



Massachusetts

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

January 2015

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

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

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Anti-Discrimination Law

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

Yes. In 1989, Massachusetts became the second state in the country to pass a comprehensive anti-discrimination law prohibiting sexual orientation discrimination in the areas of employment, housing, public accommodations, credit and services.¹ There are also other areas (e.g. education and insurance) where there are prohibitions of sexual orientation discrimination.

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

Yes. The non-discrimination law defines “sexual orientation” as “having an orientation for or *being identified as* having an orientation for heterosexuality, bisexuality or homosexuality.”² The language of “being identified as” has been interpreted to mean that, for example, if a person is fired because they are perceived to be gay (whether they are or not), they may still invoke the protection of the anti-discrimination law to challenge the firing.

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

Most likely, yes.³ Also, in some situations, if a person is fired from a job or evicted from their home because they hang out with someone who is gay or lesbian, it may be possible to show that they were fired or evicted because the employer or landlord thought they, too, were gay or lesbian.

¹ See generally Mass. Gen. Laws, chap. 151B.

² Mass. Gen. Laws, chap. 151B, section 3(6).

³ See <http://www.mass.gov/mcad/documents/SJC%20Decides%20Associational%20Discrimination%20Claim.pdf>.

Does Massachusetts have anti-discrimination laws that protect transgender people?

Yes, in November 2011, the Massachusetts legislature enacted a law, *An Act Relative to Gender Identity*,⁴ that was signed by the Governor and will go into effect on July 1, 2012. This law prohibits discrimination in several key areas and defines gender identity as “*a person’s gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person’s physiology or assigned sex at birth.*”

The law also includes ways for a person to show proof of his/her gender identity “including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity or any other evidence that the gender-related identity is sincerely held, as part of a person’s core identity . . .”

For further information see GLAD publication, *Massachusetts’ Transgender Rights Law: An Act Relative to Gender Identity*, at www.glad.org/uploads/docs/publications/ma-trans-rights-law.pdf.

What kinds of discrimination do the anti-discrimination laws address?

The Massachusetts law prohibits discrimination in:

- EMPLOYMENT
- PLACES OF PUBLIC ACCOMMODATION (however, there is no explicit protection for gender identity)
- HOUSING
- CREDIT
- SERVICES

⁴ See <http://www.malegislature.gov/Bills/187/House/H03810>

■ Employment

Who does the non-discrimination law apply to and what does it forbid?

The non-discrimination law applies to employers (government based or private) who have at least 6 employees (not including the owner or certain family members). It forbids employers from refusing to hire a person, or discharging them, or discriminating against them “in compensation, or in terms, conditions or privileges of employment” because of sexual orientation or gender identity.⁵ This covers most significant job actions, such as hiring, firing, failure to promote, demotion, excessive discipline, harassment and different treatment of the employee and similarly situated co-workers.

The law also applies to employment agencies and labor organizations (e.g. unions).⁶

Example: after employer saw a male employee reading a gay newspaper, employer told him not to bring in “pornographic materials” and then disciplined the employee for making personal phone calls (but not others who made phone calls) and berated him for hanging out with his friends (although the meeting was work-related). When employee confronted employer for referring to him to another employee as a “faggot,” employee was fired. Discrimination was found and the employee was awarded damages.⁷

Example: where employee’s supervisor ridiculed employee as “pipe smoker” and “lollipop licker,” employee awarded damages for harassment.⁸

⁵ Mass. Gen. Laws, chap. 151B, sec. 4(1).

⁶ Mass. Gen. Laws, chap. 151B, secs. 4(3), 4(2).

⁷ *Fijal v. Kentucky Fried Chicken/JTN Food Serv., Inc.* 20 M.D.L.R. 45 (1998).

⁸ *Magane v. Corcoran Management Co.*, 18 M.D.L.R. 103 (1996).

Example: where a gay male county corrections officer suffered persistent rumors in the workplace concerning his sexual orientation, slurs and shunning at work, undesirable work assignments and unsuccessful internal administrative remedies, a jury awarded him compensatory and punitive damages of \$623,000 plus interest and attorney's fees as the result of this harassment.⁹

Are any companies exempt from the anti-discrimination law?

Employers with fewer than six employees are exempt.

An employer, agency or labor organization may defend against a discrimination claim by arguing that a “bona fide occupational qualification” of the particular job is that it have someone in it who is non-LGBT. But there are no general occupational exemptions from the reach of the non-discrimination law. While that defense is allowed in the law, it is strictly applied and very rarely successful.¹⁰

Religious institutions and their charitable and educational associations are sometimes exempt from the law.¹¹ Where an employer is operated or supervised by a religious institution, it may preferentially hire members of its own religion, and may take employment actions that it “calculate[s will] ... promote the religious principles for which it is established or maintained.” This exemption, however, is not a *carte blanche* for an employer to use his or her religious beliefs as a justification for discriminating against an LGBT person.¹²

Does the Massachusetts law prohibit sexual harassment?

Yes. Sexual harassment is specifically prohibited under the law. Massachusetts law defines “sexual harassment” as:

⁹ *Salvi v. Suffolk County Sheriff's Dept.*, 67 Mass. App. Ct. 596, 855 N.E. 2d 777 (2006).

¹⁰ See, e.g. *Sarni Original Dry Cleaners, Inc. v. Cooke*, 388 Mass. 611, 447 N.E.2d 1228 (1983).

¹¹ Mass. Gen. Laws, chap. 151B, section 1(5).

¹² See, e.g., *Attorney General v. Desilets*, 418 Mass. 316, 636 N.E.2d 233 (1994)(housing case).

“sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when (a) submission to or rejection of such advances, requests or conduct is made either explicitly or implicitly a term or condition of employment or as a basis for employment decisions; (b) such advances, requests or conduct have the purpose or effect of unreasonably interfering with an individual’s work performance by creating an intimidating, hostile, humiliating or sexually offensive work environment. Discrimination on the basis of sex shall include, but not be limited to, sexual harassment.”¹³

A claim of harassment can be pursued under Mass. Gen. Laws, chap. 151B, sec. 4 (16A).¹⁴ For employers who are not large enough to be subject to the jurisdiction of the Massachusetts Commission Against Discrimination (fewer than 6 employees), claims may be brought directly in court under Mass. Gen. Laws, chap. 214, sec. 1C.¹⁵

It is as unlawful to sexually harass a gay, lesbian or bisexual person as it is to harass a non-gay person. Some harassment is specifically anti-gay, and may be more fairly characterized as harassment on the basis of sexual orientation. Other harassment is sexual in nature and more appropriately categorized as “sexual harassment.” Both types of harassment can happen to the same person, and both are forbidden.¹⁶

Both the United States Supreme Court and several state courts have found same-sex sexual harassment to violate sexual harassment laws¹⁷.

¹³ Mass. Gen. Laws, chap. 151B, sec. 1 (18).

¹⁴ Making it unlawful “for an employer, personally or through his agents, to sexually harass any employee.”

¹⁵ Setting forth right to be free from sexual harassment.

¹⁶ *Salvi v. Suffolk County Sheriff’s Dept.*, 67 Mass. App. Ct. 596, 855 N.E. 2d 777 (2006).

¹⁷ Compare *Oncala 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 forbidden under state law).

■ Public Accommodations

What is a “place of public accommodation”?

A place that holds itself open to, and accepts the patronage of the general public is a place of public accommodation subject to the non-discrimination laws.¹⁸ This definition is intentionally broad and may include a motel, restaurant, rest area, highway or hospital, as just a few examples.

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

Such places may not discriminate, or make any distinctions, or impose any restrictions because of a person’s sexual orientation. “[W]hoever aides or incites” such discriminatory treatment may also be penalized under the law.¹⁹

Example: women, who were attacked by a used car dealer when he realized they were lesbians, stated a claim under the law and were awarded damages in a settlement.

Example: two women who kissed on a bus and were then forced off of the bus by the driver were protected by the law because the driver did not order off of the bus a heterosexual couple who were kissing were awarded damages.²⁰

Example: couples who were forcibly ejected from a night club because customers were uncomfortable with their being physically affectionate were awarded damages.²¹

¹⁸ Mass. Gen. Laws, chap. 272, sec. 92A.

¹⁹ Mass. Gen. Laws, chap. 272, sec. 98.

²⁰ *Rome v. Transit Express*, 19 Mass. Discrim. Law Rptr. (M.D.L.R.) 159 (1997), affirmed, 22 M.D.L.R. 88 (2000);

²¹ *Stoll et al. v. State Street Stock Exchange, Inc.*, 18 M.D.L.R. 141 (1996).

What protections exist for transgender people in places of public accommodation?

Although the new transgender rights law does not contain explicit protections for gender identity, in many cases a transgender person may have a claim of sex discrimination if the adverse action is triggered by the sense that the individual does not meet the expectations of or act like a “real man” or “real woman,” then this can be the basis for a sex stereotyping claim.²²

In some cases an individual’s gender identity may be regarded as “a gay issue” by the person or entity perpetrating the discrimination and therefore allow a person to bring a sexual orientation claim.

In *Jette v. Honey Farms*,²³ MCAD ruled that, unlike the federal disability laws, Massachusetts’ disability law includes transgender people.

So a transgender person who is discriminated against in a public accommodation has protections under the law, but since gender identity is not one of the explicit protected classes, the person will need to find another protected characteristic (e.g. sex, sexual orientation or disability) to use in filing the complaint.

The transgender coalition to which GLAD belongs will continue to work for the express inclusion of “gender identity” in the public accommodations anti-discrimination law.

²² See *Price Waterhouse v. Hopkins*, 490 U.S. 228, 251 (1989); *Rosa v. Park West Bank*, 214 F.3d 213 (1st Cir. 2000); *Millett v. Lutco, Inc.*, 23 M.D.L.R. 231 (2001)..

²³ *Jette v. Honey Farms*, 2001 WL 1602799.

■ Housing

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

The housing laws are intended to prohibit discrimination by those engaged in most aspects of the business of listing, buying, selling, renting or financing housing, whether for profit or not.²⁴ Most often, these claims involve a refusal by an owner, landlord or real estate broker to sell, or lease, or even negotiate with a person about the housing they desire to obtain.²⁵ But other practices are forbidden, too, such as inquiring into or making a record of a person's sexual orientation or gender identity or marital status;²⁶ or discriminating with respect to mortgage loans.²⁷

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

The main exemption from the law is for owner-occupied buildings that have two units or less. The law is focused on protecting people in "multiple dwelling[s]." This is a dwelling which is usually occupied for permanent residence and which is either rented, leased, let or hired out, to be occupied as the residence or home of three or more families living independently of each other. If the building only has two apartments and the owner lives in one of them, the exemption may apply.²⁸ The other exemptions in this area of the law are fairly technical and relate to the definitions of "housing development," "contiguously located housing," and "other covered housing accommodations."

²⁴ Mass. Gen. Laws, chapter 151B, sec. 4 (3B, 3C, 6, 7).

²⁵ Mass. Gen. Laws, chap. 151B, sec. 4 (6)(a)(public housing), sec. 7 (private housing).

²⁶ Mass. Gen. Laws, chap. 151B, sec. 4(6)(c)(public housing), sec. 4(7)(private housing).

²⁷ Mass. Gen. Laws, chap. 151B, sec. 4(3B).

²⁸ Mass. Gen. Laws, chap. 151B, sec. 1 (11).

■ Credit and Services

What protections exist under Massachusetts anti-discrimination law with regard to credit?

Any person who furnishes credit, such as a bank, credit union, or other financial institution, may not “deny or terminate such credit . . . or . . . adversely affect an individual’s credit” because of sexual orientation or gender identity or marital status.²⁹

Example: GLAD brought and settled a claim against a bank which refused to allow two men to apply jointly for a loan, claiming it was both sexual orientation and marital status discrimination;

Example: GLAD brought and settled a claim against a credit union which refused to allow a feminine appearing man from applying for a loan until he came back looking more masculine. A federal court ruled that this stated a claim of sex discrimination in violation of the credit non-discrimination laws³⁰.

How does Massachusetts anti-discrimination law protect people receiving services?

Any person who furnishes services may not “deny or terminate such ... services” because of sexual orientation or gender identity or marital status.³¹ While many of those businesses which furnish services will be subject to the public accommodations law, this provision also captures those who do not, including those in the business of insurance.

²⁹ Mass. Gen. Laws, chap. 151B, sec. 4(14).

³⁰ *Rosa v. Park West Bank*, 214 F.3d 213 (1st Cir. 2000).

³¹ Mass. Gen. Laws, chap. 151B, sec. 4(14).

■ Pursuing a Complaint

How do I file a complaint of discrimination under Massachusetts law?

You may file in person or in writing at the Massachusetts Commission Against Discrimination (MCAD). The MCAD prefers for people to file in person, unless an attorney has prepared the complaint for them. Call in advance to set up an appointment and find out what you need to bring.

Boston: (617) 994-6000, One Ashburton Place, Room 601.

Springfield: (413) 739-2145.

Worcester: (508) 799-8010.

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

Do I need a lawyer?

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

What are the deadlines for filing a complaint of discrimination?

Complaints of discrimination must be filed at the MCAD within 300 days of the last discriminatory act or acts. There are very few exceptions for lateness, and GLAD encourages people to move promptly in filing claims.

What happens after a complaint is filed with the MCAD?

The MCAD assigns an investigator to look into your case. The parties may engage in limited “discovery” – a legal process which allows the other side to examine the basis of your claim and allows you to examine their justifications and defenses. This is conducted through written questions (interrogatories), requests for documents, and depositions. Ultimately, if the case is not dismissed for technical reasons, a Commissioner will decide if there is probable cause to credit your allegations.

If probable cause is found in an employment, credit, services, or public accommodations case, the case will be sent for “conciliation” or settlement proceedings. If negotiations fail to produce a settlement agreeable to all parties, the case proceeds further with more discovery and possibly a trial type hearing.

Even before probable cause is determined in a housing case, the MCAD may go to court to seek an order forbidding the respondent from selling, renting or otherwise disposing of the property at issue while the case is pending. Once probable cause is found, the respondent must be notified of its right to have its case heard in court rather than at the MCAD.³²

If probable cause is found lacking, the case is over unless you appeal the “lack of probable cause” finding. There are special rules and time constraints on appeals within the MCAD that must be observed strictly.

³² Mass. Gen. Laws, chap. 151B, sec. 5.

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

The remedies for a successful complainant may include, for employment cases, hiring, reinstatement or upgrading, backpay, restoration in a labor organization, and front pay. In housing cases, remedies may include damages (expenses actually incurred because of unlawful action related to moving, storage, obtaining alternate housing) and civil fines to be paid to the state. In public accommodations cases, the MCAD may also order civil fines to be paid to the state. In all cases, the remedies may also include emotional distress damages, attorneys' fees, cease and desist orders, and other relief that would fulfill the purposes of the anti-discrimination laws (*e.g.* training programs, posting of notices, allowing person to apply for credit on non-discriminatory terms, allowing person non-discriminatory access to and use of services).

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

Yes, in many cases. Federal employment non-discrimination law, called Title VII, applies only to employers with at least 15 employees, and complaints must be filed within 180 days of the discriminatory act with the Equal Employment Opportunity Commission (EEOC). But if you initially institute your complaint with MCAD and indicate that you wish to have the complaint cross-filed with the EEOC, then the time limit is extended to the earlier of 300 days or 30 days after MCAD has terminated the case.³³ (People who work for federal agencies are beyond the scope of this publication.)

Someone who brings a claim of discrimination may sometimes pursue protections under both state and federal law. This is true because there may be overlapping provisions of state and federal law. For example,

³³ United States Code 42 sec. 2000e-5(e)(1).

Title VII forbids employment discrimination based on race, sex, age, religion and disability (which includes HIV status), but does not expressly forbid discrimination based on “sexual orientation” or “gender identity.”

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

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

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

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

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

Are there other options for filing a complaint for discrimination?

Possibly yes, depending on the facts of your particular situation.

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

2. Local Agencies: Several cities and towns have their own local non-discrimination laws and agencies with which you can file a complaint in addition to filing at the MCAD. Sometimes the MCAD allows the local agency to investigate the case instead of the MCAD, which might produce advantages in time and accessibility of staff. Cambridge and Boston have the most developed local agencies, although Newton, Somerville, Worcester and Springfield also have some staff for certain kinds of complaints. Even if you file with the local agency, you must still file with the MCAD within 300 days of the last act of discrimination in order for your case to be processed at all.

3. State or Federal Court: After filing with the MCAD or EEOC, or both, as discussed above, a person may decide to remove his or her discrimination case from those agencies and file the case in court. There are rules about when and how this must be done.³⁴

³⁴ See e.g., Mass. Gen. Laws, chap. 151B, sec. 9.

In addition, a person may file a court case to address other claims which are not appropriately handled by discrimination agencies. For example, if a person is fired in violation of a contract, or fired without the progressive discipline promised in a handbook, or fired for doing something the employer doesn't like but which the law requires, then these matters are beyond the scope of what the agencies can investigate and the matter should be pursued in court. If a person has a claim for a violation of constitutional rights, such as a teacher or governmental employee who believes his or her free speech or equal protection rights were violated, then those matters must be heard in court.

What can I do if my employer fires me or my landlord evicts me because I filed a complaint of discrimination?

It is illegal to retaliate in these circumstances, and the employee could file an additional complaint against the employer or the tenant against the landlord for retaliation. "Retaliation" protections cover those who participate in proceedings, oppose unlawful conduct, or state an objection to discriminatory conduct.³⁵

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

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

As a general matter, people who are still working with or residing under discriminatory conditions have to evaluate how filing a case will affect their job or housing, and if they will be able to handle those possible consequences. Of course, even if a person has been fired, or evicted, he or she may decide it is not worth it to pursue a discrimination

³⁵ Mass. Gen. Laws, chap. 151B, secs. 4(4), 4A. *See also Provencher v. CVS Pharmacy*, 76 F.E.P. Cases (BNA) 1569 (1st Cir. 1998)(upholding federal retaliation claim of gay man).

claim. This is an individual choice, which should be made after gathering the information and advice to make an informed choice.

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

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

Yes. The state non-discrimination laws for employment forbid taking an action against someone because of sexual orientation or gender identity as well as race, color, religious creed, national origin, sex, ancestry, age, disability or membership in a uniformed military service of the U.S., including the National Guard. In housing, the criteria are expanded to include marital status, or because the person is a veteran. In public accommodations, gender identity, marital status and age are *not* included among the law's protections.

FAMILY LAW

■ Marriage and Civil Unions

In an historic decision, the Massachusetts Supreme Judicial Court ruled on November 18, 2003, that gay and lesbian couples have the right to civil marriage in Massachusetts. The ruling in GLAD's case, *Goodridge v. Department of Public Health*, was the first of its kind in this country by a state high court. This was a legal and cultural milestone. At long last, gay and lesbian families and their children are finally equal families in the Commonwealth.

Massachusetts does not have a residency requirement for marriage, but until July 31, 2008 an old law dating back to 1913 was used to deny marriage licenses to same-sex couples from other states unless they intended to reside in Massachusetts. On July 31, 2008 Governor Patrick signed into law a bill that repealed this so-called "1913 law," and effective immediately on that date same-sex couples from anywhere in the country or world can legally marry in Massachusetts without having an intent to reside in Massachusetts.

Although this is great news, couples should be aware that whether the marriage will be respected in their home state or country is a complicated issue.

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

Massachusetts will generally respect the legal marriages of same-sex couples regardless of where the marriage was consecrated, and a Massachusetts marriage will be respected as a marriage anywhere that same-sex couples can marry. For the most up to date list go to: <http://www.freedomtomarry.org/states/>.

(Note: In 2012 in two separate decisions, the Massachusetts Supreme Judicial Court ruled that both civil unions³⁶ and domestic partnerships³⁷ will be accorded the same respect as marriages in Massachusetts' courts).

³⁶ For more information see *Todd Elia-Warnken v. Richard Elia* case at <http://www.glad.org/work/cases/todd-elia-warnken-v.-richard-elia/>.

³⁷ For more information see *A.E.H. v. M.R.* case at <http://www.glad.org/work/cases/ae-h-v-mr/>.

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

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

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

Also, while DOMA was in effect, if an employer granted a spousal benefit to an employee (e.g. allowing the spouse of the employee to be on the company health plan), the employee was taxed on that benefit. Now that DOMA is gone, that is no longer the case. And since the IRS respects the marriages of same-sex couples wherever they live, this applies to all married same-sex couples regardless of where they reside.

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

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

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

What happens if we need to end our marriage?

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

There are a small number of places that will allow a relationship that was granted there to be dissolved without a residency requirement if you can prove that neither spouse can dissolve it where they currently reside (e.g. Vermont, California, Delaware, District of Columbia, Minnesota and Canada).³⁸

³⁸ See the following publication from the National Center for Lesbian Right: http://www.nclrights.org/wp-content/uploads/2013/07/Divorce_in_DOMA_States_Attorney_Guide.pdf.

GLAD has prepared a number of publications dealing with marriage. These publications are available both in printed form and on our website, www.glad.org. They include:

- *How To Get Married In Massachusetts*
- *Same-Sex Spousal Health Benefits*

Can Massachusetts same-sex couples get married anywhere else?

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

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

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

■ Other Legal Protections for Same-Sex Couples

Short of entering into a civil marriage, what steps can a couple take to safeguard their legal relationship in Massachusetts?

1. Relationship Agreement or Contract: In 1998, the Massachusetts Supreme Judicial Court ruled that written

cohabitation agreements by unmarried parties regarding property and finances will be respected and honored according to ordinary rules of contract law.³⁹ This ruling provides greater incentive for couples to sort out their affairs in writing before a separation. Note that the rules governing cohabitation contracts between married people are based on what is “fair and reasonable,” a more generous standard which is not available to unmarried persons. And 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.

2. Power of Attorney: Any competent person may appoint another person as his or her “attorney-in-fact” for financial matters in the event the one becomes incapacitated or disabled.⁴⁰ If no such appointment is made, then a “family” member will be empowered to make decisions for the disabled or incapacitated individual.

A person may also nominate his or her guardian or conservator -- a longer term appointment which takes priority over the attorney-in-fact -- in the same document. An individual’s choice can only be rejected by a court for good cause or disqualification. The mere fact that a family member is not appointed is not good cause.

3. Health Care Proxy: Since medical care providers look to next-of-kin to make health care decisions for an incapacitated individual, an unmarried person must appoint a health care proxy if he or she wishes another person to make those decisions instead of the family member. Under Mass. Gen. Laws, chap. 201D, a person may appoint a health care agent to make decisions for him or her upon incompetence. This can be revoked at any time by creating a new health care proxy or by a clear expression of revocation. People often give a copy of the health care proxy to

³⁹ *Wilcox v. Trautz*, 427 Mass. 316 (1998).

⁴⁰ Mass. Gen. Laws, chap. 190B, Article V, secs. 5-501—5-507.

their doctors and sometimes to family members.

4. Will:⁴¹ Without a will, a deceased unmarried person's property passes to: (1) his or her children; (2) his or her family; (3) if next-of-kin cannot be located, to the state. If the person wishes to provide for others, such as his or her partner, a will is essential. Even if a person has few possessions, he or she can name in the will who will administer his or her estate. If a person has children, he or she can nominate the future guardian of the child in a will.

5. Funeral Planning Documents: Upon death, a person's body is given to their next-of-kin. This can mean that a person's own partner has no right to remove the body or make plans for a final resting place. But if a person leaves explicit written directions giving another person (such as their partner or a friend) control over the funeral and burial arrangements, any confusion can be avoided. Some people include these instructions as part of a will, but since a will may not be found for days after death, it is preferable to give the instructions to the person you want to take care of matters as well as to family members.

6. Living Will: Within a health care proxy, language may be inserted stating what the individual wishes regarding termination of life support, preferences for types of medical care, or limits on the agent's authority.

7. Temporary Agent or Guardianship: Parents, particularly those with life-threatening illnesses, may either appoint a temporary agent⁴² for a period not exceeding 60 days or appoint a guardian⁴³ whose appointment takes effect when the parent dies or is unable to care for the child. Within 30 days after the appointment of a guardian, the guardian must petition the Probate

⁴¹ See generally, Mass. Gen. Laws, chap. 190B, Articles II & III.

⁴² Mass. Gen. Laws, chap. 190B, Article V, sec. 5-103

⁴³ Mass. Gen. Laws, chap. 190B, Article V, secs. 5-201—5-212.

and Family Court for confirmation of the appointment. The parent has the right to revoke the powers of the temporary agent or guardian at any point.

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, attorneys may be able to help effectuate your goals, for example, by drafting a will in a way which is more likely to deter a will contest by unhappy family members, or drafting a health care proxy with your specific instructions.

If a couple separates, what is the legal status of a Partnership or Relationship 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 but without the divorce system (available to all married couples) to help them sort through it.

If a person has changed his or her mind about who should be his or her attorney-in-fact, or health care agent, or beneficiary or executor under a will, or funeral planner, then those documents should be revoked -- with notice to all persons who were given copies of those documents, and new documents should be prepared which reflect the person's present wishes.

■ Domestic Partnership

What is domestic partnership?

Although it is a term used in many contexts, it most often means a status which recognizes an unmarried couple and their children as a family for certain limited purposes. In the workplace context, domestic

partnership plans allow an employee to obtain certain fringe benefits for his or her partner which benefits 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.” For further information *see* GLAD publications on domestic partnership at: www.glad.org/rights/publications/c/relationships/.

Does Massachusetts provide domestic partner benefits to state employees?

Generally, no. By the terms of a 1993 Executive Order,⁴⁴ certain managerial employees of the Commonwealth have expanded leave rights for their partners. But overall, state employees do not have equal access to health benefits or other employee benefits for their partners, and the state pension system does not allow people to name unmarried partners as beneficiaries of an employee’s pension.

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

Probably not. While several cities and towns have done so in the past, a court ruling in 1999 found that Boston did not have the power to expand the reach of the state insurance laws by including domestic partners in the group health system.⁴⁵ Amherst has continued its domestic partner program by buying individual health insurance policies for the partners of Amherst employees who previously had group health coverage through the town. Several other cities and towns have also continued to provide coverage.

What kinds of domestic partner benefits may private employers provide?

⁴⁴ Weld, Gov.

⁴⁵ *Connors v. Boston*, 430 Mass. 31 (1999).

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.

Even when employers provide these benefits, though, sometimes federal laws require different tax or other treatment of the benefits for domestic partners as compared to spouses. For example, an employee must pay federal income tax on the value of his or her partner's health insurance benefits, but the employee with a married spouse does not.⁴⁶ And for pensions, a domestic partner has no right to sign off if their partner decides to name someone other than them as the beneficiary of a pension although a spouse would have that right. In addition, a domestic partner has no right comparable to that of a spouse to sign off on their partner's designation of another person for survivor benefits.

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

Probably not. Although the non-discrimination law says that an employer can't discriminate on the basis of sexual orientation in terms of compensation, and even though employee benefits are a form of compensation, the law contains an express exemption for employee benefits.⁴⁷ Thus, an employer *may* provide domestic partner benefits if it chooses to do so, but it probably cannot be forced to do so through the state non-discrimination law.

■ Adoption

Can a single gay individual adopt a child in Massachusetts?

⁴⁶ See Internal Revenue Code, Private Letter Ruling 9603011 (Jan. 19, 1996).

⁴⁷ Laws 1989, chap. 516, sec. 19.

Yes.⁴⁸

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

Yes, ever since court rulings by the Supreme Judicial Court in 1993.⁴⁹

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

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

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

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

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

Do we need to do a second-parent adoption if we are married or in a civil union?

⁴⁸ Mass. Gen. Laws, chap. 210, sec. 1.

⁴⁹ *Adoption of Tammy*, 416 Mass. 420 (1993) and *Adoption of Susan*, 416 Mass. 1003 (1993).

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

- *Miller-Jenkins Sidebar*

Relying on a partner's good will, or even on the fact that a child was born into a marriage or civil union, is not the best way to ensure ongoing parental rights of both parents if a couple later separates. A case in point is *Miller-Jenkins v. Miller-Jenkins*. This case has been in litigation since 2004, has involved two state Supreme Courts (Vermont and Virginia), and has already made several trips to the U.S. Supreme Court. Proceedings are ongoing. In that case, Janet and Lisa had a child, Isabella, while they were in a civil union. Janet did not adopt. After the couple separated, Lisa moved to Virginia and used both the lack of an adoption, and Virginia's laws hostile to same-sex relationships to thwart Janet's contact with their daughter. Finally, however, the Virginia courts agreed that the Vermont courts had the authority to make custody and visitation decisions.

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

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

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

These are tricky cases, but if the other person can show that he or she is a “de facto parent,” then he or she has the right to visitation with the child. De facto parents should also have rights to custody, but that has not yet been definitively decided by the courts. De facto parents will also have an obligation to support the child.

In a groundbreaking case, the SJC ruled a de facto parent is “one who has no biological relation to the child, but has participated in the child’s life as a member of the child’s family.”⁵⁰ To establish de facto parenthood, a parent must:

- reside with the child;
- and with the consent and encouragement of the legal parent, perform a share of the caretaking functions⁵¹ at least as great as the legal parent, shape the child’s daily routine, address his developmental needs;
- discipline the child, provide for his education and medical care, and serve as a moral guide.

Regardless of the status of a person’s legal rights, it is critical to remember that children form strong attachments to their parental caregivers regardless of legal labels. Separating a child from a person who has acted as their parent can be a devastating loss for a child.

⁵⁰ *E.N.O. v. L.M.M.*, 429 Mass. 824, 711 N.E.2d 886, cert. denied, 120 S.Ct. 500 (1999).

⁵¹ “Caretaking functions” are distinct from “parenting functions.” Caretaking focuses on interactions with a child while, for example, the provision of financial support is a parenting function but not a caretaking one. *A.H. v. M.P.*, 447 Mass. 828 (2006).

Moreover, court proceedings to establish de facto parenthood will be painful and costly, so anything people can do outside of court to make decisions together about a child's interests is strongly encouraged. See GLAD's publication, *Protecting Families: Standards for LGBT Families*, at www.glad.org/uploads/docs/publications/protecting-families-standards-for-lgbt-families.pdf.

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

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

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

Wills: The legal parent may nominate a guardian of the child upon the parent's death. 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.

Co-guardianship: This process allows a parent to name the other non-legal parent as a co-guardian so that he or she may secure medical attention for the child and act as a parent. This status is not permanent, and may be revoked by the legal parent.

Power of Attorney: This document is signed by the parent and authorizes another person (the attorney-in-fact) to make medical or financial decisions for the child. It should be updated regularly.

■ Custody and Visitation

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

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

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

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

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

In Massachusetts, the question turns on whether there is evidence of direct harm to the best interests of the child. As a general matter, a parent's sexual orientation is not itself grounds for denying custody or

visitation.⁵² In a heterosexual case, a court found that a father who had had an extramarital affair and lived with the other woman while married did not deprive him of custody rights where there was no evidence of harm to his children.⁵³

What are the factors for making custody determinations generally?

Upon divorce, a court considers the parents as equals (unless one has engaged in misconduct) and makes orders based on the happiness and welfare of the children. “When considering the happiness and welfare of the child, the court shall consider whether or not the child’s present or past living conditions adversely affect his physical, mental, moral or educational health.”⁵⁴

If the parents are unmarried biological parents (such as a former heterosexual couple where one of the parties is now gay or lesbian), then the rules are different than at divorce. In a “paternity” proceeding, the court is still bound to act in the best interests of the child, but in awarding custody is bound to preserve the relationship between the child and the primary caretaker parent.⁵⁵ Parents cannot be awarded joint custody unless they have agreed to do so or the court finds that they have successfully exercised joint responsibility for the child in the past and have the ability to communicate with each other about the child’s interests.

Are there different kinds of custody?

Yes.⁵⁶

⁵² *Bezio v. Patenaude*, 381 Mass. 563 (1980); *Doe. v. Doe*, 16 Mass. App. Ct. 499 (1983)(“[A] parent’s [homosexual] life-style -- standing alone, is insufficient ground for severing the natural bond between a parent and a child”).

⁵³ *Fort v. Fort*, 12 Mass. App. Ct. 411 (1981).

⁵⁴ Mass. Gen. Laws, chap. 208, sec. 31.

⁵⁵ Mass. Gen. Laws, chap. 209C, sec. 10.

⁵⁶ Mass. Gen. Laws, chap. 208, sec. 31.

“Sole legal custody” means that one parent only has the right and responsibility to make major life decisions for the child, including matters of education, medical care, and emotional, moral and religious development.

“Shared legal custody” means that both parents are involved in and make these decisions.

“Sole physical custody” means that a child lives with and is under the supervision of only one parent, subject to reasonable visitation with the other parent, unless a court finds that visitation is not in the child’s best interests.

“Shared physical custody” means that the child resides with both parents in a way which ensures frequent contact with both.

How is “sexual orientation” used in custody proceedings?

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

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

It can make a difference with respect to future modification of court orders for custody. People can seek to modify court orders for custody when there has been a substantial change in circumstances. If a spouse

did not know of your sexual orientation at the time of the court proceedings but learns it later, he or she may argue that this is a substantial change of circumstances and that the custody issues should be litigated anew. Of course, if your spouse or former heterosexual partner knew of your sexual orientation at the time of the court proceedings establishing custody, a modification petition on those grounds would be pointless.⁵⁷

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

Courts have the power to do this, 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 law, “abuse” means that any of the following have occurred between people who are family or household members”:

- attempting to cause or causing physical harm;
- placing another in fear of imminent serious physical harm;
- and
- causing another to engage involuntarily in sexual relations by force, threat or duress.⁵⁸

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

In most situations, yes. “Abuse” between family or household members includes, among other relationships, those relationships in which people are or were residing in the same household, or who have a

⁵⁷ See generally, Mass. Gen. Laws, chap. 208, sec. 31.

⁵⁸ See Mass. Gen. Laws, chap. 209A, sec. 1.

child in common, or who are or have been in a substantive dating relationship.⁵⁹

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

Victims can file an application for a temporary restraining order (specifying 'domestic violence' or '209A') in the clerk's Office at the District Court with jurisdiction over the neighborhood, in which they live, or at Boston Municipal Court, or at a Superior Court. In emergency situations after normal business hours, orders may be obtained through a police officer or at a police station. In order to keep an abuser from learning the new address of a victim, the victim needs to request that their address be "impounded". This will not be available, however, with a 'stay away' order, since a stay away order needs to specify where the abuser is not supposed to go. A victim's address is always kept confidential from the public.

Temporary orders are good for ten days, and are generally issued upon request, providing a relationship between victim and offender that is covered by the law and a credible allegation of abuse, threats of abuse, or sexual assault. A hearing to extend the order for up to one year is scheduled for ten days later. There is no fee. The defendant can choose not to show up at the extension hearing, but the victim is required to be present at that hearing for the order to be extended. A lawyer is not needed for the temporary order; in certain cases, it may be helpful to have one for the extension hearing if you think the order is going to be contested by the abuser.

Violations of a 209A order are criminal offenses and can result in the immediate arrest of the abuser. It is worth noting that restraining orders do not restrict the activities or contacts of the victim.

⁵⁹ Mass. Gen. Laws, chap. 209A, sec. 1. *See also* Abuse Prevention Guidelines, No. 3:02 (Commentary) ("Unmarried persons who live together, or who did so in the past, are also within the court's jurisdiction under c. 209A, regardless of whether the relationship between them is homosexual, heterosexual, or not sexual").

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.

Where can I go to get help?

In addition to the local police and district attorney, you can call the Violence Recovery Program at 800-834-3242, the Network La Red at (617) 742-4911, the LGBTQ Domestic Violence Project at 800-832-1901, and Jane Doe, Inc. at (617) 248-0922.

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. If there is a pattern of abuse, or a serious incident of abuse, a rebuttable presumption arises in the law that it is not in the child’s best interests to be placed in sole custody, shared legal custody or shared physical custody with the abusive parent.⁶⁰

⁶⁰ Mass. Gen. Laws, chap. 208, sec. 31A.

HATE CRIMES, SEX LAWS & POLICE

■ Hate Crimes & Violence

Does Massachusetts have a hate crimes law?

Yes, Massachusetts has several provisions of law geared toward identifying and punishing hate-motivated violence⁶¹.

Most specifically, Massachusetts law contains a “Hate Crimes Penalties Act” which provides stiff penalties for those who:

- commit an assault or a battery; or, cause damage to a person’s real or personal property
- with the intent to intimidate a person because of sexual orientation or gender identity as well as “race, color, religion, national origin or disability.”⁶²

Massachusetts also has a criminal law which punishes those who:

- by force or threat of force,
- willfully injure, intimidate, interfere with (or attempt to do so), or oppress or threaten a person
- in the free exercise or enjoyment of any right or privilege secured to them under state or federal constitutions or laws.⁶³ The penalties are higher when force is used than when it is not.⁶⁴

⁶¹ Massachusetts also has a “criminal harassment” statute, Mass. Gen. Laws, chap. 265, sec. 43A, which targets any willful and malicious pattern of conduct or series of acts directed at a specific person, seriously alarming that person, and causing any reasonable person to suffer substantial emotional distress. It could apply to homophobic statements directed against a person. *See Com. V. Welch*, 444 Mass. 80 (2005).

⁶² Mass. Gen. Laws, chap. 265, sec. 39.

⁶³ Mass. Gen. Laws, chap. 265, sec. 37.

⁶⁴ *See also Commonwealth v. Stephens*, 25 Mass. App. Ct. 117, 123-24 (1987)(section 37 applies to hate-motivated harassment and violence).

There are also specific laws concerning vandalism of personal property, homes, and sites of religious worship which are beyond the scope of this document.

In a typical hate crimes case, both sections 37 and 39 are charged, along with another criminal statute (such as assault and battery, or assault and battery with a dangerous weapon, or assault with intent to murder and maim). Sometimes it is easier to prove a violation of section 37 than section 39 so both are charged. (Section 37 requires proving only a willful interference with a person's secured rights, whereas a successful prosecution under section 39 requires that *the motivation* behind an attack was a particular characteristic of the victim).

In order to track hate crimes, the State has also set up a reporting system so that incidents alleged are centrally recorded.⁶⁵ To enter an incident of hate violence into the statistics, contact the Violence Recovery Program at Fenway Community Health, (800) 834-3242.

How does the law define what is a hate crime?

Under state law, a "hate crime" is "any criminal act coupled with overt actions motivated by bigotry and bias, including, but not limited to, a threatened, attempted or completed overt act motivated at least in part by racial, religious, ethnic, handicap, gender, sexual orientation or gender identity prejudice, or which otherwise deprives another person of his constitutional rights by threats, intimidation or coercion, or which seek to interfere with or disrupt a person's exercise of constitutional rights through harassment or intimidation. . ."⁶⁶ It also includes any violation of several other laws.

Technical definitions aside, law enforcement officials and others tend to use the following as guideposts for determining whether or not a crime is an anti-gay hate crime.

⁶⁵ See Mass. Gen. Laws, chap. 22C, secs. 32-35.

⁶⁶ Mass. Gen. Laws, chap. 22C, sec. 32.

- Did the attacker use anti-LGBT language or epithets?
- Was the victim in an area associated with LGBT people (e.g. outside a gay bar or a cruising area)?
- Have there been similar crimes in the area?
- Did the attack occur regardless of economic motive (i.e., person attacked but not robbed)?⁶⁷

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

In addition to contacting the local police, you may contact the Criminal Division of the Attorney General's office at (617) 727-2200. Be sure to explain all of the factors that make you think this was a crime of bias.

For support and advocacy, contact the Violence Recovery Program at Fenway Community Health. In addition to short term counseling for victims, their professional advocates help people understand and navigate the criminal system from police reporting to obtaining injunctions to the various appearances and hearings of the court process. Their phone number is (800) 834-3242.

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

In addition to pursuing your rights in the criminal justice system, or instead of going that route if there was no force or threat of force in your case, you may seek a "civil rights injunction" from the Superior Court.

A civil rights injunction is a protection order issued by the court, and typically forbids a person or persons from coming near you (or your home, or school, or workplace, or from telephoning you) because they have been determined to be threatening to you. To obtain an

⁶⁷ See generally Mass. Gen. Laws, chap. 22C, sec. 33; 501 Code of Mass. Regs. sec. 4.04(1) (Hate Crimes Reporting Classification Criteria).

injunction, you must show that the person interfered or attempted to interfere with the exercise of your secured rights by using threats, intimidation or coercion. This is not always as easy as it sounds.

You can seek a civil rights injunction with your own lawyer, or you can ask the Attorney General to do so on your behalf.⁶⁸ The Attorney General's Office, Civil Rights Unit, is found at (617) 727-2200, but cannot fulfill all of the requests it receives. In an action you bring on your own, you may also seek compensatory money damages and an award of attorneys' fees.

A violation of a civil rights injunction is itself a criminal offense. The penalties for a violation are greater when bodily injury results from the violation than when it does not.⁶⁹

For further information see GLAD's publication, *Anti-LGBT Violence and Harassment*, at www.glad.org/uploads/docs/publications/Anti-LGBT-Harassment-Violence.pdf.

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

The *Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act*⁷⁰ 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:

⁶⁸ Mass. Gen. Laws, chap. 12, sec. 11H (actions by Attorney General); chap. 12, sec. 11I (actions by private individuals).

⁶⁹ Mass. Gen. Laws, chap. 12, sec. 11J.

⁷⁰ See H.R. 2647 at <http://thomas.loc.gov/cgi-bin/query/F?c111:6:./temp/~c111X7TYvf:e1999565>:

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

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

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

Second, for hate crimes that in some way involve crossing state or national borders, or involve or affect interstate commerce, and where a state does not have jurisdiction or has requested federal assumption of jurisdiction, or where the federal government feels that justice has not been served or that U.S. prosecution is in the public interest, the Act authorizes the federal government to prosecute the case. The Federal Bureau of Investigation (FBI) encourages victims of hate crimes to make a report to the FBI as well as local and state authorities. The Boston field office of the FBI can be reached 617-742-5533.

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.

Does Massachusetts have a law to protect people who are being harassed or threatened?

Effective May 10, 2010, a law went into effect that provides the opportunity for persons who are victims of harassment to obtain a

restraining order without needing a dating or close family relationship to the perpetrator, as is required to obtain a Domestic Violence Restraining Order (see above). The new law, Chapter 258E of the General Laws, provides for the victim to be able to petition his/her local court (district court, superior court, Boston Municipal Court or juvenile court—if both the victim and harasser are under 17 years of age) to issue the **Harassment Prevention Order**.

No filing fees or fees for certified copies of the order are charged, but there may be other court costs. In emergency situations after the court is closed, you can get a temporary order from the police, but you will still have to appear in court the next business day. Filing for a Harassment Prevention Order does not preclude pursuing other civil or criminal remedies, but you must disclose any prior or pending actions with the harasser when you file your complaint.

What do I need to show in order to get a Harassment Prevention Order?

You need to document:

- the harasser committed three or more acts against you of willful and malicious conduct that caused fear, intimidation, abuse or damage to property; or
- the harasser forced you to involuntarily engage in sexual relations; or
- the harasser violated any of the criminal laws in Chapter 265 that pertain to sex with a minor, indecent assault and battery, rape, stalking or the law in Chapter 272 that deals with drugging for sexual intercourse.

What measures can the court take to protect the victim from future harassment?

The court may first issue a temporary Harassment Prevention Order for up to 10 days to protect the victim which may include instructing the harasser:

- to refrain from abusing or harassing the victim,
- to refrain from contacting the victim,
- to stay away from the victim's home or workplace, and
- to pay the victim monetary compensation for the losses suffered as a direct result of the harassment.

How does the victim extend the temporary order?

After granting the temporary order, the harasser must be notified and be given an opportunity within 10 days to appear in court and to be heard on the question of continuing the temporary order. If the harasser does not appear, the temporary order will automatically be extended. The court can extend the Harassment Prevention Order for up to a year. At the expiration of the order, the victim can petition the court to provide another extension. The court may modify the order at any time based upon a petition from either party.

What happens if the harasser violates the Harassment Prevention Order?

Violation of the order is a criminal offense punishable by a fine of not more than \$5,000 or by imprisonment of not more than 2 ½ years, or both.

What if I have a protection order issued by another jurisdiction?

Provided the victim presents the appropriate Massachusetts court with a certified copy of the protection order and a sworn affidavit that the order is presently in effect as written, the protection order will be enforced in Massachusetts for as long as the order was in effect in the issuing jurisdiction.

For more detailed information about hate crimes, violence and harassment, see GLAD's publication, *Anti-LGBT Violence and Harassment in Massachusetts*, at www.glad.org/uploads/docs/publications/Anti-LGBT-Harassment-Violence.pdf.

■ Criminal Sex Laws

Does Massachusetts have a sodomy law?

Although Massachusetts has had two sodomy laws on the books since before its statehood, the Supreme Judicial Court has now said (most recently in 2002) that neither law applies to private, consensual, adult conduct.⁷¹

The first of the two laws challenged in GLAD's case is a more "traditional" sodomy law in that it prohibits anal sex and bestiality.⁷² It can be applied to anal sex between gay or non-gay people, but has often been associated in the public mind with gay men.

The second of the two laws challenged is also a felony which covers "unnatural and lascivious acts."⁷³ The courts have ruled that this law encompasses "oral and anal intercourse, including fellatio, cunnilingus,

⁷¹ See *GLAD et al. v. Reilly et al.*, 436 Mass. 132 (2002).

⁷² Mass. Gen. Laws, chap. 272, sec. 34 ("crime against nature").

⁷³ Gen. Laws, chap. 272, sec. 35.

and other intrusions of a part of a person's body or other object into the genital or anal opening of another person's body."⁷⁴

As a result of GLAD's case, there are no general criminal proscriptions against adults engaging in particular types of consensual, intimate activity, only a range of laws directed at prohibiting public acts of intimacy.

In a separate, similar ruling in 2003, the U.S. Supreme Court ruled that it is unconstitutional to apply sodomy laws to non-commercial sex between consenting adults in private.⁷⁵

But how do I know whether the place where I am engaged in sexual intimacy is "private"?

That is the million-dollar question: what is "private"? For the most part, what happens in the privacy of your own home should be no concern of the police. Most people arrested for sexual activity are arrested for activity occurring out of doors. The courts have ruled several times that sex is not illegal simply because it takes place outdoors, in parked cars, or on public lands. It all depends on the circumstances.

In order for the conduct to be "public," it must be in a place where it is reasonably foreseeable that unsuspecting members of the public will come by at the time and place in question. When the participants act in deliberate disregard of that risk, whether or not they are discovered by the police or another person, their conduct is considered "public." Or stated another way, if people have secreted themselves behind remote bushes or beyond fences – a place where the individual does not know or reasonably expect the presence of persons who would be offended by the conduct – then there should be no realistic danger to the public. The

⁷⁴ *Comm. v. Gallant*, 373 Mass. 577, 585 (1977).

⁷⁵ See *Lawrence & v. Texas*, 539 U.S. 558 (2003).

criminal sex laws are “not designed to punish persons who desire privacy and take reasonable measures to secure it.”⁷⁶

Why do people get arrested for sex outdoors if it can be considered “private”?

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

As a practical matter, regardless of one’s rights, having sex outdoors is a risky business. For one, based on numerous reports to us, we believe that some police will overlook sexual activity of non-gay people occurring outdoors, but arrest gay people engaged in sexual activity in the same types of venues. Another concern is that some police “hunt” for gay people having sex outdoors in park lands and rest areas -- sometimes in uniform and sometimes as undercover decoys. Either way, a person can be charged with either of the sodomy laws discussed above, or any other of a variety of sex offenses, some of which may require the person to register as a “sex offender.”

GLAD has challenged these practices by many police departments, and has sometimes helped to develop more constructive policing practices, such as with the MBTA. Due to a court case filed by GLAD, the Massachusetts State Police have issued training bulletins to all Troopers informing them of the limits of the sex laws in Massachusetts.

⁷⁶ *Commonwealth v. Ferguson*, 384 Mass. 13 (1981), -- even if a police officer finds them. *Comm. v. Nicholas*, 40 Mass. App. Ct. 255, 258 (1996).

Does Massachusetts have any other criminal laws that are applied to gay people?

There are numerous laws addressing public sexual activity, any number of which can be charged against a person arrested for having sex in “public.” These include “open and gross lewdness and lascivious behavior,” a felony involving public exposure of the genitals⁷⁷ (the Massachusetts Supreme Judicial Court has established the elements the prosecution must prove beyond a reasonable doubt in order to obtain a conviction under this statute),⁷⁸ as well as “lewd and lascivious behavior,” a misdemeanor.⁷⁹ When an undercover police officer has been touched by someone, the individual can be charged with “indecent assault and battery on a person over age 14, another felony.⁸⁰ Often, both of these are charged. Sometimes, police will also charge trespass or disorderly conduct, which are both misdemeanors. Occasionally, charges will also include a violation of section 34 or 35. If you are being charged with a violation of section 34 or 35, please contact GLAD.

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

Yes. Every state now has such a law, although the terms differ from state to state. In Massachusetts, the law has been tied up in legal challenges and has been redrafted several times. GLAD successfully challenged one version of the law because of our concerns that it denominated as sex offenders people whose only “crime” was consensual adult sex or touching an undercover police officer.⁸¹

⁷⁷ Mass. Gen. Laws, chap. 272, sec. 16.

⁷⁸ See *Commonwealth v. Kessler*, 442 Mass. 770, 773 n.4 (2004).

⁷⁹ Mass. Gen. Laws, chap. 272, sec. 53.

⁸⁰ Mass. Gen. Laws, chap. 265, sec. 13H.

⁸¹ *Doe v. Attorney General*, 426 Mass. 136, 686 N.E.2d 1007 (1997).

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, a conviction for indecent assault and battery on a person over 14 is still a “sex offense” *in some circumstances*,⁸² as is a “*second* and subsequent adjudication or conviction for open and gross lewdness and lascivious behavior,”⁸³ For a full list of sex offenses, *see* Mass. Gen. Laws, chap. 6, sec. 178C.

What if I got a continuance without a finding? Or what if my conviction is very old?

The law only applies to people who were convicted (or “adjudicated” as a youthful offender) after August 1, 1981, or were still incarcerated, on parole or probation, or in civil commitment as of that date. So if you received a continuance without a finding, that is NOT a conviction and the law does not apply to you.

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

You can contact your local police, or call the Criminal History Systems Board at (617) 660-4600 to request a form to get your criminal records. You need to fill out the form, have it notarized, and then send it back to CHSB, 200 Arlington St., Suite 2200, Chelsea, MA 02150.

What obligations are imposed on “sex offenders”?

Most sex offenders will have to register annually with the Sex Offender Registry Board and provide personal data, work information, and other identification. Depending on the circumstances, some or all of this information may be made available to the public.

⁸² Mass. Gen. Laws, chap. 272, sec. 13H.

⁸³ Mass. Gen. Laws, chap. 272, sec. 16.

Based on case law there is legal precedent supporting your right to a hearing before you are compelled to register for non-violent offenses -- such as the offenses listed above. The 1999 version of the law acknowledges that the law will sweep in some people who are not dangerous and predatory sex offenders. It has set up several systems allowing for petitions or hearings to relieve such persons from the obligation of re-registering and having the information about them stricken from the system. For more information, contact an attorney.

Where can I get help if I have been convicted of a crime that qualifies me as a “sex offender”?

Because of the strict time deadlines involved in contesting the need to register at all and the classification of one’s dangerousness, get an attorney right away. Call the GLAD Answers for a referral.

What is the age of consent for sexual activity?

Generally, the age of consent for sexual activity is 16. Mass. Gen. Laws, chap. 265, sec. 23. However, there is some confusion about the age of consent for anal sex and oral sex with case law questioning whether the age of consent for such acts is 18.⁸⁴

■ Police Harassment

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

Not necessarily. If the area is public and not posted as having particular hours, you generally have a right to be there as long as you are engaged in lawful activity. Public places belong to everyone, and are likely also places of public accommodation to which non-discrimination rules apply. Even if police officers want to deter crime, or suspect some

⁸⁴ *Comm. v. Zeitler*, 7 Mass. App. Ct. 543 (1979).

kind of unlawful intent, they have no general right to request people to move from one place to another *unless there is unlawful conduct*.⁸⁵

What are the general rules about interaction with police?

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

Police may, of course, approach a person, and make inquiries, but the officer can neither explicitly nor implicitly assert that the person must respond to their inquiries.⁸⁶ 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, the person cannot be arrested.⁸⁷

If an officer has “reasonable suspicion” that a crime has been committed or is about to be committed, he or she may briefly detain an individual, or stop the person for purposes of investigation.⁸⁸ An arrest can only occur upon “probable cause” that a crime has been committed.⁸⁹

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

Complaints may be made to any individual police department for matters concerning its officers. Call GLAD if you need to find out how to make a complaint to the local police.

⁸⁵ *Commonwealth v. Carpenter*, 325 Mass. 519, 521 (1950)(sauntering and loitering in public places is right of every person); *Benefit v. City of Cambridge*, 424 Mass. 918 (1997)(streets and other public areas are “quintessential public forums” for expression); *Kent v. Dulles*, 357 U.S. 116, 126 (1958).

⁸⁶ *Commonwealth v. Murdough*, 428 Mass. 700 (1999).

⁸⁷ *Murdough*, 428 Mass. at 703; *Alegata v. Commonwealth*, 353 Mass. 287, 300-01, 231 N.E.2d 201 (1967).

⁸⁸ *Murdough*, 428 Mass. at 763; *Terry v. Ohio*, 392 U.S. 1, 16 (1968).

⁸⁹ *Murdough*, 428 Mass. at 703.

Complaints to the Massachusetts State Police may be made to State Police Headquarters, c/o Personnel Investigations, 470 Worcester Rd., Framingham, MA 01702. You can request a form SP 340 from any barracks. According to State Police Regulations (ADM-14, Jan. 14, 2000), a complainant shall be notified of the receipt of the complaint, and the steps to be taken, be given a status report when requested, and be notified of the final disposition of the case. You may want to contact the Massachusetts State Police LGBT Community Liaison, Lt. Mary E. Ritchie, at 508-988-7003 before you submit your complaint.

Please let GLAD know whenever you make a complaint so that we can track the responsiveness of the various police departments.

In some cases, an individual may decide to pursue a lawsuit -- because of injuries, improper detainment, or for some other reason. These matters are highly specialized, and GLAD can make attorney referrals. People can also register serious complaints with the Attorney General's Office, Civil Rights Division.

STUDENTS' RIGHTS

■ Harassment and Discrimination at School

What Massachusetts laws exist to protect LGBT students?

Chapter 76, Section 5 of the Massachusetts General Laws prohibits gender identity, sex and sexual orientation discrimination in its public schools, whether committed by school employees or fellow students.

The Code of Massachusetts Regulations (603 CMR 26.00) establishes certain actions that schools must take to prohibit the harassment or discrimination of LGBT students

(www.doe.mass.edu/lawsregs/603cmr26.html?section=01). In particular, the Code requires that all schools educate staff and students about Chapter 76, Section 5 and have policies in place to ensure that complaints of discrimination and harassment are investigated and appropriate action is taken against those who violate the provisions of the law.

Also Massachusetts General Laws Chapter 151C defines fair educational practices and specifically prohibits sexual harassment by either teachers, staff or other students. Violations of this law can be brought to the Massachusetts Commission Against Discrimination (MCAD), a state agency that does not require the parties to have a lawyer.

Massachusetts' law also protects students who are perceived to be LGBT, regardless of their actual gender identity or sexual orientation. So, for example, if the vice-principal for discipline acts to resolve the harassment complaints of girls generally, but not when the harassment is directed at a female student because she is thought to be a lesbian, the school is engaging in sexual orientation discrimination.

To strengthen the protections against student harassment and bullying, in May 2010 Massachusetts implemented one of the strongest anti-bullying laws⁹⁰ in the country. It has strict requirements that schools must follow to protect you and your peers from bullying, even where the bullying includes only words, rather than physical violence. It also includes bullying through the use of technology. Many of these requirements apply to *all* schools, whether public, private, or charter. Some of the key provisions of the law include:

- Every school, with the exception of some private schools, must have in place a comprehensive anti-bullying policy.
- Your parents or guardians must be notified if the school learns that you have been bullied.
- Teachers and other school staff must receive training on how to handle bullying and are required to report bullying to the administration.
- Each school must teach students about bullying

For detailed information about this law, see GLAD's publication, *Massachusetts Students: What To Do If You're Being Bullied*, at www.glad.org/uploads/docs/publications/ma-students-what-to-do-bullied.pdf.

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

Possibly. Massachusetts state law allows victims of sexual harassment in nearly all schools, colleges and universities that accept students from the public generally⁹¹ to file complaints at the MCAD.⁹² Under federal law, public schools which receive federal funds may not discriminate on the basis of sex. Sometimes, the harassment of a gay student will be sexual harassment forbidden by this federal law, known

⁹⁰ Chapter 92 of the Acts of 2010. See <http://www.malegislature.gov/Laws/SessionLaws/Acts/2010/Chapter92>.

⁹¹ See *Horton and Andrade v. Blaine the Beauty Career School & Supplies*, 29 M.D.L.R. 28 (2007) (cosmetology school held liable for sexual harassment against two students perceived to be gay lovers under Mass. Gen. Laws, chap. 151C).

⁹² Mass. Gen. Laws, chap. 151C.

as Title IX. Complaints can be made to your school Title IX coordinator, as well as to the federal Dept. of Education, Office of Civil Rights, in Boston. A student's constitutional rights may be violated by some kinds of discrimination and harassment.

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

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

Take a look at your school policies and notify whoever is supposed to be notified -- usually a vice principal or Title IX coordinator. You 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.

At the same time, or after contacting the administration as set out above, you may want to file a complaint with the Problem Resolution System of the Mass. Dept. of Elementary and Secondary Education at (781) 338-3700. They will investigate and examine whether or not the school should consider taking further actions.

If this fails, you may also wish to consider legal action against the town. Mass. Gen. Laws, chap. 76, sec. 16. Contact GLAD for attorney referrals.

Where else can I get support if I'm having a problem?

In addition to the resources listed above, you may wish to contact the Commission on Gay and Lesbian Youth, (617) 624-5485; or the Violence Recovery Program, (800) 834-3242.

■ **Transgender Students**

The Massachusetts Department of Elementary and Secondary Education (DESE) has published a set of guidelines for public schools to follow to create a safe and supportive environment for transgender students (*see* <http://bitly/desegenderidentity>).

Included in these guidelines are recommendations that:

- Transgender students should be called by the name and pronouns that the student prefers;
- Transgender students' privacy should be protected regarding any medical information, previous names, etc.
- The name and gender on the student's records should conform to the transgender student's preferred name and gender.
- Transgender students should be able to use the restroom, locker room and changing facility that accord with their gender identity.
- In any sex segregated activities (including athletics), transgender students should be able to participate in a manner consistent with their gender identity.

■ **Gay/Straight Alliances**

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

In all likelihood, yes. According to the Mass. Dept. of Elementary and Secondary Education, the non-discrimination law (chap. 76, sec. 5) means that school administrators must respond consistently to all requests for the formation and funding of extra-curricular clubs, even if

they don't agree personally with the content or think the community isn't ready for it.

In addition, a federal law known as the "Equal Access Act" provides that secondary school students in schools that receive federal funding and have at least one extra-curricular group must allow students to form other extra-curricular groups without discriminating based on the religious, philosophical, political or other content of the speech at meetings. GLAD brought and won a case for students at West High in Manchester, New Hampshire on this very basis.

■ Commission on Gay and Lesbian Youth

The Commission on GLBT Youth began in 1992 when Governor William F. Weld created the Governor's Commission on Gay and Lesbian Youth in response to an epidemic of suicide among gay and lesbian youth. On October 7th, 1998, Governor A. Paul Cellucci expanded the powers of the Governor's Commission and renewed the executive office's commitment to combat suicide and violence affecting gay and lesbian youth. Under the Romney administration much of the effectiveness of the Commission was stripped away.

The Governor's Commission was dissolved in 2006, and the General Court created the Massachusetts Commission on Gay and Lesbian Youth that same year.⁹³ This Commission is an independent agency of the Commonwealth and has a mandate to investigate the use of resources from both the public and private sectors to enhance and improve the ability of state agencies to provide services that protect and support the health and safety of Gay, Lesbian, Bisexual and Transgender (GLBT) youth in the schools and communities of Massachusetts, with a focus on suicide prevention, violence intervention, and the promotion of zero-tolerance policies regarding harassment and discrimination against GLBT youth. The Commission is also mandated to make recommendations about policies and programs supporting GLBT youth

⁹³ Mass. Gen. Laws, chap. 3, sec.67.

to the State government and its agencies, and to ask for adequate funding in the annual State budget for effective programs.

For more information call (617) 624-5485 or view their website at www.mass.gov/cgly/.

For further information see GLAD's publication, *Massachusetts Rights of LGBT Public School Students*, at www.glad.org/uploads/docs/publications/ma-rights-of-lgbt-students.pdf.

Also, GLAD has a brochure that summarizes the rights of students in Massachusetts called, *Want to Know Your Rights As an LGBTQ Student?*, that can be found at:

<http://www.glad.org/uploads/docs/publications/lgbtq-student-rights-ma.pdf>. We would be pleased to mail you a printed version of the brochure, just contact GLAD Answers, www.GLADAnswers.org.

■ Resources

PROTECT YOUR RIGHTS

GLAD Answers

Call: (800) 455-GLAD (4523)

Email or Live Chat

www.GLADAnswers.org

Massachusetts Commission Against Discrimination

Boston: (617) 994-6000

New Bedford: (508) 990-2390

Springfield: (413) 739-2145

Worcester: (508) 799-8010

**Massachusetts Department of Elementary and Secondary Education
Problem Resolution System**

(781) 338-3700

compliance@doe.mass.edu

United States Department of Education Office of Civil Rights

(617) 289-0111

OCR.Boston@ed.gov

KNOW MORE ABOUT YOUR RIGHTS

Actions schools must take to prohibit harassment/discrimination of LGBTQ students according to the code of Massachusetts Regulations:

<http://bit.ly/maschoolregulations>

The text of the Massachusetts anti-bullying law:

<http://bit.ly/mabullyinglaw>

The DESE guidance on transgender students at:

<http://bit.ly/desegenderidentity>

GLAD's publication: *What To Do If You're Being Bullied*:

<http://bit.ly/whattodoif>

GLAD's publication: *Rights of LGBT Public School Students*:

<http://bit.ly/studentrights>

More info about GSAs from the Massachusetts Department of Elementary and Secondary Education: <http://bit.ly/gsarights>

LOCAL LGBTQ YOUTH GROUPS

BAGLY: www.bagly.org

GLBT Youth Group Network of Massachusetts

To find a group near you visit www.bagly.org/programs/

Boston GLASS: <http://bit.ly/PokxfS>

LGBT Coalition of Western MA: <http://bit.ly/wmayouthcoalition>

Asian Pride/MAP: <http://maphealth.org/programs/asian-pride/>

OTHER RESOURCES YOU CAN USE

AIDS Action Committee Hotline

(800) 235-2331

Hispanic Black Gay Coalition

www.hbgc-boston.org

Fenway Community Health Center Peer Listening Line

(800) 399-PEER (7377)

Gay, Lesbian and Straight Education Network (GLSEN)

<http://bit.ly/glsenstudent>

Parents, Families & Friends of Lesbians and Gays (PFLAG)

<http://bit.ly/pflagma> or www.gbplflag.org/safeschools

Samariteens of Boston

(800) 252-TEEN (8336)

The Trevor Project

Crisis/Support Line: (866) 488-7386

www.thetrevorproject.org

Violence Recovery Program (VRP) at Fenway Community Health Center

(800) 834-3242

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

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

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

Thank You!



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30 Winter Street, Suite 800
Boston, MA 02108
Tel 617.426.1350
1.800.455.GLAD (4523)
Fax 617.426.3594

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