
Boston, MA 02110-1491
(617) 289-0111
OCR.Boston@ed.gov

Additionally, some kinds of discrimination and harassment may violate a student's constitutional rights.

¹²⁷ 16 V.S.A. §§ 570a (harassment), 570b (hazing), 570c (bullying).

¹²⁸ 16 V.S.A. § 14

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. When harassed, if you feel safe, you may wish to speak to the perpetrators.

In addition, read your school policies and notify whoever is supposed to be notified -- usually a vice principal or Title IX coordinator. You should 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 principal and superintendent and ask for them to end the discrimination. Keep copies of all documentation for future reference.

At the same time, or after contacting the administration as set out above, you may want to contact the Safe Schools Program of the Vermont Department of Education. This program is responsible for implementing initiatives related to the equal educational opportunities and anti-harassment provisions discussed above. You can reach them at:

Safe Schools Program
Vermont Department of Education
120 State Street
Montpelier, VT 05620-2501
(802) 828-3130
www.state.vt.us/educ/new/html/pgm_safeschools.html

Alternatively, since schools are considered public accommodations in Vermont, you may want to file a complaint with the Vermont Human Rights Commission (see the discussion of *Public Accommodations* above) or other legal action. Contact GLAD for assistance and attorney referrals.

■ Gay/Straight Alliances

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

Generally, yes. 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. GLAD brought and won a case for students at West High in Manchester, New Hampshire on this very basis. *See* more about this case at <http://www.glad.org/work/cases/west-high-gsa-v-manchester-school-district/>.

Contact GLAD as soon as possible if a school is denying or delaying a Gay Straight Alliance or trying to keep you from using “gay” in the name.

■ Resources

PROTECT YOUR RIGHTS

GLAD Answers

Call: (800) 455-GLAD (4523)

Email or Live Chat:

www.GLADAnswers.org

Vermont Human Rights Commission

(800) 416-2010

www.hrc.vermont.gov

Vermont Department of Education

(802) 828-3135

<http://education.vermont.gov/>

US Department of Education Office for Civil Rights

(617) 289-0111

OCR.Boston@ed.gov

KNOW MORE ABOUT YOUR RIGHTS

The text of the Vermont anti-bullying and anti-harassment laws:

<http://bit.ly/vtbullyinglaw>

GLAD's Vermont students' rights webpage: <http://bit.ly/vtstudentrights>

GLAD's webpage on student rights: <http://bit.ly/gladstudentrights>

LOCAL LGBTQ YOUTH GROUPS

Outright Vermont

(802) 865-9677 (general)

info@outrightvt.org

www.outrightvt.org/wordpress

PFLAG

Burlington/Champlain Valley Chapter

(802) 863-4285

venner@burlingtonelecom.net

White River Junction Chapter

(802) 295-7064

New England Network for Child, Youth, and Family Services

(802) 425-3006

mgoodman@nenetwork.org

www.nenetwork.org

OTHER RESOURCES YOU CAN USE

R.U. 1.2? Community Center

(802) 860-7812

thecenter@ru12.org

www.ru12.org

Vermont Department of Health, Services for People Living with HIV/AIDS

AIDS Hotline: (800) 882-2437

(802) 863-7245 (general); 800-464-4343 (toll-free in-state)

<http://bit.ly/vthealthdeptaids>

Vermont Department of Health, Office of Minority Health

(802) 863-7288

minority health@ahs.state.vt.us

<http://bit.ly/vthealthdeptminority>

Vermont Department of Mental Health

(802) 828-3824

Vermont Network Against Domestic Violence and Sexual Assault

(800) 228-7395 (domestic violence hotline); (800) 489-7273 (sexual assault hotline); (802) 223-1302

vtnetwork@vtnetwork.org

www.vtnetwork.org

The Trevor Project

Crisis/Support Line: (866) 488-7386

www.thetrevorproject.org

Through strategic litigation, public policy advocacy, and education, GLBTQ Legal Advocates & Defenders works in New England and nationally to create a just society free of discrimination based on gender identity, HIV status, and sexual orientation.

GLAD Answers 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, log on to 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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