Family Policy

ISSUES AFFECTING GAY, LESBIAN, BISEXUAL AND TRANSGENDER FAMILIES

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Preface by Lorri L. Jean, Executive Director, NGLTF

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One of the “hottest” issues in the gay, lesbian, bisexual and transgender (GLBT) communities today—and in our struggle for equality and liberation—is the issue of family. In the past two decades the GLBT community has experienced a veritable “baby boom.” There has been an explosion in the number of organizations created exclusively to serve or advocate on behalf of GLBT families. Same-sex weddings are regular occurrences. Long-standing GLBT organizations of all kinds, including the National Gay and Lesbian Task Force, are doing more and more work in this arena. And legal recognition of our families has become one of the most hotly contested issues on the national, state and local political scenes.

Regardless of sexual orientation or gender identity, our families provide many of the narratives that most profoundly shape each of our lives: love stories of great warmth and joy, eulogies to loss and pain, anecdotes that make us laugh and those that may make us cry. Many of the most passionate stories in art and history take place in a familial setting and involve family relationships of all kinds. This is evident from the themes found in Shakespeare and Steinbeck, to the current popularity of TV shows like Everybody Loves Raymond, Friends, Will & Grace and The Sopranos. More personally, the narratives of family are created through childhood and adolescence, through partnership and parenting, through caring for elderly relatives and enjoying our own old age. Our families, however they are comprised, are an important way in which all of us experience and interact with the world.

Just as the stories we tell about family are multifaceted, a concise definition of family is not easy to pin down, especially among those GLBT people who have had to create “families of choice” when they were rejected by their families of origin because of their sexual orientation or gender identity. What is “family” to GLBT people? How are our families different from or the same as those of heterosexual people? While we know that most people define family in terms of relationships rather than technical legal definitions, the sorts of relationships each of us considers to be “family” may differ dramati-
A single parent raising biological or adopted children is a family and so is an elderly, childless couple. A family might also be comprised of adult relatives and friends who cooperate to raise children together. The possibilities are endless.

The debate over the definition of family really becomes heated, of course, when we start to talk about the members of a family in terms of gender identity and sexual orientation. In addition to those examples given above, we define our families as GLBT people co-parenting a child or growing old together. Our definition of family may include transgender parents and bisexuals married to members of the opposite sex or living with same-sex partners. We define family as going far beyond the unit of a married heterosexual couple and their children.

For nearly 20 years there has been much discussion in this country about “culture wars” and the “struggle to define America” (phrases more commonly used by anti-GLBT conservatives). The struggle has ranged from the furor over abortion to prayer in public schools. In addition, GLBT people have found their identities and their families at the center of this maelstrom. Those who seek to define the family solely as a unit constructed around a man married to a woman (as many in the Bush Administration are advocating), thereby excluding GLBT families, single parent families, and many other family structures, are out of step with the reality of today’s American family. Their attempt to deny our existence and that of our families is an assault – on our identities, on our families, and on democracy itself.

Why is the definition of family so important? Why is it crucial that our households be included in official definitions of family? What can we do to ensure that our families are protected and included in our society in the same ways as are more traditional families?

These days, some would argue that the “struggle to define America” occurs most often in courtrooms, polling places, council meetings and legislative debates. There are two primary reasons why the definition of family is so important: money and power. We know that when it comes down to the practicalities of daily living, the family unit is a central component of much of the policy and law that govern our lives. Indeed, the definition of the family unit serves as a measure and standard for allocation and distribution of many of the resources and benefits available to citizens (and non-citizens) of this country. And, for those who desire to impose their narrow, exclusionary definition on the rest of us, it serves as an inviolable line they imagine they are holding against the deterioration of the purportedly “moral!” America they yearn for—an America without GLBT people, an America without divorce, and an America where women do not work outside the home, among other impossible and archaic notions.

While that “inviolable line” has long fallen, conservatives in this country continue to do everything they can to regain the ground they’ve lost in promoting a definition of family that is, in fact, irrelevant to most American families. In terms of GLBT families, even a partial list of the ways in which “family policy” discriminates against us is extensive: the tax treatment of same-sex couples, the availability of family-related leave from work, the access to Social Security payments for bereaved same-sex partners, the family-related restrictions written into welfare reform legislation, the custody rights of GLBT parents, policies regarding visiting incarcerated family members, as well as education, health care and immigration policy. Are we seeking to “define America” when we insist upon recognition of the many forms that constitute today’s American family, or when we demand that GLBT families be afforded the same rights as those families
in which key relationships are heterosexual? Or are we simply seeking a definition that is consistent with one of the most important notions in our democracy: “Life, Liberty and the Pursuit of Happiness?”

On the one hand, we cannot help but be part of this country’s definition of family simply by living here, as GLBT partners, parents, and children. On the other hand, if definitions are being scripted without our input, whether in courtrooms or Congress, we must raise our voices and insist on being involved in the process. The Bush Administration has affirmed the family as a priority on the nation’s legislative agenda. This priority is being funded heavily through initiatives focusing on marriage and fatherhood, as well as other areas of policy such as welfare and education. How do we ensure that we are among the beneficiaries of new laws and are not being left out or, worse, discriminated against either because of express bigotry or because our families don’t fit a narrow, antiquated and inaccurate definition?

This publication seeks to contribute to the effort to ensure that the definition of family in our society includes the realities of GLBT families. It is imperative that we make sure that a clear definition of gay, lesbian, bisexual and transgender families is on the table. It is imperative that we articulate the unique needs of our families, that we highlight the ways they have been excluded or not supported, and that we make recommendations to lawmakers and policymakers as to how this support should be provided in the future. Additionally, we hope this publication will support work to ensure that law and policy is applied equally to everyone, without regard to sexual orientation and gender identity, and that all of our families are protected and supported.

No single document can address all of the issues that are relevant to today’s GLBT families. Still, this publication is an important reference for those issues most commonly at play in our quest for freedom, justice and equality.

Lorri L. Jean
Executive Director
National Gay and Lesbian Task Force
Eugene Clark and Larry Courtney lived like many married couples, creating their lives around each other and being recognized by their families and friends as a committed couple. When Larry was offered a job in New York City in 1988, the couple relocated from Washington, D.C. and Eugene found a new position in New York. When New York City created a domestic partnership registry, the couple went to City Hall to get the closest thing to a marriage certificate available to them. And when Eugene’s mother became ill, they brought her from D.C. to their one-bedroom Manhattan apartment so that they could care for her during the last years of her life.

On September 11, 2001, Eugene was one of the thousands at the World Trade Center who did not come home to their loved ones that evening. Larry received a voicemail from Eugene after the first building was hit: “Don’t worry, the plane hit the other building. I’m okay. We’re evacuating.” That was the last time Larry heard from him. Like other people who lost family members that day, Larry reported Eugene missing, filled out his death certificate, and, among other things, the workers’ compensation forms. However, Larry was informed that since he and Eugene were not legally married, he was not considered family. The compensation would go to Eugene’s father with whom Eugene had not spoken in over 20 years.

In the midst of his intense grief, Larry had to counter this claim that he and Eugene were not family, even though they had built a life together for 14 years. Larry joined with Lambda Legal Defense and Education Fund to educate the public, the media and legislators about this unjust situation. On August 20, 2002, the New York State Assembly passed a bill giving the domestic partners of September 11 victims full spousal rights to workers’ compensation.

Unfortunately, this type of situation is far from uncommon for same-sex couples and their families. Larry Courtney’s predicament was addressed in part because his life partner Eugene was killed in an attack of international significance. Although this was an important victory, most gay, lesbian, bisexual, and transgender (GLBT) families remain routinely discriminated against by public policy. Usually these injustices are not linked
to a high profile national tragedy, and these families’ stories do not make it to the evening news. Nevertheless, many GLBT people experience personal tragedies—such as the death of a life partner—that are compounded by a callous disregard of their family bonds, and as a result suffer emotionally and economically.

Whether family policy has been created with GLBT people in mind or not, it affects GLBT individuals and influences the security and well being of their families throughout their lives—from childhood through young adulthood, middle age through retirement, and even after death. Much public policy is based on the express goal of promoting “the family,” recognizing the economic and emotional interdependence of family members and giving special priority to this bond.

Historically these policies have been based on a narrow definition of family which does not encompass many of the familial bonds of GLBT people. Most policies continue to be gravely lacking in this regard, giving preference to heterosexual married couples and their children over other family formations. Unmarried couples, single parents, extended family caregivers, and the children of these families are all disadvantaged by such policies. Homophobia and heterosexism compound this problem for GLBT families. As a result, the family ties of GLBT people to their children and partners are often ignored, dismissed or attacked. GLBT people are left with little security for their relationships, especially in times of hardship or transition.

In promoting the family unit, one of the stated goals of family policy is to protect the needs of children and to ensure their health and safety. GLBT youth have special needs that can be addressed by public policy. For example, they are at greater risk than other youth of experiencing homelessness, suicide, and violence, and are often unable to find support at school or in their families. In addition, children of GLBT parents are vulnerable to the pervasive homophobia in many schools and communities, and often suffer economic and familial insecurity as a result of the lack of recognition of their ties to their non-biological parents.

As adults, GLBT people continue to be disadvantaged because their families are generally not legally recognized and are often socially disregarded. This can have major repercussions for parents and prospective parents in the arenas of custody and visitation, eligibility to serve as adoptive or foster parents, or eligibility to adopt a partner’s child. There can be additional complications for individuals and couples in the arenas of housing, access to social programs and health care, taxation, family leave from work, and rights after the dissolution of a relationship. Finally, GLBT elders face unnecessary hardships because of severe economic penalties, such as ineligibility to receive a deceased partner’s Social Security or pension benefits. Other forms of discrimination, such as heterosexist nursing home policies that do not recognize same-sex relationships, also complicate senior GLBT couples’ access to services and health care.

This manual will take a close look at the multiple facets of family policy as it relates to the lives of GLBT people and their loved ones. It will examine:

- Data on GLBT families, including the prevalence of parenting and how experiences are shaped by one’s race, class, and age.

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The family ties of GLBT people to their children, partners, caregivers and others are often ignored, dismissed or attacked. GLBT people are left with little security for their relationships, especially in times of hardship or transition.
• The major challenges faced by same-sex couples, and the avenues available to recognize their family relationships through access to marriage, civil unions, domestic partnerships, and reciprocal beneficiary status.

• The legal obstacles that GLBT people face as they seek to become parents or gain legal recognition of their parental relationships with their children.

• The unique situations of GLBT youth, who are often isolated and without family support, and the ways in which social services and schools can become more responsive to the needs of this population.

• The particular family issues facing GLBT elders, including discrimination in nursing homes and senior services, and unequal treatment under income support programs and Medicaid.

• Major health-related issues—such as health insurance access, decision making, leave from work, nursing care and domestic violence—as they relate to family policy and the ability of GLBT people to maintain family bonds and access quality care and services.

• Discrimination—in employment, housing, and taxation—and its impact on GLBT families.

This Family Policy Manual is for those interested in challenging the unequal treatment GLBT families experience under current public policy. In highlighting these areas, it is our hope that we can help policymakers, advocates, and others more clearly define areas of need and promote policies to respond to them. The conclusion provides recommendations for further research and policy change.

This manual was conceived as a series of research and policy briefing papers on key issues facing the nation’s millions of GLBT families. It is neither exhaustive on any topic discussed, nor comprehensive in addressing each and every issue faced by GLBT families and their advocates. Undoubtedly, given the numerous court decisions and family policy bills pending in state legislatures, some information may soon be out of date. But this is a starting point for identifying key policies, which, if changed uniformly, would result in a world much more responsive to the economic, legal and social issues GLBT people face in building and sustaining the relationships with those dearest to them—their partners, their children, their families.

CHAPTER NOTES

1. For example, the “best interest of the child” is the common legal standard used in child welfare decisions, including child placement, custody and visitation. Finlay v. Finlay 148 NE 624, 626 (1925) (“[The judge] acts as parens patriae to do what is best for the interest of the child.”)
What Defines a Family?

Most people in the United States consider a family to be “a group who love and care for each other,” defining the term “in emotional, rather than legal or structural terms.” In the GLBT community, as in the larger community, these families take many forms. They include:

- A single parent raising a biological child, an adopted child, or a relative’s child.
- Individuals living with their families of origin or with “families of choice,” such as close friends who serve essential caregiving functions.
- A couple living alone, with other family, or with friends.
- A couple with children from previous relationships, or adopted or conceived during their relationship.
- Multiple parent networks consisting of, for example, two couples or one couple and an individual, who are raising children together.
- Aunts, uncles, or grandparents raising their nephews, nieces, or grandchildren.

Although the public largely believes that a family is something more than a legal relationship and that caring for one another transcends legal boundaries, the vast majority of the policies that govern people’s lives define family as a legal unit comprised of a married man and woman with their own biological or adopted children.

Such limited definitions of family are out of touch with the contemporary demographic realities of American families. Currently almost a third of families with children in the U.S. are headed by unmarried parents, whether single or cohabiting partners. Approximately 44 percent of adults in the United States are unmarried. Married heterosexual couples with children comprise less than a quarter of American households, according to the 2000 U.S. Census. As the public, legislators and activists realize the true diversity of U.S. families, public policies have become more responsive.
to the needs of the full range of families. For example, increasingly public employers—including eight states, the District of Columbia and over 100 counties and cities—are offering health benefits to domestic partners of employees.\textsuperscript{5}

\section*{GLBT FAMILIES}

The public at large has only recently begun to “discover” gay, lesbian, bisexual, and transgender households, though their existence has been documented for decades. While many kinds of families—including single-parent families, unmarried-parent families and extended-family households—are disadvantaged by family policy, homophobia and heterosexism\textsuperscript{6} further compound this problem for GLBT individuals and their families.

\subsection*{Same-Sex Couples}

The majority of lesbians and gay men aspire to have committed, loving relationships and want a stronger sense of family in their lives.\textsuperscript{7} As research has consistently shown, these intimate relationships contribute greatly to health and longevity.\textsuperscript{8} In fact, a large proportion of lesbians and gay men are in long-term relationships. Among lesbians, between 64 and 80 percent report that they are in a committed relationship at any given time.\textsuperscript{9} Among gay men, several studies report that a range between 46 to 60 percent are in a committed relationship with another man.\textsuperscript{10} While there is insufficient research about the same-sex relationships of bisexual and transgender people, we assume they have similar aspirations and relationship prevalences. Fortunately, research is beginning to be more inclusive of bisexual and transgender people. The current dearth of such research, however, makes it difficult to generalize about bisexual and transgender people in same-sex relationships in the same ways that we can generalize about lesbian and gay people in same-sex relationships. Throughout this publication, most of the original research to which we refer is about gay and lesbian people and their relationships. Accordingly, in those instances, our text will refer to gay and lesbian couples and families. If the original research to which we are referring includes bisexual and/or transgender people, our text will be similarly inclusive.

The existence of these couples is partly reflected in the 2000 Census data. Nearly 600,000 same-sex cohabiting couples self-reported on the Census. Although this number likely represents a significant undercount, it constitutes a 310 percent increase over the 145,130 same-sex households tallied in the 1990 Census. In fact, same-sex partnered households were reported in 99.3 percent of all U.S. counties, representing every ethnic, racial, income and age group. Maps on the next pages illustrate increases in and concentrations of reporting same-sex coupled households in selected regions. The Census, however, did not count same-sex couples who don’t share a residence together.\textsuperscript{11} Also, the Census did not ask about sexual orientation or gender identity. Not all people in same-sex relationships are lesbian or gay; some are bisexual or transgender. The particular issues facing bisexual and transgender individuals, who are found in both same-sex and opposite-sex relationships, are discussed in subsequent sections.

Gay and lesbian couples engage in many of the same behaviors as heterosexual couples that indicate their commitment to each other. These include:
Ohio 1990
Total Same-Sex Households: 3,777

Ohio 2000
Total Same-Sex Households: 18,937

- Publicly identifying themselves as a couple to friends, other family, neighbors and coworkers.
- Living together.
- Being economically interdependent, such as jointly owning or renting a home, sharing or blending finances.
- Creating legal documents recognizing their relationships.
- Sharing parenting responsibilities.
- Exchanging rings to express commitment.
- Registering their relationships with local government.
- Marrying if their religious tradition recognizes same-sex marriage, as Reform Judaism and Unitarianism do.

Many same-sex couples are also raising children. One in five female same-sex couple households on the 1990 Census had at least one child under 18 years of age living in the home, as did 5 percent of male same-sex couple households. Data on parenting among same-sex households from the 2000 Census are not yet available.
While it is common to lump female same-sex couples and male same-sex couples together, their disparate experiences as men or women create significant differences between them. For example, the persistence of the gender gap in wages means that same-sex female couples in general earn less than same-sex male or opposite-sex couples. In addition, other factors, such as race, ethnicity, socioeconomic class, and age of the couple correlate with further differences in their approach to their relationships and their identity as a couple.

Lesbian and gay relationships (and same-sex bisexual and transgender relationships) also differ from many heterosexual relationships, especially the conservative conceptualization of them. Same-sex relationships challenge traditional gender roles related to the division of labor in the household. In addition, as is also true in many communities of color, lesbian and gay couples are likely to create extended kinship networks, including biological family members as well as close friends who function as family members.

**Bisexual Individuals in Relationships**

Popular conceptualizations of sexual orientation often present a strictly either/or perspective on intimate relationships and human sexuality: a person is either heterosexual
or homosexual; a person is emotionally and sexually attracted to either women or men. However, research shows that human sexuality is much more fluid than the simple gay-straight binarism. In fact, many people are neither exclusively heterosexual nor exclusively homosexual.

Most bisexuals describe themselves as being emotionally, sexually and/or romantically attracted to both women and men, and capable of loving and forming relationships with either. To most bisexuals, the gender of the person they find attractive is substantially less important than who the person is. Unlike most gay, lesbian or heterosexual people, they do not exclude a person from the possibility of a relationship simply because of his or her gender.

Contrary to common misperceptions, bisexuality is not the equivalent of sexual promiscuity. Most bisexuals describe themselves as monogamous in their committed relationships. Bisexual identity speaks more to the existence of attraction to people of either gender, rather than a statement of past or current sexual activity. Also contrary to common misperceptions, bisexuality is not a transitional phase between heterosexuality and homosexuality. No single pattern exists among bisexuals. Some have experienced both same-sex and opposite-sex relationships, though others have only experienced one or the other. Some feel they fit into neither the heterosexual nor homosexual worlds, while others feel identified more predominantly with one or the other.
Due to the lack of understanding, acceptance, or even acknowledgment of bisexual identity, the family relationship issues facing bisexual people seldom emerge when contemplating policy and legal changes. Some bisexual people are legally married to opposite-sex partners. As a result, they are able to access the privileges afforded to married couples. However, many bisexual people are not married either by choice or because they are in same-sex relationships. If they are committed to an opposite-sex partner they may nevertheless find the discriminatory aspects of marriage to run counter to their belief system. Finally, bisexual people in same-sex relationships often face similar discrimination and obstacles as gays and lesbians with regard to custody, visitation and adoption of children.

Transgender Individuals In Relationships

The term “transgender” is an umbrella term encompassing a range of people whose gender identities do not conform to traditional notions of masculinity and femininity. It includes transsexuals who sometimes undergo medical procedures to conform their bodies to their gender identity as male or female, cross-dressers, and individuals of any sexual orientation whose appearance or behavior leads others to perceive them as not typically male or female. Transgender people can identify as lesbian, gay, bisexual or heterosexual.

Although some issues are unique, many of the family issues facing transgender people are similar to those facing gay, lesbian and bisexual people. One similarity is that transgender parents face bias in family court proceedings when custody and visitation is determined during divorce. In fact, bias against transgender people in the family court system is quite severe, sometimes requiring that parents conceal their transgender status to maintain custody or to avoid having parent-child contact terminated altogether.

Another similarity is that a transgender person’s relationship with his or her partner is often not legally recognized. Transgender people who are married often live in a state of uncertainty about the legal status of their marriages, due to the unsettled state of the law in this area.

As a practical matter, transsexual people in many states are able to marry a person of the other sex after the transsexual person has undergone sex-reassignment surgery. In some states, a transsexual person’s marriage to someone of a different sex has been held to be valid, while courts in other states have held such marriages to be invalid. For example, a recent high-profile case from Kansas involved a transsexual woman (a male-to-female transsexual) married to a man who died without a will. As his wife, she should have received his estate. However, the deceased husband’s estranged son came forward and claimed that because his father’s wife was transsexual (and born male), she should be considered male and the same sex as her husband, making the marriage invalid. The Kansas Supreme Court agreed. This was despite the fact that the wife’s birth certificate had been amended to state that she was female years before she married her husband. Ironically, this ruling seems to indicate that a same-gender marriage between a transsexual woman (born male) and another woman should be deemed valid.

Transgender people who are lesbian or gay sometimes face the same barriers to getting their same-sex relationships recognized as other lesbian or gay people. In other cases,
two individuals of the same gender (for example, a female-born woman and a male-to-female transsexual who is not legally recognized as female) can legally marry. In addition, some transsexual people “come out” as transsexual and undergo sex-reassignment in the context of an already-existing marriage, thereby creating a situation in which what began as an opposite-sex marriage becomes a marriage between two persons of the same sex. The legal validity of these marriages has not been tested in most states. Hopefully courts will understand that there is no reason to destroy existing marriages or to deny transsexual people the freedom to marry.

The inconsistent treatment of transgender people and their marriages results in a patchwork of recognition for their relationships. The vast majority of states have not decided upon the treatment of transgender people in marriage. Therefore, in most of the country, the validity of a transsexual person’s marriage is uncertain, especially if it is challenged in court.

Race and Family Relationships in GLBT Communities of Color

Straight Blacks and White gays develop group identities that further distort who we are. When people think, “gay” they see, “White.” When they think, “Black” they fail to see “gay.”

—Chuck Tarver, creator of Blacklist, a website devoted to Black GLBT people.

To come out in the Filipino community would be double jeopardy. My first concern was that being openly gay would further jeopardize the serious consideration my political viewpoints would be given in the Filipino community. Secondly, to come out in mainstream society would force me to confront the homophobic attitudes of society at large in addition to the racial discrimination that I was already subjected to as an ethnic minority.

—G. Mangaoang, a gay man who is politically active in the Filipino community.

Census 2000 data on same-sex headed households indicate that same-sex couples of all racial and ethnic groups are self-identifying in significant numbers. While 72.4 percent of heads of household (“Person Number One” on the Census form) in reporting same-sex couples were non-Hispanic white, 10.5 percent were black, 11.9 percent were Hispanic, 2.5 percent were Asian/Pacific Islander, 0.8 percent were American Indian, and 1.8 percent were multiracial. This mirrors closely the racial diversity of the U.S. population as a whole. There is a limited body of research about the family structures and parenting behaviors of GLBT individuals who are people of color and/or members of ethnic minority groups. Most research on GLBT families has focused primarily on white people and has paid little attention to the impact of race or racism on these families. In addition most non-GLBT family research—including research on families of color—marginalizes or ignores GLBT parents and children. Moreover, most national surveys do not ask questions about sexual orientation, making it even harder to acquire data on GLBT people of color.

The Black Pride Survey, undertaken by the Policy Institute of the National Gay and Lesbian Task Force, queried nearly 2,700 black GLBT people in nine cities in the summer of 2000 and found that 25 percent of black lesbians and bisexual women and 4 per-
percent of black gay and bisexual men had children in the home. Nearly 40 percent of black lesbians and bisexual women, 15 percent of black gay and bisexual men, and 15 percent of black transgender people have children.\textsuperscript{33} A 1998 study found that one in four black lesbians lived with a child for whom she had child-rearing responsibilities, while only 2 percent of black gay men reported children in the household. One in three black lesbians reported having at least one child, as did nearly 12 percent of the gay black men surveyed.\textsuperscript{34} The 1990 Census data indicate that lesbian and bisexual women of color may be more likely than white non-Hispanic women to have children. While only 23 percent of the white women living with a same-sex partner had given birth to one or more children, 30 percent of Asian/Pacific Islander women, 43 percent of Hispanic women and 60 percent of black women in same-sex cohabiting relationships had given birth.\textsuperscript{35} These statistics indicate that anti-gay parenting policies and laws may disproportionately affect GLBT people of color.

This impact is further magnified by the pervasive and longstanding racial disparities in many child welfare policies and practices. In the arena of foster care, for example, poor parents and/or parents of color are far more likely to have their children removed and placed into foster care than middle-class and/or white parents.\textsuperscript{36} Black children are over-represented in the nation’s foster care system—they are 42 percent of those in foster care versus 17 percent of all U.S. children.\textsuperscript{37} Moreover, three of the four states with anti-gay adoption and foster care policies—Arkansas, Mississippi and Florida—are in the South and have higher proportions of blacks than the rest of the country. This indicates that anti-gay parenting bills may have a disproportionate impact upon people of color, both potential adoptive or foster parents and children in need of loving, stable homes.

Networked family structures are particularly common among families of color.\textsuperscript{38} Family responsibilities, including financial and emotional support, elder and child caregiving, and other household duties are shared through support networks that may involve the participation of extended family and friends in a variety of familial roles. Research on black families has shown that kinship arrangements commonly include multigenerational family structures as well as other types of extended family households.\textsuperscript{39} Several researchers have found that Latino families sustain complex networks that join households and communities and even cross geographic borders to provide assistance and support after immigration.\textsuperscript{40} To many Native Americans, a family encompasses an entire range of extended kin including aunts, uncles, grandparents, cousins, in-laws, and nieces and nephews, as well as parents and siblings.\textsuperscript{41}

GLBT people’s experiences in a networked family or kinship structure may be unique in several respects. In addition to any biological, foster, or adopted children they may have, GLBT family members may also be expected to “parent” other children in the network, providing financial and emotional support to siblings, nieces and nephews, and grandchildren.\textsuperscript{42} Because of their intergenerational nature, extended family networks may also present a simultaneous array of housing, health, and economic concerns across the human age-span, such as supervised care for elders and children, medical expenses (from prenatal and pediatric care to emergency treatment and geriatric care), educational costs, and career responsibilities.\textsuperscript{43}

Percentages of women living with a same-sex partner who had given birth to one or more children varied by race:

- White—23%
- Asian/Pacific Islander—30%
- Hispanic—43%
- Black—60%
Prevalent patterns of employment among people of color may also impact GLBT people in networked families or kinships if their families are representative of national norms. Current Population Survey data for 2002 show that approximately 40% of all people of color in the United States are employed in service, manual and factory labor forces. Work schedules in these fields frequently require family members to be away from home during evening, nights and weekends, presenting a variety of stressors across the family network as members make time for disparate work, education and dependent care responsibilities.

For people of color, coming out does not merely involve confronting the homophobia of the dominant society, but can also entail enduring the hostility of their communities of origin. While homophobic attitudes are pervasive in many white communities, for GLBT people of color, their communities of origin can be essential in maintaining ties to their cultural heritage and providing support against the racism of the wider society. Research in the black community suggests that, because of the prevalence of extended family networks, should a family be unwilling to accept the new identity disclosed by a GLBT family member, both the family and the individual may suffer a loss of supportive networks and exchanges on which they may be mutually dependent. GLBT people of color may also be excluded from, marginalized, or exoticized by the white GLBT community, just as happens in heterosexual society. As a result many GLBT people of color find themselves to be doubly isolated.

Class and Family

Despite the widespread stereotype that gay and lesbian people are more wealthy than the general population, research shows otherwise. An analysis of 1990 Census data and General Social Survey data from the late 1980s and early 1990s indicates that gay men earn about one-fifth to one-quarter less than their heterosexual counterparts. Lesbians appear to earn about the same as heterosexual women, but lesbian couples earn less than straight couples because women on average earn less than men. In fact, many GLBT people are poor. In New York City, 68 percent of people living with HIV or AIDS—about a third of whom are gay or bisexual men—rely on Medicaid, a health insurance program for low-income people. It is estimated that GLBT youth comprise more than 40 percent of New York City youth who are homeless and without economic resources. Several studies have demonstrated the extreme vulnerability that many transgender people have to discrimination and unemployment, a phenomenon linked to increased likelihood of poverty. Elders in same-sex relationships are ineligible for key resources which safeguard economic security in old age such as Social Security survivor benefits or their partner’s pension, increasing the likelihood of GLBT people experiencing economic hardship as they age.

Although precise data on the economic status of GLBT people of color is unavailable, it should be noted that in general blacks are twice as likely to live in poverty than whites. Economic disparities exist for other racial and ethnic groups in the United States as well. Around one in four Hispanics (23 percent) and Native Americans (27 percent) live in poverty, compared with only one in 13 non-Hispanic whites (8 percent). Asian American families also have a higher rate of poverty (11 percent) than non-Hispanic whites. Even during the boom years of the

Gay men earn one-fifth to one-quarter less than their heterosexual counterparts. Lesbians appear to earn about the same as heterosexual women, but lesbian couples earn less than straight couples because women on average earn less than men.
In the 1990s, economic progress was mixed for blacks and Hispanics alike. Median household income for blacks and Hispanics set records in 2000, but white households still earned on average $15,000 more than black households. People of color, though a minority in the U.S., still made up the majority of those living in extreme poverty.

The U.S. government’s emphasis on income differences over differences in assets understates the economic gap between black, Hispanic and white non-Hispanic households. In many cases, the wealth gap is even larger than the income gap as families of color face great barriers to accruing assets. In 1995, the median net worth of white non-Hispanic households was seven times more than that of black and Hispanic households.

Like other poor people, impoverished GLBT individuals confront many obstacles. However, they face additional challenges because of the way in which much of the public policy and private sector refuse to accept their identities or recognize their families. For example, poor GLBT individuals grapple with a punitive welfare system that increasingly favors married heterosexual couples over single parents and all unmarried couples, including same-sex couples. Also, homeless GLBT people may be separated from their same-sex partners in the shelter system and may be unable to apply for public housing as a family. Transgender homeless people may be denied access to a shelter or forced into a shelter based on their birth sex. For example, a male-to-female transgender person may be forced to stay in a men’s shelter. Rather than risk harassment and violence, some choose instead to remain on the streets.

Furthermore, poor GLBT families are disproportionately hurt by policies that economically disadvantage all GLBT people. Employment discrimination and lack of recognition of partner relationships for the purpose of Social Security, pension, and health insurance coverage all have a more severe impact on those already struggling to make ends meet. The denial of equal access to marriage and adoption forces many same-sex couples to spend thousands of dollars on legal documents to protect their families—documents that are not always upheld in court. Those who cannot afford such legal fees can find their families without even minimal protections during times of crisis. Second parent adoption can cost thousands of dollars—an insurmountable obstacle to many of moderate means. Less affluent lesbians can rarely afford to pay for donor insemination through a fertility clinic. Instead, they might rely on friends or acquaintances to provide sperm, not only risking their health, as this sperm is unscreened for diseases, but also potentially risking the integrity of their family if the donor later claims custody and/or visitation rights as “the father.”

Degree of “Outness” as a Factor in Accessing Services

The ability to access services or take advantage of legal protections for families often depends on being able to disclose one’s sexual orientation and/or gender identity publicly. GLBT people must make a conscious decision about who has knowledge of their sexual orientation and/or gender identity, and almost everyone falls somewhere on the spectrum between being completely “closeted,” i.e. not telling anyone, or completely “out,” i.e. disclosing to everyone they interact with on a significant level. The degree to which people feel they can be out depends on various factors, including having supportive people in one’s community of family, friends, colleagues, and neighbors, and having the social and/or economic security that would allow risking rejection by some people. The region one lives in, one’s religious, ethnic or cultural background, and one’s race, class and age can all play a role in determining the degree of self-disclosure.
While being publicly out places GLBT people at the risk of discrimination, isolation, harassment and even violence, being closeted also comes with its own risks. In addition to the psychological burden of having to hide a significant component of one’s life, people who are closeted have significant obstacles to accessing adequate services and protecting their families. For example:

- Someone who has just left a heterosexual relationship may not feel able to seek custody or visitation of their child for fear of being outed in court.
- Someone who is not out to their supervisor for fear of discrimination will be unlikely to seek health coverage for their partner, even if domestic partner benefits are available.
- A lesbian seeking services from a mainstream domestic violence program might refer to her batterer as “he,” for fear that if she discloses a same-sex batterer she may be denied services. This may interfere with the provision of appropriate services.
- A patient who does not come out to his or her doctor will not get appropriate sexuality-related care and is more likely to have his or her partner’s right to visit in a hospital or make medical decisions for him or her challenged.

Homophobia, biphobia, and transphobia continue to be significant problems in our society, and fear of the negative repercussions of being out is often warranted. To adequately protect GLBT families and ensure that advances made can be accessed by the broadest possible group of GLBT people, we must also combat anti-GLBT bigotry that continues to pose a huge impediment. Nondiscrimination laws and domestic partner benefits not only address specific inequalities. They also send a message that GLBT people are equal members of society, and deserve the freedom to live their lives openly, without fear or shame. In addition, programs specifically created to educate service providers, students and the public at large about GLBT issues continue to be necessary. Sensitivity trainings, safe schools programs, and public service announcement campaigns all can play important roles in combating this problem, making our communities safer for GLBT people and their families to live openly.

**CHAPTER NOTES**


12. Ibid.


22. Ibid.


Our Families—The Basics

27. See Gardiner, 42 P.3d 120; and Littleton v. Prange, 9 S.W.3d 223 (Tex.App.-San Antonio 1999).


35. Bradford, et.al.


37. Ibid.


47. Ibid.
49. Ibid.
58. Economic Policy Institute. (2000). The State of Working America. Washington, DC: Author. Available at http://www.epinet.org/books/swa2000/swa2000intro.html. “Over the entire decade [of the 1990s], the average income of Black families grew 1.1 percent per year, more than double the rate for whites (0.4 percent per year). During the boom years of 1995-98, however, the growth in Black family earnings (1.9 percent per year) trailed that of whites (2.4 percent per year). For Hispanics, the story was reversed. Over the full decade of the 1990s, Hispanic family incomes fell an average of 0.4 percent per year, but Hispanic families did much better than whites during the boom years, when average Hispanic family income grew 4.1 percent per year.”
59. Ibid.
Partner Recognition: Protecting Same-Sex Couples and their Children

THE UNITED STATES LAGS BEHIND ITS ALLIES AND NEIGHBORS IN PARTNER RECOGNITION

Government recognition of same-sex partner relationships has come slowly in the United States, especially when compared with other industrialized democracies. At the federal level there have been very few affirmative steps taken, such as the recent passage of the Mychal Judge Act providing a federal death benefit to any beneficiary listed in the insurance policy of a police officer or firefighter killed in the line of duty. Such limited advances are overshadowed by the 1996 so-called Defense of Marriage Act, whereby Congress and the President defined marriage as exclusively heterosexual and declared that states do not have to recognize same-sex marriages conducted in other states.64

Vermont offers “civil unions,” a policy that grants same-sex couples the same rights, privileges, and responsibilities as spouses under state law. It is notably less comprehensive than marriage because it offers no federal rights and in general has not been recognized outside Vermont. Over the past decade eight states and the District of Columbia have offered domestic partner benefits to the same-sex partners of public employees. Most of these states are in the northeast or on the west coast.65 California’s domestic partnership laws go further than any other state’s domestic partnership law in securing rights and benefits to same-sex cohabiting couples. Several dozen U.S. municipalities also provide health and sometimes other benefits to same-sex partners of municipal employees, and/or offer domestic partner registries to resident same-sex couples.66 However, no state has legalized same-sex marriage, and nearly three in four have passed laws restricting marriage to heterosexual couples.

Several Canadian provinces have passed laws granting equal benefits to same-sex couples in a number of areas, including health care, tax law, inheritance, property division, workers’ compensation, and, in some cases, adoption. A number of provincial and federal court rulings have also established partner recognition rights, including federal social insurance benefits, property division rights, and prison conjugal visits. Provinces that have passed

Brazil, Israel, South Africa and other countries have gone further than the U.S. federal government and most state governments in granting benefits and responsibilities to same-sex couples.
legislation recognizing same-sex couples include British Columbia, Quebec, Ontario, Manitoba, Saskatchewan, Nova Scotia, New Brunswick, and the Northwest Territories. The federal government of Canada also grants rights to same-sex couples under immigration policy. Brazil, Israel, South Africa and other countries have gone further than the U.S. federal government and most state governments in granting benefits and responsibilities to same-sex couples (see section below on international recognition).

THE BENEFITS OF PARTNER RECOGNITION

Marriage is an institution that has evolved over human history and has come to provide a comprehensive package of protections for committed couples. In modern times, in part as a result of pressure from the feminist movement, marriage has increasingly protected the more economically-dependent spouse, usually the wife. The inability to access the institution of civil marriage prevents same-sex couples and children of gay and lesbian parents from enjoying many rights and forms of economic and emotional security that married heterosexual families take for granted. Fairness is a core value in the United States. With the increased recognition of the unjust exclusion of a class of people—GLBT people in same-sex relationships—from these protections, local and state governments have begun to take steps toward rectifying this situation. They have offered domestic partnership protections and civil unions as alternative means of recognizing same-sex relationships. While these policies offer extremely important concrete benefits to families that cannot or choose not to get married, only civil marriage provides full and complete equality at both the state and federal levels for same-sex couples and their children, as far as family policy is concerned.

There are distinct advantages to providing formal support to the family relationships of gay and lesbian couples (and the same-sex relationships of bisexual and transgender people). For those in committed same-sex relationships,

- Legal recognition enhances their ability to care for one another, particularly in the event of a health emergency or other crisis.
- Formal recognition of same-sex partners and parent-child relationships enhances emotional and physical health as well as economic security of all family members.
- Children of GLBT parents benefit from increased social acceptance and familial support.

Marriage has advantages as a comprehensive, default system for the couples who participate in it. However, even if marriage discrimination against same-sex couples ends, there will be individuals, couples and families who will not want to or be able to participate in the institution of marriage. Whether because their family is not based on a committed couple unit, or because they are philosophically opposed to marriage as an institution, or because they desire to have more flexibility in defining their relationships, there are individuals who need protections for their families regardless of their marital status. Even as ending marriage discrimination is an important step toward creating legal equality for same-sex couple-headed families, it is important that we acknowledge and support family diversity, including the more complex ways many GLBT individuals structure their lives, care for their children, and maintain extended family networks.
Domestic partnership or reciprocal beneficiary laws offer important alternative systems that should also be pursued. In addition, policymakers should create various systems for individuals to affirmatively define their family relationships. These already exist to some extent: individuals may name guardians for their children in the event of their passing, can designate health care and legal decision makers in the event of their incapacitation, or can use a will in order to leave their possessions to anyone. However, these protections need to be expanded so that people can choose to name other significant individuals as their beneficiaries in different contexts. There also needs to be increased education efforts so that people who can benefit from the existing protections know how to access them.

LOST IN THE TWIN TOWERS
A Profile of Larry Courtney & Eugene Clark

On October 30, 2001, Eugene Clark and I would have celebrated 14 years as committed lifetime partners. On the morning of September 11, we got up early, had coffee together and dressed for work. He kissed me goodbye and said, “I’ll see you tonight.” He left a little earlier than usual so that he could vote in New York City’s primary election before the polls got crowded. He then boarded the “E” train for his ride to the office. He worked for Aon Consulting on the 102nd floor of Tower number 2, the south tower, of the World Trade Center. About 8:55 I got to my office in mid-town and noticed the message light on my phone was blinking. I retrieved the message. It was Gene. “Don’t worry, the plane hit the other building, I’m OK. We are evacuating.” At 9:03 a second hijacked plane hit the 86th floor of the south tower. The building collapsed at 10:05. Gene never came home from work.

Gene and I had moved to New York from DC in 1988 so that I could accept a job offer. He didn’t have a job in New York but was willing to make that move because of our commitment to each other. We enjoyed the life in the city. We reveled in the acceptance of a gay couple as a family unit. We entertained friends and family. We went to the theater. We went to gay bars, once or twice. We vacationed together and spent holidays together with different family members or just with friends. We lived life as a married couple and in 1994 when it became legal, we registered in New York City as domestic partners, receiving a certificate which is as close to a marriage certificate as we would ever have.

When Gene’s mother had a stroke in 1995, we brought her from DC to live with us in our one bedroom apartment. We nursed her and cared for her. That’s what family does. At her death in 1999, we made arrangements for and attended her funeral, recognized as a married couple. We lived the rest of his life that way!

After Gene disappeared, I did every thing I could to find him: searching every emergency room, every avenue available and posting his picture as
MARRIAGE

The Legal and Social Significance of Marriage

Marriage is a unique private and public demonstration of love and commitment that provides access to an enormous range of familial benefits and protections. At present, no state in the U.S. recognizes marriage between two people of the same sex, although there is litigation in Massachusetts, New Jersey, and Indiana to win the freedom to marry. Many liberal religious congregations, including Reform Judaism and Unitarianism, conduct same-sex wedding ceremonies, but these are not recognized under civil law. The denial of access to civil marriage means that committed same-sex couples are denied most of the benefits associated with this institution, no matter how long they have been committed to each other or whether they have the blessing of their religious community.
This unequal treatment disproportionately hurts the most vulnerable in the GLBT community. In 1996, the U.S. General Accounting Office listed 1,049 ways in which marital relationships are given special treatment by the federal government. There are also hundreds of rights, benefits, and responsibilities automatically conferred upon married couples that have implications at the local and state levels of government. These include economic advantages through tax law, increased access to health care and social services, and much more. Low-income couples are the hardest hit by this economic discrimination. Some same-sex couples spend thousands of dollars writing up legal contracts to achieve minimal protections for their relationships. The hefty price tag puts this option out of reach to low-income couples. Moreover, many legal protections are conferred by law and cannot be secured by drafting documents or other private arrangements. Some examples include the right to bring a lawsuit for wrongful death of one’s partner, access to workers’ compensation death benefits or ability to adopt a partner’s child. Children suffer from lack of recognition of their parents’ relationship, limiting access to health care and economic protections, and putting at risk their relationship with the non-biological, non-adoptive parent should the relationships ever be challenged.

Furthermore, even heterosexual relatives suffer as a result of discriminatory marriage laws. For instance, the parents of a lesbian can be denied their legal status as grandparents when their daughter’s relationship to her partner and nonbiological child is not legally recognized. Should the child’s parents die unexpectedly without relatives on the other side and without papers nominating an intended guardian, the child could be considered an orphan. In contrast, a married man is automatically considered the legal parent of any child born to his wife during the course of their marriage, regardless of the biological relationship between father and child. His parents’ relationship to the child is also secured.

**The Benefits of Marriage**

Some of the significant benefits, rights, and responsibilities of marriage are as follows:

For partners,

- The ability to access coverage of partners under Medicare and Social Security.
- The ability to file joint tax returns.
- The ability to obtain death benefits when a partner dies.
- The ability to obtain health and retirement benefits from an employer.
- The right to sponsor his or her spouse for immigration to the U.S.
- The ability to take sick leave or bereavement leave to care for a partner or a partner’s child.
- The right to make medical decisions for a partner who falls ill.
- Assumption that children born to a marriage are the children of both partners, regardless of biological relationship.
- Access to step-parent adoption of partner’s children.
• The right to use the courts for divorce.
• The right to sue for wrongful death.

For children born to a marriage or adopted by their parent’s partner,
• The right to live with a non-biological parent after a biological parent dies.
• Access to health benefits and the right to inherit death benefits from either parent.
• The right to Social Security benefits if either parent dies.
• The right to financial support and a continued relationship with both parents should their parents separate.

SAME-SEX COUPLES HURT BY MARRIAGE DISCRIMINATION

Bill Randolph lost his partner of 26 years when the World Trade Center was attacked on September 11, 2001, but is not eligible for Social Security survivor benefits—benefits that would automatically be given to the surviving spouse in a heterosexual marriage. “If you’re straight and have a marriage license, it’s one, two, three,” said Randolph. “We’re clawing at it just to be acknowledged.”

Jeanne Newland left her job in Rochester N.Y. to go with her life partner, Natasha Doty, to Virginia where Doty had accepted a new job. Newland expected to find a job in short order, but after six months of trying unsuccessfully to find work, she applied for unemployment benefits—benefits that would have been granted automatically if she had been married to her partner. New York state denied her claim, stating that following her partner was not a “good cause” to leave a job. This situation “just…didn’t seem fair” to Newland.

Bill Flanigan was prevented from visiting his life partner, Robert Daniel, when Daniel was dying in a Baltimore hospital in October 2000. Hospital personnel refused to acknowledge that Flanigan and Daniel were family. “Bill and Bobby were soulmates and one of the best couples I’ve known,” said Grace Daniel, Robert’s mother. “They loved each other, took care of each other, came to family holidays as a couple, and Bill still babysits for my grandson. If that isn’t family, then something is very wrong. When someone is dying, hospitals should be bringing families together rather than keeping them apart.”

When Linda Rodrigues Ramos died tragically in a car accident, her partner, Lydia Ramos, did not expect that she was about to lose their daughter also. After the funeral, Linda’s sister, Marie, held a memorial gathering and asked that the daughter be present. However, Marie never returned the girl as she had promised, refusing Lydia’s pleas and not even allowing Lydia to visit her daughter. Not understanding Lydia’s relationship to her daughter, the court refused to grant her emergency guardianship. The girl was completely cut off from her only surviving mother, her siblings and her grandparents on that side. Only after going to court, with representation from Lambda Legal Defense and Education Fund, was Lydia able to gain permanent guardianship and be reunited with her daughter. 
The Struggle for the Freedom to Marry: From Hawaii to Super DOMAs

In 1993, the Hawaii Supreme Court launched an important and ongoing international debate when it ruled that it was discriminatory under the state constitution to deny three lesbian and gay couples the right to obtain a marriage license. This decision stated that Hawaii could only deny the marriage licenses if it could indicate a compelling reason to do so. In 1996, the trial court found that the state had failed to justify its denial with a compelling reason, and so the couples must be allowed to marry under civil law. In 1998, an Alaska trial court also ruled that marriage was a fundamental right that could not be denied same-sex couples.

In 1998, a backlash to these rulings resulted in Hawaii and Alaska state constitutional amendments passed by voters that reserved marriage for a man and a woman. In Hawaii the legislature created a much more limited status for qualified couples, including same-sex couples, through a “reciprocal beneficiary” law. Nevertheless, the Hawaii rulings were extremely significant. In 1996, the court recognized that, “Gay and lesbian parents and same-sex couples can be as fit and loving parents, as non-gay men and women and different sex couples…. [S]ame-sex couples can, and do, have successful, loving and committed relationships….Gay men and lesbian women share this same mix of reasons for wanting to be able to marry” as heterosexual couples. Judge Chang, who wrote the decision, concluded that the state “has failed to establish or prove that the public interest in the well-being of children and families, or the optimal development of children[,] will be adversely affected by same-sex marriage.”

In Congress, right-wing conservatives responded to the Hawaii decision by introducing the “Defense of Marriage Act” (DOMA). DOMA, which passed overwhelmingly in both houses of Congress in 1996, defined marriage as a union between a man and a woman for federal purposes, thereby denying federal benefits to same-sex couples who might some day win the right to marry legally in any state or overseas, and announces that states do not have to recognize valid marriages entered into by same-sex couples in another jurisdiction. In direct contrast to the language of Judge Chang's decision, the political discourse accompanying the DOMA debates contributed to an atmosphere of homophobia.

Even as welfare reformers portrayed single mothers and cohabiting unmarried couples as selfish and narcissistic for not getting married, these same politicians and pundits denounced gay and lesbian couples as self-indulgent narcissists for seeking to get married.

In fact, it is no accident that DOMA and the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), or the welfare reform act, were passed and signed into law within days of each other in 1996. Both same-sex relationships and welfare “dependency” were decried as a threat to an abstract construct of “the family”—read: the heterosexual, married family—which was posited as “the backbone of this country” and “one of the essential foundations on which our civilization is based.”

It’s ironic that even as welfare reformers portrayed single mothers and cohabiting unmarried couples as selfish and narcissistic for not getting married, these same politicians and pundits denounced gay and lesbian couples as self-indulgent narcissists for seeking to get married. The common theme was that both unmarried straight people and same-sex couples create families that threaten the future of American, and even western, civilization. During the national debate on welfare that start-
ed under the Reagan Administration and continues into the present, welfare recipients have been portrayed as lazy, self-indulgent individuals whose incompetence as parents threatens America's social, cultural, and economic fabric, and the "American family":

"[T]he easy availability of welfare in all of its forms has become a powerful force for the destruction of family life through the perpetuation of a welfare culture."
—Reagan Administration report, 1986

"[B]ehavioral" poverty continues to grow "at an alarming pace." Behavioral poverty, as opposed to material poverty, is defined as "a cluster of severe social pathologies including: an eroded work ethic and dependency, the lack of educational aspirations and achievement, an inability or unwillingness to control one's children, as well as increased single parenthood, illegitimacy, criminal activity, and drug and alcohol use."
—Robert Rector, Heritage Foundation, 1994

"[T]he only job training that welfare recipients need is a good alarm clock."
—Mississippi Governor Kirk Fordice, 1995

In order to address this alleged dysfunctional and destructive "welfare culture," the welfare reform act prioritized—in addition to work—marriage, the reduction of out-of-wedlock births, the reinsertion of fathers into families led by single mothers, and the promotion of mother-father families as essential for the successful rearing of children. As Anna Marie Smith notes, the welfare reform act "places most of the blame for poverty—and indeed, for the entire reproduction of poverty—on what it regards as sexually irresponsible women…Wherever heterosexual women selfishly choose to engage in extra-marital sex or to leave their male partners (lesbians have been entirely erased from this imaginary scenario), they are engaging in behaviors that will ultimately impose unacceptable costs on the rest of society."

The DOMA debates were rife with similar themes, painting gays and lesbians who want to marry as sexually irresponsible, selfish, and a direct threat to civilization. Here are a few choice quotes from the DOMA floor debate on Capitol Hill:

Throughout history, civilizations that have allowed the traditional bonds of family to be weakened, these civilizations have not survived.
—Rep. Ron Packard (R-CA)

...as Rome burned, Nero fiddled, and that is exactly what [proponents of same-sex marriage] would have us do...The very foundations of our society are in danger of being burned. The flames of hedonism, the flames of narcissism, the flames of self-centered morality are licking at the very foundations of our society: the family unit.
—Rep. Bob Barr (R-GA)

We as legislators and leaders for the country are in the midst of a chaos, an attack upon God’s principles.
—Rep. Charles Canady (R-FL)

Since its passage, the constitutionality of the federal DOMA has become a source of debate among legal scholars. Critics contend, first, that DOMA is an intrusion into state power and violates the Tenth Amendment, which guarantees all unenumerated powers to the states; second, that it violates the "equal protection" clause of the Fourteenth Amendment by singling out a disfavored minority (gay, lesbian, bisexual,
and transgender people seeking to marry someone of the same sex) for the sole purpose of excluding them from an important civil right; and third, that it may violate the “full faith and credit clause” of the U.S. Constitution, whereby states recognize important legal duties and forms of status created in other states. In general, state governments are exclusively responsible for determining who may enter into civil marriage, the process by which couples may get married, and the rules for divorce. Despite differences among states’ marriage laws, heterosexual couples married in one state do not need to re-marry in another in order to have their relationship validated. The “portability” of marriage and its benefits—which is directly threatened by DOMA—is key to its effectiveness as a family security package. Experts argue that DOMA would be unable to withstand the scrutiny of the United States Supreme Court. Nevertheless, it is unlikely that the law will be tested until one state permits the marriages of same-sex couples, another state or the federal government refuses to recognize those marriages, and the married couples challenge this discrimination.

In 1999, tangible progress towards marriage rights for same-sex couples was made in Vermont, when the state Supreme Court held that the state must grant same-sex couples the protections and benefits of marriage under state law. This led to the passage in 2000 of Vermont’s groundbreaking civil union legislation that granted same-sex couples parallel rights and benefits of marriage under Vermont law (see below for more information on civil unions). However there has been a strong backlash to the Hawaii and Vermont decisions, and states fearing that they may be required to extend formal recognition to same-sex couples have passed laws to prevent this possibility by explicitly defining marriage as limited to heterosexual couples. Thirty-six states have passed anti-same-sex marriage laws, most since the mid-1990s. Currently same-sex couples in New Jersey, Indiana, and Massachusetts are suing for the right to marry in those states. As the national debate continues, public support for same-sex marriage and access to the rights and privileges of marriage steadily increases.

**Benefits of Legalizing Marriage for Same-Sex Couples**

- Ends discrimination against same-sex couples, giving them access to the same rights, responsibilities and privileges as opposite-sex couples.
- Provides a comprehensive package of economic and social protections to couples and children, allowing a more secure environment for raising children and increasing family members’ ability to care for each other effectively.

**Drawbacks of Legalizing Marriage for Same-Sex Couples**

- Does not increase protections for couples who, for personal, religious or philosophical reasons, may find the institution of marriage objectionable or incompatible with how they want to structure their lives, but who still need and deserve certain basic protections.
- Societal pressure to marry may lead to marriages where individuals involved do not understand the full range of responsibilities to which they are committing. Some of these include: duty to financially support a former spouse and children from the relationship, duty to the spouse’s creditors, and the “marriage penalty” in federal tax.
A TREND TOWARDS RECOGNIZING SAME-SEX UNIONS

Public Opinion on Partner Recognition

While most Americans do not yet support same-sex marriage, a majority do support equal access to some of the specific benefits of marriage. For example, most people feel that gays and lesbians should be entitled to inheritance rights (73 percent) and Social Security survivor benefits (68 percent). The level of opposition to same-sex marriage has dropped, while the level of support has increased somewhat over the past decade. A 2001 Henry J. Kaiser Family Foundation survey found that 55 percent of the general public oppose civil marriage equality for same-sex couples, while 39 percent support it. The public is generally more favorable towards “legally sanctioned partnerships and unions,” with a plurality of 47 percent supporting these forms of partner recognition. Although most Americans don’t yet support same-sex marriage, two thirds (66 percent) believe that same-sex marriage will be legalized in their lifetime, according to a 1999 Wall Street Journal/NBC News poll. A majority of college freshmen surveyed support the right of same-sex couples to marry: 56 percent in a 2000 survey, and 58 percent in a 2001-2002 survey.

Recognition of Same-Sex Unions by Major Newspapers

Increasingly, daily papers of major cities all over the country are printing announcements of the unions, commitment ceremonies, and marriages of same-sex couples, much as they do marriages of opposite-sex couples. At least 70 of about 150 daily papers print announcements of same-sex unions. Many of these papers print the notices on the same terms as wedding announcements, placing them in the same section or on the same page. A smaller number of papers place the announcements in separate sections or print them on a separate day. Although there are still many newspapers that do not print announcements of same-sex unions, the trend is toward inclusion. As the executive editor of the New York Times said regarding that paper’s decision to run notices of same-sex unions under the same criteria as wedding announcements, “We acknowledge the newsworthiness of a growing and visible trend in society toward public celebrations of commitment by gay and lesbian couples—celebrations important to many of our readers, their families and their friends.”

New York City Recognition of Unions and Marriages Performed in Other Localities

The New York City Council has taken a significant step towards recognizing same-sex relationships on the same terms as opposite-sex relationships. In August, 2002 the council passed, and the mayor signed, a law recognizing same-sex domestic partnerships, civil unions and marriages legally entered into in other jurisdictions. In a move that was as important symbolically as it was substantively, the council decided to include the word “marriage.” Although only the Netherlands currently allows same-sex couples access to civil marriage, the language in this law points to a future when many other jurisdictions may end discrimination in marriage. Just as opposite-sex couples need not re-register their marriages if they move from state to state, this law gives same-sex couples moving to New York City recognition of their previously registered partnerships and unions.
Anti-Same-Sex Marriage Laws in the United States


* In 1998, the Missouri Supreme Court overturned the 1996 law.

This map can be downloaded at http://www.ngltf.org/downloads/marriagemap0601.pdf

Talking Points: On Marriage Equality for Same-Sex Couples

Q. When same-sex couples insist upon the right to marry, aren’t they demanding a special right?

A. No. When same-sex couples ask for equal access to civil marriage, they are asking to be treated equally. Marriage should be available to all committed, loving couples, regardless of sex or sexual orientation.

When a heterosexual couple marries, the couple automatically benefits from the comprehensive package of protections marriage offers through a plethora of policies and laws. On the federal level alone, there are over 1,000 laws and policies that delineate the couple’s rights, benefits and responsibilities. In addition, hundreds of state, local and private sector rights—for example, employment-related—family benefits are automatically granted to couples through the institution of marriage.

Some of these include: the couple being viewed as an economic unit (for filing of taxes, inheritance purposes, and receipt of pensions or Social Security benefits in
the event of one spouse’s death), protections that help the couple stay together geographically (immigration rights, eligibility for unemployment during a relocation process), health-related rights (insurance coverage, hospital visitation and medical decision-making rights), and parental recognition (automatic parental status in relation to any child born during the marriage, simpler adoption processes). Committed gay and lesbian couples, and bisexual and transgender people in same-sex relationships, are regularly denied these protections and, at best, can access only some of them piecemeal.

Q. What about the fact that many religions do not allow the marriage of individuals of the same sex?

A. Access to civil marriage under secular law is completely unrelated to the right of religions to decide whom they will marry. It is standard under state and federal law in the United States, which is secular in its authority and operation, to recognize marriages that some religious traditions do not allow. For example, some religions do not recognize divorces or second marriages, even though they are allowed by civil law. Many religions do not marry a couple if one member of the couple adheres to a different faith. That said, however, many religious denominations have sanctified same-sex unions. These include the United Church of Christ, Reform Judaism and Unitarianism. At this point those couples’ unions are not recognized by law, despite the religious blessings.

Q. What about civil unions or domestic partnership benefits—don’t these provide protections for same-sex couples?

A. While domestic partnership benefits and civil unions represent significant advances toward recognition of same-sex relationships, they are not a substitute for full and equal civil marriage. Only one state, Vermont, allows same-sex couples to enter into civil unions. Although civil unions offer many of the same rights, benefits, and responsibilities of marriage, same-sex couples who enter into a civil union are still denied access to all of the rights and responsibilities provided by federal law. Also, it remains unclear to what extent the benefits and obligations associated with civil unions will be recognized in other states. Thus, in contrast to a married heterosexual couple who will retain their marital status when they move from Vermont to Texas, a lesbian couple’s civil union may not be recognized in the same situation. Civil unions give same-sex couples important rights and protections, but far less than full equality.

Domestic partnership benefits are not universally available. Even where they do exist, their scope varies from state to state, from locality to locality, and from employer to employer. None are as substantial as the benefits associated with marriage and rarely are they portable, although New York City’s recently passed law does provide an element of portability for people moving to New York City. Also domestic partnership provides just a handful of benefits, not the more than 1,000 rights, benefits and obligations of marriage.

Q. Won’t allowing same-sex couples to marry fundamentally undermine the institution of marriage itself?

A. No. There is no reason that allowing same-sex couples to marry would have any impact upon the marriages of opposite-sex couples. Further, institutions are gener-
ally undermined when people leave them, not when people enter them. Some argue that granting equal marriage rights to same-sex couples will actually strengthen the institution of marriage. Most importantly, the institution of marriage is not static; it has changed significantly over time. Married women used to be the legal property of their husbands, Asian immigrants were prohibited from marrying each other, and interracial marriages were prohibited by anti-miscegenation laws. A strong institution endures by accommodating social and cultural shifts. Allowing committed same-sex couples to marry will modify the institution of marriage, but will not undermine it.

“Super DOMAs”: A Threat to GLBT Families

A serious threat to the security of GLBT families has recently appeared in the form of legislation informally referred to as “Super DOMAs.” Building on the federal “Defense of Marriage Act” (DOMA) along with the numerous state laws denying marriage recognition to same-sex couples, these laws have much greater breadth than previous DOMAs. They typically aim to prohibit any kind of recognition of the relationships of same-sex couples in the form of domestic partnerships, civil unions, or otherwise. Such measures have been introduced in several states, including the following:

- **Nebraska**—the successful ballot initiative amended the state constitution to declare that only a marriage between one man and one woman is valid or recognized, and that a same-sex civil union, domestic partnership, or other same-sex relationship is not valid or recognized. Voters passed the amendment in November 2000.

- **Massachusetts**—a ballot measure would have declared that marriage is only between one man and one woman and that any other relationship would not be recognized as a marriage or its legal equivalent. In July 2002 the legislature blocked the measure from getting on the ballot in 2004.

- **Washington**—the unsuccessful 2001 bill sought to invalidate civil unions or domestic partnerships from other jurisdictions and to prohibit public funds from being used to provide benefits to domestic partners.

- **Ohio**—the bill declares that any public act, record or judicial proceeding that extends specific statutory benefits of legal marriage to nonmarital relationships (same- or opposite-sex) is void. This bill passed the House in 2001, but was not expected to be heard by the Senate Committee in 2002.

- **Oklahoma**—the unsuccessful bill declared marriages and civil unions between persons of the same gender not recognized in Oklahoma. Additionally, the bill stated that these marriages and civil unions are “repugnant to the public policy” of the state.

Super-DOMA laws are designed to invalidate a range of measures protecting GLBT families, as well as prevent future advances. They may threaten employee-provided domestic partner benefits, joint and second-parent adoptions, recognition of contracts entered into by same-sex couples, health care decision making proxies, or indeed any policy or legal document that recognizes the existence of a same-sex partnership. In fact, the Pennsylvania Defense of Marriage Act was used to back a court’s ruling that a same-sex partner did not qualify for second-parent adoption, although the decision was reversed by the Pennsylvania Supreme Court.
M. and I. Kantaras’s parents are getting divorced. Like any other children in this situation, the end of their parents’ relationship and the court battle over who will take care of them is probably very painful and confusing. Originally, the Kantaras’ case would simply have been one more custody case heard in the state of Florida. In the usual course of events, a judge would have determined the custody solution by deciding which parent could provide the home life that was in the children’s best interest. This was the sort of case Michael Kantaras’ lawyer was envisioning.

Linda Kantaras erased the possibility for the case to be resolved as a simple custody matter when she decided to formulate her counter-claim on the allegation that Michael is legally a woman. Premised on the stance taken by the courts in Texas and Kansas, Linda’s argument is that regardless of the medical condition from which Michael suffered (gender dysphoria), and regardless of the medical treatment protocol that now enables him to live a normal, happy, healthy life (sex reassignment), Michael must legally retain the gender he was assigned at birth. Linda claims that her twelve-year marriage cannot be valid under Florida law banning same-sex marriage. If the marriage is invalid, then Michael’s step-parent adoptions of their children—adoptions Linda consented to—are likewise void. Suddenly, what would have been one more custody case became a landmark case both in the state of Florida and nationally: it has received unprecedented national press attention.

For the Kantaras children, however, it has been a nightmare. Now, not only do they have to adjust to the new contours of their family as their parents separate; they also risk being permanently severed from their father for a reason that is completely unrelated to their relationship with him or his ability to be a good parent. The court has made clear that it must first decide whether Michael Kantaras is legally male in the state of Florida in order to determine the validity of the Kantaras’ marriage. To this end, Michael has been subjected to hours of embarrassing inquiry about his personhood, from how he uses the toilet to his anatomy and the intimate details of his sexual relationship with his wife. But for M. and I., the matter of Michael’s identity has always been intuitive—he is simply their dad.

Michael and Linda fell in love in
Partner Recognition

Transgender Individuals In Marriage

Transgender people enter into marriage in various ways. First, a heterosexual couple may marry and then, at a subsequent point, one of the spouses may “come out” as transgender and “transition” to living as a person of the same sex as the other spouse. Second, a transgender person may transition prior to entering into a marriage. Finally, there are some jurisdictions that refuse to recognize a transgender person as a legal member of his or her reassigned sex. In these jurisdictions, a transgender person—for example a male-to-female transsexual—can legally marry a person of the same sex as her reassigned sex, in this case a woman. Unfortunately, in most states, all of these paths to marriage are susceptible to legal challenge. Thus, transgender people in mar-

1988 while they were both working in the bakery of a local grocery store. Linda was already pregnant with M. when she and the biological father split up. She started dating Michael a short time later. After M. was born, Linda and Michael got married and Michael legally adopted M. as his son. Linda knew that Michael was transsexual before she married him. Two years later, the couple decided to have another child together and Michael’s brother agreed to be the sperm donor. I., a baby girl, was born in 1992. Both children were very close to their dad—M. has said that one of his favorite things to do is to go fishing with Michael. Michael also describes a deep love for his children, a love demonstrated in the effort he has made to support them financially and to visit regularly even after he and his wife were no longer sharing a home. Neighbors have commented on how, whenever his car pulled into the driveway, Michael’s children would run out to meet him.

The close relationship between Michael, M. and I. was tested soon after the initial separation, when Linda decided to tell the children, without Michael’s prior knowledge, consent or involvement, about Michael’s sex reassignment and that he is not their biological father. Through counseling, M. and I. have adjusted well and now enjoy a loving and respectful relationship with their dad. In May, the court transferred temporary custody to Michael until a final decision can be reached in the case.

Because of this application of the Florida law limiting marriage to different-sex couples, a court-issued marriage license may be voided on a technicality, despite the couple’s having shared more than a decade of genuine married life—including sexual and emotional intimacy, decisions to have children, and daily parenting responsibilities. In addition, the absence of a law allowing for individuals to legally change their sex has led to a man’s very identity being placed on trial by his former partner leveraging more than a decade of intimacy against him. Most importantly, two children may lose the only father they have ever known including his love, the right to inherit from him, and the opportunity to receive health insurance and other key benefits through him. As long as laws limiting marriage to different-sex couples continue to be on the books, families with a transgender parent will be at risk. Instead, laws should protect children and recognize committed relationships and marriages regardless of the parties’ gender identity, sex or sexual orientation.

The Kantaras custody decision is expected by the end of 2002. In the meantime, M. and I. are living with their dad.
marriages must live with the fear that in a time of crisis their relationship will not be recognized, an uncertainty that other married couples do not confront.

There have been three high-profile cases that have revealed the vulnerability of transgender people in marriage. In the last section we described the story of a post-operative transsexual woman in Kansas whose marriage was held to be invalid.\textsuperscript{108} In so ruling, the Court held that under no circumstances may a transgender person marry a person of the same birth sex. In Texas, there was a devastating case involving a post-operative transgender woman who filed a wrongful death suit against a doctor whose malpractice killed her husband. As in the Kansas case, the Texas court declared that marriage invalid.\textsuperscript{109} Most recently, in a Florida case that is still being decided, a transgender man is attempting to maintain his status as father against his ex-wife’s claim that he is legally female and that their marriage never existed (see profile above). The couple had a civil marriage ceremony based upon a government-issued license. The woman knew that her husband was transgender. The man adopted her first child and they had a second through donor insemination. He should be considered the legal father of both children but the courts may decide differently.

Courts in some states have upheld the validity of marriages involving transgender people. Both California and New Jersey have case law indicating that the post-transition sex of the transgender person will be recognized for the purpose of marriage.\textsuperscript{110}

No court has addressed the validity of a marriage that was entered into when the couple was of different sexes at the time they entered into the marriage and then one partner subsequently transitioned. While there is the possibility that a court would determine that the marriage became invalid when the transition occurred, there is no precedent in U.S. law for involuntarily “un-marrying” a couple against their will in such a fashion. Moreover, invalidating such a marriage where both spouses wish to remain married is not good public policy and is contrary to the expectations not only of the parties to the marriage, but also to those of the community and society.

In order to avoid some of the problems that can arise when transgender marriages are found invalid, couples are advised to draw up legal agreements similar to those drafted by lesbian and gay couples that assign certain rights and privileges to the other partner. The National Center for Lesbian Rights and the Transgender Law and Policy Institute recommend that each partner prepare a will, assign medical and financial powers of attorney to the other, and draft a personal relationship agreement outlining the rights, responsibilities and expectations as well as any other issues important to the couple.\textsuperscript{111} To avoid claims of fraud, the agreement should include a statement that the non-transgender partner is aware of the transgender partner’s status as transgender. For low-income people the cost of drawing up such documents with the assistance of an attorney can be prohibitively expensive. On the other hand, some states create forms, such as medical power of attorney forms, that can be used at no cost.

\textbf{Policy Recommendations}

- Grant same-sex couples the right to access the institution of civil marriage, with full local, state and federal recognition.
- Repeal federal and state Defense of Marriage Acts, and nullify legal or statutory provisions denying benefits to families of lesbian, gay, bisexual and transgender people.
• Prohibit the invalidation of marriages involving one or two transgender individuals, based on the actual or perceived sex of the individuals involved, or whether the sex of either one may have appeared different in the past or may change in the future.

• Adopt laws and policies respecting individuals’ own determinations of their identities, and couples’ decisions to commit to each other irrespective of their gender identity, sex, or sexual orientation.

• Honor the marriages occurring in other countries, irrespective of the gender identity, sex or sexual orientation of the partners.

MODEL LEGISLATION

A Marriage Law Inclusive of Same-Sex Couples

Marriage Legislation* Excerpted from House Bill 5608, introduced in the Rhode Island 2001 General Assembly:

Same Gender Marriages—Eligibility.—No section or provision of this chapter or any other general law, charter, provision or ordinance of any city or town shall be construed to prohibit same gender marriages.

Persons of the same gender shall be eligible to marry in the same manner and with the same requirements, as applicable, as persons of different gender.

Same gender marriages performed in another state or territory of the United States, which meet all the requirements for validity and legality in that state or territory, shall be recognized as valid and legal in this state

Excerpted from the Act on the Opening up of Marriage, Book 1 of the Civil Code, Kingdom of the Netherlands, 2000.

A marriage can be contracted by two persons of a different sex or of the same sex.

The law only considers marriage in its civil relations.

CIVIL UNIONS

While marriage provides the largest comprehensive package of protections available to couples, civil unions are the closest approximation to marriage available to lesbian and gay couples in the United States. At the moment, civil unions are unique to Vermont. No other state has enacted a civil union law, although bills have been introduced in a number of states, and an increasing number of elected officials have expressed support for civil unions legislation.112

In December 1999, in response to a suit filed on behalf of two lesbian couples and one gay male couple, Vermont’s Supreme Court ruled that the state could not deny the “common benefits” of marriage to same-sex partners.113 The court ordered the legislature to figure out how to treat same-sex couples equally. The legislature’s response was
civil unions,” a mechanism by which same-sex couples could receive all of the state-conferred benefits, privileges and responsibilities of marriage, though not the protections conferred by federal law. The extent to which civil unions will be recognized state-to-state remains an open, new legal question.

A civil union may be formed by any same-sex couple so long as both individuals are 18 years of age or older, capable of consenting, and not already in a marriage or other civil union. They must not be related by blood to a degree that would bar them from marriage. The process of forming a civil union in Vermont is similar to that of marriage. The couple obtains a license from any town clerk in the state. The couple then presents the license to a judge, assistant judge, justice of the peace or clergy member who certifies the civil union. The form is returned to the town clerk and then filed with the Office of Vital Statistics.

There is no Vermont residency requirement to form a civil union. However, civil union dissolution does require residency of six months or more. Civil union certification entitles the couple to all of the approximately 300 rights and responsibilities conferred to married couples under Vermont law. Spouses in a civil union are treated differently than married spouses in certain situations. For example, although insurers are required to offer equivalent coverage to parties of a civil union as to married couples, private employers may choose not to extend benefits to parties of a civil union. However, since this is regulated by federal law (the Employment Retirement Income Security Act of 1974), states cannot mandate coverage of same-sex couples.

Civil unions allow states the opportunity to offer a full range of state-level benefits to same-sex couples, including:

- Health care decision-making.
- Inheritance rights.
- The right to divide property at end of relationship.
- Rules related to child custody and visitation.
- Rules related to “standing” as a parent, such as the right to second parent adoption.
- State tax benefits.
- The right of a partner or child to make burial decisions.
- Guardianship.
- The right to utilize state courts for dissolution of a relationship.
- Protection under domestic violence laws.
- The ability to bring a wrongful death claim on behalf of a partner.

More importantly, as noted above, civil unions do not entitle same-sex couples to any of the federal rights and benefits acquired through marriage. Additionally, it remains unsettled what recognition civil unions will be accorded by other states. So far, there have been two cases that have tested the legal status of civil unions outside of Vermont and both denied recognition. In one case, a lesbian living in Georgia was sued by her ex-husband for allegedly violating the visitation arrangement regarding their children, which stated that neither parent could visit with the children while cohabitating with
a person to whom he or she was not married or related “within the second degree.”¹¹⁹ The woman argued that because she and her partner had entered into a civil union in Vermont, they met the requirement. However, the Georgia court ruled that a civil union is not a marriage in either Vermont or Georgia and therefore the lesbian couple was in violation of the visitation order.¹²⁰ In a second case, a Connecticut couple asked a Connecticut court to dissolve their civil union. The court refused, holding that the Connecticut law does not recognize civil unions.¹²¹

Vermont’s civil union law went into effect on July 1, 2000. As of November, 2002, Vermont state officials had recorded 4,979 civil unions.¹²² Of that total, 776 couples were Vermont residents and the remainder came from virtually every state in the United States and from several foreign countries.

Benefits of Civil Unions:
• Creates a legal status for same-sex couples that confers a comprehensive parallel package of rights, benefits, and obligations of marriage at the level of state policy.
• Decreases the unequal treatment of and provides significant protections for same-sex couples in several important areas.
• Extends social affirmation to same-sex relationships, which has an effect on how family, coworkers, neighbors and colleagues regard and support the relationship.

Drawbacks of Vermont’s Civil Union Law:
• Maintains the second class status of same-sex couples, thereby perpetuating bias and infringing on their equality and dignity.
• It remains unclear to what extent other states will accord recognition to civil unions, which creates difficulty for families who travel or move.
• The lack of federal recognition creates an awkward situation where the parties to the civil union are considered to be spouses for state, but not for federal, purposes.¹²³ This allows continued discrimination, for example, under immigration policy, federal taxes, Social Security and Medicaid Policy.

Talking Points On Civil Unions
Q. Why should same-sex couples be allowed to enter into civil unions?
A. Presently, same-sex couples are unable to marry in the United States. This means that their families are denied opportunities for recognition, rights, and support that are automatically granted to the families of married heterosexuals. Civil unions are a way of recognizing same-sex couples and their children under state law, where many essential protections exist within codes concerning families, insurance, estate planning, and probate.

Q. Why do the families of same-sex couples need protection? What type of protections do civil unions provide?
A. Civil unions protect families in many of the same ways marriage laws do in the realms of health care, parenting, financial planning, and protecting close relationships in times of crisis, such as illness or death. When relationships are not recognized, fam-
ilies are vulnerable to being torn apart or experiencing financial or emotional hardship. A child can be unjustly separated from a parent, a person can be deemed a stranger to his or her incapacitated partner, a distant relative can claim inheritance rights over those of a life partner, and a child can be denied health care coverage because his or her legal parent is not employed outside the home. In Vermont, state laws applying to married couples apply comparably to members of a civil union in all arenas including adoption, taxation, inheritance and hospital visitation.

Q. Why the need for civil unions? Don’t domestic partnership policies provide many of these same benefits?

A. Domestic partnership policies vary widely. They often provide only work-related benefits, such as health insurance coverage. Even in California, where more comprehensive benefits are provided, they offer only a handful of the hundreds of state-conferring rights, benefits, and responsibilities of marriage and none of the federal rights. Short of marriage, civil unions offer the most extensive protections for same-sex couples in the United States.

Policy Recommendations

- As long as discrimination in marriage continues, grant couples access to civil unions with, at minimum, the same state-conferring rights and responsibilities as marriage.
- Recognize fully in other states civil unions performed in Vermont or any other states that authorize civil unions.

**MODEL LEGISLATION**

**Civil Unions**

Excerpted from Title 15, Chapter 13 of the Vermont Statutes:

“Civil union” means that two eligible persons have established a relationship pursuant to this chapter and may receive the benefits and protections and be subject to the responsibilities of spouses.

BENEFITS, PROTECTIONS AND RESPONSIBILITIES OF PARTIES TO A CIVIL UNION

(a) Parties to a civil union shall have all the same benefits, protections and responsibilities under law, whether they derive from statute, administrative or court rule, policy, common law or any other source of civil law, as are granted to spouses in a marriage.

(b) A party to a civil union shall be included in any definition or use of the terms “spouse,” “family,” “immediate family,” “dependent,” “next of kin,” and other terms that denote the spousal relationship, as those terms are used throughout the law.

(c) Parties to a civil union shall be responsible for the support of one another to the same degree and in the same manner as prescribed under law for married persons.

(d) The law of domestic relations, including annulment, separation and divorce, child custody and support and property division and maintenance shall apply to parties to a civil union.
**DOMESTIC PARTNERSHIP**

Domestic partnership refers to a range of policy and statutory methods for recognizing the non-marital relationships of both same-sex and opposite-sex couples. The term “domestic partner” was coined to describe partners in amorous, committed, cohabiting, relationships equivalent to a marriage as opposed to a relationship between roommates or friends. Domestic partnership benefits reflect the idea that unmarried couples and their children are families deserving and in need of some important supports routinely provided to married couples and their children.

**The Origin of Domestic Partnership**

Domestic partnerships originated as a workplace strategy in the early to mid-1980s as lesbian and gay residents and employees, along with heterosexuals in unmarried relationships, sought to broaden workplace benefits policies that extended significant privileges and economic benefits only to married employees. By the 1990s, hundreds of companies offered benefits to same-sex partners of employees. In addition, domestic partnership had become a vehicle by which an increasing number of state and municipal governments recognized unmarried couples in a limited way through registries. Most of the city laws and policies were intended primarily to allow unmarried city workers to obtain health insurance and occasionally other employment-related benefits for their partners. However, several cities branched out to allow residents in non-marital relationships to register with the city. Registries work differently in different places; while most registries convey little more than a symbolic recognition of the relationship to assist employers who wish to offer partner benefits, cities like New York and San Francisco go beyond the employment context to ensure that city law and policy acknowledge domestic partner relationships in many ways.

The types of benefits offered to family of employees vary from one workplace to another, as do domestic partnership plans. The insurance elements are most common, while some, such as pension benefits, are less common. Benefits can include:

- Medical benefits, including dental and vision care.
- Dependent life insurance.

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Excerpted from Senate Bill 880 as introduced in the 2001 Rhode Island General Assembly:

A civil union provides those joined in it with a legal status equivalent to marriage and shall be treated under law, whether defined by statute, administrative or court rule, policy, common law or any other source of civil law, as a marriage. All laws of the state of Rhode Island, whether they derive from statute, administrative or court rule, policy, common law or any other source of civil law, applicable to marriage shall also be applicable to civil unions.

See also California AB 1338, introduced by Assembly Member Koretz, available at http://www.assembly.ca.gov/acs/acsframeset2text.htm or through NGLTF’s Legislative Lawyering Project.

* Please do not copy these. These bills are reproduced here to provide policymakers and advocates samples of language proposed or passed in some states. However, these bills may not have the most appropriate wording for your jurisdiction. If you need assistance drafting a marriage or civil union bill for your state, please contact the Legislative Lawyering Project at the National Gay and Lesbian Task Force (202-393-5177).
• Accidental death and dismemberment insurance.
• Tuition assistance.
• Long-term care insurance.
• Day care.
• Flexible spending accounts.
• Bereavement and sick leave.
• Adoption assistance.
• Relocation benefits.
• Child resource and referral services.
• Access to employer recreational facilities.
• Participation in employee assistance programs.
• Inclusion in employee discount policies.\textsuperscript{125}
• Survivor benefits from a partner’s pension.

**Domestic Partner Benefits for State Employees**

As of October 2002, 11 states and the District of Columbia extend benefits to domestic partners of some or all government employees: California, Connecticut, Delaware, Maine, Massachusetts, Minnesota, New York, Oregon, Rhode Island, Vermont, Washington state, and Washington, D.C. Same-sex partners of state employees in Hawaii can also access benefits by registering as reciprocal beneficiaries.

Opposite are more details on the specifics of the state benefits. This list covers the major areas of benefits provision and, although subject to change and not necessarily exhaustive, it reflects our findings as of November 2002. In general, health and other employment benefits are for state employees, whereas registries are open to all residents. In three states domestic partnership is limited to same-sex couples; elsewhere it is also available to cohabiting unmarried opposite-sex partners.

At least 130 cities, local governments and quasi-governmental agencies provide domestic partner coverage including Berkeley, Laguna Beach, Los Angeles, San Francisco, Santa Cruz and West Hollywood, CA; as well as Denver, CO; Atlanta, GA; Iowa City, IA; Cambridge, MA; Takoma Park, MD; Ann Arbor and Kalamazoo, MI; Minneapolis, MN; Ithaca and New York City, NY; Pittsburgh, PA; Seattle, WA; and Madison, WI. (See map below.) The majority of these offer benefits to both same- and opposite-sex couples.\textsuperscript{126}

Cities such as Seattle, San Francisco, and Berkeley report that domestic partner coverage comprises between 1 and 3 percent of their total health insurance costs.\textsuperscript{127} Kohn reports that the average enrollment increased 2.1 percent in 14 cities that extended coverage to same-sex partners, with a 0.4 percent average enrollment rate for same-sex couples. The International Society of Certified Employee Benefits conducted a study that found that 56 percent of employers offering domestic partner benefits saw a 1 percent increase in enrollment. Another 19 percent saw a 2 percent increase. Some jurisdictions have declined to undertake a financial analysis of the costs of covering domestic partners in health insurance plans, since they believe the costs to be so negligible.\textsuperscript{128}
Domestic Partnership Benefits for State Employees

**California** (same-sex only)  
(See section below, “Domestic Partnership in California,” for complete listing.)  
- domestic partner registry for all residents  
- hospital visitation for all residents  
- health/dental/vision benefits for state employees  
- sick leave for state employees  
- retirement system death benefit (continuing health coverage for surviving partner of state employee) for state employees

**Connecticut** (same-sex only)  
- health/dental benefits for state employees

**Delaware**  
- bereavement/sick leave for state employees

**District of Columbia**  
- domestic partner registry for all residents  
- hospital visitation for all residents  
- health benefits for state employees  
- bereavement/sick leave for state employees

**Maine**  
- health benefits for state employees

**Massachusetts** (executive order only extends these benefits to managerial state employees, not rank and file workers)  
- domestic partner registry for state employees  
- family/sick/bereavement leave for state employees  
- hospital/jail visitation for state employees

**Minnesota**  
- health/dental benefits for state employees

**New York**  
- health benefits for state employees

**Oregon**  
- health/dental/long-term care/life insurance benefits for state employees

**Rhode Island**  
- health benefits for state employees

**Vermont**  
- health/dental benefits for state employees  
(broader rights for people in civil unions)

**Washington** (same-sex only)  
- health/dental benefits for state employees

Challenges to Domestic Partner Benefits for Government Employees

As the map below indicates, numerous cities and counties are offering their employees domestic partner benefits, including, at minimum, family health benefits. Many other jurisdictions have considered instituting such laws. In some jurisdictions, right-wing groups have organized local citizens to challenge these laws, arguing that taxpayers should not be forced to support “nonmarital sexual relationships.” Legal challenges to existing laws have been pursued in at least 15 jurisdictions, five of which have been successful (see chart below). Two common arguments in these types of cases have been, first, that the jurisdiction had exceeded its state grant of power by regulating a state activity—such as marital status regulations—and, second, that domestic partners did not fit into state statu-
• States and Local Governments Offering Employee Domestic Partner Health Benefits

States offering domestic partner health benefits:
- Washington
- Oregon
- Illinois
- Wisconsin
- Minnesota
- Indiana
- Tennessee
- Mississippi
- Oklahoma
- Arkansas
- Louisiana
- Florida
- Puerto Rico
- Virgin Islands
- Guam

Counties offering domestic partner health benefits:
- Sonoma County, CA
- Marin County, CA
- San Francisco County, CA
- Contra Costa County, CA
- Alameda County, CA
- Santa Clara County, CA
- Santa Barbara County, CA
- Ventura County, CA
- Riverside County, CA
- San Diego County, CA

Municipalities offering domestic partner health benefits:
- New York City
- Philadelphia
- Baltimore
- Houston
- Dallas
- Austin
- San Antonio
- San Diego
- Los Angeles

(No jurisdictions in Alaska or Hawaii offer these benefits)
tory definitions or legislative ideas of who was entitled to benefits. The first argument was successful in *Lilly v. City of Minneapolis*. The court found that the benefits ordinance was designed to combat sexual orientation-based discrimination, an issue on which the state had already legislated. The second argument was successful in *Connors v. City of Boston*. The court held that although establishing benefits was within the city’s authority, a state statute had defined “dependents” too narrowly to include domestic partners.

**Domestic Partnership in California**

The state of California provides the most extensive range of domestic partner benefits so far. California established a statewide registry for domestic partners in 2000. Initially, this provided registered partners with hospital visitation rights and extended health insurance coverage for certain public sector employees. These rights were expanded in 2002, as a result of the passage of AB 25, in 2001. Presently these benefits include the right to:

- Collect employment benefits, to the same extent as spouses, when an employee voluntarily quits a job to relocate with a domestic partner.
- Use sick leave to care for a partner or partner’s child.
- File disability benefits on behalf of an incapacitated partner.
- Have the cost of domestic partner health benefits excluded as taxable income for purposes of state taxation.
- Make medical decisions for an incapacitated partner or seek court appointment to act as a conservator (to manage the estate/assets of an incompetent person).
- Sue for wrongful death or for infliction of emotional distress.
- Adopt a partner’s child using the step-parent adoption process.
- Continue health coverage for surviving domestic partners and children of retired state employees.
- Inherit a share of the property of as a next of kin (or intestate heir) of a partner who dies without a will or other estate plan (as of July 1, 2003).
- Take up to six weeks of paid leave from work to care for a new child or sick family member if one is participating in the state paid family leave insurance program (starting July 1, 2004).

**Advantages of adopting CA-style domestic partner registry law:**

- Decreases the unequal treatment of and provides significant protections for same-sex couples in several important areas.
- Creates a legal status for the coupled and family relationships of GLBT people which may heighten the standing of their relationships in other contexts, such as the courts and administrative agencies.
- Extends social affirmation to same-sex relationships, which has an effect on how family, co-workers, neighbors and colleagues regard and support the relationship.
### Challenges to Local Domestic Partnership Benefit Programs

(Status as of October 1, 2002)

<table>
<thead>
<tr>
<th>STATUS</th>
<th>CITY</th>
<th>CASE (date of last decision)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Domestic Partnership Program Overturned—Final</td>
<td>Atlanta, GA</td>
<td><em>McKinney v. City of Atlanta</em> (March 14, 1995; S. Ct.)</td>
</tr>
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<td>Minneapolis, MN</td>
<td><em>Lilly v. City of Minneapolis</em> (March 29, 1995; S. Ct.)</td>
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<td></td>
<td>Boston, MA*</td>
<td><em>Connors v. City of Boston</em> (July 8, 1999; S. Ct.)</td>
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<td>Arlington County, VA</td>
<td><em>White v. Arlington County</em> (April 21, 2000; S. Ct.)</td>
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<td>Domestic Partnership Program Upheld—Final</td>
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<td><em>Morgan v. City of Atlanta</em> (November 3, 1997; S. Ct.)</td>
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<td>Pima County, AZ</td>
<td><em>LaWall v. Pima County</em> (July 14, 1998; Ct. of Ap.)</td>
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<td>Santa Barbara, CA</td>
<td><em>Jacks v. City of Santa Barbara</em> (January 13, 1999; not appealed)</td>
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<tr>
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<td>Denver, CO</td>
<td><em>Schaefer &amp; Tader v. City of Denver</em> (April 12, 1999; S. Ct.)</td>
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<td>Chicago, IL</td>
<td><em>Crawford v. City of Chicago</em> (October 6, 1999; S. Ct.)</td>
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<td>Chapel Hill and Carrboro, NC</td>
<td><em>Godley v. Town of Chapel Hill and Town of Carrboro</em> (May 16, 2000; not appealed)</td>
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<td>Broward County, FL</td>
<td><em>Lowe v. Broward County</em> (April 4, 2001; S. Ct.)</td>
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<td>Vancouver, WA</td>
<td><em>Heinsma v. City of Vancouver</em> (August 23, 2001; S. Ct.)</td>
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<td></td>
<td>Montgomery County, MD</td>
<td><em>Tyma v. Montgomery County</em> (June, 2002: S. Ct.)</td>
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</tbody>
</table>

*Connors v. City of Boston* also invalidated domestic partner benefits offered by Cambridge, Brookline, Newton, Northampton, and Springfield, MA, absent state legislative authorization.

Date is of last available opinion or the denial of a review by a higher court, whichever is most recent.

*S. Ct.* refers to the state Supreme Court, not the U.S. Supreme Court.

Drawbacks of CA-style domestic partner registry law:

- Provides only a handful of the hundreds of rights, benefits, and obligations granted to married couples in California.
- No access is gained to federal rights, such as Social Security benefits, veteran’s benefits, or immigration rights.
- Incremental approach leads to confusion among couples and the public regarding what rights and protections are in place over the course of time.
- Not available to heterosexual unmarried couples who are under the age of 62.

Domestic Partner Benefits and Private Employment

In addition to state and local governments, there are private companies in all 50 states who provide domestic partner benefits. As of October 2002, we know of over 4,500 employers who provide these benefits—including 180 Fortune 500 companies (36 percent), 173 colleges and universities, and over 4,000 other private companies, labor organizations and non-profits. Among these are AFL-CIO, American Airlines, AT&T, Citigroup Inc., City University of New York, Episcopal Church of the United States, Fannie Mae, Ford Motor Co., General Motors, Goodwill Industries International Inc., Greenpeace International, Hewlett Packard, IBM, Indiana University, Motorola, Prudential, Time Warner, and the University of Texas.

Typically, employee benefits constitute around 30 percent of a worker's compensation and include things like health and life insurance, tuition benefits and retirement benefits. Therefore domestic partner benefits are really an issue of equal pay for equal work. Unfortunately, domestic partners are still economically discriminated against, as domestic partner benefits are taxed as income—except on California state income taxes—whereas spousal benefits are not.

A small number of employers, including Bank of America and the local Catholic Charities of San Francisco, have chosen to extend benefits to one adult designated member of an employee's household, which can be a partner, relative or friend. At times expansive definitions of “partner” have been added on to domestic partner proposals by politicians seeking to kill a bill by making it seem too broad and therefore too costly. This may also be motivated by a desire to deny same-sex relationships the same validity as opposite-sex relationships. However, broader definitions of domestic partner can allow for more flexibility for the employee and take into account a wider range of family relationships. They offer greater security to many more “nontraditional” families. For example, they allow two single sisters who cohabit and raise their children together to provide health insurance and other benefits for each other and their children. Unfortunately, some plans limit their scope by requiring that beneficiaries who are not spouses or intimate domestic partners be dependents by Internal Revenue Service definitions.

Equal Benefits Ordinances

Generally, an equal benefits ordinance (EBO) or “contractor” law requires private companies wishing to do business with a governmental body to provide domestic partners of employees comparable benefits to spouses of employees. San Francisco was the first city to implement such a law in 1997. Discussing the reasoning behind the ordinance, San Francisco Supervisor Michael Yaki said, “In terms of us
giving out our public dollars, we don’t want to give them to people to discriminate. It’s as simple as that.”139 Others have pointed out that including more family members in health care plans results in a decrease in the number of uninsured, an overall improvement in public health, and decreased government expenditure.140 A 1999 report found that the law was directly responsible for the decisions of more than 2,000 employers to offer domestic partner benefits.141 The law also had the effect of increasing by more than ten-fold the number of insurance companies in California offering domestic partnership benefits. The law withstood two legal challenges,142 and more cities and counties have implemented similar laws since then, including Berkeley, Los Angeles, Oakland and San Mateo County, California; and Seattle and Tumwater, Washington.143

The State of California and New York City are among the jurisdictions currently considering such legislation. The California legislation, if passed, would be groundbreaking as the first such state-level law. It would apply to most businesses seeking to contract with the state,144 expanding on California’s existing domestic partnership laws. This bill would allow employees of businesses who have contracts with the state to receive family benefits for their domestic partners on comparable terms to married couples.

New York City’s Equal Benefits Bill applies to all contractors doing at least $100,000 worth of business with the city, requiring those located in New York City to provide domestic partner benefits to all employees and those outside of the city to provide benefits to those working directly on contracts for the city.145 Exceptions include when only one contractor is available for a particular contract, when an emergency exists threatening public health or safety, and when compliance would violate a U.S. law. One concern that has been raised is that if contractors are located in a jurisdiction that does not prohibit discrimination based on sexual orientation, then employees who step forward to receive the benefits could put themselves at risk of being fired with no recourse. At the time of publication, New York Mayor Michael Bloomberg opposes the bill.

Talking Points On Domestic Partnership Benefits

Q. Why are domestic partnership benefits necessary?

A. Domestic partner benefits are a matter of equal pay for equal work. Benefits often comprise around 30 percent of an employee’s compensation.146 When companies do not offer equal family benefits to their unmarried partnered employees, they are discriminating based on sexual orientation and marital status. Whereas married heterosexuals can usually add their spouses and children to their health insurance policies, this option is routinely denied to same-sex couples, forcing them to choose between spending large sums of money for individual health insurance or foregoing coverage altogether for certain family members.

Q. Won’t domestic partner benefits cost employers a lot of money?

A. The cost of extending health care benefits to domestic partners has been found to be minimal. Studies of existing plans have shown enrollment rises usually by 1 percent or less and almost always less than 2 percent when coverage is extended to
include same-sex partners. The increase in cost is estimated to be equal to the increase in enrollment and never disproportionately higher than the cost of adding spouses. Even a universal requirement that all companies offer equal benefits to same-sex partners would result in only a 0.6 percent enrollment and cost increase per employer. Furthermore, employers are not required to be supportive when their employees get married or have kids, both of which raise health plan costs, yet they generally do provide such benefits. Many offer insurance coverage for the dependents of their workers because doing so allows them to recruit and hold a productive workforce. If a company understands this and cares about its employees and about the values of fairness and nondiscrimination, it should treat equitably all employees who have families.

Q. Won’t people falsely claim to be domestic partners just to access benefits?
A. While possible, false domestic partnerships are no more likely than fraudulent claims of being married (employees are rarely required to show legal proof of marriage or parenthood to cover spouses and children)—perhaps even less so. Registering involves coming out as a lesbian, gay or bisexual person. The stigma still associated with such relationships may function as a disincentive to fraud. Further, many companies that provide domestic partner benefits do so by requiring an affidavit, which is a legally binding document or registration with state or local government. There are legal consequences to falsifying such documents and to date there are no reports of fraudulent domestic partnership registrations or agreements.

Q. Won’t providing these benefits provoke a backlash?
A. No. If this were true, a significant majority of the largest U.S. companies (36 of the Fortune 50) would not be providing them. In fact, providing such benefits actually results in a positive response. Human resources professionals recently found that domestic partnership benefits were the number one most effective recruiting tool for executives and the number three most effective recruiting tool for managers and line workers. Although currently there are more than 130 city and county governments that grant domestic partnership benefits to public employees, only about a dozen have been challenged in court. Five of these challenges—in Arlington County, Virginia, Atlanta, Boston, Philadelphia, and Minneapolis—have been successful. However, these challenges were decided on narrow legal grounds peculiar to those jurisdictions. By far the more common result has been court rulings upholding partner benefit plans for government workers as a legally sound and very sensible way to offer employment equity. (See section above, “Challenges to Domestic Partner Benefits for Government Employees.”)

Q. Health benefits are expensive. While it may make sense to extend them to unmarried partners, why go further than this and provide other domestic partnership benefits?
A. More extensive provision of benefits protects gay, lesbian, bisexual and transgender families, and ensures that all employees are provided comparable compensation packages. Among the benefits provided to domestic partners in the State of California are those enabling partners to adopt each other’s children and to visit each other in the hospital—very basic rights that are often denied to same-sex couples. Many of these rights incur no financial cost.
Why include opposite-sex couples in domestic partnership plans when they can get married if they want to?

Providing domestic partner benefits to opposite-sex couples is consistent with a stand against discriminating based on sexual orientation or marital status. Not all committed couples, gay or straight, want to marry. Some object to the institution of marriage on secular, moral or political grounds. Others feel the state should not regulate such private, intimate matters. Providing domestic partnership benefits to these couples makes for a more equitable society. Same-sex-only domestic partner benefits may also violate the equal protection clause in the U.S. Constitution or local and state nondiscrimination laws.

If you need assistance drafting domestic partnership policies or laws for your state, please contact the Legislative Lawyering Project at the National Gay and Lesbian Task Force (202-393-5177).

Policy Recommendations

- Create domestic partnership registries that provides same-sex couples with the full range of legal rights and protections available at that level of government.

- Through their employment, grant all unmarried employees who have domestic partners access to the same benefits as married employees. Consider allowing individuals to designate another family member with whom they share a caregiving relationship to receive health and other benefits available through employment.

- Make domestic partnership protections portable, recognizing partnerships entered into in other jurisdictions to the fullest extent provided by local law or the other jurisdiction’s law, whichever is greater.

- Enact equal benefits laws, restricting city, county or state business contracts to companies that provide equivalent employment benefits to all employees who have dependent family members, regardless of marital status or sexual orientation.

RECIPROCAL BENEFICIARIES

The term “reciprocal beneficiaries” has been adopted by two states, Hawaii and Vermont, as a means of extending a legally enforceable status to individuals who are part of close relationships, but who cannot legally marry. In Hawaii, reciprocal beneficiary status is extended to certain blood relations, such as a widowed mother and her unmarried son, as well as to same-sex partners. Hawaii’s reciprocal beneficiary law, in its original form, provided very extensive coverage; Vermont’s law provides relatively little. Also the Vermont law does not extend to same-sex couples, as they have the option of entering into civil unions.

Hawaii

The concept of reciprocal beneficiary status as a means of officially recognizing family relationships grew out of the Hawaii legislature’s attempt to derail the court case that was on a clear path toward ending marriage discrimination against same-sex couples in
that state. The legislature put a constitutional amendment before the voters “to reserve marriage to opposite-sex couples.” It simultaneously passed a law which created the concept of reciprocal beneficiaries, established a registry for those couples who qualified, and extended as many as 60 benefits to those who registered.

Reciprocal beneficiaries are defined as individuals who are legally prohibited from marrying one another. They must be at least 18 years old, unmarried, and not in another reciprocal beneficiary relationship. They need not live together. In the four-year period between July 1997, when the law went into effect, and August 2001 the health department recorded 592 registered reciprocal beneficiaries and 27 terminations of these relationships.

Initially health and life insurance and retirement benefits were available to registered beneficiaries of state employees. However, the Hawaii legislature refused to renew portions of the law which expired in June 1999. Currently the reciprocal beneficiaries law provides much more limited rights such as workers' compensation, inheritance without a will, protection under domestic violence laws, and standing to sue for wrongful death of a partner. Reciprocal beneficiaries have not been granted tax privileges under state law, rights to property distribution and support upon termination of the relationship, or parenting privileges, such as joint adoption.

**Vermont**

Tucked in at the very end of Vermont's groundbreaking civil union law is an adaptation of Hawaii reciprocal beneficiary law. Though narrower in scope than Hawaii's law, the Vermont reciprocal beneficiary provision recognizes that certain family privileges and benefits should be available to individuals who are committed to supporting one another but are unable to marry. The Vermont law also represented an attempt to respond to the volatility associated with the State Supreme Court decision that same-sex couples had an equal right to the benefits of marriage under the state constitution.

While Vermont's reciprocal beneficiaries policy does not apply to amorous couples because they are able to enter into either civil unions or marriages, it does provide a possible framework for other jurisdictions contemplating extending some form of recognition to same-sex couples. To register as reciprocal beneficiaries in Vermont, two people must be related by blood or adoption to the degree that bars them from marriage or civil union. Entering into a marriage or civil union automatically terminates the reciprocal beneficiaries relationship. Therefore, for example, one person cannot simultaneously be in a civil union with their partner and in a reciprocal beneficiary relationship with their sibling.

Under Vermont law, the rights of reciprocal beneficiaries are limited primarily to the health care context. Reciprocal beneficiaries can visit each other in the hospital and make medical decisions for each other. They can also dispose of a co-beneficiary's remains and make anatomical gifts.
<table>
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<th>Ways to Recognize Same-Sex Relationships: A Comparison</th>
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POLICY RECOMMENDATIONS

- NGLTF supports full equality for same-sex relationships, which can only be guaranteed through access to civil marriage.
- While the reciprocal beneficiary policy offers concrete rights to same-sex couples in Hawaii, it remains very limited in scope. At the level of state policy, civil unions can afford near complete equality and should be pursued in addition to more limited domestic partner benefits or reciprocal beneficiary policies.

TREATMENT OF SAME-SEX UNIONS IN THE EVENT OF A BREAK-UP

Marriage and civil union laws provide for court oversight of the dissolution of relationships. The goal is in part to ensure the equitable division of property between a separating couple. With the exception of Vermont, no state has adopted a comprehensive code that governs the division of property for unmarried, cohabiting couples who separate. The American Law Institute, an influential group of lawyers and judges, recommends that domestic partners be treated the same as spouses in many respects, including the receipt of compensatory payments, or alimony, and division of property after a break-up. However, non-marital parties in dispute have had to substitute contracts and contractual theories to support their claims of financial and personal obligation. Because contract law was developed for the realm of business and property transactions, its translation to the world of human relationships and emotions is far from perfect. Courts have long been reluctant to enforce contractual agreements between unmarried people in a sexual or intimate relationship, but this situation has changed in recent years in some jurisdictions.

To protect their assets, many same-sex couples with the financial means to do so have hired lawyers to draft contractual agreements that govern the financial terms of their relationship during the time they are together and regulate the division of their property in the event of separation. When a same-sex couple has entered a written contract of this sort, even conservative courts have upheld them in cases which the contract strictly relates to the couple’s finances and not to their personal relationship.

Most couples, however, do not have formal, written contracts to govern their separation and property agreements. Since the California Supreme Court opened the door to recognizing verbal and de facto agreements between unmarried opposite-sex partners in the case of *Marvin v. Marvin*, some courts have gradually turned the corner in enforcing oral agreements between same-sex partners. If, however, a non-marital partner cannot prove even an oral agreement, but rather must rely solely on the existence of a cohabiting relationship and an implicit agreement to share finances, courts have been less likely to assist in the division of property.

In addition, courts have been divided when faced with written parenting agreements of
a separating couple. Some courts have treated these agreements as irrelevant, while others have seen these agreements as evidence that the biological or adoptive parent intended their partner to have a parent-like relationship to the child.

**Policy Recommendations**

- Enact laws giving jurisdiction to family and other courts to assist unmarried couples with property division and other personal matters, like child custody and visitation and support obligations, upon their separation.
- Enact statutory guidelines for the equitable division of property between non-marital partners to govern in the absence of a private contractual agreement.

**Advantages of Relying On Contractual Agreements**

- Private agreements allow flexibility for each couple to create their own terms for their relationships.

**Disadvantages of Relying On Contractual Agreements**

- There are many rights and protections that cannot be created by contract, such as the right to sue for wrongful death in the event of a loved one’s death, the right to file taxes jointly, or the right of a step-parent to adopt.
- Contract models tend to favor a partner with greater resources and power in the relationship. Community property and similar rules operate to protect the weaker partner by leveling the field somewhat.
- The law is still so unformed that inconsistent results will continue to occur causing many deserving partners great financial hardship.
- Many unmarried partners do not have the financial resources to seek legal assistance in the drafting or enforcement of contractual agreements.

**THE REST OF THE WORLD: INTERNATIONAL RECOGNITION OF SAME-SEX RELATIONSHIPS**

Beyond the borders of the United States, significant strides are being made to end marriage discrimination against same-sex couples and to recognize same-sex unions. In this area of family policy, the U.S. lags behind not only other industrialized countries in Europe, but also behind Brazil, South Africa, and Israel. Following are some examples.

- **Marriage Equality.** The Netherlands on March 31, 2001 became the first country to end marriage discrimination against same-sex couples by opening up civil marriage to same-sex couples. In June 2002, the Quebec legislature unanimously passed a law creating “civil unions” for same-sex couples with virtually all marriage rights. Superior Courts in Ontario and Quebec have ruled in the past few months that limiting marriage to opposite-sex couples was discriminatory and in violation of Canada’s Charter of Rights and Freedoms. Both courts suspended their declaration for two years to allow the federal Parliament to make needed changes to the marriage law. Both cases are being appealed to the Canadian Supreme...
Court.\(^{166}\) Denmark and Belgium both have full marriage bills in parliament that are expected to pass within 2003.

- **Registered Partnership Rights.** First passed in Denmark in 1989, the Danish Registered Partnership Act became a model for other countries seeking to extend greater protection to their gay, lesbian, and bisexual citizens. Over the last decade, several other European countries have adopted versions of the registered partnership acts. With a few exceptions, the legal standing of registered partners is identical to those of married couples. In Germany, for example, same-sex couples have equal rights as heterosexual married couples in most areas, but not in welfare, tax laws or adoption.\(^{167}\) The table below summarizes the status of rights and benefits accorded same-sex couples in many European countries.\(^{168}\) Though the Czech Republic cabinet gave initial approval to a domestic partnership bill in September 2001, it was rejected by the parliament. In Australia, one of the most conservative states, Tasmania, has created the broadest domestic partnership status available in that country, amending laws regarding property rights, parenting, hospital visitation, inheritance, work leave, organ donation and pensions.\(^{169}\)

- **Other Forms Of Legal Recognition.** On October 14, 1999, the French National Assembly approved legislation that authorized “civil solidarity pacts.” Under the legislation, after three years of stated “fidelity,” unmarried couples (same- and opposite-sex) may file tax forms jointly and may claim other rights associated with marriage, such as simultaneous vacation time from their employers and lighter inheritance taxes.\(^{177}\) Brazil allows same-sex partners the right to inherit each other’s pension and Social Security benefits, making it the first government in South America to extend legal recognition to same-sex relationships.

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### Features of Same-Sex Registered Partnership Laws in European Countries

<table>
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<td>Government Pension</td>
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<td>Medical Decisions</td>
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recognition to same-sex relationships. A South African court in Pretoria recently ruled that same-sex couples can adopt children. Though the ruling still must be cleared by the Constitutional court in Johannesburg, advocates cite South Africa’s liberal constitution—the only constitution in the world to prohibit discrimination on the basis of sexual orientation—as a reason to be hopeful that the decision will be upheld. Western Australia recently became the first Australian State to allow adoption by same-sex couples.

Fourteen countries recognize same-sex couples for the purposes of immigration. They are Australia, Belgium, Canada, Denmark, Finland, France, Iceland, Israel, the Netherlands, Norway, South Africa, Sweden, New Zealand and the United Kingdom.

As this pattern of reform continues internationally, and especially in light of the increased economic and political globalization, the United States will soon be forced to decide what consideration it will give to the laws of sovereign nations who have extended the right to marry to their lesbian, gay, and bisexual citizens. The question will not be limited to tourists whose visits are easily quantifiable, but will extend to persons with a same-sex partner who are employed in the service of their governments or by multinational corporations whose jobs will force them to relocate here for long periods.

IMMIGRATION POLICY AND BINATIONAL SAME-SEX RELATIONSHIPS

Unlike heterosexual couples, binational same-sex couples face substantial hurdles to building a life together in the United States. Heterosexual partners involved in binational relationships can simply marry, achieve immigration status and enjoy the benefits this status provides—including the legal right for the foreign partner to find employment in the United States. The current prohibition barring U.S. citizens from sponsoring their same-sex partners for immigration purposes places an enormous burden on couples in binational relationships, causing them to live in constant fear that the foreign partner will be deported. In some instances, this can mean deportation to a country where GLBT people are repressed by the government or live at great risk of persecution. Moreover, because the foreign partner in a same-sex relationship is often unable to secure employment in the United States, these couples often live under tremendous economic pressure. Without economic resources, even the few avenues available to some couples to stay together legally through work and other visas become inaccessible as they are unable to pay the necessary legal fees.

To remedy this situation, Congressman Jerrold Nadler reintroduced the Permanent Partners Immigration Act (PPIA) in the United States Congress on February 14, 2001. This bill, as proposed, amends numerous sections of the Immigration and Nationality Act (INA), the federal law that governs immigration to the United States, in order to allow U.S. nationals who are in committed same-sex relationships with foreign nationals to sponsor their partner for permanent residence. According to Nadler, “the bill is simply a matter of common sense and fairness,” as it is inappropriate for “the government to tear
apart committed and loving couples." The bill was referred to the House Subcommittee on Immigration and Claims in March 2001 and awaits further action.

The situation for transgender people in this area is only slightly better. If a transgender person lives in a jurisdiction in which he or she can legally marry, then the Immigration and Naturalization Service will accept the validity of the marriage for immigration purposes. Currently, however, this policy is of limited benefit because there are so few states in which the rights of transgender people with regard to marriage have been established.

**Policy Recommendations**

- Pass the Permanent Partners Immigration Act.

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**FORCED TO MOVE TO CANADA TO STAY TOGETHER**

*A Profile of Charles Zhang and Wayne Griffin*

Charles Zhang met Wayne Griffin over the Internet in 1998. Charles was very impressed that the New Hampshire native fluently communicated using “Ping Yin,” Chinese words written with English letters. Wayne had spent several years in China as a missionary and a teacher. They decided to meet up in New York City where Charles, a native of the Chinese province, Hainan, was living under an H1-B work visa. Charles was excited to find a friend who understood his culture and language and when they met, “It didn’t take me very long to realize this was the person with whom I wanted to spend my time and share my life.”

Wayne decided to leave his home and family in New Hampshire to move to New York. He found a job as a training manager on Wall Street and in February 1999 the couple moved in together. “We were so overjoyed by our relationship that we spent weeks painting and decorating our new home,” says Wayne. “We thought life from then on would be ‘happily ever after.’”

The couple was determined to stay together and expected to be able to do so because Charles’ boss had sponsored him for a green card. Unfortunately he also began adding more and more responsibilities to Charles’ already overwhelming workload. The situation was becoming unsustainable, as Charles was supposed to be managing two separate and unrelated departments: shipping and credit. Each day he considered quitting, but stayed on in the hopes the situation would work out. He then discovered from an attorney that the amount he was getting paid was just one half to a third of what his job title required and so his green card application was unlikely to be approved.

The sole route Charles and Wayne had to staying in the United States together was quickly becoming infeasible. “I realized it was almost impossible to go on like that,” Charles says. When Charles initially came to the United States, he did not come to stay long term. “I used to be a college teacher in China and I had a good life, good
Charles and Wayne took great care in preparing for their interviews, practicing answers to various questions and dressing appropriately. Their lawyer said they should have no problems. Everyone was very optimistic.

Unfortunately the couple was interviewed by an infamously difficult immigration agent. She quickly told Charles that he did not have the appropriate job qualifications, even before he had described the work he had done. Wayne’s interview was even more brief. “That was the darkest day of our lives,” says Charles. “We became numb. We didn’t know what to do.”

Fortunately, their lawyer—who was shocked by their treatment—recommended they write an account of their experience that she forwarded to the Consulate General. Their applications were approved two weeks later.

Wayne quit his job and the couple moved to Toronto in February of 2001. Though they are pleased to have legal status that allows them to stay together without fear of expiring visas and deportation, the transition has not been easy for them. Both of them have made significant sacrifices, not the least of which was moving away from Wayne’s family and starting from scratch in rebuilding their careers.

After over a year and a half of frustration in the employment arena in Toronto, Charles and Wayne have decided to start a photography and video business together.

Discrimination has been a significant impediment for the couple. “I hate to say this,” says Charles, “but it is probably true that because I’m Asian, income and respect,” says Charles. “The only reason I decided to stay was I felt I was more free as a gay person. After I met Wayne I became more determined to stay in the states. I wanted to live with him.”

They were quickly feeling more and more hopeless. They wrote hundreds of letters to congresspeople and senators but got no response. In the summer of 1999, Wayne and Charles saw a flyer from the Lesbian and Gay Immigration Rights Task Force. The couple contacted the group about their predicament and the group suggested they pursue moving to Canada. After looking into it, the couple decided that Charles, who had more education and so would be more likely to qualify under Canada’s point system, should apply first. The couple then contacted a lawyer who had previously worked for Canadian immigration. She recommended that Wayne also apply and they send a letter explaining their relationship.

In April of 2000, Charles finally
it’s been much harder for me to find a job—even survival jobs at hotels and coffee shops. Wayne and I would both walk in together and Wayne was the only one to ever get called back. At job fairs, people would talk to Wayne, giving him suggestions. I never got anything.” Charles only had one informational interview in his field. It was going very well until the interviewer asked Charles if his wife was working. “I was honest with him,” Charles says, telling the interviewer of his relationship with Wayne. “His face changed right then and that was the end of it.”

Of their situation, Wayne says, “It feels very strange to have to leave a country that is supposed to be a leader in human rights... The last time I did my taxes I felt a lot of anger. I was forced to pay for a government that would rather have me leave than help me to keep my family together. When I think about trying to work with my own country to obtain rights that I should have, I feel that it would be more useful to try and push a mountain into the sea with my bare hands.”

WELFARE REFORM REAUTHORIZATION AND GLBT FAMILIES

Four elements of the Bush Administration’s proposals to expand welfare reform and privatize and desecularize the social services infrastructure pose a particular threat to GLBT people of all economic classes, not only low-income GLBT people. These are:

1) Marriage promotion and the potential privileging of heterosexual married couples over other families in social service provision and adoption proceedings.

2) “Fatherhood” initiatives, which claim that children cannot be properly raised without a father and stigmatize homosexuality, lesbian and gay families, and other family structures.

3) The promotion of abstinence-only-until-marriage “sex education,” which posits heterosexual sex in the context of marriage as the only acceptable and safe form of sexual activity.

4) The “charitable choice” faith-based initiative, under which religious institutions would contract to provide a broad array of social services with $80 billion in federal and state funds over the next decade. Conservatives in Congress are seeking explicit sanction to discriminate against gay people in employment.1805

In this chapter on partner recognition, we examine the impact of marriage and fatherhood promotion initiatives on same-sex couples and single GLBT parents. Abstinence-only-until-marriage promotion is examined in Chapter 5 on GLBT youth, and the faith-based initiative is examined in Chapter 8 on discrimination and its impact on GLBT families.

Background

The Personal Responsibility and Work Opportunity Reconciliation Act (PRWO-

The Bush Administration and other conservative actors have articulated a set of proposals for this reauthorization of welfare reform that would punish and stigmatize many American families in the name of promoting and privileging certain others. In their attempts to promote heterosexual marriage among poor mothers, the Bush administration threatens the financial security of gay, lesbian, bisexual, and transgender people and our families. These proposals particularly jeopardize GLBT youth, GLBT elders, GLBT parents, and the children of same-sex couples.

**Marriage and Fatherhood Promotion**

The “Marriage Movement” and the “National Fatherhood Initiative” were created by right-wing think tanks in the 1990s, during the interval between the first and second Bush Administrations. Proponents of this exclusionary vision of marriage advocate the end of no-fault divorce, a ban on adoption by gay people, and a stigmatization of gay, unmarried, and single-parent families. They have proposed privileging heterosexual married couples in the receipt of public benefits. Some state governments have already come under the sway of the Marriage Movement. West Virginia offers cash bonuses to couples who marry, while some public school districts in New Jersey, Tennessee and elsewhere have encouraged marriage role-playing complete with gowns, tuxedos, and even church ceremonies, a clear violation of the separation of church and state. Louisiana’s Commission on Marriage and Family reviews all state laws to ensure that marriage is not “undermined,” an approach which could imperil attempts to grant legal rights and benefits to same-sex partners and their children through domestic partner policies and adoption by unmarried adults.

Some of the principal architects of the conservative marriage and fatherhood movements now serve in key positions in the Bush administration. Congress is considering legislation that would grant hundreds of millions of tax dollars to the states in order to experiment with heterosexual marriage and fatherhood promotion. These movements posit a spurious and unsubstantiated causal relationship between the declining number of families led by married heterosexual couples and persistent child poverty in the U.S. Consequently many conservatives—including several individuals now in the Bush Administration—have proposed that married, two-parent families receive priority for some social services and benefits, such as enrollment slots in the Head Start preschool program, public housing units, job training programs, and financial aid for higher education. Such policies would have a particularly negative effect on black and Latino families with children, a disproportionate number of which are headed by single parents. Of course, they also would exclude entirely families headed by same-sex couples.

The Bush Administration has also made fatherhood a national priority, with millions proposed for the Department of Health and Human Services budget to fund ‘fatherhood initiatives,’ which stigmatize single mother- and GLBT-led families with children. Fatherhood activists have even called for prohibiting the use of fertility clinics as an...
option for prospective lesbian mothers and other unmarried women.

The Marriage and Fatherhood Movements also aim to make it harder for people to get divorced. In the late 1990s key policymakers now in the Bush administration called for a ban on “no-fault divorce,” and called for a requirement that both spouses grant their consent. This could potentially trap millions of heterosexual and GLBT people in unhappy and even abusive marriages. Revoking the right to no-fault divorce could have especially serious consequences for GLBT people, many of whom do not come to understand their sexuality until after entering into heterosexual marriages. It is also worth remembering that at least 30 percent of women have been or currently are subjected to domestic violence. Poor women should not have to choose between personal safety and financial security.

**Policy Recommendations**

- Married, heterosexual couple-led families should not be favored over other types of families in determining eligibility for any government-funded service, including welfare benefits and limited-supply benefits such as Head Start slots, student financial aid, public housing, or job training.

- Marital status should not be a factor in determining eligibility to serve as adoptive or foster parents, or eligibility to access the services of fertility clinics.

- All relationships and family types that provide adequate care for children must be affirmed and respected by governmental entities making and implementing family policy with taxpayer dollars.

- Government-sponsored “fatherhood initiatives” should be replaced with “parenting initiatives” which promote good parenting skills and affirm that quality parenting depends on caring, commitment and skill, not gender, marital status, or similar characteristics. Government should assist the full range of families that exist.

- Divorce laws should be left alone.

**GLBT PEOPLE IN PREVIOUS HETEROSEXUAL MARRIAGES**

According to the 1990 U.S. Census, 31 percent of lesbians and bisexual women in same-sex relationships and 19 percent of gay or bisexual men in same-sex relationships were once married to a person of the other sex. These findings are pertinent to family policies such as “covenant marriages” which are currently available in three states, Arizona, Arkansas, and Louisiana. Covenant marriage is essentially a type of marriage that is harder, legally, to enter into and to leave. GLBT people who discover or come to terms with their sexual orientation or gender identity after they marry could find it difficult to divorce their spouse without their spouse’s consent, thereby hindering their ability to live open and honest lives. The changes in divorce laws could also affect millions of heterosexuals, effectively trapping them and their children in unhappy or unsafe marriages.
CONCLUSION

Full access to the institution of civil marriage will afford same-sex couples and their children equal treatment and protection under law. In addition, domestic partnership, civil unions and reciprocal beneficiary policies are necessary both as interim steps toward marriage and as an alternative for both opposite-sex and same-sex couples who choose not to marry. The U.S. is behind many countries and provinces in the world, including Brazil, Israel, Quebec, and South Africa, in recognizing same-sex relationships and the relationships between gay people and their nonbiological children. In order for same-sex couples to be treated equally under immigration, Social Security, and federal tax policy, marriage must be made available to same-sex couples under state and federal law.

CHAPTER NOTES


74. Ibid.

75. Pub. L. No. 104-199, 110 Stat. 2419 (1996), commonly referred to as the Defense of Marriage Act, provides the following:

SECTION 1. SHORT TITLE.
This Act may be cited as the ‘Defense of Marriage Act’.

SEC. 2. POWERS RESERVED TO THE STATES.

(a) IN GENERAL- Chapter 115 of title 28, United States Code, is amended by adding after section 1738B the following:

‘Sec. 1738C. Certain acts, records and proceedings and the effect thereof
‘No State, territory, or possession of the United States, or Indian tribe, shall be required to give effect to any public act, record, or judicial proceeding of any other State, territory, possession, or tribe respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State, territory, possession, or tribe, or a right or claim arising from such relationship.’.

(b) CLERICAL AMENDMENT- The table of sections at the beginning of chapter 115 of title 28, United States Code, is amended by inserting after the item relating to section 1738B the fol-
lowing new item:

‘1738C. Certain acts, records and proceedings and the effect thereof.’

SEC. 3. DEFINITION OF MARRIAGE.

(a) IN GENERAL- Chapter 1 of title 1, United States Code, is amended by adding at the end the following:

‘Sec. 7. Definition of ‘marriage’ and ‘spouse’

‘In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word ‘marriage’ means only a legal union between one man and one woman as husband and wife and the word ‘spouse’ refers only to a person of the opposite sex who is a husband or a wife.’

(b) CLERICAL AMENDMENT- The table of sections at the beginning of chapter 1 of title 1, United States Code, is amended by inserting after the item relating to section 6 the following new item:

‘7. Definition of ‘marriage’ and ‘spouse’.

‘In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word ‘marriage’ means only a legal union between one man and one woman as husband and wife and the word ‘spouse’ refers only to a person of the opposite sex who is a husband or a wife.’


86. The following states have laws designed to prevent recognition of the marriages of same-sex couples: Alaska, Alabama, Arkansas, Arizona, California, Colorado, Delaware, Florida, Georgia, Hawaii, Iowa, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Michigan, Mississippi, Montana, North Carolina, North Dakota, Nebraska, Nevada, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Utah, Virginia, West Virginia, Washington. Missouri's 1996 law was overturned by the state Supreme Court in 1998.


89. Ibid.


97. Ibid.


CivilRightProject/OP4-extremistsattack.PDF; MassEquality. (no date). “About the extreme anti-gay ballot initiative.” Available at http://www.massequality.org/2.php.


108. See In Re Gardiner, 42 P.3d 120 (Kan. 2002), cert. denied.


112. In 1999, civil union or same-sex marriage bills were introduced in California, Connecticut, Hawaii, New York, Rhode Island and Washington and, in 2001, such bills were introduced in Connecticut, Rhode Island, Washington and Wisconsin. In 2002, several prominent candidates for statewide office expressed support for same-sex marriage without experiencing a loss of support in the polls.


115. Vermont law allows people under 18 to marry with parental consent or court certificate. This allowance does not extend to same-sex couples.

116. In Vermont, according to Vt. Stat. Ann. Tit. 15, § 1 (2001), this means that “A man shall not marry his mother, grandmother, daughter, granddaughter, sister, brother's daughter, sister's daughter, father's sister or mother's sister.”


128. Ibid.


130. Lilly v. City of Minneapolis, 527 N.W.2d 107 (Minn. App. 1995).


133. Unmarried heterosexual couples over the age of 62 and who receive Social or Supplemental Security income can register as domestic partners. Copies of California’s domestic partnership law are available through the website of the California State Assembly, http://www.assembly.ca.gov/. Click “legislation” and search for AB 25.


138. San Francisco, Ca., Administrative Code § 12B.2(b) (1997). The statute reads:

(b) The prime contractor shall state that the prime contractor does not, and will not during the term of the contract discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits as well as any benefits other than bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to State or local law authorizing such registration, subject to the following conditions. In the event that the contractor's actual cost of providing a certain benefit for the domestic partner of an employee exceeds that of providing it for the spouse of an employee, or the contractor's actual cost of providing a certain benefit for the spouse of an employee exceeds that of providing it for the domestic partner of an employee, the contractor shall not be deemed to discriminate in the provision of benefits if the contractor conditions providing such benefit upon the employee agreeing to pay the excess costs. In addition, in the event a contractor is unable to provide a certain benefit, despite taking reasonable measures to do so, the contractor shall not be deemed to discriminate in the provision of benefits if the contractor provides the employee with a cash equivalent. The Director shall be the final arbiter of a contractor’s or property contractor’s compliance or substantial compliance with this Chapter and the Director’s determination shall not be appealable to the Commission. Contractors shall treat as confidential to the maximum extent allowed by law or the requirements of contractor’s insurance provider any request by an employee or applicant for employment for domestic partner or spousal benefits or any documentation of eligibility for domestic partner or spousal benefits submitted by an employee or applicant for employment.

In adopting this Section 12B.2(b), the intent of the Board of Supervisors is to equalize to the maximum extent legally permitted the total compensation between similarly situated employees with spouses and employees with domestic partners.


142. See S.D. Myers, Inc v. City and County of San Francisco, 253 F.3d 461 (9th Cir. 2001); Air Transport Ass’n of America v. City and County of San Francisco, 266 F.3d 1064 (9th Cir. 2001). These cases were brought by a construction company contracting on city land and an airline trade organization on behalf of the airlines servicing San Francisco International Airport. These challengers argued that the ordinance violated, among other things, federal constitutional limits on commercial regulation and federal laws regulating the airline industry. However, the court upheld the ordinance in both cases.


149. Ibid.


151. See Lilly v. City of Minneapolis, 527 N.W.2d 107 (Minn. App. 1995); City of Atlanta v. McKinney, 454 S.E.2d 517 (Ga. 1995); City of Atlanta v. Morgan, 492 S.E.2d 193 (Ga. 1997); Crawford v. City of Chicago, 710 N.E.2d 91 (Ill.App. 1 Dist. 1999); Devlin v. City of Philadelphia, 2001 WL 1946133 (Pa.Cmwlth. 2002); Connors v. City of Boston, 714 N.E.2d 353 (Mass. 1999); Schaefer v. City & County of Denver, 973 P.2d 717 (Colo.App. 1998); Slattery v. City of New York, 686 N.Y.S.2d 683 (N.Y.Sup. 1999), aff’d, 697 N.Y.S.2d 603 (N.Y.A.D. 1 Dept. 1999); Arlington County v. White, 528 S.E.2d 706 (Va. 2000); Lowe v. Broward County, 766 So.2d 1199 (Fla.App. 4 Dist. 2000); S.D. Myers, Inc. v. City and County of San Francisco, 253 F.3d 461 (9th Cir. 2001); Air Transport Ass’n of America v. City and County of San Francisco, 266 F.3d 1064 (9th Cir. 2001); Irizarry v. Board of Educ. of Chicago, 251 F.3d 604 (7th Cir. 2001); Heinsma v. City of Vancouver, 29 P.3d 709 (Wash. 2001); Martin v. City of Gainesville, 800 So.2d 687 (Fla.App. 1 Dist. 2001).

152. The initial challenge to the Atlanta benefits ordinance in McKinney, 454 S.E.2d 517 was successful. However, the city modified the wording of the law to comply with the court's decision and a subsequent challenge in Morgan, 492 S.E.2d 193 was defeated.


155. Personal communication with Dr. Unaka from the Health Department on August 13, 2001, 808 586-4600. The State does not post current data to the health department website.


157. Ibid.


159. In Gilden v. Crooke, 414 SE2d 645 (Ga Sup Ct 1992), the Georgia Supreme Court overturned the ruling of the trial court that the property agreement between a lesbian couple was invalid because they were engaged in a sexual relationship in violation of the Georgia sodomy law. In a tersely worded deci-
sion that gave no hint whatsoever to the fact that the parties were a lesbian couple, the Supreme Court simply ruled that since the contract did not require either party to engage in illegal sexual activity it was valid. In Posk v. Layton, 695 So. 2d 759 (Fla Ct App 1997), the Florida court of appeals upheld a support agreement between two women where one was encouraged to give up her job, sell her home and relocate by the promise that the other would support her and provide support payments should they cease living together. Acknowledging the state laws banning same-sex marriage and adoption of children by lesbians and gay men, the Florida court stated that although the state does not condone “the lifestyles of homosexuals or unmarried live-ins,” it does recognize their constitutional private property and contract rights.


161. While Michele Marvin was apparently able to rely on her status as a non-marital homemaker for her famous, film-star partner, Lee Marvin, the California courts were initially reluctant to enforce a similar verbal agreement between two men. See Jones v. Daly, 122 Cal. App. 3d 500 (1981). Subsequent cases reveal the court’s great relief in enforcing partner agreements that have more clearly defined business or financial provisions. See Whorton v. Dillingham, 202 Cal. App. 3rd (1988).

162. See Seward v. Mentrup, 87 Ohio App. 3d 601 (1993) in which the court held that the trial court had no authority to assist a lesbian couples divide their property after a nine year relationship, that power being only available for married couples.


178. The bill was originally introduced in Feb. 2000.


182. Ibid. at 2.

GLBTT Parents and their Children

GLBT individuals pursue different paths to parenthood. Some have children from heterosexual relationships, while others have children as single people or in the context of a same-sex relationship. Some have biological children, others adopt or become foster parents. Some parents raise their children as couples, while others are single or divorced parents. Some create innovative parenting relationships involving more than one household, such as two couples, a couple and a biological parent, or some other coparenting arrangement. The lives of GLBT parents, like all parents, are full of joys and challenges. But they are significantly complicated by the lack of many of the protections that married heterosexual families are privileged to have.

The regulation of adoption, foster care, custody and visitation in the United States is controlled overwhelmingly by state governments. Unfortunately, often state legislatures and courts discriminate on the basis of sexual orientation or gender identity in their rulings and policies. Among the privileges taken for granted by married heterosexuals but regularly denied to GLBT people and their children are:

• Legal recognition of parent-child bonds of all children born into a union.
• Joint adoption of children, as part of a couple (which is explicitly banned in Mississippi).
• Single-parent adoption (which is explicitly banned for gay men and lesbians in Florida, and regularly denied prospective gay and lesbian parents in jurisdictions across the country).
• Foster parenting, which is banned in Arkansas and effectively banned in Utah.
• Recognition of parental status for the purpose of family and medical leave.
• Access to child support when a parental relationship ends.
• Visitation with and/or custody of children after the dissolution of a relationship.
DATA ON GLBT PARENTING

Although there are no precise figures for the number of children being raised by GLBT parents, some estimates indicate that between 6 and 14 million children have at least one gay or lesbian parent.\(^{185}\) More conservative estimates find that between 1 and 9 million children ages 19 and under are being raised by a gay or lesbian parent.\(^ {186}\) The 1990 U.S. Census revealed that roughly 1 in 5 female same-sex coupled households (21.7 percent) had children under 18 years of age living in the home, as did 5 percent of male same-sex couples.\(^ {187}\) The 2000 Census data on parenting patterns in same-sex households are not yet available.\(^ {188}\)

Similarly, 21 percent of black GLBT people surveyed in the Black Pride Survey 2000 reported being biological parents and 2.2 percent reported being adoptive or foster parents. About 12 percent of respondents reported living with children, while one quarter reported having at least one child. Women in the sample of nearly 2,700 respondents from 9 major cities were significantly more likely to have children than men and transgender people: 39 percent of the black women surveyed versus 15 percent of the men and transgender people. Most of the men and women were gay or lesbian.\(^ {189}\) Another recent study found that one in four black lesbians lived with a child for whom she had child-rearing responsibilities, while only two percent of black gay men reported children in the household. One in three black lesbians reported having at least one child (who did not necessarily live with her at that point), as did nearly 12 percent of the gay black men surveyed.\(^ {190}\)

What the Research Shows: Gay and Lesbian People Make Good Parents

Welfare bills passed by the U.S. Congress in 1996 and up for reauthorization in 2002 posit single parenthood and unmarried parents as causes of poor child outcomes.\(^ {191}\) However, while correlations have been established between single parenthood and a higher prevalence of certain problems among children raised in single parent or unmarried two parent homes, other factors such as poverty may have a greater causal effect. In many European countries, higher nonmarital childbirth rates are not accompanied by a higher prevalence of child poverty.\(^ {192}\) Legislative efforts to promote heterosexual marriage and fatherhood to solve problems like poverty and welfare dependency stigmatize the many single parented families with children and GLBT families with children that are thriving. They also fail to consider the more important causal factors.

Research on Children of Lesbian and Gay Parents

The vast majority of children’s advocacy organizations recognize that most lesbian and gay parents are good parents, and that children can and do thrive in gay and lesbian families. Here are statements from several leading professional organizations concerned with child welfare:

- **The American Academy of Pediatrics:** “A growing body of scientific literature demonstrates that children who grow up with 1 or 2 gay and/or lesbian parents fare as well in emotional, cognitive, social and sexual functioning as do children whose parents are heterosexual.”\(^ {193}\)
The American Psychological Association: “Not a single study has found children of gay or lesbian parents to be disadvantaged in any significant respect relative to children of heterosexual parents.”¹⁹⁴

The National Association of Social Workers, in conjunction with the American Psychological Association: “[C]hildren who retain regular and unrestricted contact with a gay or lesbian parent are as healthy psychologically or socially as children raised by heterosexual parents and … the parenting skills of gay fathers and lesbian mothers are comparable to their heterosexual counterparts.”¹⁹⁵

The American Psychoanalytic Association: “Accumulated evidence suggests the best interest of the child requires attachment to committed, nurturing and competent parents. Evaluation of an individual or couple for these parental qualities should be determined without prejudice regarding sexual orientation. Gay and lesbian individuals and couples are capable of meeting the best interest of the child and should be afforded the same rights and should accept the same responsibilities as heterosexual parents.”¹⁹⁶

The American Academy of Family Physicians called for the group to “establish policy and be supportive of legislation which promotes a safe and nurturing environment, including psychological and legal security, for all children, including those of adoptive parents, regardless of the parents’ sexual orientation.”¹⁹⁷

These positions are based on decades of social science research that has discredited the overly simplistic premise that it is always in the best interest of a child to be raised by two heterosexual, married parents. For example, Silverstein and Auerbach contend the following:

[O]ur research with divorced, never-married and remarried fathers has taught us that a wide variety of family structures can support positive child outcomes. We have concluded that children need at least one responsible, caretaking adult who has a positive emotional connection to them and with whom they have a consistent relationship...We share the concern that many men in U.S. society do not have a feeling of emotional connection or a sense of responsibility toward their children. However, we do not believe that the data support the conclusion that fathers are essential to child well-being and that heterosexual marriage is the social context in which responsible fathering is most likely to occur.¹⁹⁸

In a comparison of five different family structures—families with adoptive children, two-parent families with biological children, single mother headed families with biological children, families with a stepfather present, and families with a stepmother present—researchers concluded that there were no major differences in children raised by single mothers compared to the children raised in other household types. Specifically, children from single mother households did not report any differences in well-being or parental relationships as compared to other children.¹⁹⁹

Sociologists debunk the claim that heterosexual parents are more successful in raising children than lesbian or gay couples.²⁰⁰ One 12-year study found that same-sex couples were better at managing disagreements than heterosexual married couples.²⁰¹ A literature review on lesbian and gay families with children concludes that the fears some
have that children from families without fathers—such as lesbian families—will suffer “deficits” in personal development are without empirical support.202 One study of psychosocial development among preschool and school-aged children finds that:

[C]hildren of lesbian mothers’ scores for social competence, internalizing behavior problems and externalizing behavior problems …did not differ from the scores for a large normative sample of American children. Likewise, children of lesbian mothers reported gender-role preferences within the expected normal range for children of this age.203

A review of current research on various family structures reveals a clear pattern: neither family structure nor sexual orientation of parents is a strong determinate of a child’s well-being, and lesbian and gay parents can raise children as well as heterosexual parents can.204

Research on Children of Bisexual Parents

These conclusions are likely true of bisexual parents in same-sex relationships as well. Although there is a lack of research focusing specifically on bisexual parents, it is highly probable that bisexuals in same-sex relationships are included in the samples of some of these studies. Since some studies do not ask people to self-identify by sexual orientation, we do not have conclusive findings on bisexual parents. The addition of such a question to all parenting studies, including those focusing on opposite-sex couples, is merited and would greatly enhance our knowledge in this area.

Research on Children of Transgender Parents

There is very little research on the children of transgender parents. The few preliminary studies that exist have found that these children are not negatively affected by their parent’s gender identity. A 1978 study of 16 children from homes with transsexuals (seven raised by male-to-female transsexuals and nine by female-to-male transsexuals) found that the children did not differ appreciably from those raised in more conventional family settings.205 A 1998 study of 18 children found that the vast majority reported no problems with teasing and most understood and accepted their parent’s transgenderism.206 For example one 14 year-old daughter reported:

My [m]other's not happy in the body she is in. My mom is a lot happier since starting to live as who she wants to be. When I was 13, my mother said, “I want to be a man, do you care?”

I said, “No, as long as you are the same person inside and still love me. I don’t care what you are on the outside”… It’s like a chocolate bar, it’s got a new wrapper but it’s the same chocolate inside.207

In addition, none of the children exhibited strong cross-gender behavior or expressed a desire to change their own sex.208

In a 1999 survey of therapists working with transgender clients, the vast majority of respondents agreed that while a parent’s gender transition was not a neutral event, postponing transitioning and maintaining secrets about one’s gender identity is much more difficult for children to deal with. In addition, “there was an overall consensus that factors within the parental relationship and family constellation had significantly more bearing on the outcome for the children than the transition itself.”209 Children were
more likely to adjust well to the transition when they were able to maintain close relationships with both parents. In addition, having supportive family members and minimal conflict between parents were closely linked to good outcomes for the children. The study showed that in most cases it is unnecessary and inadvisable for a transgender parent to postpone transitioning until the child becomes an adult.\textsuperscript{210}

Much more study is warranted into the experiences, needs and concerns of children of transgender parents. However, the existing research does contradict the notion that it is better for children to not continue a relationship with a transgender parent. This research indicates that ending parental contact, limiting custody, or requiring a parent to postpone transitioning can all be much more harmful than helpful to the children concerned.

**SINGLE PARENTING IN THE GLBT COMMUNITY**

Research on GLBT people with children is limited in that it does not disaggregate the ways in which single parents and their children differ from two-parent families. However, there is reason to believe that such differences do exist. These differences may be due more to economic privileges that come with having two incomes, as opposed to having two parents of the same sex. In addition single women suffer the added hardship associated with the gender gap in work opportunities and salary. According to the 2000 U.S. Census, single-parent households headed by women were nearly twice as likely to have family incomes that fell below the poverty level as compared to similar households headed by men.\textsuperscript{211}

While in many respects, including caretaking and economics, having two parents may be desirable in many cases, millions of U.S. children are raised in loving, highly functional single parent homes. Some conservatives have posited a causal relationship between single-parent families and poverty. In fact, the policies privileging two parent families are often the culprit. While rates of out-of-wedlock births are higher in several northern European countries, poverty is much lower than it is in the United States. For example, Sweden, Norway, and Denmark have nonmarital birthrates of 47 to 54 percent, much higher than the U.S. rate of 32 percent. Britain’s rate of 34 percent and France’s rate of 37 percent are also higher than the U.S. rate. But poverty rates in these countries are much lower than poverty rates in the U.S.\textsuperscript{212}

A late 1980s study of poverty differences between single-parent and married couple families with children found that, in several countries with generous social safety nets, the differences were not significant. In Sweden, 5.5 percent of single-parent families were poor, versus 5 percent of married couple families. In the Netherlands the difference was 7.5 percent versus 7.2 percent; in France 15.8 percent versus 10 percent, and in Britain 18 percent versus 16.6 percent. In the U.S., however, the differences were dramatic: 53.3 percent of single-parent families with children were poor, versus 17.9 percent of married couple families with children. This indicates that the poverty gap is not an inevitable state of affairs, but the result of particular public policy choices that vary from country to country.\textsuperscript{213}

There were 12 million single-parent families counted on the 2000 Census; 10 million were headed by single mothers and 2 million were headed by single fathers.\textsuperscript{214} Single par-
ents made up 40 percent of the NGLTF Black Pride Study. Eighty percent of the single parents were the biological parent to a child. Nearly 40 percent of single parents reported the presence of a child in the household. Lesbians made up almost three-quarters of single respondents that had children and reported a child in the household.

Many lesbians and bisexual women are forced through custody battles with former male spouses to forego financial support for them and their children in exchange for being allowed to retain custody of their children. At the same time many are forced by the courts to require their female same-sex partners to move out of the home as a condition for maintaining custody. Both circumstances serve to further impoverish lesbian and bisexual mothers and their children.

GLBT single parents have many of the same needs as other single parents. Welfare reform proposals that prioritize heterosexual marriage as a public policy goal over promoting self-sufficiency for single-parent led families are both misdirected and harmful (see “Welfare Reform and GLBT Families” in “Partner Recognition” chapter). Instead policies need to focus on ensuring that all families can meet their basic needs, including healthcare, food, and shelter. Families leaving the welfare rolls for jobs should continue to receive food stamps and Medicaid if they need them, and decreasing the welfare rolls should not be prioritized over decreasing poverty. The minimum wage should be raised so working families do not have to live in poverty. Single parents should be afforded opportunities to access education and training programs, and they should be allowed to count them towards workfare requirements, so that they may increase their wage-earning capacity. Access to affordable or government-subsidized child care is essential to ensure that single-parents can take advantage of such programs and can work. Policies that encourage employers to provide child-friendly, flexible work hours also make it possible for single parents to work.

In addition, GLBT single parents may be particularly hard-hit by aspects of welfare reform. For example, new TANF (Temporary Assistance for Needy Families) regulations assume that all children are the products of heterosexual family unions. Lesbians who cannot comply with the establishment of paternity required by the regulations will suffer a 25 percent decrease in cash assistance and risk termination of benefits. In contrast single fathers need not disclose the maternity of their children.

### Custody and Visitation Issues Arising Out of Heterosexual Relationships

Presuming that I am an unfit parent simply based on who I choose to love is wrong…. I am not a deviant, nor am I evil….I am the one who helped my children prepare for their first Holy Communions. I am the one the principal of their parochial school asked to serve as the secretary of the PTA.

—Dawn Huber, who lost a 2002 custody appeal in Alabama. Alabama Chief Justice Roy Moore called Huber’s homosexuality an “abhorrent, immoral, detestable” fact that “render[ed]…her an unfit parent.” He also called for the “confine[ment]” and even the “execution” of homosexuals in order to protect children.
Despite unequivocal empirical evidence that gay men and lesbians make good parents, members of our community face recurrent discrimination in their attempts to form families and to secure their relationships with their children.

Some lesbian and gay people discover their sexual orientation in the context of heterosexual marriages. When these marriages end and divorce proceedings begin, they are often confronted with custody challenges. In fact, a recent report suggests that approximately 30 percent of all lesbian and bisexual female parents, regardless of whether they first had children in a relationship with a heterosexual partner or with a partner of their own gender, have been threatened with loss of custody. Fathers, known sperm donors, female co-parents, grandparents and other relatives all have the potential of bringing custody challenges against lesbian mothers.\(^{217}\)

The “Best Interests of the Child” Standard and Gay and Lesbian Parents

In nearly every state, custody decisions must be determined according to the “best interests of the child.” Even so, application of this general rule varies greatly from state to state, and even from judge to judge.

The majority of states have adopted the so-called “nexus” approach, which requires that the parent seeking custody show a connection between the other parent’s sexual orientation and some harm to the child. Under this approach, in the absence of evidence that the other parent’s sexual orientation is actually causing some harm to the child, the court should not consider sexual orientation in deciding a custody, visitation, or adoption dispute.\(^{218}\) The District of Columbia is currently the only jurisdiction in the country that has a statute explicitly guaranteeing that sexual orientation cannot, in and of itself, be a conclusive factor in determining custody or visitation.\(^{219}\)

In practice, however, sometimes courts say that they are not considering the sexual orientation of a parent per se to be harmful to the child, but, in reality, treat it as though it were.\(^{220}\) Some states used to have an explicit “per se” rule, under which being lesbian or gay was, in and of itself, a sufficient basis to deny custody to a parent, regardless of the parent’s prior child-rearing experience and relationship with the child. In recent years, however, even very conservative courts have shifted away from this approach.\(^{221}\) In some parts of the country, divorce courts routinely impose non-cohabitation restrictions on divorcing parents. These restrictions typically prevent parents from having unmarried partners live with them or even stay overnight when children are present. While heterosexuals have the option of marrying their partners, and are then exempt from the restriction, gay men and lesbians are unable to do likewise despite being equally committed to their partners. In this sense, non-cohabitation requirements unfairly discriminate against gay and lesbian parents.\(^{222}\) Gay parents have also been ordered by courts not to attend gay community events with their children.

Bisexual Parents

Bisexual parents also face discrimination in child custody and visitation cases, where negative stereotypes about bisexual people are sometimes used to justify denying custody or limiting visitation. For example, in a 2001 Mississippi custody case between a heterosexual father and a bisexual mother living with her same-sex partner, the court ruled...
that “the morality of the mother’s lifestyle was one important factor” in granting custody to the father. Although courts seem to be moving away from the presumption that a parent’s bisexuality is a negative factor in their ability to parent, some courts are still reluctant to place a child in the custody a bisexual parent. The Ohio Appellate Court has required “a total lack of any viable alternatives,” and reversed custody previously granted a bisexual father even though the children’s mother had not denied allegations of drug use and extramarital affairs. The Ohio court also ignored advice of an appointed clinical psychologist that the children remain with their father because he provided a more stable home environment: “his sexual preferences presented no immediate danger to the children’s welfare” and the children had developed friendships and social relationships at school and in their father’s community.

Transgender Parents

Transgender parents coming out of heterosexual marriages can face bitter court battles over custody or visitation rights with their children. In some extreme cases, courts have terminated the parental status of the transgender parent, meaning the parent has no legal right to have any contact with his or her child and is no longer considered the legal parent of the child. More frequently, a court will impose conditions or restrictions on a transgender parent seeking custody or visitation rights. For example, one court granted a transgender father custody of his daughter on the condition that he did not cross-dress in front of her and that he not have any literature relating to transvestism in the home. In some cases, courts have decided that a transgender parent could retain full custody of the children because there was no evidence that having a transgender parent physically or mentally harmed the children.

Policy Recommendations

- Enact legislation forbidding the consideration of sexual orientation or gender identity as a relevant factor when assessing the “best interest of the child” in a custody or visitation proceeding.

ARCHAIC SEX LAWS, OR SODOMY LAWS, AND THEIR USE AGAINST GLBT PARENTS

The government has a long history of interference with the intimate lives of its citizens—be it in the form of banning interracial marriages, or of limiting access to contraceptive choices. For GLBT individuals, sodomy laws—state laws that criminalize consensual and private same-sex intimacy—remain a threat to our families. They have been used to justify anti-gay interpretations of the law and, in many cases, to separate gay and lesbian parents from their children. As of July 2002, these laws existed in 13 states, with prohibitions against same-sex sodomy alone in four states and against same- and opposite-sex sodomy (usually defined as oral and anal sex) in nine states (see map below).

The U.S. public does not support sodomy laws (see below) and many countries have come to recognize them as antiquated and harmful. Some laws, like that still on the books...
in Massachusetts which prescribes a five year jail term for oral sex and 20 years in jail for anal sex, date back to the Puritan period in the 1600s. These laws have been repealed in most other industrialized countries. France and Belgium abolished their laws in the 1790s, Brazil, Spain and the Netherlands abolished theirs in the early 1800s, and Denmark, Sweden and Portugal repealed sodomy laws in the first half of the 20th century. The bulk of the remaining industrialized countries have repealed theirs since 1950.\textsuperscript{229}

Although convictions under most state sodomy laws are relatively rare, the existence of these laws has other grave consequences. Technically, convicted sodomites can be legally denied the vote in Alabama. By labeling gay, lesbian, bisexual and transgender people “criminals,” state sodomy laws give courts a mechanism by which to discriminate against GLBT individuals and families. For example:

- A Mississippi court used the sodomy law to justify denying custody of a boy to his gay father despite the fact that the court also found that the father would provide better care in part because the boy’s stepfather was physically abusive to his mother.\textsuperscript{230}

- In Virginia, the court used the sodomy law to justify its decision to deny Sharon Bottoms custody of her child, instead granting custody to Bottoms’ mother.\textsuperscript{231}

- In Texas, a social work supervisor used the possible breaking of state sodomy law to invoke “emergency powers” and remove a foster child from a lesbian household. The ACLU successfully challenged the supervisor’s denial of placements.\textsuperscript{232}

- A lesbian mother was denied custody of her child and Justice Roy Moore justified the decision saying, “The law in Alabama says that sodomy is against the law.”\textsuperscript{233} In a separate case, the Alabama sodomy law was used to deny funding to a GLBT student group at a state-funded university.\textsuperscript{234}

- Denial of employment in Florida, Georgia and Texas has been justified with the sodomy laws.\textsuperscript{235} For example, in Texas an openly lesbian applicant to the Dallas Police Department was denied a position because she was presumed to engage in illegal activity.\textsuperscript{236}

Since the 1970s more than 35 states have repealed these laws. The repeal of the remainder of these laws would provide greater security to GLBT parents and their children.

Public Opinion

Disapproval of same-sex intimate relations has been decreasing steadily since it peaked in the late 1980s, and approval of such relations is at its highest since the early 1970s.\textsuperscript{237} More to the point, a Kaiser Family Foundation survey found that 88 percent of the public “believes that society should not put any restrictions on sex between consenting adults in the privacy of their own home.”\textsuperscript{238} As far as the public is concerned sodomy laws are a relic of the past. Unfortunately, they continue to threaten GLBT people and the security of our families.
Policy Recommendation

- Repeal all archaic sex or sodomy laws that criminalize sexual behavior between consenting adults.

CUSTODY AND VISITATION ISSUES ARISING OUT OF HOMOSEXUAL RELATIONSHIPS

When same-sex couples jointly raise children, it is not uncommon for one parent to lack a biological or adoptive relationship to the children. As a result, if the couple’s relationship ends, one parent is at a clear disadvantage when seeking custody or visitation rights. Even if that parent has been the primary care taker of the child or the primary bread winner, he or she may have to explain and defend his or her relationship to the child. A number of legal cases have arisen and been decided out of these types of situations, with
both heart-wrenching losses and important victories for the non-biological, non-adoptive parents. Supreme Courts in Maryland, Massachusetts, New Jersey, Pennsylvania, Rhode Island and Wisconsin have all found that a coparent who met specified standards had a legal right to seek visitation and/or custody of a child he or she had raised. In the Massachusetts case, the non-biological mother was determined to be a “de facto parent”—which the Court defined as someone who “with the consent and encouragement of the legal parent, performs a share of the care taking functions at least as great as the legal parent”—and so could seek visitation rights with her child.

Unfortunately, there have also been numerous cases where the coparent’s relationship with the child was not recognized and the coparent has been held to not have the standing to ask for visitation or custody. These cases, pitting one parent against another, have been very detrimental to the parenting rights of all GLBT people. In the hopes of reversing this trend and promoting greater respect for GLBT families, several GLBT organizations and individuals authored a set of ethical standards for child custody disputes in same-sex relationships.

Policy Recommendations

- Any individual, who with the encouragement and consent of a child’s legal parent has acted as a parent to the child for a significant period of time, should be deemed a “de facto parent” under law and have standing to pursue appropriate custody of or visitation with that child. The continuation of such a relationship is in the best interest of the child.

ADOPTION

GLBT adults are among the thousands who adopt children each year. Some adopt children they are raising with a partner (often the biological child of their partner), thereby creating a legal bond where a familial one already exists. Some are selected by family members or close friends to adopt a child upon the death or incapacity of the child’s parent(s). Many adopt through public or private agencies, domestically and internationally. A growing number work with intermediaries to identify women wishing to have their babies adopted and to reach agreements directly with those birth mothers.

There are different ways for GLBT people to adopt. Most commonly available is individual adoption of a child as a single parent. However, some states explicitly prohibit or regularly deny adoptions by GLBT individuals. Many states deny same-sex couples the ability to jointly adopt a child, or deny one parent from adopting a child that already has a legal bond to the other parent. In contrast, married couples in all parts of the country are free to pursue joint adoption, and stepparent adoption by a spouse tends to be a simple process, with only the most cursory investigation of the adoptive parent. In some situations, same-sex couples must pursue adoptions where a similarly-positioned married couple would not. For instance, when a married woman gives birth to a child, her husband is automatically considered to be a presumptive legal parent, even if he is not the child’s biological parent. This is not true, for example, of a lesbian couple where one partner gives birth.
Single Parent Adoption

Most U.S. states do not prohibit adoptions by single individuals, including GLBT people. Exceptions are Florida, which bans adoptions by “homosexual” individuals and Utah, which prioritizes heterosexual married couples as adoptive and foster parents. While Arkansas does not prohibit gays from adopting, since 1999 its Child Welfare Agency Review Board has banned gays and lesbians from foster parenting. Mississippi bans same-sex couples from adopting.

Adoptions can be arranged independently, as well as through a state or private agency. Qualifying as an adoptive parent involves passing a rigorous screening process, including home visits as well as interviews. The final stage in the adoption process entails going to court in order for a judge to approve the adoption. In many states, this type of adoption is the only way that a GLBT person can acquire the status of a legal parent for his or her non-biological children. Despite the fact that lesbians and gay men are

Restrictive Adoption and Foster Care Laws in the United States

![Map of restrictive adoption and foster care laws in the United States]

- **Laws prohibiting adoption:** Florida (prohibits adoption by “homosexuals”); Mississippi (prohibits same-sex couples from adopting)
- **Laws restricting adoptions and foster care placement:** Utah prioritizes married heterosexual couples for the purposes of adoption and foster care
- **Regulations or policies prohibiting or restricting adoption and/or foster care:** Arkansas (administrative rule prohibiting gay men and lesbians from being foster parents)

This map can be downloaded at [http://www.ngltf.org/downloads/adoptionmap.pdf](http://www.ngltf.org/downloads/adoptionmap.pdf)
technically able to adopt as individuals in many states, the judge can intervene to prevent the placement of a child with a lesbian or gay parent if he or she sees fit. The same applies to bisexual and transgender parents.

**Second Parent and Joint Adoptions**

Adoptions that allow both parents of a child to have their parental relationship legally recognized are essential to ensuring the rights and security of children of same-sex couple parents. For same-sex couples, joint adoptions and second parent adoptions are the means by which both parents can create this tie. When a child is not biologically related to either parent, a joint adoption allows both parents to simultaneously adopt a child. In such cases, it may also be possible for one person to singly adopt and then for the partner to adopt through a second parent adoption.

A second parent adoption is one in which the legal—biological or adoptive—parent retains his or her parental rights, while consenting to the adoption of the child by his or her partner. Second parent adoptions are similar to step-parent adoptions and are often used to create a legal parental relationship for the partner of the biological parent. For example, a lesbian woman may give birth to a child that both she and her partner intend to raise together as equal parents. Through a second parent adoption her partner becomes one of the child’s legal parents, whereas otherwise she would be seen as a stranger to the child before the law. In jurisdictions where second parent adoptions are not allowed, but joint adoption is, a biological parent would have to terminate his or her parental status in order that both parents may jointly adopt the child. In those places where neither form of adoption is available to unmarried or same-sex couples, then the child can only have a legally recognized relationship to one of his or her parents.

During the 1980s, lower courts in the San Francisco Bay Area began granting same-sex couples the right to adopt children jointly and simultaneously. Since then courts have been increasingly allowing such adoptions. Joint adoption is currently available in the District of Columbia, California, Connecticut, Massachusetts, New Jersey, New York and Vermont, and has been granted at the trial court level in other jurisdictions.245 Second parent adoptions have been used since 1985, when Alaska granted what was probably the first gay or lesbian second parent adoption. Trial courts in Oregon, Washington state, and California soon followed with pro-gay rulings, and since the mid-1980s trial courts in 16 other states have approved second parent adoptions involving a same-sex partner. These states include Alabama, Alaska, California, Hawaii, Indiana, Iowa, Louisiana, Maryland, Minnesota, Nevada, New Mexico, Oregon, Rhode Island, Texas, and Washington.246 State supreme courts or appellate courts have approved second parent adoptions in Vermont (1993), Massachusetts (1993), New York (1995), District of Columbia (1995), New Jersey (1995), and Illinois (1995).247 In 2000, the Connecticut legislature created a mechanism for joint and second parent adoptions.248 In August 2002, the Pennsylvania Supreme Court overturned a ban on second parent adoption, calling it “absurd.”249 Courts at some level in nearly two dozen states have approved second parent adoptions, but the vast majority of courts in the United States have not.
Generally, second parent adoptions are only possible so long as another party, such as a biological father, does not already have legal parental rights. Third parent adoption—in which both biological parents as well as a same-sex partner of one of the biological partners shared custody—has been rarely and selectively granted in several cases in Alaska and the San Francisco Bay Area.  

These adoption mechanisms, especially second parent adoption, are critically important to ensure that children have a legally protected relationship with both their par-
ents. For the child, not having a legal relationship with one parent means that the child is not entitled to a myriad of economic and health benefits through that parent. These include the right to survivor benefits, such as Social Security survivor benefits, the right to inheritance, and the right to sue for wrongful death if that parent dies. In addition, if the legal parent dies, a child may be removed from the custody of their other parent, unless that parent has been designated the child’s guardian in a will. Children living in lesbian and gay families, or bisexual and transgender families with same-sex parents, are often unable to access health benefits through a parent who is not legally recognized.

JOINT ADOPTION BY NORTH DAKOTA DADS

A Profile of Todd Berg, Chad Long and Jensen

Todd Berg and Chad Long, who are believed to be the first men to adopt in North Dakota as a couple, describe their experience in the below piece adapted from an article printed in Rainbow Families Newsletter. Chad is an elementary school teacher and recently finished his master’s degree in education. Todd advocates for and oversees staff who work with people with developmental disabilities. Rainbow Families is a Minneapolis-based organization working to organize, strengthen and celebrate families whose parents are lesbian, gay, bisexual or transgender. Their website is at www.rainbowfamilies.org.

When the two of us met in September 1996, we knew it was meant to be: we both had four letters in our first names and last names, both our first names ended with d and our last names with g. We were wearing the same belts. And we both wanted to be parents. God stepped in, creating a committed relationship, and five years later we were ready for parenthood (or at least as ready as one can be). But was North Dakota ready for us to be out... and be parents together?

For two years we researched agencies across the country and struggled to find a North Dakota agency that would do our home study. State law dictates that an in-state agency must conduct the home study regardless from where someone is adopting. We found a local agency willing to do the home study and support the Chicago-based agency we chose to use for our adoption.

Our paperwork was sent to the two agencies in late January 2001. The home study process quickly began, with our local agency willing to facilitate an out-of-state adoption. We all assumed this would be our means of adopting, because the North Dakota Department of Human Services had some personnel who would make adoption of anyone in state custody impossible for a same-sex couple, and our social worker thought the wait for a North Dakota birth family to choose a same-sex couple could be lengthy. So we proceeded with the home study that would be sent to the agency in Chicago.

Of course, the standard questionnaires, physicals, parenting surveys, and behavior inventories had to be done. At the conclusion of our home study visit on March 15, 2001, our social
worker shared some incredible news with us. She wanted to show our portfolio to a North Dakota birth mother who was interested in choosing a same-sex family to adopt her two-week-old son, who was in temporary foster care (born March 1). On April 6, 2001, we received a phone call from our local agency that the birth mother had made a decision. She wanted us to adopt her son! This wouldn’t be an out-of-state adoption as both we and our local agency had expected. We were about to adopt a North Dakota infant! We soon learned that our son would be coming home on April 20, so we had plenty to do to get ready. After buying all the baby necessities and getting the nursery prepared, we were told by our local agency just a couple of days before his expected arrival that they would no longer be supporting the adoption and that they would have to back out. Apparently, the foster parents had learned of the birth mother’s wishes to place her child in a two-dad family and threatened the local agency with media attention. That, linked with pressures from someone in a position of authority with the North Dakota Department of Human Services, caused the agency to reconsider placing this child in our home. They deemed our home no longer in the best interests of the child. Our hopes were quickly dashed and our spirits crushed.

But we made a decision that evening: we were going to fight for our son. Several phone calls later we located a different agency (locally) that was willing to take over, although a few changes were necessary. The new agency had to update our home study, the adoption had to take place as an identified adoption with full disclosure of all parties (the North Dakota Department of Human Services has no authority in identified adoptions), and the child needed to be removed from the foster family as soon as possible and be placed with us pending termination of parental rights.

Our persistence and determination paid off! On May 3, we had a wonderful visit with the birth mother and birth grandmother and we met our son and brought him home. The finalization hearing on December 14, 2001, less than one full year after sending in our paperwork, made Jensen a legal member of our two-dad family. We still enjoy letters, share photos, and have occasional visits with Jensen’s birth family. With one of us able to work from home two to three days each week (Todd) and the other with summers off (Chad), we are able to experience the joys that come with a child firsthand—morning baths, walks with the wagon, swinging in the park, trips to the zoo, and reading stories aloud, to name a few. Just as in the two of us meeting, God once again stepped in, changing our committed relationship of two into a family of three.
If a child becomes sick, their non-legal parent may be unable to authorize medical treatment for them and may even be prevented from visiting them in the hospital. Finally, if the parents’ relationship dissolves, the child could be denied access to or economic support from one parent, regardless of the role that parent has played in the child’s life. Once the adoption is completed, however, the second parent is a full legal parent, with all of the same rights and responsibilities.

**Anti-Gay Adoption Laws**

Despite all the evidence indicating that GLBT people make good parents and that their children thrive, some states have exclusionary adoption policies. In 1977, Florida enacted a law to prohibit gays and lesbians from adopting. Its statute reads, “No person eligible to adopt under this statute may adopt if that person is a homosexual.” This ban was upheld by a federal court in 2001. A federal court challenge is ongoing.

New Hampshire passed a ban on gay adoption and foster parenting in 1987, a year after Massachusetts’s Department of Social Services removed children from the home of a gay foster couple simply because they were gay, and then instituted a policy banning gays and lesbians from foster parenting. Massachusetts abandoned its ban on gay foster parents in 1990, under legal pressure and following years of protests by activists. New Hampshire repealed its anti-gay adoption and foster parenting statute in 1999. In March 2000, Utah passed a law giving married heterosexual couples priority for placement of adoptive and foster children in the home. Two months later, Mississippi passed legislation banning same-sex couples from adopting. Other states that have recently introduced exclusionary adoption and/or foster care bills include Arkansas, Indiana, Oklahoma and South Carolina. Fortunately none of these have passed.

**Adoption by Bisexual and Transgender People**

Though their situations are different, bisexual and transgender people might find themselves affected by anti-gay adoption laws. Bisexuals in same-sex relationships will face the same prejudice and lack of recognition as gays and lesbians. However, those who are single or in opposite-sex relationships might find their situations determined by whether the court has knowledge of past same-sex relationships and how those relationships are framed.

There are no laws explicitly denying transgender people the right to adopt. However, transgender people may face discrimination by an adoption agency. If a transgender person is legally the same sex as his or her partner, then he or she could face the same obstacles that gay and lesbian individuals and same-sex couples do. This also applies to second parent or stepparent adoption, where the state’s determination of whether the relationship is same-sex or opposite-sex will establish what laws apply. Furthermore, an unfriendly judge might use the “best interest of the child” standard that is a staple of family law as a way to deny both bisexual and transgender people access to adoption.

**Adoption and Race**

The issue of adoption is closely interconnected with the issue of race. African American children comprise 42 percent of the children in foster care, though they only represent 17 percent of all children in the United States. They are also less like-
ly to be returned home or to be adopted, and so often stay in foster care until reaching adulthood. Latino children in foster care are similarly less likely than other children to be adopted. White non-Hispanic and Asian Pacific Islander children are underrepresented in foster care and are more likely to be adopted. Roughly 13 percent of children adopted by two parents in the U.S. are Asian Pacific Islander, though they make up only 4 percent of all the children in the United States. Some of these children are adopted from overseas.

African Americans tend to adopt at a higher rate than whites—they are as much as 4.5 times more likely to adopt when controlling for age of parents, family income and family structure. This is in part a result of a strong tradition of extended families and informal adoptions within the black community. Many GLBT blacks are also adoptive parents. As already mentioned, NGLTF's Black Pride Survey found that 2.3 percent of the 2,700 black gay respondents surveyed (2.5 percent of women and 2.1 percent of men) were adoptive and/or foster parents. In contrast, a 1987 National Health Interview Survey found that only 1.5 percent of never-married black women and 1.8 percent of never-married white women adopted children. Of the states with anti-gay adoption and foster care policies—Florida, Mississippi, Utah and Arkansas—all but Utah have proportions of African Americans somewhat higher than the national average. Mississippi has one of the highest proportions of black residents in the U.S. Black children's chance of being adopted is not helped when the already limited pool of potential parents is limited further by the exclusion of gay and lesbian people or same-sex couples.

A related issue is the contentious debate around transracial adoption, most commonly the adoption of children of color by white parents. Though transracial adoptions decreased dramatically in 1972, after the National Association of Black Social Workers put out a statement opposing it, in 1987, 8 percent of all adoptions by U.S. parents were transracial. In 1998, 15 percent of adoptions happening in the context of foster care were transracial or transcultural. Two laws, the 1994 Multiethnic Placement Act and the 1996 Interethnic Adoption Provisions, outlawed delaying placement of a child with adoptive parents solely on the basis of race or national origin.

Nevertheless this issue continues to be debated, with some raising concerns about the expenditure of state resources on adoption rather than attempting to preserve children's birth families. Some say that white parents might be unable to pass along the heritage of the child's ethnocultural community, or to understand and effectively address the racism the child will experience. Still others are concerned that, given the intense residential segregation in the U.S., children of color adopted by white parents may grow up in a nearly all-white environment.

Those favoring transracial adoption point to the fact that the number of children available for adoption greatly surpasses the number of parents seeking to adopt, and that forcing children to wait for a racially-matched parent will keep children in agencies when they could be in homes. Attempting to address the concerns of those opposed to transracial adoption, some have advocated outreach to communities of color to

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**African American children comprise 42 percent of the children in foster care, though they only represent 17 percent of all children in the United States. They are also less likely to be returned home or to be adopted, and so often stay in foster care until reaching adulthood.**
increase the pool of potential adoptive parents of color, while allowing transracial adoption by parents who are sensitive to the racial and cultural issues involved. Many gay and lesbian parents have dealt directly with these issues by adopting children of a different race.\textsuperscript{265} As the number of interracial and same-sex couple-headed families increases, we need to grapple thoughtfully with the complexity of racism and homophobia both within and outside of these intersecting communities.

**Public Opinion: A Plurality Now Supports Adoptions by Gay Men and Lesbians**

Over the past decade the general public’s support of adoption by gay men and lesbians has grown steadily. A 2001 survey found roughly equal numbers supporting and opposing adoptions by gay men and lesbians, while a 2002 survey found a plurality supporting gay adoption—in other words, more respondents supported gay adoption than opposed it, although these supporters did not constitute a majority. This shows a growing trend toward acceptance when compared to 1994, when only 29 percent of the public supported gay and lesbian adoptions and 65 percent opposed the practice.\textsuperscript{265.5}

The 2001 Henry J. Kaiser Foundation poll found 46 percent of the general public supported adoptions by lesbians and gay men, and 47 percent opposed.\textsuperscript{266} Soon after talk show host Rosie O’Donnell revealed to a television-viewing audience that she was a lesbian adoptive parent, a March 2002 ABC News poll found that for the first time in 10 years of polling on gay and lesbian adoption, supporters of same-sex couple adoptions outnumbered opponents, 47 to 42 percent.\textsuperscript{267} The level of support increased dramatically from 1994 when it stood at only 28 percent, and from 1998 when it was at 35 percent. There were significant differences across demographic variables in ABC News’s random national sample of 1,031 adults. Most women supported gay adoption, while most men opposed it. Most young people (18-34) supported adoption by “gay couples,” while most elders (65+) opposed it. A majority of easterners and midwesterners were supportive, while most southerners were opposed; a plurality of westerners was supportive. Majorities of Democrats and Independents supported gay adoption, while most Republicans opposed it.

**A FAMILY STORY**

**A Profile of Akilah Monifa and Ruth Bolden**

When Akilah Monifa and Ruth Bolden decided they wanted to have a child, they didn’t realize the full extent of hurdles they would face. Living in California, a state with relatively positive GLBT-parenting laws, and specifically in the Bay Area, which is know to have a selection of services for gay and lesbian families, they thought they were well-situated. Initially, they decided to use donor insemination and began researching fertility clinics to find one that would meet their needs. Calling fertility clinics that primarily served lesbians, they soon discovered that most did not carry sperm from donors of color. The apologetic tone of the responses was no comfort to the two African American women who were frustrated that the clinics were clearly not seeking to serve them.

Akilah and Ruth began calling out-of-state clinics throughout the country. Common responses to their explana-
tion that they were two women seeking to have a child were, “We serve families,” “This is a Christian-based organization,” and “We don’t serve your kind.” They also continued to experience difficulty in finding places that had a range of sperm donors of color. When they asked if a sperm bank might have sperm from a Jewish person of color (Ruth is Jewish), they were asked, “Why would you want that?!” Akilah describes fertility clinics as, “akin to country clubs,” with various mechanisms for selecting their clientele. After much effort, they eventually found a place that met their needs. Unfortunately, Ruth was unable to carry her pregnancies to full term. Akilah and Ruth then decided to pursue adoption.

The couple enrolled in an adoption class and joined a support group. They decided they would like an open adoption where the family maintains contact with the birth mother and the child has the option of having a relationship with her. They also wanted a child of African descent. Again they began the process of researching agencies and again they were turned away with statements like, “We have never worked with gays or lesbians, so we are probably not the best agency for you.” Some agencies said that Ruth, who is biracial and light-skinned, should pass as white because it would increase the couple’s likelihood of being chosen. Eventually they found an agency that had both worked with African American couples and with gay and lesbian couples, but it soon became clear that even this was not enough. The agency had not previously worked with African American gay or lesbian couples, which Akilah says “was probably the reason they were not able to make a match.” She believes this was reflected in the way they talked to African American birth mothers and whether they would regularly ask if they would be willing to have a gay or lesbian adoptive couple.

Fortunately, the next agency they worked with in New York took a different approach. When an African American birth mother said she would like her child to be raised by a single woman, it took only one question for the birth mother to say that she would consider a lesbian couple. She looked over and approved Akilah and Ruth’s application. In January 2001, four years after deciding they would like to raise a child, Akilah and Ruth became proud parents of a baby girl, Isabella Bolden Monifa.

Reflecting on the process, Akilah notes the multiple subtle ways in which the assumption of parents’ heterosexuality pervades society. One recurrent problem is that forms ask parents or prospective parents to fill out “mother” and “father.” “It is so easy to change forms to
Foster care systems in the United States are overburdened with more children than they can handle and not enough qualified adults coming forward to help. While there are 117,000 children available for adoption in the foster care system, only 46,000 are adopted from public child welfare agencies annually. In a six-month period, the number of kids entering foster care was three times the number of kids adopted out of foster care during that entire year. Additionally, GLBT youth are overrepresented in the foster care system and have special needs that the foster care system, in general, is unprepared to meet (see “Youth” chapter below for more on this issue).

On the other side, there is a huge shortage of foster parents in the United States. Although members of the GLBT community make nurturing and committed parents, lesbians and gay men are prevented from becoming foster parents in some states. Arkansas, for instance, specifically prohibits foster parenting by lesbians and gay men. As stated above, Utah prioritizes heterosexual married couples in its placement of foster children, which stigmatizes potential gay foster parents and can in effect prevent GLBT people from foster parenting. The Arkansas ban is currently being challenged by four individuals, including a gay couple and a heterosexual man who has a gay son.269

In some states, lesbians and gay men are allowed to become foster parents, but prohibited from adopting these same children. In Florida, a profoundly regressive adoption ban threatens to remove a foster child from the only family he has ever known—one with two gay dads—for just this reason.

One of the most problematic forms of discrimination occurs when lesbians and gay men are allowed to become foster parents, but prohibited from adopting these same children. In a high profile Florida case, a profoundly regressive adoption ban threatens to remove a foster child from the only family he has ever known—one with two gay dads—for just this reason.

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Akilah knows her daughter will face challenges because of her race and because she has two mothers. But the fact society has changed its attitude toward those who are adopted and those who are gay—both of which were seen as shameful secrets—makes Akilah feel more optimistic about the future. In the meantime, she and Ruth strive to do their best: they love Isabella, talk honestly to her, tell Isabella her adoption story, and teach her that it’s not a big deal to say, “I have two mommies.”
POLICY RECOMMENDATIONS

- End all forms of discrimination against GLBT people in custody, visitation, foster care and adoption laws.
- Amend adoption statutes to provide a process by which unmarried partners may adopt children in the same manner as step-parents.
- Amend adoption laws to allow unmarried partners the option of jointly adopting children.
- Amend adoption laws to allow more than two people to be the legal parents of a child. Amend state laws to create a legal presumption that a child born in the context of a same-sex relationship is the legal child of both partners.
- Enact laws allowing a woman who is about to give birth to obtain a pre-adoption court order naming her same-sex partner as the second parent in the event that the biological mother dies before the second parent adoption is completed.

ACCESSING REPRODUCTIVE TECHNOLOGY

Donor Insemination

Donor insemination is a method that lesbians have used increasingly since the 1980s to conceive children. While some states have laws specifying that a sperm donor is not a legal father, most states have not addressed this issue directly. As a result, lesbians and bisexual women sometimes confront issues related to the paternity of the child born out of a donor insemination agreement. If they have acquired the sperm of an anonymous donor through a sperm bank, they can avoid challenges to their parental relationship and the integrity of their same-sex parent family. If, on the other hand, they have used the sperm of a known donor, they then run the risk of the man concerned ultimately demanding a parental role in their family. This can occur even when a pre-existing arrangement mandates the contrary.

Although reproductive rights are usually understood to include the right to terminate an early-term or health-threatening pregnancy, for lesbians they also involve the right to access the technology that enables non-coital pregnancy. Many, perhaps most, sperm banks, fertility clinics, and doctors still balk at providing services to lesbians and gay men seeking to create a life.\textsuperscript{271} No U.S. state expressly denies access to fertility clinics to lesbians, gay men, and/or unmarried couples, though many individual clinics do. However, most big cities have at least one clinic which serves these prospective parents. But the cost of such services is out of reach of many lesbian individuals and couples. While 14 states mandate medical insurance coverage of reproductive assistance, such coverage is usually limited to cases of infertility, and lesbian couples are often not seen as qualifying because such assistance is not viewed as a medical necessity in the same way as is an infertile heterosexual couple’s need for assistance.\textsuperscript{272} Consequently, donor insemination at a medical facility is often not an option available to low-income lesbians.
Those supporting equal treatment for lesbian families should keep an eye on the Marriage Movement and the Fatherhood Movement, conservative organizations promoting an anti-gay family agenda. Founded in right-wing think tanks during the 1990s, several Marriage and Fatherhood Movement leaders now hold key policymaking positions within the Bush Administration. David Blankenhorn, cofounder of the Fatherhood Movement along with Bush appointees Wade Horn and Don Eberly, has advocated laws restricting access to fertility clinics to married heterosexual couples only. In his 1995 book *Fatherless America: Confronting Our Most Urgent Social Problem*, Blankenhorn reserved particular vitriol for lesbian couples who choose to have a child with the help of a male friend or an anonymous sperm donor. In a chapter of his book *Fatherless America* titled “The Sperm Father,” Blankenhorn wrote, “The Sperm Father…is also a convenience father, the ideal solution for women who want to create manless families…[He] is also a fantasy father…for women, the fantasy of the little girl left alone to play with her dolls, no boys allowed.”273 Culturally, “the rise of the Sperm Father constitutes nothing less than father killing…represents the final solution.”274

Reiterating his claim that “every child deserves a father and that unwed childbearing is wrong,” Blankenhorn called for cutting off the use of fertility clinics as an option for prospective lesbian mothers and other unmarried women. New laws should prohibit sperm banks and others from selling sperm to unmarried women, Blankenhorn argued, and limit the use of artificial insemination to cases of married couples experiencing fertility problems. “In a good society, people do not traffic commercially in the production of radically fatherless children,” Blankenhorn wrote.275

**Surrogacy**

While not nearly as widespread as the use of donor insemination by lesbians, gay men at times utilize surrogacy arrangements in order to create biological children. There are indications that parenting through surrogacy might be an increasingly frequent phenomenon. For example, in Los Angeles a corporation called Growing Generations was created to provide surrogacy services to the gay community. In the surrogacy process, the woman carrying the child may be a genetic parent to the child, or a “gestational surrogate” carrying the fertilized egg of another woman.276 The man involved often provides his own sperm, though not always. Like donor insemination agreements, surrogacy agreements can be formal or informal ones.277 Surrogacy is a matter of controversy, with many states discouraging or limiting the practice.

Twenty-three states have passed laws dealing with surrogacy agreements.278 Arizona and the District of Columbia have statutes that prohibit surrogacy. Michigan, New York, Washington, Florida, Nevada, New Hampshire, Virginia and West Virginia technically prohibit payments to surrogates, but the laws in these states have many loopholes. Florida, Virginia and New Hampshire presume that the coupled individuals who contract with the surrogate are the legal parents, while North Dakota and Utah attribute legal parentage to the surrogate and her husband.279 For gay couples, the issue of legal parentage is a particularly important one. To preserve the integrity of their family they need to be certain that the surrogate will not ultimately sue for custody. Unfortunately, only the biological father is usually considered the legal parent.
Policy Recommendations

• Prohibit discrimination based on sexual orientation or marital status in public accommodations, including fertility clinics and surrogacy service providers.

• Mandate equal treatment of lesbian couples and individuals seeking medical insurance coverage of reproductive assistance.

CHILDREN OF GLBT PARENTS

The kids [of GLBT parents] are really vulnerable because they have already got the message that their parents and families are not protected like other families…. The negative experiences that we have growing up in these families have nothing to do with who our parents are and everything to do with society’s attitudes…. We would all be made safer by a federal law to prevent discrimination based on sexual orientation and perceived orientation and gender identity and perceived gender identity.


Children in GLBT families are negatively affected by all the policies that discriminate against their parents. For instance, a hospitalized child in a state without second parent adoption might be prevented from seeing her non-biological father by the hospital staff. If one of her parents loses his job because he is gay, the child could lose her health benefits and will suffer as a result of her family’s decreased income. If her non-biological father dies without a will, she may not be entitled to any of his estate. Reforms to support the well-being of GLBT families are also necessary for the millions of children being raised by GLBT parents.

Estimates of the number of children of lesbian and gay parents range widely, from at least 1 million to as many as 14 million. One fifth of the lesbian or bi female couple households identified on the 1990 Census had a child under 18 living in the household, as did one in 20 gay or bi male couple households. Some 40 percent of black lesbians/bi women, and 15 percent of black gay/bi men and black transgender people, reported having children in the Black Pride Survey, which was conducted by NGLTF, five black researchers and nine Black Pride organizations in summer 2000.

The children of GLBT parents have needs that are rarely considered by policymakers. They can experience many of the same problems as GLBT youth. For instance, the pervasiveness of homophobia in the schools from elementary grades through high school means that these children are often vulnerable to teasing and harassment at school (see “GLBT Youth” section for more information on these topics.) The needs of these children are similarly not always well served by support groups for GLBT students. Safe Schools Initiatives that target GLBT and questioning youth have achieved significant advances in improving school climate for all youth and providing specific support for GLBT youth. However, they are generally not geared toward children of gay parents who have their own unique concerns.
Unlike GLBT students, who are often in the coming out process and grappling with issues connected to their own sexual orientation, many children of GLBT parents have grown up “culturally queer,” regularly confronting homophobia in all its manifestations and anxious to protect their families from further discrimination. There is a huge experiential gap between these individuals and those GLBT youth who are just coming out themselves. On the other hand, children of newly-out GLBT parents need a space to process the changes in their family and address their own internalized homophobia.

The unique needs of children of GLBT parents are being addressed by organizations such as Children of Lesbians and Gays Everywhere (COLAGE), a national organization with chapters in at least 19 states. Through its local chapters, COLAGE provides support to youth in different communities in the form of developing after-school programming, producing a newsletter, providing social support, and giving them access to other youth from GLBT families, in part through a pen pal program.

Policy Recommendations

- **Fund programs reaching out to children of GLBT parents, such as COLAGE, in the context of public health promotion.**

- **Support Safe Schools Initiatives and encourage them to include children of GLBT parents as a population distinct from GLBT youth.**

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**GROWING UP WITH A LESBIAN MOM**

*A Profile of Tina Fakhrid-Deen*

Riding a city bus one day when Tina Fakhrid-Deen was 10, her mother turned to her and said, “You love Michael Jackson?” Tina said yes. Her mother followed up, “What if I told you he were gay?” Tina did not know what gay meant but knew it was a bad thing. She responded, “Well, I’d be mad at you because it’s not true and it’s nasty.” Tina’s mother could see this was not going in the right direction, “What if I told you I were gay?” Tina turned her head toward the window and started to cry. They did not talk about it much that weekend and when Tina’s mother brought it up Tina would tune her out.

Tina was living with her father at that point. She was born to married parents in Chicago. They divorced when Tina was two. She lived with her mother until she was five. After living with her grandmother and subsequently her father, Tina moved back in with her mother at the age of 12. It was some time after Tina’s mother came out to her that Tina began to understand what “gay” meant. Though her mother had girlfriends at various points, she was never publicly affectionate with them. But she also did not try to hide the fact that she is gay, decorating the house and her car with rainbow flags and taking Tina to GLBT Pride events. She was a construction worker and was happy to go without make-up or frills.
In fact, today as an adult Tina is working to provide support to other children of GLBT parents as the head of the Chicago chapter of Children of Lesbians and Gays Everywhere (COLAGE). She says that it is important for GLBT parents to realize that their children need support. “Gay families have the same issues as heterosexual families, but some are different too.” Rather than merely presenting a “squeaky-clean image” and “wanting everything to be okay,” all parents need to communicate with their children. Mentioning that her COLAGE group is mostly white middle class youth, she says that being African American, she may not have had the same support white children do and that there needs to be more work in both the African American and white GLBT communities to reach out to others like her.

When asked what would have helped her most while growing up, she says, “someone I could have talked to who was not judgmental.” She believes schools need to do much more to provide a safe and supportive environment for their students. She adds that even though she had an openly gay teacher that she loved, it was not enough. The atmosphere of the school did not make her comfortable to approach him about the subject. “Teachers and administrators need to be more vocal about opposing abuse of LGBT people,” Tina says. “They need to educate themselves about appropriate responses.” She adds that “normalizing different families,” in part by adding books that discuss GLBT issues to the curriculum, is especially important. The anti-GLBT atmosphere in schools “limits the growth process of all students.”

Tina, on the other hand, felt that she had to hide her mother’s sexual orientation. Classmates who saw Tina’s mother in her construction hat would say, “Your mother is a dyke,” and Tina would deny it vehemently to all but her best friend. Like many teenagers, Tina tried to separate herself from her mother and create her own identity. She would not bring friends home, would not drive her mother’s rainbow-stickered car, and stopped going to Pride events. While she disagreed with the negative portrayals of her mother by her grandmother and father, she also did not want to be associated with the GLBT community.

Going to college changed that for Tina. “I grew out of it,” she says, in part because of the distance from home and her increased comfort with her own sexuality. A transformative moment for her was when she was walking down the street with a boyfriend and they saw two men holding hands. He commented that he would like to put them in a hot air balloon and blow it up. Tina became so angry she back-handeded him and started yelling, “Are you going to put my mom in that balloon?! Are you going to kill her too?! My mom is gay!” She says, “That was a liberating experience.” Ever since, she has been very vocal about responding to anti-GLBT comments or negative statements like, “That’s so gay.”

Tina Fakhrid-Deen
TALKING POINTS ON GAY AND LESBIAN PARENTING

Q. Doesn’t lesbian and gay parenting harm children?

A. No, there is absolutely no empirical evidence for this claim whatsoever. Social science research indicates that lesbian and gay individuals and couples can parent as well as their heterosexual counterparts. Their children are as happy, healthy and emotionally well-adjusted as other children. Psychologist Charlotte Patterson reports that “not a single study has found children of gay or lesbian parents to be disadvantaged in any significant respect relative to children of heterosexual parents.” Children of gay and lesbian parents have good relationships with their peers, although sometimes they are subject to anti-gay harassment. They are less inclined to hold stereotypical understandings of gender roles and more likely to be tolerant of differences in others.

Q. But what about adoption—should gays and lesbians be allowed to adopt?

A. With half a million children in the U.S. foster care system, many of whom bounce from foster home to foster home until they turn 18, it is not in the interest of child welfare to restrict the pool of potential parents on the basis of prejudice against their sexual orientation. The Child Welfare League of America, the nation’s premier child advocacy organization, says that adoption “[a]pplicants should be assessed on the basis of their abilities to successfully parent a child needing family membership and not on their . . . sexual orientation.” The American Academy of Child and Adolescent Psychiatry and the North American Council on Adoptable Children also support evaluating gay and lesbian applicants for adoption on the same basis as heterosexual applicants.

Q. Wouldn’t it be best if children were raised by a married man and woman?

A. Studies show that the lesbians and gay men make just as good parents as their heterosexual counterparts, and that the presence of a married father and mother is not a prerequisite to having a good childhood. Many single parents and same-sex couples provide loving and nurturing homes to their children. Also, adoptive children usually do not have the choice of a married mother and father. They have no parents. Given the huge waiting list for adoptive homes among children in foster care, restricting adoptive parents to heterosexual married couples effectively cheats children out of the chance to grow up in a loving home. This is especially true for older children, as well as children with special needs. Lesbian and gay families are well equipped to provide these children with the stability and nurturing that they need.

Q. What about pedophilia? Isn’t there a significant association between homosexuality and child molestation?

A. The link between pedophilia and homosexuality is a completely unfounded one. A 1998 article in the Journal of the American Medical Association notes that 90 percent of pedophiles are men and that 95 percent of these individuals are heterosexual. Michael Stevenson Ph.D., a psychologist at Ball State University, explains this statistic by noting that “gay men desire consensual sexual relations with other adult men. Pedophiles are usually adult men who are sexually attracted to pre-pubescent children. They are rarely sexually attracted to other adults.” Stevenson observes that cases of pedophilia by adult lesbians are “almost non-existent.” Preventing
CHILD SEXUAL ABUSE AND HOMOSEXUALITY

Periodically, as with the recent Catholic priest sex scandals, homosexuality has been conflated with pedophilia, the sexual attraction to children. In 1977 Anita Bryant named her anti-gay group “Save Our Children,” and warned that “a particularly deviant-minded [gay] teacher could sexually molest our children.” More recently, anti-gay activists have warned that efforts to make schools safe for GLBT youth are nothing more than attempts to “recruit” youth into “the homosexual lifestyle.” GLBT people are often constructed as a threat to youth, and some argue that gay people should not be allowed to teach, parent, or serve as Boy Scout troop leaders. Conservatives have suggested that sexual orientation nondiscrimination laws and increased tolerance of gay people lead to an increase in pedophilic acts, i.e. sexual molestation of children. Most recently, some in the Catholic Church hierarchy have blamed homosexuality for the widespread pattern of sexual abuse of children, teens and young seminarians by priests.

The Problem is Sexual Abuse, Not Sexual Orientation

When a man abuses a young girl, the problem is not heterosexuality. Few would characterize such abuse as a heterosexual act similar to consensual sex between an adult man and woman. Similarly, when a man sexually abuses a boy or underage teen, the problem is not homosexuality. The problem is child abuse.

Similarly, if a male boss sexually harasses a female employee, again, the problem is not heterosexuality, but sexual harassment. When men harass or abuse other men who are legally above the age of consent, as is the case in some instances of harassment of seminarians by priests, the problem is sexual harassment and sexual abuse—not homosexuality.

Q. Are homosexuals more likely to sexually abuse children?
A. No. In fact, gays and lesbians may be less likely than heterosexuals to sexually abuse children. Two studies which examined the sexual orientation of child molesters found that less than 1 percent in one study and zero percent in the other were lesbian or gay.

About four in five cases of child sexual abuse reported to child protection authorities involve a girl who is abused. But because sexual abuse of boys is less likely to be reported, it is estimated that one quarter to one third of all sexually abused children are boys, while two thirds to three quarters are girls. Because 90 percent of child molesters are men, some have argued that “homosexual” child abuse is widespread and that homosexuals abuse children at a rate higher than their proportion of the population. Such claims are based on the false belief that men who sexually abuse boys are homosexual. In fact, the overwhelming majority of men who sexually abuse children live their lives as heterosexual men.

Very little empirical data exist on child sexual abuse and sexual orientation. Psychologist Michael Stevenson reviewed the existing social science literature on
the relationship between sexuality and child sexual abuse and found that “a gay
man is no more likely than a straight man to perpetrate sexual activity with chil-
dren.”291 Further, “cases of perpetration of sexual behavior with a pre-pubescent
child by an adult lesbian are virtually nonexistent.”292

In a review of 352 medical records of children evaluated for sexual abuse during a
12-month period at a Denver children’s hospital, Dr. Carole Jenny found that less
than 1 percent of the abused children in her study were abused by a gay man or a
lesbian. Of 269 adult perpetrators of child abuse identified among the 352 cases of
abuse, only two (or 0.07 percent) were gay or lesbian. Jenny noted that the vast
majority of the children in the sample, or 82 percent, “were suspected of being
abused by a man or a woman who was, or had been, in a heterosexual relationship
with a relative of the child.” Jenny concluded that in this sample, “a child’s risk of
being molested by his or her relative’s heterosexual partner is over 100 times greater
than by someone who might be identifiable as being homosexual, lesbian, or bisex-
ual.”293 In an earlier study of convicted male child molesters in Massachusetts,
none of the 175 men were found to have an exclusively homosexual adult sexual
orientation or to be primary attracted to other adult men.294

CONCLUSION

At least one million GLBT parents, and probably many more, are raising millions of
children in the U.S. Although precise figures are not available due to the dearth of
research on GLBT people, among people living in same-sex couples responding to the
1990 Census one in five women and one in 20 men had children under 18 living with
them in the home; more still had adult children or children living with a former het-
terosexual partner or spouse. Population-based studies and Census analysis indicate par-
enting rates may be higher among black, Hispanic and Native American lesbians and
gay men. Several states discriminate against gay and lesbian people in adoption and fos-
ter care. While courts in roughly 20 states have allowed second parent adoption, chil-
dren of same-sex couples in most states still live with the economic and emotional inse-
curity of not having their relationship with their second mother or father recognized.
State legislators and family advocates can change state policies to afford GLBT fami-
lies with children the protection and security they need and deserve.

CHAPTER NOTES

Annual Meeting of the Canadian Political Science Association, Toronto, Ontario.


188. The Census Bureau will release a 1 percent Public Use Microdata Sample (PUMS) in December 2002, and sometime in 2003 will release a 5 percent PUMS.


207. Ibid.

208. Ibid.


210. Ibid.


218. See Teegarden v. Teegarden, 642 N.E.2d 1007 (Ind. Ct. App. 1994); Fox v. Fox, 904 P.2d 66 (Okla. 1995) (holding that trial court erred by ordering a change of custody from lesbian mother to heterosexual father where there was “no evidence that the mother’s behavior has any adverse effect on the children”); Blew v. Verta, 420 Pa. Super. 528, 617 A.2d 31 (1992) (removing restrictions on lesbian mother’s custody where “the trial court’s conclusion that [the child] has been harmed by his mother’s lesbian relationship is not supported by its own findings of fact”); Stroman v. Williams, 291 S.C. 376, 353 S.E.2d 704 (Ct. App. 1987)


221. See J.A.D. v. F.J.D., 978 S.W.2d 336 (Mo. 1998) (“A homosexual parent is not ipso facto unfit for custody); Tucker v. Tucker, 910 P.2d 1209 (Utah 1996) (holding that mother’s sexual orientation would not by itself disqualify her from being awarded custody); Bottoms v. Bottoms, 457 S.E.2d 102 (Va. 1995) (holding that parent’s sexual orientation does not by itself render that person unfit to have custody).


225. Ibid.

226. See e.g. Daly v. Daly, 715 P.2d 56 (Nevada 1986). The court, in terminating the male-to-female transgender’s parental rights, declared that the parent was “selfish” in his “choice to discard his fatherhood…”

227. See In re V.H., 412 N.W.2d 389 (Minn. Ct. App. 1987) (granting custody to cross-dressing father on condition that the father never cross-dress in front of daughter or have any literature relating to transvestism in the home). See also In re D.F.D. and D.G.D., 261 Mont. 186 (1993) (awarding custody to father after expert testimony indicated that father no longer cross-dressed and would not do so in the future).

228. See Christian v. Randall, 516 P.2d 132 (Colo. App. 1973). The court held that the female-to-male transsexual parent was fit to retain custody of his four daughters. The court, in overruling the trial court, found the record contained no evidence that the transsexual parent’s home endangered the children’s physical health or impaired their emotional well-being.


234. Ibid.


243. In total, four states limit adoption and/or foster parenting by gays and lesbians in some way: FL, MS, UT, and AR. Three do it by statute, one (AR) by regulation. Florida bans homosexuals from adopting by law: Its statute reads, “No person eligible to adopt under this statute may adopt if that person is homosexual.” (Fla. Stat. Title VI, Chapter 63, 63.042, 2(d)3.) Mississippi bars same-sex couples from adopting by law. Its statute reads, “Adoption by couples of the same gender is prohibited.” (Miss. Code of 1972 as amended, Sec. 93-17-3 (2).) Utah prioritizes heterosexual married couples for placement of foster and adoptive children in state custody by law. Its statute reads, “with regard to children who are in the custody of the state, the division shall establish a policy providing that priority for foster care and adoptive placement shall be provided to families in which both a man and a woman are legally married under the laws of this state.” (Title 62A, Ch. 04a, Section 602 (5)(c).) Arkansas bans gays and lesbians from foster parenting, but not from adopting, by regulation. An anti-gay adoption bill was rejected by the Arkansas legislature in 2000. For more information see http://www.aclu.org/news/1999/n040699a.html.


251. Fla. Statutes Title VI, Chapter 63, 63.042, 2(d)3.


253. Utah Code, Title 62A, Chapter 04a, Section 602.


101

277. Ibid.
287. Ibid.
288. Ibid.
292. Ibid.
GLBT Youth and Children of GLBT Parents

FAMILY AND GLBT YOUTH

GLBT youth are coming out at earlier and earlier ages. Many of them become dangerously isolated—rejected by family and friends, harassed and attacked by their peers in school, and demeaned by society at large. Because of their youth, they lack independent resources and have an especially hard time accessing support—either from school, or from older members of the GLBT community. This problem is accentuated for GLBT youth of color, who already face prejudice and stigmatization from the wider society because of their race or ethnicity. By coming out they also risk rejection by their community of origin, and therefore intensified isolation.295

For GLBT youth the regular stresses of adolescence are made more complicated by the multifaceted realities of their sexual orientation or gender identity. In general, most teens find themselves in various conflicts with their family. For GLBT youth, when questions of sexual orientation or gender identity are thrown into the mix, the stakes are raised dramatically. GLBT youth often find themselves further alienated from their families because they feel the need to hide their emerging sexual or gender identity. One study found that coming out or being discovered as gay, lesbian, or bisexual by family or friends, along with gay-related harassment, induced the most common gay-related stressors among gay, lesbian and bisexual youth.296 Another study documented that only 11 percent of gay and lesbian youth experienced supportive responses upon coming out to their parents, while 20 percent of mothers and 28 percent of fathers were rejecting or completely intolerant.297 When GLBT youth face rejection and even violence from their families, in addition to discrimination by peers, schools and other institutions, they experience a “double victimization.”298 Even with the recent increase in gay-straight alliances and GLBT youth centers, in nearly all communities there still is a desperate need for more support systems for GLBT young people.

In one study, only 11 percent of gay and lesbian youth experienced supportive responses upon coming out to their parents, while 20 percent of mothers and 28 percent of fathers were rejecting or completely intolerant.
How Many GLBT Youth Are There?

Very few surveys gather data that allow for estimates of the prevalence of homosexuality and bisexuality among teenage students and there are virtually no data on the prevalence of transgenderism among youth. These include the Youth Risk Behavior Surveys conducted by Vermont, Massachusetts and Wisconsin in 1997, and by Seattle in 1995. Others are the 1996 Voice of Connecticut Youth Survey, the 1987 Minnesota Adolescent Health Survey, and the 1991 U.S. National American Indian Adolescent Health Survey. The lowest incidence of homosexual or bisexual identity was found in the 1987 Minnesota survey, where 1.1 percent described themselves as bisexual or homosexual; however, 5.1 percent of respondents reported same-sex attraction or anticipated future same-sex sexual experience. The survey of American Indian youth in reservation schools found only 1.6 percent of respondents self-identified as gay or bisexual, but 4.4 percent reported same-sex attraction or anticipated future same-sex experience. In Massachusetts over 4 percent of respondents either self-identified as gay or bisexual or reported same-sex sexual experience. In Vermont 5.4 percent of young men and 3.4 percent of young women reported same-sex sexual activity. In Seattle 4.5 percent said they were lesbian, gay or bisexual, and another 4 percent said they were “not sure” of their sexual orientation. It is likely that some students who will “come out” as adults have not yet come to terms with being gay, or are reluctant to report their sexual orientation on a survey administered in school. Although we don’t know exactly how many U.S. students are gay, lesbian or bisexual, these studies indicate that at least 1 million of the nation’s 45 million school age children (many of whom, of course, are prepubescent and don’t yet have a sexual orientation) are homosexual or bisexual in terms of attraction or orientation, even if they don’t identify as such.

GLBT Youth of Color

GLBT youth of color and those from racial and ethnic minority groups face unique challenges that reflect the multidimensionality of their life situations. In Gay, Lesbian and Straight Education Network’s (GLSEN) National School Climate Survey 48 percent of the GLBT youth of color surveyed experienced verbal harassment based on both their sexual orientation and their race/ethnicity. In particular, GLBT youth of color confront a “tricultural” experience: they often face homophobia from their respective racial or ethnic group, racism from within a predominantly white non-Hispanic GLBT community, and a combination of the two from society at large. Feeling like one has no community to identify with or must choose between various aspects of their identity can be especially burdensome to GLBT youth of color.

One challenge that advocates face in creating policies that meet the needs of GLBT youth of color is that research on the influences of race and ethnicity on sexual identity development is limited. Traditional sexual identity development models, such as the stage identity model developed by the psychological theorist Vivienne Cass, are based on cohorts of white, adult, gay men. Many researchers question the applicability of these models to identity development among GLBT youth of color and women. The dramatic lack of research on GLBT youth of color has been documented by the National Youth Advocacy Coalition. A literature review found that in the last 30 years only 3.6 percent of all research on GLBT youth—a total of 16 articles and two book chapters—focused on gay, lesbian or bisexual youth of color. None of the articles focused specifically on transgender youth of color. The report called for studies on how various ethnic groups socially regulate sexual culture and behavior; how youth of color
perceive gender in relation to sexual identity; the process of sexual and ethnic identity development in GLBT youth of color; and the particular identity development processes of transgender and bisexual youth of color.

A number of factors identified in the theoretical literature, such as internalized homophobia, fear of rejection or violence, and avoidance of disclosure, seem to indicate that many GLBT youth of color may experience a delay in labeling themselves or disclosing their sexual identity. Research exploring the influences of ethnicity on sexual identity development indicates that some identity development milestones, such as labeling their same-sex attractions and same-sex romantic and sexual involvement, are experienced consistently regardless of ethnicity, while others, such as disclosure to family members and opposite-sex romantic and sexual relationships, vary according to ethnic group.

It is apparent that GLBT youth of color are likely to face other challenges and stresses in consolidating their racial, ethnic and sexual identities than white GLBT youth. Sexuality holds different meanings within each cultural and ethnic group, and identity is formed, in part, by these meanings. Relevant factors include values and beliefs regarding sexuality, stereotypes about gender and sex roles, expectations of childbearing, religious values and beliefs, degree of acculturation or assimilation into mainstream society, and the importance of family and ethnic communities in providing acceptance and support. For example, the supportive and tight-knit family structures that can be found among Asian and Pacific Islander (API) American, African American, and Latino communities can make the coming-out process more difficult for some GLBT youth. As Trinity Ordona, a co-founder of Asian/Pacific Islander PFLAG in San Francisco notes, “The families are the core of the culture. When a gay Asian comes out and gets kicked out of the family, it’s like being severed from the heart. But if you get the family on your side they will stand and protect you.”

For most children, racial or ethnic identity is a point of commonality within their families. As a result their families can be the basis for a vital support system in a society in which racism persists. A child who experiences hostility in the outside world because of her racial or ethnic background can come home to receive support from her family on the basis of their shared background. In contrast, most GLBT youth have difficulty finding similar support around sexuality or gender. In addition, conservative religious beliefs can be dominant in some ethnic minority and immigrant communities. Of course they are also widespread in white U.S.-born communities. In the Black Pride Survey of 2700 black GLBT people, two-thirds of respondents said homophobia was a problem in the black community. Forty-three percent reported mostly negative experiences in black churches and mosques, while another 31 percent reported equally positive and negative experience. Although sizable and well-organized GLBT communities of color exist in many regions, many GLBT youth of color may have difficulty connecting with these communities because of their relative size or geographic concentrations.

GLBT youth of color often experience racism in white-dominated GLBT communities and organizations. Furthermore, support networks such as gay/straight alliances (GSAs) historically have disproportionately helped suburban and middle class GLBT youth, who tend to be white. Although increasingly GSAs are coming into existence in urban schools with higher proportions of students of color, it is important that continued work is done to ensure that the diversity of the student body is fully reflected in the membership and the leadership of the clubs.
Many GLBT youth of color find inadequate support as they navigate between different often compartmentalized communities. At times, advocates, researchers, and educators characterize GLBT students’ race as an “add-on” to their “primary” identity: their sexuality or gender identity. Initiatives to make schools safer for GLBT students and to integrate GLBT issues into the curriculum also must incorporate an understanding of how GLBT people of color’s experiences differ from those of white GLBT students.

**Issues Affecting Intersex Youth**

While many people believe that all infants are born clearly male or female, in fact this is not the case. At least one in 2,000 children is born with a sexual anatomy that mixes male and female characteristics such that it is difficult even for medical experts to tell whether they would best be labeled as boy or girl. There are at least three dozen different medical labels for causes of intersexuality. The most common cause is a disorder of the adrenal gland that causes children to be born with large clitorises. Other intersex conditions may cause a child to be born with a small penis, or a short vagina, or with female looking genitals on the outside, and testes on the inside. Contrary to a popular misconception, no child is ever born with two sets of genitals, male and female. And most people with intersex conditions have standard sex chromosomes.

Although intersex people are distinct from transgender people and can be any sexual orientation, they suffer similar negative consequences of not fitting into rigid ideas about sex and gender—namely, that everyone must be a particular sex and exhibit specific attributes traditionally associated with that sex. Most dramatically, most intersex infants with visibly unusual genitals are subjected to genital plastic surgery, although this surgery is not medically necessary, and is damaging to sexual function when these children reach adulthood. Most doctors who specialize in children with intersex conditions still believe that it is better not to talk about being intersex, or even to lie about it, in order to save the child from feeling confused or ashamed. Unfortunately, this has the opposite of the intended effect. Although the majority of children with intersex conditions do grow up to have a gender identity that accords with the sex they were assigned at birth, some of them find that the sex assigned feels wrong. In recent years, a growing number of people have been speaking out against these medical interventions as harmful, unethical and based upon nothing but social prejudice.

**EDUCATION POLICY ISSUES AFFECTING GLBT STUDENTS**

American culture changed dramatically in the 1990s, with more and more people “coming out” as openly gay, lesbian, bisexual or transgender. School-age children who are gay or lesbian are self-identifying as such, on average, at age 16. With the age of puberty dropping, some come out even younger. Yet public policy has not kept up with changing patterns of sexual identity among young people. Teens often come out in schools where administrators and teachers cannot guarantee their safety against verbal and physical attack from other students.

Sometimes even teachers make statements that create a hostile environment, and appear to legitimize harassment and violence against GLBT students. For example, one
teacher told his class, after attending a health fair at which people with AIDS spoke, that “All gays and lesbians will die of AIDS.” In another instance, when a student asked about gay issues or AIDS in class, the teacher turned to two students widely thought to be gay and said, “Why don’t we ask them? They seem to be the experts.” Anti-gay harassment and violence is epidemic in the nation’s schools. From elementary school through high school, “gay” is the epithet of choice to denote something bad, undesirable, or just different. While all students can become a target of harassment for their perceived homosexuality or gender nonconformity, the nation’s GLBT students and children of GLBT parents often suffer the worst abuse. Such abuse can have devastating effects on the children targeted, including higher rates of suicidal ideation and attempted suicide, higher truancy and drop-out rates, substance abuse and running away from home. A 1989 government study found suicide to be the leading cause of death among gay and lesbian youth, who were almost three times more likely to try to kill themselves than their heterosexual counterparts. In a 1999 Massachusetts study, almost 49 percent of lesbian, gay and bisexual students said they had considered suicide during the previous year.

There are a number of proven policy interventions that government officials can enact which improve school climate and safety for GLBT students, children of GLBT parents, and other students who are just different. There are ethical reasons for making the nation’s schools safer for gay students. There are also legal reasons: international law and many federal laws mandate equal access to education. Schools that fail to provide a safe environment to GLBT students are also vulnerable to lawsuits that can incur financial liabilities. Jamie Nabozny was awarded over $900,000 because teachers and administrators in his Wisconsin high school didn’t take action to stop the daily harassment and violence he experienced.

**Anti-GLBT Harassment and Violence in the Nation’s Schools**

More than 80 percent of GLBT youth surveyed in 2001 reported verbal harassment because of their sexual orientation over the past 12 months; 40 percent said this harassment happened “often” or “frequently.” Twenty percent of GLBT students reported physical assault because of their sexual orientation over the past year, while 10 percent reported being assaulted because of their gender identity or gender nonconformity. Nearly 70 percent of students reported feeling unsafe in school because of their sexual orientation.

The 1999 Massachusetts Youth Risk Behavior Survey, conducted by the state Department of Education, found that lesbian, gay and bisexual youth were:

- Three times more likely than their heterosexual peers to have been assaulted or involved in at least one physical fight in school.

- Three times more likely to have been threatened or injured with a weapon at school.

- Four times as likely as their heterosexual peers to skip school because they felt unsafe.

A study in Des Moines, IA public high schools found that the average high school student hears an anti-gay comment every seven minutes; teachers intervened only 3 percent of the time (they didn’t hear most of the comments).
Unchecked, anti-GLBT harassment can escalate to violence, including rape. Of 111 incidents of anti-GLBT harassment and violence reported to the Safe Schools Coalition of Washington State, 92 targeted students. These included eight separate gang rape incidents in which 11 children were raped, two of them sixth graders.\textsuperscript{327}

It is the spring of his sixth grade year. This twelve-year-old is one of two students who are sexually assaulted at an elementary school-sponsored camp. He is attacked three nights in a row by four other sixth graders and two high school-aged counselors...He is beaten up and tied down with belts. They throw one another on top of him. They anally gang rape him with objects. One of his attackers vomits on him. They threaten to kill him if he tells anyone of the assaults.\textsuperscript{328}

When the boy finally found an adult who would listen, his parents, teacher, and the local police got involved and were supportive. His mother took him to the emergency room where he was treated and released. He changed schools one month later, but three and a half years later he was still having nightmares.\textsuperscript{329}

In another gang rape incident, a non-gay identified ally was forced to watch a “punishment” gang rape of a lesbian student:

\begin{quote}
I have a friend at school [who's] a year behind me. She's been really 'out' for a long time as a lesbian. She's pretty isolated at school; she gets harassed all the time. We got to be friends this last year. A few weeks ago we had a prom. Without me knowing, someone got a picture of her kissing me. (I was there with someone else.) And it got distributed around school. The principal and vice principal knew she was being harassed and that our picture was being circulated around school.

[Last week after school] the guy I went to the prom with picked me up and said he wanted to show me something. He brought me behind the school, to this storage building [by] the gym. Four other guys had her there. Her lip was cut, her clothes were torn and it was obvious they had hurt her. The one who's supposed to be my boyfriend held me. At first, I tried to get loose, to stop them, but I couldn't and when I saw how violent they were, I was scared. They told her they were going to teach her to stay away from 'their' girls. They made me watch while they raped her and peed on her. She couldn't dress herself after they left. She was bleeding 'down there' because she was a virgin. There were a lot of bruises. It took me a long time to get her dressed and...take her home.

[My friend is] such a wonderful person and they don't know her. I think they did it because if it was her, no one would care. [Afterwards, she] told me not to report it to the school. My mom] was very upset. She wanted me to report it. I used to feel I was...involved in everything. A cheerleader, student council. I used to feel I was a part of everything. Now I don't feel part of anything. No. I don't want to be part of anything. These guys weren't gang members; they are basketball players. Two are on student council.\textsuperscript{330}
\end{quote}

Many victims of physical assault don't want their parents to find out for fear they will...
have a homophobic reaction. As a result, they don’t report incidents. In too many instances of anti-gay harassment or violence, adult teachers and school staff are silent or blame the victim. This was the case in about one in four of the cases witnessed by adults reported to the Washington State Safe Schools Coalition.

A CHILD LOST TO HATE VIOLENCE
A Profile of F.C. Martinez

Pauline Mitchell, mother of Fred C. Martinez (“F.C.”) made the following statement about her son’s life and death on August 11, 2001. F.C. identified as gay, two-spirit and transgender. After many incidents of harassment in school, F.C.’s body was discovered near Cortez, Colorado, in the Four Corners area, on June 21, 2001. Ms. Mitchell, who had reported F.C. missing on June 18, read about the discovery of a body on the 21st in the newspaper and was not informed by police of her son’s murder until June 25. F.C. was 16 years old. Shaun Murphy, an 18-year-old neighbor, pled guilty to the murder.

I am Miss Pauline Mitchell. My son Fred C. Martinez, Jr., F.C. as he was known by family and friends, left this world much too soon because of those who fear and hate anyone who is different. F.C. was my youngest child. He lived to the age of 16 years and was always ready to bring a laugh or smile to my heart when I needed it the most. He never saw another person as a stranger but as a fellow human being and was always ready to give a hug or compliment to anyone whom he believed to be hurt-

F.C. loved life and to make others happy. He was my baby, my “tail” as I would call him. He was always ready to go with me on any errands or trips I had to make. He cherished his friends and he had many. He would love to do make-up with his girlfriends, to share ideas. He was a free spirit and I loved him for his spirit and all of who he was.

F.C. had many difficult times in his short life. Much of this was related to the fact that he was Navajo living in a world that does not honor and respect different ways, and also that he was Nadleeh—two-spirit—and he could comfortably walk the path of both male and female, that he would love differently from most. F.C. also felt the pain of what comes when your family is poor, but very proud. It is not easy to grow up as Navajo, Nadleeh and poor. But these are facts of life. He was not ashamed of who he was and neither was I. I now tell you that I dearly loved my precious son and was proud of all that he was.

F.C. worked hard to overcome these hardships and he was beginning to find the path he would walk down for what should have been a long and fulfilling life, and to do so proudly. Why can’t others allow our loved ones to express themselves freely? Those who speak of our children and loved ones with ignorance and hate are responsible for the pain I, and so many
Impact of Harassment on GLBT and Questioning Youth and the Children of GLBT Parents

Kids harassed and attacked for allegedly being gay, lesbian or bisexual are at higher risk for suicidal ideation (thinking about committing suicide) and suicide attempts, as well as for a number of other health risks. The 1997 Wisconsin Youth Risk Behavior Survey found children harassed because someone thought they were gay were four times as likely as other kids to have made a serious enough suicide attempt within the past 12 months to be treated by medical professionals. These youth were also twice as likely to report having sniffed inhalants, three times as likely to have been pregnant or gotten someone pregnant, and four times as likely to have vomited or taken laxatives to lose weight within the past 30 days. In a Seattle study, both gay and straight youth harassed because someone thought they were gay were more likely to have seriously considered and/or attempted suicide within the past 12 months. Heterosexual youth harassed because someone thought they were gay were five times as likely as straight students who didn’t experience harassment to have tried to kill themselves. Studies in a number of other states—including Massachusetts, Vermont, and Minnesota—found higher rates of suicide attempts among gay, lesbian and bisexual youth than among heterosexual youth, as well as higher rates of substance abuse, teen pregnancy, and anorexic and bulimic behaviors.

Of course, most GLBT and questioning youth are healthy and resilient despite the stigma they face from some of their peers and from the broader society. In many schools and
communities GLBT youth leaders have organized gay-straight alliances, and have lobbied successfully for gay student nondiscrimination laws, nonharassment policies, and other interventions to improve school climate. Still, many who are targeted by anti-gay harassment and violence are at higher risk for substance abuse, suicide, eating disorders, and unsafe sex, often with a person of the other gender to “prove” they are straight.

The toll of anti-GLBT harassment and violence on the students targeted is high. As a result of the 92 known instances of harassment and/or violence targeting Washington state youth in the Safe Schools Coalition study:

- 12 students changed schools.
- 10 students dropped out of school.
- 10 attempted suicide.
- 2 of these succeeded in committing suicide.\(^{334}\)

For those who don’t commit suicide and stay in the schools where they’ve been harassed or assaulted, most have a harder time paying attention in class, and don’t talk as much in class in order to avoid the attention of potential tormenters. Many report feeling self-conscious, unsafe, and isolated. Witnesses of anti-GLBT harassment and violence are also negatively affected, with many reporting the same types of disengagement and insecurity as those directly targeted.\(^{335}\)

Truancy and drop-out rates are higher for gay, lesbian and bisexual students. The 1991 National American Indian Adolescent Health Survey found that gay Native American youth were nearly twice as likely as their heterosexual peers to have run away from home within the past 12 months (28 percent vs. 17 percent).\(^{336}\)

**Anti-GLBT Harassment in Elementary Schools**

While most policy interventions targeting anti-GLBT harassment and violence are done in high schools and, to a lesser extent, middle schools, studies have found harassment of kids as young as first grade. The Washington State Safe Schools Coalition found a number of such instances. In one, a first grader, riding home with his father, asks him, “Do you know what a ‘faggot’ is?” When his father says, “Why do you ask?” the child replies, “[Name] called me one at recess.”\(^{337}\) In another reported case, a second grader is taunted in class and on the playground with “Get away, gay boy!” and “Don’t let gay boy touch you!” The boy is unsure why they are saying this about him or what he has done “wrong,” and, as nobody will play with him at recess, he is more reserved and less interactive in class, and often prefers to stay home.\(^{338}\)

While these two incidents evoked a pretty supportive reaction from teachers and school administrators, a third incident in which a third-grade boy was called “fagot,” “gay boy” and “joto” (a Spanish term for “queer”) was minimized by the school principal. Even though the mother witnessed the “joto” remark, the principle said her report was “hearsay,” and said that, “He’ll have to live with it.” He refused to call the parents of the boy who called him “joto,” saying “kids of this age don’t know what this means” and that a meeting with both students and both sets of parents “wouldn’t resolve anything” and would be “totally inappropriate and unnecessary.” When she attempted to go over the principal’s head, school district administrators never returned the mother’s calls. Her son did not want to get to school before classes started out of fear of getting attacked in the school yard. At the end of the school year she moved him to another school.
Children of lesbian and gay parents often also experience harassment. This is what happened to the sixth-grade child of a lesbian couple in Massachusetts:

In one school, a sixth-grader was labeled a “fag” by classmates who discovered that he had lesbian parents. Other children would point pencils at his behind and make sexual innuendoes, while teachers who witnessed this harassment failed to intervene. The harassment spiraled out of control, culminating in physical violence. He was thrown against his locker and kicked in the head by a boy wearing cleats. Moments later, he yelled at one of his attackers, and he was later punished for using inappropriate language. His mothers, with the help of a lawyer, quickly had their son transferred to another school.339

Policy Recommendations

Elected and appointed officials at all levels of government can do many things to help stop anti-GLBT harassment and violence in schools:

• Pass laws banning discrimination and harassment on the basis of sexual orientation and gender identity in schools in their state or municipality.
• Promote respect for all students through Safe Schools Initiatives.
• Pass nondiscrimination laws covering employment, which make it safer for GLBT teachers and school administrators to be openly-GLBT role models for GLBT youth and the children of GLBT parents. (Research has shown that having an openly gay role model improves health outcomes for gay youth.)340
• Promote training on GLBT issues as a requirement for teacher certification, and promote training of existing teachers and staff in how to create safe environments in their schools and communities where harassment, violence and discrimination are not tolerated.
• Promote research to identify the particular experiences of youth who are harassed and physically assaulted for their perceived sexuality and gender identity, and the particular needs of GLBT and questioning youth and the children of gay parents.

NONDISCRIMINATION AND ANTI-HARASSMENT LAWS AND REGULATIONS

Seven states have laws banning discrimination against gay, lesbian and bisexual students. They are: California, Connecticut, Massachusetts, Minnesota, New Jersey, Vermont, and Wisconsin. California, New Jersey, and Minnesota also prohibit discrimination on the basis of gender identity.341 Minnesota and New Jersey accomplish this through including the state’s schools in the access to “public accommodations” section of their civil rights statute. In Minnesota, students in both public and private schools are protected against discrimination on the basis of both sexual orientation and gender identity. In New Jersey students are protected against sexual orientation discrimination in the state’s public schools. The other six states promote nondiscrimination through their education statutes. By cross-referencing its hate crimes statute, California also prohibits discrimination on the basis of “gender.”342 Three state legislatures considered safer schools bills in 2002, Florida, Michigan and New York.343
MODEL LEGISLATION

Nondiscrimination and Anti-Harassment

Massachusetts

Massachusetts’ law states that:

Every person shall have a right to attend the public schools of the town where he actually resides, subject to the following section. No person shall be excluded from or discriminated against in admission to a public school of any town, or in obtaining the advantages, privileges and courses of study of such public school on account of race, color, sex, religion, national origin or sexual orientation. (Mass. Gen. Laws Ann. Ch. 76, Section 5.)

This language would cover all students if it were expanded to include “gender identity and expression.”* Another Massachusetts law prohibits such discrimination in charter schools, which are private schools funded by public funds.

Minnesota’s law prohibits discrimination in educational institutions on the basis of “sexual orientation.” It defines sexual orientation to include gender variance or gender identity:

“Sexual orientation” means having or being perceived as having an emotional, physical, or sexual attachment to another person without regard to the sex of that person or having or being perceived as having an orientation for such attachment, or having or being perceived as having a self-image or identity not traditionally associated with one’s biological maleness or femaleness.**

Vermont prohibits “harassment” on the basis of sexual orientation which it defines in such a way to encompass “a form of discrimination.” Vermont also takes affirmative steps to increase this law’s effectiveness, directing school boards to:

• “develop procedures for implementing the statute;

• provide notice of the policy and procedures to students, custodial parents or guardians of students, and staff members, with age-appropriate language for students and examples of harassment;

• publish the notice in any publication of the school district that sets forth the comprehensive rules, procedures and standards of conduct for the school, and;

• develop and initiate age-appropriate programs to effectively inform students about the substance of the policy and procedures.”346


* If you need assistance drafting a definition of gender identity and expression please contact the Transgender Civil Rights Project at the National Gay and Lesbian Task Force (202-393-5177.)

** Please do not copy this language. There has been litigation on this specific definition that may make it problematic for your jurisdiction. For assistance please contact the Transgender Civil Rights Project at the National Gay and Lesbian Task Force.

In states with no nondiscrimination or anti-harassment policies, municipalities can take matters into their own hands and amend school anti-harassment policies to include sexual orientation. North Olmstead, Ohio; Decatur, Georgia; and Lawrence, Kansas have done this. The National Gay and Lesbian Task Force encourages states and municipalities to pass nondiscrimination and anti-harassment laws and policies which cover sexual orientation and gender identity. For help crafting such laws, contact NGLTF’s State Legislative Lawyering Project at www.ngltf.org or 202-393-5177.}
Another way states ban discrimination is through regulations promulgated through the state department of education. Pennsylvania’s state Board of Education mandates “that educational programs shall be provided without discrimination on the basis of…sexual orientation….” Rhode Island’s Department of Education mandates that “no student shall be excluded from, discriminated against, or harassed in any educational program, activity or facility in a public school on account of sexual orientation or perception of same.” Washington state law also outlaws anti-gay harassment, but not anti-gay discrimination, in education.

Safe Schools Initiatives

Massachusetts launched the first Safe Schools Initiative nearly a decade ago, after the Governor’s Commission on Gay and Lesbian Youth documented the hostile school climate pervasive in most of the state’s schools and its negative impact on GLBT students, the children of gay parents, and other students who are “different.” This includes many heterosexual young men targeted as “faggots” because they play an instrument in the band or try out for a school play, or because they are academically successful, or those young women labeled “dykes” because they participate in girls’ athletics or don’t wear makeup. The Safe Schools Program seeks to fulfill four recommendations the Massachusetts Board of Education made in 1993:

• “Develop policies that protect gay and lesbian students from harassment, violence, and discrimination.
• Offer school personnel training in violence prevention and suicide prevention.
• Offer school-based support groups for gay, lesbian, and heterosexual students.
• Provide school-based counseling for family members of gay and lesbian students.”

The Massachusetts legislature appropriated funds to support the Safe Schools Program through the Departments of Education and Health and Human Services. Within a few years more than 140 schools across the Commonwealth had gay/straight alliances, and many teachers and counselors were trained in how to deal with anti-gay harassment and violence. Very quickly the program showed results. Laura Szalacha, a Harvard School of Education student who wrote her dissertation on the Massachusetts initiative, found that:

• In schools with gay/straight alliances (GSAs)—in-school support groups for GLBT, questioning, and straight students—students were three times as likely to say gay students could safely choose to be open about their sexuality (35 percent) than students in schools without GSAs (where only 12 percent of students said students could safely be openly gay).

• In schools that had undergone faculty training on gay issues, 54 percent of students said that gay students felt supported by teachers and counselors, while in schools that had not undergone faculty training only 26 percent of students said gay students felt supported.

The Massachusetts Safe Schools Program is a national model, as it was, until 2002 when Governor Jane Swift vetoed funding for the program, the only program fully funded by state monies. In other states and municipalities with safe schools programs private funding sources are the primary source of support. Follow up is needed to ensure the success of these initiatives. Until recently, many urban and rural communities in Massachusetts still...
did not have GSAs and hadn’t had teacher trainings. Instead, most of the interventions were happening in schools located in suburban, mostly white, middle and upper class communities. As of the late 1990s, Boston only had one GSA at one high school. Also, not a lot was done to combat harassment and violence against transgender students. However, in the past few years the number of GSAs in Boston schools increased from one to 15, and more safe schools work was done in cities around the state with large communities of color. In California, GSAs exist across the state, in urban, rural and suburban school districts. Minneapolis/St. Paul and Chicago also have many GSAs in their school districts, which are predominantly comprised of students of color. GLSEN’s 2001 school climate survey found that GSAs were still less likely to exist in rural school districts.349

Gay/Straight Alliances

Gay/straight alliances (GSAs), or in-school, extracurricular groups which support GLBT, questioning, and supportive heterosexual students, are an important piece of the overall strategy to ensure that schools provide education in a safe and welcoming environment.350 They provide a frequently student-initiated organization for students and school staff to work toward ending anti-GLBT bias and homophobia in schools.351 They are also the most visible and widely adopted component of safer schools programs.352

Prior to the founding of PROJECT 10, a school-based support program for GLBT students in Los Angeles public schools, informal discussions with gay, lesbian and bisexual students revealed that they felt they were without traditional support systems, sympathetic adults to talk to, or peers “like themselves” with whom to socialize. In 1985, after PROJECT 10 had been in place for a full school year at Los Angeles’ Fairfax High School, a study of the general student population was conducted. Of the 342 (out of 500) surveys that were returned, 56 percent of the respondents knew a GLB person and felt that there should be some outreach to GLB students on every campus. Fifty-one percent felt that the effect of PROJECT 10 on Fairfax High School had been positive, only 11 percent felt the effect had been negative and that it gave the school a bad name, and 38 percent were unsure as to the effect. Seventy-nine percent of the students surveyed felt that “the greatest benefit of PROJECT 10 was that it provided all students with a place to get accurate information” on GLB issues.353 Portion of the Project 10 model have been replicated in schools across the country.

Some, however, argue against the creation of GSAs. Some community reluctance comes from the concern that the club is a vehicle for homosexuality, and that it will teach and promote immorality. Tim Wildmon, vice president of the American Family Association feels that, “It’s a way to get gay curriculum in schools. We view these kinds of clubs as an advancement of the homosexual cause.”354 Such claims appeal to the stereotype that gay people “recruit” youth and reference either implicitly or explicitly the false claim that homosexuality is closely linked to pedophilia.355

GSAs are often the only school-based place where GLBT youth can safely discuss the problems associated with society’s limited acceptance of their sexual orientation or gender identity. The groups provide a setting where GLBT youth can communicate with others who understand what it is they are going through.356
Students are able to make friends without hiding their sexual orientation, which helps them develop social skills and self-esteem. Another aspect of students’ involvement in the GSAs is an increased interest in learning about cultural and social issues related to sexual orientation. This awareness includes a range of students, both GLBT and their heterosexual allies.

A Connecticut teacher and GSA co-advisor, Liz Welsh, told Education World:

I have seen changes in students who come to the GSA. Kids with support move away from risk behaviors and experience school success. You can’t pretend these kids don’t exist. Even kids who won’t step foot in the room benefit. At least they know there is a safe place; someone is acknowledging them and the issues they face.

Lee’s study involving seven students from the GSA at East High School in Salt Lake City, Utah, found that the GSA had a positive impact on the students’ academic performance and enhanced their sense of belonging to the school community. The students’ sense of physical safety was better as well. Several students expressed that their attendance and desire to go to school had improved since their involvement with the GSA, and they were working harder when there. Also improved were relationships with family and at school, their comfort level regarding sexual orientation, the development of strategies to handle assumptions of heterosexuality, and an increased perceived ability to contribute to society.

In her study of the Massachusetts Safe Schools Project, Szalacha found that the presence of a gay/straight alliance in schools made a difference. In those schools that had a GSA, 52 percent of the students indicated that there were members of the faculty, staff or administration who support GLBT students, in contrast to only 37 percent of students in schools without a GSA. Sixty-four percent of the students in the schools with a GSA reported feeling comfortable with referring a friend who was questioning sexuality issues to talk to a counselor, while only 44 percent of the students in schools without a group felt comfortable doing so. In schools with GSAs, 35 percent of the students reported that GLBT students can safely choose to be open about their sexuality in school; only 12 percent of students felt this sense of safety in schools without GSAs. Forty percent of the staff in schools with a gay/straight alliance indicated that they would be comfortable assisting a student with sexuality questions, while only 29 percent of the staff in schools without at GSA would be comfortable providing this assistance.

Much work remains to be done regarding racial and gender diversity in GSAs. Often, even in racially diverse school districts, GSAs are disproportionately white and female. Some say it’s harder for young men to attend GSAs because they may be at greater risk of harassment and physical attack from other young male peers if their participation is discovered.

Lance McCready found that some African American gay youth in a Los Angeles high school perceived that school’s GSA as a “white” institution that was not created for them. During the 1997-1998 academic year, McCready investigated the reasons why black gay males were reluctant to be involved with the Project 10 group. He found that one of the students he interviewed, Jamal, recognized that:

At [the high school], where social groups are often defined by race, identifying himself as gay (a social identity he and other Black students perceived as White) in every situation would put him at odds with his Black peers.
Consequently, he chose to de-emphasize his sexuality and involve himself in extracurricular clubs and activities (such as student government) that are legitimized by Black students. Downplaying his sexuality also meant that Project 10 was off limits. Particularly among Black students, to align oneself with Project 10 meant risking harassment and public ridicule.362

A 2001 study by the California-based Gay-Straight Alliance Network found that 53 percent of the GLBT, questioning, and allied straight youth of color with a GSA at their school said the group’s membership did not reflect the racial diversity of the school. The same percentage said that the GSA leadership did not reflect the school’s racial diversity. Nearly half (45 percent) said they did not feel comfortable going to the GSA at their school. Policy makers and advocates concerned about GLBT issues in schools should support efforts to make GSAs and other interventions more representative of the diversity of GLBT youth and the children of GLBT parents, and more culturally competent to handle the particular needs and experiences of youth of color.

**GLBT Issues in Curricula**

Although the Massachusetts Governor’s Commission on Gay and Lesbian Youth recommended the incorporation of gay and lesbian issues into curricula, such as including coverage of the gay rights movement in a social studies or contemporary history course, gay issues are still largely excluded from curricula. Such inclusion of GLBT issues in curricula is supported by the National Education Association’s Task Force on Sexual Orientation, among others.363 Finally, most interventions occur at the high school level, with very little being done to combat homophobic harassment and violence in middle schools and in elementary schools.

In GLSEN’s 2001 national survey of GLBT youth, 25 percent reported that GLBT issues were taught in some of their classes. Usually the inclusion of GLBT issues in curricula occurred in history/social studies, English classes, and health classes. Nearly 80 percent said that the representation of GLBT topics was either somewhat positive or very positive. Fewer than a third of youth reported having inclusive textbooks in their classes, and about a third said they had GLBT resources in their libraries or internet access to GLBT community websites. Rural students were less likely to report that GLBT issues were taught in class or that GLBT issues were represented in textbooks or library books, or that GLBT resources were available via school library internet connections.364 In many schools anti-pornography computer chips prevent GLBT students from accessing information on-line about GLBT community centers, social services, and social or political organizations.

Despite these limitations, Safe Schools initiatives hold great promise for making schools safer for all students. Most teachers interviewed for a recent Human Rights Watch report said that their teacher training programs did not address harassment and discrimination based on sexual orientation or gender identity.365 Legislators and activists interested in promoting Safe Schools Programs in their state should contact the Gay, Lesbian and Straight Education Network (GLSEN) at www.glsen.org, or contact the Massachusetts Department of Education’s Safe Schools Program.
Teachers, Administrators, and Staff

Nondiscrimination laws and nondiscrimination clauses in teacher union contracts can make it easier for GLBT teachers to be out, thereby serving as role models for GLBT youth, and can also make it safer to teachers and school staff to intervene in cases of anti-gay harassment and violence. Studies show the impact that supportive teachers and adult role models play in the lives of GLBT students. The Human Rights Watch study showed that when GLBT students reported positive school experiences, they attributed it to the presence of supportive teachers.\footnote{366} GLSEN’s National School Climate study indicates that 26 percent of GLBT youth surveyed knew of an openly gay teacher or staff member at their school, and 60 percent of the youth reported that they knew of a teacher or staff person who was supportive of GLBT students at their school. Rural students were less likely to report having an “out” or supportive teacher or staff member at their school.\footnote{367} Thirty-five percent of youth who had a supportive teacher or staff person felt as if they belonged at their school, compared to 25 percent who did not have a supportive teacher or staff person.\footnote{368}

An analysis of National Adolescent Health Study data found that “feelings about teachers play the largest role in predicting the troubles of both boys and girls with bisexual attractions in school—paying attention, getting homework completed, and getting along with other students.”\footnote{369} This indicates that youth reporting positive feelings about their teachers are significantly less likely to experience the broad range of school troubles. While schools are often hostile toward GLBT students, supportive teachers can help prevent many of the risks experienced by GLBT youth and can make a real difference in schools.\footnote{370} Others have also documented the importance of gay role models in the lives of GLBT youth. Data from the Nuestras Voces study of Latino gay and bisexual men in 1998-1999 show that the presence of an adult gay role model while growing up increased self-esteem, lowered psychological distress and lessened the likelihood that they would find themselves in high-risk situations that could lead to risky sexual behaviors.\footnote{371}

The honesty of out GLBT teachers, administrators and staff, as well as their presence in schools, has a positive impact on all members of the school community.\footnote{372} The understanding that students gain from experiences with openly GLBT students and teachers in the school environment can be significant. For example, in a survey of 11 former students in their late twenties and early thirties regarding their impressions of having a teacher who was openly gay, there were no reports of any intense concerns about having a gay teacher while in middle school. The experience seems to have offered them a different perspective on the debate surrounding issues of homosexuality. The results of the study suggest that openly gay teachers may serve an important role in the development of students.\footnote{373}

Blumenfeld discusses the decision of a Massachusetts teacher, Peter Atlas, to come out to his school:

His motivations for taking this action were twofold: First, he did it for the students. “It was an attempt to alleviate some of the fear, shame, loneliness, and despair of kids in high school today that I also felt as a closeted teen,” he told me. And second, he did it for himself and other staff members. “It takes much more energy to be closeted than it does to be out,” he continued. “All of the
The response to Atlas's acknowledgment of his sexuality was mixed. While some students and parents expressed concern, there were also messages of support and encouragement from the community. One father wrote, “I wanted to write and support your courageous statements. You will undoubtedly pay a price for your honesty, yet others would pay a price for your silence, and that price could be fatal.”

THE IMPACT OF RECENT EDUCATION POLICY INNOVATIONS ON GLBT ISSUES IN SCHOOLS

A great deal of research and policy analysis remains to be done regarding the impact on GLBT issues in schools of a number of recent policy innovations. These include: charter schools, school vouchers and school choice, single-sex only schools, and parental notification laws. In some struggling urban school systems, students lucky enough to get into a charter school may get a better education than at other schools. However, the decentralized nature of charter school governance means that if parents on the school parent council are largely homophobic, they could prevent safe schools programs from being implemented in that charter school. While many educators and progressives are concerned that charter schools drain public funds from already underfunded public schools, others like health activist and education professor Eric Rofes argue that charter schools may provide an opportunity to replicate across the country the successes of GLBT high schools like San Francisco’s Harvey Milk School and the Hetrick-Martin Institute in New York City.

School vouchers entail the use of public funds for private, and often religious, schools. While some argue this is a matter of providing affordable alternatives to low-income, mostly black and Hispanic students in cities, others fear that this too will drain scarce public funds from already struggling public school systems, and lead to a drain of the best students and most involved and motivated parents from the public schools as well. Specific concerns related to GLBT youth and children of GLBT parents are that private and religious schools may be hostile to safe schools initiatives to promote tolerance and end anti-gay harassment and violence. However, Jamie Nabozny—the plaintiff in a major school harassment case—found a Catholic school he transferred to was safer than the public school he left due to anti-gay harassment. His parents, however, could not afford the Catholic school tuition so he had to return to the public school, where he was harassed again on a daily basis.

Opponents of school choice say it would drain motivated students and financial resources from the poorest performing school districts, further entrenching class and racial disparities in the U.S. education system. Yet school choice, including the ability to transfer to another school, whether intradistrict or interdistrict, may also offer harassed GLBT students the ability to move to a safer environment and start fresh without the stigma they experienced in the school they left. Activists and policymakers should develop a nuanced analysis of the issue of school choice. While the goal should certainly be to make all schools safe for all youth, short term in extreme situa-

Parental notification laws often mandate advance, written consent of parents before controversial topics like sex and sexuality are discussed in schools.
tions school choice could offer harassed GLBT youth and children of GLBT parents a solution to their untenable personal situations.

Parental notification laws have been passed in many states and municipalities, often in reaction to pro-gay interventions. These laws often represent a backlash from anti-gay, Religious Right activists against sex education efforts and anti-homophobia initiatives. Parental notification laws often mandate advance, written consent of parents before controversial topics, like sex and sexuality are discussed in schools. Sometimes they also cover other topics, like abortion, divorce, and death. Parental notification laws with an opt-out provision are better than those that require parents to affirmatively opt-their children in before they can attend certain classes. But preferable to parental notification laws is close parent involvement with school programming and curricula, regular communication between teachers and parents, and the discussion of sensitive topics in the appropriate context in an age-appropriate way. Unfortunately parental notification laws can have a chilling effect, leading teachers and health educators not to address topics that students would benefit from—and that even could contain life-saving information—out of fear of violating the law.

Another recent policy innovation is single-sex schools. The No Child Left Behind Act (107 P.L. 110), passed January 8, 2002, allows federal funding for single-sex schools for the first time since the passage of Title IX in the 1972. Little is known about the impact of single-sex schools on gender and sexuality development, and on anti-GLBT attitudes, harassment, and violence. One researcher warns that,

> When all-girl classes are set up...an underlying, if unintended, message can be that girls are less capable...Separating boys from girls in order to better control boys’ behavior can indicate that boys are “too wild” to control.376

A 2001 report on California’s pilot program for single-gender schooling expressed concerns about the impact on children:

> Our interviews and observations of the single gender academies often revealed definitions of gender that were either limited, as was the case with masculinity, or unrealistic, as was heard in messages about femininity. Gender was constructed as a dichotomous entity within the single gender academies, promoting a paradigm of girls as good, boys as bad.377

Clearly single-sex schools would have a significant impact on the gender development of all students, and particularly on the experiences of transgender and gender variant students, as well as gay and bisexual students. Those concerned with GLBT youth should support research into the potential impact of these proposals before appropriating public funds to support such schools.

Traditionally the federal government’s role in education policy is small when compared with the role of state and local governments. However, on January 8, 2002 President George W. Bush signed into law the No Child Left Behind Act (NCLB Act), which mandates a much larger federal role in education policy making. Augmenting much of the Elementary and Secondary Education Act, originally passed in 1965, the NCLB Act makes states accountable to the federal government for meeting state-set education standards in order to continue to receive federal education funding.378 The new legislation prohibits the use of federal funds to elementary and secondary schools for the “promotion or encouragement of sexual activity” or for contraceptive distribution. Sex
education and HIV-prevention education funded under the NCLB Act must be deemed “age appropriate” and the curriculum must include “the health benefits of abstinence.” The language of the NCLB Act does not bar states using federal funds from educating school children about contraceptives and safer sex practices, so long as abstinence is also encouraged. These comprehensive curricula may also be referred to as “abstinence plus” programs because abstinence is presented as the preferred choice, but safer sex education is also taught.

As noted above, since 1996 the federal government has also made welfare grants available to schools offering an abstinence-only-until-marriage curriculum. Under the 1996 welfare reform legislation, which Congress is expected to reauthorize late in 2002 or in 2003, programs teaching students that abstinence-until-marriage is the only acceptable and healthy option are eligible for funding. It seems permissible for states to receive education funding from both sources—TANF welfare funds and the No Child Left Behind Act—simultaneously. There is no apparent reason why states should not be able to take money offered for abstinence-only education under welfare reform, using it to fund the abstinence piece of their sex education curriculum exclusively, while continuing to use NCLB monies as well as state monies to fund the other portions of a comprehensive sex education program. Many states currently use both state sex education funds and federal abstinence-only funds in this manner.

**ABSTINENCE-ONLY-UNTIL-MARRIAGE EDUCATION**

The welfare reform law of 1996, premised on the unproven claim that poor women’s failure to marry is the cause of high rates of family poverty in the United States, promoted an abstinence-only-until-marriage education policy that teaches that sex outside the context of marriage is intrinsically dangerous, both physically and psychologically. Relying on scientifically inaccurate information and shame, this policy poses a threat to all children. But it poses a particular threat to gay, lesbian, bisexual and transgender youth, who are already subject to widespread harassment and violence in the nation’s schools.

Each year since 1996, nearly $100 million in government funds have been spent on abstinence-only-until-marriage education, ostensibly aimed at preventing teen pregnancy and out-of-wedlock births. The Bush Administration sought a substantial increase in abstinence-only-until-marriage funds during the welfare reauthorization of 2002.

As of 1999 nearly one-third of the nation’s high schools were promoting abstinence only, while excluding information about contraception and safer sex education. A study of 43 states plus Puerto Rico and the District of Columbia found that more than 10 percent of the abstinence-only funds had been granted to “faith-based entities” in 22 states. A further 40 percent of the funds were spent through other private, but nonreligious, entities. Twenty-eight jurisdictions sampled prohibited organizations providing abstinence-based education from providing information on contraception if asked by a student or other client. A further five jurisdictions provided no guidance one way or the other.

Research has shown that sex education which promotes the delay of first intercourse but simultaneously teaches safer sex practices is more effective than abstinence-only education.
Research has shown that sex education which promotes the delay of first intercourse but simultaneously teaches safer sex practices is more effective than abstinence-only education. A World Health Organization review of 35 sex education programs around the world documented the relative ineffectiveness of abstinence-only education in stemming the spread of sexually-transmitted diseases. American youth have higher rates of unwanted pregnancy and sexually transmitted diseases than their counterparts in Europe, where comprehensive sex education is the norm.

A report released by U.S. Surgeon General David Satcher in early 2001 also questioned the effectiveness of abstinence-only education. Satcher noted that there has been little research to demonstrate the effectiveness of this particular type of instruction. More comprehensive education programs that also provide information on condom use have proven effective in stemming disease transmission and pregnancy among already sexually active youth. Yet safer sex education has not been shown to increase or hasten sexual activity among youth. According to Satcher:

To date, there are only a few published evaluations of abstinence-only programs. Due to this limited number of studies it is too early to draw definite conclusions about this approach. Similarly, the value of these programs for adolescents who have initiated sexual activity is not yet understood. More research is clearly needed.

Programs that typically emphasize abstinence, but also cover condoms and other methods of contraception, have a larger body of evaluation evidence that indicates either no effect on initiation of sexual activity or, in some cases, a delay in the initiation of sexual activity. This evidence gives strong support to the conclusion that providing information about contraception does not increase adolescent sexual activity, either by hastening the onset of sexual intercourse, increasing the frequency of sexual intercourse, or increasing the number of sexual partners. In addition, some of these evaluated programs increased condom use or contraceptive use more generally for adolescents who were sexually active.

Abstinence-Only and Prevention Efforts to Stop Sexual Diseases and Teen Pregnancy

Several states and municipalities have rejected or stopped applying for federal disease prevention funds out of a mistaken belief that accepting abstinence-only funds precludes them from accessing federal funds for sex education. Nebraska decided not to reapply for HIV prevention grants from the Centers for Disease Control because HIV prevention has traditionally combined abstinence promotion with safer sex education. Since 1997 Nebraska has limited all state-sponsored sex education to an abstinence-only-until-marriage message. Following lobbying from the National Abstinence Clearinghouse, Nebraska’s Education Commissioner decided not to reapply for CDC funds.

Ohio also failed to use CDC funds awarded to the state’s Department of Education for HIV prevention and other health goals. In 1998 state legislators passed a law preventing the department from spending the funds until it agreed they would only be used to teach abstinence. More than two years passed and an agreement between the department and the legislature was not worked out. Language that would have required programs to “emphasize” abstinence, but not limit their approach only to abstinence education, was
rejected by hardliners. As a result, $1 million in CDC funds was forfeited. Only 10 percent of those CDC funds were earmarked for HIV prevention; the rest were for other health initiatives, including tobacco use prevention, diabetes, and cancer prevention.388

The Northern Kentucky Independent District Health Department also voted in 2001 to limit sex education efforts paid for with state dollars to the abstinence-only-until-marriage approach.389 The New Jersey and Maine legislatures considered bills which would mandate abstinence-only education in those states’ public schools.390 Florida Governor Jeb Bush announced in March 2001 that he wanted to take $1 million in state funds for family planning services at health clinics and rechannel the funds into abstinence-only-until-marriage programs. Florida already had 35 abstinence-only education programs funded by Temporary Assistance for Needy Families (TANF) funds and run by private organizations.391 While Arkansas has long limited state-funded “sex education” to an abstinence-only-until-marriage approach, a bill that would further restrict sex education was introduced last year.392

Scared Chaste: Abstinence-Only’s Reliance on Fear, Shame and Misinformation

Abstinence-only-until-marriage approaches to sex education are counterproductive, dangerous, and even harmful to the youth who are subject to their messages. Premarital sex is presented as intrinsically harmful. Relying on shame and fear, abstinence-only spreads inaccurate information about sexually transmitted diseases and contraceptives; presents rarely occurring, worst-case scenarios as routine and common; stigmatizes and evokes hostility toward people with AIDS; and largely ignores homosexuality except as a context for HIV transmission.393 At least two curricula, however, are explicitly hostile toward lesbians and gay men.394

“[T]here is no such thing as ‘safe’ or ‘safer’ premarital sex,” warns FACTS, one such curriculum. “There are always risks associated with it, even dangerous, life-threatening ones.”395 Echoing Pat Buchanan’s claim that AIDS is “nature’s retribution” on “the poor homosexuals” who “have declared war on nature,”396 Sex Respect, another abstinence-only curriculum, teaches the following:

Is this [AIDS and other sexually transmitted diseases] nature’s punishment for sex outside of marriage? No, not at all. These are natural consequences. For example, if you eat spoiled food, you will get sick. If you jump from a tall building, you will be hurt or killed…If you have sex outside of marriage, there are consequences for you, your partner, and society.397

The Sexuality Information and Education Council of the United States (SIECUS) documents numerous ways in which the incidence and effects of several sexually transmitted diseases (STDs) are misrepresented in abstinence-only curricula.398 SIECUS warns that these scare tactics can discourage students from seeking treatment for STDs, such as chlamydia, which are easily curable if treated early on.399

Condoms are presented as a dangerous and ineffective form of birth control: “Relying on condoms is like playing Russian roulette,” declares Me, My World, My Future.400 Condom failure rates are overstated; failure of users to properly use condoms is inaccurately translated into an intrinsic defect in the product.401 FACTS warns that even if
condoms are properly used, they may still allow “the transmission of HIV/AIDS.” This flies in the face of CDC and other scientific research, which finds condoms highly effective in stopping the spread of STDs when used properly.\textsuperscript{402}

Skewed information about HIV/AIDS is common in abstinence-only-until-marriage curricula. \textit{Sex Respect} devotes three paragraphs to the possibility of contracting HIV through “French kissing.” This is based on a single case investigated by the CDC in 1987, which may have involved transmission due to bleeding, open-mouth sores. However, kissing is generally not a risk factor for HIV transmission. People with AIDS are also stigmatized as dangerous bearers of death. \textit{Sex Respect} warns, “How can you tell if someone has AIDS? There is no way for you to predict. Anyone can be carrying your death warrant.”\textsuperscript{403}

**Scared Straight: Heterosexism, Sexism, and Anti-Gay Bias in Abstinence-Only Curricula**

Heterosexist gender stereotypes about boys and girls are widespread in abstinence-only curricula. Boys are presented as sex-crazed, and girls as less interested in sex than they are in finding love. Girls are warned about “the way you dress sending messages.” \textit{Sex Respect} warns, “Watch what you wear. If you don’t aim to please, don’t aim to tease.” Feminism is blamed for promiscuity: “the liberation movement has produced some aggressive girls today, and one of the tough challenges for guys who say no will be the questioning of their manliness.”\textsuperscript{404} Girls are portrayed as primarily responsible for rejecting the sexual advances of boys.\textsuperscript{405}

Programs that focus on abstinence-only-until-marriage are detrimental to GLBT youth, those youth questioning their sexual orientation, the children of GLBT parents, and GLBT teachers and administrators in the nation’s schools. Homosexuality is largely ignored except as a context for HIV transmission. But homosexuality is implicitly, and sometimes explicitly, stigmatized. For example, \textit{Sex Respect} teaches students that “[R]esearch and common sense tell us the best ways to avoid AIDS are: Remain a virgin until marriage…Avoid homosexual behavior.”\textsuperscript{406} When homosexual sexual practices are noted in this context, they are portrayed as “unnatural behavior.”\textsuperscript{407}

At least two abstinence-only curricula are overtly hostile toward lesbians and gay men. \textit{Clue 2000} engages in the standard right-wing tactic of conflating homosexuality with pedophilia and incest when it notes that “[a]mong Kinsey’s most outrageous and damaging claims are the beliefs that pedophilia, homosexuality, incest, and adult-child sex are normal.”\textsuperscript{408} \textit{Facing Reality} assures teachers and parents that presenting homosexuality as intrinsically dangerous is actually in the best interests of students, and is not homophobic. It also repeats the outdated notion of AIDS as a gay disease:

[M]any homosexual activists are frustrated and desperate over their own situation and those of loved ones. Many are dying, in part, due to ignorance. Educators who struggle to overcome ignorance and instill self-mastery in their students will inevitably lead them to recognize that some people with AIDS are now suffering because of the choices they made…Teachers, in order to preserve an atmosphere of intellectual freedom, should feel confident that when examining health issues and moral implications of homosexual behaviors, they are not engaging in an assault on a particular person or group.\textsuperscript{409}
Studies have shown that lesbian, gay and bisexual youth who receive gay-sensitive HIV instruction in school tend to engage in risky sexual behavior less frequently than similar youth that do not receive such instruction. In a random sample of high school students and HIV education instructors in Massachusetts, among sexually active heterosexual and homosexual youth, gay youth reported more sexual partners, more frequent use of substances before engaging in sex, and higher rates of pregnancy. However, those gay youth that received gay-sensitive HIV instruction reported fewer sexual partners and less frequent substance use before sex.410

Impact of Abstinence-Only Combined with Anti-Gay Education Policies and “Parent’s Rights Laws”

The often explicitly anti-gay and stigmatizing language of abstinence curricula can have a chilling effect on discussion of homosexuality in the schools, including attempts to deal with incidents of anti-gay harassment of GLBT students and the children of GLBT parents. In reaction to a growth in sex education and anti-homophobia initiatives in the early 1990s, conservatives pushed “parents' rights” laws and parental notification laws in states across the U.S., requiring teachers to provide advance written warning to parents prior to addressing issues of homosexuality in class. This followed by a few years the “no promo homo” laws enacted by several states in the late 1980s and early 1990s, which restrict any neutral or positive mention of homosexuality.411 When taken together, these policies create a context that may have a chilling effect on open conversations about issues facing GLBT students and the children of GLBT parents, including issues of verbal and physical harassment. They may also preclude, as they are intended to, the incorporation of GLBT issues in social studies, literature, and health classes.

The link between sex education, abstinence promotion, and GLBT youth was vividly displayed in recent comments by Boston University President John Silber, who called for the disbanding of a gay-straight alliance at a university-run high school. Boston's gay newspaper Bay Windows reported September 12, 2002:

Silber ordered academy headmaster James Tracy to disband the school’s two-year old GSA last week, saying it didn’t belong there because it encouraged teen sex. “We’re not running a program in sex education,” Silber told the Sept. 7 Boston Globe. “If they want that kind of program, they can go to Newton High School. They can go to public school and learn how to put a condom over a banana.” According to a Sept. 6 Globe story, Silber threatened to cut funding to the school if the GSA wasn’t shut down.419

In Massachusetts legislators introduced a bill requiring schools to notify the parents or guardian of a student attending any after school activities dealing with “human sexual education or human sexuality issues.” In effect, this would have required that students seek parental consent in order to attend a gay-straight alliance meeting. When the legislators learned of this, they said they would change the bill to exempt GSAs, so that students could attend GSAs without having to tell their parents.420 However, activists and legislators concerned about GLBT youth should be vigilant regarding the introduction of such legislation in their state.
STATE LAWS REQUIRING NEGATIVE PORTRAYALS OF HOMOSEXUALITY

South Carolina bans discussion of “alternative sexual lifestyles from heterosexual relationships including, but not limited to, homosexual relationships except in the context of instruction concerning sexually transmitted disease.”

Arizona law prohibits “instruction which: 1. Promotes a homosexual life-style. 2. Portrays homosexuality as a positive alternative life-style. 3. Suggests that some methods of sex are safe methods of homosexual sex.”

Alabama requires that any mention of homosexuality stress “that homosexuality is not a lifestyle acceptable to the general public and that homosexual conduct is a criminal offense under the laws of the state.”

Texas law is almost identical to Alabama’s statute.

Kay Coburn, an administrator with the Temple, Texas Independent School District, told Human Rights Watch that there is “no discussion of homosexuality,” nor “any message in the curriculum about how homosexuals might protect themselves from HIV. Abstinence is the only message. The traditional family is where you have sex. The curriculum doesn’t address sex outside this structure.”

Cheryl Cox, a health teacher and member of her Robinson (TX) High School health education advisory council, noted that coverage of homosexuality and other “lifestyle options” was “not needed or necessary… I can’t see it ever being acceptable to discuss homosexuality, as it’s a very conservative community. It’s a topic that I’m not supposed to be talking about because of the standards set forth by the community and by the health advisory board.”

Terry Cruz, an abstinence educator in Laredo, TX, told Human Rights Watch that “probably the only time I touch on the subject [of homosexuality] is with HIV, referring to how HIV originally started.”

Efforts to silence and stigmatize homosexuality can have devastating effects on GLBT youth. A recent NIH-funded study of Latino gay and bisexual men found a correlation between experiences of homophobia and increased likelihood to engage in HIV risk behaviors. It also found that family acceptance and the presence of an openly gay role model while growing up correlated with lower incidence of HIV risk behaviors. The promotion of homophobia and ignorance about AIDS and other STDs hurts all students, but especially those who are GLBT or from GLBT families.

Abstinence Efforts Likely to Dominate in Near Future

People continue to get infected with HIV unnecessarily because some public health professionals and many elected officials have abdicated their responsibility to deal with HIV/AIDS as a public health issue. Instead, too many impose their narrow vision of morality on the rest of the population and promote policies which have failed to prevent the continued spread of this disease. Thus abstinence-only-until-marriage education may in fact contribute to the transmission of HIV and other STDs.
Although gay and bisexual men are disproportionately affected by HIV and AIDS, increasingly those living with HIV or AIDS are heterosexual, female, and African American and Latina/o women and children. Within the gay and bisexual male community, men of color, particularly younger men of color, are at greater risk for HIV/AIDS. For example, in New York City one recent study found that four percent of white homosexually active 15- to 22-year-old men are HIV-positive, while 10 percent

### Sex Education Laws in U.S. States

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Total: 36 3 (1 poss.) 6

1=members: HIV & sexuality  
2=if religious or moral objections  
3=must provide monogamous heterosexual marriage  
4=sex education  
5=must provide negative information re: homosexuality and AIDS  
6=HIV/STDs  
7=localities may require for education on STDs

of Latino men and 22 percent of African American men in this age bracket are HIV-positive. From 1999 to 2000 69 percent of new HIV infections were among black and Latino individuals, most of them men who have sex with men.

Federal incentives favoring abstinence-only education are likely to become more entrenched under President George W. Bush. As governor, Bush opposed sex education and HIV/AIDS prevention efforts. Bush told the Washington Times in July 1999 that he supports abstinence-only education, arguing that teaching safer sex and abstinence together “sends a contradictory message that tends to undermine the message of abstinence.” Bush told young people that they should avoid sex until they are in “a biblical marriage relationship.” Bush also supports educational grants for churches and faith-based groups to promote abstinence until marriage.

Abstinence-only sex education, while strongly supported by President Bush and a conservative Congress, does not enjoy widespread support among the U.S. public. According to a national study conducted by the Henry J. Kaiser Family Foundation there exists a strong disparity between what is actually taught in sex education programs and what parents actually want. One of the strongest disparities exists for homosexuality. Seventy-six percent of parents of 7-12th graders felt that sex education should cover homosexuality, while only 41 percent of students reported the topic was actually covered.

Policy Recommendations

- Age-appropriate, publicly-funded sex education programs should be offered which provide comprehensive, factual information about sexuality.
- Sex education curricula that promote abstinence should also provide information on safer-sex techniques that significantly reduce the risk for transmission of sexually-transmitted diseases and pregnancy.
- All sex education curricula should avoid gender stereotypes and the stigmatization of homosexuality.

GLBT YOUTH IN FOSTER CARE

It is estimated that 10 to 20 percent of youth in the foster care system are gay or lesbian. Usually GLBT youth end up in the foster care system because of their family’s disapproval with their sexual orientation or gender identity. According to one study, 50 percent of gay male adolescents experienced a negative reaction after disclosing their sexual orientation to a family member. As a result nearly one-quarter were kicked out of their homes. In another study, a third of gay men and lesbians experienced physical violence from a family member as a result of their sexual orientation.

These GLBT youth are often not even acknowledged, let alone adequately cared for. In Youth in the Margins, a landmark report studying GLBT youth in foster care, Lambda Legal Defense and Education Fund argues that the lack of acknowledgement of GLBT youth in foster care leads to a hostile atmosphere where GLBT youth feel forced to hide their sexual orientation. Many are consistently subject to physical, verbal, and emotional harassment and abuse. One study found that 78 percent of GLBT youth ran away
from foster care placements because of the hostile treatment they received due to their sexual orientation or gender identity. Sadly, 100 percent of GLBT youth in group homes run by New York City’s Administration on Children Services reported being verbally harassed. Seventy percent suffered physical abuse because of their sexual identity.432

Additional concerns arise for GLBT youth of color within the foster care system who also have to negotiate the risk of cultural alienation from their own communities because of their sexual orientation. The New York City Child Welfare Administration, the Council of Family and Child Care Agencies, and the Child Welfare League of America have all endorsed the need for reform within the foster care system to better support GLBT youth. Simply framed by researcher Gerald Mallon in his book of the same title, when it comes to GLBT youth in the foster care system, “We don’t exactly get the welcome wagon.”433

State foster care agencies have been markedly unresponsive to the issues GLBT youth face. Though state foster care agencies are required by federal law to provide protection and care for all youth in the system, including GLBT youth, most of these systems are neither aware of the concerns nor prepared to address them in any way. Not a single state foster care system has an official policy that prohibits discrimination on the basis of sexual orientation. There is a dire need for competency training for agency officials and foster parents alike to deal with the particular issues facing GLBT foster children, appropriate sex education, confidential HIV testing, etc.

To begin to solve the problems GLBT youth face in the foster care system, state and local policy makers must first begin by enacting and enforcing non-discrimination policies that prohibit discrimination based on sexual orientation and gender identity against the youth in foster care, foster parents as well as staff. Training should also be mandated for foster parents and staff on the issues GLBT youth experience and the importance of non-judgmental support. Initiatives similar to the Safe Schools Initiative should be launched for group homes and child welfare agencies.434

Along these lines, the California legislature recently passed AB 2651, establishing GLBT sensitivity training for foster parents. The bill would have directed California’s Department of Social Services to recruit GLBT adults to become foster parents for GLBT youth. This bill was vetoed by Governor Davis on September 30, 2002.435

**JUVENILE JUSTICE ISSUES AFFECTING GLBT YOUTH**

GLBT youth who are kicked out of their homes may end up homeless, commit a crime, and then end up in the juvenile justice system. The Urban Justice Center estimates that 4 to 10 percent of the juvenile delinquency population identifies as GLBT. According to a recent report, these youth were commonly arrested for “survival crimes,” such as robbery or prostitution.436

Although the Urban Justice Center’s report focuses primarily on GLBT youth in New York City’s juvenile justice system, the major difficulties GLBT youth face in the system are common in other parts of the U.S. According to the report:
• There is a lack of awareness about the existence of GLBT youth and their needs.
• There is a scarcity of sentencing options appropriate for GLBT youth.
• The safety of detained GLBT youth is in jeopardy.
• Professionals who work with GLBT youth lack expertise and training in the particular issues they face.
• Policies governing how to handle issues relating to sexual orientation and gender identity are nonexistent, and general policies are inconsistent in application.
• There is a lack of services that are sensitive to the needs of GLBT youth. Researchers have found that GLBT youth entering the system are often confronted by several difficulties. Frequently their identity is unknown, overlooked or patently denied. Other difficulties include a lack of general services specific to their health and safety needs, a scarcity of appropriate sentencing options (for example, the lack of parental support eliminates the possibility of lighter, at-home parole sentence and necessitates institutionalization), and the lack of professional training and institutional policy on handling issues of sexual orientation and gender identity. Detention facilities are generally not supportive of GLBT youth. Often they are homophobic. As a result of these institutional shortcomings, GLBT youth in the juvenile justice system report harrowing experiences of being abused by fellow detainees and staff, receiving heightened disciplinary measures, and being detained in isolation because they were viewed as a threat to others. One transgender youth was forced by staff to answer to her male name as opposed to her chosen, female name because of an institution policy “meant to curb gang-related monikers.” Another spent three weeks in the infirmary under “protective custody,” despite her request to live with the general population, and then spent three months in observation when the customary period was not more than a week.

In order to properly serve GLBT youth it is vital that lawyers, judges, and other officials involved with the juvenile justice system are trained in appropriate and non-judgmental approaches to dealing with GLBT youth. If it is ordered by a judge that placement is necessary for a youth, suitable placement should be sought out. Unfortunately, as indicated by the Urban Justice Center report, when placement options do not exist in New York City, GLBT youth may be placed in protective custody, which can take the form of a facility’s infirmary or in some cases solitary lockdown, isolation from the rest of the facility’s population, or even more restrictive settings. Currently there is only one group home in the eastern United States tailored to meet the needs of men identifying as gay, bisexual, or transgender. The Gramercy Life Skills Program offers around-the-clock care and training for up to 25 young men. Youth institutionalized there receive appropriate and sensitive counseling from trained staff. The program provides a transition and an alternative to institutional life for gay, bisexual, and transgender males. It is important to improve the treatment of GLBT youth in the juvenile justice system and afford them an opportunity to deal with their problems free of further harassment, marginalization, and isolation.

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INSTITUTIONALIZATION OF GLBT YOUTH BY PARENTS

Despite the American Psychological Association’s elimination of homosexuality from its list of mental disorders in 1973, GLBT people, especially youth, continue to be “treated” for their different sexual orientations and gender identities. Gender Identity Disorder (GID) remains in the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV) as a treatable illness. The criteria for this illness in a child include an interest in being the opposite sex, a belief that they will grow up and become the opposite sex, and a disgust with their own genitalia.

Because GID remains classified as a mental illness, it can be the basis for the imposition of psychological treatment, including civil commitment, of GLBT and questioning kids by their parents. Along with GID, therapists can use other broad diagnoses to justify treatment by institutionalization. A diagnosis for Oppositional Defiant Disorder (ODD) includes persistent defiant and disobedient behavior against authority in youth for six months. A young person in conflict with his or her parents over his or her sexual orientation could easily be perceived as falling within such a category. Depression diagnoses could also be drawn from the behavior of a young person struggling with these issues.

Youth who are diagnosed with one of these illnesses and institutionalized have little recourse. Parents have broad legal control over the mental health treatment of their minor children. The U.S. Supreme Court has ruled that due process only requires assessment by a neutral fact finder of whether the statutory criteria for commitment of the child have been satisfied. The Court deferred to the judgment of medical professionals often appointed by the hospital where the child is being held, rather than judicial officials, in making those decisions. By leaving the decisions in the hands of potentially biased parents and therapists, the law leaves GLBT youth vulnerable to serious mental harm.

In fact, many GLBT youth tell horror stories of their experiences in mental health institutions. Experiences include being sedated, hypnotized, physically restrained, isolated, and subjected to painful treatments as part of “conversion therapy” or “reparative therapy.” As part of their counseling, some youth in these institutions are told that homosexuality is an abnormal state they will outgrow. Youth who escape these institutions often become homeless. Some enter networks of safe homes that exist in some regions, such as San Francisco, and provide shelter for these youth. However, these safe homes are at risk of being raided by the police, resulting in the return of the youth to the institutions from which they escaped.

The psychological profession has largely refuted conversion therapy to “cure” people of homosexuality. The consensus within the profession is that it doesn’t work, may cause harm to its targets, and thereby violates the code of ethics of the profession.

POLICY RECOMMENDATIONS

- Institute programs and services that directly respond to the needs of GLBT youth.
- Adopt GLBT-inclusive nondiscrimination policies covering all state agencies.
- Ensure that personnel at all the institutions providing services to at-risk youth are well
informed about the needs of GLBT youth, especially child welfare program staff, medical providers and mental health care practitioners.

- **End the institutionalization of youth solely on the basis of sexual orientation, gender expression or gender identity. End use of “conversion therapy” or “reparative therapy” on GLBT youth.**

- **Educate all shelter service providers about the needs of this population and create shelters to specifically meet the needs of GLBT homeless youth.**

- **Increase the number of GLBT-friendly foster parents and ensure that these individuals are sensitive to issues of race.**

## CONCLUSION

Youth are coming out as gay or lesbian at age 16, on average; some come out to parents and classmates even earlier. Unfortunately, school administrators and teachers have not kept up with this cultural change, and GLBT youth are often vulnerable to harassment, violence, and even rape or murder. State legislators and family and youth advocates can protect all children in the state’s schools by passing and enforcing student nondiscrimination and nonharassment laws and by affirmatively challenging homophobia through safe schools initiatives. They should also look closely at the impact of the federal government’s abstinence-only-until-marriage promotion efforts, which threaten disease and pregnancy prevention efforts as well as stigmatize gay youth and the children of gay parents. State foster care and juvenile justice systems should address the particular needs of GLBT youth in their care and ensure that children already encountering family difficulties or trouble with the law are not further victimized by anti-gay harassment or violence while in state care. Finally, parents should not be allowed to forcibly institutionalize GLBT youth simply because of their difference in sexual orientation or gender identity. Similarly, they should not be able to force their children into “conversion therapy,” which does not work and may violate psychological codes of ethics.

## CHAPTER NOTES


297. Ibid.


299. Reis, B. and Saewyc, E. (1999). Eighty-Three Thousand Youth: Selected Findings of Eight Population-Based Studies as They Pertain to Anti-Gay Harassment and the Safety and Well-Being of Sexual Minority Students. Seattle: Safe Schools Coalition of Washington. p. 11-12. It should be noted that this lowest figure is from 1987, when widespread misinformation existed about AIDS, reinforcing homophobia, and when fewer people were “out” and society largely ignored the concerns of gay people. Things changed significantly in the 1990s, and rates of youth identifying as gay, lesbian, and bisexual increased significantly.

300. Reis et al. (1999).


312. Ibid. p. 237.


320. For example, one teacher said, “All gays should be placed on an island somewhere.” Another said, “Gay people… should all be shot.” Another called Seattle's Capitol Hill, a heavily GLBT neighborhood, “the place where freaks hang out.” He also misread an announcement about a U.S. Navy representative's visit to the school to talk about “careers in the Navy” as “queers in the Navy.” All these examples are from Washington State in the mid- to late-1990s. Reis, B. (1999). They Don't Even Know Me! Understanding Anti-Gay Harassment and Violence in Schools. A Report on the Five Year Anti-Violence Research Project of the Safe Schools Coalition of Washington State. Seattle: Safe Schools Coalition of Washington State.


329. Ibid.
330. Ibid.
334. Ibid.
335. Ibid.
337. Ibid.
338. Ibid.
345. The Safe Schools/Bullying Act, SHB 1444, was enacted in 2002. For exact language see www.leg.wa.gov/pub/billinfo/2001-02/House/1425-1449/1444_s_sl_04012002.txt.
348. Ibid.


374. Blumenfeld. (1994). p. 113. When he made the decision to come out in 1993, Peter Atlas was a math teacher at Concord Carlisle Regional High School in Massachusetts.

375. Ibid, p. 118.


Abstinence activists are so extreme that they advocate against masturbation, a nearly universal human activity. The National Abstinence Clearinghouse’s “Abstinence Survival Kit” warns that “sexual self-stimulation” may “eventually leave the person unable to respond sexually to a real person.” “It’s the first sign of sexual addiction,” warns Leslee Unruh, the Clearinghouse’s president.


Ibid.


Ibid.

Ibid.

Ibid.

Ibid.

Ibid.

Ibid.

Ibid.

Ibid.

Ibid.

Ibid.

Ibid.

Ibid.

Ibid.

Ibid.

Ibid.

Ibid.

Sex Respect describes anal intercourse as “unnatural behavior.” Of course, anal intercourse is a behavior practiced by both heterosexuals and homosexuals. Ibid, p. 29.

Ibid.

Ibid.
409. Ibid, p. 47.


437. Ibid, p. 25

438. Ibid.


442. DSM-IV § 313.81


446. Ibid.

GLBT Elders

Family policy issues affecting GLBT elders include unequal treatment under income support programs, caregiving issues, and anti-gay bias in senior centers, nursing homes, and long-term care facilities. Many of these inequalities require changes in federal law, but state legislators and state-level activists can lobby for and effect changes by influencing the disbursement of federal funds through Area Administrations on Aging (AAAs), which distribute Older Americans Act funds at the local level. Although many services have been created to meet the unique needs of older Americans, GLBT elders often feel that they must stay closeted to gain access to elder services. In a recent study, fully 75 percent of GLBT elders reported not being completely open about their sexual orientation to health-care workers. Discrimination following disclosure of sexual orientation has been reported in nursing homes, senior centers, domestic violence centers and other care settings.

INCOME SUPPORT PROGRAMS

Social Security

Nearly two-thirds of U.S. retirees rely on Social Security for more than half of their annual income; for 15 percent of seniors, Social Security is their only source of income. But GLBT people in same-sex partnerships are not eligible for the spousal benefit or the survivor benefit. This lack of eligibility costs GLBT elders hundreds of millions of dollars in unaccessed income per year.

Social Security survivor benefits allow widows, widowers and dependent children to put food on the table, and provide a sense of fairness when an employee pays into the system his or her whole life, but dies before being able to enjoy these retirement sav-
nings. But same-sex partner survivors are not eligible for these benefits. In 1998, 781,000 widows and widowers received an average of $442 a month in survivor benefits, a total of $4.1 billion dollars that year (Social Security Administration). If only 3 percent of the total population of seniors who survived their life partner are gay, lesbian, or bisexual same-sex partners, the failure to pay survivor benefits costs these seniors about $124 million a year. The September 11 attacks illustrated the unfairness of this policy, as same-sex survivors of victims were denied survivor benefits as well as funds from the victims compensation fund administered by the U.S. Justice Department.

The spousal benefit allows husbands and wives to receive an amount equal to 50 percent of their spouse’s monthly Social Security check, if that amount is higher than what their own earnings would make them eligible for each month. In marriages where one spouse earns significantly more than the other and/or has a longer work history, taking the spousal benefit instead of the individual’s own payment makes sense. However, same-sex partners are not eligible for the spousal benefit.451

Unequal Treatment Under Pension Regulations

Because GLBT people can still be discriminated against in employment in most of the country, and because same-sex couples are not treated equally under Social Security, pension income is an important policy issue affecting GLBT elders. For workers with defined-benefit pensions, their same-sex partners do not receive the same legal protections provided to married spouses. The Retirement Equity Act of 1984 created spousal rights to a worker's pension benefits while both are living and after the worker's death. Though such rights can be waived, the measure was intended to protect widows or widowers from severe loss of income. The same-sex partner of a pension plan participant cannot claim such rights; the pension wealth belongs to the worker alone. When a retired worker dies, gay or straight, the remaining pension wealth can be distributed to a named non-spouse beneficiary. Thus, a surviving same-sex partner can inherit pension proceeds. However, certain tax rollover treatment for these distributions—a significant advantage—is only available to a legal, opposite-sex spouse.

If a person dies after becoming vested in a pension plan, but before reaching the age of retirement, a legal spouse is entitled to plan benefits beginning in the year that the deceased would have started receiving the pension. Or the spouse can take a lump-sum distribution and roll the amount over into an Individual Retirement Account (IRA) where it maintains its tax-deferred status. A surviving same-sex partner, again, can be a named beneficiary of the pension upon the participant’s death, but the proceeds are not tax favored. If no one is named as a beneficiary, a same-sex partner would not receive the pension benefits, but rather the deceased’s “intestate heirs,” or next of kin such as parents or siblings, would. In contrast, a spouse would be considered the deceased’s heir and would be entitled to the pension benefits.

Unequal Treatment Under 401(k) Regulations

If a person with a 401(k) plan dies, the tax implications for the beneficiary depend on whether or not the beneficiary is a legal spouse. If the beneficiary is a legally married spouse, then he or she may roll over the total amount of the distribution into an IRA with no income tax implications. (There may also be estate taxes depending on the size of the decedent's estate and inheritance taxes in those states where applicable.) The spouse can maintain the funds in an IRA until he or she turns 70-1/2, the age at which
withdrawals from retirement accounts become mandatory. However, if the surviving beneficiary is a same-sex partner who is unable to legally marry, the pension distribution is subject to a 20 percent federal withholding tax.452

The effect of this unequal treatment is striking. Assume that Deborah dies at age 50 with $100,000 in her 401(k) account, which she leaves to her life partner, Pat, also age 50. Pat will receive the sum less taxes (at least $20,000), for a total of $80,000 or less. Pat is not able to roll the sum over into a tax-free IRA. If Pat were a man and Deborah’s widower, Pat would receive the full $100,000 and be able to shield it from income taxes until age 70-1/2. The survivor of the legally married couple would have a nest egg to invest which is at least 25 percent larger than that of the surviving partner in the same-sex couple. The nest egg could grow in a tax-deferred account until the maximum age of disbursement for the surviving spouse in a legally married couple. The surviving partner of the same-sex couple, however, would not be able to roll the initial disbursement into an IRA. Over 20 years time, this unequal treatment could add up to cost the surviving lesbian partner tens of thousands of dollars in potential retirement income.

Unequal treatment of same-sex couples under Social Security and retirement plan regulations denies GLBT elders access to funds to which they are entitled, from systems they pay into throughout their working lives, but which they cannot access due to the heterosexism of current policies. These unaccessed income sources could help ensure economic security in old age.

There is majority public opinion support for treating same-sex couples equally in Social Security (57 percent in a 1997 poll) and inheritance rights (62 percent).453 A 2001 poll conducted by the Kaiser Family Foundation reported even higher levels of support for access to Social Security benefits (68 percent) and equal inheritance rights (73 percent).454 In addition, in January 2002 the Democratic National Committee called for equal treatment of same-sex couples by the Social Security Administration. Those concerned with fair treatment of GLBT elders, including mainstream aging advocacy organizations, should support the GLBT community’s push for such equal treatment.

### SENIOR SERVICES AND SENIOR CENTERS

The federal Older Americans Act (OAA) provides funds for home-based and community-based services to seniors.455 This Act enables the provision of a wide range of services to people over 60, including social services, in-home services, community services and caregiving services. Funds are awarded each year through a National Aging Network composed of 57 state units on aging, 661 Area Agencies on Aging (AAAs), and 222 tribal organizations, all of which coordinate programs through 27,000 community based service providers.456 In order to access the funds through the Older Americans Act, Area Agencies on Aging are required to submit an area plan to the federal Administration on Aging. This plan, which includes community input and comment, is an assessment of the service needs for elders in a particular jurisdiction and justifies allocation of funds for the proposed services. GLBT activists should lobby and participate in their local AAAs to ensure equal access to senior services.
Few agencies specifically address the social service needs of GLBT elders. Some, like Senior Action in a Gay Environment in New York, do heroic work with few resources. Mainstream aging service providers could do more to serve GLBT clients. A 1994 study of 24 Area Agencies on Aging and 121 lesbian and gay elders aged 60 and older who lived in those 24 regions found that AAAs have a long way to go in providing services to gay and lesbian seniors. Almost all of the AAAs (96 percent) did not offer any services specifically designed for gay, lesbian, bisexual and transgender elders, and did not target outreach efforts to GLBT seniors. Only 17 percent reported staff training in the area of sexual orientation, but half said they thought there was a need for such training and 88 percent said they would be willing to provide an in-service training to staff were it available.457 Despite this apparent willingness to address the problem, this study of New York State Area Agencies also found that 46 percent of the AAAs interviewed reported that gay and lesbian elders would not be welcome at the senior centers in their areas if their sexual orientation were known. Although things have likely improved since the mid-1990s, outreach to GLBT seniors and cultural competency training would make senior centers and senior services more likely to be accessed by GLBT seniors.

LONG TERM CARE ISSUES

Anti-GLBT Bias in Nursing Homes

Heterosexism and homophobia (and presumably biphobia and transphobia) are widespread in nursing homes, and are symptomatic of a larger sexphobia often associated with those providing services to seniors. In addition to isolation, many GLBT people experience actual abuse from care providers. Few service providers have instituted policies to address this homophobic behavior, leaving some GLBT elders in hostile and dangerous environments.

The staff in one nursing home staff refused to bathe a resident because they did not want to touch “the lesbian,” and a home care assistant threatened to “out” a gay client if he reported her negligent care.458 A random survey of social workers in New York State uncovered disturbing attitudes among nursing home staff toward lesbian and gay residents.459 The majority (52 percent) reported intolerant or condemning attitudes toward lesbians and gay men specifically. An additional 38 percent, however, simply avoided answering the question about homosexuality at all, leaving the impression of a less than accepting attitude. Of the 29 nursing homes represented in the study, only one offered formal training to staff on sexuality and the rights of residents to express themselves sexually. One respondent commented that her nursing home does not allow same-sex partners, stating, “It’s part of the admissions requirements.”460

Gay, lesbian and bisexual elders entering assisted living facilities and other institutions are often presumed to be heterosexual and may feel compelled to...
hide their sexual orientation. Long-term relationships may be devalued and unrecognized. Assisted living centers, congregate housing and home health care services need to take proactive steps to minimize discrimination, abuse and neglect directed at GLBT elders. Caregivers should be trained to be competent in issues of sexuality and gender. Diversity training is critical given documented examples of bias among senior care providers.

Nursing homes should also include detailed sexuality policies within residents’ rights policies, and accommodate the appropriate, private expression of the sexual needs of residents, be they homosexual, bisexual or heterosexual. Nursing home staff should also be trained to understand and better serve the needs of GLBT clients.

**MODEL LEGISLATION**

*Residential Care Facilities for the Elderly*

California Regulations For Residential Care Facilities For The Elderly:

Section 87118—NONDISCRIMINATION

(a) All licensed facilities shall receive persons on a nondiscriminatory basis according equal treatment and services without regard to race, color, religion, national origin, actual or perceived sexual orientation or ancestry.

NGLTF recommends that this language be expanded to include gender expression and identity.

**Unequal Treatment Under Medicaid Regulations Regarding Nursing Home Stays**

Because they lack long term care insurance, most seniors who enter nursing homes experience a crisis in their care as well as personal finances. Often seniors who enter nursing homes spend all of their assets on their care, and then simply apply for Medicaid when they have next to nothing left, a phenomenon known as the “Medicaid spend-down.”

Medicaid regulations allow one member of a married heterosexual couple to remain in the couple’s home for the rest of his or her life without jeopardizing his or her spouse’s right to Medicaid coverage. Upon the survivor’s death, the state may then take the home to recoup the costs of terminal care. However, since same-sex couples cannot marry, Medicaid regulations do not offer the same protection for same-sex partners, even if they have spent their entire adult lives together. This unequal treatment can force same-sex couples into a Hobson’s choice between giving up a home and life’s savings in order to get medical coverage to meet a partner’s health care needs versus forsaking medical coverage in order to keep the home and savings. Medicaid regulations should be changed to treat same-sex couples equally to married heterosexual couples. Same-sex partners should be able to remain in their home without jeopardizing their partners’ right to Medicaid coverage.462

Same-sex partners should be able to remain in their home without jeopardizing their partners’ right to Medicaid coverage.
CAREGIVING

Most seniors turn to their families of origin for support in their old age. Surveys have shown that family members and close friends—usually spouses, daughters and daughters-in-law—provide the majority of caregiving to elderly people in this country.\(^463\) In fact, women are both the majority of caregivers—including 70 percent of unpaid caregivers—and the majority of care recipients.\(^464\) The Administration on Aging has reported that 67 percent of American seniors live with a spouse or other relative and less than a third live alone.\(^465\)

People without children may be less likely to have caregivers that are willing and able to provide long-term care for an extended period. This could be particularly problematic for gay men—and to a lesser extent, lesbians—as they age, since they are less likely than heterosexual men to have children. Formal sources of care are often prohibitively costly. Moreover, public programs generally offer inadequate coverage or require participants to deplete their financial resources in order to gain eligibility. Partners who act as caregivers might not be eligible to take leave from work and may encounter difficulties in obtaining information from hospitals or nursing home staff if they are not viewed as “immediate family.” Individuals might also have primary caregivers who are close friends, relatives or partners who live separately. Legislative and institutional policies created to support caregivers should recognize that individual choice in naming caregivers is an important component of care plans and that the chosen caregiver may or may not be the individual’s next of kin or partner.

Anecdotal evidence indicates that GLBT children often serve as the primary caregivers for their elderly parents, as their heterosexual siblings are busy raising families of their own and gay siblings—sometimes closeted—are viewed as “single.” One-third of respondents in one recent study of GLBT seniors said that due to their sexual orientation (and, presumably, the non-recognition of their partner) family members expected them to provide more of the family care.\(^466\) So aging GLBT people may actually have heavier caregiving burdens than aging people in general. In focus groups that NGLTF and Pride Senior Network conducted with GLBT seniors across New York City in 2000, many GLBT people reported frustration and resentment at heterosexual siblings who look to them to provide primary care for ailing elderly parents because they are—often falsely—seen as “single,” while heterosexual siblings are presumed to be busy with a married partner and/or children. These experiences can shape GLBT seniors’ expectations, fears and anxieties about their futures as caregivers.

Among the 341 New York City GLBT people 50 and older surveyed by Pride Senior Network and NGLTF through the elder caregiving study, 20 percent had children, and 7 percent had grandchildren. Lesbian and bisexual women were more likely to have kids and grandkids compared with gay and bisexual men—30 percent and 10 percent respectively. Nearly two thirds lived alone, and 40 percent were partnered, with the women more likely to be partnered than the men. Eight percent reported currently needing caregiving assistance, while 19 percent had needed it in the past.\(^467\)

Forty five percent were currently providing care to a member of their family of origin (usually parents) or to partners or friends. Eighteen percent were providing care to a family of origin member, 23 percent to a family of choice member (partners and friends), and 4 percent to both. Women were twice as likely as men to provide care to a family of origin member. In general those with partners said they would go to their partners first for caregiving needs; those without partners said they’d go to friends first.\(^468\)
POLICY RECOMMENDATIONS

- Enact laws and regulations that prohibit discrimination based on sexual orientation or gender expression and identity in public accommodations, including senior centers, receipt of senior services, and long term care facilities.

- In the absence of state- or federal-level nondiscrimination legislation, incorporate nondiscrimination language into all legislation and policy concerning health care, social services, senior centers and senior services.

- Fund outreach and programming for GLBT seniors throughout each state.

- Include the concerns of GLBT seniors within the annual plans of Area Agencies on Aging.

- Require and fund GLBT competency trainings for senior service providers, including case managers, senior center staff, home care workers, assisted living and nursing home staff.

- Enact legislation allowing for domestic partners and other caregivers to take family leave to care for someone.

- Broaden the definition of caregiver to any person named by an individual receiving care and create programs to support caregivers.

- End discrimination against same-sex couples in the areas of health care benefits, Social Security benefits, disability benefits, pensions and 401(k) plans.

CONCLUSION

Homophobia, biphobia, transphobia and neglect appear widespread in nursing homes. GLBT elders also experience similar attitudes in senior services and health care. They may have particular caregiving issues, as they are less likely to have children, who provide the bulk of informal caregiving to elders in the United States. Finally, income support programs and Medicaid regulations discriminate against same-sex relationships. Policymakers and elder services advocates should incorporate the particular needs of GLBT elders into their efforts and push for equal treatment of seniors in same-sex relationships.

CHAPTER NOTES


460. Ibid, p. 166.

461. Ibid.


467. Ibid.

468. Ibid.
Our Health and Well-Being

IN SICKNESS AND IN HEALTH

In the United States health care is intimately associated with family. Even with the high level of institutionalization of the health care system, both culture and public policy dictate that families continue to be an essential component in meeting the health care needs of the sick and elderly. In times of illness, many people seek support from their families, whether emotional, economical, or in meeting their daily needs. The family is given priority by health care providers and others. For example, a hospital will call on an incapacitated patient’s family to make medical decisions for him or her. In addition, many people receive their health insurance through family members. However, because of lack of recognition of their families, GLBT people face unique problems when dealing with the health care system, often having to struggle to have the relationships most important to them respected.

Each day, countless numbers of same-sex partners care for each other, their children, their parents, or their partner’s parents. In ways no different than anyone else who is a primary caregiver of an ill person, GLBT people take on the tasks of getting family members to doctor appointments, helping them make medical decisions, keeping the household running, taking care of their children, going to work, and informing family and friends of progress. They perform the same functions, but lack many of the social or legal structures that have been put in place precisely to support those who are ill, their caregivers, and family members.

For GLBT families, laws that support families’ access to adequate health care are among those most in need of reform. Among the many rights that heterosexual married couples are automatically entitled to, but that same-sex couples are routinely denied, are:

- The ability to visit loved ones who are sick and hospitalized.
- The right to make medical, legal or financial decisions for an incapacitated partner as their next of kin or conservator.

GLBT people face unique problems when dealing with the health care system, often having to struggle to have the relationships most important to them respected.
• The right to take time from work to care for an ill partner.
• Access to health insurance for one’s partner and a partner’s children.
• The right to make funeral arrangements for a deceased partner.
• The right to inherit a partner’s assets without a will and to retain joint property after a partner’s death.
• The entitlement to Social Security survivors’ benefits.
• Reduced tax burden in case of transfer of property after death of one partner.

OBSTACLES TO HEALTH CARE FOR GLBT INDIVIDUALS

GLBT people also face many obstacles to health care that are not directly related to family policy issues. According to a Gay and Lesbian Medical Association survey of over 500 health practitioners, the top health concerns for gay men are HIV/AIDS and other sexually transmitted diseases, substance use, depression/anxiety, and certain forms of cancer. Top lesbian health concerns are breast cancer, depression/anxiety, gynecological cancer, fitness (diet and exercise), substance use, domestic violence, osteoporosis, and heart health. GLMA notes that gay men may be affected by depression at higher rates than the general population. Similarly, lesbians experience chronic stress as a result of homophobia and hiding their sexual orientation. Also, lesbians are more likely than heterosexual women to have risk factors associated with breast cancer.

Fear of experiencing discrimination keeps many GLBT people silent about their sexual orientation when interacting with health care professionals. In fact, 67 percent of medical professionals have reported knowing of patients who had either received inadequate care or had been denied care because of their sexual orientation. As a result, GLBT patients who cannot come out to their doctors are unlikely to receive health information relevant to their needs. Transgender people are even more likely than gay, lesbian and bisexual patients to face discrimination in part because they are less able to hide their difference. Transgender people who are undergoing hormone therapy or sex reassignment surgery also face unique health concerns and might have difficulty finding a knowledgeable and sensitive primary care physician to address their needs. Finally, substance abuse and sexually transmitted diseases, especially HIV/AIDS, are more prevalent in the transgender community in part because transgender people who face rampant employment discrimination often must resort to prostitution to earn a living.

These general obstacles to health care combine with the unequal treatment of same-sex couple families to limit GLBT people’s access to quality health care and prevention. GLBT people who are unable to access adequate health care are less able to care for children, partners and other family members. The inadequacies in the health care system in relation to both GLBT individuals and their families should be a top priority of policymakers and those advocating for GLBT equality and improvements in public health.

Sixty-seven percent of medical professionals reported knowing of patients who had received inadequate care or been denied care because of their sexual orientation.
Health Insurance Access

I am a lesbian and the parent of two boys aged six and three. Our first child was born in Maryland on November 2, 1988. A few years later we moved to Vermont and [my partner] Jane became pregnant with our second child. I found a new job and naturally added my son to my health coverage. I was aware that the law prohibited Jane from being covered under my policy, but had assumed that my son would be covered. A few months later my boss informed me that my son could not be covered. Only legal children of an employee were eligible for coverage under the insurance policy. Fortunately, Jane was employed, so she added our son to her coverage. During her seventh month of pregnancy, however, she was laid off. As a result, our son no longer had health insurance. 473

—Deborah Lashman, plaintiff in successful suit to allow second parent adoption in Vermont

Two-thirds of Americans receive health coverage through their employers. In 2000, however, over 38 million people under the age of 65 were uninsured. 474 The majority (83 percent) of these individuals lived in families in which one member was employed either full time (72 percent) or part-time (11 percent). Most were without health coverage because their employers did not provide it. 475

People in same-sex relationships often face significant difficulties in acquiring health care coverage, as they are ineligible for the health care benefits that employers frequently extend to their employees’ legally married spouses. Moreover, the children of same-sex couples may also be excluded from coverage if their non-biological or non-legal parent is the only person in the family with employer-provided health insurance. GLBT individuals face added difficulty in acquiring health care coverage as studies indicate that they are less affluent than the population at large and therefore less able to purchase health insurance independently. 476 In fact, surveys show that the GLBT community is significantly underinsured. 477 GLBT people of color and transgender individuals are especially unlikely to have access to health coverage. 478

Even transgender people who do have health insurance might not have their medical needs covered. Transsexualism, as a medical condition, is excluded from coverage by nearly all insurance carriers. While this clearly exempts from coverage medical care relating to sex reassignment, some carriers also refuse to cover treatment of other medical conditions, inaccurately claiming that they are caused or complicated by the patient’s transsexualism. One notable exception is San Francisco, where city employees’ health insurance was expanded in 2001 to cover medically necessary sex reassignment and related noncosmetic, medical treatment. 479

Significant advances have been made in increasing health insurance access for same-sex couples and their families through domestic partner benefits and Equal Benefits Ordinances that require contractors with a city or other jurisdiction to provide such benefits to their employees. However, tax laws prevent unmarried partners from getting health benefits on the same terms as married partners. For example, employer-provided spousal and family health care coverage is exempt from federal income tax liability. Therefore employees with legal spouses get tax-free insurance

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benefits. However, domestic partner health coverage is taxed as income by the federal government. As a result, many GLBT employees face a federal tax bill in the hundreds if not thousands of dollars, depending upon their tax bracket and the cost of the benefits plan. Some accept this inequity because they can afford the tax bill. Others are forced to decline the coverage and hope that any needed medical care will not exceed the cost of the tax.

LESBIAN FAMILY DENIED HEALTH COVERAGE FOR TERMINAL CANCER

A Profile of Lisa Stewart

Lisa Stewart, a 33-year-old South Carolina native, lives with her partner of 10 years, Lynn, and their five-year-old daughter, Emily. In March 2000 Lisa was diagnosed with breast cancer. Up until that point, life was “about as good as it could get for us,” says Lisa. They had a beautiful daughter, had just bought a second home and were able to travel during the summers. Unfortunately the cancer progressed to stage four or terminal cancer. In dealing with her illness, Lisa became painfully aware of the nonrecognition of her relationship to Lynn and the family struggled through many different obstacles.

Lisa was unable to keep her job as a real estate appraiser because of her cancer-related disability. Not only did she lose her income, but she also lost her health insurance. As an independent contractor with a small company she had no benefits from work. She needed to go elsewhere to find the coverage that was especially necessary as she faced the prospect of $20,000-a-month chemotherapy bills. Health insurance coverage is not available to domestic partners through Lynn’s job in the public school system, so Lisa pursued health coverage through the State Cancer Aid Program. In response to her application, she was told that their combined household income was too high and so Lisa was not qualified for coverage.

Lisa was in a double-bind: though Lynn’s income was counted against Lisa’s application for state aid, Lynn’s employer refused to recognize their relationship and give Lisa access to group health insurance coverage. On the advice of a financial counselor, Lisa separated her household from Lynn’s...
Family Policy

HEALTH CARE DECISION MAKING

Married heterosexual couples automatically have a right to visit their loved ones in the hospital, to make health care decisions for their sick partners if they are incapacitated, and to supervise their spouse’s funeral arrangements in the unfortunate circumstance of their deaths. These rights are not automatically granted to same-sex partners.

For example, when a gay man is hospitalized, his partner might not be allowed to visit him unless he can present a hospital visitation authorization—a document completed by the hospitalized person specifying who may visit him. Unfortunately, hospital administrators do not always respect these documents and not all states require hospitals to use these forms. This causes tremendous pain and hardship to members of GLBT families, as it did for Bill Flanigan and Robert Daniel in a Baltimore hospital in October 2000. When Daniel was admitted to the hospital, personnel refused to let Flanigan see his dying partner because they said he was not a family member. They disregarded Flanigan’s Durable Power of Attorney for Health Care Decisions and the fact that he and began using a different address in order to qualify for the state aid. “I’m not listed on the deed. I got rid of everything I owned,” says Lisa, “I felt forced into the situation.”

Because of the serious nature of the illness, the family has also had to consider end-of-life issues. Lisa, Emily’s biological mother, is her only legally-recognized parent. This means that Emily’s relationship to Lynn is precarious. They were told that second-parent adoption has never been allowed in South Carolina. “We would have loved to do second parent adoption,” Lisa says, but they feared their case would become a “media circus.” Instead Lisa has declared Lynn to be Emily’s guardian, which will protect their parent-child relationship—at least from everyone but Lisa herself. Lisa has power to revoke guardianship and says that she knows of other relationships in which that has occurred after the couple broke up. Since Emily is Lisa’s legal child she will qualify for Lisa’s Social Security survivor benefits in the event of her passing, but Lynn will not.

The couple has put a great deal of care into getting their financial matters in order and writing their wills. Though they had never thought about it before Lisa’s illness, she says, “I encourage everybody to make their wills very explicit.” In fact they have declared their documents binding before two attorneys. On a broader level, she wishes that her family could have been recognized and respected as many others are. She says that in a better world, “Lynn and I would be considered a couple, married or partnered, and she could have added me to her insurance.”

Despite these hardships, the family has stayed involved with their community and church and Emily has been very active in local sports. Fortunately, Lisa says she has wonderful support from her community. “I have wonderful doctors who’ve worked through so many issues with me—not just providing medical care, but working with insurance and aid programs to get me the best treatments. We have so many wonderful family and friends that are always available to help. We’ve had tremendous family support from both our parents and our siblings.”

Though Lynn’s income was counted against Lisa’s application for state aid, Lynn’s employer refused to recognize their relationship and give Lisa access to group health insurance coverage.

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had been recognized as a family member during Daniel's previous hospital stays. Flanigan was not allowed to confer with Daniel's doctors or to let them know that Daniel did not want life-prolonging measures, such as insertion of a breathing tube. Flanigan was finally allowed to see Daniel four hours later when Daniel's mother and sister arrived. Daniel had already received a breathing tube, contrary to his wishes, and had lost consciousness. Flanigan never had a chance to say goodbye to him. 

Furthermore, if a GLBT person with a same-sex partner is incapacitated in the hospital, then their closest blood relative will automatically be given the power to make decisions about their care unless a medical power of attorney form has been completed. If this form exists, then the specified health care proxy may act on behalf of the incapacitated person and make decisions as their agent. If the incapacitated person has also completed financial power of attorney forms, then their same-sex partner may also act as their financial proxy and pay bills or sell assets on behalf of their loved one.

DEATH

Several years ago, my partner of six years died suddenly. I was devastated, of course. But almost immediately my shock was doubled when I discovered the way our relationship was perceived—or not—by the powers that be. Though I was registered at her work as her domestic partner, after her death I wasn't legally allowed even basic courtesies. To make arrangements for her body I needed to get written permission from a member of her family, the closest of whom lived several states away.

And then, because her will could not be located, I was stripped of all dealings with any aspect of her property. California's probate law dictates that upon death all arrangements and inheritance are left to a spouse. Without a legal “spouse,” or children, all powers and inheritances are awarded to the parents. So, my partner’s estate fell by default into the hands of her father, a man who lives in the Middle East and who not only showed no interest in attending funeral services, but also never inquired about the arrangements made for her remains. Despite knowing me for years, almost immediately he made it scarily clear that he wasn’t about to recognize me as his daughter’s partner or heir. I will never forget my first dealings with the probate lawyer he hired: a man who asked me to make a list of what in our house was “hers.”

—Louise Rafkin, California

My partner’s estate fell by default into the hands of her father, a man who lives in the Middle East and who not only showed no interest in attending funeral services, but also never inquired about the arrangements made for her remains.

Same-sex couple families are particularly vulnerable when one member of the couple dies. This is especially the case if a family has children and lives in a state where neither joint adoption nor second parent adoption are legal options. In situations in which the second parent has not established a legal tie to the couple’s child as a legal parent or guardian in the event of the biological parent’s death, the legal parent’s death could completely tear apart the family.

Even the rituals that inevitably follow death are more challenging for GLBT families. In order for same-sex couples to ensure that their remains will be disposed of in an
appropriate manner, they may need to complete a “consent to autopsy and disposition of remains” form, because some medical power-of-attorney forms do not cover this subject. This form enables GLBT people to appoint their partners as agents to carry out their final wishes. However, not all states have this form.

When one member of a heterosexual married couple dies without a will, the other member of the couple automatically inherits any property or assets belonging to their spouse. However, the same standards do not apply to same-sex couples. An unmarried couple that purchases a house together without putting both partners on the title has no protections if one of them dies. In fact, if a lesbian or gay man dies without a will, then their partner faces the possibility of losing, to a biological family member of the deceased, all objects that can be shown to “belong” to the deceased. Wills are the best insurance against a homophobic family member’s challenging a life partner’s desire to stay in a house that was never jointly owned or access to other items left by the deceased.

Another way in which surviving same-sex partners are treated unfairly concerns taxes. When married couples leave property to a surviving spouse, the inheritance is tax-free. In contrast, when same-sex partners leave property to each other, the value of the estate being bequeathed beyond $675,000—and after 2006, beyond $1 million—is taxed. Furthermore, married couples are exempt from property tax reassessment upon death of one spouse. An unmarried partner, in contrast, will be subject to a property tax reassessment, even if the property was owned jointly or willed properly. The tax can be so significant that the survivor might be unable to afford to keep their home.

SURVIVING PARTNER OF POLICE OFFICER DENIED PENSION

A Profile of Mickie Mashburn and Lois Marrero

Lois Marrero’s last word to Mickie Mashburn came in the form of a message on Mickie’s beeper on July 6, 2001. It said, “I love you.” Lois and Mickie, both police officers, frequently spoke to each other on the phone and paged each other during the day. They were speaking on the phone when Lois received the call about a bank robbery in progress. Mickie didn’t know what type of call had just come in, but knew it was “something big.”

A short time later when some of her colleagues came to inform her, Mickie knew before they spoke that Lois was dead. Mickie’s first thought was of Lois’ mother and sister. She asked one of her co-workers to please go quickly and notify them. Mickie was horrified by the possibility that they might find out about the death on television. She had known and been close to Lois’ extended family for 18 years. That night, Lois’ sister told interviewers, “We love Mickie, she is part of our family.”

During their 11-year relationship, Mickie and Lois were known as a couple and supported by the Tampa Police Department and the larger community. They were both dedicated to their jobs as police officers and Mickie continues...
Mickie Mashburn

to serve the department, now for more than 17 years. Lois and Mickie helped educate the police department about issues of concern to the GLBT community, working to improve relations and good will. Sharing a home, a workplace and many interests, Lois and Mickie could spend 24 hours a day together.

Now Mickie says, "The day Lois died, a part of me died. I’m not the same person anymore." Despite their high visibility in the police department as a couple, their public commitment to each other through their Holy Union ten years before, and their dedication to their work, soon after Lois’ death, Mickie discovered that their relationship was going to be treated differently than those of her coworkers. Mickie was told that she was not eligible to receive Lois’ pensions, although she was the one left paying Lois’ bills. Instead, Lois’ blood relatives pursued and were granted the pension of almost $500,000. In the process they changed the way they talked about Mickie and her relationship to Lois. A grieving Mickie had to become embroiled in a court case, legal paperwork and conflict with those she once thought of as part of her own family.

Ironically, a state law required the police department pension board to permit all police officers to designate a beneficiary to receive their pension benefits in the event they are killed in the line of duty no later than July 2000. Although this was a full year before Lois was gunned down, the pension board failed to do so. Because the pension board failed to follow state law and Lois was denied the opportunity to designate Mickie as her beneficiary, Lois’ blood relatives were able to claim Lois’ pension as her only legally recognized surviving family members.

In addition, the Mychal Judge Act—which grants a one-time federal payment to any beneficiary listed in a deceased police officer’s or firefighter’s insurance policy—was only made retroactive to September 11, 2001, two months after Lois, the first openly-gay or lesbian police officer killed in the line of duty, was slain.

Mickie feels that she has been well-supported by many GLBT and straight community members. However she is saddened at how this issue has hurt her relationship with Lois’ extended family, of whom she says, “Everyone handles grief differently.” She also feels that her own family has suffered greatly dealing with this conflict. Mickie continues this fight out of respect for Lois’ memory. Lois was always the activist in the family and Mickie knows that Lois would have wanted her to make sure that their family is recognized and respected. “The money cannot bring Lois back,” Mickie says, “but we need to have this right for our relationships. No one else should go through what I have gone through. We need to be accepted like everyone else.”
Treatment of Surviving Nonbiological Children and Partners Under Social Security

GLBT taxpayers help weave the Social Security safety net that is supposed to protect all workers’ survivors. That net consistently fails same-sex couples. Compare treatment of, say, a married heterosexual couple and a lesbian couple. In both cases, a stay-at-home mom cares for one child. In the lesbian family, the at-home mom is the only legal parent.

If both families’ breadwinners died in the terror of September 11, the married stay-at-home mom and her child would be entitled to $1,686 a month from Social Security. The dead lesbian’s partner and child would get nothing.

The double victimization of same-sex couples—first by disaster, then by discrimination—is nothing new. But the massive scale of the September 11 losses spotlights changes needed for our nation to keep its promise of equality.

We were married in our hearts with one another, but legally [the closest we could get] to a marriage certificate . . . was the domestic partnership agreement. So it’s very painful. I want to be afforded the same rights, courtesy, respect and compassion that any other spouse [would] who has lost a loved one in this tragedy.

—Keith Bradkowski, life partner of American Airlines flight attendant Jeff Collman, who was killed on September 11, 2001.

Social Security’s treatment of same-sex couples is among the most blatant and costly example of institutionalized heterosexism in federal policy. Married spouses and children are eligible for survivors’ benefits. But in the current system, an unmarried life partner of a deceased person is not eligible for benefits. While widows or widowers or even divorced spouses can count on a portion of the deceased’s Social Security income, this does not apply to unmarried partners, no matter how many years they may have lived with and supported their partners. Minor children of lesbian and gay parents are also negatively affected by Social Security’s failure to recognize our families. When a non-legal parent dies, his or her children are deprived of minors’ benefits. These benefits are automatically granted to the step-children of married heterosexual parents.

An Important Step in the Right Direction: The Mychal Judge Act

The federal government has made important progress in recognizing same-sex couples in the form of the recently-passed “Mychal Judge Police and Fire Chaplains Public Safety Officers’ Benefit Act,” named after Father Mychal Judge, who was killed administering last rites to firefighters at the World Trade Center September 11, 2001. Signed into law by President Bush on June 24, 2002, the law ensures that the one-time federal benefit of $250,000—hitherto given only to spouses, children and parents of officers who died in the line of duty—will now be given to any designated beneficiary recognized under the deceased’s life insurance plan. This implies that siblings, same-sex partners, or indeed anyone of the deceased’s choice would receive the federal benefit. Gay activists have called the law a landmark step in the path to gaining equal benefits for loved ones, be they same-sex partners, other family, or intimate friends. While the act was made retroactive to cover beneficiaries of victims of the September 11 attack, unfortunately it does not cover the lesbian partner of a Tampa, FL police officer who died in the line of duty. The partner, Mickie Mashburn, is currently pursuing her claim in court.
Personal Injury and Wrongful Death

Although same-sex couples are often as interdependent, both emotionally and financially, as married heterosexual couples, in almost every state a surviving same-sex partner lacks the legal standing to sue for wrongful death or personal injury. This is an option that is generally only available to married partners.

When Sharon Smith’s partner, Diane Whipple, was mauled to death by a neighbor’s dog, Sharon pursued and won a wrongful death action on behalf of her partner. For the first time, a court permitted the surviving lesbian or gay partner to bring a wrongful death suit as a surviving spouse. Sharon Smith’s experience, along with the experiences of those who lost their same-sex partner in the September 11 attack, brought to the forefront the plight of people who, in the face of tragedy, must deal with the added burden of having to defend and prove their relationships. Sharon Smith was instrumental in helping pass California’s domestic partner bill (AB 25), which has a provision giving registered domestic partners in California standing to sue for wrongful death of their partners (see section above, “Domestic Partnership in the State of California,” for more information on California’s groundbreaking domestic partnership law, AB 25). The law, which became effective in January 2002, provides an important example that other states can follow to more fully protect the rights of same-sex couples.

Public Opinion Supports Hospital Visitation, Survivor Benefits

A November 1998 poll showed that 71 percent of Americans support extending hospital visitation rights to gay and lesbian couples. A fall 2000 poll found that 73 percent support extending inheritance rights to gay and lesbian couples and 68 percent support extending Social Security survivor benefits. Without these benefits same-sex couples are denied equal protection under law, and concrete benefits in time of severe emotional stress.

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MODEL LEGISLATION

Wrongful Death

California Assembly Bill 25

LEGISLATIVE COUNSEL’S DIGEST AB 25, Migden.

Domestic partnerships.

(1) Existing law establishes a cause of action for negligence, including the negligent infliction of emotional distress and a cause of action for wrongful death. This bill would make these provisions applicable to a domestic partner as well as a surviving spouse.

SECTION 1. Section 1714.01 is added to the Civil Code, to read: 1714.01.

(a) Domestic partners shall be entitled to recover damages for negligent infliction of emotional distress to the same extent that spouses are entitled to do so under California law.

(b) For the purpose of this section, “domestic partners” has the meaning provided in Section 297 of the Family Code.

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SECTION 2. Section 377.60 of the Code of Civil Procedure is amended to read: 377.60. A cause of action for the death of a person caused by the wrongful act or neglect of another may be asserted by any of the following persons or by the decedent’s personal representative on their behalf:

(a) The decedent’s surviving spouse, domestic partner, children, and issue of deceased children, or, if there is no surviving issue of the decedent, the persons, including the surviving spouse or domestic partner, who would be entitled to the property of the decedent by intestate succession.

(b) Whether or not qualified under subdivision (a), if they were dependent on the decedent, the putative spouse, children of the putative spouse, stepchildren, or parents. As used in this subdivision, “putative spouse” means the surviving spouse of a void or voidable marriage who is found by the court to have believed in good faith that the marriage to the decedent was valid.

(c) A minor, whether or not qualified under subdivision (a) or (b), if, at the time of the decedent’s death, the minor resided for the previous 180 days in the decedent’s household and was dependent on the decedent for one-half or more of the minor’s support.

(d) This section applies to any cause of action arising on or after January 1, 1993.

(e) The addition of this section by Chapter 178 of the Statutes of 1992 was not intended to adversely affect the standing of any party having standing under prior law, and the standing of parties governed by that version of this section as added by Chapter 178 of the Statutes of 1992 shall be the same as specified herein as amended by Chapter 563 of the Statutes of 1996.

(f) For the purpose of this section, “domestic partners” has the meaning provided in Section 297 of the Family Code.

SECTION 36. Section 2504 of the Probate Code is amended to read: 2504. Court approval is required for the compromise or settlement of any of the following:

(a) A claim for the support, maintenance, or education of

(1) the ward or conservatee, or

(2) a person whom the ward or conservatee is legally obligated to support, maintain, or educate, against any other person (including, but not limited to, the spouse or parent of the ward or the spouse, domestic partner, parent, or adult child of the conservatee).

(b) A claim of the ward or conservatee for wrongful death.

(c) A claim of the ward or conservatee for physical or nonphysical harm to the person.

THE FEDERAL FAMILY AND MEDICAL LEAVE ACT

Lynn Sprout spent many nights sleeping in a chair next to her dying partner’s hospital bed. “She was begging me not to let her die, not to let her suffer,” Sprout said of her partner of 18 years. At the time, Sprout was a pediatric nurse at Carle Foundation Hospital, where she managed a staff of 26. She juggled the needs of her partner and her job, all while trying to keep the fact she was a lesbian a secret, as she had for 15 years. She feared if she made her sexual orientation public, she would lose her job.
And when Sprout felt forced to tell her supervisors the reason she was taking so many vacation days—to care for her sick partner, Linda Schurvinske—she was told it wasn't her responsibility to take care of her, that Ms. Schurvinske's children should be taking care of her. Six months after her partner died, Sprout was fired.

Sprout has filed a discrimination complaint with the Urbana, Illinois Human Relations Commission, charging that Carle Hospital violated the city's human rights ordinance, which protects employees from discrimination based on sexual orientation and marriage.

Sprout, 50, of Champaign, IL, said she has no doubt that had she been taking days off to care for a husband, she would not have been fired.

More than anything, Sprout wants Carle to change its policies to give lesbians and gays the same rights as heterosexuals. “Everyone should be able to be there for their family,” Sprout said. “And they should be able to say who their family is.” She says Carle did not provide her coverage under the Federal Family and Medical Leave Act or bereavement leave coverage as the hospital does for heterosexual employees.486

The Family and Medical Leave Act, a federal law passed in 1993, discriminates against GLBT families. It provides up to 12 weeks of unpaid leave after the birth or adoption of a child, to facilitate recovery from a “serious health condition,” or to care for an immediate family member who is extremely sick. To qualify for family leave under this law, an employee must have worked for more than 1,250 hours in the previous 12 months in a company with over 50 employees. Most importantly, however, for gay men and lesbians, family is defined in very specific terms to exclude those headed by gay or lesbian individuals. For instance, the legislation states that “[s]pouse means a husband or wife as defined or recognized under State law for purposes of marriage in the State where the employee resides, including common law marriage in States where it is recognized.”487 In its current form, this law prevents gay men and lesbians from taking care of their families on equal terms with their heterosexual counterparts and exposes them to additional vulnerability in the workplace.

STATE-PROVIDED FAMILY AND MEDICAL LEAVE

In a groundbreaking move the California legislature passed the first state law providing paid family leave to employees. The bill was introduced and championed by lesbian State Senator Sheila Kuehl. This law allows employees to take 6 weeks of paid leave (as opposed to 12 weeks of unpaid leave through the federal law) to care for an ill relative—including domestic partner—or after the birth, adoption or foster placement of a child. Most workers will be paid at a rate of about 55 percent of their salary. This program will begin in 2004 and will be completely employee-funded, with average annual payments of $26 per worker.488

Many states have family leave laws that provide unpaid leave. However, only two include same-sex domestic partners. These states are Hawaii and Vermont. The California family leave law is unique in that it provides paid leave and includes same-sex domestic partners in the original law rather than adding them to an existing law.489
DOMESTIC VIOLENCE

Domestic violence cuts across all racial, class, religious, age and sexual orientation lines. Studies indicate that domestic violence is as prevalent in same-sex relationships as it is in opposite-sex relationships. Preliminary studies of lesbian couples found that 22 to 46 percent of lesbians have been in physically violent same-sex relationships. The Gay Men's Domestic Violence Project did a survey of over 2,000 men at the 1997 Boston Pride, finding that 1 in 4 gay men have experienced domestic violence. A survey of 12 service organizations nationwide yielded 4,048 reported cases of GLBT domestic violence in 2000. This is likely a tiny portion of the actual cases nationwide.

Domestic violence remains an under-reported crime and many victims experience barriers to accessing services. Some factors responsible for this include:

- A real or perceived lack of services
- Feelings of shame or denial
- Economic dependence on the batterer
- Unresponsive law enforcement agencies
- Cultural and linguistic barriers
- Fear of loss of immigration status
- Fear of further violence
- A desire to protect the batterer

In the case of GLBT people other factors compound this problem:

- A dearth of resources, services and education on GLBT domestic violence issues
- A fear of being “outed,” or experiencing public disclosure of one’s sexual orientation
- Belief in the myth that same-sex relationships cannot be abusive and therefore not recognizing abuse when it happens
- Fear of homophobic reactions by service-providers, police, and others
- Greater risk of losing children to a third party than opposite-sex relationships
- Fear of having to cut ties to what may be a relatively small GLBT community

Anecdotal evidence from same-sex survivors suggests that poor law enforcement responses occur more frequently with same-sex situations. The National Coalition of Anti-Violence Programs reports that “sometimes, they inappropriately arrest the victim, especially if she or he is physically larger or is perceived as ‘more masculine,’ than the assailant; worse yet, police often make anti-gay comments and occasionally even perpetuate anti-gay violence.” Additionally, survivors of same-sex abuse often confront ignorance and/or prejudice in treatment from medical professionals, domestic violence specialists and other service providers, who lack training in the unique challenges that GLBT survivors face. Gay and bisexual men, along with transgender survivors, suffer the added obstacle that many domestic violence services and shelters only offer services to battered women. Even in places like Boston where safe houses offer two weeks of shelter to gay, bisexual and transgender men fleeing violence, more long-term shelters do not exist. In contrast women can access as much as 18 months
of transitional housing in Massachusetts. Lesbian survivors often can enter shelters originally created for heterosexual women. However in some instances they have been denied access to shelters, on the premise that a female partner could too easily infiltrate a shelter.

Many domestic violence service providers see gender inequality as one of the root causes of domestic violence. Since same-sex domestic violence does not fit this framework, it has been under the radar screen of many providers. GLBT people have also been reluctant to believe that domestic violence can occur in their relationships. There needs to be continued education about same-sex domestic violence within both the GLBT community and among domestic violence and health care service providers.

In addition, domestic violence laws were originally written in response to a phenomenon conceived of as “wife battering.” One of the primary tools available to survivors is a protective order, also known as a restraining or stay-away order. Although many laws have been rewritten to be gender neutral, there are still at least three states—Delaware, Montana and South Carolina—in which domestic violence protective orders are unavailable to same-sex couples. In 18 states, the laws are gender neutral, but only apply to household members (see map below). This problem also exists on a federal level. For example, the Violence Against Women Act (VAWA) explicitly does not apply to male victims of domestic violence.

Furthermore, in many jurisdictions, family courts only decide cases of domestic violence between married couples or heterosexual couples with a child. As a result a GLBT survivor might have to pursue his or her claim in the criminal courts that have different standards, for example, requiring an arrest to have been made. A related problem is that many judges do not spend the time to discover who the batterer is in a same-sex relationship and issue mutual restraining orders to both parties. This creates a very dangerous situation where a batterer can use a restraining order as a tool to control the survivor, manipulating the situation to lead to the survivor’s arrest.

The lack of legal recognition of same-sex relationships poses additional obstacles for a survivor who is trying to leave a relationship. For example, if the survivor is not the legal parent of their child or does not have legal possession of their home, car or other assets, they might be more likely to tolerate the abuse and stay in the relationship.

Steps Toward Addressing GLBT Domestic Violence

Massachusetts’ programs can provide a useful starting point for other regions of the country seeking to protect GLBT survivors of domestic violence. Based in Boston are two programs created specifically to meet the needs of GLBT victims of domestic violence: the Gay Men’s Domestic Violence Project (GMDVP) serving gay, bisexual and transgender men and the Network/La Red serving lesbians, bisexual women and transgender individuals. They both provide hotline services, counseling, advocacy and access to safe homes. They also have spearheaded outreach and education programs geared towards the GLBT community and the general public. In addition Fenway Community Health Center’s Violence Recovery Program provides services to all GLBT victims of violence, including domestic violence. Their services for domestic violence survivors are more limited than those of the programs focused only on domestic violence. Nationally there are less than 20 GLBT programs, most of which, like the...
Fenway Violence Recovery Program, were initially created to respond to anti-gay bias violence and have since expanded to include domestic violence. 502

As with most domestic violence programs, state and federal sources of funding are essential to maintaining the programming of both the GMDVP and the Network. Their governmental funding sources include:

**The Network/La Red:**
- Department of Social Services (the primary state source of funds for all domestic violence programs in Massachusetts)
- Boston Police Department
- Massachusetts Office of Victim Assistance
- Executive Office of Public Safety
- Federal funding through the Violence Against Women Act

**The Gay Men’s Domestic Violence Project:**
- Department of Social Services
- Boston Police Department
- Department of Public Health
- Massachusetts Office of Victim Assistance (federal funding through Victims of Crime Act) 503

The gender-neutral language of much of the domestic violence-related laws and regulations made it possible for the GMDVP to gain access to this funding. However, Massachusetts, like the other 49 states, does not have a shelter for gay, bisexual and transgender men. In Massachusetts this is because the line item regarding shelter services is specific to female victims. 504 Both the GMDVP and the Network run safe homes programs, which offer up to 14 days of shelter in volunteers’ homes or in hotels or apartments. The funding for these safe homes comes from a line item intended to cover “underserved populations.” However, there is no funding for full shelters for these populations. After 14 days the only option for some survivors, especially men, is to enter a homeless shelter. 505

The Network says that the most underfunded portion of their programs is education and outreach. 506 The GMDVP Boston Pride Survey found 87 percent of those surveyed did not realize that domestic violence laws in Massachusetts apply to same-sex relationships, and 70-75 percent could not name any resources for gay male domestic violence victims. 507 This perception of lack of services is especially striking in Boston, which is unique in the range of services it does provide. 508 Clearly, even when services exist, there is a continued need to fund education directed at the GLBT community.

**Policy Recommendations**
- Make all language in legislation, regulations and budget line items dealing with domestic violence services gender-neutral and inclusive of all victims regardless of marital status, sexual orientation, sex, or gender identity; include victims who are not cohabiting with their abusers.
• Increase access to public and private funding for GLBT domestic violence programs.

• Develop service standards for domestic violence programs that are inclusive of GLBT people, prohibiting discrimination against GLBT individuals and setting out minimum requirements for crisis intervention and referrals.

• Train service providers on GLBT domestic violence issues.

• Fund education and outreach to the GLBT community about domestic violence and services available, and outreach to all services providers about the needs of GLBT victims of domestic violence.

• Recognize same-sex relationships through civil marriage, domestic partnership and other means.

• Forbid the issuance of “mutual restraining orders” without written findings that both parties are dangerous to each other.

Our Health and Well-Being

Domestic Violence Laws in the United States

The state domestic violence laws are gender neutral and include household members and dating partners (29 states and DC): AK, CA, CO, CT, DC, HI, IL, IN, LA, ME, MA, MI, MN, MS, MO, NV, NH, NJ, NM, ND, OK, OR, PA, RI, TN, TX, VT, WA, WV, WY

The state domestic violence laws are gender neutral but apply to household members only (18 states): AL, AZ, AR, FL, GA, ID, IA, KS, KY, MD, NE, NY, NC, OH, SD, UT, VA, WI

The state domestic violence laws explicitly exclude same-sex survivors of domestic violence (3 states): DE, MT, SC

This map can be downloaded at http://www.nfgltf.org/downloads/domesticviolencelawsmap.pdf
New York State provides an important model for meeting the health and social service needs of GLBT families. Although the state already had a history of funding GLBT and HIV/AIDS health needs through the Department of Health, the AIDS Institute and other agencies, in 1997 it clearly designated in the budget a separate $1 million initiative to meet the non-HIV related health needs of GLBT people. The money was appropriated to the Department of Health (DOH), but did not become available until 1998. The DOH issued a Request for Proposals and received applications from 72 organizations from all parts of the state, 11 of which were awarded grants. The guidelines indicated that the funding would go to programs that “promote wellness and access to health and human services for lesbian and gay individuals and their families.”

While this funding was not sufficient to meet the extensive needs within the GLBT community, it was an important first step. Each year the legislature, led by the Assembly, has increased funding—in 1999 to $2 million and in 2000-2001 to $2.7 million. As a result, the number of organizations receiving funding has also increased, currently to 40. The organizations provide “critical health, mental health, alcohol and substance abuse treatment, violence prevention, and social services.” They serve a range of GLBT communities across the state, including youth, seniors, and people of color. Some examples include:

- **Community Awareness Network for a Drugfree Life and Environment**, which draws a link between harassment of GLBT youth and higher rates of drug and alcohol abuse among GLBT youth, has worked with educators and youth workers to strategize ways to respond to anti-gay comments and attitudes in the classroom and other settings.

- **The New York City Gay and Lesbian Anti-Violence Projects** provides a range of services for survivors of violence, including bias attacks and domestic violence.

- **In Our Own Voices – Project ¡Sano!,** conducted a study of GLBT people of color in the Albany area, finding that 39.4 percent were in long-term relationships and 42.5 percent had children. It has organized various family events including Family Matters Day, where attendees could get information on legal and financial issues related to family health, and has created and distributed a directory of 45 providers sensitive to issues affecting GLBT people of color.

Subsequently, various state agencies have begun working to better serve members of the GLBT community, for example, implementing sensitivity trainings and requesting proposals on GLBT issues.

This success has been in part a result of the collaboration and work of three different GLBT organizations: the New York State Lesbian, Gay, Bisexual and Transgender Health and Human Services Network, a network of at least 49 GLBT social service organizations; the Empire State Pride Agenda (ESPA) Foundation, a non-profit that educates lawmakers and state agencies; and ESPA, a political lobbying organization. The ESPA Foundation recommends expanding funding to $5 million per year and distributing the funding through various agencies, including the Office of Children and Family Services, the State Office of Aging, and the Office for the Prevention of Domestic Violence.
CONCLUSION

GLBT people may have particular health care needs, and may be at risk for certain kinds of health problems, just as other diseases disproportionately affect certain ethnic groups. Family nonrecognition and inability to access insurance through partners or second parents exacerbates the stress of poor health experiences among GLBT families. Even following the death of a partner, GLBT people may experience devastating abuse on the part of homophobic, often estranged members of families of origin, who usually have more rights than life partners or nonbiological children. Lack of coverage under the Family and Medical Leave Act can force a same-sex partner to risk his or her job to care for a sick partner. It is particularly important that these inequities be addressed, so that people experiencing the emotional distress of a sick or dying partner are not further victimized by the health care and insurance bureaucracy, employers, or the government.

CHAPTER NOTES


475. Ibid.


477. Ibid.

478. Ibid.


485.5. California Family Code Section 279 states that, “Domestic partners are two adults who have chosen to share one another’s lives in an intimate and committed relationship of mutual caring.” They must both be unmarried and not parties to other domestic partnerships, at least 18 years of age, sharing a residence and living expenses, and not be related by blood to a degree that would prevent marriage. In California domestic partnership is open to same-sex couples and opposite-sex couples that include at least one person over the age of 62. The National Gay and Lesbian Task Force recommends that domestic partner laws be equally inclusive of same-sex and opposite-sex couples.


496. Personal communication with Curt Rogers, Executive Director of the Gay Men’s Domestic Violence Project, August 20, 2002.


503. Personal communication with Curt Rogers; Personal communication with Gunner Scott.

504. Personal communication with Curt Rogers.

505. Personal communication with Curt Rogers; Personal communication with Gunner Scott.

506. Personal communication with Gunner Scott.


508. They are: the Gay Men’s Domestic Violence Project which provides community education and direct services, including access to safe beds, for gay, bisexual and transgender men; the Network/La Red, which works to end abuse in the lesbian, bisexual women’s and transgender community through a hotline, safe home program, advocacy and organizing/outreach; and Fenway Community Health’s Violence Recovery Program provides counseling, support groups, advocacy, and referral services to GLBT victims of violence, including domestic violence.


510. Ibid.


512. Ibid.

513. Ibid.


Discrimination Affecting GLBT Families

The hardships related to discrimination affect not only individuals but also their families. These can include loss of income, denial of health care, and mental anguish as a result of discrimination or harassment.

GLBT individuals suffer pervasive discrimination in employment, housing, education, medical care, and everyday life because of continuing societal ignorance and fear of difference. Numerous studies document the existence of employment discrimination, which can take many forms, including unfair hiring or firing practices, denial of promotion, or disregard of harassment by coworkers. Discrimination in public accommodations, such as businesses, hospitals, or social service, is also a serious problem. Some of the studies looking at these issues include:

- One-third of a national sample of 534 members of three national GLBT organizations reported employment discrimination.
- Thirty percent of respondents to a Philadelphia Task Force survey of over 3,000 GLBT individuals said they have experienced employment discrimination in their lifetime.
- Nearly 40 percent of the attorneys surveyed by the Los Angeles County Bar Association reported experiencing or witnessing sexual orientation discrimination, and over half said their work environment was inhospitable to gay, lesbian, and bisexual lawyers.
- A survey of over 1,800 GLBT people in New York State found that almost half of the respondents had experienced anti-GLBT discrimination or hostility in a public accommodation. One quarter had been verbally harassed, most often in stores and restaurants.

The hardships related to discrimination affect not only individuals but also their families. These can include loss of income, denial of health care, and mental anguish as a result of discrimination or harassment.

To address the reality of anti-gay discrimination in the workplace, some states and cities have passed nondiscrimination laws. Twelve states and the District of Columbia prohibit discrimination on the basis of sexual orientation in both the public and private sector:

Currently more than 200 cities, towns and counties prohibit discrimination based on sexual orientation in employment. In general, local laws and ordinances vary widely in scope. For example, some laws protect against discrimination in public sector employment, while others include private sector employment (though usually they exempt religious employers), public accommodation, housing, education, and credit. In New York State alone there are 20 different laws enacted by 20 different counties, cities, towns and villages that provide protection against sexual orientation discrimination to some degree. These different levels of protection create a difficult predicament for individ-

GLBT Nondiscrimination Laws in the United States


* Activists in Maine have twice passed a statewide nondiscrimination bill. The first—passed in 1997—was repealed by a 1998 ballot measure. The second—passed in 2000—automatically put the measure up for a public vote for ratification. On Nov. 7, 2000, Maine voters defeated the ballot initiative, invalidating the measure.

§ An Oregon appellate court ruled that the state law prohibiting sex discrimination in the workplace also covers sexual orientation. The state has not determined whether or not it will appeal the ruling.

This map can be downloaded at http://www.ngltf.org/downloads/nondiscriminationmap.pdf
uals who experience discrimination while working in one locality and living in another. In addition, these local laws often do not provide the same mechanisms for relief that are available to people who experience discrimination for other reasons, such as race or religion. Also, in most parts of the country GLBT workers continue to be unprotected from unfair and discriminatory actions at work and in other arenas.

**Talking Points on Employment Nondiscrimination Laws**

**Q.** Why are nondiscrimination laws necessary? Don’t gay men and lesbians earn more than heterosexuals?

**A.** This is a fallacy perpetuated by flawed marketing surveys of gay men and lesbians that found above-average earnings. The samples for these surveys were not random—the questionnaires were placed in GLBT newspapers and magazines and distributed at community events. As a result, the data represented only a narrow segment of the community and provided a skewed portrait of the economics of gay and lesbian people. Academic research using random data from the General Social Survey, however, indicates that gay and bisexual men are likely to earn 11 percent to 27 percent less than their heterosexual counterparts. According to data from the 1990 U.S. Census, the household income of lesbian and bisexual female couples was 18 percent lower than that of married couples.

**Q.** Why does it matter whether GLBT employees can be “out” at work?

**A.** The career stakes of being closeted in the workplace are high. When an employee can disclose his or her sexual orientation or gender identity at work without fear of reprisal, that employee becomes a better worker who is more productive and loyal to the company. Conversely, employees who expend energy concealing their sexual orientation, gender identity, and their family formations are less productive. Wasting energy worrying about who to bring to the company party, or how to describe to coworkers your relationship to your partner and child, has a detrimental effect on an employee’s overall career development. The visibility of out GLBT employees also increases the likelihood that the workplace will be safe, provide effective support networks, and have unbiased workplace policies. A company is much less likely to provide domestic partner benefits or have a nondiscrimination policy if it thinks it has no GLBT employees.

**Q.** If so many localities already have nondiscrimination laws, why is it so important to enact further statewide or federal legislation?

**A.** Local nondiscrimination laws, while valuable, are really a temporary measure until full statewide and national protection against sexual orientation and gender identity discrimination is a reality. The piecemeal nature of current legislation has severe consequences for both individuals and businesses. Individuals who experience discrimination can find that the legal remedies available to them are insufficient, confusing or impractical. Businesses engaged in statewide or national commerce expend valuable resources trying to synchronize their policies to accommodate a patchwork of legislation. Furthermore, people who do not live or work in a locality that specifically outlaws anti-GLBT discrimination have no protection against it at all. More than half of all Americans have no such protection.
Q. Won’t sexual orientation and gender identity nondiscrimination laws and ordinances increase the amount of litigation in our already clogged legal system?

A. Opponents of nondiscrimination legislation make two conflicting claims: (1) discrimination based on sexual orientation does not exist and, (2) nondiscrimination laws will lead to a flood of litigation. A 2002 U.S. General Accounting Office (GAO) report on states’ experience with legislation prohibiting sexual orientation-based discrimination shows both claims to be false.\(^5\) The GAO report illustrates that although individuals have filed discrimination complaints, the number of complaints is relatively few compared to the total number of discrimination complaints filed on all bases. The GAO report also makes clear that there is no upward trend in the volume of sexual orientation-based discrimination cases over time (see chart).\(^5\) Although a high percentage of GLBT individuals experience discrimination, such claims are a proportionally small percentage of the total number of actual discrimination cases and do not overwhelm the legal system.

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**Sexual Orientation Discrimination Cases as a Percentage of All Discrimination Cases in 12 States that Prohibit Sexual Orientation Discrimination**

![Graph](chart.png)

Rhode Island

General Laws of Rhode Island—Right to equal employment opportunities

- The right of all individuals in this state to equal employment opportunities, regardless of race or color, religion, sex, sexual orientation, gender identity or expression, disability, age, or country of ancestral origin, is recognized as a civil right.

General Laws of Rhode Island—Unlawful employment practices

It is an unlawful employment practice:

1. For any employer:
   
   (i) To refuse to hire any applicant for employment because of his or her race or color, religion, sex, disability, age, sexual orientation, gender identity or expression, or country of ancestral origin;

   (ii) Because of these reasons, to discharge an employee or discriminate against him or her with respect to hire, tenure, compensation, terms, conditions or privileges of employment, or any other matter directly or indirectly related to employment; provided, if an insurer or employer extends insurance-related benefits to persons other than or in addition to the named employee, nothing in this section shall require those benefits to be offered to unmarried partners of named employees;

   (iii) In the recruiting of individuals for employment or in hiring them, to utilize any employment agency, placement service, training school or center, labor organization, or any other employee referring source which the employer knows, or has reasonable cause to know, discriminates against individuals because of their race or color, religion, sex, sexual orientation, gender identity or expression, disability, age, or country of ancestral origin.

2. For any employment agency:

   (i) To fail or refuse to classify properly or refer for employment or otherwise discriminate against any individual because of his or her race or color, religion, sex, disability, age, sexual orientation, gender identity or expression, or country of ancestral origin; or

   (ii) For any employment agency, placement service, training school or center, labor organization, or any other employee referring source to comply with an employer's request for the referral of job applicants if the request indicates either directly or indirectly that the employer will not afford full and equal employment opportunities to individuals regardless of their race or color, religion, sex, sexual orientation, gender identity or expression, disability, age, or country of ancestral origin;

3. For any labor organization:

   (i) To deny full and equal membership rights to any applicant for membership because of his or her race or color, religion, sex, sexual orientation, gender identity or expression, disability, age, or country of ancestral origin;
(ii) Because of these reasons, to deny a member full and equal membership rights, expel him or her from membership, or otherwise discriminate in any manner against him or her with respect to his or her hire, tenure, compensation, terms, conditions or privileges of employment, or any other matter directly or indirectly related to membership or employment, whether or not authorized or required by the constitution or bylaws of the labor organization or by a collective labor agreement or other contract;

(iii) To fail or refuse to classify properly or refer for employment, or otherwise to discriminate against any member because of his or her race or color, religion, sex, sexual orientation, gender identity or expression, disability, age, or country of ancestral origin...

(4) Except where based on a bona fide occupational qualification certified by the commission or where necessary to comply with any federal mandated affirmative action programs, for any employer or employment agency, labor organization, placement service, training school or center, or any other employee referring source, prior to employment or admission to membership of any individual, to:

(i) Elicit or attempt to elicit any information directly or indirectly pertaining to his or her race or color, religion, sex, disability, age, sexual orientation, gender identity or expression, or country of ancestral origin;

(ii) Make or keep a record of his or her race or color, religion, sex, disability, age, sexual orientation, gender identity or expression, or country of ancestral origin;

(iii) Use any form of application for employment, or personnel or membership blank containing questions or entries directly or indirectly pertaining to race or color, religion, sex, disability, age, sexual orientation, gender identity or expression, or country of ancestral origin;

(iv) Print or publish or cause to be printed or published any notice or advertisement relating to employment or membership indicating any preference, limitation, specification, or discrimination based upon race or color, religion, sex, disability, age, sexual orientation, gender identity or expression, or country of ancestral origin; or

(v) Establish, announce, or follow a policy of denying or limiting, through a quota system or otherwise, employment or membership opportunities of any group because of the race or color, religion, sex, disability, age, sexual orientation, gender identity or expression, or country of ancestral origin of that group.
BUSH’S FAITH-BASED INITIATIVE AND DISCRIMINATION IN EMPLOYMENT AND SERVICE PROVISION

Under the faith-based initiatives bill passed by the U.S. House of Representatives in July 2001 and which awaits passage in the Senate as this publication went to press, $8 billion a year in tax dollars would be transferred to religious institutions to pay for the delivery of a wide range of social services. Under the House proposal (H.R.7), institutions receiving such funding are explicitly allowed to discriminate on the basis of religious affiliation. While the Senate bill (S.1924) removed this explicit authorization of discrimination, its silence on the issue might be interpreted by the Justice Department as authorizing such discrimination. Religious discrimination often serves as a proxy for race, gender, and sexual orientation discrimination. Because there is no federal sexual orientation and gender identity nondiscrimination law, religious service providers receiving federal funds could legally discriminate against GLBT people in employment and services. The bill does not guard against recipients' of social services being subjected to proselytizing and other forms of coercive activity by these religious institutions. A religious organization could thus discriminate in hiring staff on the basis of marital status, sexual orientation, gender identity, or any other characteristic that the group claims is objectionable to its religious tenets, possibly including race or sex. These religious organizations could also ban openly GLBT people from receiving services and justify this as essential to maintaining the “religious character” of a program.

Case Studies in Faith-Based Discrimination: Jews and Lesbians Need Not Apply

Already under experiments with public funding of religious social service providers, people have lost or been denied social service jobs in Kentucky and Georgia. Two alleged that they were fired because they are lesbians, and one alleges he was denied a job because he is Jewish. A federal court ruled that the firing of a Kentucky lesbian counselor due to her sexual orientation by the state-funded Kentucky Baptist Homes for Children did not violate any laws or constitutional principles. The other two cases are in litigation.

Alicia Pedreira was a therapist supervisor employed by Kentucky Baptist Homes for Children. Although Kentucky Baptist Homes, which runs Kentucky’s foster care system, receives $13 million of its total $19 million budget from state and federal funds, it is exempt from the Louisville, KY sexual orientation nondiscrimination law. There is no state sexual orientation nondiscrimination law in Kentucky. Pedreira was fired after coworkers spotted a photo of her with another woman's arms wrapped around her at a state fair photo exhibition. Pedreira's termination letter indicated that a homosexual lifestyle was “contrary” to the “core values” of the Kentucky Baptist Homes for Children. Pedreira was fired after coworkers spotted a photo of her with another woman's arms wrapped around her at a state fair photo exhibition. Pedreira's termination letter indicated that a homosexual lifestyle was “contrary” to the “core values” of the Kentucky Baptist Homes for Children. Pedreira was fired after coworkers spotted a photo of her with another woman's arms wrapped around her at a state fair photo exhibition. Pedreira's termination letter indicated that a homosexual lifestyle was “contrary” to the “core values” of the Kentucky Baptist Homes for Children. Pedreira was not fired because of poor job performance or even because she portrayed homosexuality in a positive light with her clients. Pedreira was fired because of who she was. A case litigated by the American Civil Liberties Union’s Lesbian and Gay Rights Project alleging religious discrimination against Pedreira (since sexual orientation is not protected by federal law) failed in federal court.
Lambda Legal Defense and Education Fund filed suit against the United Methodist Children’s Home in Decatur, GA in August 2002. Lambda charged “the Home” with using state tax dollars to discriminate in employment and to “indoctrinat[e] foster youth in religion.”541 One lesbian counselor was fired “because her sexual orientation conflicted with the Home’s religious teachings,”542 or, as the Home said, “her religious beliefs were not in conformity with those required,” because she condoned homosexuality.543 A highly qualified Jewish applicant for a psychotherapist position was asked to indicate his religion, church, and four references, including one minister. During his interview he was told, “We don’t hire people of your faith.”544 It is unclear whether they would also refuse to hire an individual who was Catholic, or of a different Protestant denomination. The United Methodist Children’s Home receives 40 percent of its budget from the state.

Lambda also challenged the Home’s practice of forcing all the youths in its care to attend Methodist religious services, and forcing lesbian and gay youth in its care to undergo “potentially dangerous intervention therapy” based on its religious opposition to homosexuality.545

In order to preserve our democracy, the separation of church and state must be maintained. The wholesale privatization and desecularization of the United States’ social service infrastructure will be devastating for the GLBT community. This also threatens basic principles of diversity, cultural pluralism, and individual rights that are at the core of the American political system.

**Policy Recommendations**

- *Faith-based organizations should not be allowed to discriminate, in employment or service provision, using tax dollars.*

- *The First Amendment’s principle of separation of church and state, and the pluralism of America’s religious traditions reflected in the First Amendment’s nonestablishment clause, should not be violated.*

- *Faith-based organizations receiving federal or private funds should respect the spirit of the law by not engaging in proselytizing or evangelizing in any of their social service programs supported by government funds.*

**HOUSING**

Access to a place to live is an important civil and human right, but same-sex couples and GLBT individuals are vulnerable to housing discrimination. When couples search for apartments or homes together, they may be easily identifiable as gay or lesbian. If they have children, they may be an even more obvious target of discrimination. Very few states ban sexual orientation-based discrimination in housing. These are California, Connecticut, Maryland, Massachusetts, Minnesota, New Hampshire, New Jersey, Rhode Island, Vermont, Wisconsin and the District of Columbia.546 In many cases, GLBT families have little or no remedy when denied a home because of their sexual orientation or marital status. In addition, GLBT families might be unable to qualify as a “family” when applying for public housing, which decreases their likelihood of being able to access public housing. Federal fair housing laws do not protect GLBT people from discrimination.
UNEQUAL TAX TREATMENT OF SAME-SEX COUPLES

Another area where GLBT people face a discriminatory standard is in tax laws. Same-sex couples confront significantly different tax burdens than do married couples. Specifically, same-sex couples do not enjoy the tax exemptions that married couples do with regard to gift taxes and estate taxes. Moreover, same-sex partners are liable for taxes on any domestic partner benefits they receive. Finally, GLBT people face obstacles in claiming their same-sex partners as dependents. There are four main areas of tax disparity of particular concern:

1) Married spouses can transfer an unlimited amount of money to each other without incurring taxes—unless their spouse is not a U.S. citizen, under which circumstances they can transfer up to $101,000 per year without being liable for gift tax. The IRS stipulates, however, that a person who transfers more than $11,000 to someone who is not his or her spouse is liable to pay a gift tax on the amount that exceeds $11,000, unless it is designated to pay for tuition or medical expenses.

2) Whereas gift taxes apply to monetary transfers between unmarried people while they are alive, estate tax applies to monetary transfers between unmarried people in the event that one of them dies. While spouses can inherit each other's estates tax free, for unmarried couples the value of the estate exceeding $675,000—or after 2006, $1 million—will be taxed.

3) Most employees receive tax-free health insurance for themselves and their spouses and dependents. Same-sex couples, however, do not qualify as spouses and normally don’t qualify as dependents. The value of their domestic partner benefits, such as health insurance, is taxable income, paid by the employee. This can have significant tax consequences, even to the point of making it financially detrimental for an unmarried partner to access health benefits. For instance, if the value of the health benefits is enough to bump an employee up to the next tax bracket, then they could pay more for their partner's benefits than if they acquired insurance independently.

4) There are few cases in which tax filers can claim their same-sex partners as a dependent on their income taxes. According to the IRS website guide, in order for an unrelated person to be claimed as a dependent, that person must live in the tax filer's house for the entire year (some exception is made for absences due to illness), earn less than $2,900 in that year, and have more than 50 percent of his or her living expenses paid for by the tax filer. However, also under IRS regulations, the dependent's relationship to the tax filer must not violate local law. According to investigative research by Debt Counselors of America, the IRS does not elaborate any further on what the violation of local laws means. Since there are still 13 states that have anti-sodomy laws that outlaw homosexual sex, same-sex couples could have a dependent's status contested under state law.

There are other forms of tax discrimination that are less distinct but equally pervasive. For example, GLBT individuals need to remember that their taxes are likely to fund programs that promote abstinence-only sex education, which invalidates safe sex and stigmatizes homosexuality. Tax dollars also pay the salaries of legislators who, in many other ways, perpetuate discrimination against GLBT people and their com-
munity. Although on a per capita basis GLBT people pay higher tax burdens than most heterosexual people, anti-gay activists continue to attack domestic partner programs and safe schools initiatives as “using taxpayers’ dollars to promote homosexuality,” as if gay people did not pay taxes.

CONCLUSION

Discrimination against GLBT people makes it harder for same-sex partners and GLBT parents to provide for their families. Although 12 states and the District of Columbia have sexual orientation nondiscrimination laws, and two of these states and the District of Columbia prohibit gender identity discrimination, most Americans live in a state or municipality with no protection against getting fired, being denied housing, or being refused service in a restaurant, hotel, or store because of their sexual orientation or gender identity. The faith-based initiative promoted by President Bush could exacerbate anti-GLBT discrimination in both employment and social service provision.

CHAPTER NOTES


528. Ibid.

529. Ibid.

530. Ibid.


533. van der Meide. (2000).


540. Of course, there would be nothing wrong with this had she done it. Many children in foster care are gay, lesbian, bisexual, transgender, or questioning of their sexuality. They deserve support, and heterosexual children living in group homes with them must not be allowed to create a hostile environment for their GLBTQ housemates.


542. Ibid.


544. Ibid.


547. I.R.C. §§ 105, 106.

548. I.R.C. § 152 defines a dependent as an individual who receives half his/her support from the taxpayer and is a member of the taxpayer’s residence, which is the dependent’s principle place of residence. However, even if a same-sex partner fulfills these two requirements of §152, sub-section (b)(5) of the same section requires the taxpayer’s relationship to the dependent to be one recognized by local law, thus raising valid concerns about whether a same-sex relationship would qualify.


Narrow definitions of family make for bad public policy. A government of the people, by the people, and for the people should adopt policies which reflect the needs of all families, not just those which fit a particular structure, even if that structure is the dominant one in society. In the first years of the 21st century, GLBT individuals and their families are discriminated against in a broad number of policy areas, including partner recognition, parenting, and issues related to health care and death. In addition, GLBT youth and elders face unique obstacles in the major institutions that they count on: schools, social services, hospitals and nursing homes. Reform is badly needed to address these problems and to protect GLBT families. Although there have been significant policy advances in recent years, most states have also enshrined discrimination in their law by passing anti-gay marriage laws. The Bush Administration’s faith-based initiative threatens further discrimination against GLBT people and their families.

Right-wing activists have claimed that recognizing GLBT families will undermine the heterosexual nuclear family. They have also denied the diversity of American families and constructed “gay” and “family” as mutually exclusive categories. At the 1992 Republican National Convention many delegates held signs that read “Family Values Forever, Gay Rights Never.” Despite the conservative movement’s dystopic vision, we already know that most U.S. households today do not look like the Cleavers, the normative middle American family. Roughly one in three families with children in the United States is headed by unmarried parents or single parents, and about half of children growing up today will spend some time in a single-parent family—whether by choice, death, separation or divorce. Estimates indicate that between one and nine million children age 18 and under are being raised by at least one gay or lesbian parent.

Nonetheless, one of the areas of most blatant discrimination in family policy is the lack of recognition of same-sex relationships. Even in many “gay-friendly” communities, although NGLTF encourages the proliferation of civil union, domestic partnership and reciprocal beneficiary policies, only full access to the institution of civil marriage affords equality under federal law.
same-sex couples can only assemble a patchwork of rights that in no way approaches the range of rights and protections granted to married heterosexual couples and their children. Although NGLTF encourages the proliferation of civil union, domestic partnership and reciprocal beneficiary policies, only full access to the institution of civil marriage affords equality under federal law, including Social Security, immigration policy, and federal tax law, and other important policy frameworks.

As more and more GLBT people have children, it has become clear that these children are as healthy and well-adjusted as other children. Adoption and foster care policies that discriminate against gay men, lesbians, and same-sex couples should be repealed. States should allow second parents to legally adopt the children they have often raised since birth. Policymakers and advocates can pass laws and regulations which make schools safe for all students, and which make senior services accessible and welcoming for all elders. They can also push for equal treatment of same-sex partners facing health crises or death, which would eliminate needless suffering and anguish during periods of stress or mourning.

GLBT families face unique challenges as a result of a whole range of laws and policies, many of which might not, at first glance, appear to be family issues. Employment discrimination is a family issue, when it means that children must go without new clothes or health insurance because one of their parents lost a job. Nursing home policies are a family issue, when they prevent loved ones from having private time together. School harassment is a family issue, when it means that GLBT youth feel completely isolated in their lives and so run away from home. In light of this reality, this family policy manual ends with a set of policy recommendations that seek to present a holistic system for meeting the needs of GLBT families. More specific recommendations are available in each section.

POLICY RECOMMENDATIONS

Equality for Same-Sex Couples

- Grant same-sex couples the right to civil marriage, with full local, state and federal recognition.

- Repeal federal and state Defense of Marriage Acts and nullify legal or statutory provisions denying benefits to families of lesbian, gay, bisexual and transgender people.

- Grant same-sex and opposite-sex couples who do not desire to marry the right to register with the state through civil unions.

- Grant all unmarried couples the right to register as domestic partners and to receive equal benefits as married couples through their employment.

- Make civil unions and domestic partnerships portable, recognizing partnerships entered into in other localities.

- Honor and recognize the marriages of same-sex couples performed in other countries.

- Enact laws giving jurisdiction to family and other courts to assist unmarried couples with property division and other personal matters, like child custody and support, upon their separation.
• Enact statutory guidelines for the equitable division of property between non-marital partners to govern in the absence of a private contractual agreement.

• Pass the Permanent Partners Immigration Act.

• Treat all families equally when it comes to eligibility for benefits. Do not stigmatize or discriminate against children from single parent families or unmarried two parent families.

**Parenting**

• End all forms of discrimination against GLBT people in child custody, visitation, foster care and adoption laws. The sexual orientation or gender identity of the parent should not be relevant factors when assessing the “best interest of the child.”

• Repeal all archaic sex or sodomy laws that criminalize sexual behavior between consenting adults.

• Amend adoption statutes to provide a process by which unmarried partners may adopt children in the same manner as heterosexual step-parents.

• Amend adoption laws to allow unmarried partners the option of jointly adopting children.

• Amend adoption laws to allow more than two people to be the legal parents of a child.

• Amend state laws to create a legal presumption that a child born in the context of a lesbian or gay partnership is the legal child of both members of the couple.

• Enact laws allowing a woman who is about to give birth to obtain a pre-adoption court order naming her same-sex partner as the second parent in the event that the biological mother dies before the second parent adoption is completed.

• Any individual, who with the encouragement and consent of a child’s legal parent has acted as a parent to the child for a significant period of time, should be deemed a “de facto parent” under law and have standing to pursue appropriate custody of or visitation with that child. The continuation of such a relationship is in the best interest of the child.

**Youth**

• Institute programs and services that directly respond to the needs of GLBT youth.

• Adopt non-discrimination policies covering all state agencies.

• Ensure that personnel at all the institutions providing services to at-risk youth be well informed about the needs of GLBT youth, especially medical providers and mental health care practitioners. End the institutionalization of youth solely on the basis of sexual orientation, gender expression or gender identity. End use of “conversion therapy” or “reparative therapy” on GLBT youth.

• Educate all shelter service providers about the needs of this population and create shelters to specifically meet the needs of GLBT homeless youth.

• Make sure that representatives of the child welfare system are trained to be responsive to the problems of this population.

• Increase the number of GLBT-friendly foster parents and ensure that these individuals are sensitive to issues of race.
• Ensure that schools establish nondiscrimination, antiharassment rules that include sexual orientation and gender identity, and that states also pass laws prohibiting discrimination and harassment of students or teachers on these grounds.

• Encourage gay-straight alliances in the schools and affirmatively make schools safer for GLBT and questioning students, and the children of GLBT parents, through safe school initiatives.

• Stop teaching abstinence-only sex education and promoting heterosexuality as the only morally viable norm in schools. Instead, promote abstinence in the context of age-appropriate sex education, which also provides information on how to use contraception to prevent sexually transmitted diseases and unwanted pregnancy.

• Encourage inclusiveness and respect for diversity of all people, including GLBT people and their families, in classroom discussions, curricula and textbooks.

Elders

• Enact laws and regulations that prohibit discrimination based on sexual orientation or gender expression and identity in public accommodations, including senior centers, receipt of senior services, and long term care facilities.

• In the absence of state- or federal-level nondiscrimination legislation, incorporate nondiscrimination language into all legislation and policy concerning health care, social services, senior centers and senior services.

• Fund outreach and programming for GLBT seniors throughout each state.

• Include the concerns of GLBT seniors within the annual plans of Area Agencies on Aging.

• Require and fund GLBT competency trainings for senior service providers, including case managers, senior center staff, home care workers, assisted living and nursing home staff.

• Enact legislation allowing for domestic partners and other caregivers to take family leave to care for someone.

• Broaden the definition of caregiver to any person named by an individual receiving care and create programs to support caregivers.

• End discrimination against same-sex couples in the areas of health care benefits, Social Security benefits, disability benefits, pensions and 401(k) plans.

Health

• Extend health benefits to partners of unmarried government employees and their children.

• Allow all people to designate any family member with whom they share a caregiving relationship, to receive health and other benefits available through their employment.

• Amend the tax code to make the cost of health benefits for domestic partners tax free.

• Recognize GLBT families and give their members the same rights as members of hetero-
sexual families with regard to hospital visitation, health care decision making and financial decision making.

• Respect the rights of those holding medical power of attorney.

• Social Security regulations should be amended to allow the surviving partner of a same-sex couple to receive benefits just as heterosexual married widows and widowers do.

• Amend the provisions of the Family and Medical Leave Act to enable unmarried domestic partners to take time off work to care for family members on equivalent terms to married ones.

• Fund and promote training of residential facilities staff on homosexuality, family diversity and sensitivity to the needs and family lives of GLBT people.

• Require nursing homes to accept same-sex partners on the same terms that they accept married spouses.

• Promote changes in Medicaid regulations to protect the surviving partners of those who die in nursing homes from eviction following the death of their partner.

• Ensure state domestic violence laws protect all survivors of domestic violence, including same-sex cohabiting partners and dating partners.

• Ensure that funding for community-based domestic violence prevention services includes earmarked funds for same-sex survivors.

• Ensure that law enforcement, medical and legal professionals and domestic violence counselors are trained on the dynamics of same-sex domestic violence and are able to respond in a thoughtful and helping manner.

Discrimination

• Amend federal civil rights and fair housing laws to prohibit discrimination on the basis of sexual orientation, gender identity and marital status.

• Amend the tax-code to enable same-sex couples to take advantage of the benefits presently available to married couples.

• Faith-based organizations should not be allowed to discriminate in employment or service provision using tax dollars.

Research

• Ensure the inclusion in all surveys—particularly those conducted by or partially funded by the government—a question allowing people to identify as gay, lesbian, bisexual or transgender in order to increase the baseline of data on GLBT people and their families. Also ensure the inclusion of a question allowing unmarried partners to identify as such, rather than as single or married.

• Support the promotion of research on families headed by GLBT people, and have this reflected in the funding priorities of federal, state and local funding agencies. Research topics might include the experiences of GLBT youth in the foster care system, the caregiving needs of GLBT seniors, or the experiences of single parents who are GLBT.

Conclusion and Policy Recommendations
CHAPTER NOTES


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OROrganizations

National Gay and Lesbian Task Force
http://www.ngltf.org/
1325 Massachusetts Ave. NW, Ste. 600
Washington, DC 20005
(202) 393-5177
ngltf@ngltf.org

Alternative Family Institute
http://www.altfamily.org
425 Divisadero St., Ste. 203-B
San Francisco, CA 94117
(415) 436-9000
info@altfamily.org

Alternatives to Marriage Project
http://www.unmarried.org
P.O. Box 991010
Boston, MA 02199
(718) 793-0296
atmp@unmarried.org

American Civil Liberties Union
Lesbian and Gay Rights Project
http://www.aclu.org
125 Broad St., 18th Fl.
New York, NY 10004
(212) 549-2627
lgbthiv@aclu.org

Audre Lorde Project
http://www.alp.org
85 S. Oxford St., 3rd Floor
Brooklyn, NY 11217
(718) 596-0342
alpinfo@alp.org

Children of Lesbians and Gays Everywhere
http://www.colage.org
3543 18th St., Ste. 1
San Francisco, CA 94110
(415) 861-KIDS (5437)
colage@colage.org

Family Pride Coalition
http://www.familypride.org
P.O. Box 65327
Washington, DC 20035-5327
(202) 331-5015
info@familypride.org
Freedom to Marry Collaborative  
http://geocities.com/freedomtomarry/  
116 West 23rd St, Suite 500  
New York, NY 10011  
(212) 851-8418  
evan@freedomtomarry.org

Gay & Lesbian Advocates & Defenders  
http://www.glad.org  
294 Washington St., Ste. 301  
Boston, MA 02108  
(617) 426-1350  
gladlaw@glad.org

Gay and Lesbian Medical Association  
http://www.glma.org  
459 Fulton St., Ste. 107  
San Francisco, CA 94102  
(415) 255-4547  
info@glma.org

Gay Financial Network  
http://www.gfn.com  
111 Broadway, 12th Floor  
New York, NY 10006-1901  
(800) 848-6010  
support@gfn.com

Gay, Lesbian and Straight Education Network  
http://www.glsen.org  
121 West 27th St., Ste. 804  
New York, NY 10001-6207  
(212) 727-0135  
glsen@glsen.org

Gay Men's Domestic Violence Project  
http://www.gmdvp.org  
PMB 131  
955 Massachusetts Ave  
Cambridge, MA 02139  
(617) 354-6056  
support@gmdvp.org

GenderPAC  
http://www.gpac.org  
1743 Connecticut Ave., NW  
4th Floor  
Washington, DC 20009-1108  
(202) 462-6610  
gpac@gpac.org

Human Rights Campaign Family Net  
http://www.hrc.org/ 
familynet/index.asp  
919 18th St. NW, Ste. 800  
Washington, DC 20006  
(202) 628-4160  
familynet@hrc.org

International Gay and Lesbian Human Rights Commission  
http://www.iglhrc.org  
1375 Sutter Street, Ste. 222  
San Francisco, CA 94109  
(415) 561-0633  
iglhrc@iglhrc.org

Los Angeles Gay and Lesbian Center  
http://www.laglc.org  
1625 N. Spruader Blvd.  
Los Angeles, CA 90028  
(323) 993-7400  
info@laglc.org

Lambda Legal Defense and Education Fund  
http://www.lambdalegal.org  
120 Wall St., Ste. 1500  
New York, NY 10005  
(212) 809-8585  
lambdalegal@lambdalegal.org

Lesbian and Gay Immigration Rights Task Force  
http://www.lgirtf.org  
350 W. 31st St., Ste. 505  
New York, NY 10001  
(212) 714-2904  
info@lgirtf.org

National Center for Lesbian Rights  
http://www.nclrights.org  
870 Market St., Ste. 570  
San Francisco, CA 94102  
(415) 392-6257  
info@nclrights.org

National Coalition for LGBT Health  
http://www.lgbthealth.net/  
1407 S Street, NW  
Washington, DC 20009  
(202) 797-3516  
coalition@lgbthealth.net

National Latina/o Lesbian, Gay, Bisexual & Transgender Organization  
http://www.llego.org  
1420 K St., NW, Ste. 200  
Washington, DC 20005  
(202) 408-5380

National Minority AIDS Council  
http://www.nmac.org/  
1931 13th Street, NW  
Washington, DC 20009  
(202) 483-6622  
info@nmac.org

National Youth Advocacy Coalition  
http://www.nyacyouth.org/  
1638 R Street, NW, Ste. 300  
Washington, DC, 20009  
(202) 319-7596
Old Lesbians Organizing for Change
http://www.oloc.org
P. O. Box 980422
Houston, TX 77098
info@oloc.org

Parents, Families and Friends of Lesbians and Gays
http://www.pflag.org
1726 M St., NW, Ste. 400
Washington, DC 20036
(202) 467-8180
info@pflag.org

Partners Task Force for Gay & Lesbian Couples
http://www.buddybuddy.com
PO Box 9685
Seattle, WA 98109-0685
(206) 935-1206
demian@buddybuddy.com

People of Color in Crisis
http://www.pocc.org
468 Bergen Street
Brooklyn, NY 11217
(718) 230-0770
poccgen@pocc.org

Pride Senior Network
http://www.pridesenior.org
132 W. 22nd St., 4th Fl.
New York, NY 10011
(212) 675-1936
info@pridesenior.org

Senior Action in a Gay Environment
http://www.sageusa.org
305 Seventh Ave., 16th Fl.
New York, NY 10001
(212) 741-2247
sageusa@aol.com

Straight Spouse Network
http://www.ssnetwk.org
8215 Terrace Dr.
El Cerrito, CA 94530-3058
(510) 525-0200
dir@ssnetwk.org

INTERNET DIRECTORIES AND SERVICES

National Association of LGBT Community Centers
http://www.lgbtcenters.org/directory.asp

Support Groups For Gay and Lesbian Parents
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Special Thanks

Paula Ettelbrick, J.D., Adjunct Law Professor, University of Michigan and New York University Law School, served as Family Policy Director at the NGLTF Policy Institute from 1999–2001. In this capacity she conceptualized this publication and oversaw and conducted much of the initial research into these issues. She also reviewed drafts of this document following her departure from NGLTF.

Community Reviewers

This publication would not have been possible without the contribution of many people. The contributors and editors of this report wish to express their sincere appreciation for the dedicated hard work of their colleagues listed below. We relied on their professional expertise as they reviewed various drafts or portions of this document.

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Thanks also to those community members whose stories were shared in this publication.

NGLTF Staff, Research Fellows, and Interns
Thanks to NGLTF staff Lorri L. Jean, Darrel Cummings, Betsy Gressler, Carrie Evans, Lisa Mottet, and Michael Cruz for their help with editing, release, and distribution of the report. Thanks to Vaid Research Fellows Shireen Barday, Gautam Bhan, Sangeeta Budhiraja, Brian Cahill, Pavita Krishnaswamy, Ruth McFarlane, Jill Rader, and John Vang. Thanks also to interns Elisabeth Brown and Brian Moulton for their feedback on the report.

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SPECIAL THANKS

The following funders have generously supported NGLTF’s family policy work, including the production of this manual:

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Special thanks to the many individuals who selected the Task Force to receive contributions through the Combined Federal Campaign. (CFC#2262)
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We extend our thanks to the following companies for their generous support:

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A significant source of funding for the Task Force is its major donor program, the Leadership Council. Leadership Council members pledge $1,200 or more in non-event related contributions. We extend our heartfelt thanks to the following individuals who made pledges between April 1, 2001 and June 30, 2002.

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The 2000 Census and Same-Sex Households

By Judith Bradford, Kirsten Barrett and Julie A. Honnold. In 2000 the U.S. Census allowed same-sex couples living together to identify themselves as “unmarried partners.” This national data set offers a rich trove of information on members of our community, easily accessible on-line. Maps show concentrations of same-sex households in all 50 states and a dozen major cities. (October 2002; 162 pp.; $10.00; www.ngltf.org/pub.html)

Say it Loud and I’m Black Proud

This largest-ever study of Black GLBT people is the result of a two-year collaboration between nine Black GLBT Pride organizations, the NGLTF Policy Institute, and five African-American researchers: Juan Battle, Cathy J. Cohen, Dorian Warren, Gerard Ferguson, and Suzette Audam. The survey of nearly 2,700 respondents documents significant and often surprising demographics, experiences, and policy priorities of Black GLBT people. (March 2002; 86 pp.; $10.00; www.ngltf.org/pub.html)

Leaving Our Children Behind

This report, by Sean Cahill and Kenneth T. Jones, describes the reactionary agenda of senior policymakers in the Bush administration to change social service provision in the United States. Examines the impact of marriage and fatherhood initiatives, abstinence-only-until-marriage education, and the faith-based initiative on the GLBT community. (December 2001; 112 pp.; $10.00 www.ngltf.org/pub.html)

Social Discrimination and Health

This groundbreaking report reviews social science literature and explains what we do and do not know about the demographics of GLBT elders. Outing Age outlines major public policy issues facing GLBT seniors—including federal aging programs, disability, long-term care and caregiving, nursing homes, and Social Security—and presents recommendations for advocacy to move public policy toward equal treatment of this population. (November 2000; 96 pp.; $10.00; www.ngltf.org/pub.html)

Transgender Equality

A handbook providing activists and policymakers with the tools they need to pass transgender-inclusive non-discrimination and anti-violence legislation. Written by Paisley Currah and Shannon Minter, with an introduction by Jamison Green. This handbook is an invaluable resource guide providing model legislative language, talking points, responses to frequently asked questions, and a comprehensive resource listing. (June 2000; 96 pp.; $10.00; www.ngltf.org/pub.html)
Other NGLTF Publications

The 2000 National Election Study and Gay and Lesbian Rights

SUPPORT FOR EQUALITY GROWS
For the first time in 2000, a solid majority of Republican voters expressed support for sexual orientation nondiscrimination laws. Columbia University Political Scientist Alan Yang documents increased support for gay adoption and strong majority support for military service. (June 2001; 10pp; www.ngltf.org/downloads/NES2000.pdf)

Out and Voting II
THE GAY, LESBIAN AND BISEXUAL VOTE IN CONGRESSIONAL ELECTIONS, 1990-1998
An in-depth profile of the gay, lesbian, and bisexual voting bloc and the first-ever analysis of the impact of this emerging constituency in national congressional elections. By Dr. Robert Bailey of the Rutgers University School of Public Policy and Administration. Among the report's findings: out GLB voters comprise roughly 5% of the national electorate, and 8.8% of voters in cities of 500,000 or more. (January 2000; 54 pp; $10.00; www.ngltf.org/pub.html)

From Wrongs to Rights
PUBLIC OPINION ON GAY AND LESBIAN AMERICANS MOVES TOWARDS EQUALITY
This groundbreaking report, written by Alan Yang of the Department of Political Science at Columbia University, tracks public opinion trends over the last 26 years on various gay and lesbian rights issues including: employment and housing non-discrimination, family issues, marriage, adoption, and the military. (December 1999; 32pp; $10.00; www.ngltf.org/downloads/yang99.pdf)

Domestic Partnership Organizing Manual
This manual, by Policy Institute Research Fellow Sally Kohn, provides comprehensive information on what domestic partnership benefits are, why employers should adopt these benefits, and how employees and citizens organize effectively for policy change. Sample policies and lists of who offers domestic partnership benefits are included. (May 1999; 140pp; $10.00; www.ngltf.org/pubs/dp_pubs.html)

Income Inflation
THE MYTH OF AFFLUENCE AMONG GAY, LESBIAN, AND BISEXUAL AMERICANS
This report, by Professor M.V. Lee Badgett, of the Department of Economics at the University of Massachusetts at Amherst, explores the pervasive and inaccurate notion that GLB people form an economic elite, insulated from discrimination by their wealth and disconnected from society at large by a special, privileged status. After examining data from seven different surveys, she finds that none support this stereotype. (November 1998; 23pp; $10.00; www.ngltf.org/downloads/income.pdf)

Re-Thinking Elections
AN OP-ED SERIES ON CRITICAL ELECTORAL BATTLES FACING GLBT COMMUNITIES
This publication makes sense of the success of recent right-wing anti-gay ballot measures and encourages more rigorous thinking and effective action as we confront the ongoing wave of such measures. Author and Director of Organizing and Training Dave Fleischer has trained hundreds of our communities' leaders in managing campaigns, running for office, and leading ballot measure campaigns. (October 1999; 13pp; $5.00 or FREE with other purchase; www.ngltf.org/pubs/rethink.pdf)

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