

gay, lesbian & bisexual transgender what you need to know

Missouri & Kansas Edition



THE RIGHTS OF LESBIAN, GAY, BISEXUAL AND TRANSGENDERED PEOPLE IN MISSOURI AND KANSAS

American Civil Liberties Foundation of Kansas and Western Missouri

3601 Main Street

Kansas City, MO 64111

www.aclukswmo.org

www.aclu.org

**The Rights of Lesbian, Gay, Bisexual and Transgendered
People in Kansas and Western Missouri
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I. COMMUNITY, EMPLOYMENT AND HOUSING

Does Missouri or Kansas state law protect individuals against sexual orientation or gender identity discrimination?

No. Neither the State of Missouri nor the State of Kansas protects individuals from discrimination based on sexual orientation by state statute. Missouri and Kansas, like most states and the federal government, do not at this time include sexual orientation or gender identity in their non-discrimination statutes, which only prohibit discrimination in housing, employment and public accommodation based upon race, color, religion, national origin, ancestry, sex and age.¹

For the past several years, the state legislatures of both Missouri and Kansas proposed non-discrimination legislation that would have prohibited, among other things, discrimination based on sexual orientation and gender identity, but the bills have not become law.²

On August 31, 2007, Governor Kathleen Sebelius signed an executive order that prohibits discrimination against LGBT state employees in Kansas. According to press releases, the order protects more than 37,000 Kansas state employees from being fired due to their sexual orientation or gender identity.³ In July 2010, Missouri Governor Jay Nixon issued a similar executive order extending employment protections to LGBT persons working in the Executive Branch of Missouri State Government and encouraging the adoption of the same protections for LGBT employees by all branches of Missouri Government.⁴ Missouri Office of Personnel Management estimates that approximately 58,000 state employees are covered by this executive order.

There are also legislative efforts to prohibit discrimination at the federal level. For several years, members of the U.S. House of Representatives have introduced the federal Employment Non-Discrimination Act (“ENDA”) that would make it illegal to fire, refuse to hire or refuse to promote an employee based on the person’s sexual orientation or gender identity. ENDA does not apply to employers who employ less than 15 persons.⁵ ENDA remains pending in Congress and has not yet become law.

Is there any place in Missouri or Kansas where gays and lesbians are protected from sexual orientation discrimination?

Yes. Employees of the State of Kansas and the State of Missouri are protected from discrimination in their employment based on sexual orientation or gender identity resulting from executive orders issued by Kansas Governor Sebelius in 2007 and Missouri Governor Nixon in 2010. In addition, the following cities and counties in Missouri and Kansas have laws that protect against sexual orientation discrimination:

Clayton, Missouri prohibits discrimination in public and private housing and public accommodation;⁶

Columbia, Missouri prohibits discrimination in housing, private and public employment, and public accommodation;⁷

Creve Coeur, Missouri prohibits discrimination in public and private housing, employment and public accommodation;⁸

Ferguson City, Missouri prohibits discrimination in employment, housing and public accommodation;⁹

Kansas City, Missouri prohibits discrimination in private and public employment, commercial real estate lending, brokerage services, public accommodation and public and private housing;¹⁰

Kirksville, Missouri prohibits discrimination in public and private housing;¹¹

Kirkwood, Missouri prohibits discrimination in housing, employment, and public accommodation;¹²

Maplewood, Missouri prohibits discrimination in housing, employment, and public accommodation;¹³

Olivette, Missouri prohibits discrimination in housing sales, rentals, and financings, public accommodation, and employment;¹⁴

Richmond Heights, Missouri prohibits discrimination in public and private housing, public accommodation and public employment;¹⁵

St. Louis, Missouri prohibits discrimination in private and public employment and housing and protects gays and lesbians who are victims of hate crimes;¹⁶

University City, Missouri prohibits discrimination in public and private employment, public accommodation, public and private housing, and protects GLBT individuals who are victims of hate crimes;¹⁷

Lawrence, Kansas prohibits discrimination in private and public employment¹⁸ and housing sales, rentals and financings;¹⁹

Jackson County, Missouri's Constitution Home Rule Charter prohibits discrimination in county employment. As of February 2012, the Jackson County Code of Ordinances also prohibits discrimination in housing and public accommodation.²⁰

On November 27, 2012, the Saint Louis County Council voted to include sexual orientation and gender identity in the county's non-discrimination ordinance, which prohibits discrimination in housing, public employment, public accommodation and protects GLBT individuals who are victims of hate crimes.²¹

The following universities have non-discrimination policies that include "sexual orientation": Missouri State University, Washington University, St. Louis University, Rockhurst University, University of Central Missouri, Harris-Stowe State University, University of Kansas, Kansas State University, Emporia State University, Fort Hays State University, Pittsburg State University, Baker University, Washburn University, Kansas Wesleyan University, and Wichita State University.

Are there any cities or counties in Missouri or Kansas that protect individuals from gender-identity discrimination?

Yes. Of the city and county non-discrimination policies that include sexual orientation discussed above, only Kirksville, Missouri does not expressly address gender identity as a protected category.

If the city where a person lives protects against sexual orientation discrimination, does that mean that the state government must prevent sexual orientation discrimination?

No. Generally, cities, towns and counties in Missouri and Kansas can implement non-discrimination laws that are enforceable only within the boundaries of that city, town or county. However, the state court system can be used to enforce those laws.

If a city can pass a non-discrimination law that includes sexual orientation, can a city also pass a law that permits same-sex couples to get married?

No. The state – and not individual cities, towns or counties – has the authority to regulate and define marriage. Some people believe that the federal government also has authority to define and regulate marriage, which is a central issue in the current debate over the proposed federal constitutional amendment to define marriage as between a man and a woman and whether certain provisions of the federal Defense of Marriage Act are constitutional.

Does the State of Missouri or the State of Kansas protect individuals from public accommodation discrimination²² based on sexual orientation or gender identity?

No. Although state law in Kansas and Missouri prohibits public accommodation discrimination based on race, color, religion, national origin, sex, ancestry and disability, sexual orientation is not a protected class of persons under Missouri or Kansas law.²³ Some cities (see above) protect LGBT individuals from public accommodation discrimination.

Can a financial institution deny an individual or a couple a loan based upon their sexual orientation or gender identity?

Maybe. While Missouri and Kansas do not have state laws that prohibit lending to LGBT people or couples, neither state specifically protects LGBT individuals from credit discrimination. However, a federal law called the Equal Credit Opportunity Act of 1975 ("ECOA"),²⁴ although not specifically protecting LGBT individuals or couples, may prevent sexual orientation discrimination in loan processes; and, at least one federal court has ruled that the ECOA does indeed protect LGBT people.²⁵ Another federal court found that a biological male dressed in feminine attire had properly brought a case based on gender discrimination when a bank employee told him to return in male clothing upon request for a loan application.²⁶

In terms of financial loans for housing, the U.S. Department of Housing and Urban Development (HUD) adopted new program regulations in 2012 that ensure "equal access to housing in HUD programs regardless of sexual orientation or gender identity."²⁷ Under these new regulations, housing providers are prohibited from asking applicants about their sexual orientation or gender identity. Providers and lenders cannot use gender identity or sexual orientation as a basis for granting or denying applications.²⁸ These regulations apply to housing providers that receive HUD funding, lenders that are insured by the Federal Housing Administration (FHA), and may apply to housing providers that have loans insured by the FHA. The HUD website (www.hud.gov) gives this example of prohibited discrimination:

An underwriter for an FHA insured loan is reviewing an application where two male incomes are being used as the basis for the applicants' credit worthiness. The underwriter assumes the applicants are a gay couple and, as a result, denies the application despite the applicants' glowing credentials. This scenario may violate HUD regulations, which prohibit FHA-insured lenders from taking actual or perceived sexual orientation into consideration in determining adequacy of an applicant's income.²⁹

More information regarding HUD policy and how to file a complaint for violations of this policy can be found on the HUD website. Also, local non-discrimination laws may prevent LGBT individuals from discrimination in the loan process (see pages 1-2).

What is sexual harassment and does it apply in the LGBT context?

Sexual harassment law applies in the LGBT context, in that the federal courts have ruled that, under Title VII of the Civil Rights Act of 1964, there is such a thing as same-sex sexual harassment in the workplace.³⁰ Sexual harassment is generally defined as unwelcome sexual advances, language or actions that result in an adverse effect (loss of employment, demotion or promotion denial, among other things) on an individual's employment. This type of harassment occurs, for example, when a supervisor requires a subordinate to succumb to sexual advances or tolerate sexual or gender-based behavior in exchange for a promotion, raise or retaining his or her job.

Sexual harassment can also result in a "hostile work environment," which occurs when unwanted sexual advances, language or actions are so pervasive in the work place that the environment interferes with a

person's ability to perform his or her job. This type of harassment does not require that the unwanted sexually charged behavior come from a supervisor or that the behavior is targeted at a specific individual.

Under Missouri and Kansas state law, is there such thing as same-sex sexual harassment?

Most likely. The United States Supreme Court and other federal courts have found that individuals may sue their employers for sexual harassment by supervisors (or, in the hostile work environment context, employees) directed to individuals of the same gender.³¹

Importantly, this does not mean that Missouri or Kansas state law protects against "sexual orientation" or "gender identity" discrimination (except, as discussed above, the Kansas and Missouri Governors' executive orders which applies to Kansas and Missouri state employees). In fact, unless there is a local law that protects against such discrimination, private and public employers (other than employees of the State of Kansas and the State of Missouri) in most situations do not have to protect their LGBT employees from discrimination based on sexual orientation or gender identity.

Can an LGBT person lose his or her job because of the person's sexual orientation or gender identity?

Probably. Federal law and Missouri and Kansas state law do not prohibit employers (other than the State of Kansas and the State of Missouri as an employer) from firing a person because of his or her sexual orientation or gender identity. However, local laws (such as the Kansas City, Missouri non-discrimination ordinance) may protect individuals from losing a job based solely on sexual orientation or gender identity.

The federal Employment Non-Discrimination Act ("ENDA") has been introduced in the U.S. House of Representatives for many years. The bill would make it illegal for an employer with 15 or more employees to fire or refuse to hire or promote an employee based on the person's sexual orientation or gender identity. ENDA has never been passed into law.

Do any laws protect transgender employees from workplace discrimination?

Although transgender status is not a protected class under the Civil Rights Act of 1964, a recent decision by the Equal Employment Opportunity Commission (EEOC) ruled that the prohibition against sex-based discrimination under Title VII of the Civil Rights Act of 1964 encompasses "discrimination based on gender identity, change of sex, and/or transgender status."³² The Supreme Court and lower federal courts have repeatedly defined Title VII "sex-based" discrimination as not only referring to anatomical differences between men and women, but also referring to gender stereotypes.³³ Therefore, the EEOC argues that discrimination based on transgender status or gender identity is inherently "related to the sex of the victim" under Title VII.³⁴ This interpretation of Title VII allows discrimination claims based on transgender status or gender identity to be "processed under Part 1614 of EEOC's federal sector EEO complaints process."³⁵ The EEOC decision applies to all federal agencies and departments, and may apply to private employers with 15 or more employees that are currently subject to EEOC regulations. For more information, visit <<http://www.eeoc.gov/employees/index.cfm>>.

Can a person bring his or her same-sex partner or transgender partner to employer-sponsored events, such as an office holiday party?

Maybe. Unless there is a local law prohibiting discrimination in private employment, a private employer may be able to prohibit an employee from bringing a same-sex partner or transgender partner to a company event. This is also true for public employers, other than the State of Kansas. However, nothing in the law prohibits private employers from having internal policies or practices that prohibit discrimination in this context.

Can the same-sex or transgender partner of an employee of a private employer obtain health insurance coverage from the employee's employer?

This depends on the internal policy of the employer and the health insurance provider. Neither state nor federal law prohibits a private employer's extension of health insurance benefits to same-sex or transgender partners. In fact, many private employers provide benefits to domestic partners with proof of a committed relationship (such as a joint bank account, joint ownership of a car or house, joint responsibility for finances or estate planning documents designating each other as beneficiaries, and/or being registered as domestic partners in the city or county).

What is the military's "Don't Ask, Don't Tell" policy, and can the military discharge a gay or lesbian service member for coming out?

Don't ask, don't tell ("DADT") was repealed by the Don't Ask, Don't Tell Repeal Act of 2010, which officially ended DADT on September 20, 2011.³⁶ Don't ask, don't tell is the common term for the policy restricting the United States military from efforts to discover or reveal closeted gay, lesbian, and bisexual service members or applicants, while barring those that are openly gay, lesbian, or bisexual from military service. Gays and lesbians were regularly discharged from the military under this policy.³⁷ Following the repeal of DADT, discharge decisions can no longer be based solely on an individual's sexual orientation. Service members who were discharged under DADT are also able to re-enlist. Furthermore, sexual orientation cannot be considered as "a bar to military service or admission to Service academies, ROTC or any other accession program."³⁸

For more information on this subject, contact the Servicemembers Legal Defense Network (see the list of LGBT organizations at the end of this handbook).

Are there laws that protect persons with HIV/AIDS from employment discrimination?

Yes. A federal law known as the American with Disabilities Act ("ADA") protects people with HIV disease from discrimination by most employers, public or private, if 15 or more persons are employed.³⁹ For more information on HIV/AIDS law, go to the HIV/AIDS issues link at www.aclu.org.

Interestingly, the definition of "disability" under the ADA expressly excludes homosexuality, bisexuality, gender identity disorders not resulting from physical impairment and other sexual behavior disorders.⁴⁰

II. SCHOOLS

Can a public school refuse to allow a student to attend class because he or she (or his or her parent) is gay or lesbian?

No. The Missouri state constitution permits all eligible students to receive an education through twelfth grade. In Kansas, the law grants all eligible students this right by statute.⁴¹ The state laws do not specifically address sexual orientation as it relates to public education, and the issue has not been presented to Missouri or Kansas courts. Although public schools may suspend or expel students for safety and disciplinary reasons, a student should be able to receive a public education regardless of his or her sexual orientation or the orientation of his or her parents.⁴²

Can a same-sex couple attend their high school prom together?

Most likely. Although some school officials may try to prevent same-sex couples from attending prom, students should be able to attend prom (or any other school dance) with their date of choice as long as the students comply with the school's rules (like prohibitions against alcohol). School officials have attempted to prevent same-sex couples from attending prom on the basis that permitting attendance would pose a safety threat to the gay and lesbian students or that permitting attendance would pose a "substantial disruption" for all students. However, at least one court has held that attending a high school dance with a member of the same sex is protected as expression under the First Amendment of the United States Constitution.⁴³

Can a student organize a Gay-Straight Alliance at a public school?

Yes. A federal law called the "Equal Access Act" provides that if a school permits students to organize clubs, school officials cannot prevent a club from organizing based upon the subject matter addressed by the club. Although the Equal Access Act does not specifically address gay clubs, the law applies to students who want to form a Gay-Straight Alliance or other gay club. Students must, of course, comply with their school's rules relating to forming clubs, such as application requirements and procurement of faculty sponsors. In other words, students who want to form a GSA or other similar club must follow the same rules as students who form a chess club.⁴⁴

Do school officials have to protect students from gay-related harassment from other students?

Most likely. School officials have an obligation to provide a safe learning environment for all of their students, and failure to do so could result in a costly lawsuit against the school district. There are no Missouri or Kansas laws that specifically address school safety. However, individual school districts may enact anti-harassment and anti-discrimination rules that protect students from gay-related harassment.

Can an LGBT teacher lose his or her job because he or she is out at school?

Probably, unless the teacher's employment contract, school district policy or local law prohibits sexual orientation or gender identity discrimination or unless the teacher is an employee of the State of Kansas or the State of Missouri. Neither Kansas nor Missouri state law prevents a teacher from losing his or her job based on sexual orientation or gender identity (except for a teacher who is an employee of the State of Kansas or the State of Missouri). For example, the Kansas City, Missouri, School District has sexual orientation and gender identity in its nondiscrimination clause. On the Kansas side, the Lawrence school district (USD 497) prohibits sexual orientation and gender identity discrimination.

Can a teacher discuss LGBT issues in the classroom with his or her students?

Probably, as long as the discussion is age-appropriate, topical and does not interfere with the educational process. Although there are no Kansas or Missouri cases that address this issue, the United States Supreme Court in 1968 established the rule that the First Amendment protects speech by public employees.⁴⁵ Therefore, a teacher should be able to discuss LGBT issues in the classroom unless the school administration has a valid, significant reason for prohibiting the teacher's speech.⁴⁶

However, a bill was introduced in the Missouri General Assembly in April 2012 that would prohibit the teaching of sexual orientation in public schools, except in regards to human reproduction. The bill, H.B. 2051, states:

Notwithstanding any other law to the contrary, no instruction, material, or extracurricular activity sponsored by a public school that discusses sexual orientation other than in scientific instruction concerning human reproduction shall be provided in any public school.⁴⁷

This legislation, nicknamed the “don’t say gay” bill, was not passed into law.

Do any universities or colleges in Kansas and Missouri protect students and other individuals from sexual orientation discrimination?

Yes. Several universities and colleges in Kansas and Missouri include sexual orientation in their non-discrimination policies.

In Missouri, these include the University of Missouri, Missouri State University, Washington University, St. Louis University, William Jewell College, Rockhurst University, Harris-Stowe State University, and the University of Central Missouri. Truman State University includes sexual orientation in an addendum to its statement of non-discrimination, which does not grant the same level of protection to this category as other classes protected on the state and federal level.⁴⁸

In Kansas, the University of Kansas, Kansas State University, Emporia State University, Baker University, Washburn University, Fort Hays State University, Pittsburg State University, Kansas Wesleyan University, and Wichita State University have all included sexual orientation in their notices of non-discrimination. The KSU policy, for example, prohibits discrimination on the basis of, among other things, “sexual orientation, or other non merit reasons, in admissions, educational programs or activities and employment . . . as required by applicable laws and regulations.”

Do any universities or colleges in Kansas and Missouri protect students and other individuals from gender identity discrimination?

Kansas State University, Washington University and the University of Missouri added “gender identity” to their non-discrimination policies in 2008, 2007, and 2009, respectively. Since 2009, the University of Kansas, Washburn University, and Rockhurst University have also extended their non-discrimination policies to include “gender-identity.” None of the university and college policies discussed above address gender identity discrimination against transgender individuals.

Does Missouri or Kansas have an anti-bullying law expressly covering sexual orientation or gender identity?

No. Although a Safe School Bill was introduced in the Missouri legislature for several years,⁴⁹ it has not become law. The Safe Schools Bill would have modified the existing anti-bullying law to expressly cover sexual orientation (which, by reference to another statute, would include transgender individuals). The Kansas legislature passed an Anti-Bullying Bill in 2007, but the bill does not enumerate any particular classes or categories.⁵⁰

III. COUPLES AND MARRIAGE; LEGAL PROTECTION OF RELATIONSHIP AND ASSETS

Can same-sex couples become legally married in Missouri or Kansas?

No. Both Kansas and Missouri have constitutional and statutory prohibitions against same-sex marriage. Missouri's marriage amendment was passed in 2004, and Kansas followed with its marriage amendment in 2005.⁵¹

The Missouri Constitution reads: "To be valid and recognized in this state, a marriage shall exist only between a man and a woman."⁵²

In Kansas, the constitution reads: "Marriage (a) The marriage contract is to be considered in law as a civil contract. Marriage shall be constituted by one man and one woman only. All other marriages are declared to be contrary to the public policy of this state and are void. (b) No relationship, other than a marriage, shall be recognized by the state as entitling the parties to the rights or incidents of marriage."⁵³

What is the significance of the state constitutional amendments, such as those that passed in both Missouri and Kansas, that define marriage as only between a man and a woman?

State constitutional amendments can be very difficult to repeal or challenge in court. So even though Missouri and Kansas already had statutes banning same-sex marriage, the addition of the constitutional amendments made it procedurally and practically even more difficult to achieve legal recognition of same-sex relationships.

What is the federal Defense of Marriage Act ("DOMA")?

In 1996, Congress enacted the federal Defense of Marriage Act ("DOMA"). DOMA excuses states from having to recognize a same-sex marriage that is performed in a state where same-sex marriages are legal, like Massachusetts.⁵⁴ In section 3, the statute defines "marriage" as a legal union between one man and one woman as husband and wife for federal purposes. As a result, DOMA prevents same-sex couples from filing joint federal tax returns or receiving federal benefits, such as social security benefits as married couples.⁵⁵ However, on June 17, 2009, President Obama announced that the federal government would extend long-term care, sick leave, and other limited benefits to the same-sex partners of federal employees.⁵⁶ In recent years, advocates have tried to pass the Domestic Partnership Benefits and Obligations Act (DPBO), which would provide currently unrecognized same-sex spouses and partners of gay and lesbian federal employees with health insurance, life insurance, government pensions, and other employment related benefits and obligations.⁵⁷ Although the DPBO has not yet become law, the Senate Committee of Homeland Security and Governmental Affairs of the 112th Congress approved the DPBO of 2011 by a voice vote in May 2012.

Recently, the constitutionality of section 3 of DOMA, which limits the federal benefits associated with marriage to heterosexual spouses, has been repeatedly challenged. Section 3 states:

In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the 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.⁵⁸

In February 2011, President Obama instructed the Department of Justice not to defend cases based on section 3 of the Defense of Marriage Act. According to Attorney General Eric Holder, "after careful consideration...the President has concluded that...classifications based on sexual orientation should be subject to a more heightened standard of scrutiny. The President has also concluded that section 3 of DOMA, as applied to legally married same-sex couples, fails to meet that standard and is therefore

unconstitutional.”⁵⁹ In October 2012, the Second Circuit found the section to be unconstitutional in the case *Windsor v. United States*. On December 7, 2012 the Supreme Court agreed to hear this case and review the constitutionality of DOMA.

Originally introduced in 2009, the Respect for Marriage Act (RFMA) is federal legislation that would repeal DOMA. If passed, RFMA would require the federal government, but not individual states, to grant legal recognition to same-sex marriages.⁶⁰ RFMA was reintroduced into the Senate in 2011, with the support of President Obama. Although the Senate Judiciary Committee sent the bill to the Senate floor, RFMA has not become law.

Many states have state statutes and/or state constitutional amendments specifically defining marriage as the union of one man and one woman for all purposes within that state. These state laws are known by a variety of names, including "state DOMAs," "mini-DOMAs" or "marriage recognition laws." Missouri and Kansas both have DOMAs in their statutes that were passed in the mid 1990s, which were later followed by anti-gay state constitutional marriage amendments in each state.⁶¹

Several amendments to the U.S. Constitution banning same-sex marriage have been proposed in Congress. The 2006 version provided: “Marriage in the United States shall consist only of the union of a man and a woman. Neither this Constitution, nor the constitution of any state, shall be construed to require that marriage or the legal incidents thereof be conferred upon any union other than the union of a man and a woman.” Both the U.S. House and Senate rejected the amendment in July 2006. However, each year, various members of Congress introduce similar versions of these constitutional amendments.

Can a transgender person legally enter a heterosexual marriage in Kansas or Missouri?

The Missouri courts have not yet addressed this issue, and no law in Missouri explicitly prohibits a heterosexual marriage involving a transgender person. In 2002, however, the Kansas Supreme Court held that a marriage between a post-operative transgender woman and a man is void as a matter of Kansas state law.⁶² The Kansas courts have not yet revisited this issue.

Which states allow or recognize marriage, civil unions or domestic partnerships?

Massachusetts was the first state to recognize same-sex marriages, by an order of the Massachusetts Supreme Court in *Goodridge v. Dept. of Public Health*.⁶³ In 2008 and 2009, three other state supreme courts (California, Connecticut, and Iowa) have found that same-sex couples should be entitled to marry.⁶⁴ However, in November 2008 a voter-approved constitutional amendment (Proposition 8) overturned the California decision.⁶⁵

In February 2012, the Ninth Circuit U.S. Court of Appeals ruled in *Perry v. Brown* that California Proposition 8 is unconstitutional. The appellate decision states that Proposition 8 "serves no purpose, and has no effect, other than to lessen the status and human dignity of gays and lesbians in California, and to officially reclassify their relationships and families as inferior to those of opposite-sex couples."⁶⁶ Although this case was a significant victory, the decision will not be enforced pending an appeal to the United States Supreme Court.

In April 2009, Vermont became the first state in which gay marriage was recognized without court intervention. The Vermont statute states that "[m]arriage is the legally recognized union of two people. When used in this chapter or in any other statute, the word 'marriage' shall mean a civil marriage."⁶⁷ Same-sex marriages in Vermont began on September 1, 2009. In the summer of 2009, Maine and New Hampshire also enacted same-sex marriage statutes. Sex marriages began in New Hampshire on January 1, 2010. A November 2009 voter-approved constitutional amendment overrode the Maine legislature's law so that same-sex marriage was not permitted in Maine.⁶⁸ However, the Maine Same-Sex Marriage Question appeared on the November 2012 ballot and passed, allowing same-sex couples to acquire a marriage license.⁶⁹

Same sex marriage in the District of Columbia was legalized in December 2009, and marriages began in March 2010. The D.C. city council enacted a bill to recognize same-sex marriages performed in other states in May 2009.⁷⁰ In July 2011, New York legalized same-sex marriage through the Marriage Equality Act, which was signed by Governor Andrew Cuomo on the same day it was passed by the New York Legislature.⁷¹

In 2009, voters in Washington passed Referendum 71, confirming state law that expands the rights, responsibilities, and obligations afforded state-registered same-sex and senior domestic partners to be equivalent to those of married spouses, except that a domestic partnership is not a marriage. In 2012, both Washington and Maryland passed laws legalizing same-sex marriage. After being signed into law, the bills were put to a vote by referendum in November 2012. Both laws passed, legalizing same-sex marriage.⁷² Minnesota voted against amending the state constitution to define marriage as between a man and a woman in November 2012.

As of February 2012, other states currently recognizing civil unions include New Jersey (2006), Rhode Island (2011), Illinois (2011), Hawaii (2012), and Delaware (2012). Domestic partnerships with at least some partnership benefits are available in California (2001), Oregon (2007), Maine (2009), and Nevada (2009).

If a same-sex couple enters into a civil union in Oregon (or other state) or marriage in Massachusetts, will the union be legally recognized in Missouri or Kansas?

Probably not. As of the date of publication, same-sex civil unions and same-sex marriages have not been a subject of any court cases in Missouri or Kansas, but it is not likely that such unions or marriages will be legally recognized by either state because of the states' anti-gay constitutional marriage amendments and the states' mini-DOMAs.

Furthermore, section 2 of the federal DOMA states:

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.⁷³

Doesn't the U.S. Constitution require states to recognize each other's laws and decrees?

The Full Faith and Credit Clause of the United States Constitution provides that states should recognize each other's laws and judgments. There is, however, a "public policy" exception to the clause that some people argue prevents same-sex couples from marrying. In the past, when the legal pronouncements of one state have conflicted with the public policy of another state, courts have been reluctant to order a state to honor a law or judgment that is in conflict with its own public policy. This, combined with laws in Missouri and Kansas that make explicit reference to the states' "public policy" of recognizing only opposite-sex marriages,⁷⁴ thereby avoiding the application of the Full Faith and Credit Clause, prevent legal recognition of same-sex marriages that are valid in other states.

Is there a difference between a civil union and a marriage?

Yes, although these definitions are subject to much debate. In general, a civil union, like a marriage, is a relationship status that confers at least some benefits and responsibilities upon a couple. However, the practical difference is currently that the federal government and many states, including Missouri and Kansas, define "marriage" as a legal union existing only between one man and one woman. This distinction prevents the extension of rights granted by civil unions or same-sex marriages outside of the state in which these rights are recognized. For example, a civil union in California is theoretically the same as "marriage" in terms of

the rights and responsibilities granted to the couple by the state, but the federal government does not recognize such unions. Nor does the federal government recognize a Massachusetts marriage of a same-sex couple. Whether called a marriage, a civil union or a domestic partnership, government sanctioned same-sex relationships lack legal equality with married, opposite-sex couples. This will continue until the federal government and states like Missouri and Kansas repeal their discriminatory laws or until a court orders them to do so.

Is there such thing as “common law” marriage for same-sex couples in Missouri or Kansas?

No. A common law marriage is a “marriage” which does not depend for its validity upon any religious or civil ceremony but is created by the consent of the parties, much like an oral contract. Missouri does not recognize common law marriage for couples, whether heterosexual or homosexual. Currently, Kansas is among a shrinking minority of jurisdictions that recognize some form of common law marriage. Kansas recognizes common law for couples that are of the opposite sex who hold themselves out as a married couple.⁷⁵

Does Missouri or Kansas offer civil unions or a domestic partnership registry to same-sex couples?

No. Neither Missouri nor Kansas extends legal recognition to same-sex couples in any way, but some municipalities, such as (1) Kansas City, Missouri, (2) Lawrence, Kansas; (3) Columbia, Missouri, (3) Clayton, Missouri, (4) Olivette, Missouri, (5) St. Louis, Missouri, (6) University City, Missouri, and counties like Jackson County in Missouri offer a domestic partnership registry (see below).

What is a domestic partnership?

“Domestic partnership” is used in many contexts. Most often, it means a status that recognizes an unmarried couple (whether homosexual or heterosexual), and sometimes their children, as a family for certain limited purposes. Some cities and counties in Missouri and Kansas (but not the states) offer a domestic partnership registry to unmarried couples, which permits couples to register their relationship for the purpose of gaining legal recognition by the city or county in which the registry is offered.

Domestic partnership registries may often assist same-sex couples with two basic rights: visitation in the hospitals under control of municipal ordinances and visitation in incarceration situations within facilities under municipal control. Other benefits of domestic partnership registries vary based on the jurisdiction in which the registry is offered.

In the workplace, domestic partnership plans typically allow an employee to take advantage of some employee benefits, such as health insurance for the employee’s partner and bereavement leave. Private employers may offer domestic partnership benefits to its employees even if the state, local or federal government bans recognition of marriage between persons of the same sex.

Does Missouri or Kansas offer domestic partner benefits for state employees?

No. Employee benefits for employees of the state are not extended to same-sex couples in Kansas or Missouri. At this time, despite Kansas Governor Sebelius’s and Missouri Governor Nixon’s executive orders prohibiting discrimination based on sexual orientation and gender identity of state employees, neither Kansas nor Missouri has extended domestic partner benefits to its employees.

Glossip v. Missouri Department of Transportation and Highway Patrol Employees’ Retirement System, brought with the help of the ACLU, is challenging the lack of survivor benefits for domestic partners of state employees in Missouri. Although Missouri offers survivor benefits to heterosexual spouses of state troopers who are killed in the line of duty, these benefits are not given to domestic partners.⁷⁶ The lawsuit argues that

the denial of these benefits violates the state constitution's guarantee of equal protection under the law. The district court denied relief, and the case is currently on appeal to the Missouri Supreme Court.

If a same-sex couple is registered with a city or county domestic partnership registry in Missouri or Kansas, does the state have to legally recognize the couple for purposes of employee benefits or state taxation?

No. Domestic partnership registries are only legally valid within the city or county in which they are offered for the limited purposes defined by the local domestic partnership registry law.

Are there any cities, towns or counties in Missouri and Kansas that extend legal recognition to same-sex couples?

Yes. Lawrence, Kansas, Clayton, Columbia, Kansas City, Olivette, St. Louis, University City and Jackson County, Missouri extend some form of legal recognition to same-sex couples through domestic partnership registries.⁷⁷

What legal benefit does a same-sex couple receive by registering with a domestic partnership registry?

Practically speaking, the domestic partnership registries in cities and counties in Kansas and Missouri are symbolic in effect and do not provide registered couples with many legal benefits. However, in addition to the political and philosophical significance of domestic partnership registries, the registries are valuable to couples that want to legally formalize their relationships. Proof of registration may also be helpful to couples whose employers offer domestic partnership benefits or in other contexts, such as hospital or jail visitation.

There may be additional legal benefits to individuals who are employed by a city or county that offers a domestic partnership registry. In Kansas City, Missouri, for example, city employees who register receive the same health insurance, sick and funeral leave benefits as married, straight employees.⁷⁸ In St. Louis, a city employee who registers does not receive health insurance benefits for his or her partner.

What types of domestic partnership benefits may private employers provide?

Private employers may provide domestic partners with any benefits they wish, which may include health insurance, family and medical leave, bereavement leave, equal pension benefits, relocation expenses or access to company facilities. Contact your employee benefits handbook or administrator to find out if your employer offers such benefits.

Are there any ways that a same-sex couple can legally protect their relationship and their assets, even though same-sex marriage is not recognized in Missouri and domestic partnership registries offer no practical legal benefits?

Yes. Wills, trusts and other estate planning documents can be created for same-sex couples that offer a variety of protections for the couple, their children and their assets. These documents may also provide protections to couples who wish to ensure that they can visit each other in the hospital if one of them is ill and may also give one partner the power to make financial and health care decisions for the other partner if the other partner can no longer make these types of decisions. Below are descriptions of the most commonly used legal documents that help protect the rights of same-sex couples. An attorney should be consulted to determine which of these documents are right for each person or couple and to ensure that the document includes the technical details required by law.

RELATIONSHIP AGREEMENT OR CONTRACT

A couple may enter into a written agreement that sets forth each person's financial and household obligations. Written agreements regarding property and finances should be respected and honored according to ordinary rules of contract law, although the Missouri and Kansas courts have not yet ruled on the subject.

DURABLE POWER OF ATTORNEY FOR FINANCIAL DECISIONS

A power of attorney is a document by which an individual (called the “principal”) gives another person (called the “agent”) the authority to make decisions on behalf of the person who granted the power. If a person grants such authority with a power of attorney document, the decision and actions of the agent that are within the authority spelled out in the power of attorney are legally binding on the principal.

Under Missouri and Kansas law and the laws of many other states, a power of attorney with proper wording may be “durable.” This means that the power granted by a person in his or her durable power of attorney lasts beyond the principal’s incapacity. A power of attorney does not survive after the death of the principal.

DURABLE POWER OF ATTORNEY FOR HEALTH CARE DECISIONS

A durable power of attorney for health care decisions is a legal document where a person can designate someone else to make health care decisions if he or she becomes unable to make such decisions for him or herself. Many people use a durable power of attorney for health care decisions to designate another person to serve as their agent for the purpose of making health care decisions when they are unable to do so. Like a durable power of attorney for financial decisions, a durable power of attorney for health care decisions lasts beyond the principal’s incapacity.⁷⁹ Again, a power of attorney does not survive after the death of the principal.

HEALTH CARE DIRECTIVE (LIVING WILL)

A health care directive, which is sometimes called a living will, is a document that sets forth a person’s wishes regarding medical care in case the person becomes incapacitated. Common issues addressed in a health care directive include when or if to withdraw life-sustaining nutrition or medical care when a person is in a vegetative state and “do not resuscitate” orders.

A WILL

A will is a legal document where a person designates how he or she wants his or her assets distributed after death. With a will, a person can have his or her assets distributed to a same-sex partner, friends, family members, organizations and practically anyone he or she wishes.

A LIVING TRUST

A living trust is a legal document where a person designates how he or she wants trust-held assets distributed upon death or even before death. One of the advantages of a living trust is that the trust does not need to be filed with the probate court to distribute assets upon the person’s death. Upon death, the trustee distributes the assets to the designated person(s) or organization(s). As with a will, a person can have his or her assets distributed to practically any person or organization with a living trust.

Another major difference between a living trust and a will is that a trust is “funded” (assets are titled in the name of and held in the trust) during a person’s lifetime. For example, a car held in a living trust is titled in the name of the trust (the “John Doe Living Trust”) rather than in the name of the individual (“John Doe”).

“TRANSFER ON DEATH” DESIGNATION

A transfer on death (or “TOD”) designation can be used with an automobile and assets such as stock certificates and permits automatic transfer of the property to a designated person or organization after a person dies. Such a transfer is immediate upon death and does not require a will, a trust or any filing with the probate court.⁸⁰ A benefit of a TOD designation is that the beneficiary does not have any legal rights to the property during the owner’s life.

“PAY ON DEATH” DESIGNATION

A pay on death (or “POD”) designation is used for assets such as bank accounts and permits the designated person to receive the assets immediately after the death of the owner of the account. Such a transfer is immediate upon death and does not require a will, trust or filing with the probate court.⁸¹ Like the beneficiary of a TOD designation, the beneficiary of the POD designation does not have any legal rights to the account while the owner of the account is still living.

BENEFICIARY DEEDS AND BENEFICIARY DESIGNATIONS

The owner of real estate can file a beneficiary deed with the county recorder of deeds office to transfer property to a beneficiary after the owner’s death. Also, a person can designate a beneficiary to receive the assets of a retirement plan or life insurance by filling out a beneficiary designation form with the institution that holds the plan or insurance. The federal Pension Protection Act became law in August 2006 and permits a non-spouse beneficiary to roll-over retirement benefits and to select the hardship distribution rules (if, of course, the non-spouse partner is named as the beneficiary).⁸²

JOINTLY TITLED PROPERTY

Couples can own real estate, automobiles and other titled property as “joint tenants with right of survivorship.” The benefit of joint tenancy is that the each person has a 100% ownership interest in the property and, upon death of one of the parties, the survivor retains 100% ownership of the property without the need for a will, trust or other estate planning document.

“Tenancy in common” is another way to title property. With tenancy in common, each member of the couple has a 50% ownership interest in the property. When one of the parties dies, the decedent’s 50% ownership interest will not automatically transfer to the survivor without some other estate planning document or beneficiary deed.

When purchasing automobiles, stock, real estate and other titled property as a couple, it is important to tell the real estate or sales agent and, if applicable, the title company whether the couple prefers to own the property as joint tenants or tenants in common. Joint tenancy is preferred by most same-sex couples.

Does a person need an attorney to get these documents?

Not necessarily, although the ACLU strongly suggests that every person hire an attorney to prepare most of these documents because there are many technical requirements that must be met in order for these documents to be enforceable by a court. Even one missing requirement could invalidate the entire document.

However, a pre-approved form of a durable power of attorney for health care decisions may be available through a person’s health care provider without the need for an attorney. Also, TOD and POD designations may be accomplished without an attorney by filling out paperwork that is available at most banks, at the Department of Motor Vehicles (for personal vehicles) or at the institution that holds the stock or other investments.

Do Missouri or Kansas laws prohibit transfer of property to a same-sex partner through the use of wills, trusts and other estate planning documents?

No. Even though each of these documents and designations can be challenged in court (which is also true for heterosexuals), if the documents are prepared properly, a person’s assets should be distributed according to his or her wishes.

What happens to a person’s assets if he or she dies without a will?

“Intestate” is the word that describes the status of a deceased person who dies without a will. Missouri and Kansas have statutes setting forth the distribution of a person’s assets when he or she dies without a will. Generally, the assets of a person who dies intestate are distributed to the surviving spouse, if any, and then to children and surviving parents, siblings and then down the bloodline to more distant relatives. Without a will or trust or other estate planning documents, a person’s assets will not automatically transfer to the surviving same-sex partner or transgender partner.

Does Missouri or Kansas permit distribution of assets to a person’s same-sex partner if he or she dies without a will or trust?

No. If a gay or lesbian person dies without a will or a trust or other estate planning documents (discussed above), his or her assets will not be distributed to his or her partner, but rather will be distributed according to Missouri or Kansas intestate laws. Intestate laws in both states dictate that a deceased person’s assets go to legal spouses, children and family members in percentages that are set forth in the intestate laws.⁸³

How can a person designate who will be in charge of his or her funeral and burial arrangements?

Generally, a person can use a durable power of attorney for health care decisions, combined with a health care directive, to designate the person who can make decisions regarding cremation and burial.

Until 2008, Missouri had a statute that set forth who has the right to control burial arrangements (“right of sepulcher”). According to the statute, if someone other than next-of-kin had been granted the right of sepulcher, the mortician or funeral director must first obtain written permission from the legal next-of-kin (in the following order: legally recognized spouse, adult child, parent, sibling).⁸⁴ As amended in 2008, the statute now allows same-sex partners of the deceased to receive the right of sepulcher.⁸⁵

In Kansas, a durable power of attorney for health care decisions is needed in order for one’s partner to authorize disposal of the decedent’s remains. In the absence of such a power, these decisions revert to the decedent’s legally recognized spouse, adult children, parents and next-of-kin, in that order.⁸⁶

If a same-sex couple separates, what is the legal status of these documents?

These documents remain in full force and effect even if a same-sex couple separates. An attorney should be consulted if a person wishes to revoke or change a will, trust or durable power of attorney. For TOD or POD designations, a person can contact the appropriate institution (e.g., the bank) to request a change in the designation.

IV. PARENTING

Can a gay or lesbian individual adopt a child in Missouri or Kansas?

Yes. The adoption laws of both Missouri and Kansas allow “any adult” to adopt a child, and no specific laws or court cases in either state prohibit adoption by gays and lesbians. The primary inquiry by courts who consider adoptions in Missouri or Kansas is whether the adoption is in the “best interests of the child.” A person’s sexual orientation does not render a person unfit to parent, a fact recognized by the American Academy of Pediatrics, the American Psychological Association, the American Academy of Family Physicians and the Child Welfare League of America, among many other professional organizations.

Can a gay or lesbian individual become a foster parent in Missouri or Kansas?

Yes. In *Johnston v. Dept. of Social Services*, with the help of the ACLU, a lesbian challenged a Missouri Department of Social Services’ ruling that she lacked reputable character to be a foster parent because she was a lesbian. A Jackson County circuit court held that sexual orientation is not a proper basis on which to deny a person’s foster parent application. Rather, the court must decide what is in the best interests of the child, regardless of sexual orientation. *cite?* The State of Missouri dropped its appeal of that decision, and soon thereafter the Missouri Department of Social Services changed its policy to permit qualified gays and lesbians to become foster parents.

In Kansas, the Department of Social and Rehabilitation Services places children with foster parents based on the “best interests of the child” and does not discriminate based on sexual orientation.

Can a same-sex couple adopt a child?

Yes. There are no specific laws or court cases in Missouri or Kansas that prohibit adoption by same-sex couples. The Missouri adoption statute allows “any adult” or a “person and spouse” to adopt, so a same-sex couple should be able to adopt a child together, as long as the adoption serves the best interest of the child. Kansas allows “any adult” or a “husband and wife jointly” to adopt. Same-sex couples have successfully adopted children in Missouri and Kansas, and more and more judges in these states are recognizing that sexual orientation is irrelevant to good parenting and the best interests of children.

Can a partner in a same-sex relationship adopt the other partner’s biological child in a “second-parent adoption”?

Yes. A “second-parent adoption” provides the equivalent of a stepparent adoption to gay and lesbian couples and allows both people to become the legal parents of the children they raise together. There are no statutes or reported cases in either Missouri or Kansas that expressly prohibit second-parent adoptions by gays or lesbians.

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

CO-PARENTING AGREEMENT

This is an agreement setting out the parents’ expectations about each other’s roles and their plans in the event of separation, disability or death. The law in this area is changing rapidly. At the very least, co-parenting agreements are important indicators of what the couple believes is in the best interests of the child and may be persuasive to a court. While the enforceability of such agreements is unclear in Missouri, the Kansas Supreme Court, in a case in which the ACLU submitted a friend of the court brief, recently held that co-parenting agreements between same sex partners do not violate public policy and are enforceable if such enforcement would be in the best interests of the children.⁸⁷

WILLS

In a will, the legal parent may nominate a guardian of the child upon the parent's death. These wishes are given strong preferences by the courts. Of course, if the child has another legal parent living, that person would have priority over the nominated guardian.⁸⁸

POWER OF ATTORNEY

This document is signed by the biological parent and authorizes another person (the "attorney in fact") to make medical, financial and educational decisions for the child. The power of attorney must be renewed on an annual basis.⁸⁹

Can a person lose custody or visitation rights with his or her child because of his or her sexual orientation?

Maybe. In Missouri and Kansas, the primary factor in custody and visitation determinations is the "best interests of the child."⁹⁰ Under current law, a court should consider sexual orientation in the same way a court considers any other personal characteristic or behavior. For example, a court should not consider the fact that one parent drinks alcohol unless the court determines that the child's best interest is harmed by that parent's alcohol use (such as behavior problems, trouble in school or emotional problems that are related to the parent's alcohol use). Thus, a parent's sexual orientation, without a showing of harm to the child, should not prevent that parent from having custody of his or her child.

Can a person's ex-spouse use sexual orientation to prevent the person from getting custody of his or her child?

Yes. However, as discussed above, the court must consider the best interest of the child and should not consider a parent's sexual orientation in a custody case unless there is proof of harm to the child as a result of the parent's sexual orientation. For example, in one Missouri case, a child was residing with a former "domestic partner" of the mother at the time the marriage of the mother and father was dissolved. The court awarded custody of the child to the former domestic partner without any discussion of the same-sex relationship between the mother and the partner.⁹¹

Can a court prevent a person's gay or lesbian partner from spending time with the person's biological children?

Yes, but only if the best interest of the child is harmed as a result of the relationship between the partner and the child. The Missouri Supreme Court has ruled that a parent's gay or lesbian partner cannot be excluded from spending time with his or her partner's biological child without a showing of harm to the child.⁹²

Can a court consider other people's prejudice towards LGBT people when a court is determining whether a parent's sexual orientation is harmful to a child?

Maybe. Courts should not base a custody or visitation decision on the homophobia of others, although courts sometimes look at factors such as social acceptance in a community when evaluating the best interest of the child. Issues such as whether the child will be made fun of at school because the child's parents are gay are based on speculation and should not be considered by the court. As with all custody and visitation cases, an attorney should be consulted to find the best way to prove to the court that LGBT people can and do raise healthy, well-adjusted children in loving homes and supportive communities.

When a gay or lesbian couple separates, can the non-biological parent have visitation rights with the children of the former partner?

Possibly. At least one Missouri court has applied the equitable parent doctrine to a case involving a lesbian couple, which resulted in custody and visitation rights for the non-biological parent.⁹³ The court in that case found that the non-biological parent was an equitable parent after helping raise the child for two years with the consent of the biological mother. The court further found that lesbian and gay people are not *per se* unfit to parent; rather, their sexual orientation is merely one factor to consider, and sexual orientation cannot, standing alone, be a permissible basis for the denial of custody or visitation.⁹⁴

In a recent Missouri case, a court ruled that that a lesbian co-parent's attempt to establish legal ties with the child born to her former partner could not be entertained on the merits under Missouri's family law statutes and case law, and that she also could not seek financial support from her former partner for the child whom she bore during their relationship. The court noted but never mentioned any significance of the fact that both children were conceived with sperm from the same anonymous donor, and thus they are biologically half-siblings. Nor did the court articulate why the decision was in the best interests of the child. Instead, the court ruled that the lesbian co-parent did not have standing to assert the claims.⁹⁵

There are no reported cases in Kansas that address this issue.

V. VIOLENCE AGAINST LGBT PEOPLE

What is domestic violence/assault/abuse?

In Missouri, domestic assault occurs when a person causes or attempts to cause physical injury to a family or household member or an adult who is or has been in a continuing social relationship of a romantic or intimate nature with the actor. In addition, domestic assault occurs when a person knowingly attempts to cause or causes the isolation of such family or household member by unreasonably and substantially restricting or limiting such family or household member's access to other persons, telecommunication devices or transportation for the purpose of isolation.⁹⁶

In Kansas, domestic "abuse" means the occurrence of one of the following acts between intimate partners or household members: (a) intentionally attempting to cause bodily injury, or intentionally or recklessly cause bodily injury; (b) intentionally placing, by physical threat, another in fear of imminent bodily injury; or (c) engaging in any of the following acts with a minor under 16 years of age who is not the spouse of the offender: (1) The act of sexual intercourse; or (2) any lewd fondling or touching of the person of either the minor or the offender, done or submitted to with the intent to arouse or to satisfy the sexual desires of either the minor or the offender, or both.⁹⁷ "Intimate partners or household members" means persons who are or have been in a dating relationship, who reside or have resided together or who have had a child in common.⁹⁸

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

Yes. In Missouri, the domestic assault statutes apply to "family" or "household member" which includes spouses, former spouses, adults related by blood or marriage, adults who are presently residing together or have resided together in the past, an adult who is or has been in a continuing social relationship of a romantic or intimate nature with the victim and adults who have a child in common, regardless of whether they have been married or have resided together at any time.⁹⁹

In Kansas, the law applies to "intimate partners or household members." This includes persons who are or have been in a dating relationship (of a social or romantic nature), persons who reside together or who have formerly resided together and persons who have had a child in common.¹⁰⁰

Does the State of Missouri or Kansas protect gays and lesbians with hate crimes laws?

Yes. Under Missouri law, certain crimes that are knowingly motivated by sexual orientation are subject to enhanced penalties.¹⁰¹ In Kansas, enhanced penalties are imposed when certain offenses are motivated entirely or in part by the defendant's belief or perception of the sexual orientation of the victim, whether or not the defendant's belief or perception was correct.¹⁰²

Does Missouri or Kansas have a hate crimes law that protects transgender individuals?

Yes, in Missouri. The Missouri hate crimes law explicitly includes gender identity-motivated crimes under its broad definition of sexual orientation. Sexual orientation is defined as a "male or female heterosexuality, homosexuality, bisexuality by inclination, practice, identity or expression, or having a self-image or identity not traditionally associated with one's gender."¹⁰³

The Kansas hate crimes law does not explicitly address gender identity-based violence.

Does the federal hate crimes act protect gays and lesbians?

The Hate Crimes Sentencing Enhancement Act requires the U.S. Sentencing Commission to increase the penalties for hate crimes committed on the basis of the actual or perceived sexual orientation of any person.¹⁰⁴

In October 2009, the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act was passed. The act expands existing law to include hate crimes motivated by a victim's actual or perceived gender, sexual orientation, gender identity or disability.¹⁰⁵

Does Missouri or Kansas have an enforceable “sodomy” law that criminalizes private consensual sex between adults of the same sex?

No. In *Lawrence v. Texas*,¹⁰⁶ the United States Supreme Court in 2003 found that the due process clause of the United States Constitution prohibits the criminalization of private consensual sex between adults of the same sex. Missouri formally repealed its criminal sodomy statute in 2006, but the Kansas law, although unconstitutional, technically remains on the books.¹⁰⁷

Can the state punish LGBT criminals more harshly than straight criminals?

No. In *State v. Limon*,¹⁰⁸ a case handled by the ACLU, a male minor convicted of statutory rape of another male minor sought to be sentenced under the Kansas "Romeo and Juliet" statute, which significantly decreased the penalty of the crime if the offender was less than 19 and the victim was 14 or 15. However, the statute provided for a decreased penalty only if the victim and offender were "members of the opposite sex." The Kansas Supreme Court declared the statute unconstitutional under equal protection grounds. Thus, the penalty was decreased to be the same as if the offender and victim were of the opposite sex (13-15 months vs. 206 months).

LGBT RIGHTS ORGANIZATIONS

American Civil Liberties Union (ACLU)

ACLU of Kansas and Western Missouri
3601 Main
Kansas City, MO 64111
(816) 756-3113, ext. 236
www.aclukswmo.org

ACLU of Eastern Missouri
454 Whittier Avenue
St. Louis, MO 63108
(314) 652-3111
www.aclu-em.org

ACLU LGBT and AIDS Project
125 Broad Street
New York, NY 10004
(212) 549-2627
www.aclu.org

PROMO

3701 Lindell Blvd.
St. Louis, MO 63108
(314) 862-4900
www.promoonline.org

PROMO Springfield
P.O. Box 2722
Springfield, MO 65801
(417) 291-6569

Kansas Equality Coalition

6505 E. Central PMB 219
Wichita, Kansas 67206
(316) 260-4863
www.kansasequalitycoalition.org

The LIKEME Lighthouse

3909 Main Street
Kansas City, MO
(816) 753 – 7770
likemelighthouse.org

Lesbian and Gay Community Center of Greater Kansas City (LGCKKC)

(816) 931-4420
www.lgckkc.org

Kansas City Lesbian Gay and Allied Lawyers ("KC LEGAL")

1201 Walnut Street, Suite 2900
Kansas City, MO 64106-2150
www.kclegal.net

Human Rights Campaign (HRC)

1640 Rhode Island Avenue NW
Washington, D.C. 20036
(202) 628-4160
www.hrc.org

HRC Kansas City Steering Committee
<http://kansascity.hrc.org/>

HRC St. Louis Steering Committee
<http://stlouis.hrc.org/>

Gay and Lesbian Alliance Against Defamation (GLAAD)

104 West 29th Street, 4th Floor
New York, NY 10001
(212) 629-3322
www.glaad.org

Gay, Lesbian and Straight Education Network (GLSEN)

GLSEN Kansas City
P. O. Box 2655
Mission, Kansas 66201
(913) 608-4528
www.glsen.org/kansascity

GLSEN

90 Broad Street, 2nd Floor
New York, NY 10004
(212) 727-0135
www.glsen.org

Midwest Alternative Families Alliance (MAFA)

P.O. Box 6752
Leawood, KS 66206-9998
www.kcmafa.org

EQUAL Youth Center – Kansas City

Support@ EQUALCenter.org
www.EQUALCenter.org

**SAGE Metro St. Louis - Services & Advocacy for
Gay, Lesbian, Bisexual, & Transgender Elders**
Tower Grove Manor, Suite 109
2710 South Grand Blvd.
St. Louis, MO 63118
(314) 772-5887
www.sagemetrostl.org

Kansas City Anti-Violence Project
P.O. Box 411211
Kansas City, MO 64141-1211
(816) 561-0550
www.kcavp.org

**Parents and Friends of Lesbians and Gays –
Kansas City(PFLAG-KC)**
P.O. Box 414101
Kansas City, MO 64141-4101
(816) 765-9818
www.pflagkc.org

PFLAG Mid-Missouri
(573) 864-1431
pflag.missouri.org

KC PRIDE Democratic Club
P.O. Box 5863
Kansas City, MO 64171
(816) 531-3570
www.kcpridedemocrats.com

Gay and Lesbian Victory Fund
1133 15th Street NW, Suite 350
Washington, DC 20005
(202) VICTORY
www.victoryfund.org

National Center for Transgender Equality
1325 Massachusetts Avenue NW, Suite 700
Washington, DC 20005
(202) 903-0112
www.transequality.org

National Gay and Lesbian Task Force
1325 Massachusetts Avenue NW, Suite 600
Washington, D.C. 20005
(202) 393-5177
www.thetaskforce.org

Lambda Legal Defense and Education Fund
120 Wall Street, 19th Floor
New York, NY 10005-3904
(212) 809-8585
www.lambdalegal.org

National Center for Lesbian Rights
870 Market Street, Suite 370
San Francisco, CA 94102
(415) 392-6257
www.nclrights.org

Servicemembers Legal Defense Network
P.O. Box 65301
Washington, DC 20035-5301
(202) 328-3244
www.sldn.org

Four Freedoms Democratic Club
www.fourfreedoms.org

ENDNOTES

¹MO. REV. STAT. § 213.030 (2004) (defining “discrimination” as any unfair treatment based on race, color, religion, national origin, ancestry, sex, age as it relates to employment, disability, or familial status as it relates to housing); MO. REV. STAT. § 213.040 (2004) (housing); MO. REV. STAT. § 213.045 (2004) (commercial real estate loans); MO. REV. STAT. § 213.050 (2004) (selling or renting by real estate agencies); MO. REV. STAT. § 213.055 (2004) (employment); MO. REV. STAT. § 213.065 (2004) (public accommodations); KAN. STAT. ANN. § 44-1001 (2003) (“The practice or policy of discrimination against individuals in employment relations, in relation to free and public accommodations, in housing by reason of race, religion, color, sex, disability, national origin, or ancestry or in housing by reason of familial status is a matter of concern to the state.”); KAN. STAT. ANN. § 44-1009 (2003) (employment and public accommodation); KAN. STAT. ANN. § 44-1016 (2003) (housing); KAN. STAT. ANN. § 44-1016 (2003) (real estate sales or rental).

²*See, e.g.* S.B. 266, 94th Gen. Assemb., 1st Reg. Sess (Mo. 2007); S.B. 163, 80th Sess. (Kan. 2007); SB 169, 82th Sess. (Kan. 2009).

³Kan. Exec. Order No. 07-24 (2007).

⁴Mo. Exec. Order No. 10-24 (2010).

⁵H.R. 2015, 110th Cong. (2007). A version of ENDA that covered “sexual orientation” but not “gender identity” passed the House on November 7, 2007. *See* H.R. 3685 (2007).

⁶City of Clayton, Mo., Code of Ordinances, tit. II, ch. 225.

⁷Columbia, Mo., Code of Ordinances, §§ 12-32 (definition of protected category), 12-34 (employment), 19-159 (city employees) and 19-176 (general policy).

⁸City of Creve Coeur, Mo., Municipal Code, tit. II, ch. 230.

⁹Ferguson, Mo., Code of Ordinances, pt. II, ch. 21.

¹⁰Kansas City, Mo., Code of Ordinances, §§ 38-132 (employment); 38-133 (housing); 38-134 (commercial real estate loans); 38-135 (brokerage services); and 38-137 (public accommodations).

¹¹Kirkville, Mo., Code of Ordinances, art. II, ch. 13, § 13-8.

¹²Kirkwood Human Rights Commission. “2012 Annual Report.” Retrieved from
<<http://www.kirkwoodmo.org/mm/files/HumanRights/Human%20Rights%20Commission%20Annual%20Report%202012.pdf>>

¹³Maplewood, Mo., Code of Ordinances, §30-1 – 30-26.

¹⁴Olivette, Mo., Code of Ordinances, tit. II, ch. 225, art. I.

¹⁵Richmond Heights, Missouri Code of Ordinances Title II, Chapter 235, article III.

¹⁶City of St. Louis, Mo., Code of Ordinances, §§ 3.44.080, 3.59.030 and 15.19.010.

¹⁷University City, Mo., Code of Ordinances, tit. 9, §§ 9.08.250 (hate crimes); 9.08.260 (housing); 9.08.270 (public accommodations); and 9.08.280 (employment).

¹⁸City of Lawrence, Kan., Code of Ordinances, ch. X, art. 1, § 10-101.

¹⁹City of Lawrence, Kan., Code of the City of Lawrence, ch. X art. 1, § 10-101 (provides fair housing and equal opportunity without regard to race, sex religion, color, national origin, ancestry, age, familial status, disability or sexual orientation in housing sales, rentals and financing and their terms and conditions).

²⁰Jackson County, Mo., Constitutional Home Rule Charter, art. 9, § 6.

²¹“An Ordinance Amending SLCRO 1974 As Amended By Repealing and Re-Enacting Sections 107.146, 202.270, 717.010, 717.020, 717.030, 717.040, 717.050, 717.056, 718.020, 722.040 and 722.050 Pertaining to Discrimination by County Contractors or in Connection with Housing or Public Accommodations or County Employment or Hate Crimes” (Bill No. 279, 2012). Journal of the County Council, St. Louis County, Missouri. 27 November 2012, p. 35. Retrieved from:
<http://www.stlouisco.com/YourGovernment/CountyCouncil/CurrentCouncilJournal>

²²A “public accommodation” is generally defined as a business establishment that provides lodging, food, entertainment or other services and is open to the public. “Public accommodation discrimination” occurs when an establishment that is open to the public treats some of its customers differently than others based on the customer’s race, color, religion, national origin, sex, ancestry or disability.

²³MO. REV. STAT. § 213.065 (2004); KAN. STAT. ANN. § 44-1009 (2003).

²⁴15 U.S.C. § 1691, et seq. (1994 & Supp. IV 1999).

²⁵*Markham v. Colonial Mortg. Serv. Co.*, 605 F.2d 566 (D.C. Cir. 1979).

²⁶*Rosa v. Park West Bank & Trust Co.*, 214 F. 3d 213 (1st Cir. 2000).

²⁷Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity, 77.23 FR 5662 (2012-02-03).

²⁸*Id.*

²⁹http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/LGBT_Housing_Discrimination

³⁰*Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75 (1998).

³¹*Id.*; see also *Tanner v. Prima Donna Resorts, Inc.*, 919 F. Supp. 351 (D. Nev. 1996); *Vandeventer v. Wabash Nat’l Corp.*, 887 F. Supp. 1178, 1180 (N.D. Ind. 1995).

³²*Macy v. Holder*, Appeal No. 0120120821 (U.S. Equal Employment Opportunity Commission, Apr. 20, 2012).

³³*Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989); *Schwenk v. Hartford*, 204 F.3d 1187, 1202 (9th Cir. 2000); *Smith v. City of Salem*, 378 F.3d 566, 572 (6th Cir. 2004); *Glenn v. Brumby*, 663 F.3d 1312, 1316 (11th Cir. 2011).

³⁴*Macy v. Holder*, (2012) 2012 WL 1435995 (E.E.O.C.).

³⁵*Id.*

³⁶10 U.S.C.A § 654 (repealed Dec. 22, 2011).

³⁷Hunter et al., *The Rights of Lesbians and Gay Men, Bisexuals, and Transgender People, An American Civil Liberties Union Handbook*, 4th Edition, Southern Illinois University Press, 2004, pp. 48-50.

³⁸Clifford L. Stanley, *Repeal of Don't Ask, Don't Tell and future impact on policy*. Memorandum for Secretaries of the Military Departments (Jan. 28, 2011). Retrieved from <http://www.defense.gov/home/features/2010/0610_dadt/USD-PR-DADT_28Jan11.pdf>

³⁹42 U.S.C. § 12101, 12211 (1994 and Supp. III 1997); *Bragdon v. Abbott*, 524 U.S. 624 (1998).

⁴⁰42 U.S.C. § 12211 (a) and (b)(1) (2007).

⁴¹*See generally* KAN. STAT. ANN. § 72-1107 or 72-1046 (2004).

⁴²Mo. Const. art. IX, § 1(a) (amended 1976); KAN. STAT. ANN. § 72-1046 (2003).

⁴³*Fricke v. Lynch*, 491 F. Supp. 381 (D.R.I. 1980) (federal district court in Rhode Island ruling that a student's choice of a date is a form of expression protected by the First Amendment). Although this case is not binding in Kansas or Missouri, no other court in the country has questioned the federal court decision.

⁴⁴20 U.S.C. §§ 4071-74 (2004); *see also* *Christian Legal Soc. Chapter of the Univ. of California, Hastings Coll. of the Law v. Martinez*, 130 S. Ct. 2971 (2010) (upholding a state law school "all comers" antidiscrimination policy to not recognize a student group that does not accept members who do not share the groups core beliefs about religion and sexual orientation).

⁴⁵*Pickering v. Board of Educ.*, 391 U.S. 563 (1968).

⁴⁶Hunter et al., *The Rights of Lesbians and Gay Men, Bisexuals, and Transgender People, An American Civil Liberties Union Handbook*, 4th Edition, Southern Illinois University Press, 2004, pp. 41-42.

⁴⁷H.B. 2051, 96th Gen. Assem., 2nd Sess. (Mo. 2012).

⁴⁸Truman State University, Code of Policies of the Board of Governors, § 17.020

⁴⁹H.B. 582, 95th Gen. Assem. (Mo. 2009); S.B. 539, 94th Gen. Assem. (Mo. 2007).

⁵⁰Kan Stat. Ann. § 72-8256 (2007).

⁵¹MO. REV. STAT. § 451.022 (2004); Mo. Const. Art. I, Sec. 33; KAN. STAT. ANN. § 23-101 (2003); Kan. Const. art. 15, § 16.

⁵²Mo. Const. art. I, § 33.

⁵³Kan. Const. art. 15, § 16.

⁵⁴DOMA provides that no state must “recognize or give effect to any public act, record, or judicial proceeding of any other state respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State . . . or a right or claim arising from such relationship.” 28 U.S.C. § 1738C.

⁵⁵28 U.S.C. § 1738C.

⁵⁶Memorandum on Federal Benefits and Non-Discrimination 74 Fed. Reg. 29393 (June 17, 2009).

⁵⁷See S. 1102, 111th Cong. (2009); H.R. 2517, 111th Cong. (2009).

⁵⁸“Defense of Marriage Act”. United States Government Printing Office. September 21, 1996.

⁵⁹*Statement of the Attorney General on Litigation Involving the Defense of Marriage Act*, February 23, 2011.

⁶⁰The Respect for Marriage Act, H.R. 1116, S. 598 (2011).

⁶¹MO. REV. STAT. § 451.022 (2004); KAN. STAT. ANN. § 23-101.

⁶²*In re Estate of Gardiner*, 42 P.3d 120 (Kan. 2002).

⁶³*Goodridge v. Dept. of Public Health*, 798 N.E.2d 941 (Mass. 2003).

⁶⁴*Kerrigan v. Comm’r of Public Health*, 957 A.2d 407 (Conn. 2008); *Varnum v. Brien*, 763 N.W.2d 862, No. 07-1499 (Iowa 2009); *In re Marriage Cases*, 183 P.3d 384 (Cal. 2008).

⁶⁵Prop. 8 § 2, November 5, 2005 (now Cal. Const. art. I § 7.5); *Perry v. Schwarzenegger*, 704 F. Supp. 2d 921 (N.D. Cal. 2010).

⁶⁶*Perry v. Brown*, 671 F.3d 1052 (9th Cir. 2012).

⁶⁷VT. STAT. ANN. Tit. 15, § 8 (2009).

⁶⁸Me. Law 82 (2009) (enacting ME. REV. STAT. ANN. tit. 19-A § 650-A); N.H. REV. STAT. ANN. § 457:1-a (2009).

⁶⁹ Maine Same-Sex Marriage Question, Question 1 (2012).

⁷⁰ D.C. Code § 46-405.01 (2009).

⁷¹ New York Dom. Rel. Law § 10, 11, 13 (2011).

⁷² Wash. Leg. Serv. Referendum 74 (REF. 74) (2012) (enacted); Maryland Question 6 (2012) (enacted).

⁷³ Defense of Marriage Act, PL 104-199, September 21, 1996, 110 Stat 241.

⁷⁴ MO. REV. STAT. § 451.022 (2004); Mo. Const. art. I, § 33; KAN. STAT. ANN. § 23-101 (2003); Kan. Const. art. 15, § 16.

⁷⁵ *In re Estate of Gardiner*, 42 P.3d 120 (Kan. 2002); *Driscoll v. Driscoll*, 552 P.2d 629 (Kan. 1976); *State v. Johnson*, 532 P.2d 1325 (Kan. 1975).

⁷⁶ “*Glossip v. Missouri Department of Transportation and Highway Patrol Employees' Retirement System*” (2012, November 8). *American Civil Liberties Union*. Retrieved from <http://www.aclu.org/lgbt-rights/glossip-v-missouri-department-transportation-and-highway-patrol-employees-retirement-sys>

⁷⁷ See Columbia, Mo., Code of Ordinances, 12-70A et seq.; St. Louis, Mo., City Code of Ordinances §§ 8.37.010 to 8.37.080 (adopted June 19, 1998); Kansas City, Mo., Ordinance No. 031027 (adopted September 11, 2003); Clayton, Mo., Code of Ordinances, tit. II, § 225.200 - § 225.220; Olivette, Mo., Code of Ordinances, tit. II, §245.010 - §225.090; University City, Mo., Code of Ordinances, tit. III, §3.01.010; Kansas Attorney General Opinion No. 2007-9 (April 6, 2007) (“Arguably, the registry proposed in the City of Lawrence's ordinance is simply a list of names of unmarried couples, including same-sex couples. Some may register simply to make a statement that they are legally committed to each other. Others may register in order to obtain employment benefits bestowed by private organizations that extend such rights . . .”).

⁷⁸ Kansas City, Mo., Ordinance Nos. 030954 and 030955 (August 28, 2003) amended Administrative Code of Kansas City, Mo., Code § 2-1100 and § 2-1101, which relates to sick leave and funeral policies, to cover domestic partners. Health benefits became available to “domestic partners” of city employees on May 4, 2004 pursuant to an ordinance adopted by the City Council, Ord. No. 070480, amending Administrative Code of Kansas City, Missouri § 2-1118.

⁷⁹ MO. REV. STAT. §§ 404.800 to 404.865 (2003); KAN. STAT. ANN. §§ 58-625; 58-629; 58-632 (2003).

⁸⁰ MO. REV. STAT. §§ 461.003 to 461.081 (2003); KAN. STAT. ANN. § 59-3501 (2003) (real estate); KAN. STAT. ANN. § 59-3509 (2003) (vehicles); KAN. STAT. ANN. § 59-3513 (2003).

⁸¹ MO. REV. STAT. § 362.471 (2004); KAN. STAT. ANN. § 9-1215 (2002).

⁸² Pension Protection Act of 2006, PL 109-280, August 17, 2006, 120 Stat 780.

⁸³ MO. REV. STAT. § 474.010 (2004); KAN. STAT. ANN. § 59-514 (2003).

⁸⁴ MO. REV. STAT. § 194.119 (2003).

⁸⁵ MO. REV. STAT. § 194.119 (2003), as amended by S.B. 778, 94th Gen. Assemb. (2008) and S.B. 1139, 94th Gen. Assemb. (2008).

⁸⁶ KAN. STAT. ANN. § 65-1734 (2003).

⁸⁷ *Frazier v. Goudschaal*, 2013 Kan. LEXIS 83 (Feb. 22, 2013).

⁸⁸ *Second Parent Adoption: What to Do if Second-Parent Adoption is Unavailable and What are the Alternatives to Second-Parent Adoption?* [HRC.org, http://www.hrc.org/resources/entry/second-parent-adoption](http://www.hrc.org/resources/entry/second-parent-adoption) (last visited April 30, 2010).

⁸⁹ MO. REV. STAT. §§ 404.800 to 404.865 (2004); KAN. STAT. ANN. §§ 58-632; 58-625; 58-629 (2003).

⁹⁰ MO. REV. STAT. § 452.375.2 (2003); KAN. STAT. ANN. § 60-1610(a)(3) (2003).

⁹¹ *Scott v. Scott*, 147 S.W.3rd 887 (Mo. Ct. App. 2004).

⁹² *J.A.D. v. F.J.D.*, 978 S.W.2d 336 (Mo. banc 1998).

⁹³ *In re the Matter of T.L.*, 1996 WL 393521 (Mo. Cir. Ct. May 7, 1996).

⁹⁴ *Id.*

⁹⁵ *White v. White*, 293 S.W.3d 1, 6 (Mo. Ct. App. 2009).

⁹⁶ MO. REV. STAT. §§ 565.072 to 565.074 and § 455.101 (2003).

⁹⁷ KAN. STAT. ANN. § 60-3102 (2003).

⁹⁸ *Id.*

⁹⁹ MO. REV. STAT. §§ 565.072 to 565.074 and § 455.010 (2003).

¹⁰⁰ KAN. STAT. ANN. § 60-3102 (2003).

¹⁰¹ MO. REV. STAT. § 557.035 (2003).

¹⁰² KAN. STAT. ANN. § 21-4716 (2003).

¹⁰³ MO. REV. STAT. § 557.035 (2003).

¹⁰⁴ 28 U.S.C. § 994.

¹⁰⁵ 18 U.S.C. § 249.

¹⁰⁶*Lawrence v. Texas*, 539 U.S. 558 (2003).

¹⁰⁷KAN. STAT. ANN. § 21-5504 (2003); MO. REV. STAT. § 566.090 (2003).

¹⁰⁸*State v. Limon*, 122 P.3d 22 (Kan. 2005).



3601 Main
Kansas City, MO 64111
p: (816) 756-3113
www.aclukswmo.org