



# Vermont

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

September 2018

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](http://www.glad.org), for more information.

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

# Contents

■ <b>ANTI-DISCRIMINATION LAW</b>	1
LGBT Discrimination	1
Prohibited Areas of Discrimination	2
Employment	3
Public Accommodations	5
Housing	7
Credit and Insurance	8
Pursuing a Complaint	10
■ <b>FAMILY LAW</b>	21
Marriage and Civil Unions	21
Other Legal Protections for Same-Sex Couples	24
Domestic Partnership	27
Adoption	28
Vermont Parentage Act	31
Custody and Visitation	37
Domestic Violence	40
■ <b>HATE CRIMES, SEX LAWS &amp; POLICE</b>	44
Hate Crimes & Violence	44
Criminal Sex Laws	47
Police Harassment	52
■ <b>STUDENTS' RIGHTS</b>	54
Bullying, Harassment, Hazing and Discrimination at School	54
Gay/Straight Alliances	58
Conversion Therapy	59



# **ANTI-DISCRIMINATION LAW**

## **■ LGBT Discrimination**

### ***Does Vermont have an anti-discrimination law protecting LGBT individuals from discrimination?***

Yes. Vermont was among the first states to pass a comprehensive statewide law prohibiting sexual orientation discrimination in 1992.<sup>1</sup> “Sexual orientation” is defined as “female or male homosexuality, heterosexuality or bisexuality.”<sup>2</sup>

In May 2007, Vermont became the third state in New England to explicitly prohibit discrimination on the basis of gender identity.<sup>3</sup> 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.”<sup>4</sup>

### ***Does it also protect people perceived to be LGBT?***

As to sexual orientation, 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

---

<sup>1</sup> See, e.g., 21 V.S.A. § 495 (employment).

<sup>2</sup> 1 V.S.A. § 143.

<sup>3</sup> Public Act 41, An Act Relating to Prohibiting Discrimination on the Basis of Gender Identity, 2007-2008 Leg., Reg. Sess. (Vt. 2007).

<sup>4</sup> 1 V.S.A § 144.

bisexual. The hate crimes law, discussed below in the *Hate Crimes, Sex Laws & Police* section, also applies to actual or perceived sexual orientation and gender identity.)

As to gender identity, and as noted above, gender identity is defined as either “actual or perceived gender identity.” This language includes discrimination based upon perception.

***Does it also protect people associated with LGBT individuals?***

Not specifically. But in some situations, if a person is discriminated against because of their association with LGBT individuals or causes, it may be possible to show that the discrimination was because their employer or landlord believed that the person themselves was LGBT. This would count as discrimination based on perception, which is prohibited as to gender identity and is prohibited in many, if not all, situations involving sexual orientation.

## ■ Prohibited Areas of Discrimination

Vermont law prohibits discrimination in:

- Employment
- Public Accommodations
- Housing
- Credit and Insurance

## ■ 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.<sup>5</sup> 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.<sup>6</sup>

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.<sup>7</sup> Unions may not deny union membership or otherwise discriminate against its members because of sexual orientation or gender identity.<sup>8</sup>

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.<sup>9</sup>

### *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 it is a “bona fide occupational qualification” of the particular job to have a non-LGBT employee fill it.<sup>10</sup> There are no general occupational

---

<sup>5</sup> 21 V.S.A. § 495(a)(1).

<sup>6</sup> 21 V.S.A. § 495(a); § 495d(1) (definition of employer).

<sup>7</sup> 21 V.S.A. § 495(a)(3).

<sup>8</sup> 21 V.S.A. § 495(a)(4).

<sup>9</sup> 21 V.S.A. § 495(a)(2).

<sup>10</sup> 21 V.S.A. § 495(a).

exemptions from the reach of the non-discrimination law, however, and this defense is very rarely successful.

- As to sexual orientation and gender identity, religious organizations – and charitable or educational organizations operated, supervised or controlled by a religious organization – are exempt from the law to the extent that they give a “preference to persons of the same religion or denomination” or take “any action with respect to matters of which is calculated by the organization to promote the religious principles for which it is established or maintained.”<sup>11</sup> 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; or
- submission to or rejection of such conduct by an individual is used as a component of the basis for employment decisions affecting that individual; or
- 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.<sup>12</sup>

---

<sup>11</sup> 21 V.S.A. § 495(e).

<sup>12</sup> 21 V.S.A. § 495d(13).

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.<sup>13</sup>

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.<sup>14</sup>

## ■ 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.”<sup>15</sup>

---

<sup>13</sup> 21 V.S.A. § 495h.

<sup>14</sup> *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); *Melnychenko v. 84 Lumber Co.*, 424 Mass. 285, 676 N.E.2d 45 (1997)(same-sex sexual harassment prohibited under state law).

<sup>15</sup> 9 V.S.A. § 4501.

***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."<sup>16</sup>

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.<sup>17</sup> However, a religious organization or any nonprofit organization operated, supervised or controlled by a religious organization shall not be required to provide services, accommodations, advantages, facilities, goods or privileges relating to the solemnization or celebration of a marriage.<sup>18</sup>

There is another exception to the law, stating that it 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.<sup>19</sup>

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.

---

<sup>16</sup> 9 V.S.A. § 4502 (a).

<sup>17</sup> 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.

<sup>18</sup> 9 V.S.A. § 4502(1).

<sup>19</sup> 9 V.S.A. § 4502 (d).

## ■ 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 or other real estate -- including buying, selling, renting, negotiating, listing, advertising, inspecting, or financing -- and in the terms, conditions, privileges, services or facilities connected to those transactions.<sup>20</sup> Also, mobile home park owners are prohibited from discriminating on the basis of sexual orientation or gender identity.<sup>21</sup>

The housing 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.<sup>22</sup>

In addition, it is unlawful to coerce, intimidate, or threaten a person regarding a public accommodation or housing matter, or interfere with a person's ability to exercise their rights to be free from discrimination in public accommodations or housing.<sup>23</sup>

### *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.<sup>24</sup>

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 limit the sale, rental or occupancy of the dwelling to persons of the

---

<sup>20</sup> 9 V.S.A. § 4501(5)(definition of "dwelling") and § 4503(a)(setting forth unlawful practices).

<sup>21</sup> 10 V.S.A. § 6236(e)(3).

<sup>22</sup> 15 V.S.A. § 1204(e)(7).

<sup>23</sup> 9 V.S.A. § 4506(e).

<sup>24</sup> 9 V.S.A. § 4504(2).

same religion or 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.<sup>25</sup>

## ■ 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.<sup>26</sup>

In addition, Vermont law provides specific non-discrimination provisions with regard to the issuance of bank credit cards,<sup>27</sup> retail installment contracts or retail charge agreements (i.e. in-store credit cards),<sup>28</sup> motor vehicle retail installment contracts,<sup>29</sup> and agricultural finance leases.<sup>30</sup>

**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

---

<sup>25</sup> 9 V.S.A. § 4504(5).

<sup>26</sup> 8 V.S.A. § 10403(a)(discrimination prohibited); § 10403(c)(4)(definition of “credit services”).

<sup>27</sup> 8 V.S.A. § 14303(b).

<sup>28</sup> 9 V.S.A. § 2410.

<sup>29</sup> 9 V.S.A. § 2362.

<sup>30</sup> 9 V.S.A. § 2488.

that this constituted a claim of sex discrimination in violation of a federal credit non-discrimination law.<sup>31</sup>

***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.<sup>32</sup>

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 gender, marital status, medical history, occupation, living arrangements, beneficiaries, zip codes or other territorial designations to determine sexual orientation or gender identity.<sup>33</sup>

Insurers may not use sexual orientation, gender identity, or beneficiary designation in the underwriting process or in determining eligibility for insurance.<sup>34</sup>

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.<sup>35</sup>

---

<sup>31</sup> *Rosa v. Park West Bank*, 214 F.3d 213 (1st Cir. 2000).

<sup>32</sup> 8 V.S.A. § 4724(7)(B)(i) and (ii).

<sup>33</sup> 8 V.S.A. § 4724(7)(C)(i).

<sup>34</sup> 8 V.S.A. § 4724(7)(C)(ii).

<sup>35</sup> 8 V.S.A. § 4724(7)(E).

## ■ 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.

<b>Types of Claims</b>	<ul style="list-style-type: none"> <li>• Employment claims against the state</li> <li>• Public Accommodations</li> <li>• Housing</li> </ul>	Employment claims against parties other than the State of Vermont	<ul style="list-style-type: none"> <li>• Credit Services</li> <li>• Retail Installment Contracts</li> <li>• Insurance</li> </ul>	Agricultural Finance Leases
<b>Where to File?</b>	<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 &amp; 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, 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) 828-1625  
(802) 828-2481 (fax)  
human.rights@vermont.gov

A complaint may be filed under oath in person, in writing, by fax 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  
Vermont Attorney General's Office  
109 State Street  
Montpelier, VT 05609-1001  
(888) 745-9195 (Toll Free in Vermont Only)  
(802) 828-3657  
(802) 828-3665 (TTY)  
(802) 828-2154 (fax)  
[ago.civilrights@vermont.gov](mailto:ago.civilrights@vermont.gov)

Complaining parties must complete a questionnaire, which the Civil Rights Unit will send to you or you can find at <http://ago.vermont.gov/wp-content/uploads/2018/05/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 Insurance

- 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 Financial Regulation:  
89 Main Street  
Montpelier, VT 05620-3101  
(802) 828-3301

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 (800) 964-1784. 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

Office of the Attorney General  
Consumer Assistance Program  
109 State Street  
Montpelier, VT 05609-1001  
(802) 656-3183  
(800) 649-2424 (Toll-Free in Vermont Only)  
(802) 304-1014(fax)  
[ago.civilrights@vermont.gov](mailto:ago.civilrights@vermont.gov)  
<http://www.uvm.edu/consumer>

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. There are many legal rules governing these processes, and 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.<sup>36</sup> The Attorney General's Civil Rights Unit 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.

***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 criteria are expanded to include marital status, but do not include age, ancestry and place of birth. In housing, the 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.

---

<sup>36</sup> Code of Vermont Rules 80-250-001, Rule 2.

## ***What happens after a complaint is filed with the Commission or the Civil Rights Unit?***

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 fourteen (14) days.<sup>37</sup> 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 the governor then decide whether there are reasonable grounds to credit your allegations.<sup>38</sup>

If you file a complaint with the Civil Rights Unit (CRU), the process is very similar, and is described in detail on the CRU's website: <http://ago.vermont.gov/civil-rights-unit-process/>.

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 the CRU issues 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.<sup>39</sup>

---

<sup>37</sup> Code of Vermont Rules 80-250-001, Rule 10.

<sup>38</sup> 9 V.S.A. §§ 4551(a) and 4554(d) – (e).

<sup>39</sup> 9 V.S.A. § 4554(e); Code of Vermont Rules 80-250-001, Rules 31-32.

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.<sup>40</sup>

**If reasonable grounds of unlawful discrimination are not found,** the case will be dismissed at the Commission.<sup>41</sup> If the CRU finds no violation of law, the file will be closed.<sup>42</sup>

At this point, or at any point in the process at the Commission or the 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 the Commission, the Commission will administratively dismiss the investigation although the Commission may file its own complaint regarding the matter or intervene in your court action.<sup>43</sup>

***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.<sup>44</sup>

### **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

---

<sup>40</sup> [www.ago.vermont.gov/divisions/civil-rights/employment-law/civil-rights-unitprocess.php](http://www.ago.vermont.gov/divisions/civil-rights/employment-law/civil-rights-unitprocess.php).

<sup>41</sup> 9 V.S.A. § 4554(d).

<sup>42</sup> [www.ago.vermont.gov/divisions/civil-rights/employment-law/civil-rights-unitprocess.php](http://www.ago.vermont.gov/divisions/civil-rights/employment-law/civil-rights-unitprocess.php).

<sup>43</sup> Code of Vermont Rules 80-250-001, Rule 27.

<sup>44</sup> 21 V.S.A. § 495b.

damages.<sup>45</sup> In addition, criminal penalties of fines up to \$1000 may be imposed.<sup>46</sup>

In all of these cases, the court may grant attorney's fees, costs<sup>47</sup> and other appropriate relief that is consistent with the purposes of the anti-discrimination laws (*e.g.* training programs, posting of notices, allowing a person non-discriminatory access to and use of a public accommodation).

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

Yes, in many cases. Since federal law and state law contain overlapping provisions, someone bringing a discrimination claim may sometimes pursue protections under both. For example, the federal employment non-discrimination law, called Title VII, applies to employers with at least 15 employees and forbids employment discrimination based on race, sex, age, religion, and disability (which includes HIV status).

While Title VII does not expressly forbid discrimination based on sexual orientation or gender identity, a growing number of courts and government agencies have taken the position that its proscription against sex discrimination encompasses both.

For example, in 2018, in the case of *Franchina v. City of Providence*<sup>48</sup>, the U.S. First Circuit Court of Appeals ruled that a lesbian who experienced extensive unchecked harassment from her co-workers at the Providence Fire Department was protected by Title VII. The court ruled that the plaintiff could bring sex-plus claims under Title VII where, in addition to the sex-based charge, the 'plus' factor was the plaintiff's status as a gay or lesbian individual. GLAD submitted an amicus brief<sup>49</sup> in this case.<sup>50</sup>

---

<sup>45</sup> 9 V.S.A. § 4506(a).

<sup>46</sup> 9 V.S.A. § 4507.

<sup>47</sup> 9 V.S.A. §4506(b)(public accommodations and housing); 21 V.S.A. §495b(2)(employment).

<sup>48</sup> See <https://www.glad.org/wp-content/uploads/2018/01/2018-01-25-Franchina-Opinion.pdf>.

<sup>49</sup> See <https://www.glad.org/wp-content/uploads/2018/01/2017-08-25-Franchina-Amicus-Brief.pdf>.

<sup>50</sup> See also *Zarda v. Altitude Express, Inc.*, 883 F.3d 100 (2d Cir. 2018) (sexual orientation discrimination is sex discrimination under Title VII); *Hively v. Ivy Tech Community College*, 853 F.3d 339 (7th Cir. 2017) (same).

Also, a recent decision by the U.S. Court of Appeals for the Sixth Circuit in *EEOC v. RG and GR Harris Funeral Homes, Inc.*<sup>51</sup> allowed the plaintiff to bring claims of discrimination based solely on gender identity. The plaintiff in the case, a funeral home director who was born male, was terminated after informing her employer that she suffered from gender dysphoria and would begin transitioning by dressing and presenting as a woman. The employer admitted that he fired the plaintiff because of her gender identity but argued that Title VII should not be enforced against the funeral home, because it would constitute a substantial burden upon the employer's sincerely held religious beliefs, in violation of the Religious Freedom Restoration Act (RFRA). The court rejected this argument, reasoning that the employer's religious exercise would not be substantially burdened by continuing to employ the plaintiff without discriminating against her on the basis of her gender identity.

In two separate decisions in 2012 and 2016, the EEOC itself concluded that sexual orientation discrimination, gender identity discrimination, and sex discrimination are one and the same, since the first two are based on preferences, assumptions, expectations, stereotypes, and norms associated with masculinity and femininity.<sup>52</sup>

Unfortunately, the Department of Justice (DOJ) under the Trump administration is attempting to roll back this progress. Attorney General Sessions issued a memorandum<sup>53</sup> in which he stated that the position of the DOJ is that "gender identity" discrimination is not protected under Title VII. Also, the DOJ filed an amicus brief<sup>54</sup> with the U.S. Court of Appeals for the Second Circuit arguing that "sexual orientation" is not protected by Title VII.

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 NHCHR. For more information go to:

---

<sup>51</sup> See <http://www.opn.ca6.uscourts.gov/opinions.pdf/18a0045p-06.pdf>.

<sup>52</sup> See *Macy v. Holder*, EEOC Appeal No. 0120120821 (Apr. 20, 2012); *Baldwin v. Foxx*, EEOC Appeal No. 0120133080 (July 15, 2015).

<sup>53</sup> See <https://assets.documentcloud.org/documents/4067383/Attachment-2.pdf>.

<sup>54</sup> See <https://assets.documentcloud.org/documents/3901661/Brief-Amicus-Brief-Doj.pdf>.

[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/fair\\_housing\\_equal\\_opp/LGBT\\_Housing\\_Discrimination](http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/LGBT_Housing_Discrimination).

However, given the position of the DOJ and the Trump administration in general, it is possible that this position of HUD may be reversed at some point.

***Should I file a complaint with a federal agency?***

GLAD recommends that, where there may be overlapping state and federal jurisdiction, you explore filing with the appropriate Vermont agency first but keep in mind the possibility of pursuing a federal claim as well. Federal complaints must be filed within 180 days of the discriminatory act with the Equal Employment Opportunity Commission (EEOC). However, if you initially institute your complaint with Vermont and indicate that you wish to have the complaint cross-filed with the EEOC, the time limit is then extended to the earlier of 300 days or 30 days after the Vermont agency has terminated the case.<sup>55</sup> (People who work for federal agencies are beyond the scope of this publication.)

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 Vermont cross-file your complaint with the EEOC.

***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

---

<sup>55</sup> United States Code 42 sec. 2000e-5(e)(1).

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 a failure of their duty of fair representation.

- 2. State or Federal Court:** After or instead of filing with the Commission, the CRU or the 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, you may file a court case to address other claims that are not appropriately handled by discrimination agencies, such as when you are 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. Similarly, if you have a claim for a violation of constitutional rights – for instance, if you are a teacher or a governmental employee who believes his or her free speech or equal protection rights were violated – then those matters must also 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.<sup>56</sup>

---

<sup>56</sup> 9 V.S.A. § 4506(e)(retaliation prohibited in public accommodations and housing); 21 V.S.A. § 495(a)(8) (retaliation prohibited in employment). See also *Provencher v. CVS Pharmacy*, 145 F.3d 5 (1st Cir. 1998)

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

Call GLAD Answers at [www.GLADAnswers.org](http://www.GLADAnswers.org) or call 800-455-GLAD (4523) any weekday between 1:30 and 4:30 p.m.

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. Even if you have been fired, or evicted, you may decide it is not worth it to pursue a discrimination claim. This is an individual choice, which should be made after gathering enough information 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 discrimination. Try to have on hand copies of your employee handbooks or personnel manuals, as well as 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.

# FAMILY LAW

---

## ■ Marriage and Civil Unions

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

Yes. On April 7, 2009, Vermont became the first state to authorize 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 Marriage<sup>57</sup> (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. The Marriage Act took effect on September 1, 2009.

This was the result of nearly 15 years of relentless work by Vermont Freedom to Marry, under the leadership of Beth Robinson. GLAD was pleased to have been able to provide some assistance and support to the effort.

Six years later, in *Obergefell v. Hodges*,<sup>58</sup> the U.S. Supreme Court made marriage equality a reality nationwide when it held that the U.S. Constitution guarantees same-sex couples the right to marry. GLAD’s own Mary Bonauto represented the plaintiffs during oral arguments. Post-*Obergefell*, all 50 states are required to issue marriage licenses to same-sex couples, and all states must respect the marriages of same-sex couples performed in other jurisdictions.

For information about getting married in Vermont, see: [https://www.sec.state.vt.us/media/770332/getting\\_married\\_in\\_vermont\\_faq.pdf](https://www.sec.state.vt.us/media/770332/getting_married_in_vermont_faq.pdf).

---

<sup>57</sup> See An Act Relating to Civil Marriage at: <http://www.leg.state.vt.us/docs/2010/bills/Passed/S-115.pdf>.

<sup>58</sup> 135 S.Ct. 2584 (2015).

## ***Will the federal government respect my marriage?***

Yes. Thanks to the demise of the Defense of Marriage Act (DOMA) in *Windsor v. United States*<sup>59</sup>, the federal government will recognize and respect the legal marriages of same-sex couples.

Unfortunately, one issue that has yet to be definitively resolved by *Windsor* and *Obergefell* concerns spousal benefits and self-insured health plans. While New Hampshire state law prohibits discrimination based on sexual orientation, self-insured health plans are governed by federal law. Title VII, the federal anti-discrimination statute, only prohibits discrimination based on race, color, religion, sex, or national origin—sexual orientation is not explicitly included.

As was discussed above in the section on “Pursuing a Complaint,” there have been some rulings by federal courts that “sexual orientation” discrimination is a form of “sex” discrimination and thus covered by Title VII, and the EEOC has also taken this position.<sup>60</sup>

Also, both Section 1557<sup>61</sup> of the Affordable Care Act and implementing regulations of the Obama administration, 45 CFR 147.104(e),<sup>62</sup> were supposed to prohibit discrimination against LGBT people in most public and private health care plans, so that everyone would have access to health care. Unfortunately, these protections are under attack by some states and by the Trump administration.

If your employer is discriminating against you in spousal healthcare benefits on the basis of sexual orientation, contact GLAD Answers.

## ***What happens if we need to end our marriage?***

After *Obergefell v. Hodges*, same-sex spouses everywhere should be able to dissolve their marriages on the same terms as different-sex spouses. Vermont applies its divorce statutes to same-sex couples.<sup>63</sup>

---

<sup>59</sup> 133 S.Ct. 2675 (2013).

<sup>60</sup> See [https://www.eeoc.gov/eeoc/newsroom/wysk/enforcement\\_protections\\_lgbt\\_workers.cfm](https://www.eeoc.gov/eeoc/newsroom/wysk/enforcement_protections_lgbt_workers.cfm).

<sup>61</sup> See <https://www.hhs.gov/civil-rights/for-individuals/section-1557/index.html>.

<sup>62</sup> See <https://www.ecfr.gov/cgi-bin/retrieveECFR?n=45y1.0.1.2.62.0.27.4>.

<sup>63</sup> See generally *Solomon v. Guidry*, 2016 VT 108, 155 A.3d 1218 (2016).

However, spouses should note that when Vermont courts divide marital property and award alimony/maintenance, one of the factors a judge considers is the length of the marriage.<sup>64</sup> Nonetheless, the court does include, as marital property, all property owned by “either or both of the parties, however or whenever acquired ....”<sup>65</sup> So, for spouses whose partnership pre-dates marriage equality, the length of the marriage may not accurately reflect the true length of the relationship, resulting in an unbalanced division of assets.

If you are going through divorce proceedings in Vermont and believe your division of assets may be unfairly affected by the length of the marriage, contact GLAD Answers.

***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. Couples who have a Vermont civil union, and wish to be married, will need to go through the process of getting married.

When the legislature enacted the civil union law in 2000, it also established “reciprocal beneficiary” relationships. These allow people who were at least 18 years old, not parties to a marriage, civil union or other reciprocal beneficiary relationship, and not 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.<sup>66</sup> The reciprocal beneficiary law was repealed effective May 28, 2014, based on the fact that, over the course of 14 years, no reciprocal beneficiary relationship had ever been established in Vermont.

---

<sup>64</sup> 15 V.S.A. § 751(b)(1)(division of property) and §752(b)(4)(maintenance).

<sup>65</sup> 15 V.S.A. § 751(a).

<sup>66</sup> 15 V.S.A. §§ 1301-1306(now repealed).

## ■ Other Legal Protections for Same-Sex Couples

*Without getting married, what steps can a couple take to safeguard their legal relationship in Vermont?*

**1. Relationship Agreement or Contract:** Cohabitation agreements regarding property and finances provide a way for couples to sort out 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 (such as one's partner) as their "attorney-in-fact" for financial matters in the event the person becomes incapacitated or disabled.<sup>67</sup>

This power of attorney can be extended to the time when the person is incapacitated if the power of attorney says, "This power of attorney shall not be affected by the subsequent disability or incapacity of the principal."<sup>68</sup> If no such appointment is made, then a "family" member will be empowered to make decisions for the disabled or incapacitated individual. A power of attorney does not include authority to make health care decisions.<sup>69</sup>

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 (and courts consider the preference of the

---

<sup>67</sup> 14 V.S.A. §§ 3501-3516.

<sup>68</sup> 14 V.S.A. § 3508(a).

<sup>69</sup> 14 V.S.A. § 3504(b)(1).

incapacitated person in appointing a guardian<sup>70</sup>). 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 health care decisions for them upon incompetence, incapacity or death<sup>71</sup> and provide the agent with an advance directive that, for example, can:<sup>72</sup>

- 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;
- make an anatomical gift pursuant to Vermont law;<sup>73</sup>
- 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.<sup>74</sup> People often give a copy of their advance directive to their doctors and sometimes to family members.

**5. Will:** If a person who is neither married nor joined in a civil union, dies without a will, their property passes to: (1) their

---

<sup>70</sup> 14 V.S.A. § 3072(b)(consideration of ward's preference in appointing guardian).

<sup>71</sup> 18 V.S.A. §§ 9700-9720.

<sup>72</sup> 18 V.S.A. § 9702.

<sup>73</sup> An anatomical gift can also be made on a Vermont driver's license or a nondriver ID card. 18 V.S.A. §5250e(a).

<sup>74</sup> 18 V.S.A. § 9704

children or (2) their family.<sup>75</sup> If the person wishes to provide for others, such as their partner, a will is essential. Even if a person has few possessions, they can name in the will who will administer their estate. If a person has children, they can nominate the future guardian of the children 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 better 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 an advanced directive for health care with specific instructions about types of treatments to which you do and don't consent, and the exact scope of the agent's authority.

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

Upon separation, the terms of a Relationship or Partnership Agreement/Contract will come into play if the couple has one. Absent 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. It is likely that Vermont courts will, under some circumstances, recognize contract theories and equitable principles to address the property and financial matters of a separating same-sex couple even without a written agreement. However, written agreements provide for greater security.

**If a person has changed his or her mind about who should be his or her attorney-in-fact, advanced directive agent, 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.**

---

<sup>75</sup> 14 V.S.A. § 314.

## ■ Domestic Partnership

### *What is domestic partnership?*

Although it is a term used in many contexts, “domestic partnership” 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 their partner and family which were previously limited to married spouses. Some states, cities and towns have also enacted domestic partner laws. In other contexts, “domestic partner” is also a shorthand term for family, replacing “lover,” “friend,” and “roommate.” Some people call cohabitation agreements “domestic partner agreements.”

### *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 and dental 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) 828-3491 for an application, which can also be found on the state website at: [http://humanresources.vermont.gov/sites/dhr/files/Documents/Benefits/DHR-Domestic\\_Partner\\_App&Policy.pdf](http://humanresources.vermont.gov/sites/dhr/files/Documents/Benefits/DHR-Domestic_Partner_App&Policy.pdf).

To qualify as a domestic partner, a couple must: (1) be each other’s sole domestic partner in an “exclusive and enduring domestic relationship”; (2) share a residence for at least six months prior to applying; (3) be 18 years of age or older; (4) not be married to anyone; (5) not be related by blood such they could not marry; (6) be competent to enter a contract; and (7) have agreed to be responsible for each other’s welfare.

***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.

However, even when employers provide these benefits, federal laws sometimes treat domestic partner (and civil union) benefits differently from spousal benefits, often with financial consequences. For example, employees must pay federal income tax on a domestic partner's or civil union spouse's health insurance benefits, but marital spousal benefits are exempt.<sup>76</sup> Similarly, while spousal consent is required if a married employee decides to name a third party as a pension beneficiary or survivor benefits recipient, an employee with a domestic partner or a civil union spouse can change these designations freely.

## ■ 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.<sup>77</sup>

---

<sup>76</sup> See Internal Revenue Code, Private Letter Ruling 9603011 (Jan. 19, 1996).

<sup>77</sup> 15A V.S.A. § 1-102(a).

### ***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.<sup>78</sup> 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.”<sup>79</sup>

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

Both joint adoptions and second-parent adoptions ensure your child has two legal parents, which often provides greater comfort and security to everyone involved. Depending on your particular family situation, the law may not recognize both partners as legal parents without an adoption. In these cases, the non-legal parent needs special permission to make medical decisions for the child or attend school meetings, and is at risk of losing custody if the couple splits up.

Adoption allows a non-legal parent to become a legal parent, entitled to make decisions for the child without special authorization. It also permits the adoptive parent to automatically assume custody of the child if their partner dies. Likewise, if the adoptive parent dies, the child will have the right to inherit from them even absent a will, and may be able to collect Social Security survivor benefits.

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

---

<sup>78</sup> *In re B.L.V.B.*, 160 Vt. 368 (1993).

<sup>79</sup> 15A V.S.A. § 1-102(b).

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

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.<sup>80</sup> While that is good news, it is still extremely important to adopt because another state or foreign country 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.

***Short of second-parent adoption, how can a family protect the interests of the child vis-à-vis their non-legal parent?***

There are a number of steps that can be taken, although none offers the security of an adoption decree.

- **Co-parenting Agreement:** A co-parenting agreement is 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 always be given full effect by courts, which are bound to make custody and visitation decisions based on the child's best interests, they are important indicators of what the couple *believed* was in the best interests of the child and may influence a court's ultimate decision.
- **Wills:** A legal parent may, by a last will, nominate a guardian to take custody of the child upon the parent's death.<sup>81</sup> 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:** A legal parent may choose to grant the non-legal parent power of attorney over the child, which allows

---

<sup>80</sup> *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).

<sup>81</sup> 14 V.S.A. § 2656.

the non-legal parent to make medical or financial decisions.  
Power of attorney documents should be updated regularly.

## ■ Vermont Parentage Act

On July 1, 2018, the new Vermont Parentage Act (VPA) went into effect.<sup>82</sup> Through the VPA, the Vermont Legislature re-wrote Vermont's laws on parentage to be modern and reflective of the great diversity of families in Vermont. What this means for children and families in Vermont is that there is greater clarity on who can establish parentage and how to establish parentage. Securing a child's relationship to their parent is one of the most important components of stability and security for a child.

### *What is the Vermont Parentage Act?*

The Vermont Parentage Act, or VPA, is a new set of state laws that expand the ways someone can legally establish that they are the parent of a child (also known as parentage

### *Why was it passed now?*

For years, Vermont courts have called upon the legislature to modernize the state's parentage laws as they were forced to decide cases without clear statutory guidance. In response, the legislature established a Parentage Study Commission during the 2016-2017 legislative session. The Parentage Study Commission was comprised of a broad array of stakeholders. The Commission studied the existing parentage laws and case law, and it made recommendations about necessary changes. Their work culminated in a report issued in October 2017<sup>83</sup> that included the proposed legislation that would become the VPA.

---

<sup>82</sup> See generally 15C V.S.A. §§101-809.

<sup>83</sup> See <https://legislature.vermont.gov/assets/Legislative-Reports/Vermont-Parentage-Study-Committee-Report-and-Vermont-Parentage-Act.pdf>.

## ***What does parentage mean?***

“Parentage” means that you are a legal parent for all purposes. Parentage comes with a host of rights (e.g. parenting time and decision making) as well as duties (e.g. payment of child support, providing health insurance, providing for basic needs).

## ***How can Vermonters establish parentage under the VPA?***

The VPA provides that Vermonters can establish their parentage in the following ways:

- Giving birth (excluding surrogates)
- Adoption
- Voluntary acknowledgment
- Adjudication
- Presumption
- De facto parentage
- Genetic parentage (excluding donors)
- Assisted reproduction
- Gestational carrier agreement

## ***How do I voluntarily acknowledge my child?***

You can voluntarily acknowledge the parentage of a child by signing a form from the Vermont Department of Health known as a “Voluntary Acknowledgement of Parentage” or VAP.<sup>84</sup> A VAP must be signed by the birth parent and the other parent. If you are the non-birth parent, you can sign a VAP if you are a genetic parent, an intended parent of a child born by ART or surrogate, or a presumed parent of the child.

Signing a VAP form is voluntary, and it can be done at the hospital soon after birth or at another time. A VAP form must be witnessed and signed by at least one other person. If one person does not want to sign this form, then the other parent can try to adjudicate parentage through the courts.

---

<sup>84</sup> [http://www.healthvermont.gov/sites/default/files/documents/pdf/HS\\_VR\\_AcknowledgmentofParentageForm.pdf](http://www.healthvermont.gov/sites/default/files/documents/pdf/HS_VR_AcknowledgmentofParentageForm.pdf).

***What is a presumed parent?***

A presumed parent is a non-birth parent that the law recognizes because of certain circumstances or relationships.

***Who can be a presumed parent?***

You are a presumed parent if any of the below are true:

1. You are married to the child's birth parent when the child is born;
2. You were married to the child's birth parent, and the child is born within 300 days of the marriage being terminated by death, annulment, or divorce;
3. You married the child's birth parent after the child was born, asserted parentage and are named as a parent on the birth certificate; or
4. You resided with the child for the first two years of their life, and another parent of the child openly held the child out as your child.

***What is a de facto parent?***

A de facto parent is a parent recognized by the court because of their relationship with the child. You can establish de facto parentage if you can demonstrate, with clear and convincing evidence, all of the following:

1. You lived with the child as a regular member of the household for a significant amount of time;
2. You consistently took care of the child;

3. You took full and permanent responsibility for the child without expectation of payment;
4. You held the child out as your child;
5. You established a bonded and dependent relationship which is parental in nature;
6. You had a parental relationship with the child that was supported by another parent; and
7. Continuing a relationship with the child is in the child's best interest.

***If I am a parent who has signed a VAP, do I also need to do a second-parent adoption?***

A VAP is the equivalent of a judicial decree, and a VAP establishes legal parentage under state law and gives you all of the rights and duties of a parent. Until LGBTQ parents can sign VAP forms throughout the United States, it is best practice to also complete a co-parent adoption of your child to ensure universal recognition of parentage.

***Why is it important to establish parentage quickly?***

Establishing parentage quickly ensures that a child is secured to their parents for all purposes and increases clarity for all involved in a child's life. This is particularly important if a problem with the child or the parents should arise; for example, established parentage will allow a parent to make any early medical decisions in a child's life, ensure that a child will receive insurance benefits or inheritance rights, and protect parents' parental rights if they separate.

***What if I am a non-biological parent? How can I establish myself as a legal parent?***

The VPA has many provisions that protect non-biological parents. If you are your child's presumed parent, or the parent of a child born by ART or gestational carrier agreement, you can establish parentage by signing a VAP. If the child's other parent does not want to sign a VAP, you can seek a court order establishing parentage. You can also become a parent through the de facto parent provisions of the VPA.

***How does the VPA help people conceiving through assisted reproduction?***

Before the VPA, Vermont had no statutes addressing assisted reproduction, so the VPA provides important clarity for all involved. The VPA provides that a donor is not a parent of a child conceived through assisted reproduction. Also, a person who consents to assisted reproduction with the intent to be a parent of the resulting child is a legal parent.

***Can I use surrogacy to have a child?***

Yes. The VPA has comprehensive provisions about how to establish parentage through gestational carrier agreements. Before starting any medical procedures to conceive a child through a carrier process, you must have a written and signed agreement. This agreement is between you, any other intended parents, the carrier, and the spouses of any of those parties (if applicable). This agreement will establish that you are the parent(s) of the child and that the carrier and their spouse, if applicable, do not have parental rights or duties. To enter into a gestational carrier agreement, the following must be true:

1. All intended parents and the carrier must be at least 21;
2. All intended parents and the carrier must have completed a medical evaluation and mental health consultation; and

3. The intended parent(s) and the carrier must be represented by separate lawyers for the purposes of the agreement, and the carrier's attorney must be paid for by the parent(s).

The law requires carrier agreements to incorporate several terms to be valid, such as allowing a surrogate to make their own health and welfare decisions during pregnancy and requiring the parent(s) to pay all related healthcare costs.

***Can Vermonters use genetic carriers?***

Yes. If a carrier is a family member, they can serve as a gestational carrier using their own gametes. Someone who is not a family member cannot be a genetic surrogate. Otherwise, the same laws, including the need for a valid agreement, apply to genetic and non-genetic carriers.

***What protections are there for domestic violence survivors so that they are not pressured into establishing legal parentage?***

The VPA aims to ensure that the establishment of parentage is fair, clear, efficient and child-centered. Some legal parentage arises out of operation of law. Other legal parentage can arise by consent. No one should ever be or feel pressured to consent to parentage. The VPA contains many provisions that allow people to challenge parentage if it was established through duress, coercion, or threat of harm.

***Can a child have more than two legal parents?***

Yes. A court may determine that a child has more than two parents if the court finds that it is in the child's best interest. To determine best interests vis a vis parentage, a court must consider factors such as the child's age, the length and nature of the potential parent's relationship with the child, the harm to the child if the parental relationship is not recognized, the basis for each person's claim of parentage of the child, and other equitable factors.

***What if I am not married? What if I am transgender or non-binary?***

The VPA explicitly provides that every child has the same rights as any other child without regard to the marital status or gender of the parents or the circumstances of their birth. By being marital status and gender neutral, the VPA aims to treat all Vermonters equally.

***Where can I go if I need help resolving a parentage issue?***

As with any family law issue, legal advice is recommended. GLAD Answers, our legal information line, can provide information and referrals to local practitioners. If you have questions about how to protect your family, contact GLAD Answers at [www.GLADAnswers.org](http://www.GLADAnswers.org) or call 1-800-455-GLAD (4523).

■ **Custody and Visitation**

***What standards should be maintained by same-sex couples who are breaking up and who have children?***

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;
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. Not allow the absence of agreements or legal relationships to determine outcome;
9. Treat litigation as a last resort; and
10. Refuse to resort to homophobic/transphobic laws and sentiments to achieve a desired result.

For more detailed information about these standard see the publication *Protecting Families: Standards for LGBT Families* at: <https://www.glad.org/wp-content/uploads/2017/01/protecting-families-standards-for-lgbt-families.pdf>.

***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.<sup>85</sup> 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.<sup>86</sup> 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 factors<sup>87</sup>:

- 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;

---

<sup>85</sup> 15 V.S.A. § 665(a).

<sup>86</sup> 15 V.S.A. § 666.

<sup>87</sup> 15 V.S.A. § 665(b).

- 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;
- 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.<sup>88</sup>

***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?***

As stated above, Vermont courts base custody arrangements on the best interests of the child. As a general rule, a parent's sexual orientation or marital status should have no bearing on a child's best interests.

Nevertheless, your former partner may try to argue that your sexual orientation is detrimental to your child. Any number of reasons can be cited, such as that the LGBT parent's sexual orientation is causing other people to tease or ostracize the child, that the parent is a bad role model, or that the parent'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.

---

<sup>88</sup> 15 V.S.A. § 665(c).

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

It may 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 that alter the child’s best interests.<sup>89</sup> 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.

***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 Vermont law 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; stalking; and sexual assault.<sup>90</sup>

***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 spouses, as well as between “household

---

<sup>89</sup> 15 V.S.A. § 668(a).

<sup>90</sup> See 15 V.S.A. § 1101(1).

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 interacted, and, if the parties have broken up, how long ago the relationship ended.<sup>91</sup>

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

You can file a complaint seeking relief from abuse in the family division of the Superior Court in the county in which you live, or, if you have just fled your home, in either your new or old county.<sup>92</sup> There is no fee.<sup>93</sup>

If you are in immediate danger, you can file an application for a temporary order.<sup>94</sup> That application can be filed in the criminal, civil or family division of the Superior Court.<sup>95</sup> All of the courts are required to have procedures for people to file these applications after regular court hours or on weekends and holidays.<sup>96</sup> 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 finding of an immediate danger of further abuse.

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.<sup>97</sup> 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.<sup>98</sup> Once an order is issued, it is filed with the Department of Public Safety’s protection order database. Police and sheriff’s departments, as well as state police district offices, are also required to

---

<sup>91</sup> 15 V.S.A. § 1101(2).

<sup>92</sup> 15 V.S.A. § 1102(a).

<sup>93</sup> 15 V.S.A. § 1103(f).

<sup>94</sup> 15 V.S.A. § 1104.

<sup>95</sup> 15 V.S.A. § 1102(b).

<sup>96</sup> 15 V.S.A. § 1106(b).

<sup>97</sup> 15 V.S.A. § 1104(b).

<sup>98</sup> 15 V.S.A. § 1104(b).

maintain files of prevention orders and procedures to make personnel aware of the existence and contents of abuse prevention orders.<sup>99</sup>

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.<sup>100</sup>

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.<sup>101</sup>

If for some reason you decide not to go through with the legal process, you should show up in court anyway and ask that the order be dismissed. 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.<sup>102</sup> 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.<sup>103</sup>

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 (Toll Free in Vermont Only) or (802) 241-1250 or <http://www.ccvs.vermont.gov>.

---

<sup>99</sup> 15 V.S.A. § 1107.

<sup>100</sup> 15 V.S.A. § 1103(e).

<sup>101</sup> 15 V.S.A. § 1106(b).

<sup>102</sup> 15 V.S.A. § 1108(e).

<sup>103</sup> 15 V.S.A. § 1152.

***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 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, [www.vtnetwork.org](http://www.vtnetwork.org), at [vtnetwork@vtnetwork.org](mailto:vtnetwork@vtnetwork.org) (email) 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.<sup>104</sup>

---

<sup>104</sup> 15 V.S.A. § 665(b)(9).

# 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, disability, **sexual orientation**, or **gender identity**.<sup>105</sup> There is a sliding scale of sentencing enhancements based on the maximum penalty for the underlying crime.

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).<sup>106</sup>

### *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 U. S. Armed Forces, disability..., sexual orientation or gender identity.”<sup>107</sup>

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.<sup>108</sup>

---

<sup>105</sup> 13 V.S.A. § 1455.

<sup>106</sup> 13 V.S.A. § 1466.

<sup>107</sup> 13 V.S.A. § 1455.

<sup>108</sup> [www.ago.vermont.gov/divisions/civil-rights/hate-crimes.php](http://www.ago.vermont.gov/divisions/civil-rights/hate-crimes.php).

***Besides the police, who 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 toll-free (in Vermont) at (888) 745-9195 or at (802) 828-3657 or by email at [AGO.CivilRights@vermont.gov](mailto:AGO.CivilRights@vermont.gov).

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

Victims of hate crimes who have suffered damage, loss or injury can also file a civil claim in the Superior Court of the county where they live or where the crime occurred.<sup>109</sup> These claims can seek:

- an order to stop the hate-motivated behavior and restrict the perpetrator's ability to contact the victim 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

---

<sup>109</sup> 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.<sup>110</sup>

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.<sup>111</sup>

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

The *Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act*<sup>112</sup> was passed by Congress on October 22, 2009 and was signed into law by President Obama on October 28, 2009. It expands the 1969 United States federal hate crime law to include crimes motivated by a victim's actual or perceived gender, sexual orientation, gender identity or disability.

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

---

<sup>110</sup> 13 V.S.A. § 1461.

<sup>111</sup> 13 V.S.A. §§ 1461(c), 1465(a-b).

<sup>112</sup> See 18 U.S.C. § 249.

- that occur in rural areas which do not have the resources needed to prosecute such crimes.

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

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

## ■ Criminal Sex Laws

*Does Vermont have a sodomy law?*

No.

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

LGBT people are subject to the same laws as non-LBGT people. Sex in public, with underage persons, without consent, or with force are all illegal acts. Sex for pay – as either the customer or the provider – is also illegal.

Most 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.”<sup>113</sup> This law targets sexual activity that is obvious and not concealed, and

---

<sup>113</sup> 13 V.S.A. § 2601.

requires no more than one witness.<sup>114</sup> This one witness can be anyone, including the person who complains about the conduct or the police.

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 (e.g., time of day, level of seclusion).<sup>115</sup>

The State has a legitimate law enforcement interest in protecting the general public from open displays of nudity or of sexual activity. Socializing and expressions of same-sex affection that do 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 other non-sexual touching.

As a practical matter, *regardless of one's rights, having sex in a public venue or outdoors is a risky business*. For one, based on numerous reports to us, we believe that some police will overlook outdoor sexual activity between straight couples, but arrest LGBT people engaged in the same behavior. Another concern is that some police “hunt” for LGBT people having sex outdoors in park lands and rest areas to arrest them, sometimes in uniform and sometimes as undercover decoys. If a person is caught, they can be charged with a violation of the sex laws.

### ***Does Vermont have a “sex offender registry” 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.

---

<sup>114</sup> *State v. Benoit*, 158 Vt. 359 (1992).

<sup>115</sup> 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).

***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.**<sup>116</sup>

***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:

Vermont Crime Information Center  
Department of Public Safety  
45 State Drive  
Waterbury, VT 05671-1300  
[www.vcic.vermont.gov](http://www.vcic.vermont.gov)

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

The sex offender registration laws only apply to sex offenders:

- convicted in Vermont on or after July 1, 1996;
- convicted in Vermont or another state before July 1, 1996, and either: (a) confined in Vermont and released from confinement on or after that date, or (b) being supervised in the community in Vermont on July 1, 1996; or
- 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.<sup>117</sup>

---

<sup>116</sup> See 13 V.S.A. § 5401(10)(A)(ii). For a full list of the offenses, see 13 V.S.A. § 5401(10).

<sup>117</sup> Public Act 124, § 3 (Approved 4/25/96; Effective 9/1/96).

### ***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, current address, Social Security number, current employment, and name and address of a postsecondary educational institution if they are enrolled as a student.<sup>118</sup>

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 (and whether they will be living with a child under 18), the name, address and phone number of the probation and parole office in charge of monitoring the sex offender, and documentation of any treatment or counseling received.<sup>119</sup>

Generally, a sex offender is required to report to the Department of Public Safety annually within ten days of the person’s date of birth. A person who has been deemed to be a sexually violent predator must report to the Department every 90 days. Other reporting obligations exist upon various changes in the person’s daily life and circumstances.<sup>120</sup>

### ***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.<sup>121</sup>

The registration requirement continues for the person’s life if they had at least one prior conviction for a sex offense in another jurisdiction, if they were convicted of sexual assault or aggravated sexual assault (unless the age of the victim was the basis for the conviction), or if they

---

<sup>118</sup> 13 V.S.A. § 5403(a).

<sup>119</sup> 13 V.S.A. § 5404(a).

<sup>120</sup> 13 V.S.A. § 5407.

<sup>121</sup> 13 V.S.A. § 5407(e).

were determined to be a sexually violent predator.<sup>122</sup> After ten years, however, most individuals 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.<sup>123</sup>

### ***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 them. The identity of a victim of an offense requiring registration shall not be released.<sup>124</sup>

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 their personal safety or that of their family.<sup>125</sup>

### ***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 them 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.<sup>126</sup>

---

<sup>122</sup> 13 V.S.A. § 5407(f).

<sup>123</sup> 13 V.S.A. § 5411(e).

<sup>124</sup> 13 V.S.A. § 5402.

<sup>125</sup> 13 V.S.A. § 5411.

<sup>126</sup> 13 V.S.A. § 5413.

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

Generally, the age of consent for sexual activity is 16 unless either: (a) the parties are married and the sexual act is consensual; or (b) one party is less than 19 and the child is at least 15 and the sexual act is consensual. However, in some specific circumstances, such as where one party is the other's guardian, the age of consent is 18.<sup>127</sup>

### **■ 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 not engaged in unlawful activity. Public places belong to everyone. They are also often places of public accommodation to which Vermont's 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*.<sup>128</sup>

***What should LGBT people expect from interactions with police?***

The presence of individuals who appear to be LGBT -- 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.

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 not constitute grounds for the person to be arrested. A police officer may generally only stop a person briefly for purposes of investigation if

---

<sup>127</sup> 13 V.S.A. § 3252.

<sup>128</sup> See *Kent v. Dulles*, 357 U.S. 116, 126 (1958).

they have “reasonable suspicion” that a crime has been committed or is about to be committed.<sup>129</sup> 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.<sup>130</sup> These intrusions must be objectively reasonable and based on specific articulable facts.<sup>131</sup>

An arrest can only occur upon “probable cause” that a crime has been committed.<sup>132</sup> 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.<sup>133</sup>

### ***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.

For information on how to submit complaints to the Vermont State Police, visit: <http://vsp.vermont.gov/headquarters/internalaffairs>. You may submit a complaint online, by email or to any Station Commander of the Vermont State Police.

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

---

<sup>129</sup> *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).

<sup>130</sup> *State v. Marcello*, 157 Vt. 657, 658 (1991).

<sup>131</sup> *State v. Burgess*, 163 Vt. 259, 262 (1995).

<sup>132</sup> Vt. R. Crim. P. 3(a)

<sup>133</sup> *State v. Chapman*, 800 A.2d 446, 449 (Vt. 2002).

# **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,<sup>134</sup> and therefore they may not discriminate on the basis of sexual orientation or gender identity in their accommodations, advantages, facilities or privileges.<sup>135</sup> 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.”<sup>136</sup>

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. occurs during the school day on school property, on a bus or at a school-sponsored activity or before or after the school day on a

---

<sup>134</sup> 9 V.S.A. § 4501.

<sup>135</sup> 9 V.S.A. § 4502.

<sup>136</sup> 16 V.S.A. § 570.

school bus or at a school-sponsored activity; or

4. occurs at any other time and can be shown to pose a clear and substantial interference with a student's right to access educational programs.<sup>137</sup>

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 disability that has the purpose or effect of:

1. objectively and substantially undermining and detracting from or interfering with educational performance or access to school resources; or
2. creating an objectively intimidating, hostile or offensive environment.<sup>138</sup>

Hazing is defined as any act against a student who is pledging, being initiated into, affiliating with, holding office in, or maintaining membership in any organization that is affiliated with an educational institution and that is intended to have the effect of (or be reasonably expected to have the effect of) humiliating, intimidating or demeaning the student or endangering the physical or mental health of the student.<sup>139</sup>

### ***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 Agency of Education.<sup>140</sup> The model policy can be found at:

---

<sup>137</sup> 16 V.S.A. § 11(a)(32).

<sup>138</sup> 16 V.S.A. § 11(a)(26)(A).

<sup>139</sup> 16 V.S.A. § 11(a)(30)(A).

<sup>140</sup> 16 V.S.A. § 570(b).

<http://education.vermont.gov/documents/healthy-safe-schools-hhb-model-policy>.

All of these policies must include, among other things:

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;
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.<sup>141</sup>

Harassment and hazing are also explicitly prohibited at Vermont postsecondary schools, which are required to establish policies and enforcement procedures to address harassment complaints.<sup>142</sup>

---

<sup>141</sup> See 16 V.S.A. §§ 570a (harassment), 570b (hazing), 570c (bullying).

<sup>142</sup> 16 V.S.A. § 178.

***Does Vermont have specific guidance for schools to follow to protect transgender students?***

Yes. The Vermont Agency of Education has established best practices for schools regarding transgender and gender nonconforming students.<sup>143</sup> These practices are intended to help school and district administrators take steps to create a culture in which transgender and gender nonconforming students feel safe, supported, and fully included and to meet each school's obligation to provide equal educational opportunities for all students. These practices are intended to help schools ensure a safe learning environment free of discrimination and harassment and to promote the educational and social integration of transgender and gender nonconforming students.

***Are there federal laws that protect me?***

Possibly. Federal law prohibits sex discrimination in public schools that receive federal funding. Depending on the situation, harassment of LGBT students may be actionable as sex discrimination.<sup>144</sup> Harassment of transgender students, in particular, is actionable. Several federal courts have held that the federal anti-discrimination law, Title IX, prohibits discrimination based on gender identity.<sup>145</sup> Complaints can be made to your school's Title IX coordinator, as well as to the federal Department of Education, Office of Civil Rights, in Boston. In cases where a school has reacted with deliberate indifference, monetary damages may be available. A student's constitutional rights may be violated by some kinds of discrimination and harassment.

Although the U.S. Departments of Education and Justice released a joint guidance in 2016 taking the position that Title IX protects

---

<sup>143</sup> See <http://education.vermont.gov/sites/aoe/files/documents/edu-best-practices-transgender-and-gnc.pdf>.

<sup>144</sup> See, e.g., *Ray v. Antioch Unified School District*, 107 F. Supp. 2d 1165 (N.D. Cal. 2000) (stating that attacks based on a student's perceived sexuality constitute sex discrimination).

<sup>145</sup> See, e.g., *Whitaker v. Kenosha Unified School District*, 858 F.3d 1034 (7th Cir. May 30, 2017) (holding that discrimination against transgender students constitutes sex discrimination under Title IX and the Equal Protection Clause of the U.S. Constitution) and *Bd. Of Educ. v. U.S. Dep't of Educ.*, 208 F. Supp. 3d 850 (S.D. Ohio 2016) (preliminary injunction granted to 11-year-old girl to permit her to use the girls' restroom and to be treated "as the girl she is.").

transgender students from discrimination based on gender identity,<sup>146</sup> that guidance was rescinded by the Trump administration in February 2017.

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

### ***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's 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 Vermont Agency 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:

Vermont Agency of Education  
219 Main Street, Suite 402  
Barre, VT 05641  
(802) 479-1030  
[aoe.edinfo@vermont.gov](mailto:aoe.edinfo@vermont.gov)

---

<sup>146</sup> See *Dear Colleague Letter on Transgender Students*, U.S. Department of Justice/U.S. Department of Education, available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf>.

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.

**For additional information about youth and student issues go to:**  
<https://www.glad.org/issues/youth/>.

## ■ Gay/Straight Alliances

*Do students have the right to form Gay Straight Alliances (GSA) in their schools?*

Yes, as to high school students; probably, as to middle school students. A federal law known as the “Equal Access Act” requires that all federally funded secondary schools provide equal access to extra-curricular clubs. So long as a school has at least one student-led extra-curricular club, it must allow additional clubs to organize, and must provide them with equal access to meeting spaces, facilities, and funding without discriminating based on a club’s purpose, be that purpose religious, philosophical, political, or otherwise.<sup>147</sup> GLAD brought and won a case for students at West High in Manchester, New Hampshire on this very basis.

For more information see GLAD’s publication, *The Right to Establish a GSA in Public Schools* at <https://www.glad.org/wp-content/uploads/2017/01/gsa-public-schools.pdf>. If your school is preventing you from forming a GSA, contact GLAD Answers.

---

<sup>147</sup> 20 U.S.C. § 4071.

## ■ Conversion Therapy

***Does Vermont have a law banning therapy or treatment to change a minor's sexual orientation or gender identity?***

Yes. On May 25, 2016, Governor Peter Shumlin signed into law Act 138, *An Act Relating to the Prohibition of Conversion Therapy on Minors*.<sup>148</sup>

State and national medical, mental health, and child welfare organizations all oppose the practice of conversion therapy, a practice that seeks to change a person's sexual orientation or gender identity. Extensive professional literature shows the practice to be both ineffective in changing sexual orientation or gender identity and harmful to youth. Young people who have been subjected to conversion therapy are at increased risk of depression, suicidal thoughts and suicide attempts, and illegal drug use.

Under the law's provisions, any licensed health professional who practices conversion therapy is guilty of unprofessional conduct and is subject to punishment under the Vermont laws that deal with unprofessional conduct.

---

<sup>148</sup> <https://legislature.vermont.gov/assets/Documents/2016/Docs/ACTS/ACT138/ACT138%20As%20Enacted.pdf>.





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](http://www.glad.org), or call us at (800) 455-GLAD (4523) with your credit card, or mail your check, payable to GLAD to 18 Tremont Street, Suite 950, 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!*



GLBTQ Legal Advocates & Defenders  
18 Tremont Street, Suite 950  
Boston, MA 02108  
Tel 617.426.1350  
1.800.455.GLAD (4523)  
Fax 617.426.3594

[www.GLAD.org](http://www.GLAD.org) | [www.GLADAnswers.org](http://www.GLADAnswers.org)