



**ANSWERS**

*for the LGBTQ Community*

# Rhode Island

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

January 2017

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

If you have questions about this publication, other legal issues or need lawyer referrals, contact **GLAD Answers** by live chat or email at [www.GLADAnswers.org](http://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

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

Yes. Since 1995, Rhode Island has had a comprehensive anti-discrimination law concerning sexual orientation in employment, housing, credit and public accommodations and has included sexual orientation under its equal opportunity and affirmative action law. In 2001, Rhode Island added gender identity or expression to each of these statutory protections.<sup>1</sup>

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

Yes. The anti-discrimination laws define “sexual orientation” as “having or *being perceived* as having an orientation for heterosexuality, bisexuality or homosexuality and define “gender identity or expression” as including a “person’s actual or perceived gender.”<sup>2</sup> Thus, 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?***

Not specifically. But in some situations, if a person is fired from a job or evicted from his or her home because he or she hangs out with someone who is gay or lesbian, it may be possible to show that the person was fired or evicted because the employer or landlord thought he or she was gay or lesbian as well.

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<sup>1</sup> R.I. Gen. Laws, ch. 11-24 (public accommodations); ch. 28-5 (employment); ch. 28-5.1 (equal opportunity and affirmative action); and ch. 34-37 (housing and credit).

<sup>2</sup> R.I. Gen. Laws §§ 28-5-6(11)(gender identity or expression) and (16)(sexual orientation) (employment); 34-37-3(9)(gender identity or expression) and (15)(sexual orientation) (housing and credit); and 11-24-2.1(h)(sexual orientation) and (i)(gender identity or expression) (public accommodations).

## ● Employment

### *What does the law forbid? To whom does the law apply?*

The anti-discrimination law applies to all public employers and private employers who employ 4 or more individuals.<sup>3</sup>

It forbids employers from refusing to hire a person, or discharging them, or discriminating against them in compensation, in terms, conditions or privileges of employment or in any other matter directly or indirectly related to employment because of sexual orientation or gender identity or expression.<sup>4</sup> Beyond hiring and firing, this covers most significant job actions, such as failure to promote, demotion, excessive discipline, harassment and different treatment of the employee and similarly situated co-workers. It also prohibits an employer from inquiring about a person's sexual orientation or gender identity or expression either in a job application or during a job interview or maintaining such information unless based on a certified bona fide occupational qualification or where necessary to comply with a federal affirmative action plan.<sup>5</sup>

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

It should be noted that all educational programs and activities of state agencies as well as all state employment services are required to be open to all without regard to sexual orientation or gender identity or expression.<sup>7</sup>

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<sup>3</sup> R.I. Gen. Laws § 28-5-6 (8)(i).

<sup>4</sup> R.I. Gen. Laws § 28-5-7 (1).

<sup>5</sup> R.I. Gen. Laws § 28-5-7(4).

<sup>6</sup> R.I. Gen. Laws §§ 28-5-7 (2) and (3).

<sup>7</sup> R.I. Gen. Laws §§ 28-5.1(8) and (9).

As broad as the law is, there are several **exemptions**.

- Employers with fewer than 4 employees are exempt.<sup>8</sup>
- An employer, employment agency or labor organization may seek a certification from the R.I. Commission for Human Rights that it is a “bona fide occupational qualification” of a particular position that it not be filled by someone otherwise protected by the law such as an LGBT person.<sup>9</sup> While this immunity is allowed in the law, it is strictly applied and very rarely successful.
- The employment discrimination statute does not apply “to a religious corporation, association, educational institution, or society with respect to the employment of individuals of its religion to perform work connected with the carrying on of its activities.”<sup>10</sup> This exemption, however, is not a *carte blanche* for an employer to use his or her religious beliefs as a justification for discrimination.
- By the law’s definition of “sexual orientation,” it does not “impose any duty on a religious organization.”<sup>11</sup> That restriction on the reach of the non-discrimination law does not apply to the law’s protections on the basis of gender identity or expression.

It is important to note that unlawful employment practices in Rhode Island also include practices which have a “disparate impact” on the basis of sexual orientation or gender identity or expression (or other characteristics) when the employer is unable to show that the practice or group of practices in question is required by “business necessity.”<sup>12</sup> This can be important to combat discrimination based on policies or practices that are not LGBT-specific but harm LGBT people more than others.

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<sup>8</sup> R.I. Gen. Laws § 28-5-6(8)(i).

<sup>9</sup> R.I. Gen. Laws § 28-5-7 (4) .

<sup>10</sup> R.I. Gen. Laws § 28-5-6(8)(ii).

<sup>11</sup> See R.I. Gen. Laws §§ 28-5-6 (16); 34-37-3(15) and 11-24-2.1(h).

<sup>12</sup> R.I. Gen. Laws § 28-5-7.2.

***Does the Rhode Island law prohibit sexual harassment on the job?***

Yes, by case law, sexual harassment is forbidden as sex discrimination.<sup>13</sup>

In addition, employers with at least 50 employees and employment agencies must develop and disseminate to their workers anti-sexual harassment policies in their workplaces.<sup>14</sup> The law also strongly encourages employers to train employees on the scope of the policy.<sup>15</sup>

For purposes of this statute, “sexual harassment” is defined as:

any unwelcome sexual advances or requests for sexual favors or any other verbal or physical conduct of a sexual nature when:

- Submission to such conduct or advances or requests is made either explicitly or implicitly a term or condition of an individual’s employment; or
- Submission to such conduct or advances or requests by an individual is used as the basis for employment decisions affecting such individual; or
- Such conduct or advances or requests have the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile, or offensive working environment.<sup>16</sup>

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<sup>13</sup> See, e.g., *Iacampo v. Hasbro, Inc.*, 929 F. Supp. 562 (D.R.I. 1996).

<sup>14</sup> R.I. Gen. Laws §§ 28-51-1(a); and 28-51-2 (a), (b).

<sup>15</sup> R.I. Gen. Laws § 28-51-2 (c).

<sup>16</sup> R.I. Gen. Laws § 28-51-1(b).



***Can a gay or transgender person be sexually harassed?***

It is just as unlawful to sexually harass an LGBT individual as it is to harass anyone else. Some harassment is specifically anti-gay, and may be more fairly characterized as harassment on the basis of sexual orientation. Similarly, some harassment may be specifically anti-transgender and may be pursued more appropriately as discrimination based on gender identity or expression. Other harassment is sexual in nature and more appropriately categorized as “sexual harassment.” Each type of harassment can happen to the same person, and all are forbidden.<sup>17</sup>

Moreover, that the sex of the harasser and the victim is the same does not defeat a claim of sexual harassment. Same-sex sexual harassment has been held to violate both state and federal anti-discrimination laws.<sup>18</sup>

***Can I use the state anti-discrimination law to force my employer to provide insurance benefits to my unmarried partner?***

Although the anti-discrimination law says that an employer cannot discriminate on the basis of sexual orientation in terms of compensation, and even though employee benefits are a form of compensation, in many, if not most circumstances, that law probably cannot be used to compel an employer to provide benefits to an employee’s unmarried, same-sex partner.

Under R.I. Gen. Laws, § 28-5-7 (1)(ii), even if an employer provides insurance benefits to some employees, “nothing herein shall require those benefits to be offered to unmarried partners of named employees.” As a result, the anti-discrimination cannot be used to compel an employer to provide domestic partner insurance benefits. Note that

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<sup>17</sup> See R.I. Gen. Laws § 28-5-7(1)(v) (recognizing need for response to complaints of harassment on the basis of sexual orientation and gender identity or expression in addition to that based on sex).

<sup>18</sup> See *Mann v. Lima*, 290 F. Supp. 2d 190, 194 (D.R.I. 2003)(applying *Oncala v. Sundowner Offshore Services, Inc.*, 523 U.S. 75, 79-81 (1998); see also R.I. Gen. Laws, § 28-44-17 (sexual harassment against members of either sex may constitute “good cause” for quitting job under unemployment laws).

nothing in the law forbids an employer from providing domestic partner benefits if it chooses to do so. As discussed below, the state and several municipalities have already equalized some benefits like health insurance.

When an employee has a legal spouse, however, under some circumstances the anti-discrimination law may be a means to ensure equal treatment of same-sex spouses as different-sex spouses. The availability of such a claim depends on the type of benefit sought (i.e., family or medical leave versus health insurance) and on the type and terms of the particular benefits plan. This area of law is complicated and you should feel free to contact GLAD for information specific to your situation.

## ● Public Accommodations

### *What is a “place of public accommodation”?*

Places of public accommodation are places that are open to the public and include, but are not limited to, stores, restaurants, bars, public transportation, garages, hotels, hospitals, clinics, rest rooms, barber shops, salons, amusement parks, gyms, golf courses, swimming pools, theaters, fairs, libraries, public housing projects, and so on.<sup>19</sup>

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

Such places shall not “directly or indirectly refuse, withhold from, or deny to any ... person any of the accommodations, advantages, facilities or privileges of that public place,” and shall not advertise or state that their accommodations are so limited, because of a person’s sexual orientation or gender identity or expression (or other protected characteristics).<sup>20</sup>

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<sup>19</sup> R.I. Gen. Laws § 11-24-3.

<sup>20</sup> R.I. Gen. Laws § 11-24-2.

## ● Housing

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

The housing laws are intended to prohibit discrimination by owners and their agents from refusing to sell, rent, lease, let or otherwise withhold “housing accommodations” based on sexual orientation, gender identity or expression, marital status, or familial status.<sup>21</sup> In addition, neither owners nor those who accept applications for loans or financial assistance to acquire, build, repair or maintain housing accommodations -- i.e., those involved in financing -- may either inquire about sexual orientation, gender identity or expression, marital status, or familial status, or discriminate on those bases.<sup>22</sup>

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

Owner-occupied housing accommodations of 3 units or less are not subject to the sexual orientation or gender identity or expression portions of the law.<sup>23</sup> In addition, a religious organization or non-profit institution run by a religious organization can limit the sale, rental or occupancy of a property it owns or operates for non-commercial purposes to persons of the same religion (or give preference to such persons) unless membership in the religion is restricted on account of one of the protected categories, including sexual orientation and gender identity or expression.<sup>24</sup>

## ● Credit

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<sup>21</sup> R.I. Gen. Laws § 34-37-3(10)(defining “housing accommodation”) and § 34-37-4 (a).

<sup>22</sup> R.I. Gen. Laws §§ 34-37-4(a) and (b).

<sup>23</sup> R.I. Gen. Laws § 34-37-4.4 (sexual orientation exemption) and § 34-37-4.5 (gender identity or expression exemption).

<sup>24</sup> R.I. Gen. Laws § 34-37-4.2(a).

***What protections exist under Rhode Island anti-discrimination law with regard to credit?***

Financial organizations such as banks, trust companies, savings banks, loan and investment banks, savings and loan associations, credit unions and any other commercial credit institution<sup>25</sup> may not discriminate in granting or extending any form of loan or credit because of sexual orientation, gender identity or expression, or marital or familial status.<sup>26</sup>

● **Pursuing a Complaint**

***How do I file a claim of discrimination?***

You may file a charge of discrimination in person or in writing at the Rhode Island Commission For Human Rights (RICHR), 180 Westminster Street, 3<sup>rd</sup> floor, Providence, RI 02903. If you plan to go in person, you can call in advance to set up an appointment and find out what you need to bring. Their phone number is (401) 222-2661 (voice) and 401-222-2664 (TTY). The fax number is (401) 222-2616.

The charge must be under oath and must state the name and address of the individual making the complaint as well as the name and address of the entity against which he or she is complaining (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, but GLAD strongly encourages people to find lawyers to represent them throughout the process. Although the process is designed to allow people to represent themselves, there are many legal rules governing the RICHR process, and employers and other defendants are almost certain to have legal representation.

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<sup>25</sup> This non-discrimination provision applies to any “financial organization governed by the provision of title 19 or any other credit granting commercial institution.” R.I. Gen. Laws § 34-37-4.3.

<sup>26</sup> R.I. Gen. Laws § 34-37-4.3.

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

A complaint must generally be filed with the RICHR within one year of the discriminatory act or acts.<sup>27</sup> There are very few exceptions for lateness, and GLAD encourages people to move promptly in filing claims.

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

Yes, you can file several claims if you have suffered discriminatory treatment based on more than one personal characteristic. The state anti-discrimination laws for employment and public accommodations forbid taking an action against someone because of sexual orientation or gender identity or expression as well as race, color, religion, sex (including pregnancy and sexual harassment), disability, age, or country of ancestral origin<sup>28</sup>.

For credit, the R.I. law adds to the foregoing prohibitions on discrimination based on marital status, familial status, military status and associating with members of a protected class.<sup>29</sup>

In housing, all of the foregoing are protected as well as status as a victim of domestic violence and housing status.<sup>30</sup>

***What happens after a charge is filed with the RICHR?***

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<sup>27</sup> R.I. Gen. Laws §§ 28-5-17(a); 34-37-5 (b); see Rules and Regulations of the RICHR Rule 4.05.

<sup>28</sup> R.I. Gen. Laws § 11-24-2 and § 28-5-7 (1)(i).

<sup>29</sup> R.I. Gen. Laws § 34-37-4(b).

<sup>30</sup> R.I. Gen. Laws, § 34-37-4 (a).

The RICHR may initiate a preliminary investigation in an employment, credit, housing, or public accommodations case. If the RICHR determines it is probable that a defendant is or was engaged in unlawful practices, then the RICHR shall attempt to eliminate the unlawful practices by “informal methods of conference, conciliation and persuasion.”<sup>31</sup>

If conciliation is unsuccessful, or at any time when the circumstances so warrant (including before investigation in egregious cases), the RICHR may serve a complaint and notice of hearing on the respondent. This process involves a trial type hearing but is not as formal as an actual trial in court. This process must be commenced within 2 years of when the complainant first filed his or her charge with the RICHR.<sup>32</sup>

After the RICHR rules (either because it has found no probable cause to proceed, or because it has ruled on the merits after a hearing), any complainant, intervener, or respondent claiming to be aggrieved by a final order of the commission may obtain judicial review in Superior Court.<sup>33</sup>

There are a few times when the case can be taken from the RICHR and filed in court. For example:

- Once the complaint has been pending at the RICHR for at least 120 days, (but less than 2 years and before any conciliation agreement has been made), the complainant may request permission to remove the case from the RICHR. That request should be granted, and the complainant then has 90 days from when he or she receives a “right to sue” letter to file the case in Superior Court.<sup>34</sup>
- After the RICHR finds probable cause to credit the allegations in a complaint, either party may elect to terminate the proceedings

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<sup>31</sup> See, e.g., R.I. Gen. Laws, § 28-5-17(a) and § 34-37-5(b); see also Rules and Regulations of the RICHR Rule 5.02.

<sup>32</sup> R.I. Gen. Laws §§ 28-5-18; 34-37-5.

<sup>33</sup> R.I. Gen. Laws §§ 28-5-28; 34-37-6.

<sup>34</sup> R.I. Gen. Laws § 28-5-24.1(a) and § 34-37-5(l); see also Rules and Regulations of the RICHR Rule 17.01.

at the RICHR and file in court as long as they do so within the strict timelines set by the RICHR rules.<sup>35</sup>

- In addition, in housing cases, the RICHR 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.<sup>36</sup>

If probable cause is found lacking, the case is over unless you seek judicial review of the “lack of probable cause” finding. There are special rules and time constraints on this process which must be observed strictly.<sup>37</sup>

***What are the legal remedies the RICHR may award for discrimination if an individual wins their case there?***

In all cases alleging different treatment discrimination, the remedies for a successful complainant in an intentional discrimination case may include compensatory damages (including for emotional distress), attorney’s fees (including expert fees and other litigation expenses), cease and desist orders, and any other action which will effectuate the purpose of the anti-discrimination laws.<sup>38</sup>

In addition, in employment cases, a successful complaint may be entitled to a remedy involving hiring, reinstatement or upgrading of employment, back pay, and admission or restoration to union membership.<sup>39</sup> If the adverse job action was taken against the individual for a variety of reasons, and sexual orientation or gender identity or expression was not the sole motivating factor, the RICHR may limit the damages awarded.

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<sup>35</sup> See R.I. Gen. Laws, § 28-5-24.1(c) and § 34-37-5(n).

<sup>36</sup> R.I. Gen. Laws § 34-37-5(m).

<sup>37</sup> R.I. Gen. Laws § 28-5-28 and § 34-37-6.

<sup>38</sup> R.I. Gen. Laws § 28-5-24 (b)(employment); § 34-37-5(h) (housing cases); § 11-24-4 (public accommodations cases); Rules and Regulations of the RICHR Rule 12.02.

<sup>39</sup> R.I. Gen. Laws § 28-5-24 (a)(1).

In housing cases, the RICHR is also empowered to impose civil fines, with increasing severity depending on whether the offender has committed other discriminatory acts in the past.<sup>40</sup>

When complainants prevail in court, the remedies named above may be awarded, as well as punitive damages when the challenged conduct is shown to be motivated by malice or ill will, or when the action involves reckless or callous indifference to the statutorily protected rights of others.<sup>41</sup> The only exception is that punitive damages may not be awarded against the State.

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

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

While Title VII does not expressly forbid discrimination based on sexual orientation or gender identity, a growing number of courts and government agencies have taken the position that its proscription against sex discrimination encompasses both.<sup>42</sup> In two separate decisions in 2012 and 2016, the EEOC itself concluded that sexual orientation discrimination, gender identity discrimination, and sex discrimination are one and the same, since the latter two are based on preferences, assumptions, expectations, stereotypes, and norms associated with masculinity and femininity.<sup>43</sup> Although the EEOC's decisions are not binding on the courts, many have used similar reasoning in affirming

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<sup>40</sup> R.I. Gen. Laws § 34-37-5(h)(2).

<sup>41</sup> R.I. Gen. Laws § 28-5-29.1 (employment); § 11-24-4 (public accommodations); § 34-37-5 (o) (3) (housing).

<sup>42</sup> See, e.g., *United States & Dr. Rachel Tudor v. Southeastern Oklahoma State University*, 2015 U.S. Dist. LEXIS 89547 (2015) (denying motion to dismiss professor's Title VII complaint that school had subjected her to a hostile work environment based on her gender identity).

<sup>43</sup> See *Macy v. Holder*, EEOC Appeal No. 0120120821 (Apr. 20, 2012); *Baldwin v. Foxx*, EEOC Appeal No. 0120133080 (July 15, 2015).



Title VII's applicability to discrimination based on gender identity and sexual orientation.<sup>44</sup>

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

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

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

GLAD recommends that, where there may be overlapping state and federal jurisdiction, you explore filing with the state first but keep in mind the possibility of pursuing a federal claim as well. Federal complaints must be filed within 180 days of the discriminatory act with the Equal Employment Opportunity Commission (EEOC). However, if you initially institute your complaint with the RICHR and indicate that you wish to have the complaint cross-filed with the EEOC, then the time limit is extended to the earlier of 300 days or 30 days after the RICHR has terminated the case.<sup>45</sup> (People who work for federal agencies are beyond the scope of this publication.)

If you have a sexual orientation or gender identity or expression complaint, you should check off “sex” as well as “sexual orientation” or “gender identity” as the bases for your claim and request that the RICHR cross-file your complaint with the EEOC.

### ***Are there other options for filing a complaint for discrimination?***

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

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<sup>44</sup> See, e.g., *Smith v. City of Salem*, 378 F.3d 566 (6th Cir. 2004) (holding that Title VII prohibits discrimination against transgender people based on gender stereotyping); *Videckis v. Pepperdine Univ.*, 150 F. Supp. 3d 1151, 1160 (C.D. Cal. 2015) (holding “sexual orientation discrimination is a form of sex or gender discrimination”).

<sup>45</sup> 42 United States Code § 2000e-5(e)(1).

**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. Obtain and read a copy of your contract and contact a union steward about filing a complaint. Deadlines in contracts are strict. Bear in mind that if your union refuses to assist you with a complaint, you may have a discrimination action against them for their failure to work with you, or for failure of duty of fair representation.

**2. State or Federal Court:** After filing with the RICHR, the EEOC, or both, you may decide to remove your discrimination case from those agencies and file the case in court. There are rules about when and how this must be done, as discussed above.

In addition, you may file a court case to address other claims which are not appropriately handled by discrimination agencies. For example, if you are fired in violation of a contract; 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. Similarly, if your claim involves 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 for filing a complaint of discrimination?***

It is illegal to retaliate in these circumstances, and the employee or tenant could file an additional complaint for retaliation. If an employer, employment agency or labor organization discriminates against you in any manner because you have opposed a forbidden practice or have

made a charge, testified or assisted in a complaint filed under the anti-discrimination laws, then you can state a claim of retaliation.<sup>46</sup>

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

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

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

Some people prefer to meet with an attorney to evaluate the strength of their claims before filing a case. It is always helpful to bring 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); what happened; who said what; and who else was present. Try to have on hand copies of your employee handbooks or personnel manuals, as well as any contracts, job evaluations, memos, discharge letters and the like. If you are concerned about a housing matter, bring a copy of your lease, along with any notices and letters you have received from your landlord.

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<sup>46</sup> R.I. Gen. Laws § 28-5-7 (5) and § 34-37-4(m). See also R.I. Gen. Laws, § 28-51-2(b)(1)(ii) (“Every employer shall adopt a policy against sexual harassment which shall include a statement that it is unlawful to retaliate against an employee for filing a complaint of sexual harassment or for cooperating in an investigation of sexual harassment”); *Provencher v. CVS Pharmacy*, 76 F.E.P. Cases (BNA) 1569 (1st Cir. 1998)(upholding federal retaliation claim of gay man). The U.S. Supreme Court has broadly interpreted the anti-retaliation provisions in federal anti-discrimination laws. See *Burlington Northern & Santa Fe Ry. Co. v. White*, 548 U.S. 53 (2006).

# Family Law

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## ● Marriage & Civil Unions

### *Can same-sex couples legally marry in Rhode Island?*

Yes, after many years of failed attempts and nearly two years after the passage of a civil unions bill in July 2011, on May 2, 2013, the Rhode Island General Assembly approved and Governor Lincoln Chafee signed a marriage equality law, *An Act Relating to Domestic Relations-Persons Eligible to Marry*,<sup>47</sup> that extended the right to marry to same-sex couples effective August 1, 2013.

That legislation also ended the ability of same-sex couples to enter into civil unions in Rhode Island on that same date and allows any couples already in a Rhode Island civil union to keep their civil unions or merge their civil unions into marriage.<sup>48</sup>

Two years later, in *Obergefell v. Hodges*,<sup>49</sup> the U.S. Supreme Court made marriage equality a reality nationwide when it held that the U.S. Constitution guarantees same-sex couples the right to marry. GLAD's own Mary Bonauto represented the plaintiffs during oral arguments. Post-*Obergefell*, all 50 states are required to issue marriage licenses to same-sex couples, and all states must respect the marriages of same-sex couples performed in other jurisdictions.

### *How does one get married in Rhode Island?*

The process for getting married in Rhode Island requires the following basic steps:

1. If at least one party is a resident of Rhode Island, the couple must obtain a license from the clerk in the city or town where

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<sup>47</sup> See <http://webserver.rilin.state.ri.us/BillText/BillText13/HouseText13/H5015B.pdf>.

<sup>48</sup> R.I. Gen. Laws § 15-3.1-12.

<sup>49</sup> 135 S.Ct. 2584 (2015).

either party lives. If neither party is a resident of Rhode Island, the couple must obtain a license from the clerk of the city or town where the proposed marriage is to take place.<sup>50</sup>

2. The couple must have the marriage solemnized (i.e. have a ceremony which is witnessed by at least two people in addition to the officiant) within 3 months of obtaining the license.<sup>51</sup>
3. Once the ceremony has been performed, the person who performed it has 72 hours to return the license to the city or town where it was issued.<sup>52</sup>
4. The clerk will then file the original, and the couple can receive an official certificate of their marriage.

For more detailed information see the GLAD Publication, “Rhode Island Marriage Guide for Same-Sex Couples,”  
[www.glad.org/wp-content/uploads/2017/01/ri-marriage-guide.pdf](http://www.glad.org/wp-content/uploads/2017/01/ri-marriage-guide.pdf)

### ***How does religion affect getting married in Rhode Island?***

The Act also reiterates the right of any religion to set any requirements it chooses on who may marry within that religion and the right of any clergy person, rabbi or similar official to refuse to marry any couple. It also provides further exemptions for religiously-controlled organizations and fraternal benefit organizations.

For some additional information see the GLAD Publication, “Rhode Island Marriage Guide for Same-Sex Couples,”  
<http://www.glad.org/wp-content/uploads/2017/01/ri-marriage-guide.pdf>

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

Rhode Island will respect the legal marriages of same-sex couples regardless of where the marriage was performed, just as all states will now respect the marriage of a same-sex couple married in Rhode Island.

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<sup>50</sup> R.I.Gen. Laws § 15-2-1.

<sup>51</sup> R.I. Gen. Laws § 15-2-8 and § 15-3-8.

<sup>52</sup> R.I. Gen. Laws § 15-3-12.

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

Yes. Thanks to the demise of the Defense of Marriage Act (DOMA) in *Windsor v. United States*<sup>53</sup>, the federal government will recognize and respect the legal marriages of same-sex couples.

DOMA, a federal statute which defined marriage exclusively as the union between one man and one woman, once prevented same-sex spouses from accessing the 1000+ federal laws pertaining to marriage, including taxes, Social Security (including SSDI and SSI), immigration, bankruptcy, FMLA, federal student financial aid, Medicaid, Medicare, veteran's benefits, and TANF. Happily, in 2013 the U.S. Supreme Court struck down DOMA as unconstitutional. GLAD filed the first comprehensive challenge to DOMA in 2009, *Gill v. OPM*,<sup>54</sup> and the legal framework developed in that case was used in many subsequent cases, *Windsor* included. GLAD was also responsible for coordinating the *Windsor* amici briefs.

Unfortunately, one issue that has yet to be definitively resolved by *Windsor* and *Obergefell* concerns spousal benefits and self-insured health plans. While Connecticut state law prohibits discrimination based on sexual orientation, self-insured health plans are governed by federal law. Title VII, the federal anti-discrimination statute, only prohibits discrimination based on race, color, religion, sex, or national origin—sexual orientation is not explicitly included. As a result, some self-insured employers claim they can legally deny benefits to same-sex spouses.

Luckily, this issue is far from settled. Recently, the U.S. Equal Employment Opportunity Commission (“EEOC”) took the position that Title VII’s prohibition against ‘sex discrimination’ encompasses discrimination based on sexual orientation.<sup>55</sup>

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<sup>53</sup> 133. S.Ct. 2675 (2013).

<sup>54</sup> 699 F.Supp.2d 374 (D. Mass. 2010).

<sup>55</sup> See *Baldwin v. Foxx*, Agency No. 2012-24738-FAA-3 (July 15, 2015).

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

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

After *Obergefell v. Hodges*, same-sex spouses everywhere should be able to dissolve their marriages on the same terms as different-sex spouses. Rhode Island applies its divorce statutes to same-sex couples.

However, spouses should note that when Rhode Island courts divide marital property and award alimony, one of the factors a judge considers is the length of the marriage.<sup>56</sup> The judge cannot include as marital property, property held in the name of one spouse if held by that spouse prior to marriage.<sup>57</sup> Unfortunately for spouses whose partnership predated marriage equality, the length of the marriage may not accurately reflect the true length of the relationship, resulting in an unbalanced division of assets.

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

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

Yes. Thanks to *Obergefell v. Hodges*, all states are required to issue marriage licenses to same-sex couples.

## **● Domestic Partnership**

### ***What is domestic partnership?***

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<sup>56</sup> R.I. Gen. Laws §15-5-16(b) (alimony) and § 15-5-16.1(a) (division of property).

<sup>57</sup> R.I. Gen. Laws §15-5-16.1(b).

Although it is a term used in many contexts, “domestic partnership” most often means a status which recognizes an unmarried couple and their children as a family for certain limited purposes. This recognition may be given by a state or municipal governmental entity or by private businesses and organizations.

In the workplace context, employers may set criteria for domestic partnership as a way for employees to obtain certain fringe benefits for their partners and families which were previously limited to married spouses. The State of Rhode Island, some Rhode Island cities and towns and many private employers in Rhode Island offer domestic partner benefits such as coverage for the partner and his/her children under the employee’s health plan.

In other contexts, “domestic partner” is also a shorthand term for family, replacing “lover,” “friend,” and “roommate.” Some people call cohabitation agreements “domestic partner agreements.” See GLAD’s publications on Domestic Partnership for further information at [www.glad.org/know-your-rights/publications](http://www.glad.org/know-your-rights/publications)

### **GOVERNMENTAL DOMESTIC PARTNERSHIP RECOGNITION IN RHODE ISLAND**

Although Rhode Island does not have a statewide domestic partnership registry like some other states, the Rhode Island legislature has enacted several laws that provide certain benefits to same-sex couples.

In order to qualify, both partners must certify by affidavit that (1) both partners are at least 18 years old and mentally competent to contract, (2) that neither partner is married to anyone, (3) that the partners are not related by blood to a degree that would prohibit marriage in the State of Rhode Island, (4) that the partners live together and have lived together for at least one year, (5) that the partners are financially interdependent as evidenced by at least two of the following: (A) a domestic partnership agreement or relationship contract; (B) a joint mortgage or joint



ownership of a primary residence; (C) two of these: (i) joint ownership of a motor vehicle; (ii) a joint checking account; (iii) joint credit account; (iv) joint lease; and/or (D) the domestic partner has been designated a beneficiary for the employee's will, retirement contract or life insurance.<sup>58</sup>

***What domestic partner benefits does Rhode Island offer to state employees?***

In the summer of 2001, the Rhode Island legislature made domestic partner benefits available to state employees with respect to health insurance. It did so by changing the definition of "dependent" in state insurance laws. In 2006, Rhode Island extended these benefits to include family and medical leave to care for an ill partner<sup>59</sup> and COBRA health benefits for a state employee's domestic partner,<sup>60</sup> and in 2007, the legislature extended pension benefits managed through the Employee Retirement System of Rhode Island, to surviving domestic partners with whom the employee had lived for at least a year and were "financially interdependent."<sup>61</sup>

To qualify, a same-sex couple must certify by affidavit to the benefits director of the division of personnel that the couple meets the requirements listed above. Misrepresentations of information in the affidavit will result in an obligation to repay any benefits received and a fine up to \$1000. Employees are further required to inform the benefits director at their place of employment if and when their relationship ends.

***Are other benefits available to domestic partners of public employees?***

Under Rhode Island law, various death benefits or annuities, accidental death benefits or retirement benefits are available to the domestic partners of judges, teachers, police officers, firefighters and

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<sup>58</sup> See, e.g., R.I. Gen. Laws § 36-12-1(3).

<sup>59</sup> R.I. Gen. Laws § 28-48-1(5).

<sup>60</sup> R.I. Gen. Laws § 36-12-2.4.

<sup>61</sup> R.I. Gen. Laws §36-10-40.

some others workers. If you believe you fall in one of these categories, you should consult a lawyer.

Some Rhode Island cities and towns offer domestic partner benefits such as coverage for the partner and his/her children under the employee's health plan.

### ***What other protections does state law provide to domestic partners?***

In January 2010 the Rhode Island legislature passed legislation<sup>62</sup> that gives a domestic partner control over the remains and the funeral and burial arrangements of his/her partner provided: (1) the partner meets the definition of domestic partner defined above, and (2) the deceased has not designated another person as his/her "funeral planning agent" as described below in the section "Legal Protections for Same-Sex Couples—Funeral Planning Documents."<sup>63</sup> The law was championed by a gay man, Mark Goldberg, who had a five-week battle to claim the body of his partner of 17 years. Despite near unanimous passage, it took a legislative override of the Governor's veto to finally enact the law.

Although it is an important step forward to have this protection for domestic partners, it does require that you prove that your relationship meets certain criteria at a time of tragedy. The better way to achieve this protection is to name your partner as your "funeral planning agent," as discussed below. That agent takes precedence over everyone—spouse, domestic partner, and blood relatives.

## **DOMESTIC PARTNERSHIP RECOGNITION BY PRIVATE COMPANIES AND ORGANIZATIONS**

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

Private employers can provide to domestic partners any benefits they wish -- whether health insurance, family medical or bereavement leave,

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<sup>62</sup> See R.I. Gen. Laws § 5-33.2-24 and § 23-4-10.

<sup>63</sup> R.I. Gen. Laws, § 5-33.2-24(2)(i).

equal pension benefits, relocation expenses, or access to company facilities. Private organizations, e.g. a gym, country club, etc., can extend family membership or other family benefits to domestic partners.

However, even when employers provide these benefits, federal laws sometimes treat domestic partner benefits differently from spousal benefits, often with financial consequences. For example, employees must pay federal income tax on a domestic partner's health insurance benefits, but spousal benefits are exempt.<sup>64</sup> Similarly, while spousal consent is required if a married employee decides to name a third party as a pension beneficiary or survivor benefits recipient, an employee with a domestic partner can change these designations freely.

In most states, employees must also pay a state income tax on these benefits, but Rhode Island exempts employees from state income tax on health benefits extended to a domestic partner or civil union partner.<sup>65</sup>

## ● Legal Protections for Same-Sex Couples

*Without getting married, what steps can a couple take to safeguard their legal relationship in Rhode Island regardless of whether they have a marriage or civil union?*

**1. Relationship Agreement or Contract:** Cohabitation agreements regarding property and finances are a good way for couples to sort out their affairs in writing before a separation. As long as the contract is not about sexual services, it has a good chance of being upheld as valid as long as it complies with the requisites for a valid contract.<sup>66</sup> Bear in mind that, as in any state, specific provisions concerning children may or may not be enforced according to their terms because it is always in the court's power to determine the best interests of children. (See discussion below concerning parenting agreements.)

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<sup>64</sup> See Internal Revenue Code, Private Letter Ruling 9603011 (Jan. 19, 1996).

<sup>65</sup> R.I. Gen. Laws § 44-30-12(c)(6).

<sup>66</sup> See *Doe v. Burkland*, 808 A.2d 1090, 1094 (R.I. 2002) (allowing contract claim by former same-sex partner; "The mere existence of a sexual relationship between two parties does not impair the right to contract with each other for consideration independent of the relationship.").

**2. Power of Attorney:** Any competent person may appoint another person (such as one's partner) as their "attorney-in-fact" for financial matters in the event the one becomes incapacitated or disabled.<sup>67</sup> The law provides a "short form" which allows you to mark the kinds of transactions you wish your partner (your "attorney-in-fact") to perform. These include: (a) real estate transactions; (b) chattel and goods transactions; (c) bond, share and commodity transactions; (d) banking transactions; (e) business operating transactions; (f) insurance transactions; (g) claims and litigations; (h) benefits from military service; (i) records, reports and statements; and (j) all other matters.<sup>68</sup> If no such appointment is made, then a "family" member will be empowered to make decisions for the disabled or incapacitated individual. This power of attorney does not include health care decisions.

**3. Health Care Power of Attorney:** 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 agent if he or she wishes another person to make those decisions instead of the family member. Under R.I. Gen. Laws § 23-4.10-2, a person may appoint a health care agent to make decisions -- whether for a limited amount of time or indefinitely. The attorney-in-fact may then make decisions for you -- either immediately or upon your becoming incompetent to make decisions. Even after you give another person a Health Care Power of Attorney, you may make decisions for yourself if that is what you wish and as long as you are competent to do so.

The statute provides a "statutory form" that you can use for your Health Care Power of Attorney.<sup>69</sup>

The power of attorney can specify the authority of the agent to make decisions on your behalf, and also state what kinds of treatments you do not desire, including treatments which might

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<sup>67</sup> R.I. Gen. Laws § 18-16-1 to § 18-16-12.

<sup>68</sup> R.I. Gen. Laws § 18-16-2.

<sup>69</sup> R.I. Gen. Laws § 23-4.10-2.

keep you alive. You can also specify your wishes regarding organ and tissue gifts after death.

The power of attorney must be signed either by one notary public or by two witnesses. None of these signers may be your designated or alternate agent; a health care provider or a health care provider employee; or the operator of a community care facility or an employee of such a facility. The power of attorney can be revoked at any time by creating a new power of attorney or by a clear expression of revocation. People often give a copy to their doctors and sometimes to family members.

**4. Living Will:** Within a durable power of attorney for health care, 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.<sup>70</sup>

**5. Will:** Without a will, a deceased unmarried person's property passes to: (1) their children; (2) their family; (3) if next-of-kin cannot be located, to the state.<sup>71</sup> If you wish to provide for others, such as your partner, a will is essential. Even if you have few possessions, you can name in the will who will administer your estate. If you have children, you can nominate their future guardian in a will.<sup>72</sup>

**6. Funeral Planning Documents:** Rhode Island permits a person to name another as his or her "funeral planning agent" with sole responsibility and authority to make any and all arrangements and decisions about funeral services, and burial or disposition of remains, including cremation.<sup>73</sup> The document must be signed by the individual and should be notarized.<sup>74</sup> To prevent any disputes with family members, it is preferable to give the instructions to the person you want to take care of matters, as well as to family members.

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<sup>70</sup> R.I. Gen. Laws § 23-4.10-2.

<sup>71</sup> R.I. Gen. Laws §§ 33-1-1 to 33-1-13.

<sup>72</sup> R.I. Gen. Laws § 33-5-4.

<sup>73</sup> R.I. Gen. Laws § 5-33.3-3.

<sup>74</sup> R.I. Gen. Laws § 5-33.3-4.

Even absent these documents, a surviving same-sex partner who can prove that their relationship satisfied the state criteria for being “domestic partners” (read the “Domestic Partnership” section above) can also assume control of the funeral and burial process. However, this requires proving certain facts about your relationship at a time of tragedy and does not control if someone else has been appointed as the “funeral planning agent.” The best way to ensure that your partner is able to make these decisions is to name your partner your “funeral planning agent.”

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

GLAD recommends working with an attorney on these documents. Although some forms are available, the form may not be suited to your individual needs and wishes. Moreover, an attorney may be able to better help 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 durable power of attorney for health care with specific instructions about the types of treatments to which you do and don’t consent, and the exact scope of the agent’s authority.

***If an unmarried couple separates, what is the legal status of a Relationship or Partnership Agreement/Contract?***

Upon separation, the terms of a Relationship or Partnership Agreement/Contract will come into play if the couple has one. Absent an agreement, couples can get involved in costly and protracted litigation about property and financial matters but without the divorce system to help them sort through it. The Rhode Island Supreme Court has recognized that, under some circumstances, contract theories and equitable principles may apply to address the property and financial matters of a separating same-sex couple even without a written agreement.<sup>75</sup> Written agreements offer vastly greater security, however, providing the court with a roadmap as to the intentions of the parties.

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<sup>75</sup> See *Doe v. Burkland*, 808 A.2d 1090 (R.I. 2002).

**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 planning agent, 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.**

## ● Adoption

***Can a single gay individual adopt a child in Rhode Island?***

Yes.<sup>76</sup>

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

Though the question of joint adoption by an unmarried couple is not addressed expressly by the Rhode Island statutes on adoption or by any authoritative ruling by the State Supreme Court, joint and second parent adoptions have routinely been granted at the Family Court level. Feel free to contact GLAD for more information, or if you encounter any difficulties. Also, with the advent of marriage and civil unions in Rhode Island, a married or civil union couple can do a step-parent adoption.

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

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

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<sup>76</sup> R.I. Gen. Laws § 15-7-4.

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

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

***If we are married or in a civil union and both our names are on the child's birth certificate, do we still need to do a second parent adoption?***

GLAD strongly recommends that you still do a second-parent adoption. Because the marriage or civil union could encounter a lack of respect in some states, relying on the fact of the marriage or civil union alone to protect their children is not the best approach. It is advisable to continue the practice of securing a second-parent adoption in order to obtain a decree of legal parenthood that should be generally recognized and is independent of the marriage or civil union.

This document can only provide general information about the need to establish legal parenthood independent of a marriage or civil union. For you and your children, we cannot urge more strongly that you consult an attorney about undertaking co-parent adoption. Contact GLAD for more information and to obtain referrals to adoption attorneys.

- *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 the ongoing 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.

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](http://www.glad.org/work/cases/miller-jenkins-v-miller-jenkins).

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

The rights of a co-parent were addressed by the Rhode Island Supreme Court in a ruling handed down in September, 2000. When such a person can show she is a de facto parent, then she is entitled to a court hearing to address what custody, visitation and support arrangement is in the best interests of the child.<sup>77</sup> To be qualified as a de facto parent, the legal parent must have consented to and fostered the relationship between the child and the de facto parent; the child and de facto parent must have lived together; the de facto parent must have

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<sup>77</sup> *Rubano v. DiCenzo*, 759 A.2d. 959 (R.I. 2000).

performed parental functions for the child to a significant degree; and the child and de facto parent must have developed a parent-child bond.

One other helpful point about the *Rubano* case is that it clarifies that a parenting agreement can be used to bar a parent from claiming that his or her former partner has no grounds for making a custody or visitation claim. In some cases, parties to the agreement may also seek to enforce the agreements in court.

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

<http://www.glad.org/wp-content/uploads/2017/01/protecting-families-standards-for-lgbt-families.pdf>

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

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

**1. Co-parenting Agreement:** A co-parenting agreement is an agreement setting out the parents' expectations about each other's roles and their plans in the event of separation, disability, or death. While these agreements may not always be given full effect by courts, which are bound to make custody and visitation decisions based on the child's best interests, they are important indicators of

what the couple *believed* was in the best interests of the child and may influence a court's ultimate decision.

**2. Wills:** The legal parent may nominate a guardian of the child upon the parent's death.<sup>78</sup> These wishes are given strong preferences by courts. Of course, if the child has another legal parent living, then that person would have priority over the nominated guardian.

**3. Power of Attorney and Temporary Guardianship:** This document is signed by the parent and authorizes another person (the attorney-in-fact and temporary guardian) to make a wide variety of decisions and arrangements for the child, including matters related to school, medical care and finances.

**4. Co-guardianship:** While there is no express provision in the law allowing for appointment of co-guardians, and although the practice varies to some degree across the State, some probate courts allow a parent to name the other non-legal parent as a co-guardian so that the other parent may secure medical attention for the child and act as a parent.<sup>79</sup> This status is not permanent, and may be terminated by a court.<sup>80</sup>

## ● 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;

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<sup>78</sup> R.I. Gen. Laws § 33-15.1-7.

<sup>79</sup> R.I. Gen. Laws § 33-15.1-5.

<sup>80</sup> R.I. Gen. Laws § 33-15-18 (“The court shall remove any...guardian...upon finding that the [guardian] has not fulfilled, or is no longer able to fulfill, the duties of the appointment as set forth by the order itself and/or the limited guardianship and guardianship law.”).

4. Maintain continuity for the children;
5. Seek a voluntary resolution;
6. Remember that breaking up is hard to do;
7. Investigate allegations of abuse;
8. Not allow the absence of agreements or legal relationships to determine outcome;
9. Treat litigation as a last resort; and
10. Refuse to resort to homophobic/transphobic laws and sentiments to achieve a desired result.

For more detailed information about these standard see the publication *Protecting Families: Standards for LGBT Families* at: <http://www.glad.org/wp-content/uploads/2017/01/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 my sexual orientation against me to deny me custody or visitation of my kids?***

In Rhode Island, the question should turn on whether there is evidence of direct harm to the best interests of the child, although there has been no reported case on the subject. As a general matter, “[i]n any proceeding or suit in any court, neither parent shall have any natural priority or preference in any matter relating to their minor children.”<sup>81</sup> Specific acts of parental misconduct are relevant to determinations of child custody.<sup>82</sup>

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

In Rhode Island, the leading case regarding the best interests of the child is *Pettinato v. Pettinato*.<sup>83</sup> The Rhode Island legislature has not statutorily defined the factors that comprise a child’s best interests, but in the *Pettinato* case, the Rhode Island Supreme Court listed eight

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<sup>81</sup> R.I. Gen. Laws § 33-15.1-3.

<sup>82</sup> R.I. Gen. Laws § 15-5-3.1(b).

<sup>83</sup> 582 A.2d 909 (R.I. 1990).

factors that should be considered by courts to determine the best interests of the child:

- The wishes of the child’s parent or parents regarding the child’s custody;
- The reasonable preference of the child, if the court deems the child to be of sufficient intelligence, understanding, and experience to express a preference;
- The interaction and interrelationship of the child with the child’s parent or parents, the child’s siblings, and any other person who may significantly affect the child’s best interest;
- The child’s adjustment to the child’s home, school, and community;
- The mental and physical health of all individuals involved;
- The stability of the child’s home environment;
- The moral fitness of the child’s parents; and
- The willingness and ability of each parent to facilitate a close and continuous parent-child relationship between the child and the other parent.<sup>84</sup>

In addition, Rhode Island Law requires courts to “consider evidence of past or present domestic violence” and arrange visitation to best protect the child and the abused parent from further harm.”<sup>85</sup>

As to visitation, the law provides that whichever parent does not have primary physical custody of the child shall be granted a reasonable right

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<sup>84</sup> *Pettinato* 582 A.2d at 913-914.

<sup>85</sup> R.I. Gen. Laws § 15-5-16(g).

of visitation, unless there is a showing of cause why the right should not be granted.<sup>86</sup>

***How is “sexual orientation” used in custody proceedings?***

In a divorce or paternity proceeding, a parent may argue that the other parent’s sexual orientation is causing detriment to the child. Any number of reasons can be cited, such as that the gay or lesbian parent’s sexual orientation is causing other people to tease or ostracize the child, or that the parent is a bad role model. Or a parent may argue that the ex’s new partner is not good for the child. In the overwhelming majority of circumstances, these matters can be answered to the satisfaction of a judge in a way which does not penalize the gay parent or the child.<sup>87</sup> Contact GLAD for further resources.

***Does it matter if my “ex” knew or suspected I was gay or lesbian 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, they 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.<sup>88</sup>

If circumstances have changed so that a modification complaint is appropriate, then the standard once again is what arrangement is in the best interests of the child.

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<sup>86</sup> R.I. Gen. Laws § 15-5-16(d)(1).

<sup>87</sup> Compare *Suddes v. Spinelli*, 703 A.2d 605, 607 (R.I. 1997) (visitation rights only denied “in an extreme situation in which the children’s physical, mental or moral health would be endangered”).

<sup>88</sup> See *King v. King*, 114 R.I. 329, 330, 333 A.2d 135, 137 (1975)(changed circumstances shown when four years passed and boy passed from childhood to adolescence); *Kenney v. Hickey*, 486 A.2d 1079, 486 A.2d 1079, 1082 (R.I. 1985).

## ***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.<sup>89</sup>

## ● **Domestic Violence**

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

Under the laws for the Family Court and the District Court, “domestic abuse” means the occurrence of one or more of the following acts between people who are family members, parents, or persons who are or have been in a substantive dating relationship within the past year, or against the minor child of one of the parties:

- attempting to cause or causing physical harm;
- placing another in fear of imminent serious physical harm;
- causing another to engage involuntarily in sexual relations by force, threat of force, or duress; and
- stalking or cyberstalking.<sup>90</sup>

Note that the District Court provisions prohibit abuse between “cohabitants” and apply to substantive dating relationships regardless of the age of the parties, and are thus broader than the Family Court provisions.

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

Yes, if you are married or in a civil union. Even if you are not, some same-sex relationships are covered under the definition of “substantive

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<sup>89</sup> Compare *Seravo v. Seravo*, 525 A.2d 922 (R.I. 1987) (father’s visitation rights terminated where he sexually assaulted his child and the child was still traumatized from the abuse).

<sup>90</sup> See R.I. Gen. Laws § 15-15-1 (2) (family court); § 8-8.1-1(5) (district court).

dating relationship.” This includes relationships which are “significant and personal/intimate” based on the length of time of the relationship, the type of relationship, and the frequency of interaction between the parties.<sup>91</sup> Other relationships may be covered if partners or former partners share legal parentage of a child.<sup>92</sup> As well, in the District Court, partners who live together or have lived together within the past three years may be considered “cohabitants.”<sup>93</sup>

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

The process is intended to be simple. You may go to the appropriate court (District Court or Family Court) where you live, or if you have just fled your home, you can also file in the town where you used to live. You will need to fill out a complaint alleging “abuse” as defined above. The complaint is under oath, so everything you say must be true. Try to put in as much detail as possible demonstrating why you feel threatened.

If you are in danger of harm, the Court can grant you a temporary protective order for not more than 21 days, which can include an order restraining your abuser from hurting you, barring him or her from entering your home, assigning child custody and requiring payment of child support. If the courts are closed (nights, holidays, weekends), you can contact the local or state police, who will be able to contact a judge on call to handle these matters.

The defendant/abuser must be served with (given a copy of) the court order and notified of his or her right to contest the order in court. Once the order is issued, it is filed with the state Bureau of Criminal Identification and is effective state-wide. Violation of a court order of which an abuser has notice is a criminal offense.<sup>94</sup>

The Court will also assign a date for another hearing at which the temporary order will either be extended or dismissed. At that time, both parties often have attorneys. You should bring with you any witnesses

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<sup>91</sup> R.I. Gen. Laws § 15-5-1 (5) and § 8-8.1-1(5).

<sup>92</sup> R.I. Gen. Laws § 15-5-1 (3).

<sup>93</sup> R.I. Gen. Laws § 8-8.1-1 (1).

<sup>94</sup> R.I. Gen. Laws § 15-15-3 and § 8-8.1-3.



who can substantiate the abuse, as well as copies of threatening letters, medical records, or any other documents which can show how you have been harmed and why you are afraid. Expect to be asked questions by both the judge and the attorney(s) for the abuser/defendant. You have the same right to ask questions.

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

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

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

Not necessarily. Some courts try to be sensitive to the fact that some people seeking orders may be closeted, or may be in a same-sex relationship which they do not want revealed. If you proceed in the District Court rather than the Family Court, you do not have to claim that you are in a "substantive dating relationship," but only that you are cohabitants to get a protective order, and thus you may be able to conceal your sexual orientation if you choose.<sup>95</sup>

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

In addition to the local police and district attorney, you can call:

The Rhode Island Coalition Against Domestic Violence at (401) 467-9940, [www.ricadv.org](http://www.ricadv.org). Helpline 24 hours every day at (800) 494-8100

Day One, the Sexual Assault and Trauma Resource Center, at (401) 421-4100 or (800) 494-8100, [www.dayoneri.org](http://www.dayoneri.org).

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<sup>95</sup> R.I. Gen. Laws, § 8-8.1-1.

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

Yes. Evidence that a parent has in the past, or is presently, abusing the other parent or the child is a factor showing that that parent is not acting in the best interests of the child.<sup>96</sup>

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<sup>96</sup> R.I. Gen. Laws, § 15-5-16(g).

## **Hate Crimes / Sex Laws / Police**

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- **Hate Crimes & Violence**

### ***How does Rhode Island define a “hate crime”?***

In Rhode Island, a hate crime is “any crime motivated by bigotry and bias, including, but not limited to threatened, attempted, or completed acts that appear after investigation to have been motivated by racial, religious, ethnic, sexual orientation, gender, gender identity or expression, or disability prejudice or motivated by prejudice against a person who is homeless or is perceived to be homeless.”<sup>97</sup> “Gender identity or expression” was added in 2012.

In order to track hate crimes, the State has set up a reporting system so that incidents alleged are centrally recorded.<sup>98</sup> All police departments within the state are required to have training on identifying, responding to and reporting hate crimes,<sup>99</sup> and must report monthly the occurrence of such crimes to the state police, who must maintain a permanent record of the offenses, categorized by community of occurrence, type of offense, and target.<sup>100</sup>

### ***Does Rhode Island have increased sentencing for hate crimes?***

Yes, Rhode Island law establishes additional penalties for crimes motivated by hatred or animus toward the victim’s actual or perceived, religion, ethnicity, race, gender, sexual orientation or gender.<sup>101</sup> Although “gender identity or expression” was added in 2012 to the definition of a “hate crime” as noted above, it has not been added to the hate crimes sentencing statute.

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<sup>97</sup> R.I. Gen. Laws, § 42-28-46 (a)(2).

<sup>98</sup> R.I. Gen. Laws § 42-28-46 (b).

<sup>99</sup> R.I. Gen. Laws § 42-28.2-8.1.

<sup>100</sup> R.I. Gen. Laws § 42-28-46 (b).

<sup>101</sup> R.I. Gen. Laws § 12-19-38(a).

If it is proven beyond a reasonable doubt that a person was motivated by hatred or animus toward a person's protected characteristic, then the person shall, for a misdemeanor, be sentenced to no less than 30 days mandatory imprisonment and, for a felony, be sentenced to an additional, consecutive term of imprisonment for not less than 1 year and no more than 5 years.<sup>102</sup>

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

Begin by contacting the local police. Police officers do not actually charge people with hate crimes, but will need to provide the prosecutor with evidence that the crime was motivated by bias, so be sure to explain all of the factors that make you think this was a hate crime. You may also contact the criminal division of the Attorney General's office at (401) 274-4400.

For support and advocacy, contact: Day One, Sexual Assault and Trauma Resource of Rhode Island, (401) 421-4100 or (800) 494-8100. [www.dayoneri.org](http://www.dayoneri.org)

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

In addition to pursuing your rights in the criminal justice system, you can contact the Office of the Civil Rights Advocate of the Attorney General's Office at (401) 274-4400. The Civil Rights Advocate is authorized to receive complaints, to conduct investigations, education and training, and to bring civil actions for injunctions or other equitable relief to address physical threats, trespassing, property destruction, or harassment that interfere "with the exercise or enjoyment by any other person of rights secured by the United States Constitution or the laws of the United States or of rights secured by the Constitution of Rhode Island or laws of the state." In addition, a fine of up to \$5,000 may be imposed.<sup>103</sup>

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<sup>102</sup> R.I. Gen. Laws § 12-19-38(c) and (d).

<sup>103</sup> R.I. Gen. Laws § 42-9.3.

An injunction under this provision does not prevent you, depending on the circumstances, from seeking monetary damages for harms you experienced from the crime committed against you.

***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* was passed by Congress on October 22, 2009 and was signed into law by President Obama on October 28, 2009. It expands the 1969 United States federal hate crime law to include crimes motivated by a victim's actual or perceived gender, sexual orientation, gender identity or disability.

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

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

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

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

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

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

## ● Criminal Sex Laws

### *Does Rhode Island have a sodomy law?*

Rhode Island repealed its sodomy law in 1998. All of the criminal laws dealing with forcible sex, sex with minors, or public sexual activity apply equally regardless of the sex of the parties involved.

### *Does Rhode Island have any other criminal laws which are applied to gay people?*

No. All laws apply equally to gay and non-gay people.

Most people arrested for sexual activity are arrested for activity occurring out of doors. The “indecent exposure - disorderly conduct” law is a misdemeanor (for the first offense and a felony thereafter) and forbids (a) intentional, knowing or reckless (b) exposure of the genitals to the view of another person (c) under circumstances where the person’s conduct is likely to cause affront, distress or alarm to that person.<sup>104</sup>

Note that the offense has several elements. First, the exposure must be intentional, knowing or reckless in the mind of the perpetrator. Second, it must occur in circumstances where another person would likely be alarmed or distressed.

This law has been applied to people having sexual encounters in “public.” Bear in mind that sexual activity involving exposure of the genitals should not be illegal simply because it takes place outdoors, in parked cars, or on public lands. Instead, a great deal depends on the

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<sup>104</sup> R.I. Gen. Laws, § 11-45-2.

time of day, the level of seclusion (e.g., behind remote bushes or beyond fences) and the overall circumstances.

The State has a legitimate law enforcement interest in protecting the general public from open displays of sex -- whether the sex is between people of the same sex or of a different sex. But socializing and the expression 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 hand-holding, cruising, talking, flirting, foot-tapping, or non-sexual touching.

*As a practical matter, regardless of one's rights, having sex outdoors is 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 the disorderly conduct law and have the report of his or her arrest printed in the local newspaper.

***Does Rhode Island 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 Rhode Island, the law does not specify as registrable offenses any statutes of particular concern to gay people, such as the disorderly conduct law.

***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 convictions for violent sexual offenses or offenses involving children. For a full list of sex offenses, see R.I. Gen. Laws § 11-37.1-2 and § 11-37.1-3.

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

You can contact the Department of the Attorney General, Attn.: Bureau of Criminal Identification, 150 S. Main St., Providence, RI 02903, or call (401) 274-4400. You can send a signed and notarized release for information along with a copy of your identification, self-addressed stamped envelope, and a check or money order for \$5. See [www.riag.ri.gov/BCI/index.php](http://www.riag.ri.gov/BCI/index.php) (click on tab for “Background Checks”). You may also obtain a BCI printout by visiting the BCI at the Dep’t of the Attorney General and possessing proper identification and \$5 check or money order.

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

Most sex offenders will have to register annually with the local law enforcement agency and provide personal data, work information, and other identification.<sup>105</sup> All offenders required to register must do so for ten years following their release from confinement or placement on parole, supervised release or probation and must update their information on a quarterly basis for the first two years. Those determined to be sexually violent predators or recidivists, and those who have been convicted of certain aggravated offenses on the other hand, must register and provide updated information on a quarterly basis for life.<sup>106</sup>

Information in the registry can be freely shared with law enforcement agencies and government agencies performing confidential background checks, but is generally not made available to the public.<sup>107</sup> When dealing with an offender who is determined to have a moderate or high risk for re-offense, the community must be notified affirmatively and identifying information about the offender will be made available on the websites of the state police and court system, although there is a legal procedure whereby the offender can seek to block release of the information.<sup>108</sup>

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

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<sup>105</sup> R.I. Gen. Laws § 11-37-1.3 (a).

<sup>106</sup> R.I. Gen. Laws §§ 11-37.1-4.

<sup>107</sup> R.I. Gen. Laws § 11-37.1-11(b).

<sup>108</sup> R.I. Gen. Laws § 11.37.1-11(5); § 11-37.1-12; and § 11-37.1-13.



Generally, the age of consent for sexual activity is 16.<sup>109</sup>

## ● 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 not engaged in any unlawful activity. Public places belong to everyone, and are often also places of public accommodation to which anti-discrimination rules apply. Even if police officers want to deter crime, or suspect some kind of unlawful intent, they have no general right to request people to move from one place to another unless there is unlawful conduct.<sup>110</sup>

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

The presence of individuals who appear to be LGBT -- whether because such individuals are displaying symbols such as a rainbow flag or pink triangle or for any other reason -- should not trigger any special scrutiny by a police officer, 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. 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.<sup>111</sup>

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<sup>109</sup> See R.I. Gen. Laws § 11-37-6.

<sup>110</sup> *Kent v. Dulles*, 357 U.S. 116, 126 (1958).

<sup>111</sup> *State v. Abdullah*, 730 A.2d 1074 (R.I. 1997); *State v. Bennett*, 430 A.2d 424 (R.I. 1981); *Terry v. Ohio*, 392 U.S. 1, 16 (1968). An arrest can only occur upon “probable cause” that a crime has been committed. R.I. Const., Art. I, § 6.

Police sometimes detain a person whom they believe has committed or is about to commit a crime. If the person is not charged with a crime, he or she must be released after two hours.<sup>112</sup>

***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. Many departments have their own Internal Affairs Divisions which receive and investigate civilian complaints against police officers.

Complaints concerning the State Police in Rhode Island should be made to the Rhode Island State Police Office of Professional Standards, which you can contact at in writing at 311 Danielson Pike, North Scituate, RI 02857, or by phone at (401) 444-1011. Citizen complaint forms are also available on the State Police website at

<http://risp.ri.gov/documents/PSU/ComplaintComplimentForm.pdf>.

Complaints should include as much information as possible about the incident, including your name and contact information; the name, rank and badge number (if known) of the officer; the location, date, time and details of the incident; and the names and contact information of any witnesses. 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 attempt to seek help from the Attorney General's Office, Criminal Division at (401) 274-4400.

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<sup>112</sup> See R.I. Gen. Laws § 12-7-1.

# Students' Rights

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## ● Harassment and Discrimination at School

### *Are there any laws protecting gay, lesbian, bisexual and transgender students in Rhode Island?*

Yes. In 2011, Rhode Island passed the “Safe Schools Act” that applies to all school districts, charter schools, career and technical schools and approved private day or residential schools in Rhode Island.

It defines “bullying” as written, verbal or electronic expression or a physical act or gesture or any combination thereof directed at a student by one or more students that:

- causes or places the student in reasonable fear of physical or emotional harm or damage to the student’s property,
- creates an intimidating, threatening, hostile or abusive educational environment,
- infringes on the rights of the student to participate in school activities, or
- disrupts the educational process or orderly operation of the school.<sup>113</sup>

The law identifies characteristics that may be reasonably perceived to have motivated the act of “bullying” as including race, color, religion, ancestry, national origin, gender, disability, sexual orientation and gender identity and expression.<sup>114</sup>

The law goes on to define “cyber-bullying” as bullying through the use of technology or electronic communication.<sup>115</sup>

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<sup>113</sup> R.I. Gen. Laws § 16-21-33(a)(1).

<sup>114</sup> R.I. Gen. Laws § 16-21-33(a)(1)(v).

<sup>115</sup> R.I. Gen. Laws § 16-21-33(a)(2).

The law charges the Rhode Island Department of Elementary and Secondary Education (RIDE) to prescribe a statewide bullying policy that must be adopted by all the schools by June 30, 2012. The policy must include:

- procedures for students, staff, parents and others to report bullying,
- procedures for promptly responding to and investigating reports of bullying or retaliation,
- the range of disciplinary actions that may be taken,
- a parental engagement strategy,
- procedures for restoring a sense of safety for the student,
- strategies for protecting a person who reports bullying or assists in the investigation,
- procedures for promptly notifying the parents of both the perpetrator and victim,
- procedures for providing appropriate counseling for the victim, perpetrator and others affected by the bullying.<sup>116</sup>

***Are there other laws in Rhode Island that protect students from discrimination and harassment?***

Yes. First, state law says that students, staff members and teachers all have the right to attend or work at a safe school, whether elementary, secondary or post-secondary.<sup>117</sup> These provisions empower schools to suspend or expel disruptive students.

The Rhode Island Department of Education's guidance and model policies on bullying, teen dating violence and sexual violence explicitly acknowledge the role that sexual orientation, sex, disability, appearance, and clothing may play in bullying, and make clear the applicability of provisions relating to dating and sexual violence to students regardless of sexual orientation.<sup>118</sup>

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<sup>116</sup> R.I. Gen. Laws § 16-21-34.

<sup>117</sup> R.I. Gen. Laws § 16-2-17 and § 16-81-1.

<sup>118</sup> See *Guidance on Developing Required Policies Against Bullying*, available at [http://www.ripin.org/pdfs/ride\\_bully\\_policy\\_for\\_schools.pdf](http://www.ripin.org/pdfs/ride_bully_policy_for_schools.pdf); *Guide to Preventing Bullying, Teen Dating Violence, and Sexual Violence*, available at [www.ricdsv.org/images/GuidePreventingBullyingTDVSVRhodeIslandSchools\\_4-1-2008.pdf](http://www.ricdsv.org/images/GuidePreventingBullyingTDVSVRhodeIslandSchools_4-1-2008.pdf).

***Are there other sources of protection for LGBT students in Rhode Island?***

Yes. A Board of Regents Policy adopted in 1997 and revised in 2010 provides in part as follows:

. . .all students, without exception, have the right to attend a school in which they feel safe and able to express their identity without fear. . . .certain students, because of their actual or perceived sexual orientation or gender identity/expression, have been subject to discrimination through abuse, harassment, bullying and/or exclusion from full participation in educational activities.

Therefore, it is the Policy of the Board of Regents that no student shall be excluded from any educational program or activity or discriminated against, bullied, or harassed in any public educational setting based upon actual or perceived sexual orientation or gender identity/expression. . . This policy shall include but is not limited to admissions, guidance services, co-curricular and extra-curricular activities.

Each local school district is urged to review programs, services and activities to assure that such offerings are conducted in a manner that is free of inadvertent or intentional bias based upon sexual orientation and/or gender identity/expression. Each local school district is required by law to address harassment and bullying based on sexual orientation and/or gender identity/expression through the development and enforcement of appropriate student and staff behavior and disciplinary policies. . .

The Board of Regents policy can be found at:

<http://www.thriveri.org/documents/RIDE%20Policy%20Statement%20on%20Discrimination%20Sexual%20Orientation.pdf>.

***What kinds of conduct does the law and policy cover?***

Technically, the policy covers exclusion from a public school or discrimination in taking advantage of school programs. A school may not be so bold as to say, “Don’t come here,” or “You can’t take track,” but if they fail to redress pervasive harassment against you at school or in a particular class or activity, they may have said so in effect. It does not provide any mechanism for court or administrative enforcement of the policy.

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

Possibly. Federal law prohibits sex discrimination in public schools that receive federal funding. Depending on the situation, harassment of LGBT students may be actionable as sex discrimination.<sup>119</sup> Harassment of transgender students in particular is actionable. Several federal courts have held that the federal anti-discrimination law, Title IX, prohibits discrimination based on gender identity.<sup>120</sup> Similarly, in 2016, the U.S. Departments of Education and Justice released a joint guidance taking the position that Title IX protects transgender students from discrimination based on gender identity; that Title IX obliges schools to respect a student’s gender identity and allow them to participate in sex-segregated activities and access sex-segregated facilities consistent with that identity; and that Title IX does not require a student to provide documentation or medical diagnosis before being treated consistently with their gender identity.<sup>121</sup>

Complaints can be made to your school’s Title IX coordinator, as well as to the federal Department of Education, Office of Civil Rights, in

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<sup>119</sup> See, e.g., *Ray v. Antioch Unified School District*, 107 F. Supp. 2d 1165 (N.D. Cal. 2000) (stating that attacks based on a student’s perceived sexuality constitute sex discrimination).

<sup>120</sup> See, e.g., *G.G. v. Gloucester Cnty. Sch. Bd.*, 822 F.3d 709 (4th Cir. 2016) *mandate recalled and stayed*, *Gloucester Cnty. Sch. Bd. v. G.G.*, 136 S. Ct. 2442 (2016) (deferring to DOE’s interpretation that Title IX prohibits gender identity discrimination); *Bd. of Educ. v. U.S. Dep’t of Educ.*, 2016 U.S. Dist. LEXIS 131474 (S.D. Ohio 2016) (same).

<sup>121</sup> See *Dear Colleague Letter on Transgender Students*, U.S. Department of Justice/U.S. Department of Education, available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf>.

Boston. In cases where a school has reacted with deliberate indifference, monetary damages may be available. A student's constitutional rights may be violated by some kinds of discrimination and harassment.

A student's *constitutional* rights under both state and federal constitutions may be violated by some kinds of discrimination and harassment as well.

In addition, under state law, every *post-secondary* school is to establish a written policy concerning sexual harassment.<sup>122</sup> Also, post-secondary schools that have received internal complaints of harassment based on sexual orientation or gender identity or expression are required to disclose to the complainant in a timely manner how the complaint was addressed and what actions, if any, were taken to resolve the matter.<sup>123</sup> Neither of these laws provides a mechanism for court enforcement.

Finally, state law prohibits hazing, subjecting both the perpetrators of hazing and school officials who knowingly permit hazing to criminal liability. Hazing is defined as "any conduct or method of initiation into any student organization, whether on public or private property, which willfully or recklessly endangers the physical or mental health of any student or other person."<sup>124</sup>

### ***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's policies and notify whoever is supposed to be notified -- usually a vice principal or Title IX coordinator. You should document any incidents of harassment or discrimination in writing. Once you meet with the right officials, make a note of what you told them and on what date and ask when they will be getting back to

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<sup>122</sup> R.I. Gen. Laws § 16-76-1 and § 16-76-2.

<sup>123</sup> R.I. Gen. Laws § 16-76.1-1.

<sup>124</sup> R.I. Gen. Laws § 11-21-1 and § 11-21-2.

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.

If all of these steps fail, you may also wish to consider legal action. Contact GLAD for attorney referrals.

## ● Other Rights of Public School Students

In addition to the right to attend school in safety and free from discrimination and harassment based on your sexual orientation or gender identity or expression:

- LGBTQ youth must have equal access to and be allowed to participate on equal terms in all school programs, including extracurricular activities.
- Schools must respect the gender identity of transgender students, including using appropriate names and pronouns, and allowing transgender students to wear clothing consistent with their gender identity.
- LGBTQ youth have the right to be open about their sexual orientation and gender identity and expression.
- Students have the right to form extracurricular groups, such as Gay-Straight Alliances, on the same terms and with the same privileges and resources as all other extracurricular groups.
- LGBTQ students have the right to express themselves on issues relating to sexual orientation or gender identity and expression.
- Students have the right to learn about LGBT issues and have access to information and resources, including educational



websites, about LGBT issues and people, regardless of objecting school officials or parents.

**For additional information, see GLAD's publication, *Rights of LGBTQ Youth in Rhode Island* at:**

[www.glad.org/wp-content/uploads/2017/01/rights-of-lgbtq-youth-in-ri.pdf](http://www.glad.org/wp-content/uploads/2017/01/rights-of-lgbtq-youth-in-ri.pdf)

**GLAD has a brochure called, *Want to Know Your Right As an LGBTQ Student?*, that can be found at:**

[www.glad.org/wp-content/uploads/2017/01/lgbtq-student-rights-ri.pdf](http://www.glad.org/wp-content/uploads/2017/01/lgbtq-student-rights-ri.pdf)

**We would be glad to mail you a printed version of this brochure.**

**Just contact GLAD Answers by email or live chat at**

**[www.GLADAnswers.org](http://www.GLADAnswers.org) or by phone at 800-455-GLAD (4523).**

## ● Gay/Straight Alliances

***Do students have the right to form Gay/Straight Alliances in their schools?***

Yes, as to high school students; probably, as to middle school students. A federal law known as the "Equal Access Act" requires that all federally funded secondary schools provide equal access to extra-curricular clubs. So long as a school has at least one student-led extra-curricular club, it must allow additional clubs to organize, and must provide them with equal access to meeting spaces, facilities, and funding without discriminating based on a club's purpose, be that purpose religious, philosophical, political, or otherwise.<sup>125</sup> GLAD successfully intervened on behalf of students seeking to form a GSA at South Kingston High School on this very basis.

If your school is preventing you from forming a GSA, contact GLAD Answers.

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<sup>125</sup> 20 U.S.C. § 4071.

● Resources

**PROTECT YOUR RIGHTS**

**GLAD Answers**

Call: (800) 455-GLAD (4523)

Email or Live Chat:

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

**Rhode Island Commission for Human Rights**

(401) 222-2661

[www.richr.ri.gov](http://www.richr.ri.gov)

**Rhode Island Department of Education**

(401) 222-4600

**US Department of Education Office for Civil Rights**

(617) 289-0111

[OCR.Boston@ed.gov](mailto:OCR.Boston@ed.gov)

**American Civil Liberties Union – RI**

(401) 831-7171

[www.riaclu.org](http://www.riaclu.org)

**KNOW MORE ABOUT YOUR RIGHTS**

The text of the Rhode Island anti-bullying law: <http://bit.ly/ribullylaw>

GLAD's Rhode Island students' rights webpage:

[www.glad.org/overview/youth-schools/rhode-island/](http://www.glad.org/overview/youth-schools/rhode-island/)

GLAD's webpage on youth rights: [www.glad.org/youth](http://www.glad.org/youth)

**LOCAL LGBTQ YOUTH GROUPS**

**Youth Pride Inc.**

(401) 421-5626

[info@youthprideri.org](mailto:info@youthprideri.org)

[www.youthprideri.org](http://www.youthprideri.org)

**PFLAG**

**Greater Providence**

(401) 751-7571

[pflagprovidence@verizon.net](mailto:pflagprovidence@verizon.net)

[www.pflagprovidence.org/index.htm](http://www.pflagprovidence.org/index.htm)

**OTHER RESOURCES YOU CAN USE**

**GLBT Help Line of Rhode Island**

(401) 751-3322

[www.glbthelpline.org](http://www.glbthelpline.org)

**AIDS Project Rhode Island**

(401) 831-5522

[www.aidsprojectri.org](http://www.aidsprojectri.org)

**East Bay Community Action Program**

(401) 847-7821

[www.ebcap.org](http://www.ebcap.org)

**Rhode Island Coalition Against Domestic Violence**

(401) 467-9940

1-800-494-8100 (24 hr)

**The Trevor Project**

Crisis/Support Line: (866) 488-7386

[www.thetrevorproject.org](http://www.thetrevorproject.org)





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

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

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

*Thank You!*



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

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