



Sexual Orientation: Developments in the Law and Issues for the Courts

**Prepared at Seattle University School of Law
for the Washington State
Gender and Justice Commission**

*From Gay Marriage to Domestic Violence to Hate Crimes:
What You Need to Know About the
Cases Coming to Your Court*

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Second Edition Edited by:

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I. Preface

A. Preface to Second Edition

Since the publication of the first edition of this benchguide in 2004, Washington State has seen significant changes in the law as it affects gay, lesbian, bisexual and transgendered (“GLBT”) persons. The state legislature has added sexual orientation as a protected against discrimination in employment and housing. Although our Supreme Court has held that same-sex couples do not have a right to marry under state constitution, the legislature has created a state-wide domestic partnership registry, which provides same-sex couples with some, but not all, of the rights afforded to married couples. The Supreme Court affirmed the doctrine of de facto parentage articulated by the Court of Appeals, and suggested that it is finally time to set aside the pejorative term “meretricious relationship” when dividing property between unmarried couples, suggesting that we call those relationships what they are – “committed intimate relationships.”

This second edition leaves in tact the hard work of the original authors and contributors, while attempting to reflect the changes mentioned above. As the law is a work in progress, so is this benchguide, and it will undoubtedly require further updates as the law changes. It is my hope that the second edition continues to provide Washington’s judges with a point of reference for the particular ways that the law touches the lives of GLBT persons in their courtrooms.

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E. Ross Farr

Editor, Second Edition

B. Introduction

As our society becomes increasingly aware of the existence and needs of gay, lesbian, bisexual, and transgendered (“GLBT”) persons, there inevitably will be more “openly” GLBT people and issues within our courts. See, e.g., Jill Schaachner Chanen, *The Changing Face of Gay Legal Issues*, AMERICAN BAR ASSOCIATION JOURNAL, July 2004, at 47. These developments serve to challenge each judicial officer to become familiar with the current state of the law and to maintain a forum that is free of bias.

A 2001 California study by the Judicial Council’s Access and Fairness Advisory Committee found that 56% of gay and lesbian court users observed or experienced a negative comment or action, particularly when sexual orientation was at issue. See Judicial Council of California, *Sexual Orientation Fairness in the California Courts*, Jan. 2001, at 3-4. One in five California court employees of all sexual orientations heard “derogatory terms, ridicule, snickering or jokes about gay men and lesbians in open court, with the comments being made most frequently by judges, lawyers, or court employees.” Id. at 4. This percentage increased in situations other than open court. Id. at 6.

As we all know, reaching the lawful decision in a case is not enough to offset any perception of bias. Rather, litigants and parties want to experience our courts as a place where they are heard and are treated with respect and dignity. We also know that racial minorities and women still experience bias in the justice system even though it is not always obvious.

In the spirit of promoting fair and equal justice this Handbook is offered as a tool to familiarize judges with the current state of the law affecting GLBT individuals.

C. Terminology

Language in the courtroom is of utmost importance in assuring a fair and impartial tribunal for all citizens. Pejorative terms can immediately indicate ignorance, disrespect, or even bias on the part of a judge, lawyer, or litigant. In the area of sexual orientation, many people may have questions about the appropriate terms to use to describe persons or issues. Accordingly, this section is designed to develop an awareness of various terms so that oral rulings and written decisions do not communicate an unintended message.

1. National Lesbian and Gay Journalists Association Stylebook Supplement as Guide for Terminology and Usage.
 - a) We offer a terminology stylebook (**Appendix A**) as a guideline for modern usage of language relating to gay, lesbian, bisexual, and transgender/transsexual people. The terminology is compiled by and used with permission from the National Lesbian and Gay Journalists Association. The style sheet is also used by the American Medical Association.

- b) The language associated with GLBT people is constantly evolving. Indeed, within GLBT communities, there has been reclamation of various words formerly used pejoratively against GLBTs. For example, many youth and younger GLBTs use “queer” as a positive term. Moreover, some words that might be offensive if used by persons outside a community are used as positive terms by “insiders” in that community. Some members of the lesbian population use the word “dyke” as a respectful label, for instance.
- c) Now considered clinical, antiquated and somewhat offensive is the use of the word “homosexual” or the description of a GLBT as being an “avowed” or “practicing homosexual.” Please refer to the style sheet for more examples and appropriate terms.
- d) This handbook uses GLBT because it is the most widely used, all inclusive terminology to describe those of non-heterosexual sexual orientations, and because it includes transgendered persons in the GLB community.
- e) Please see Section VI for additional notes on terminology relating to transgendered/transsexual persons.

D. Court Rules and Professional Responsibility

1. Washington’s Rules of Professional Conduct prohibit a lawyer from discriminating on the basis of sexual orientation in connection with the lawyer’s professional activities. In addition, some court rules explicitly forbid bias and prejudice by judges, attorneys, witnesses, litigants, jurors, or court personnel toward another on the basis of sexual orientation.
2. Washington Rules of Professional Conduct- Rule 8.4 (2006):

“Misconduct: It is professional misconduct for a lawyer to: . . . (g) commit a discriminatory act prohibited by state law on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation, or marital status, where the act of discrimination is committed in connection with the lawyer’s professional activities . . .”
3. Federal Court Rules

“Rules of the United States District Court for the Western District of Washington—General Rules—Rule 9: Prohibition of bias. Litigation, inside and outside the courtroom in the United States District Court for the Western District of Washington, must be free from prejudice and bias in any form. Fair and equal treatment must be accorded all courtroom participants, whether judges, attorneys, witnesses, litigants, jurors, or court personnel. The duty to be respectful of others includes the responsibility to avoid comment or behavior that can reasonably be interpreted as manifesting prejudice or bias toward another on the basis of categories such as gender, race, ethnicity, religion, disability, age, or sexual orientation. (Adopted effective September 30, 1994; amended effective July 1, 1997.)”

4. Example of Local Rules (Superior Court for Jefferson County)
 - a) Guardian Ad Litem Rules—GALR 1.9. Code of Conduct—Title 11
Guardian Ad Litem. 1.9.7. “The guardian ad litem shall treat the parties with respect, courtesy, fairness, and good faith regardless of race, color, creed, religion, national origin, cultural heritage, gender, age, education, economic status, marital status, sexual orientation, or disability.”
 - b) Guardian Ad Litem Rules—LGALR 1.10. Code of Conduct—Title 26
Guardian Ad Litem. 1.10.7. “The guardian ad litem shall treat the parties with respect, courtesy, fairness, and good faith regardless of race, color, religion, national origin, cultural heritage, gender, age, education, economic status, sexual orientation, or disability.”

E. Demographics

1. Introduction

There are same-sex couples in every county in Washington. In the 2000 census, couples were allowed to identify as same-sex or opposite-sex unmarried partners. MARTIN O’CONNEL, TAVIA SIMMONS, U.S. DEP’T OF COMMERCE, MARRIED-COUPLE AND UNMARRIED PARTNER HOUSEHOLDS: CENSUS 2000 SPECIAL REPORTS 1-3 (2003). This is the first counting of GLBT people in the U.S. Census.

2. Limitations and Undercounting

There is not a complete count of all married or unmarried partners, but of couples where one person was the householder. Id. at 2. The most obvious undercounting of the GLBT population is that not all GLBTs are in a relationship they would characterize as “unmarried partners.” Undercounted GLBT’s include single GLBTs, couples who have not reached that level of commitment, and bisexuals and transsexuals who might be legally married. Further, prejudice and discrimination against GLBT people might explain additional underreporting. GARY J. GATES, DAVID M. SMITH, HUMAN RIGHTS CAMPAIGN, GAY AND LESBIAN FAMILIES IN THE UNITED STATES: SAME-SEX UNMARRIED PARTNER HOUSEHOLDS (2001) AT 1.

3. 1990 and 2000 Census Compared

In the 1990 Census, if two people of the same sex identified themselves as being married, the U.S. Census Bureau changed one of partners’ sexes to make the couple a heterosexual married couple. Id. In 2000, the Census Bureau put a same-sex couple identified as married into the unmarried partners’ category. Id. The U.S. Census Bureau believes the 1990 and 2000 data are not comparable due to this undercounting. Id. The Human Rights Campaign, a national GLBT right organization, believes that the 314% increase in unmarried partner households reflects a changing political climate in which more gays and lesbians feel comfortable being out, rather than an initial undercounting. Id.

4. National Data

One out of nine unmarried-partner households had partners of the same-sex. O'Connell, *supra* at 1-2. Nationwide there are 594,391 same-sex unmarried-partner households representing 1% of all coupled (married-couple and unmarried-partner) households. *Id.* at 3. 85.3% of these households are in a metropolitan area, and those households are almost evenly split between those who are in the central city (41.6%) and those not in the central city (43.6%). *Id.* 14.7% of same-sex unmarried-partners do not live in a metropolitan area. *Id.*

5. Washington State Data

a) All Same-Sex Unmarried-Partners

Washington State has the 6th highest percentage of coupled households that are lesbian or gay. GATES, *supra* Table 2 at 5. The 1.2% or 15,900 couples represents a little over the national average. O'CONNELL, *supra* Table 2 at 4. The five states with the highest percentages of GLBT households are the District of Columbia at 5.14%, California at 1.40%, Vermont at 1.34%, Massachusetts at 1.29%, New York at 1.27% and then Washington. GATES, *supra* Table 2 at 5.

b) Same-Sex Unmarried-Partners With Children

Children include those under the age of 18. Undercounting is again a problem because only the children of the household owner were counted. O'CONNELL, *supra* at 10. In cases where the child of the partner is not related to the householder (the other partner), an actual family unit may not have been tabulated. *Id.* The authors of the U.S. Census Bureau report on married couple and unmarried-partner households attempted to rectify this undercounting by creating a category for all unmarried-partners' children. *Id.* In male same-sex partner households in Washington State, 18.1% have their own children and 18.6% have their own and/or unrelated children. *Id.* Table 4 at 9. In female same-sex partner households in Washington state, 26.7% have their own children and 28.2% have their own and/or unrelated children. *Id.*

c) Percent Of Households With Partners Of Different Races Or Origins

17.6% of male and 16.1% of female same-sex partner households in Washington State are households with partners of different races. *Id.* Table 5 at 12.

d) Average Age Of Same-Sex Partner Households

Nationally, the average age of same-sex unmarried-partner households is in the early forties. *Id.* at 13. This is between that of married couples (late forties) and opposite-sex couples (mid-thirties). *Id.* Table 6 at 14. In Washington State, same-sex unmarried-partner households, the average age of a male householder is 43.3. *Id.* His partner's average age is 41.2. *Id.* For females, the average age of the householder is 42.3 and of her partner is 41.3. *Id.*

6. King County Data

In national statistics, King County is in the top 25 counties ranked by percentage of coupled households. GATES, *supra* Table 3 at 6. 2.07% of coupled King County households are gay or lesbian. Id.

7. Other Counties

San Juan County is ranked 20 out of the top 25 counties outside of Metropolitan Statistical Areas (see Seattle data below) with the highest percentage of same-sex unmarried-partners. GATES, *supra* Table 9 at 11. 1.5% of the couples in San Juan County are same-sex. Id.

Please see **Appendix B** for complete data on all Washington counties.

8. City of Seattle Data

- a) Out of a population of 100,000 people or more, Seattle has the 3rd highest percentage (1.9%) of same-sex unmarried partner households after San Francisco and Fort Lauderdale. O'Connell, *supra* Table 3 at 10.
- b) Metropolitan Statistical Areas (MSA) are the U.S. Census Bureau's geographic regions comprised of areas in and around major cities. GATES, *supra* at 2.
- c) Seattle-Tacoma as a MSA ranked 10 out of the top 25 U.S. MSAs for the percentage of coupled households that are gay or lesbian at 1.47% of coupled households. GATES, *supra* Table 5 at 7.
- d) When Bremerton is added to the Seattle-Tacoma MSA and the area ranks at over 1 million people, Seattle-Tacoma-Bremerton rank 4th nationally at 1.47% of coupled households. GATES, *supra* Table 5 at 7.

II. Family Law

A. Introduction

The changing nature of family structures, both in Washington State and elsewhere, presents courts with a variety of novel legal issues. In this section we address six areas of family law that raise particular issues for GLBT persons: “meretricious” relationships, marriage, registered domestic partnerships, adoption, parenting, and domestic violence.

B. “Meretricious” or Committed Intimate Relationships & the Non-Marital Couple

1. Introduction

A word about terminology: it should be noted that the Washington State Supreme Court has recognized the derogatory connotations of the term “meretricious” and has substituted the term “committed intimate relationship,” . . . which accurately describes the status of the parties and is less derogatory.” Olver v. Fowler, ___ Wn.2d ___, 168 p.3d 348, 350 n. 1 (2007) (quoting Olver v. Fowler, 131 Wn. App. 135, 140 n.9, 126 P.3d 69 (2006)). This Bench Guide likewise encourages the use of the term “committed intimate relationship,” but uses the term “meretricious” when describing some historical case law below.

In Washington, it has been established through case law that the provisions of RCW 26.09.080 (disposition of property and liabilities upon dissolution of marriage or separation) and community property principles apply when distributing the assets of a committed intimate relationship. Connell v. Francisco, 127 Wn.2d 339, 898 P.2d 831 (1995).

Division III of the Court of Appeals has upheld the application of the committed intimate relationship doctrine to same-sex couples. Gormley v. Robertson, 120 Wn. App. 31, 83 P.3d 1042 (2004). However, Division II, in Vasquez v. Hawthorne, 99 Wn. App. 363, 994 P.2d 240 (2000), reversed and vacated on other grounds, 145 Wn.2d 103, 33 P.3d 735 (2001), held that a same-sex relationship could not be a “meretricious relationship” because such persons do not have a quasi-marital relationship due to their inability to marry.

Despite this lack of clarity among appellate courts, a growing number of GLBT couples, upon the ending of their relationship, are seeking the court’s assistance in dividing property acquired during the relationship. The cause of action may be filed under equitable theories such as “meretricious relationship,” implied partnership, implied contract, constructive trust, joint venture or joint tenancy.

When equitable claims are brought, the focus remains on the equities involved *between* the parties. We know from our Supreme Court in Vasquez v. Hawthorne that equitable claims are not dependent on the “legality” of the relationship between the parties, nor are they limited by the gender or sexual orientation of the parties. 145 Wn.2d 103, 33 P.3d 735 (2002). Although the Supreme Court did not approve or disapprove the application of the meretricious doctrine to same-sex couples, trial courts will continue to be asked to apply the doctrine to GLBT couples. As a first step, each trial court will have to decide whether to apply the meretricious doctrine or whether to decide the case solely on a factual analysis under other equitable theories. See Judge Brown’s concurring decision in Gromley.

2. “Meretricious” or Committed Intimate Relationship Doctrine Analysis and Application

Connell described a “meretricious” relationship as “a stable, marital-like relationship where both parties cohabit with knowledge that a lawful marriage between them does not exist.” Connell, 127 Wn.2d at 346.

Whether relationships are properly characterized as “meretricious” depends upon the facts of each case. The task of *resolving* this equitable claim is a threefold inquiry.

The court must:

- a) Determine whether there is a committed intimate relationship;
- b) Evaluate the interest each party has in the property acquired during the relationship; and
- c) Make a just and equitable distribution of the property.

In determining whether a committed intimate relationship exists, the following factors should be considered:

- a) Whether there has been continuous cohabitation;
- b) The duration of the relationship;
- c) The purpose of the relationship;
- d) The intent of the parties; and
- e) Whether there was a pooling of resources and services for mutual benefit.

Connell, 127 Wn.2d at 346; see also In re Marriage of Pennington, 142 Wn.2d 592, 14 P.3d 764 (2000).

Each of the above factors are relevant to the inquiry, but none alone are dispositive. Once a court decides whether there is a committed intimate relationship, the court may subsequently utilize established methods for determining the parties' interests in community property and for making a just and equitable division of the property.

3. Selected Case Law (Listed in the order in which the law has developed)

a) Connell v. Francisco, 127 Wn.2d 339, 898 P.2d 831 (1995).

Facts: After living with her male partner from 1983 to 1990, Connell sought a just and equitable distribution of property upon dissolution of the relationship. The Superior Court determined that the relationship was sufficiently long term and stable to require a just and equitable distribution of property. Analogizing to RCW 26.09.080 governing distribution of property upon the dissolution of a marital relationship, the Superior Court limited the property subject to distribution to the property that would have been community in character had they been married. Connell appealed. The Court of Appeals, reversed, 74 Wn. App. 306, 872 P.2d 1150, holding that property owned by either party prior to the relationship, and that which would be considered community property had they been married, was subject to distribution. Upon appeal by Francisco, the Court addressed whether and to what extent the principles contained in RCW 26.09.080 govern the disposition of property following a committed intimate relationship.

Holding: Affirmed in part, reversed in part. Property acquired by each party prior to the relationship was not subject to distribution, but income and property acquired during the relationship were subject to distribution. All of the principles contained in RCW 26.09.080 do not apply to committed intimate relationships, as a committed intimate relationship is not the same as a marriage. A trial court may not distribute property acquired by each party prior to the relationship at the termination of a committed intimate relationship. Income and property acquired during a committed intimate relationship should be characterized in a similar manner as income and property acquired during marriage, and distributed under the same “just and equitable standard.”

b) In re the Marriage of Pennington, 142 Wn.2d 592, 14 P.3d 764 (2000).

Facts: Female cohabitants, in separate cases, filed complaints against their male cohabitants, seeking equitable division of property on basis of committed intimate relationships. The Superior Court found the relationships to have been meretricious and divided the assets. Male cohabitants appealed. The Court of Appeals, 93 Wn.App. 913, 971 P.2d 98, reversed and remanded in the Pierce County case, and the Court of Appeals, 96 Wn. App. 103, 978 P.2d 551, affirmed in the King County case. Five non-exclusive factors should be used to analyze when a committed intimate relationship exists: continuous cohabitation, duration of relationship, intent of the parties, pooling of resources, and purpose of relationship.

Holding: Affirmed the Pierce County case; reversed the King County case. When balanced on the whole, the equitable principles are not satisfied by the trial court’s findings. Applying the five factors to the couple’s relationship shows that it does not rise to the level of a meretricious relationship as envisioned by Connell. Id.

- c) Vasquez v. Hawthorne, 145 Wn.2d 103, 33 P.3d 735 (2001).

Facts: A surviving cohabitant in a 17-year relationship claimed decedent's estate under various theories, including meretricious relationship. The trial court on a summary judgment motion awarded property to the surviving cohabitant. The Court of Appeals reversed, dismissed the meretricious relationship claim and remanded for the trial court to address claims on constructive trust and implied partnership, holding that *"a same-sex relationship cannot be a meretricious relationship because such persons do not have a 'quasi-marital relationship.'"*

Holding: The Supreme Court reversed and remanded the case for trial on all of the issues, including the equitable doctrines of meretricious relationship, implied partnership, and constructive trust. Among other issues, a question of fact concerning the nature of the two men's relationship remained to be resolved.

- d) Gormley v. Robertson, 120 Wn. App. 31, 83 P.3d 1042 (2004).

Facts: Gormley and Robertson were involved in a ten-year intimate relationship. The two women pooled their resources and acquired property as well as debt. When they separated in 1998, a dispute arose over the division of property. Gormley sought equitable relief based on several theories, including meretricious relationship. The Superior Court entered judgment dividing the property. Robertson appealed.

Holding: Affirmed. The court found in favor of Gormley and held that the meretricious relationship doctrine applied to the same-sex couple's division of assets and liabilities. The Court stated: *"[I]t is of no consequence to the cohabitating couple, same-sex or otherwise, whether they can legally marry. Indeed, one of the key elements of a meretricious relationship is knowledge by the partners that a lawful marriage between them does not exist."*

- e) Olver v. Fowler, ___ Wn.2d ___, 168 P.3d 348 (2007).

Facts: A man and a woman, Cung Ho and Thuy Nguyn Ho had lived in a committed intimate relationship for 14 years when they died together in a car accident. They pooled their money and resources and purchased assets which were titled in Cung's name. Cung left a will that left everything to Thuy, and she left everything to Cung. No party disputed that they lived in a committed intimate relationship. After their simultaneous deaths, there was no dispute that their wills failed and intestacy should control distribution under the uniform simultaneous death act. The special administrator of Thuy's estate filed an inventory, arguing that Thuy was entitled to an equitable interest in all property acquired during their relationship.

Holding: The Supreme Court reaffirmed that “an inability to legally marry did not preclude an equitable claim per se, and that each claim had to be evaluated on its facts.” Olver, 169 P.3d at 355. The Court held, inter alia, that the law of intimate committed relationships applied to the estates of two deceased committed intimate partners, “allowing equitable division between the deceased partners’ estates.” Id. at 357.

4. Other Resources

- a) *Washington Family Law Deskbook*, § 12 (2d ed. 2000).

5. Questions to Consider

- a) Should the committed intimate relationship doctrine be applied to same-sex relationships? Does a trial court need to make a specific finding that the relationship is a same-sex intimate relationship in order to distinguish it from other types of cohabitating relationships? Is sexual intimacy relevant to the inquiry? Is a finding of committed intimate relationship consistent with a finding that the couple was engaged in a relationship that was emotionally and financially interdependent with the *intent to create a marital-like* relationship? Is it relevant to your inquiry as to whether the couple is or is not public about the nature of the relationship? If a couple is not public about their relationship, will you consider a request to seal the court file and conduct a closed hearing? How does registered domestic partnership affect (discussed below) effect this inquiry?

C. Marriage

1. Applicable Statutes

- a) RCW 26.04.010: “Marriage Contract—Void Marriages

(1) Marriage is a civil contract between a male and a female.”

- b) RCW 26.04.020. “Prohibited Marriages:

(1) Marriages in the following cases are prohibited: . . . (c) When the parties are persons other than a male and a female.

(2) A marriage between two persons that is recognized as valid in another jurisdiction is valid in this state only if the marriage is not prohibited or made unlawful under subsection . . . (1) (c) . . . of this section.”

2. Selected Case Law

- a) Andersen v. King County, 158 Wn.2d 1, 138 P.3d 963 (2006).

Facts: Eight same-sex couples in King County challenged marriage laws that deem marriage valid only between a man and a woman, RCW 26.04.010 and 26.04.020 (1) (c), on grounds the laws violate the privileges and immunities clause of Washington State Constitution (Article 1, § 12), deny substantive due process rights to liberty and privacy of state constitution (Article 1, § 3), and make an unjustifiable distinction based upon gender in violation of Washington's Equal Right Amendment (Constitution, Article XXXI). The King County Superior court ruled that RCW 26.04.010 and 020 (1) (c) violate Article 1, § 12 because the privilege of civil marriage and the various privileges legally conferred by that status are not being made equally available to all citizens. The statutes violate Article 1, § 3 because denial to the plaintiffs of the right to marry constitutes a denial of substantive due process.

In Thurston County, the American Civil Liberties Union also challenged the constitutionality of Washington state's ban on same-sex marriage on behalf of 11 gay and lesbian couples from around the state. The plaintiff's similarly argued that the state and federal constitutions prohibit the Washington Legislature from enacting a law that authorizes marriage between adult couples of the opposite sex and prohibits marriage between adult couples of the same sex. Similar to the King County Superior Court, the Thurston County Superior Court ruled that Washington State's Defense of Marriage Act (DOMA) violates the Privileges or Immunities clause of the Washington State constitution, and is therefore, unconstitutional. The court concluded that since homosexuals are a suspect class and that marriage is a fundamental right, and the strict scrutiny test applies. Consequently, the state failed to show that a prohibition on same-sex marriage furthers the state's interest in family stability, and thus failed the strict scrutiny test.

Holding: The State Supreme Court accepted direct review of these two cases, consolidated them, and reversed them in a plurality opinion. The Court upheld RCW 26.04.010 and 26.04.020, holding that they do not violate the state privileges and immunities clause because it "does not grant a privilege or immunity to a favored minority class . . ." Anderson, 158 Wn.2d at 9. The Court held that, under a federal Equal Protection analysis, "[t]he plaintiffs have not established that they are members of a suspect class or that they have a fundamental right to marriage that includes the right to marry a person of the same sex." *Id.* The Court applied a rational basis test and held that the Legislature had a rational basis for limiting marriage to opposite sex couple because doing so "furthers procreation . . . and furthers the well-being of children by encouraging families where children are reared in homes headed by the children's biological parents." Anderson, 158 Wn.2d at 10. Similarly, the Court held that DOMA does not violate the state's due process clause, the state constitutional right of privacy, or the state constitution's equal rights amendment.

D. Registered Domestic Partnership

1. Introduction

In 2007, the Legislature passed, and Governor Gregoire signed into law, a bill providing for registered domestic partnership in Washington State. Chapter 156, Laws of Washington 2007. The law became effective on July 22, 2007. The law sought to address the fact that a number of state laws provide automatic rights and powers to spouses. The Legislature found that:

[m]any Washingtonians are in intimate, committed and exclusive relationships with another person to whom they are not legally married. These relationships are important to the individuals involved and their families; they also benefit the public by providing a private source of mutual support for the financial, physical, and emotional health of those individuals and their families. The public has an interest in providing a legal framework for such mutually supportive relationships, whether the partners are of the same or different sexes, and irrespective of their sexual orientation.

. . .

The rights granted to state registered domestic partners in this act will further Washington's interest in promoting family relationships and protecting family members during life crises. This act does not affect marriage or any other ways in which legal rights and responsibilities between two adults may be created, recognized, or given effect in Washington.

2007 Wash. Laws 2007 Ch. 156, Section 1. A copy of the Final Bill Report and the final Act (2007 Wash. Laws 156) are attached hereto as Appendix: G.

2. Extension of Rights to Domestic Partners

- State registered domestic partners are granted the following rights commensurate with those granted spouses:
- Health care facility visitation (chapter 48.43 RCW).
- Ability to grant informed consent for health care for a patient who is not competent (RCW 7.70.065);
- Authority of a health care provider to disclose information about a patient without the patient's authorization to the patient's state registered domestic partner (RCW 70.02.050);
- automatic revocation of the designation of a domestic partner as the beneficiary for nonprobate assets upon termination of the partnership (RCW 11.07.010);
- automatic revocation of power of attorney granted to domestic partner upon termination of partnership (RCW 11.94.080);

- title and rights to cemetery plots and rights of interment (RCW 68.32.020, .030, .040, .060, .110, .130);
- ability to authorize autopsies and request copies of autopsy reports and records (RCW 68.50.100, .101, .105);
- right to control the disposition of the remains of a deceased person (RCW 68.50.160);
- ability to consent to removal of human remains from a cemetery plot (RCW 68.50.200);
- ability to make anatomical gifts (RCW 68.50.550);
- inheritance rights when the domestic partner dies without a will (RCW 11.04.015);
- administration of an estate if the domestic partner died without a will or if the representative named in the will declined or was unable to serve (RCW 11.28.120);
- beneficiary rights in wrongful death actions (RCW 4.20.020, .060); and
- ability to designate a partner's physician as the attorney-in-fact (RCW 11.94.010).

3. Creation of Registered Domestic Partnership

Domestic partners must register with the Office of the Secretary of State. Registration involves Individuals seeking to enter into a state registered domestic partnership must declare on a form provided by the Office of the Secretary of State that they:

- share a common residence;
- are at least 18 years of age;
- are not married to, nor in a state of registered domestic partnership with, someone other than the person with whom they are entering into a domestic partnership;
- are capable of consenting to the partnership;
- are not neared of kin then second cousins nor are sibling, child, grandchild, aunt, uncle, niece, or nephew to the other person; and
- are members of the same sex, or one of the persons is at least 62 years of age.

4. Termination of Registered Domestic Partnership

Termination does not require a court proceeding. Either party may file a notice of termination with the Office of the Secretary of State and pay the filing fee. The termination notice must be notarized and signed by at least one party. If it is not signed by both parties, the filing party must also file an affidavit stating that the other party has been served the notice, or that the other party could not be located after reasonable effort, including publication. The registered partnership is terminated 90 days after the date the termination notice is filed. Partnerships are also automatically terminated if either party enters into a valid Washington marriage.

5. Questions to Consider

To what extent does a registered domestic partnership affect the analysis of whether persons are in a committed intimate (“meretricious”) relationship? To what extent does the current law affect inheritance rights when the definition of community property was not amended to include domestic partnerships?

E. Adoption

1. Introduction

As previously discussed in the section on demographics, there are significant numbers of GLBT households with children. The legal relationship between these couples and their children raises a host of issues such as financial support, medical consent, access to school records, employment benefits for one’s dependents, the right to visitation if the relationship between the adults ends, or custody in the event of death of one’s partner.

While GLBT couples in Washington can obtain the same parental rights through adoption as married or heterosexual couples, there are many GLBT couples who do not secure such rights. The reasons may include the lack of financial resources, ignorance of the ability to do so, or fear of being rejected by the court. As discussed below, for those without such legal rights, courts have relied upon the doctrine of de facto parenthood to explore whether a non-adoptive parent should have contact with her child. See In re the Matter of the Parentage of L.B., 155 Wn.2d 679, 122 p.3d 161 (2005) (discussed more fully below). Although equitable remedies have been applied to prevent an injustice and to protect a child’s best interest, our courts should be a forum where GLBT couples feel comfortable seeking the security that legal adoptions provide for their families.

In general, examples of adoptions involving the GLBT community include:

- a) Adoption of a child from a foreign country. Individuals or couples who have adopted a child in a jurisdiction outside of the United States may file a petition for adoption in Washington State. Technically, such adoptions may already have been “court approved” in the country of origin but many parents feel an added sense of security when the adoption is re-approved by a court in this country.

- b) Second parent adoptions. These adoptions involve the adoption of a child by one's domestic partner. In general, one parent is the birth parent or legal parent and the petitioning party (the partner) is seeking to be approved as the second legal parent of the child. Consent to the adoption by the legal parent of the child is necessary before the adoption can proceed.

In circumstances where the child was conceived through assisted reproduction, it is important to note that pursuant to RCW 26.26.705, a donor is not a parent of a child and termination of parental rights or consent to adoption by the donor is not necessary.

- c) Third parent adoptions. Adoption by a third parent is often seen in the context of blended families (same-sex or different-sex) where the original legal parents may have separated or divorced and one of the parents is now in a relationship where his/her partner may wish to adopt the child since the child may be living with them. In such instances, termination of parental rights is not necessary if the legal parents consent to the adoption.

2. Applicable Statutes

- a) RCW 26.33 governs adoptions.
- b) RCW 26.33.140: Who May Adopt or Be Adopted
 - (1) Any person may be adopted, regardless of his or her age or residence.
 - (2) Any person who is legally competent and who is eighteen years of age or older may be an adoptive parent.
- c) RCW 26.33.010: Intent of the Statute.

The guiding principle must be determining what is in the best interest of the child.

3. Selected Case Law

To date, there is no case law specific to this topic.

4. Other Resources

- a) *Washington Family Law Deskbook*, §§ 46 and 60 (2d ed. 2000).

5. Questions to Consider

- a) What about fourth parent adoptions where the original legal parents separate or divorce and each parent either remarries or enters into a same-sex committed relationship? Will you require more than the usual information in a home study when the petitioning party is GLBT? Why? What if the sperm donor is a friend of the biological parent and wishes to remain involved in the child's life? Will you approve a written agreement regarding the parental relations among all of the individuals?

F. Parentage and Custody of Children

1. Introduction

Recognition of non-biological parents in the GLBT community continues to develop under the common law and a number of cases seeking further definition and clarification continue to be filed in our courts.

The Uniform Parentage Act, chapter 26.26 RCW, does not expressly address the question of parentage in the context of a GLBT relationship and provides no right of action to establish such parentage. See In re the Parentage of L.B., for a lengthy and specific discussion of the UPA and its inapplicability to same-sex couples. 155 Wn.2d 679, 122 P.3d 161 (2005) However, our Supreme Court in the case of Parentage of L.B. held that a common law claim of de facto or psychological parentage exists in the State of Washington and would be the basis for a petition for co-parenting or visitation.

Proof of a de facto child parent relationship requires sufficient evidence that:

- a) the natural or legal parent consented to and fostered the parent-like relationship;
- b) petitioner and child lived together in same household;
- c) petitioner assumed obligations of parenthood without expectation of financial compensation; and
- d) petitioner was in a parental role for a length of time sufficient to establish a bonded, dependent parental-like bond with child.

In re the Parentage of L.B., 155 Wn.2d at 708.

In addition to a common law claim, the Court also found that the third party custody visitation statute (RCW 26.10.160(3)) could also be the legal basis for determining visitation notwithstanding Troxel v. Granville, 530 U.S. 57, 120 S.Ct. 2054 (2000).

RCW 26.10.160(3): "Visitation rights – Limitations. (3) Any person may petition the court for visitation rights at any time including, but not limited to, custody proceedings. The court may order visitation rights for any person when visitation may serve the best interest of the child whether or not there has been any change of circumstances . . ."

Our appellate courts will likely continue to develop how RCW 26.10.160(3) might apply to a *de facto* parent. Similar to other family law matters, the questions and issues regarding parentage are always fact specific and a careful reading of appellate cases is paramount before applying the principle of law to a specific case.

2. Parenting Plans

Trial courts routinely approve parenting plans in a heterosexual context. As family structures change with children often living in two households with four parents, parenting plans become a significant governing document for families. Parenting plans between GLBT parents are often established as private agreements between parties. Such parenting plans may be presented for court approval in the context of dissolution of a meretricious relationship. Consequently, there are also petitions to enforce or modify the Parenting Plan.

Questions regarding a parent's sexual orientation in the context of custody and visitation have been squarely addressed by our courts. The Washington State Supreme Court has specifically held that a parent's sexual preference in and of itself is not a bar to custody or reasonable rights of visitation. In Re: Marriage of Cabalquinto, 100 Wn.2d 325, 669 P.2d 886 (1983). This case describes comments by the trial court judge that demonstrated the judge's strong antipathy to GLBT persons and is an excellent example of how important it is to remain neutral and to make decisions based on the law and not on personal "feelings." Cabalquinto, 100 Wn.2d at 888.

3. Applicable Statutes

RCW 26.09.187 sets out criteria for establishing permanent parenting plans.

4. Other Resources

Washington Family Law Deskbook, § 47 (2d ed. 2000).

5. Questions to Consider

Are there additional factors that you would consider or require to be shown in determining the best interests of the child if the household is GLBT? Would you approve a parenting plan in a pending case involving committed intimate ("meretricious") relationship? Would you enforce provisions of a non- court approved parenting plan? Would you modify a parenting plan or restrict visitation if a parent changes their gender? What evidence would you require to show that a transsexual parent is unfit or harmful to the child?

G. Domestic Violence

The prevalence of abuse between both same-sex and opposite-sex partners is estimated to be approximately 25 to 30 percent of all couples. According to experts, the level of domestic violence in the GLBT community is the same as in society at large. Unlike battered different-sex victims, however, same-sex victims may not be taken as seriously by the police.

1. Applicable Statutes

- a) RCW 10.99.020(5): Enumerated list of acts that qualify as domestic violence.

- b) RCW 26.50.010 (1): “‘Domestic violence’ means: (a) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members; (b) sexual assault of one family or household member by another; or (c) stalking as defined in RCW 9A.46.110 of one family or household member by another family or household member.”
- c) RCW 26.50.010 (3): “‘Dating relationship’ means a social relationship of a romantic nature. Factors that the court may consider in making this determination include: (a) the length of time the relationship has existed; (b) the nature of the relationship; and (c) the frequency of interaction between the parties.”
- d) RCW 10.99.020(3) – Definitions: “‘Family or household members:’ ‘adult persons who are presently residing together or who have resided together in the past, persons sixteen years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship, persons sixteen years of age or older with whom a person sixteen years of age or older has or has had a dating relationship....’”
- e) Anti-Harassment Statutes, Chapter 9A.46 RCW
 - (1) § 9A.46.020: Definition of harassment; § 9A.46.060: Crimes included in harassment; § 9A.46.110: Stalking
- f) Shelters for Victims of Domestic Violence, RCW 70.123: Information on resources for victims of domestic violence.
- g) Victims of Sexual Assault Act, RCW 70.125.
- h) Name Change for Victim, RCW 4.24.130 (5): “Name change petitions may be filed and shall be heard in superior court when the person desiring a change of his or her name or that of his or her child or ward is a victim of domestic violence as defined in RCW 26.50.010(1) and the person seeks to have the name change file sealed due to reasonable fear for his or her safety or that of his or her child or ward. Upon granting the name change, the superior court shall seal the file if the court finds that the safety of the person seeking the name change or his or her child or ward warrants sealing the file. In all cases filed under this subsection, whether or not the name change petition is granted, there shall be no public access to any court record of the name change filing, proceeding, or order, unless the name change is granted but the file is not sealed.”

2. Selected Case Law

To date there is no case law specific to this topic.

3. Other Resources

a) The following are some comments from judges that merit consideration:

- (1) “Just as with straight couples, allegations of sexual abuse sometimes arise with domestic violence between gay, lesbian, transgendered couples. Regardless of the orientation, it’s important that they be handled sensitively to avoid unduly embarrassing the parties while still allowing the evidence to be fully developed. Sometimes judges are so embarrassed about the allegations that they don’t allow for a full hearing to take place, even when the evidence needs to be developed as to whether the behavior was consensual or truly abusive. I generally try to close the hearing if the significant parts of the allegations have to do with sexual abuse (in a civil case), so the parties feel more free to testify about the facts. On the other hand, sometimes the evidence of non-sexual physical abuse is so overwhelming that it is not necessary to delve into the more sensitive evidence. Occasionally, there may be a concern that the allegations are being raised solely to embarrass or ‘out’ the respondent.” [See “*Questions to Consider*” below regarding closed hearings].
- (2) “I have observed that many gay/lesbian couples are embarrassed about being in court on the Domestic Violence (DV) issues (which is not unique to the gay/lesbian community; most everyone is), but also embarrassed about the need to disclose their relationship, which is required in order to establish standing to obtain a DV order. Usually testimony to establish the relationship isn’t required, but may be if the Respondent contests the relationship. These are public hearings, so there are usually people on the benches waiting their turn, and they of course listen to what is going on. Fortunately, the statute allows people living together to file, so the more intimate details don’t need to be revealed in court, and I will interrupt and redirect if the testimony goes that direction when there is no need. The parties usually seem very relieved.”
- (3) “A case of former companions [same-sex couple] where the aggressor filed a DV complaint against his partner. I did not believe him and reversed the parties at the hearing and granted the order in favor of the respondent. Life lesson: do not ignore your instincts; take the time to listen to a person who may be intimidated by the court and the batterer. The batterer often is the person who uses the court as part of the victimization process. I will never forget the look in the respondent’s face when I told him that I believed him. He crumpled into a mass of tears and the storm trooper petitioner smiled and bowed to me.”

b) *Domestic Violence Manual for Judges* (2001) (Produced by the Washington State Gender and Justice Commission).

c) *Washington Family Law Deskbook*, § 74 (2d ed. 2000).

- d) Claire M. Renzetti, *Violent Betrayal: Partner Abuse in Lesbian Relationships* 18 (1992).
 - e) See **Appendix F** for Additional Resources.
4. Questions to Consider
- a) Because discrimination on the basis of sexual orientation is still prevalent in Washington and elsewhere, it is prudent to consider carefully whether a hearing should be closed under applicable court rules. This decision will require consideration of the situation of the parties and the relationship (if any) of their sexual orientation to the matter at issue and court rules. Both respect for privacy (giving the social context of discrimination), and avoidance of treating GLBT status as something that *should* be hidden, are required in this context.
 - b) There may be inappropriate places to refer GLBT perpetrators. A question to consider is whether there are referrals/resources known in the GLBT community for treating perpetrators? [See **Appendix F** for Additional Resources]

III. Employment Law

A. Introduction

Washington is an at-will employment state. GLBT claimants must demonstrate that adverse employment action has been taken against them that violated federal, state or local law, contravened public policy, or constituted breach of contract

In 2006, Washington State's Law Against Discrimination (WLAD), chapter 49.60 RCW, was amended to prohibit discrimination based on sexual orientation in employment (as well as in public accommodation, housing and credit).

However, federal employment discrimination laws, do not specifically prohibit discrimination on the basis of sexual orientation, gender identity or transexualism. As a result, GLBT litigants who rely on federal statutes are forced to frame their claims as "sex discrimination."

B. Employment Discrimination Under Washington Law

1. Overview

The Washington Law Against Discrimination (WLAD), RCW 49.60, which applies to employers with eight or more employees, prohibits employment discrimination based sexual orientation. This includes decisions to hire, terminate, and advertise for job openings. The addition of sexual orientation as a protected status is relatively recent (2006), and to date, no reported cases have been issued regarding discrimination based on sexual orientation. However, all of the analyses provided for the other statuses protected by WLAD also apply to sexual orientation.

GLBT private sector employees in Washington can also rely upon local laws to support discrimination claims. Seattle Municipal Code 14.04.040, for example, prohibits an employer from discriminating against any person based on sexual orientation or gender identity and provides a private right of action.

Additionally, courts may see claims that a discharge on the basis of sexual orientation, gender identity or transexualism constitutes breach of an implied contract. Increasingly, private-sector employers are modifying their non-discrimination policies and employment handbooks to prohibit employment discrimination on the basis of sexual orientation. Today, about three-quarters of all Fortune 500 companies include sexual orientation in their written non-discrimination policies.

In general, GLBT public employees also have employment protection afforded by executive order, agency rule-making or local ordinances. For example, the Governor has signed an executive order that provides protection against sexual orientation discrimination for state employees. Additionally, several cities and counties in Washington have enacted ordinances that provide protection against discrimination in public-sector employment on the basis of sexual orientation. Seattle Municipal Code 4.80.020, which provides that it is the policy of the city of Seattle to provide a workplace for its employees that is free from discrimination on the basis of sexual orientation or gender identity, is one such ordinance.

2. Statutes

- a) RCW 49.60.010(15) defines protected “sexual orientation” as “heterosexuality, homosexuality, bisexuality, and gender expression and identity. As used in this definition, ‘gender expression or identity’ means having or being perceived as having a gender identity, self-image, appearance, behavior, or expression, whether or not that gender identity, self-image, appearance, behavior, or expression is different from that traditionally associated with the sex assigned to that person at birth.”
- b) RCW 49.60.180: “It is an unfair practice for any employer (1) To refuse to hire any person because of age, sex, sexual orientation . . .; (2) To discharge or bar any person from employment because of age, sex, marital status, sexual orientation, race, creed, color, national origin, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a disabled person.”
- c) RCW 49.60.190: “It is an unfair practice for any labor union or labor organization: (1) To deny membership and full membership rights and privileges to any person because of age, sex, marital status, sexual orientation . . . (2) To expel from membership any person because of age, sex, marital status, sexual orientation . . . (3) To discriminate against any member, employer, employee, or other person to whom a duty of representation is owed because of age, sex, marital status, sexual orientation . . .”
- d) RCW 49.60.200: “It is an unfair practice for any employment agency to fail or refuse to classify properly or refer for employment, or otherwise to discriminate against, an individual because of age, sex, marital status or sexual orientation . . .”
- e) Executive Order 85-09: “Whereas, it is the long established policy of the State of Washington that the State should not discriminate in its employment practices based on characteristics that are not directly related to the ability of an individual to perform the requirements of a job; . . . Direct that no state agency or institution of higher education shall discriminate in employment solely on the basis of an individual's sexual orientation. No state agency or institution of higher education shall be required to establish employment goals based on sexual orientation; . . .”

3. County and City Codes: See **Appendix C & D**

4. Selected Case Law

Note that the following cases were decided prior to the Legislature's prohibition of discrimination based on sexual orientation.

- a) Doe v. Boeing Co., 121 Wn.2d 8, 846 P.2d 531 (1993).

Facts: The employer terminated the plaintiff, who was biologically male, for wearing female attire during the 12 month period prior to sex reassignment surgery. Doe informed Boeing that in order to qualify for sex reassignment surgery, she would have to live full time in the social role of the opposite sex and to dress in female attire. Boeing told Doe that she could not use women's restrooms or dress in "feminine" attire prior to her surgery, although she could wear unisex clothing. There was no evidence that Doe's transsexualism interfered with her work performance. Doe was terminated for violation of Boeing's directives when she wore "excessively" feminine attire to work. The trial court found that while Doe did suffer a temporary handicap, the employer accommodated her. The Court of Appeals reversed, and Boeing appealed.

Holding: Reversed. The Supreme Court held that Doe's gender dysphoria was not a handicap under RCW 49.60.10. The act requires factual findings of both (1) the presence of an abnormal condition, and (2) employer discrimination because of that condition. While gender dysphoria was an abnormal condition, the court held that the transsexual employee was not "handicapped" by her gender dysphoria and further that the employer did not discharge her because of that condition, but because she violated a directive on acceptable attire. Additionally, the scope of the employer's duty to reasonably accommodate the employee's gender dysphoria under RCW 49.60.180 was limited to those steps necessary to enable her to perform her job. The employer's actions in allowing the employee to wear unisex clothing at work met this standard and did not discriminate against the transsexual employee by reason of her abnormal condition.

- b) Deo v. King Broad Co., (Unpublished Opinion) 2004 Wash. App. LEXIS 1484; 2004 WL 1598862 (Wash. App. Div. 1).

Facts: Deo was employed as a television segment producer for six years. Over the years, King told Deo that his work performance was unsatisfactory and failure to improve might result in his termination. In 1999, King terminated Deo's employment. After his termination, Deo filed an unfair labor practice charge with NLRB, a claim with EEOC alleging race discrimination, and a complaint with Seattle Office for Civil Rights alleging hostile work environment based on race and sexual orientation. Deo then filed this action in superior court listing 12 causes of action, including wrongful termination based on sexual orientation. All of his claims ultimately were dismissed.

Holding: Affirmed. The court held that Deo did not offer any evidence that his supervisor's criticism of his work was motivated by discriminatory animus and isolated remarks by his co-workers did not show that King's reasons for terminating Deo were pretext. Thus, summary judgment dismissing Deo's claims of sexual orientation discrimination under Seattle Municipal Code 14.04.040(A) was proper.

5. Other Resources

- a) The Washington State Human Rights Commission (Commission) enforces the Laws Against Discrimination (RCW 49.60). The Commission works to prevent and eliminate discrimination by investigating human rights complaints and providing education and training opportunities throughout the state. <http://www.hum.wa.gov/>
- b) King County Office of Civil rights: <http://www.metrokc.gov/dias/ocre/>
- c) King County Fair employment resources:
<http://www.metrokc.gov/dias/ocre/Empl.htm>
- d) City of Tacoma Human Rights and Human Services Department:
<http://www.cityoftacoma.org/Page.aspx?hid=943>
City of Tacoma Sexual Orientation Ordinance: Tacoma Municipal Code 1.29.040; .050.)
- e) For a list and links to Fortune 500 companies with non-discrimination policies that include sexual orientation:
http://www.hrc.org/issues/workplace/workplace_resourcesandpublications.asp
- f) Transgender issues in the workplace: a tool for managers.
<http://nmmstream.net/hrc/downloads/publications/tgtool.pdf>

6. Non-statutory Claims

- a) Wrongful Discharge in Violation of Public Policy

A plaintiff who asserts a claim for wrongful discharge in violation of public policy bears the burden of establishing the existence of a clear mandate of public policy and that his or her discharge contravenes or jeopardizes that public policy. In determining whether a clear mandate of public policy is violated, courts inquire whether the employer's conduct contravenes the letter or purpose of a constitutional, statutory, or regulatory provision or scheme. This claim became easier under when the Washington legislature provided a clear statement of public policy against discrimination on the basis of sexual orientation or gender identity when it amended WLAD (see discussion above).

b) Breach of Implied Contract

Through disseminated handbooks and company policies, an employer may create an implied contract that alters the at-will employment relationship. To prevail on a claim for wrongful discharge under this theory, an employee must show that: (1) the employer created an atmosphere of job security and fair treatment with promises of specific treatment in specific situations, and (2) the employee justifiably relied on those promises.

To date, there has not been any reported case in which a GLBT litigant sought relief under a breach of implied contract theory. However, as more and more employers issue written statements that they prohibit discrimination in the workplace on the basis of sexual orientation or gender identity, it is likely that GLBT employees who have been discriminated against in violation of Company policies will raise claims that the employer breached an implied promise of fair and equal treatment.

C. Employment Discrimination Under Federal Law

1. Overview

Title VII of the 1964 Civil Rights Act, 42 U.S.C. § 2000e, which applies to employers with 15 or more employees, prohibits discrimination on the basis of sex. What constitutes “sex” discrimination for the purposes of a Title VII claim brought by a GLBT plaintiff remains an unresolved question. Title VII does not define the term “sex.” Further, although the statute does not prohibit discrimination on the basis of “gender,” many litigants frame their claims as “gender discrimination” and many courts use the terms “sex discrimination” and “gender discrimination” interchangeably, which adds further confusion surrounding what precisely discrimination on the basis of “sex” is.

Some scholars argue that if Title VII sex and gender discrimination proscriptions were applied consistently, discrimination on the basis of sexual orientation would be prohibited. Francisco Valdes, *Queers, Sissies, Dykes, and Tomboys: Deconstructing the Conflation of “Sex,” “Gender,” and “Sexual Orientation” in Euro-American Law and Society*, 83 Calif. L. Rev. 3 (1995). Others argue that sexual orientation harassment is indistinguishable from gender-based sexual harassment, for it is plainly sexual in nature, and it is based on the ultimate gender stereotype. Andrew Koppelman, *Why Discrimination Against Lesbians and Gay Men Is Sex Discrimination*, 69 N.Y.U.L. Rev. 197 (1994). See also, Lisa Wehren, *Same-Gender Sexual Harassment Under Title VI: Garcia v. Elf Atochem Marks a Step in the Wrong Direction*, 32 Cal. W. L. Rev. 87 (1995).

It has been determined that Title VII provides protection against “same-sex” sexual harassment. Oncale v. Sundown Offshore Services, Inc., 523 U.S. 75, 118 S.Ct. 998, 140 L.Ed.2d 201 (1998). It is equally clear that Title VII prohibits “sexual stereotyping” (i.e., discriminating against a female employee for not acting feminine enough or against a male employee for not acting masculine enough). Price Waterhouse v. Hopkins, 490 U.S. 228, 109 S.Ct. 1775, 104 L.Ed.2d 268 (1989), legislatively overruled in part (not material to this discussion) by 1991 Civil Rights Act § 107. In spite of these holdings, Title VII has not been extended to support a claim for sexual orientation discrimination.

In addition to Title VII, GLBT plaintiffs may have a cause of action under 42 U.S.C. § 1983 if their employer is a state agency or can be characterized as a state actor. Federal and other state courts have allowed litigants to pursue a Section 1983 claim that sexual orientation discrimination violates their constitutional right to equal protection. Recently, a Washington court remanded for trial a § 1983 claim alleging employment discrimination based on sexual orientation. Miguel v. Guess, 112 Wash. App. 536, 51 P.3d 89 (Div. 3, 2002).

2. Federal Statutes, Regulations, and Executive Orders

- a) 42 U.S.C. § 2000e-2: “It shall be an unlawful employment practice for an employer (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or . . .”
- b) 42 U.S.C. § 1983: “Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, . . .”
- c) 42 U.S.C. § 12211 [Americans With Disabilities Act]: “(a) Homosexuality and bisexuality. For purposes of the definition of 'disability' in section 3(2), [42 USCS § 1210(2)], homosexuality and bisexuality are not impairments and as such are not disabilities under this Act. (b) Certain conditions. Under this Act, the term 'disability' shall not include (1) transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders . . .”

- d) 7 CFR § 15d.2: “(a) No agency, officer, or employee of the United States Department of Agriculture shall, on the ground of race, color, religion, sex, age, national origin, marital status, familial status, sexual orientation . . . exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States under any program or activity conducted by the United States Department of Agriculture.”
- e) 28 CFR § 42.1 [Department of Justice]: “(a) It is the policy of the Department of Justice to seek to eliminate discrimination on the basis of race, color, religion, sex, sexual orientation, . . . within the Department and to assure equal employment opportunity for all employees and applicants for employment.”
- f) 31 CFR § 0.214 [Department of Treasury]: “(a) Employees shall not discriminate against or harass any other employee, applicant for employment or person dealing with the Department on official business on the basis of race, color, religion, national origin, sex, sexual orientation, age, or disability. Sexual harassment is a form of sex discrimination and is prohibited by this section.”

Executive Order 13087 Further Amendment to Executive Order 11478, Equal Employment Opportunity in the Federal Government, May 28, 1998: "By the authority vested in me as President by the Constitution and the laws of the United States, and in order to provide for a uniform policy for the Federal Government to prohibit discrimination based on sexual orientation, it is hereby ordered that Executive Order 11478, as amended, is further amended...."

3. Selected Case Law

- a) Miguel v. Guess, 112 Wash. App. 536, 554, 51 P.3d 89 (Div. 3, 2002). Note that this case law predates WLAD's inclusion of sexual orientation as a protected status.

Facts: Ms. Davis, a lesbian public-hospital employee, sued the hospital and a physician alleging violation of her equal protection rights under 42 U.S.C. § 1983 and wrongful termination in violation of public policy. The superior court granted summary judgment for the hospital and physician, and the plaintiff appealed.

Holding: Affirmed in part and reversed in part. The Court agreed with the trial court that the plaintiff had failed to establish the existence of a clear public policy against discrimination on the basis of sexual orientation and affirmed dismissal of that claim. As to the Section 1983 claim, the Court held that there were genuine issues of fact for trial as to whether the hospital and physician were state actors and whether the hospital's reasons for firing the employee were pretextual. In remanding for trial, the Court affirmatively stated that "a state actor violates a homosexual employee's right of equal protection when it treats that person differently than it treats heterosexual employees, based solely upon the employee's sexual orientation."

- b) Oncale v. Sundowner Offshore Services, Inc., 523 U.S. 75, 118 S. Ct. 998, 140 L. Ed. 2d 201 (1998)

Facts: Oncale worked on an oil platform with other men. On several occasions, Oncale's co-worker forcibly subjected him to sex-related humiliating actions, including physical assault in a sexual manner and the threat of rape. He eventually quit his job and brought a Title VII action against former employer, male supervisors, and co-workers alleging sexual harassment. The U.S. District Court for the Eastern District of Louisiana granted summary judgment for defendants and plaintiff appealed. The Fifth Circuit affirmed.

Holding: Reversed. The Supreme Court held that sex discrimination consisting of same-sex sexual harassment is actionable under Title VII. The judgment of the Court of Appeals for the Fifth Circuit was reversed, and the case was remanded for further proceedings.

- c) Nichols v. Azteca Rest. Enters., 256 F.3d 864 (9th Cir. 2001) Facts: The plaintiff, Sanchez, brought this action against his former employer, Azteca Restaurant Enterprises, Inc., alleging sexual harassment and retaliation in violation of Title VII and the Washington Law Against Discrimination, RCW 49.60. Sanchez claimed that he was verbally harassed by male co-workers and a supervisor because he was effeminate and did not fit with views of a male stereotype. Sanchez further asserted that he was terminated in retaliation for opposing the harassment. Following a bench trial, the district court entered judgment in favor of Azteca on all claims.

Holding: Reversed. Relying on Price Waterhouse v. Hopkins, 490 U.S. 228, 109 S.Ct. 1775, 104 L.Ed.2d 268 (1989), the Court held that the sustained campaign of taunts against the plaintiff, including that he walked and carried his tray "like a woman," were based on sexual stereotypes and constituted actionable sexual harassment under both Title VII and the WLAD.

- d) Rene v. MGM Grand Hotel, Inc., 305 F.3d 1061 (9th Cir. en banc, 2002)

Facts: The plaintiff, a gay man, worked as a butler in the employer's hotel for two years. On an almost daily basis a supervisor and co-workers grabbed his crotch, poked their fingers in his anus through his clothes, and touched him "like a woman." Rene filed a Title VII claim for sexual harassment and specifically alleged that the harassment was motivated by his sexual orientation. The trial court dismissed his claims stating, "Title VII's prohibition of 'sex' discrimination applies only to discrimination on the basis of gender and is not extended to include discrimination based on sexual preference."

Holding: The Ninth Circuit, sitting en banc, reversed and held that an employee who alleges that he was subjected to severe, pervasive and unwelcome physical conduct of a sexual nature asserts a viable claim of discrimination based on sex under Title VII even if that employee also alleged that the conduct was motivated by his sexual orientation. The court concluded that neither the sexual orientation of the claimant nor the fact that the harasser is motivated by the claimant's sexual orientation is relevant for the purposes of Title VII. According to the court, a plaintiff's sexual orientation "neither provides nor precludes" a cause of action for sex discrimination under Title VII.

4. Questions to Consider

- a) When evaluating whether the GLBT plaintiff has stated an actionable claim for sex harassment or sex discrimination in the workplace, courts should not focus on the sexual orientation or gender identity of the plaintiff. Rather, inquire whether the mistreatment was because of the plaintiff's sex or gender. Was the plaintiff harassed because he or she did not meet sexual stereotypes? If same-sex harassment is alleged, your inquiry should not be limited to whether the harassment was motivated by sexual desire. Rather, ask was the conduct sexual in nature. If not, did the supervisor or alleged harasser treat employees of one sex differently than employees of another? Was the conduct objectively hostile or unreasonable?

5. Other Resources

- a) Katherine M. Franke, *The Central Mistake of Sex Discrimination Law: The Disaggregation of Sex From Gender*, 144 U. Pa. L. Rev. 1 (1995) ("Title VII should recognize the primacy of gender norms as the root of both sexual identity and sex discrimination, and thereby the law should prohibit all forms of normative gender stereotyping regardless of the biological sex of any of the parties involved.").
- b) Andrew Koppelman, *Why Discrimination Against Lesbians and Gay Men Is Sex Discrimination*, 69 N.Y.U.L. Rev. 197 (1994).
- c) Anthony E. Varona & Jeffrey M. Monks, *En/Gendering Equality: Seeking Relief Under Title VI Against Employment Discrimination Based on Sexual Orientation*, 7 Wm. & Mary J. Women & L. 67, 67 (2000) ("Discrimination against lesbians and gay men often is motivated more by how we violate societal sex and gender norms than it is by the much narrower characteristic of specifically how, and with whom, we have sex.").
- d) Francisco Valdes, *Queers, Sissies, Dykes, and Tomboys: Deconstructing the Conflation of "Sex," "Gender," and "Sexual Orientation" in Euro-American Law and Society*, 83 Calif. L. Rev. 3 (1995).
- e) Lisa Wehren, *Same-Gender Sexual Harassment Under Title VI: Garcia v. Elf Atochem Marks a Step in the Wrong Direction*, 32 Cal. W. L. Rev. 87 (1995).

- f) *Addressing Sexual Orientation Discrimination in Federal Civilian Employment: Executive Order 13087*, issued on May 28, 1998, prohibits discrimination based upon sexual orientation within Executive Branch civilian employment. <http://www.opm.gov/er/address2/Guide01.asp>
- g) Increasing numbers of sexual harassment cases involving male-on-male harassment are being filed. According to the Equal Employment Opportunity Commission (EEOC), the number of sexual harassment claims brought by men doubled during the 1990s to 13.5 percent, with the vast majority of those claims apparently involving same-sex harassment. See Reed Abelson, *“Men, Increasingly, Are the Ones Claiming Sex Harassment by Men,”* N.Y. Times, June 10, 2001, at A1; or see http://faculty.uml.edu/sgallagher/male_sexual_harassment.htm
- h) *Employee Rights Litigation: Pleading and Practice* § 2.02 (2003).

D. Employee Benefits

1. Overview

In addition to being subjected to harassing and discriminatory conduct in the workplace, GLBT employees may also be discriminated against in the granting of employee benefits. Many employers who offer health insurance and other employee benefits extend the benefits to spouses and children of married heterosexual employees. These same benefits are often denied to employee's who have a same-sex partner, whether or not the employee's partner is registered under state law.

GLBT employees may also be denied the benefits of certain laws because of their GLBT status. For example, the Family Medical Leave Act, 29 U.S.C. § 2612, entitles employees to protected leave to care for a “spouse” with a serious health condition, but it does not provide protected leave to an employee who cares for a domestic partners or same-sex partner with a serious health condition.

GLBT public sector employees likely will find more protections against discrimination in employee benefits. The Seattle Municipal Code, for example, includes domestic partner (both different-sex and same-sex) in its definition of eligible family members for sick leave usage. Seattle Municipal Code 4.24.005.

2. Selected Statutes

- a) 29 U.S.C. § 2612 [FMLA]: ". . . an eligible employee shall be entitled to a total of 12 workweeks of leave during any 12-month period for one or more of the following: (A) Because of the birth of a son or daughter of the employee and in order to care for such son or daughter.(B) Because of the placement of a son or daughter with the employee for adoption or foster care.(C) In order to care for the spouse, or a son, daughter, or parent, of the employee, if such spouse, son, daughter, or parent has a serious health condition.(D) Because of a serious health condition that makes the employee unable to perform the functions of the position of such employee."

3. Other Resources

- a) For a list and links to Fortune 500 companies that offer domestic partner health benefits:
http://www.hrc.org/issues/workplace/workplace_resourcesandpublications.asp
- b) For a list and links to private-sector companies that offer domestic partner health benefits:
http://www.hrc.org/issues/workplace/workplace_resourcesandpublications.asp

See **Appendix E** for further resources on employment policies.

IV. Criminal Law

A. Introduction

In 2003, the U.S. Supreme Court struck down a Texas state law banning private consensual sex between adults of the same sex. Lawrence v. Texas, 539 U.S. 558 (2003). At that time 13 states had sodomy laws. Of those 13 states, four—Texas, Kansas, Oklahoma, and Missouri—prohibited oral and anal sex between same-sex couples. The other nine—Alabama, Florida, Idaho, Louisiana, Mississippi, North Carolina, South Carolina, Utah and Virginia—banned consensual sodomy for everyone. The Court's ruling in Lawrence invalidated those laws. Washington State, however, had already eliminated its sodomy law through legislation effective July 1, 1976.

Unlike sodomy laws, most criminal laws do not apply differently based on sexual identity, even when the crime relates to something sexual such as rape. Further, gay, lesbian, bi-sexual, and transgender persons are both victims and perpetrators of crimes where their sexual identity is irrelevant. However, two crimes are of special concern: malicious harassment, also known as “hate crimes,” and rape.

B. Malicious Harassment—“Hate Crimes”

Washington State's malicious harassment law includes “sexual orientation” as one of the enumerated protected classes. A malicious harassment charge is not a sentence enhancer like a deadly weapon enhancement; rather, it is a separate substantive crime.

Washington's malicious harassment statute regulates conduct, not speech. Therefore, words alone are not sufficient to constitute malicious harassment. In order to be charged under the malicious harassment statute, words must be accompanied by acts that sufficiently convey a threat of harm. Further, malicious harassment charges are generally brought only if the primary motivation for the crime was the victim's inclusion as a member of one of the enumerated protected classes. Thus, intent of the defendant is an element of the crime.

1. Applicable Statutes

- a) RCW 9A.36.080: “Malicious Harassment. A person is guilty of malicious harassment if he or she maliciously and intentionally commits one of the following acts because of his or her perception of the victim's race, color, religion, ancestry, national origin, gender, sexual orientation, or mental, physical or sensory handicap:
- b) Causes physical injury to the victim or another person;
- c) Causes physical damage to or destruction of the property of the victim or another person; or,
- d) Threatens a specific person or group of persons and places that person, or members of the specific group of persons, in reasonable fear of harm to person or property . . .”

2. Selected Case Law

With Regard to Race:

a) State v. Talley, 122 Wn.2d 192, 858 P.2d 217 (1993)

Facts: Two cases were consolidated on appeal. One defendant, Talley, burned a cross on his own lawn in the presence of a mixed-race family with the intent to discourage them from buying the house next door. Defendants Myers and Stevens burned a cross on the lawn of an African-American family. Both cases had been dismissed by the trial courts as unconstitutional infringements on the defendants' speech.

Holding: Reversed and remanded. The section of the malicious harassment statute that regulated conduct, not speech, was constitutional. However, the section which specified cross burning and defacement of property with certain types of symbols or words as per se violations regulated protected symbolic speech based on content and thus was unconstitutional.

b) State v. Pollard, 80 Wn. App. 60, 906 P.2d 976 (1995)

Facts: Defendant Pollard was convicted of malicious harassment for using racial slurs against and physically threatening Johnny Durham, a 12-year-old African American, and his friend, Michael Duncan. Pollard also pushed Durham and raised his fist as if to hit Durham. Pollard was intoxicated at the time of the incident. After police arrived, Pollard continued to yell racial epithets and to threaten Durham. Pollard appealed his conviction arguing that there was insufficient evidence to uphold his conviction or, alternatively, that the statute is unconstitutionally vague.

Holding: Conviction upheld. Although the malicious harassment statute requires that the selection of victim be made before the defendant engages in harassing conduct, evidence that the defendant planned the encounter with victim is not necessary to sustain a conviction. The malicious harassment statute does not criminalize uttering biased remarks during commission of another crime, and the state must show that the defendant selected the victim on a basis impermissible under the statute. The malicious harassment statute is not unconstitutionally vague on grounds that, because statute lacked "substantial factor" element, it was unclear as to how much of the defendant's conduct needed to be attributable to victim's status as a member of an enumerated group.

c) State v. Robertson, 88 Wn. App. 836, 947 P.2d 765 (1997)

Facts: Defendants, four African-American females, were found guilty of third-degree assault and malicious harassment of Tiana Leahy, who was white. After making racial statements about the victim, one defendant approached the victim, asked her to fight, and then punched her in the face. The other three defendants then threatened and insulted the victim while taking turns holding her on the ground and punching and kicking her.

Holding: Conviction upheld. Defendants can be found guilty of malicious harassment through accomplice liability if they assist the principal in committing one of the enumerated acts after the principal has made racial slurs. The State is not required to prove that the accomplice shared the principal's mental state in prosecution for malicious harassment based on accomplice liability. Further, the antimerger provision of the harassment statute applies to dispositions in juvenile court.

- d) State v. Wendt, 96 Wn. App. 1004, 1999 WL 455458 (1999)

Facts: Defendant was convicted of malicious harassment for instigating a bar fight. After interviewing several bar patrons, a police officer told the defendant that witnesses were reporting that he was an instigator of the bar fight. Defendant then made several statements that were highly derogatory to Hispanics and said the victims had started the fight.

Holding: Conviction upheld. The trial court did not abuse its discretion by allowing the defendant's racist statements to be admitted even though the victims did not overhear them. The trial court concluded that statements related directly to the crime and were relevant to prove racial motivation.

With Regard to Gender:

- e) State v. Johnson, 115 Wn. App. 890, 64 P.3d 88 (2003)

Facts: Conviction upheld. Defendant was found guilty of malicious harassment of police officer Tami Scott. Officer Scott arrested Johnson for trespassing. Once Officer Scott placed Johnson in the patrol car, he threatened to kill her and used terms identified by the superior court as indicators of gender hatred. Before arriving at the jail, Officer Scott called ahead to report that she would not be taking the defendant out of the patrol car. Three weeks later when Officer Scott and a male officer served a warrant for malicious harassment, the defendant was "very nice" to the male officer, while still acting belligerently toward Officer Scott. On appeal, defendant argued that the State did not show that he selected Officer Scott because of her gender.

Holding: Conviction upheld. If the State shows that the defendant chose the victim because of the victim's status as a member of a group enumerated in the harassment statute, it does not matter that the defendant did not initiate the contact.

With Regard to Sexual Orientation:

- f) State v. Harrison, 93 Wn. App. 1028, 1998 WL 848076 (1998)

Facts: Defendant was convicted in juvenile court of malicious harassment of Ara Tripp, a transgendered person. Harrison was part of a larger group of juveniles who yelled homophobic remarks at Tripp, threatened her, and threw gravel at her as she attempted to leave.

Holding: Conviction upheld. Defendant's involvement with the group that threatened to assault Tripp and called her numerous derogatory names associated with sexual orientation, while standing shoulder-to-shoulder behind the principal assailant was sufficient to find Harrison guilty of malicious harassment as an accomplice.

g) State v. Timothy K., 107 Wn. App. 784, 27 P.3d 1263 (2001)

Facts: Juvenile defendant was charged with malicious mischief in the second degree and malicious harassment for damaging victim's car with a pair of pliers. Victim testified that he had seen defendant's car drive by his house on many previous occasions, and that he had repeatedly heard homophobic expletives coming from the car. However, victim did not hear such comments during the incident. Defendant appealed conviction, arguing that his adjudication of guilt and punishment for the malicious mischief charge must be reversed because that charge contains no elements that are not also necessarily proved by an adjudication of guilt for malicious harassment.

Holding: Conviction upheld. Malicious harassment and second degree malicious mischief offense require proof of an element not found in the other offense. Further, the legislative findings support a conclusion that malicious harassment and malicious mischief be punished separately. Therefore, convictions for malicious harassment and second degree malicious mischief do not violate double jeopardy.

With Regard to Religion:

h) State v. McCallum, 102 Wash. App. 1010, 2000 WL 1201228 (2002)

Facts: Defendant was convicted of malicious harassment and assault in the fourth degree for assaulting the victim because of his belief that the victim was Jewish. McCallum assaulted Dale Pattison-Ball after an altercation that stemmed from an incident from the previous night. During the assault, McCallum used numerous anti-Semitic epithets. Defendant appealed conviction, arguing that the evidence was insufficient to support the conclusion that he committed malicious harassment.

Holding: Conviction upheld. Defendant's use of similar anti-Semitic slurs in the victim's presence the night before and on prior occasions supports the conclusion that he engaged in the type of victim selection prohibited by the malicious harassment statute.

3. Other Resources

- a) Lambda: www.lambda.org
- b) Hate-Crime Network: www.hatecrimenet.org
- c) *Washington Legal Practice* § 13.02

4. Questions to Consider

- a) Because of the possibility of a high number of challenges for cause in malicious harassment cases involving sexual orientation, judges may want to consider having a larger jury pool.
- b) Judges may also want to be directly involved in asking questions of potential jurors during voir dire. Potential jurors will often be more forthcoming about biases with judges than with lawyers.

C. Rape

Same-sex assaults and rapes do happen; however, such crimes are vastly underreported. For instance, some estimate that less than one percent of male same-sex rapes are reported. This underreporting is due in part to societal stigmas attached to same-sex rape and sexual assault and to a lack of resources for victims. Others fear that reporting such crimes will result in their being “outed.” Not all same-sex assault and rape occurs between persons who identify as GLBT. It is, for example, common for men to be assaulted by men who identify as “straight.” See, e.g., Nancy E. Murphy, *Queer Justice: Equal Protection for Victims of Same-Sex Domestic Violence*, 30 Val. U. L. Rev. 335 (1995).

1. Applicable Statutes

- a) RCW 9A.44.040: “Rape in the first degree. (1) A person is guilty of rape in the first degree when such person engages in sexual intercourse with another person by forcible compulsion where the perpetrator or an accessory: (a) Uses or threatens to use a deadly weapon or what appears to be a deadly weapon; or (b) Kidnaps the victim; or (c) Inflicts serious physical injury, including but not limited to physical injury which renders the victim unconscious; or (d) Feloniously enters into the building or vehicle where the victim is situated. (2) Rape in the first degree is a class A felony.”
- b) RCW 9A.44.050: “Rape in the second degree. (1) A person is guilty of rape in the second degree when, under circumstances not constituting rape in the first degree, the person engages in sexual intercourse with another person: (a) By forcible compulsion; (b) When the victim is incapable of consent by reason of being physically helpless or mentally incapacitated; (c) When the victim is developmentally disabled and the perpetrator is a person who is not married to the victim and who has supervisory authority over the victim; (d) When the perpetrator is a health care provider, the victim is a client or patient, and the sexual intercourse occurs during a treatment session, consultation, interview, or examination. It is an affirmative defense that the defendant must prove by a preponderance of the evidence that the client or patient consented to the sexual intercourse with the knowledge that the sexual intercourse was not for the purpose of treatment; (e) When the victim is a resident of a facility for mentally disordered or chemically dependent persons and the perpetrator is a person who is not married to the victim and has

supervisory authority over the victim; or (f) When the victim is a frail elder or vulnerable adult and the perpetrator is a person who is not married to the victim and who has a significant relationship with the victim. (2) Rape in the second degree is a class A felony.”

- c) RCW 9A.44.060: Rape in the third degree. “(1) A person is guilty of rape in the third degree when, under circumstances not constituting rape in the first or second degrees, such person engages in sexual intercourse with another person, not married to the perpetrator: (a) Where the victim did not consent as defined in RCW 9A.44.010(7), to sexual intercourse with the perpetrator and such lack of consent was clearly expressed by the victim's words or conduct, or (b) Where there is threat of substantial unlawful harm to property rights of the victim. (2) Rape in the third degree is a class C felony.”
- d) Washington also has a “Rape Shield Law.” RCW 9A.44.020. This statute applies to all persons without regard to sexual orientation.

2. Selected Case Law

To date, there is no case law specific to this topic.

3. Other Resources

- a) Alternatives to Violence of the Palouse: 1-800-562-6025 (Eastern Washington).
- b) Northwest Network of Bi, Trans, Lesbian, and Gay Survivors: 206-568-7777 (Western Washington).

4. Questions to Consider

- a) Because of the possibility of a high number of challenges for cause in same-sex rape or sexual assault cases, judges may want to consider having a larger jury pool.
- b) Judges may also want to be directly involved in asking questions of potential jurors during voir dire. Potential jurors will often be more forthcoming about biases with judges than with lawyers. Further, some jurors may not believe that same-sex rape or assault occurs, or may erroneously believe that it occurs more frequently, especially in male relationships.
- c) There is a concern among many same-sex rape victims, especially male victims, that their previous sexual history will be put on trial. Therefore, reassurance that the “rape shield law” applies to same-sex victims may be necessary.
- d) As with domestic violence, the threat of “outing” a person is a significant tool of power. Judges should be especially sensitive to this concern.

V. Youth

A. Introduction

As there is increasing acceptance and understanding of GLBT youth, youth are “coming out” at younger ages. However, even with increasing acceptance, GLBT youth are still at a high risk for social problems such as homelessness and suicide. Approximately 40% of homeless youth in Seattle identify as gay, lesbian or bisexual. SEATTLE COMMISSION ON CHILDREN AND YOUTH SURVEY OF STREET YOUTH (1986). GLBT youth are also two to three times more likely to commit suicide than other youth, and nearly 30% of all completed youth suicides are related to issues regarding sexual identity. U.S. Dept. of Health and Human Services, Secretary’s Task Force on Youth Suicide, Vol. 3, pp. 110-142. (1989).

B. Gay, Lesbian, Bisexual, Transgender Youth and Schools

Many GLBT youth do not experience schools as a safe environment. Nationally, 97% of all students in public high schools report regularly hearing homophobic comments from their peers. John Myers, THE COALITION FOR SAFER SCHOOLS OF NYS, THE REAL OR PERCEIVED GAY, LESBIAN, BISEXUAL AND TRANSGENDERED ATUDENT PROTECTION PROJECT. GLBT youth are two to four times more likely than their heterosexual peers to be threatened or injured with a weapon at school. Twice as many GLBT students report being subjected to physical violence compared to their peers. GLBT youth are also more likely to miss school or drop out. Nationally, self-identified GLBT students are five time more likely to miss school than their heterosexual peers and 28% of GLBT students drop out. Id.

Washington State practitioners do not report encountering many GLBT youth issues, possibly due to assumptions that GLBT youth concerns are addressed at the school level or not at all. Indeed, there is anti-harassment protection for GLBT youth in Washington State. Anti-discrimination policies for both sexual orientation and gender identity are in effect in a limited number of school districts in the state. However, public defenders report that if GLBT issues arise with juvenile clients, it is usually in the context of a defendant who has assaulted a peer who is, or is perceived to be, GLBT.

1. Applicable Statutes

- a) In response to some of the concerns listed above, the legislature passed the Anti-Bullying Bill, Laws of 2002, ch 207 § 2 (to be codified at RCW 28A.320, RCW 28A.600, et al).

- b) Two key sections, provide: “By August 1, 2003, each school district shall adopt or amend if necessary a policy, within the scope of its authority, that prohibits the harassment, intimidation, or bullying of any student. It is the responsibility of each school district to share this policy with parents or guardians, students, volunteers, and school employees.” § 2 (1).
“‘Harassment, intimidation, or bullying’ means any intentional written, verbal, or physical act, including but not limited to one shown to be motivated by any characteristic in RCW 9A.36.080(3) [the Anti-Malicious Harassment Bill, see section IV.B., *supra*], or other distinguishing characteristics.” § 2 (2).

2. Selected Case Law

To date, there is no case law specific to this topic.

3. Other Resources

a) School Districts

- (1) The following school districts have policies that explicitly protect students from harassment, intimidation and bullying based on gender identity (this could include, but is not limited to transgendered students): Federal Way, Edmonds, Monroe, North Kitsap, Olympia, and Seattle.

b) Bullying Report

- (1) In 2003, the Washington State PTA and The Safe Schools Coalition authored an extensive bullying report for Washington State. The report includes, among other topics, information on the impact of bullying on youth, Washington State school districts compliance with the Anti-Bullying Law of 2002, and suggested trainings. See Lauren Hafner, The Washington State PTA and The Safe Schools Coalition, *Bullying Report: How are Washington State Schools Doing?* (Dec. 2003) at: <http://www.safeschoolscoalition.org/bullyreport/index.html>.
- (2) According to the report, 69%, or 205, of Washington school districts responded to the survey from the report’s authors. Nearly all school districts have adopted, or were in the process of adopting, anti-harassment, intimidation and bullying statutes. Before the Anti-Bullying law came into effect, only a third of Washington schools reported having anti-harassment policies. Id.

C. **Gay, Lesbian, Bisexual, Transgender Youth and Foster Care**

GLBT youth in foster care also face particular challenges. Judges should be aware that the American Bar Association has begun a LGBTQ Youth in Foster Care Project to begin to examine these challenges in a meaningful way. (“LGBTQ” is an alternate term for “GLBT.”)

GLBT youth in foster care are particularly vulnerable. GLBT youth often experience rejection and violence within their families when their sexual orientation or gender identity become known. Many become homeless. “On the streets they are more susceptible to violence and crime.” Andrea Khoury, Opening Doors for LGBTQ Youth in Foster Care, Vol. 26, No. 5 ABA Child Law Practice (July 2007) (a link to this article can be found at <http://www.abanet.org/child/lgbtq.shtml>).

“Seventy-four percent of LGBTQ youth in foster care believe they experience prejudicial treatment by service providers because of their sexual orientation or gender identity.” Id.

“Judges who ask the right questions and insist on appropriate services and fair and respectful treatment can protect this vulnerable population and help them become successful adults.” Id.

“If the judge creates an open and supportive courtroom for all youth (including LGBTQ youth), insists the agency keep youth safe, finds an appropriate placement, and asks all parties to respect the youth, then other professionals involved in the case will follow the judge’s lead.” Id.

Judge’s can show a GLBT youth that his or her courtroom is safe by:

- being aware that some youth coming before the court identify as GLBT in dependency in delinquency cases;
- addressing the youth in court;
- speaking to the youth respectfully and reflecting an understanding of what the youth has had to endure;
- letting the youth address the court;
- requesting that the social worker ask the youth about sexual orientation;
- being extremely sensitive regarding when and how to share the youth’s sexual orientation or gender identity with others in the case;
- having a list of placements in your community that are GLBT friendly;
- having a list of counseling services that are GLBT friendly; and
- asking the social worker and/or attorneys about the foster parents’ views on GLBT youth in their home.

Id.; and summarized from Judge’s Survey Questionnaire found at <http://www.abanet.org/child/lgbtq.shtml> .

The LGBTQ Youth in Foster Care Project is conducting further research on GLBT youth in foster care by collecting surveys from judge’s and lawyers regarding their experiences with GLBT youth. A link to this survey can be found at <http://www.abanet.org/child/lgbtq.shtml> .

1. Questions to Consider

- a) Are GLBT juveniles on probation given resources that are sensitive to their sexual orientation or gender identity?
- b) Are juvenile probation officers informed about the community resources available for GLBT youth?
- c) Is a juvenile whose probation dictates that he or she live with a parent or guardian leaving home because of issues relating to sexual orientation or gender identity? Will those issues relating to sexual orientation be worsened by a return to that parent or guardian?

VI. Transgender/Transsexual Issues

A. Introduction

Transgender and transsexual issues in the law are increasingly common as transgender and transsexual people become more visible and less stigmatized. Tens of thousands of transsexual and transgendered Americans live routine lives around all of us everyday, often unidentified as “trans” by those who do not know. A transsexual person is one who has, often from his or her first memories, “an enduring, pervasive, and compelling desire to be a person of the opposite sex.” WILLIAM N. ESKRIDGE, JR. & NAN D. HUNTER, *SEXUALITY, GENDER AND THE LAW* 1102 (1997). Transgendered is a more recent term used to describe a transsexual person, but it also has a broader meaning. The term is also used to describe non-conformity with traditional gender expression. Thus, for men, being transgendered would mean a non-conformity with an outward masculine gender expression; for women, it would mean a non-conformity with feminine gender expression. Transgendered people may or may not identify with their birth sex, and are of all sexual orientations. Legal resources adequately addressing issues concerning transsexual and transgendered persons are at a nascent level of development. To assist the judiciary, this handbook thus offers a short summary of those resources, though recognizing that transsexual and transgender legal issues are in many instances quite distinct from issues of sexual orientation.

B. Medical and Other Studies

Medical science has not yet determined the reasons for the desire to alter one's biological sex or to express a gender not seeming to correspond with one's biological sex. Researchers variously point to genetics, to hormones, to mental processes, to cultural rigidity concerning gender roles, and to the common practice of “assigning” children born with ambiguous genitalia (“intersexed” children) to one or the other sex at birth. See e.g., Joanna Schaffhausen, *Gender Bender*, ABC NEWS, Jan. 22, 2004 at <http://www.abcnews.com>; Claudia Kolker, *The Cutting Edge*, SLATE MAGAZINE, June 8, 2004 at <http://www.slate.com>.

Though the modern trend is away from characterizing transsexual and transgendered persons as “mentally ill,” a diagnosis of what is commonly called “Gender Identity Disorder” is still often required in order to undergo surgery and hormone treatment to change one's sex. See American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders* 576-82 (4th ed. 2000).

C. Terminology

1. The Stylebook Supplement in Appendix A contains helpful information on the following terms related to or associated with transsexual and transgendered issues: drag, drag performers, FTM, gender identity, intersex, MTF, transgender, transition, transsexual.

2. Further, Sexual Reassignment Surgery (SRS), formerly known as a sex change is the term used for the series of surgeries, which physically alters a transsexual's body, including the genitalia. Not all transsexuals choose to undergo SRS.
3. There is not a strict definition of when the process of changing one's sex is complete. Indeed, the process is often referred to as a "transition," of which SRS may be just one part.
4. The following terms related to or associated with transsexual and transgendered persons are to be avoided: hermaphrodite, she-male, he-she, transvestite.
5. If unsure of which pronoun to use to refer to a particular person, either ask the person which term he or she prefers, or use the pronoun that corresponds to his or her external gender expression.

D. Discrimination

Please see Section III for information on transsexual/transgender employment discrimination and pertinent statutes, case law, and other resources.

E. Changing Sex on a Birth Certificate

1. Applicable Statutes

To date, there are no statutes specific to this topic.

2. Selected Case Law

To date, there is no case law specific to this topic.

3. Other Resources

Administrative Law

- a) A birth certificate change of sex is a simple administrative process for those born in Washington State. One must send a letter requesting a change of sex on a birth certificate, along with a letter from a doctor stating SRS is complete and a certified copy of a court ordered name change to: Center for Health Statistics, Department of Health, 101 Israel Road SE. Tumwater, WA 98501. See SPENCER BERGSTEDT, *TRANSLEGALITIES: A LEGAL GUIDE FOR TRANSSEXUALS*, 55 (1997).
- b) A birth certificate change of sex for people born outside of Washington State may be more difficult to accomplish. Some states do not allow a change of sex on birth certificate. Other states will allow a change of sex on a birth certificate if the state receives a court order from the state in which the court user is residing stating that SRS is complete, and that the birth state should change the sex on the certificate. Some Washington judges view it as out of their jurisdiction to issue such an order, whereas other judges do so easily.

F. Changing Sex on a Driver's License

1. Applicable Statutes

To date, there are no statutes specific to this topic.

2. Selected Case Law

To date, there is no case law specific to this topic.

3. Other Resources

Administrative Law

- a) A change of sex on a driver's license in Washington State is a simple administrative process. One must send a cover letter with the request for the change, a photocopy of the current license, a certified copy of a court-ordered name change, and a letter from a doctor or therapist stating that the person is a transsexual successfully living full-time as either a man or woman to: Department of Licensing, Driver Examining, PO Box 9030, Olympia, WA 98507. See Bergstedt, *supra*, at 55.

G. Name Change

1. Applicable Statutes

To date, there are no statutes specific to this topic.

2. Selected Case Law

To date, there is no case law specific to this topic.

3. Other Resource

- a) District courts may order names changes for transsexuals and transgendered people.

4. Questions to Consider

- a) Is it necessary to state in the open court the reason for the name change? Many practitioners suggest that for name-change petitions due to a sex change, judges simply ask the petitioner if the name change is for the reason stated in the petition. This practice protects the privacy of the petitioner from other court users present as well as from unnecessarily adding information to the court record, which is already available on the petition itself.

H. Marriage

Challenges to the legitimacy of a marriage, in which a transsexual is one of the spouses, are most often brought by third parties. For instance, a hospital may challenge a marriage in a malpractice suit when one of the spouses has died. Typically, more female-to-male transsexuals (FTMs) win marriage suits than male-to-female transsexuals (MTFs). This is because most FTMs are associated with the GLBT community. They often first identify as lesbians before transitioning. Conversely, the stigma of being a feminine man keeps many MTFs away from the GLBT community. Because FTMs are associated with the GLBT community, they seek out lawyers who can familiarize the court with transsexual issues, who will solicit medical testimony, and who often have specialized in the holistic representation of a transsexual client.

I. Custody of Children

In Seattle, many guardians ad litem do not discriminate based on the transsexuality of one parent. Usually, the child's best interest is analyzed, exclusive of the parent's birth sex or transition stage. However, there is still some discrimination where the focus becomes on the parent, rather than the child's best interests.

Though many states have upheld parental rights, some states have terminated or limited the rights of transsexual parents to the visitation or custody of their children. However, studies have shown that "children raised by transsexuals ... do not differ appreciably from children raised in more conventional settings."

See Bergstedt, *supra*, at 25; SHANNON MINTER & SPENCER BERGSTEDT, CHILD CUSTODY FOR TRANSSEXUAL PARENTS (1997).

J. Incarceration

In some cases, transsexuals are not administered hormones in prison and may even be placed with their birth-sex population. Best practices suggest that transsexuals who began hormone treatment and/or SRS prior to commitment, be allowed to continue to receive treatment during incarceration. Once a person has undergone SRS, it is medically necessary for him or her to continue to receive hormones; otherwise, there will be no hormones present in the body—a medically dangerous situation.

Appendix A:
Stylebook Supplement on
Lesbian, Gay, Bisexual, and
Transgender Terminology

Appendix A: Stylebook Supplement

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The National Lesbian & Gay Journalists Association



Stylebook Supplement on Lesbian, Gay, Bisexual
& Transgender Terminology



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The National Lesbian & Gay Journalists Association (NLGJA) is an organization of journalists, media professionals, educators and students who work within the news industry to foster fair and accurate coverage of lesbian, gay, bisexual and transgender issues. NLGJA opposes all forms of workplace bias and provides professional development to its members.

Since its founding in 1990, NLGJA has grown to a 1,300-member, 24-chapter organization in the United States with affiliations in Canada and Germany.

NLGJA's Stylebook Supplement on Lesbian, Gay, Bisexual and Transgender Terminology is intended to complement the prose stylebooks of individual publications, as well as the Associated Press stylebook, the leading stylebook in U.S. newsrooms. It reflects the association's mission of inclusive coverage of lesbian, gay, bisexual and transgender people, includes entries on words and phrases that have become common and features greater detail for earlier entries. It also includes an expanded contact list of lesbian, gay, bisexual and transgender organizations, with Web sites, e-mail and mailing addresses, phone numbers and, when possible, media contacts.

The Stylebook Supplement was translated into Spanish in 2005 as a part of NLGJA's continued outreach to Spanish-language media.

Please visit nlgja.org for additional information on terminology and organizations.

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National Lesbian & Gay Journalists Association

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ACT UP: The acronym for AIDS Coalition to Unleash Power, an activist organization with independent chapters in various cities. ACT UP acceptable in first reference. See **AIDS**.

AIDS: Acquired Immune Deficiency Syndrome, a medical condition that compromises the human immune system, leaving the body defenseless against opportunistic infections. Some medical treatments can slow the rate at which the immune system is weakened. Do not use the term “full-blown AIDS.” Individuals may be HIV-positive but not have AIDS. Avoid “AIDS sufferer” and “AIDS victim.” Use “people with AIDS” or, if the context is medical, “AIDS patients.” See **HIV**.

bisexual: As a noun, an individual who may be attracted to both sexes. As an adjective, of or relating to sexual and affectional attraction to both sexes. Does not presume nonmonogamy.

civil union: The state of Vermont began this formal recognition of lesbian and gay relationships in July 2000. A civil union provides same-sex couples some rights available to married couples in areas such as state taxes, medical decisions and estate planning.

closeted, in the closet: Refers to a person who wishes to keep secret his or her sexual orientation or gender identity.

coming out: Short for “coming out of the closet.” Accepting and letting others know of one’s previously hidden sexual orientation or gender identity. See **closeted** and **outing**.

commitment ceremony: A formal, marriage-like gathering that recognizes the declaration of members of the same sex to each other. Same-sex marriages are not legally recognized by the U.S. government. See **marriage**.

cross-dresser: Preferred term for person who wears clothing most often associated with members of the opposite sex. Not necessarily connected to sexual orientation.

cruising: Visiting places where opportunities exist to meet potential sex partners. Not exclusively a gay phenomenon.

domestic partner: Unmarried partners who live together. Domestic partners may be of opposite sexes or the same sex. They may register in some counties, municipalities and states and receive some of the same benefits accorded married couples. The term is typically used in connection with legal and insurance matters. See **gay/lesbian relationships**.

Don’t ask, don’t tell: Shorthand for “Don’t Ask, Don’t Tell, Don’t Pursue, Don’t Harass,” the military policy on gay men, lesbians and bisexuals. Under the policy, instituted in 1993, the military is not to ask service members about their

sexual orientation, service members are not to tell others about their orientation, and the military is not to pursue rumors about members' sexual orientation. The shorthand is acceptable in headlines, but in text the full phrase adds important balance.

down low: Usually refers to black men who secretly have sex with men, often while in relationships with women, but do not identify as gay or bisexual. Sometimes abbreviated as DL. Use with caution, as people generally do not identify themselves using this term.

drag: Attire of the opposite sex.

drag performers: Entertainers who dress and act in styles typically associated with the opposite sex (drag queen for men, drag king for women). Not synonymous with transgender or cross-dressing.

dyke: Originally a pejorative term for a lesbian, it is now being reclaimed by some lesbians. Caution: still extremely offensive when used as an epithet.

“ex-gay” (adj.): Describes the movement, mostly rooted in conservative religions, that aims to change the sexual attraction of individuals from same-sex to opposite-sex.

fag, faggot: Originally a pejorative term for a gay male, it is now being reclaimed by some gay men. Caution: still extremely offensive when used as an epithet.

FTM: Acronym for “female to male.” A transgender person who, at birth or by determination of parents or doctors, has a biological identity of female but a gender identity of male. Those who have undergone surgery are sometimes described as “post-op FTMs” (for post-operative). See **gender identity** and **intersex**.

gay: An adjective that has largely replaced “homosexual” in referring to men who are sexually and affectionally attracted to other men. Avoid using as a singular noun. For women, “lesbian” is preferred. To include both, use “gay men and lesbians.” In headlines where space is an issue, “gays” is acceptable to describe both.

gay/lesbian relationships: Gay, lesbian and bisexual people use various terms to describe their commitments. Ask the individual what term he or she prefers, if possible. If not, “partner” is generally acceptable.

gender identity: An individual's emotional and psychological sense of being male or female. Not necessarily the same as an individual's biological identity.

heterosexism: Presumption that heterosexuality is universal and/or superior to homosexuality. Also: prejudice, bias or discrimination based on such presumptions.

HIV: Human immunodeficiency virus. The virus that causes AIDS. “HIV virus” is redundant. “HIV-posi-

tive” means being infected with HIV but not necessarily having AIDS. AIDS doctors and researchers are using the term “HIV disease” more because there are other types of acquired immune deficiencies caused by toxins and rare but deadly diseases that are unrelated to what we now call AIDS. See **AIDS**.

homo: Pejorative term for homosexual. Avoid.

homophobia: Fear, hatred or dislike of homosexuality, gay men and lesbians.

homosexual: As a noun, a person who is attracted to members of the same sex. As an adjective, of or relating to sexual and affectional attraction to a member of the same sex. Use only if “heterosexual” would be used in parallel constructions, such as in medical contexts. For other usages, see **gay** and **lesbian**.

intersex (adj.): People born with sex chromosomes, external genitalia or an internal reproductive system that is not considered standard for either male or female. Parents and physicians usually will determine the sex of the child, resulting in surgery or hormone treatment. Many intersex adults seek an end to this practice.

lesbian: Preferred term, both as a noun and as an adjective, for women who are sexually and affectionally attracted to other women. Some women prefer to be called

“gay” rather than “lesbian”; when possible, ask the subject what term she prefers.

LGBT: Acronym for “lesbian, gay, bisexual and transgender.”

lifestyle: An inaccurate term sometimes used to describe the lives of gay, lesbian, bisexual and transgender people. Sexual orientation may be part of a broader lifestyle but is not one in itself, just as there is no “straight” lifestyle. Avoid.

lover: A gay, lesbian, bisexual or heterosexual person’s sexual partner. “Partner” is generally acceptable. See **gay/lesbian relationships**.

MSM: Acronym for “men who have sex with men.” Term used usually in communities of color to describe men who secretly have sex with other men while maintaining relationships with women. Not synonymous with “bisexual.” See **down low**.

marriage: Advocates for the right to marry seek the legal rights and obligations of marriage, not a variation of it. Often, the most neutral approach is to avoid any adjective modifying the word “marriage.” For the times in which a distinction is necessary, “marriage for same-sex couples” is preferable in stories. When there is a need for shorthand description (such as in headline writing), “same-sex marriage” is preferred because it is more inclusive and more accurate than “gay.”

MTF: Acronym for “male to female.” A transgender person who, at birth or by determination of parents or doctors, has a biological identity of male but a gender identity of female. Those who have undergone surgery are sometimes described as “post-op MTFs” (for post-operative). See **gender identity** and **intersex**.

obituaries: When reporting survivors, list partners of gay, lesbian, bisexual or transgender deceased in an order equivalent to spouses of heterosexual deceased.

openly gay/lesbian: As a modifier, “openly” is usually not relevant; its use should be restricted to instances in which the public awareness of an individual’s sexual orientation is germane. Examples: Harvey Milk was the first openly gay San Francisco supervisor. “Ellen” was the first sitcom to feature an openly lesbian lead character. “Openly” is preferred over “avowed,” “admitted,” “confessed” or “practicing.”

outing (from “out of the closet”): Publicly revealing the sexual orientation or gender identity of an individual who has chosen to keep that information private. Also a verb: The magazine outed the senator in a front-page story. See **coming out** and **closeted**.

pink triangle: Now a gay pride symbol, it was the symbol gay men were required to wear in Nazi concentration camps during World War II. Lesbians sometimes also use a

black triangle.

practicing: Avoid this term to describe someone’s sexual orientation or gender identity. Use “sexually active” as a modifier in circumstances when public awareness of an individual’s behavior is germane.

Pride (Day and/or march): Short for gay/lesbian pride, this term is commonly used to indicate the celebrations commemorating the Stonewall Inn riots of June 28, 1969. Pride events typically take place in June. See **Stonewall**.

queen: Originally a pejorative term for an effeminate gay man. Still considered offensive when used as an epithet.

queer: Originally a pejorative term for gay, now being reclaimed by some gay, lesbian, bisexual and transgender people as a self-affirming umbrella term. Still extremely offensive when used as an epithet.

rainbow flag: A flag of six equal horizontal stripes (red, orange, yellow, green, blue and violet) signifying the diversity of the lesbian, gay, bisexual and transgender communities.

seroconversion: Scientifically observable alteration of blood or other bodily fluids from HIV-negative to HIV-positive. The verb is “seroconvert.” See **HIV**.

seronegative: Synonymous with HIV-negative. See **HIV**.

seropositive: Synonymous with HIV-positive. See **HIV**.

safe sex, safer sex: Sexual practices that minimize the possible transmission of HIV and other infectious agents.

sexual orientation: Innate sexual attraction. Use this term instead of “sexual preference.” See **lifestyle**.

sexual preference: Avoid. See **sexual orientation**.

sodomy: Collective term for various sexual acts that some states have deemed illegal. Not synonymous with homosexuality or sex between gay men. The legal definition of sodomy is different from state to state; in some states, sodomy laws have applied to sexual acts practiced by heterosexuals. The U.S. Supreme Court decided in June 2003 that state sodomy laws targeting private, consensual sex between adult same-sex or opposite-sex partners violate the U.S. Constitution’s due process clause.

special rights: Politically charged term used by opponents of civil rights for gay people. Avoid. “Gay civil rights,” “equal rights” or “gay rights” are alternatives.

Stonewall: The Stonewall Inn tavern in New York City’s Greenwich Village was the site of several nights of raucous protests after a police

raid on June 28, 1969. Although not the nation’s first gay civil rights demonstration, Stonewall is now regarded as the birth of the modern gay civil rights movement.

straight (adj.): Heterosexual; describes a person whose sexual and affectional attraction is to someone of the opposite sex.

transgender (adj): An umbrella term that refers to people whose biological and gender identity or expression may not be the same. This can include preoperative, postoperative or nonoperative transsexuals, female and male cross-dressers, drag queens or kings, female or male impersonators, and intersex individuals. If an individual prefers to be called transsexual, drag queen or king, intersex, etc., use that term. When writing about a transgender person, use the name and personal pronouns that are consistent with the way the individual lives publicly.

transition: The process by which one alters one’s sex. This may include surgery, hormone therapy and changes of legal identity.

transsexual (n.): An individual who identifies himself or herself as a member of the opposite sex and who acquires the physical characteristics of the opposite sex. Individual can be of any sexual orientation. To determine accurate use of names or personal pronouns, use

the name and sex of the individual at the time of the action.

transvestite: Avoid. See **cross-dresser**.

two spirit: An American Indian believed to possess a mixture of masculine and feminine spirits. Some identify as gay, lesbian, bisexual or transgender. Should not be used as a blanket term for LGBT American Indians.

abiertamente gay/lesbiana: Como calificativo, “abiertamente” por lo general no es relevante; su uso se debe restringir a los casos en que el conocimiento público de la orientación sexual de un individuo es relevante. Ejemplos: Harvey Milk fue el primer supervisor de San Francisco abiertamente gay. “Ellen” fue la primera comedia de televisión en ofrecer un personaje principal abiertamente lesbiana. “Abiertamente” es preferible a “declarado”, “admitido”, “confesado” o “practicante”.

ACT UP: Las siglas (en inglés) de la Coalición del SIDA para desarrollar poder (AIDS Coalition to Unleash Power), una organización activista con sucursales independientes en varias ciudades. El término ACT UP es aceptable en primera referencia. Vea **SIDA**.

amante: La pareja sexual de una persona gay, lesbiana, bisexual o heterosexual. El término “pareja” es de aceptación común.

artista travesti: Un artista que se viste y actúa de manera comúnmente asociada con personas del sexo opuesto. (En inglés se dice “drag queen” con respecto a un hombre, y “drag king” con respecto a una mujer). No es sinónimo de transexual o “cross-dressing”.

bandera arco iris: Una bandera de seis franjas horizontales del mismo ancho (rojo, anaranjado, amarillo, verde, azul y violeta) que significa la diversidad de las comunidades

lesbianas, gays, bisexuales y transsexuales.

bisexual: Como sustantivo, un individuo que puede sentirse atraído hacia personas de ambos sexos. Como adjetivo, lo que se refiere a la atracción sexual o afectiva hacia personas de ambos sexos. No implica ausencia de monogamia.

ceremonia conyugal: Una reunión formal, similar a un matrimonio, que reconoce el compromiso que une a dos personas del mismo sexo. Los matrimonios entre personas del mismo sexo no son reconocidos legalmente por el gobierno federal de los Estados Unidos. Vea **matrimonio**.

“cross-dresser”: En inglés, término usado para referirse a una persona que usa ropa generalmente asociada con miembros del sexo opuesto. No necesariamente relacionado con la orientación sexual.

“cruising”: Visitar lugares donde hay oportunidad de conocer posibles parejas sexuales. No es un fenómeno exclusivo de gente gay.

derechos especiales: Un término politizado que usan las personas opuestas a los derechos civiles de la gente gay. Es preferible no usarlo. Términos alternativos son: “derechos civiles de los gay”, “igualdad de derechos” o “derechos para los gay”.

doble espíritu: Un nativo de Norteamérica que posee espíritu masculino y espíritu femenino. Algunos se auto-identifican como gay, lesbiana, bisexual o transexual. No debe utilizarse como un término generalizador de nativos de Norteamérica LGBT.

“Don’t ask, don’t tell”: Manera abreviada de referirse al reglamento militar “No pregunte, no cuente, no averigüe, no acose” que se estableció en 1993 para las personas gay, lesbianas y bisexuales que sirven en las fuerzas armadas. De acuerdo con este reglamento, los mandos militares no preguntarán al personal enlistado acerca de su orientación sexual, el personal enlistado no hablará con otros sobre su orientación, y las autoridades militares no investigarán rumores sobre la orientación sexual de sus miembros. La expresión es aceptable en titulares de noticias, pero el empleo de la frase completa en el texto facilitará un entendimiento más balanceado.

“down low”: En inglés, se refiere comúnmente a hombres de raza negra que tienen sexo con otros hombres ocultamente, a menudo mientras mantienen relaciones con mujeres, pero no se identifican como gay o bisexuales. La abreviación “DL” también es utilizada. Emplee el término con precaución, puesto que la gente no se identifica generalmente como tal.

drag: Traje del sexo opuesto.

“dyke”: En inglés, fue originalmente un término despectivo para lesbiana. Pero últimamente algunas de ellas lo usan con connotaciones positivas. Precaución: Sigue siendo extremadamente ofensivo cuando se usa como epíteto. Equivalentes derogatorios en español: tortillera, arepera, marimacho y pata.

en el armario (en el closet): En referencia a una persona que desea mantener en secreto su orientación sexual o identidad de género.

estilo de vida: Un término inexacto usado a veces para describir la vida de la gente gay, de lesbianas, de bisexuales y de transexuales. La orientación sexual pudiese ser parte de un estilo de vida más amplio pero no es uno en sí mismo, así como no hay un estilo de vida “heterosexual”. Preferible evitarlo.

“ex-gay” (adjetivo): Un movimiento que tiene raíces en grupos religiosos conservadores de los Estados Unidos, que intenta cambiar la atracción sexual que una persona sienta por las de su mismo sexo y dirigirla hacia el otro sexo.

gay (Anglicismo): Adjetivo que ha reemplazado en gran medida el término “homosexual” para referirse a hombres que se sienten atraídos sexual y afectivamente por otros hombres. Evite el uso como sustantivo. Para las mujeres es preferible usar “lesbiana”. Para incluir ambos, utilice “gays y lesbianas”. Cuando se carece de espacio para titulares largos es aceptable usar “gays” para

describir a ambos grupos.

HAM: Sigla que significa “de hombre a mujer”. Una persona transexual que al nacer o por determinación de sus padres o doctores, tiene una identidad biológica de varón pero una identidad de género femenino. Aquellas que han sido reasignadas quirúrgicamente a veces son descritas como “HAM postoperatorio”. Vea **identidad de género** e **intersexual**.

heterosexismo: Presunción de que la heterosexualidad es universal y/o superior a la homosexualidad. También: prejuicio, favoritismo o discriminación basada en tal presunción.

“homo”: Término peyorativo para un homosexual. Preferible no usarlo.

homofobia: Miedo, odio o aversión a la homosexualidad, a gays y a lesbianas.

homosexual: Como sustantivo, una persona que se siente atraída por personas del mismo sexo. Como adjetivo, lo que se refiere o relaciona con la atracción sexual y afectiva hacia alguien del mismo sexo. Se recomienda utilizar como calificativo sólo cuando se emplearía “heterosexual” de forma paralela, por ejemplo en contextos médicos. Para otras expresiones de uso común, vea **gay** y **lesbiana**.

HSH: Siglas que significan “hombrés que tienen sexo con hombres”.

Término usado generalmente en comunidades de color para describir a los hombres que tienen sexo secretamente con otros hombres, mientras mantienen relaciones íntimas con mujeres. No es sinónimo de “bisexual”. Vea “**down low**”.

identidad de género: El sentido emocional y psicológico de un individuo de ser hombre o mujer. No necesariamente igual a la identidad biológica del individuo.

intersexual (adjetivo): Gente que nace con los cromosomas sexuales, los órganos genitales externos o un sistema reproductivo interno que no se consideran estándar para un varón o una hembra. Generalmente los padres y los médicos determinan el sexo del infante, lo que implica intervención quirúrgica o tratamiento con hormonas. Muchos adultos intersexuales buscan poner fin a esta práctica.

lesbiana: Término preferido, tanto como sustantivo como adjetivo, para mujeres que se sienten atraídas sexual y afectivamente hacia otras mujeres. Algunas prefieren ser llamadas “gays” en vez de “lesbianas”. Siempre que sea posible, pregunte a la persona el término que prefiere.

LGBT: Sigla que significa “lesbiana(s), gay(s), bisexual(es) y transexual(es).”

MAH: Sigla que significa “de mujer a hombre”. Una persona transexual que al nacer o por determinación

de sus padres o doctores, tiene una identidad biológica de hembra pero identidad de género masculina. Aquellos que han sido reasignados quirúrgicamente a veces son descritos como “MAH postoperatorio”. Vea **identidad de género e intersexual**.

marica: Término despectivo para homosexuales. Evite el uso. Otros términos similares a evitar: loca, maricón, mariposa (Colombia y Puerto Rico), mariposón (Cuba), mariquita (Colombia), mayate (Cuba, México), pato (Puerto Rico), puñal (México), puto.

marimacho: Término despectivo para lesbianas. Evite el uso. Otros términos similares a evitar: arepera, marimacha, marimacho, pata y tortillera.

matrimonio: Los que abogan a favor del derecho a casarse buscan los derechos legales y las obligaciones del matrimonio y no una variante del mismo. A menudo, el modo más neutro de referirse al tema es evitar cualquier adjetivo que modifique la palabra “matrimonio”. En situaciones en que sea necesaria una distinción, se puede emplear “matrimonio de parejas del mismo sexo” en artículos. Cuando hay una necesidad de una descripción corta (por ejemplo en algún titular), es preferible usar “matrimonio del mismo-sexo” porque es más amplio y más exacto que “matrimonio gay”.

obituarios: Cuando se informe

sobre los sobrevivientes de una persona gay, lesbiana, bisexual o transsexual que ha fallecido, mencione a su pareja en un orden equivalente al del esposo o la esposa de difuntos heterosexuales.

orgullo (día y/o desfile del): El término se refiere al sentido de autoafirmación que sienten muchos homosexuales y alude a las celebraciones que conmemoran los disturbios de la taberna Stonewall Inn del 28 de junio de 1969. Vea **Stonewall**.

orientación sexual: Atracción sexual natural. Utilice este término en vez de “preferencia sexual”. Vea **estilo de vida**.

pareja doméstica: Dos cohabitantes que no están casados. Una pareja doméstica puede estar integrada por personas de sexos opuestos o del mismo sexo. Pueden recibir algunos de los mismos beneficios aportados a los matrimonios cuando se registran en ciertos condados, municipios o estados que los otorgan. El término se utiliza típicamente en conexión con asuntos legales y de pólizas de seguro. Vea **relaciones gay/lesbianas**.

practicante: Evite este término para describir la identidad u orientación sexual de alguien. Utilice “activo sexualmente” como modificador en circunstancias cuando el conocimiento público de las acciones de un individuo es relevante.

preferencia sexual: Preferible evitarla. Vea **orientación sexual**.

“queen”: En inglés, originalmente un término derogatorio alusivo a algún hombre gay afeminado. Se considera ofensivo cuando se emplea como epíteto.

“queer”: En inglés, originalmente un término derogatorio alusivo a gay, pero recientemente ha sido adoptado como término genérico de autoafirmación por algunos gays, lesbianas, bisexuales y transexuales. Precaución: Sigue siendo sumamente ofensivo cuando se emplea como epíteto.

relaciones gay/lesbianas: Se usa terminología variada para describir estas uniones. Si es posible, pregunte a la persona el término que prefiere.

sacar del armario (del closet): Dar a conocer la orientación sexual o identidad de género de alguien que ha elegido mantener en privado esa información.

salir del armario (del closet): Aceptación personal y dejarle saber a otros sobre una orientación sexual o identidad de género previamente oculta. Vea en el armario y sacar del armario.

seroconversión: Fenómeno observable científicamente cuando la sangre u otros líquidos corporales pasan de VIH-negativo a VIH-positivo. El verbo es “seroconvertir”. Vea VIH.

seronegativo: Sinónimo de VIH negativo. Vea VIH.

seropositivo: Sinónimo de VIH positivo. Vea VIH.

sexo seguro, sexo más seguro: Prácticas sexuales que reducen la probabilidad de transmisión del VIH y de otros agentes infecciosos.

SIDA: Síndrome de inmunodeficiencia adquirida, una condición médica que compromete el sistema inmune humano, dejando al cuerpo indefenso frente a infecciones oportunistas. Algunos tratamientos médicos pueden reducir la rapidez con que el sistema inmune se debilita. Individuos pueden ser VIH positivos y no tener SIDA. Evite usar “víctima del SIDA”, “sidoso” o “sidoso”. Use “gente/persona con SIDA” y si el contexto es médico use “paciente con SIDA”. Vea VIH.

sodomía: Término usado para describir varios actos sexuales que algunos estados consideran ilegales. No es sinónimo de sexo entre personas del mismo sexo. La definición legal de la sodomía difiere de estado a estado; en algunos estados, las leyes sobre sodomía también aplican a actos sexuales practicados por gente heterosexual. El Tribunal Supremo de los Estados Unidos dictó en junio del 2003 que las leyes estatales sobre sodomía dirigidas a la actividad sexual en privado y con consentimiento mutuo de parejas del mismo sexo o heterosexuales, violan la cláusula constitucional que otorga el respeto a todos los derechos de la persona (llamada en inglés “Due process clause”).

Stonewall: La taberna Stonewall Inn en el vecindario de Greenwich Village de la ciudad de Nueva York, donde hubo protestas callejeras durante varias noches seguidas a raíz de una redada de policía que tuvo lugar el día 28 de junio 1969. Aunque no fue la primera demostración en defensa de los derechos civiles de los gay, hoy en día Stonewall es considerada la cuna del movimiento contemporáneo por los derechos civiles de los gays.

“straight” (adjetivo): En inglés, una persona heterosexual, cuyo interés sexual y afectivo se dirige hacia una persona del sexo opuesto.

“transgender” (adjetivo): En inglés, término abarcador que se refiere a personas cuyo género biológico no coincide con su identidad o expresión sexual. Puede incluir a transsexuales preoperados, postoperados y sin operar, al igual que a “cross-dressers” femeninos y masculinos, “drag queens” y “drag kings”, imitadores de caracteres masculinos o femeninos y personas intersexuales. Cuando se escribe sobre una persona “transgender”, se usa el nombre y los pronombres personales que correspondan con la manera de vivir en público de la persona. Nota: en español, algunas personas se auto-identifican como “transgénero”.

transición: El proceso de cambiar el sexo de una persona, lo cual puede incluir cirugía, terapia hormonal y cambios en la de identidad legal.

transexual: Una persona que se identifica con el otro sexo, y adopta sus características físicas. Puede ser de orientación heterosexual u homosexual. Use el nombre y los pronombres personales que conformen con los que la persona emplea al momento de la acción en el reportaje.

travesti: A diferencia de su equivalente en inglés, mucha gente se auto-identifica como tal sin considerarle ofensivo. Precaución: Sigue siendo sumamente ofensivo cuando se emplea para generalizar o como epíteto. Vea “cross-dresser”.

triángulo rosa: Símbolo que los hombres gay debían portar en los campos de concentración nazis durante la Segunda Guerra Mundial; ahora simboliza orgullo gay. Las lesbianas a veces también utilizan un triángulo negro.

unión civil: El estado de Vermont empezó este reconocimiento formal de las relaciones entre parejas del mismo sexo en julio del 2000. Una unión civil concede algunos de los derechos disponibles a los matrimonios en áreas como impuestos estatales, decisiones médicas y disposición de herencias.

VIH: Virus de inmunodeficiencia humana. El virus que causa SIDA. “Virus del VIH” es redundante. “VIH positivo” significa estar infectado con VIH pero no necesariamente tener SIDA. Tanto los médicos como los investigadores utilizan cada vez más la frase “enfermedad del VIH”

debido a que hay otros tipos de deficiencias inmunoadquiridas que no tienen que ver con lo que llamamos SIDA y que son causadas por toxinas o por enfermedades mortales raras. Vea **SIDA**.

AIDS Action: Lobbies for programs and research funding. (202) 530-8030; fax: (202) 530-8031; aidsaction@aidsaction.org; www.aidsaction.org; media contacts: Marsha Martin, executive director, Ext. 3044, or Donna Crews, govt. affairs and public policy, Ext. 3040.

ACLU Lesbian and Gay Rights

Project: Special division staffed by legal and civil rights experts working for equal treatment of lesbians, gay men and bisexuals. 125 Broad St., New York, NY 10004; (212) 549-2627; fax: (212) 549-2650; www.aclu.org, lgbthiv@aclu.org.

ACT UP: Chapter-based activist group. ACT UP/Philadelphia: P.O. Box 22439 Land Title Station, Philadelphia, PA 19110-2439; (215) 731-1844; fax: (215) 731-1845.

Bay Area American Indian Two-Spirits: Offers cultural and social events for LGBT American Indian people and their friends. 1800 Market St., P.O. Box 95, San Francisco, CA 94102-6227; phone: 415-865-5616; www.baaits.org.

Bisexual Resource Center: brc@biresource.org, 617-424-9595, Bisexual Resource Center, P.O. Box 1026, Boston, MA 02117-1026 USA.

Cathedral of Hope: Christian church based in Dallas, with primary outreach to lesbian, gay, bisexual and transgendered people. (214) 351-1901 or (800) 501-HOPE; fax: (214) 351-6099; hope@cathedralofhope.com; www.

cathedralofhope.com.

Children of Lesbians and Gays

Everywhere (COLAGE): National organization supporting young people with LGBT parents. 3543 18th St. #1, San Francisco, CA 94110; (415) 861-5437; fax: (415) 255-8345; colage@colage.org; www.colage.org; media contact: Felicia Park-Rogers, executive director.

Dignity USA: LGBT Catholics. 1500 Massachusetts Ave. NW, Suite #11, Washington, DC 20005-1894; (800) 877-8797 or (202) 861-0017; fax: (202) 429-9808; dignity@aol.com; www.dignityusa.org.

Family Pride Coalition: Support for lesbian, gay, bisexual and transgender parents and their families. (202) 331-5015; fax: (202) 331-0080; info@familypride.org; www.familypride.org; media contact: Corri Planck, communications director, (202) 331-3775, corri.planck@familypride.org.

FTM International: Educational organization serving female-to-male transgender people and transsexual men. (415) 553-5987; info@ftmi.org; www.ftmi.org.

Gay, Lesbian, Straight Education Network (GLSEN):

Chapter-based group working to create safer schools. 121 W. 27th St., Suite 804, New York, NY 10001; (212) 727-0135; fax: (212) 727-0254; glsen@glsen.org; www.glsen.org.

Gay and Lesbian Alliance Against Defamation (GLAAD): Promotes fair, accurate and inclusive media coverage. (800) 429-6334; fax: (212) 629-3322; cell: (917) 239-0647; glaad@glaad.org; www.glaad.org; media contact: Glennda Testone, testone@glaad.org.

Gay and Lesbian Medical Association (GLMA): Represents health professionals and their patients. (415) 255-4547; fax: (415) 255-4784; info@glma.org; www.glma.org.

Gay and Lesbian Victory Fund: Works to elect gay and lesbian officials. (202) 842-8679; fax: (202) 289-3863; Victory@victoryfund.org; www.victoryfund.org.

Gay Men's Health Crisis: AIDS and HIV service provider. The Tisch Building, 119 W. 24 St., New York, NY 10011. GMHC Hotline: (800) 243-7692; in New York City: (212) 807-6655; hotline@gmhc.org. Press and media: Lynn Schulman, (212) 367-1210; lynns@gmhc.org; www.gmhc.org.

Gay Men of African Descent: 103 E. 125th St., Suite 503, New York, NY 10035; (212) 828-1697; fax: (212) 828-9602 www.gmad.org; media contact: Tokes Osubu, executive director, (212) 828-1697, info@gmad.org.

Gender Public Advocacy Coalition (GenderPAC): National organization working to end discrimination and violence caused by gender stereotypes. 1743 Connecticut

Ave. NW, 4th Floor, Washington, DC 20009; (202) 462-6610; fax: (202) 462-6744; gpac@gpac.org; www.gpac.org.

Human Rights Campaign (HRC): Political action committee. (202) 628-4160; fax: (202) 347-5323; hrc@hrc.org; www.hrc.org; media contact: Steven Fisher, VP for communications, (212) 216-1547; steven.fisher@hrc.org.

Indigenous Peoples Task Force: Provides health education and counseling, including HIV services, for American Indian people and their families. 1433 East Franklin Ave. Suite 18A, Minneapolis, MN 55404; phone: 612-870-1723; fax: 612-870-9532; SharonD@indigenouspeoplestf.org; www.indigenouspeoplestf.org.

Institute for Gay and Lesbian Strategic Studies (IGLSS): Independent think tank that addresses LGBT issues. P.O. Box 2603, Amherst, MA 01004-2603; (413) 577-0145; www.iglss.org; media contact on deadline: (413) 549-1055.

International Foundation for Gender Education: Information provider and clearinghouse for referrals. IFGE, P.O. Box 540229, Waltham, MA 02454-0229; (781) 899-2212; fax: (781) 899-5703; info@ifge.org; www.ifge.org; media contact: Denise LeClaire.

International Gay and Lesbian Human Rights Commission (IGLHRC): (415) 561-0633; fax: (415) 561-0619; iglhrc@iglhrc.org; www.iglhrc.org

Intersex Society of North America: (707) 633-6077; fax (707) 633-6049; info@isna.org; www.isna.org.

Lambda Legal Defense and Education Fund (LLDEF): (212) 809-8585; fax: (212) 809-0055; pressqueries@lambdalegal.org; www.lambdalegal.org; media contact: Eric Ferrero, communications director at ext. 227.

Log Cabin Republicans: Chapter-based. (202) 347-5306; fax: (202) 347-5224; info@logcabin.org; www.logcabin.org.

Metropolitan Community Church: Fellowship of Christian churches with special outreach to gay, lesbian, bisexual and transgender people. 8704 Santa Monica Blvd. Second Floor, West Hollywood CA 90069-4548; (310) 360-8640; fax: (310) 360-8680; info@MCCchurch.org; www.MCCchurch.org

National Center for Lesbian Rights (NCLR): Legal resource center. (415) 392-6257; fax: (415) 392-8442; info@nclrights.org; www.nclrights.org.

National Gay and Lesbian Task Force (NGLTF): Civil rights. (202) 393-5177; fax: (202) 393-2241; ngltf@nglhf.org; www.nglhf.org; media contact: Roberta Sklar, communications director, (646) 358-1465, rsklar@thetaskforce.org.

National Lesbian & Gay Journalists Association (NLGJA): Resource that works within the news industry;

chapter-based. (202) 588-9888, ext. 11; fax: (202) 588-1818; info@nlgja.org; www.nlgja.org; media contact: Pamela Strother, executive director, pstrother@nlgja.org.

National Stonewall Democrats: Network of lesbian and gay Democrat clubs. P.O. Box 9330, Washington, DC 20005; (202) 625-1382; fax: (202) 625-1383; johnmarble@stonewalldemocrats.org; www.stonewalldemocrats.org.

National Transgender Action Coalition: Works for civil rights for all transgender, intersex and gender-variant people. P.O. Box 76027, Washington, DC 20013; info@ntac.org; www.ntac.org.

New York City Gay and Lesbian Anti-Violence Project and the National Coalition of Anti-Violence Programs: Serves GLBT and HIV-positive victims of violence. The New York group is incubating the national coalition. 240 W. 35th St., Suite 200, New York, NY 10001; (212) 714-1184; fax: (212) 714-2627; webmaster@avp.org; www.avp.org.

Parents, Families and Friends of Lesbians and Gays (PFLAG): Provides support, education, advocacy through 460+ chapters. (202) 467-8180; fax: (202) 467-8194; info@pflag.org; www.pflag.org.

Republican Unity Coalition: A gay-straight alliance of Republican leaders. P.O. Box 19206, Washington, D.C. 20036-9206; www.republican-unity.com, ccfrancis@aol.com.

Senior Action in a Gay Environment (SAGE): Social service and advocacy organization dedicated to LGBT senior citizens. 305 Seventh Ave., 16th Floor, New York, NY 10001; (212) 741-2247; fax: (212) 366-1947; sageusa@aol.com; www.sageusa.org.

Servicemembers Legal Defense Network (SLDN): Legal-aid and watchdog group. (202) 328-3244; fax: (202) 797-1635; sldn@sldn.org; www.sldn.org; media contact: Steve Ralls, director of communications, (202) 328-3244, Ext. 116, Sralls@sldn.org.

Seventh-Day Adventist Kinship: Support for GLBT Seventh-day Adventists and their friends and families. P.O. Box 49375, Sarasota, FL 34230-6375; (866) 732-5677; www.sdakinship.org.

Sexual Orientation Issues in the News (SOIN): Resource center for journalism educators. Annenberg School for Communication, University of Southern California, 3502 Watt Way, Los Angeles, CA 90089-0281. Media contact: Laura Castañeda, professor; lcastane@usc.edu; www.usc.edu/annenberg/soin.

World Congress of Gay, Lesbian, Bisexual, and Transgender Jews: Keshet Ga'avah: Chapter-based. P.O. Box 23379, Washington, DC 20026-3379; (202) 452-7424; fax: (215) 873-0108; info@glbtjews.org; www.glbtjews.org; media contact: Scott Gansl, president, (609) 396-1972.

Appendix B:
Same-Sex Couples and
Same-Sex Couples Raising
Children in Washington
Data From Census 2000

SAME-SEX COUPLES AND SAME-SEX COUPLES
RAISING CHILDREN IN WASHINGTON
DATA FROM CENSUS 2000

JANUARY 2005



by R. Bradley Sears and Professor William B. Rubenstein [1]
The Williams Project on Sexual Orientation Law and Public Policy
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SAME-SEX COUPLES AND SAME-SEX COUPLES RAISING CHILDREN IN WASHINGTON
DATA FROM CENSUS 2000

EXECUTIVE SUMMARY

This report provides demographic and socio-economic information about same-sex couples and same-sex couples raising children in Washington.

SAME-SEX COUPLES IN WASHINGTON

- We estimate, based on the best available studies of human sexuality, that there are approximately 127,000 individuals who self-identify as gay men or lesbians in Washington.
- Approximately 16,000 Washington householders identified themselves as living with a same-sex partner in the 2000 Census.
- Washington has the fifth highest percentage of same-sex households among all fifty states.
- Census 2000 identified same-sex couples in every Washington county, but almost one-half live in King County and almost one-third live in Seattle.
- Individuals living in same-sex couples not only live throughout the state, but share all of the other attributes of Washington's population – they include every race, every ethnicity, the able-bodied and the disabled, citizens and non-citizens.
- Individuals in same-sex couples contribute to the Washington economy: 78% of members of same-sex couples in Washington are employed compared with 66% of members of married couples.
- Individuals in same-sex couples have served Washington and the United States in the armed forces: 15% percent of the individuals in same-sex couples are veterans compared with 20% of individuals in married couples.
- Individuals in same-sex couples in Washington depend on one another economically in ways similar to married couples. Disparate income levels between the partners provide evidence of interdependence, suggesting that one partner is caring for the other. Members of same-sex couples have higher disparities of income than unmarried heterosexual couples, though not as highly disparate as married couples.
- Similarly, in 64% of same-sex couples one partner is a homeowner. By comparison, one or both partners are homeowners in 43% of different-sex unmarried couples and 80% of married couples.

SAME-SEX COUPLES AND SAME-SEX COUPLES RAISING CHILDREN IN WASHINGTON
DATA FROM CENSUS 2000

SAME-SEX COUPLES RAISING CHILDREN IN WASHINGTON

- Same-sex couples in Washington are raising over 7,400 children. Approximately 24% of same-sex couples in Washington are raising children under 18.
- The children of same-sex couples are diverse. Over 30% are children-of-color, while only 21% of children of married parents are identified as non-White.
- Compared to married couples with children, same-sex couples with children have fewer economic resources to care for their children. For example, same-sex parents have lower household incomes, lower home ownership rates, and lower levels of education than do married couples.
- The median household income for same-sex parents in Washington is \$9,000 lower than the median household income for married couples with children; the average household income is \$10,000 lower. In addition, the home ownership rate for same-sex parents is 18% lower than the rate for married parents.
- Same-sex parents are more likely than married parents to be African-American, Hispanic, or Spanish speakers. All of these factors may mean that these parents are more likely to face discrimination in employment or in the housing and rental markets, making it more difficult for them to provide for their children.

The economic situation of same-sex parents revealed by Census 2000 suggests that the financial protections and benefits of marriage are likely to be just as important to them as to married couples with children.

SAME-SEX COUPLES AND SAME-SEX COUPLES RAISING CHILDREN IN WASHINGTON

DATA FROM CENSUS 2000

I. INTRODUCTION

Across the United States, courts, legislatures and voters are struggling with the issue of gay marriage. Recently, two Washington state trial courts struck down Washington's Defense Against Marriage Act as unconstitutional.[2] With appeals to the Washington Supreme Court pending, members of the state Senate have already responded by announcing their intention to amend the state constitution to ban gay marriage.[3] As Washington considers whether to extend the legal rights and obligations of marriage to same-sex couples, the Williams Project contributes this report on the characteristics of the Washington families that will be directly impacted.

Using data from Census 2000, this report provides demographic and economic information about same-sex couples and same-sex couples raising children in Washington. In most cases, we compared married couples with different-sex and same-sex "unmarried partners," which the Census Bureau defines as an unmarried couple who "shares living quarters and has a close personal relationship." [4] We compared economic and household variables for these three sets of couples.

II. SAME-SEX COUPLES IN WASHINGTON

Washington ranks 5th among the states in terms of same-sex couple households as a percentage all households (1.2%), and 12th in terms of total number of same-sex couples (almost 16,000 same-sex couples). (Table 1) The individuals in these couples are in many ways more diverse than the general Washington population, are active contributors to the State's economy, and have served the State and the U.S. in the armed forces.

Table 1 – States with the highest percent of same-sex couples households as a percent of all households

State	Same-sex couples households as a percent of all households
1. California	1.4%
2. Massachusetts	1.3%
2. New York	1.3%
2. Vermont	1.3%
5. Florida	1.2%
5. Nevada	1.2%
5. Washington	1.2%

SAME-SEX COUPLES AND SAME-SEX COUPLES RAISING CHILDREN IN WASHINGTON
DATA FROM CENSUS 2000

There are approximately 16,000 same-sex couples living in Washington.

According to data provided by Census 2000, there are approximately 16,000 (15,900) same-sex couples living in Washington.[5]

Just over half of Washington's same-sex couples (52%) are female-female, and 48% are male-male.[6]

Individuals in same-sex couples are slightly younger than individuals in married couples: the average age of individuals in same-sex couples in Washington is approximately 42 compared to 47 for married individuals.

It is likely that not all same-sex couples in Washington identified themselves during Census 2000. Householders might have been hesitant to identify themselves as living with a same-sex partner as this designation would essentially reveal their sexual orientation to the government. Others may not have thought to apply the "unmarried partner" category to their relationship. This is particularly true since this Census characterization is relatively new and hence many members of same-sex couples may not understand how to identify themselves as such on the Census. Moreover, the Census only captures same-sex couples living under one roof. Surveys taken after Census 2000 indicate that 16-19% of same-sex couples did not identify themselves on Census 2000.[7] In light of this undercount, the number of same-sex couples in Washington is likely to be closer to 20,000.

Using data from Census 2000 and the National Health and Social Life Survey (NHSLs), we estimate that 25% of all gay men and lesbians in Washington live in Census-reporting couples. The NHSLs found that 2.8% of males and 1.4% of females in the United States identify themselves as gay. Using these percentages and the total male and female populations in Washington, we estimate that over 127,000 Washington residents would identify themselves as gay men or lesbians. The Census identified 32,000 individuals in same-sex couples; this is 25% of the 127,000 self-identified gay people we estimate live in Washington

Same-sex couples live throughout Washington.

The Census reports same-sex couples in every county in Washington. However, almost one-half of Washington's same-sex couples live in King County. Seattle ranks third in the nation in terms of same-sex couple households as a percent of all households, behind only San Francisco and Fort Lauderdale. (Table 2)

SAME-SEX COUPLES AND SAME-SEX COUPLES HOUSEHOLDS RAISING CHILDREN IN WASHINGTON
DATA FROM CENSUS 2000

Table 2 – Cities with the highest percent of same-sex couple households as a percent of all households

City	Same-sex couple households as a percent of all households
1. San Francisco, CA	2.7%
2. Fort Lauderdale, FL	2.1%
3. Seattle, WA	1.9%
4. Oakland, CA	1.8%
4. Berkeley, CA	1.8%
5. Atlanta, GA	1.7%
6. Minneapolis, MN	1.6%
7. Washington, DC	1.5%
8. Long Beach, CA	1.4%
9. Portland, OR	1.3%

The number of same-sex couples identified by Census 2000 range from 2 couples in Garfield County to 7,751 in King County. As a percentage of all couples in each county, same-sex couples range from 0.3% in Garfield County to 2.0% in King County. (Table 3 & Map 1)

Table 3 – Same-sex couples in Washington by county

County	Male-male couples	Female-female couples	Total same-sex couples	Same-sex couples as a percent of all couples
Adams County	17	16	33	0.92%
Asotin County	15	11	26	0.54%
Benton County	95	88	183	0.55%
Chelan County	76	75	151	0.97%
Clallam County	50	63	113	0.70%
Clark County	302	395	697	0.87%
Columbia County	2	4	6	0.59%
Cowlitz County	69	77	146	0.67%
Douglas County	21	29	50	0.64%
Ferry County	9	7	16	0.92%

SAME-SEX COUPLES AND SAME-SEX COUPLES RAISING CHILDREN IN WASHINGTON
DATA FROM CENSUS 2000

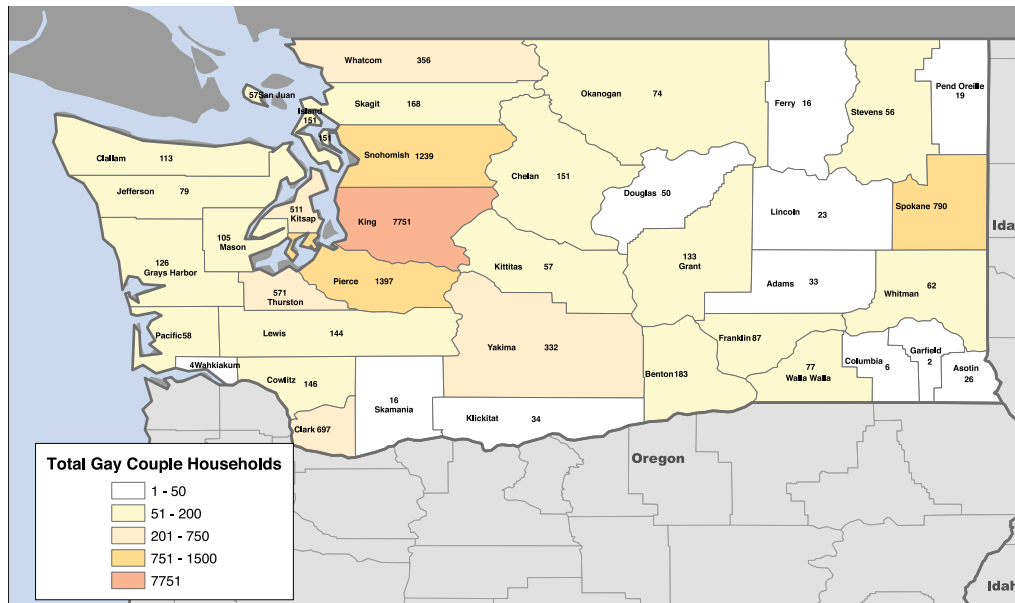
Franklin County	43	44	87	0.88%
Garfield County	0	2	2	0.33%
Grant County	73	60	133	0.81%
Grays Harbor County	70	56	126	0.81%
Island County	59	92	151	0.82%
Jefferson County	25	54	79	1.13%
King County	4089	3662	7751	2.07%
Kitsap County	240	271	511	0.93%
Kittitas County	24	33	57	0.79%
Klickitat County	15	19	34	0.72%
Lewis County	72	72	144	0.88%
Lincoln County	12	11	23	0.85%
Mason County	35	70	105	0.88%
Okanogan County	42	32	74	0.80%
Pacific County	23	35	58	1.08%
Pend Oreille County	8	11	19	0.65%
Pierce County	587	810	1397	0.91%
San Juan County	22	35	57	1.50%
Skagit County	76	92	168	0.69%
Skamania County	6	10	16	0.64%
Snohomish County	538	701	1239	0.88%
Spokane County	370	420	790	0.86%
Stevens County	23	33	56	0.57%
Thurston County	179	392	571	1.18%
Wahkiakum County	3	1	4	0.39%
Walla Walla County	45	32	77	0.67%
Whatcom County	144	212	356	0.97%
Whitman County	24	38	62	0.84%
Yakima County	149	183	332	0.72%

January 2005

WILLIAMS PROJECT

SAME-SEX COUPLES AND SAME-SEX COUPLES RAISING CHILDREN IN WASHINGTON DATA FROM CENSUS 2000

Map 1 – Number of same-sex couples in Washington by county



Same-sex couples are more diverse than Washington's general population.

Individuals in same-sex couples in Washington are more likely than individuals in married couples to be people of color and of Hispanic origin. Eighty-four percent of members of married couples identify themselves racially as White compared with 81% of individuals in same-sex couples. Individuals in same-sex couples are slightly more likely than individuals in married couples to identify themselves as Black, being of mixed race, or of Hispanic origin. (Table 4)

Same-sex couples in Washington are significantly more likely than married couples to be interracial. While 11% of married couples in Washington have partners of different races or origins, 17% of same-sex couples in Washington have partners of different races or origins.[8] (Table 4)

SAME-SEX COUPLES AND SAME-SEX COUPLES RAISING CHILDREN IN WASHINGTON
DATA FROM CENSUS 2000

Table 4 – Diversity of individuals in same-sex couples in Washington compared to individuals in married couples in Washington

Characteristic	Same-sex couples	Married couples
White	81%	84%
Black	3%	2%
Asian/Native Hawaiian/Pacific Islander	4%	6%
Other/Multiracial	4%	3%
Percent speaking Spanish in household	6%	5%
Hispanic	7%	5%
Interracial	17%	11%

Individuals in same-sex couples actively contribute to the Washington economy and have served in the United States military.

Seventy-eight percent of individuals in same-sex couples in Washington are employed, compared with 66% of members of married couples. Although members of same-sex couples are more likely to be employed, members of both same-sex and married couples have similar employment patterns. Roughly the same percentage of individuals in both groups work for the government, the private for-profit sector, the non-profit sector, and are self-employed. (Table 5)

Members of same-sex couples are more likely than members of married couples to have obtained a college degree or higher: 38% percent of individuals in same-sex couples have obtained a college degree or higher compared to 30% of members of married couples. (Table 5)

Until 1992, the United States military barred gay people from military service; since 1992, Congress has barred "openly gay" people from serving. Nonetheless, individuals living in same-sex couples in Washington show surprisingly high rates of military service: 15% percent of individuals in same-sex couples have served in the military, compared with 20% of individuals in married couples. The rate of service among men is almost the same for married men and men in same-sex couples: 18% percent of men in same-sex couples have served in the military compared with 20% of married men. By comparison, 17% of married women in Washington have served in the military compared with 12% of women in same-sex couples. (Table 5)

SAME-SEX COUPLES AND SAME-SEX COUPLES RAISING CHILDREN IN WASHINGTON
DATA FROM CENSUS 2000

Table 5 – Economic characteristics and veteran status of individuals in same-sex couples in Washington compared to individuals in married couples

Characteristic	Same-sex couples	Married couples
Percent employed	78%	66%
Type of employment for those employed		
• Private for-profit sector	60%	61%
• Non-profit sector	9%	7%
• Public sector (federal, state, local government)	19%	19%
• Self-employed	12%	13%
College degree or higher	38%	30%
Citizenship	95%	93%
Veteran status	15%	20%

Military service by individuals in Washington same-sex couples rose significantly during Vietnam, and exceeded military service by individuals in married couples from 1975-1990. (Table 6).

Table 6 – Military service of individuals in same-sex and married couples in Washington by era of service

Era of military service	Same-sex couples	Married couples
1990s	2%	3%
1975-1990	4%	2%
Vietnam	5%	7%
1955-1964	1%	5%
Korea/WWII	1%	2%

Individuals in same-sex couples depend on each other economically.

Census data suggest that individuals in same-sex couples in Washington depend upon one another economically and in pursuit of their life goals. Factors demonstrating such interdependence include: having only one partner in the workforce, significant income disparities between partners (implying that one cares for the other), and indicia of major life decisions, such as homeownership or child-rearing.

Single wage-earner. In 23% of same-sex couples in Washington, one person is employed while the other person is either unemployed or out of the labor force. (Table 7) It is fair to assume that in many of these couples, one person's income supports both

SAME-SEX COUPLES AND SAME-SEX COUPLES RAISING CHILDREN IN WASHINGTON
DATA FROM CENSUS 2000

individuals. The bread-winner's income may also be paying for a partner's education, or one person in the couple may be at home with full-time child care responsibilities.

Income disparities. The average difference between the individual incomes of same-sex partners in Washington was \$25,900, compared to \$39,600 for married couples and \$21,800 for different-sex unmarried couples. (Table 7) This again may suggest that one partner cares for the other economically, or that one is home taking care of the house or child-rearing, while the other is in the workforce. In fact, the Census data show that same-sex couples with children are more likely than those without children to have one partner work and the other stay at home. Among Washington same-sex couples with no children, only 21% have one member working while the other does not. Among Washington same-sex couples with children that percentage increases to 32%.

Major life decisions. The rate of home ownership among same-sex couples is higher than that of unmarried different-sex couples, though not as high as that of married couples. One or both partners are homeowners in 64% of same-sex couples, compared with 80% for married couples and 43% for different-sex unmarried couples. (Table 7) This indicates that individuals in same-sex couples rely upon one another to maintain a home, undertake mortgage obligations, and share an interest in real property. Because same-sex couples are not afforded the legal benefits and protections generally afforded marital property interests, these major life decisions are more complicated to execute.

Table 7 – Indicators of interdependence among couples in Washington, by type of couple

Indicator of interdependence	Different-sex unmarried Couples	Same-sex couples	Married couples
Only one partner employed	29%	23%	31%
Average difference in individual income between partners	\$21,800	\$25,900	\$39,600
Only one partner has a college degree or higher	18%	24%	22%
Only one partner disabled	20%	20%	19%
Only one partner on public assistance	7%	4%	2%
Home ownership by either partner	43%	64%	80%
Raising a child (one or more child under 18 in household)	41%	24%	48%

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In sum, these Census data suggest that many same-sex couples in Washington are taking on responsibilities to care for each other and to raise children even though they cannot access the legal rights and obligations provided by marriage under Washington law.

III. SAME-SEX COUPLES RAISING CHILDREN IN WASHINGTON

Marriage contributes to the economic and emotional security of children by encouraging couples to enter into long-term relationships that provide children with stable environments and the care and support of two parents. In addition, the legal rights and obligations of marriage provide for the continued support of children in the event of the death of one or both parents or the dissolution of the parents' relationship.

Same-sex couples in Washington are raising 7,405 children.

Many same-sex couples in Washington are raising children. The Census indicates that householders living with a same-sex partner in Washington were raising 7,405 of their "own" children in 1999. The Census category of "own" children includes all children who are biologically-related, adopted, or step-children of the householder. It does not include foster children.[9] This calculation also does not count children in the household unrelated to the householder.

However, the Census provides this aggregate data a separate way: 24% of same-sex couple households in Washington have children under 18 in their home (this figure includes "own" children, foster children, and children unrelated to the head of household). Twenty-eight percent of female-female couples in Washington have children under 18, compared with 19% of male-male households; by contrast, 40% of unmarried different-sex households and 46% of married couples have children in the home.

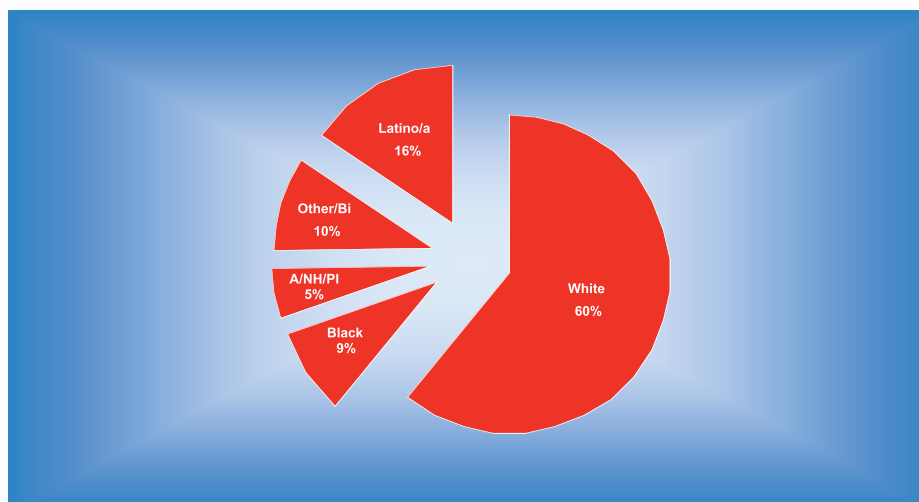
In sum, Census 2000 shows that more than 8,600 individuals in same-sex couples were raising approximately 7,400 children in Washington in 1999. (The Census sheds no light on how many thousands of other children are being raised by single gay men and lesbian.)

The children being raised by same-sex couples are racially and ethnically diverse.

The Washington children being raised by same-sex parents belong to every race and ethnicity, reflecting a greater diversity than the Washington population as a whole. For example, of the "own" children of the householder in same-sex couples, 61% are White, 9% are African-American, 5% are Asian-American, 16% are of Hispanic origin, and 10% are of another race or multi-racial. (Chart 1)

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Chart 1 – Race of Own Children Raised by Same-sex Couples in Washington



The children of same-sex couples are slightly younger and more likely to have been adopted.

Both married couples and same-sex couples with their own children in Washington have, on average, two children. In addition, married couples with children are similar to same-sex parents in terms of average age: both groups are in their mid to late-30s. (Table 8)

Children of same-sex couples are slightly younger than children of married couples: 31% percent of children being raised by same-sex couples are under five years old, compared with 27% of the children of married couples. (Table 8)

Children of same-sex couples in Washington are also more likely to have been adopted. Six percent of children with same-sex parents are adopted, compared with only 3% of children with married parents. (Table 8)

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DATA FROM CENSUS 2000

Table 8 – Characteristics of same-sex couples with children in Washington compared to married couples with children.

Household characteristic	Same-sex parents	Married parents
Average number of children	1.7	2.0
Average age of parents	37	38
Percentage of children under 5 years of age	31%	27%
Percentage of children who are adopted	6%	3%

Members of same-sex couples raising children in Washington have lower incomes and are less likely to have a college degree or own a home than members of married couples.

Comparisons of households with same-sex couples raising their own children and married couples raising their own children show that same-sex parents have fewer economic resources to provide for their children.

Parents in same-sex couples have lower levels of education than parents in married couples. Only 24% of same-sex Census parents in Washington have a college or advanced degree, while 31% of married parents have a college or advanced degree. (Table 9)

The household incomes of Census same-sex parents in Washington are substantially lower than the household incomes for married couples with children. The median household income for same-sex parents is almost \$9,000 lower than the median household income for married couples with children; the average household income is almost \$10,000 lower. (Table 9)

The home ownership rate for Census same-sex parents is also significantly lower than the rate for married parents. While 76% of married couples with children in Washington own their own homes, only 58% of same-sex parents captured by the Census own their own homes. (Table 9)

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Table 9 – Socio-economic characteristics of same-sex parents with children in Washington compared to married parents with children

Household characteristic	Same-sex parents	Married parents
B.A. or advanced degree	24%	31%
Percent homeowners	58%	76%
Household income (average)	\$66,400	\$76,200
Household income (median)	\$53,200	\$62,000

Parents in same-sex couples also differ from individuals in same-sex couples as a whole (as described above in Section II) and parents in married couples in ways that might create additional obstacles for them in providing for their children.

Parents in same-sex couples are more likely to belong to racial minorities and to be Spanish speakers.

This may mean that these parents are more likely to face discrimination in employment or the housing and rental markets, making it more difficult for them to provide for their children.

While approximately 79% of married parents in Washington identify themselves as White, only 68% of same-sex parents identify themselves as such in the Census. Thirteen percent of parents in Census same-sex couples identify themselves as Hispanic and 12% as Spanish speakers, compared to 8% of parents in married couples. In addition, while 8% of Census same-sex parents in Washington identify themselves as Black, only 2% of married parents identify themselves as Black. (Table 10)

Table 10 - Racial and ethnic diversity of same-sex parents with children in Washington compared to racial and ethnic diversity of married parents with children in Washington

Characteristic	Same-sex parents	Married parents
White	68%	79%
Black	8%	2%
Asian/Native Hawaiian/Pacific Islander	5%	7%
Hispanic	13%	8%
Other	6%	4%
Percent speaking Spanish in household	12%	8%

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IV. CONCLUSION

The picture of same-sex couples raising children presented by Census 2000 is quite different than the popular misconception that gays are men, affluent, urban, White and childless. People in same-sex couples look like Washingtonians generally. Individuals in same-sex couples raising children, however, don't fare this well: they are less affluent, more racially and ethnically diverse, and hence particularly in need of the protections and benefits that marriage provides.

[1] The authors thank Ryan Kirkpatrick, UCLA School of Law 2005, for his research assistance.

[2] See *Castle v. State*, 2004 WL 1985215 (Wash. Super. September 7, 2004) (No. 04-2-00614-4) and *Anderson v. King County*, 2004 WL 1738447 (Wash. Super. August 4, 2004) (No. 04-2-04964-4-SEA).

[3] Lornet Turnbull, Gays Are A Protected Class, State Judge Rules, SEATTLE TIMES, Sept. 9, 2004.

[4] Unless otherwise noted, data in this report is from Public Use Micro Samples (PUMS) provided by the U.S. Census Bureau for our calculations (available at <http://www.census.gov/Press-Release/www/2003/PUMS.html>, and <http://www.census.gov/Press Release/www/2003/PUMS5.html>). The Census Bureau also provides household weights and person weights that allow us to make projections from the samples to create estimates for the whole population of couples in Washington.

[5] Tavia Simmons and Martin O'Connell, Married-Couple and Unmarried-Partner Households, Census 2000 Special Reports, CENSR-5, U.S. Department of Commerce, U.S. Census Bureau Feb. 2003, Table2, p. 4.

[6] *Id.*

[7] Lee Badgett and Marc Rodgers, Left out of the count: Missing same-sex couples in Census 2002, Institute of Gay and Lesbian Strategic Studies, 2003, http://www.iglss.org/media/files/c2k_leftout.pdf, accessed on May 5, 2004.

[8] Simmons and O'Connell, *supra* note 5, at 12, Table 5. The seven race groups used for this analysis were White, Black or African-American, American Indian and Alaska Native, Asian, Native Hawaiian and other Pacific Islander, some other race alone, or two or more races. If either spouse or partner was not in the same single race as the other spouse or partner, or if at least one partner was in a multiple-race group, then the couple was classified as an interracial couple.

[9] Simmons and O'Connell, *supra* note 3, at 16.

Appendix C: Private-Sector Codes and Ordinances

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Private-Sector Employees County and City Codes

- (1) Clallam County Home Rule Charter Article X § 10.10 Personnel System—
Nondiscrimination: In the exercise of its powers or in the performance of its duties, the county shall ensure that no person is discriminated against because of race, creed, political ideology, color, national origin, sex, marital status, sexual orientation . . .
- (2) King County Code 12.18.10 Statement of purpose . . . The King County council hereby finds and declares that practices of employment discrimination against any person on the basis of race, color, age, sex, marital status, sexual orientation, . . . constitute a matter of local concern and are contrary to the public welfare, health, peace and safety of the residents of King County. The provisions of this chapter shall apply to King County when acting as an employer and to other employers, labor organizations, and employment agencies in unincorporated King County and shall be liberally construed for accomplishment of its policies and purposes . . .
- (3) King County Code 12.18.020 Definitions . . . J. “Sexual Orientation” means male or female heterosexuality, bisexuality, or homosexuality, and includes a person’s attitudes, preferences, beliefs and practices pertaining to sex. (Ord. 7430 § 2, 1985).
- (4) King County Code 12.18.030 Unfair employment practices prohibited: It is an unfair employment practice for any: A. employer or labor organization to discriminate against any person with respect to referral, hiring, tenure, promotion, terms, conditions, wages or other privileges of employment; . . .

Private-Sector Employees City Ordinances and Municipal Codes:

- (1) Olympia ordinance No. 5401 Ordinance relating to hate crimes: . . . whereas, the Olympia City Council finds that such crimes against persons because of their race, color, religion, ancestry, national origin, gender, sexual orientation, or mental, physical or sensory disability is serious and increasing, and . . .
- (2) Seattle Municipal Code 14.04.020 Declaration of policy: A. It is declared to be the policy of the City, in the exercise of its police powers for the protection of the public health, safety, and general welfare, and for the maintenance of peace and good government, to assure equal opportunity to all persons, free from restrictions because of race, color, sex, marital status, sexual orientation, gender identity, political ideology, age, creed, religion, ancestry, national origin, or the presence of any sensory, mental or physical disability. The role of the Office for Civil Rights is to enforce the provisions of this chapter in furtherance of this policy.

(3) Seattle Municipal Code 14.04.030 Definitions:

- A. "Discrimination," "discriminate," and/or "discriminatory act" means any act, by itself or as part of a practice, which is intended to or results in different treatment or differentiates between or among individuals or groups of individuals by reason of race, color, age, sex, marital status, sexual orientation, gender identity, political ideology, creed, religion, ancestry, national origin; or the presence of any sensory, mental or physical handicap.
- B. "Sexual orientation" means actual or perceived male or female heterosexuality, bisexuality, or homosexuality and includes a person's attitudes, preferences, beliefs and practices pertaining thereto.
- C. Gender identity" means a person's identity, expression, or physical characteristics, whether or not traditionally associated with one's biological sex or one's sex at birth, including transsexual, transvestite, and transgendered, and including a person's attitudes, preferences, beliefs, and practices pertaining thereto.

(4) Seattle Municipal Code 14.04.040 Unfair employment practices designated: It is unfair employment practice within the City for any:

- A. Employer to discriminate against any person with respect to hiring, tenure, promotion, terms, conditions, wages or privileges of employment, or with respect to any matter related to employment; . . .
- B. Employer, employment agency, or labor organization to print, circulate, or cause to be printed, published or circulated, any statement, advertisement, or publication relating to employment or membership, or to use any form of application therefore, which indicates any preference, limitation, specification, or discrimination based upon race, color, sex, marital status, sexual orientation, gender identity, political ideology, age, creed, religion, ancestry, national origin, or the presence of any sensory, mental or physical handicap; . . .

(5) Seattle Ordinance Number 102562—An ordinance relating to and prohibiting discriminatory practices based on race, color, sex, marital status, sexual orientation, . . . with respect to employment; defining offenses and prescribing penalties, remedies, and enforcement procedures; and repealing Ordinance 100642.

(6) City of Spokane Municipal Code 01.06.010 Law Against Discrimination Findings: The City of Spokane finds that discrimination based on race, religion, color, sex, national origin, marital status, familial status, age, sexual orientation, or disability poses a substantial threat to the health, safety and general welfare of the citizens of Spokane. The City deems it necessary and proper to enact a local ordinance to address these issues.

- (7) City of Spokane Municipal Code 01.06.020 Law Against Discrimination—
Purpose: The City values the dignity and worth of all human beings and is committed to promoting justice, equity and an inclusive environment by respecting cultural and individual diversity and fostering mutual understanding among all people regardless of race, religion, color, sex, national origin, marital status, familial status, age, sexual orientation, and disability.
- (8) City of Spokane Municipal Code 01.06.020 Law Against Discrimination—
Definitions: . . . C.1. "Discrimination" means different or unequal treatment because of race, religion, color, sex, national origin, marital status, familial status, age, sexual orientation, or disability. 2. "Discriminate" means to treat differently or unequally because of race, religion, color, sex, national origin, marital status, familial status, age, sexual orientation, or disability.
- (9) City of Spokane Ordinance No. C-32232 (Human Rights and Discrimination)
- A. 1.06.010 Findings: The City of Spokane finds that discrimination based on race, religion, color, sex, national origin, marital status, familial status, age, sexual orientation, or disability poses a substantial threat to the health, safety and general welfare of the citizens of Spokane. The City deems it necessary and proper to enact a local ordinance to address these issues.
- B. 1.06.020 Purpose: A. The City values the dignity and worth of all human beings and is committed to promoting justice, equity and an inclusive environment by respecting cultural and individual diversity and fostering mutual understanding among all people regardless of race, religion, color, sex, national origin, marital status, familial status, age, sexual orientation and disability.
- C. 1.06.030 Definitions: . . . M. "Sexual orientation" means actual or perceived heterosexuality, homosexuality, or bisexuality.
- (10) Tacoma Ordinance No. 26948: Whereas, to further the objectives of the City of Tacoma's Law Against Discrimination, on February 26, 2002, the Commission unanimously recommended amending Tacoma's Law Against Discrimination to include protection based on a person's sexual orientation and gender identity, . . ."
- (11) Tacoma Municipal Code 1.29.040 Definitions: . . . "Sexual orientation" shall mean actual or perceived homosexuality, bisexuality, or heterosexuality.
- (12) Tacoma Municipal Code 1.29.050 Unlawful discriminatory employment practice: "The exclusion of a person from, or failure or refusal to extend to a person, equal opportunities because of race, religion, color, national origin or ancestry, sex, gender identity, sexual orientation, age, marital status, familial status, or the presence of any sensory, mental, or physical disability is hereby declared to be an unlawful discriminatory practice." This municipal code further applies to the following, please see the municipal code for the text:

- A. Employers. It is an unlawful discriminatory practice for any employer to:
 - 1. Fail or refuse to hire or to discharge an individual, or otherwise discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment because of race, religion, color, national origin or ancestry, sex, gender identify, sexual orientation . . .
 - 2. Limit, segregate, or classify employees in any way which would tend to deprive an individual of employment opportunities, or otherwise adversely affect that individual's status as an employee because of race, religion, color, national origin or ancestry, sex, gender identify, sexual orientation . . .
 - 3. Confine or limit recruitment or hiring of employees, with intent to circumvent the spirit and purpose of this chapter, to any employment agency, employment service, labor organization, training school, training center, . . . who are predominantly of the same race, religion, color, national origin or ancestry, sex, gender identify, sexual orientation . . .
 - 4. Require of any applicant for employment any information concerning race, religion, color, national origin or ancestry, sex, gender identity, sexual orientation . . .
- (13) Tacoma Municipal Code 1.29.060 Additional unlawful discriminatory practices: The exclusion of a person from, or failure or refusal to extend to a person, equal opportunities because of race, religion, color, national origin or ancestry, sex, gender identity, sexual orientation, . . .
 - A. Labor Organizations. It is an unlawful discriminatory practice for a labor organization to: 1. Exclude or expel from its membership or otherwise to discriminate against any member or applicant for membership because of . . . sex, gender identify, sexual orientation . . .
 - B. Employment Agencies. It is an unlawful discriminatory practice for an employment agency to refuse to refer employment or otherwise discriminate against any person because of . . . sex, gender identity, sexual orientation . . .
 - C. Advertising. It shall be an unlawful discriminatory practice for an employer, labor organization, employment agency, or joint labor-management committee controlling apprenticeship or other training programs to print or publish or cause to be published any notice or advertisement relating to employment, training, or apprenticeship opportunities which indicates any preference, limitation, or discrimination based on . . . sex, gender identity, sexual orientation . . .

Appendix D: Public-Sector Employee Codes and Ordinances

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Public-Sector Employees County and City Codes

- (1) Clallam County Home Rule Charter Article X § 10.10 Personnel System—
Nondiscrimination: In the exercise of its powers or in the performance of its duties, the county shall ensure that no person is discriminated against because of race, creed, political ideology, color, national origin, sex, marital status, sexual orientation
- (2) King County Code 3.12.040 Personnel Benefits: B. Full-time regular, part-time regular, provisional, probationary and term-limited temporary employees and their spouse or domestic partner, each of their dependent children, and each of the dependent children of their spouse or domestic partner shall be eligible for medical, dental, life, disability, and vision benefits, except in those instances where contrary provisions have been agreed to in the collective bargaining process and to the extent such benefits are available through insurers selected by the county.
- (3) King County Code 3.12.180 Equality of county employment: A. The county is an equal opportunity employer and shall carry out federal, state and local laws and regulations prohibiting discrimination in employment on the basis of race, color, creed, religion, national origin, sex, sexual orientation, marital status or the presence of a sensory, mental, or physical disability.
- (4) King County Code 12.18.10 Statement of purpose: The King County council hereby finds and declares that practices of employment discrimination against any person on the basis of race, color, age, sex, marital status, sexual orientation, constitute matter of local concern and are contrary to the public welfare, health, peace and safety of the residents of King County. The provisions of this chapter shall apply to King County when acting as an employer and to other employers, labor organizations, and employment agencies in unincorporated King County and shall be liberally construed for accomplishment of its policies and purposes
- (5) King County Code 12.18.020 Definitions J. “Sexual Orientation” means male or female heterosexuality, bisexuality, or homosexuality, and includes a person’s attitudes, preferences, beliefs and practices pertaining to sex. (Ord. 7430 § 2, 1985).
- (6) King County Code 12.18.030 Unfair employment practices prohibited: It is an unfair employment practice for any: A. employer or labor organization to discriminate against any person with respect to referral, hiring, tenure, promotion, terms, conditions, wages or other privileges of employment;
- (7) King County Code 12.19.030 Nondiscrimination in benefits: A. A contractor who has contracted with the county shall not discriminate in the provision of employee benefits between an employee with a spouse and an employee with domestic partner.

City Ordinances and Municipal Codes:

- (8) Anacortes Policy 504 Types of Absences—Bereavement Leave: . . . (3)(a) In the event of the death of an employee's immediate family member, time off with pay for employee's regular scheduled workday will be granted to regular full time employees. The phrase "immediate family" for the purposes of the bereavement policy includes the employee's spouse (or domestic partner), . . .
- (9) Bremerton Municipal Code 22.01.260 Discrimination Prohibited (Public Corporation): (a) Neither the Board of Directors membership, nor Membership, nor any employees of the public corporation may directly or indirectly be based upon or limited by age, race, color, religion, sex, national origin, marital status, sexual orientation, political ideology or the physical handicap of a capable person. (b) To assure equality of employment opportunity, the public corporation: (1) Will not discriminate in employment because of age, race, color, religion, sex, national origin, marital status, sexual orientation, political ideology or against a physically handicapped person capable of performing the work.
- (10) Burien Municipal Code 2.27.010 Domestic partner benefits—Reimbursement: When AWC Employee Benefit Trust extends dependent eligibility to employee's domestic partners and their children, the city will provide benefit coverage to domestic partners and dependent children on the same basis as provided to spouses and dependent children. [Ord. 384 § 1, 2003; Ord. 348 § 1, 2001]
- (11) Des Moines Municipal Code 2.12.100 Fair employment policy: (1) Fair Employment Policy Established. It is the policy of the city of Des Moines to promote and afford equal treatment and employment practices to its employees and applicants for employment and to assure equal employment opportunity abased upon ability and fitness of any person regardless of sex, age, . . . sexual orientation, marital status, . . .
- (12) Everett Municipal Code 2.104.260 Discrimination prohibited (Public Corporations): A. Neither board of directors nor membership may directly or indirectly be based upon or limited by age, race, color, religion, sex, national origin, marital status, sexual orientation, . . . B. To assure equality of employment opportunity, the public corporation: 1. Will not discriminate in employment because of age, race, color, creed, religion, sex, national origin, marital status, sexual orientation, . . .
- (13) Kirkland Municipal Code 3.80.020 Personnel Ordinance—General provisions: Affirmative Action Policy. Within the parameters required or allowed by law, it is the policy of the city to promote and assure equal opportunity based on ability and fitness to all persons regardless of race, religion, color, national origin, sex, age, marital status, political affiliation, sexual orientation, or the presence of any sensory, mental or physical disability or the use of a trained dog guide or service animal by a disabled person.
- (14) Kirkland Municipal Code 3.80.030 Personnel Ordinance—Definitions: "Immediate family" means wife, husband, son, daughter, mother, father, grandmother, grandfather, mother-in-law, father-in-law, domestic partner, brother, sister and other relatives as designated by approval of the city manager.

- (15) Mount Vernon Municipal Code 2.94.250 Discrimination Prohibited: A. Neither board membership nor constituency membership may directly or indirectly be based upon limited by age, race, color, religion, sex, national origin, marital status, parental status, sexual orientation, gender identity, . . . B. To assure equality of employment opportunity, the public corporation: 1. Will not discriminate in employment because of age, race, color, creed, religion, ancestry, sex, national origin, marital status, sexual orientation, gender identify. . .
- (16) Olympia Municipal Code 03.18.020—City Contracts—Non-Discrimination in Benefits: A. No contractor on a City contract shall discriminate in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse.
- (17) Olympia Municipal Code 1.24.010: A. No officer, official, employee, agent or contractor of the city shall in the rendering or delivery of city services or resources, discriminate against any person(s), firm or organization because of age, sex, race, creed, color, sexual orientation . . .
- (18) Olympia Ordinance No. 5401 Ordinance relating to hate crimes: . . . Whereas, the Olympia City Council finds that such crimes against persons because of their race, color, religion, ancestry, national origin, gender, sexual orientation, or mental, physical or sensory disability is serious and increasing, and . . .
- (19) Olympia Ordinance 6304—An ordinance related to contracts; requiring contractors on City contracts to provide employee benefits to their employees with domestic partners equivalent to those provided to their employees with spouses; and adopting Chapter 3.18 entitled "Equal Benefits—City Contracts—Non-Discrimination in Benefits" of the Olympia Municipal Code.
- (20) Pullman City Code 1.14.005 City policy on diversity in the workplace: The city of Pullman recognizes that continued success in meeting the needs of the community requires the full and active participation of talented and committed individuals regardless of their respective race, ethnicity, religion, gender, age, sexual orientation, . . . and that only by fostering an environment of recognition and acceptance, can we begin to appreciate and support the strengths afforded by the range of problem solving styles, communication skills, ideas, and organizational contributions of each and every person.
- (21) Pullman City Code 1.14.010 Refusal to hire due to discrimination prohibited: The city of Pullman shall not refuse to hire any person for a position with the city of Pullman because of such person's sex, religion, age, color, national origin, race, marital status, sexual preference or orientation, or physical or mental disability unless based upon bona fide occupational qualifications; provided, that the prohibition against discrimination because of such disability shall not apply if the particular disability prevents the proper performance of the particular worker involved.

- (22) Renton Municipal Code 2-7-1 Human Rights and Affairs commission—
Declaration of Policy; Definitions: The City Council herewith finds that all forms of prejudice and the general practice of discrimination against any individual, group or organization by reason of race, color, creed, national origin, age, sex, sexual orientation, the presence of any sensory, mental or physical disability or marital status have a detrimental effect on the public welfare and well-being, that to eliminate such prejudice and discrimination an instrumentality should be established through which the citizens of the City may be kept informed of developments in human relations, the employees and officials of the City may obtain expert advice and assistance in wholesome practices to keep peace and good order, and private persons, groups and organizations may be officially encouraged and advised to promote tolerance and goodwill toward all people.
- (23) Seattle Municipal Code 4.80.020 Policy: It is the policy of the City to provide a workplace for its employees that is free from discrimination on the basis of race, color, sex, marital status, sexual orientation, gender identity, political ideology, age, creed, religion, ancestry, national origin, or the presence of any sensory, mental or physical handicap.
- (24) Seattle Municipal Code 14.04.020 Declaration of policy: A. It is declared to be the policy of the City, in the exercise of its police powers for the protection of the public health, safety, and general welfare, and for the maintenance of peace and good government, to assure equal opportunity to all persons, free from restrictions because of race, color, sex, marital status, sexual orientation, gender identity, political ideology, age, creed, religion, ancestry, national origin, or the presence of any sensory, mental or physical disability. The role of the Office for Civil Rights is to enforce the provisions of this chapter in furtherance of this policy.
- (25) Seattle Municipal Code 14.04.030 Definitions:
- A. "Discrimination," "discriminate," and/or "discriminatory act" means any act, by itself or as part of a practice, which is intended to or results in different treatment or differentiates between or among individuals or groups of individuals by reason of race, color, age, sex, marital status, sexual orientation, gender identity, political ideology, creed, religion, ancestry, national origin; or the presence of any sensory, mental or physical handicap.
 - B. "Sexual orientation" means actual or perceived male or female heterosexuality, bisexuality, or homosexuality and includes a person's attitudes, preferences, beliefs and practices pertaining thereto.
 - C. "Gender identity" means a person's identity, expression, or physical characteristics, whether or not traditionally associated with one's biological sex or one's sex at birth, including transsexual, transvestite, and transgendered, and including a person's attitudes, preferences, beliefs, and practices pertaining thereto.

- (26) Seattle Municipal Code 14.04.040 Unfair employment practices designated: It is unfair employment practice within the City for any:
- A. Employer to discriminate against any person with respect to hiring, tenure, promotion, terms, conditions, wages or privileges of employment, or with respect to any matter related to employment; . . .
 - B. Employer, employment agency, or labor organization to print, circulate, or cause to be printed, published or circulated, any statement, advertisement, or publication relating to employment or membership, or to use any form of application therefore, which indicates any preference, limitation, specification, or discrimination based upon race, color, sex, marital status, sexual orientation, gender identity, political ideology, age, creed, religion, ancestry, national origin, or the presence of any sensory, mental or physical handicap; . . .
- (27) Seattle Municipal Code 4.24.005 Definitions: . . . A. "Eligible family member" for purposes of sick leave usage means: 1. The employee's dependent child (i.e., the biological, adopted, foster or step child of an employee or his or her spouse/ domestic partner, or a legal ward or a child for whom the employee or his or her spouse/ domestic partner stands in loco parentis . . .). 2. The employee's domestic partner designated as such by the employee in an Affidavit of Domestic Partnership or otherwise as provided by Seattle Municipal Code Section 4.30.010.
- (28) Seattle Municipal Code 4.24.035 Paid sick leave—Use: A. An officer's or employee's request for paid sick leave may be granted by the appointing authority or a designated management representative when the officer or employee is required to be absent from work because of: . . . 2. An illness, injury, or medical or dental appointment of an officer's or employee's eligible family member . . .
- (29) Seattle Municipal Code 4.26.005 Definitions: . . . C. "Domestic partner" means an individual designated by a City officer or employee in an affidavit filed pursuant to Seattle Municipal Code Section 4.30.020 and qualified under Section 4.30.010.
- (30) Seattle Municipal Code 4.26.010 Leave provisions. Eligible employees are entitled to up to ninety (90) calendar days of unpaid leave in addition to any paid leave to which they may otherwise be entitled during any twelve (12) month period for one or more of the following: . . . C. To care for the spouse/ domestic partner, or a son or daughter, or parent, of the employee or spouse/ domestic partner, if such spouse/ domestic partner, son, daughter, or parent has a serious health condition.
- (31) Seattle Municipal Code 4.28.020 Funeral Leave— Definitions: A. For the purpose of this chapter, the term "close relative" means the spouse or domestic partner, child, mother, father, brother, sister, grandchild, grandfather or grandmother of an officer or employee or of the spouse or domestic partner of such officer or employee.

- (32) Seattle Municipal Code 4.36.185 Beneficiaries—Domestic partners: An unmarried officer or employee may designate his or her domestic partner as his or her beneficiary for purposes of the benefits set forth in Sections 4.36.200, 4.36.210, 4.36.230, 4.36.260, 4.36.270 and 4.36.320 of this chapter upon the following terms and conditions.
- (33) Seattle Municipal Code 20.45.020 Discrimination in the provision of benefits prohibited: A. No contractor on a City contract shall discriminate in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse, . . .
- (34) Seattle Ordinance Number 102562—An ordinance relating to and prohibiting discriminatory practices based on race, color, sex, marital status, sexual orientation, . . . with respect to employment; defining offenses and prescribing penalties, remedies, and enforcement procedures; and repealing Ordinance 100642.
- (35) Seattle Ordinance Number 111714: An ordinance relating to the control of harassment based on a person's sexual orientation; adding a new section 12A.06.160 to the Seattle Municipal Code to define a new criminal offense.
- (36) Seattle Ordinance No. 114648 Sick leave: An ordinance relating to sick leave and funeral leave use; adding a new chapter to the Seattle Municipal Code ("S.M.C.") to facilitate the identification of an individual as the spouse or "domestic partner" of a City Officer or employee and establishing eligibility for the use of leave under S.M.C. Chs. 4.24 and 4.28 for the care or funeral of any such person or specified relative thereof; amending and adding to S.M.C. Ch. 4.24 to authorize the use of sick leave for the care of a spouse or domestic partner, or of a parent or a dependent child of an officer or employee or his/her spouse or domestic partner.
- (37) Seattle Ordinance Number 119707 Retirement System: An ordinance relating to the City Employees' Retirement System; amending and clarifying various sections of Chapter 4.36 of the Seattle Municipal Code to allow an unmarried member to designate a domestic partner as his or her beneficiary; . . .
- (38) Seattle Ordinance Number 119748 Contractors: An ordinance related to contracts; creating a new Seattle Municipal Code Chapter 20.45 requiring contractors on City contracts to provide employee benefits to their employees with domestic partners equivalent to those provided to their employees with spouses.
- (39) City of Spokane Municipal Code 01.06.010 Law Against Discrimination—Findings: The City of Spokane finds that discrimination based on race, religion, color, sex, national origin, marital status, familial status, age, sexual orientation, or disability poses a substantial threat to the health, safety and general welfare of the citizens of Spokane. The City deems it necessary and proper to enact a local ordinance to address these issues.

- (40) City of Spokane Municipal Code 01.06.020 Law Against Discrimination—
Purpose: The City values the dignity and worth of all human beings and is committed to promoting justice, equity and an inclusive environment by respecting cultural and individual diversity and fostering mutual understanding among all people regardless of race, religion, color, sex, national origin, marital status, familial status, age, sexual orientation, and disability.
- (41) City of Spokane Municipal Code 01.06.020 Law Against Discrimination—
Definitions: . . . C.1. "Discrimination" means different or unequal treatment because of race, religion, color, sex, national origin, marital status, familial status, age, sexual orientation, or disability. 2. "Discriminate" means to treat differently or unequally because of race, religion, color, sex, national origin, marital status, familial status, age, sexual orientation, or disability.
- (42) City of Spokane Ordinance NO. C-32232 (Human Rights and Discrimination)
- A. 1.06.010 Findings: The City of Spokane finds that discrimination based on race, religion, color, sex, national origin, marital status, familial status, age, sexual orientation, or disability poses a substantial threat to the health, safety and general welfare of the citizens of Spokane. The City deems it necessary and proper to enact a local ordinance to address these issues.
- B. 1.06.020 Purpose: A. The City values the dignity and worth of all human beings and is committed to promoting justice, equity and an inclusive environment by respecting cultural and individual diversity and fostering mutual understanding among all people regardless of race, religion, color, sex, national origin, marital status, familial status, age, sexual orientation and disability.
- C. 1.06.030 Definitions: . . . M. "Sexual orientation" means actual or perceived heterosexuality, homosexuality, or bisexuality.
- (43) Tacoma Ordinance No. 26948: Whereas, to further the objectives of the City of Tacoma's Law Against Discrimination, on February 26, 2002, the Commission unanimously recommended amending Tacoma's Law Against Discrimination to include protection based on a person's sexual orientation and gender identity, . . ."
- (44) Tumwater Municipal Code 3.46.020 Non-Discrimination in Benefits: A. No contractor on a city contract shall discriminate in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse.
- (45) Vancouver Ordinance No. M- 3084 adopts workforce diversity program to prohibit discrimination in city employment on the basis of actual or perceived sexual orientation. Passed 10-93.
- (46) Vancouver Municipal Code 2.69.010 Adoption of workforce diversity program: . . .
.. (5)Prohibition of discrimination in city hiring and terms and conditions of employment on the basis of actual or perceived sexual orientation; . . .

Appendix E: Employment Policies

Appendix E: Employment Policies

- (a) Clark County is an equal opportunity employer and is committed to providing equal opportunity in employment, access and the provision of all County services. This commitment applies regardless of race, color, religion, creed, sex, marital status, national origin, disability, age, veteran status, on-the-job injury, or sexual orientation.
<http://www.co.clark.wa.us/hr/employment/equal.html>
- (b) King County Fair Employment Resources:
<http://www.metrokc.gov/dias/ocre/Empl.htm>
- (c) Snohomish County has a non-discrimination employment policy: Diversity and ADA Information: It is Snohomish County's policy that persons shall not be discriminated against in employment because of race, color, national origin, creed, religion, sex, age (40+), marital status, sexual orientation, disabled veteran status, or disability."
http://www1.co.snohomish.wa.us/Departments/Human_Resources/Services/diversity_ada.htm
- (d) Snohomish County has offered domestic partners benefit program since January 2002.
http://www.co.snohomish.wa.us/documents/Departments/performance_auditor/finalreport-healthcare.pdf
- (e) Thurston County equal employment policy does not discriminate based on sexual orientation:
http://www.co.thurston.wa.us/hr/equal_opp/Equal_Opportunity_Policy.pdf
- (f) Des Moines Fair Employment Policy
http://www.desmoineswa.gov/dept/city_clerk/empl_ap.html
- (g) City of Seattle employee benefits extend to domestic partners:
<http://www.cityofseattle.net/personnel/employment/benefits.asp>
- (h) City of Vancouver extends employee benefits to domestic partners:
<http://www.cityofvancouver.us/hr.asp?deptID=10422&itemid=17046>
- (i) [City of Vancouver Equal Employment Opportunity](#): The City of Vancouver is committed to providing equal employment opportunities to all individuals. Therefore, the City will not discriminate in any employment practice on the basis of age, sex, race, creed, political or religious affiliation or opinion, color, national origin, marital status, military status, pregnancy, disability, sexual orientation or any other protected status under applicable law.
- (j) For a list of states with non-discrimination policies that include sexual orientation see:
http://w3.hrc.org/Template.cfm?Section=Search_the_Database&Template=/CustomSource/WorkNet/srch.cfm&searchtypeid=2&searchSubTypeID=1

- (k) For a list of local governments and quasi-governmental agencies with non-discrimination policies that include sexual orientation see:
http://w3.hrc.org/Template.cfm?Section=Search_the_Database&Template=/CustomSource/WorkNet/srch.cfm&searchtypeid=2&searchSubTypeID=1
- (l) For a list of colleges and universities with non-discrimination policies that include sexual orientation see:
http://w3.hrc.org/Template.cfm?Section=Search_the_Database&Template=/CustomSource/WorkNet/srch.cfm&searchtypeid=1&searchSubTypeID=1
- (m) For a list of governments that offer domestic partner health benefits see:
http://w3.hrc.org/Template.cfm?Section=Search_the_Database&Template=/CustomSource/WorkNet/srch.cfm&searchtypeid=1&searchSubTypeID=1
- (l) For a list of local governments and quasi-governmental agencies that offer domestic partner health benefits see:
http://w3.hrc.org/Template.cfm?Section=Search_the_Database&Template=/CustomSource/WorkNet/srch.cfm&searchtypeid=1&searchSubTypeID=1
- (m) For a list of colleges and universities that offer domestic partner health benefits see:
http://www.hrc.org/Template.cfm?Section=Search_the_Database&Template=/CustomSource/WorkNet/WorkplacePolicySearch.cfm&DPHealth=univ&submitted=1&refresh=1

Appendix F:

Additional Resources

Listed by region/city under each topic heading as follows:

- COUNSELING
- DEMOGRAPHICS
- DOMESTIC VIOLENCE
- FAMILIES
- GENERAL WASHINGTON STATE RESOURCES
- GLBT PEOPLE OF COLOR
- HEALTHCARE
- HIV/AIDS
- LEGAL/CIVIL RIGHTS
- LESBIANS
- SENIORS
- TRANSGENDER/TRANSSEXUAL/GENDER
- YOUTH—including Youth Transitional Housing

COUNSELING

SEATTLE

Seattle Counseling Services for Sexual Minorities

<http://www.seattlecounseling.org>

- Community resource that advocates, educates, and serves to advance the social well-being and mental health of the GLBT communities.

DEMOGRAPHICS

Reports from the last census on same-sex unmarried partner households:

Gary J. Gates, David M. Smith, Human Rights Campaign, [Gay and Lesbian Families in the United States: Same-Sex Unmarried Partner Households](#) (2001).

Martin O'Connell, Tavia Simmons, U.S. Dep't Of Commerce, [Married-Couple and Unmarried-Partner Households: Census 2000 Special Reports](#) (2003).

DOMESTIC VIOLENCE

SEATTLE

Lesbian Batterers Group

Phone 205-826-3044 for information or to make a referral.

- A group for lesbian batterers who often do not benefit from counseling in heterosexual groups. A service of Community Violence Prevention Services of Family Services.

WASHINGTON STATE

Northwest Network of Bisexual, Transgendered, Lesbian, and Gay Survivors of Abuse

www.nwnetwork.org

- The Network supports the self-determination and safety of GLBT survivors of abuse through education, organizing, and advocacy. Counseling is available but no crisis shelter is available at the network.

Washington State Coalition Against Domestic Violence

www.wscadv.org

- Lists state-wide resources by county though none are GLBT specific. A queer caucus page is soon to come on the network/caucus page.

FAMILIES

NATIONAL

Families Like Ours

www.familieslikeours.org

- Nonprofit providing adoption resources to adoptive and foster families and professionals with a focus on GLBT families.

Family Pride Coalition

www.familypride.org

- Advocacy, education, support and community collaboration for and about GLBT parents and their families.

PUGET SOUND

Rainbow Families of Puget Sound

www.rainbowfamilies.org

- GLBT parenting resource group.

SEATTLE

Gay Fathers Association of Seattle

www.gfas.org

- Provides community awareness, referral and resource networks and peer support about and for gay father in Seattle.

VANCOUVER

Love Makes a Family

www.LMFamily.org

- Works to create a supportive environment and to provide a public voice for all families, especially those subjected to social, economic, and legal discrimination due to sexual orientation or gender identity/expression. Direct services to families.

GENERAL WASHINGTON STATE RESOURCES

Often can provide links to communities where resources are not well publicized.

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

www.pflag.org

- Diverse resources, support and services with chapters in every region in the state which are accessible through the website.
- Chapters in Bellingham/Whatcom County, Ellensburg, Ephrata, Everett/Snohomish County, Kitsap County, Port Townsend, Pullman/Moscow, ID/Palouse Region, Richland/Tricities, Seattle, Skagit County, Olympia, Spokane, Vancouver, Walla Walla/Blue Mountain, Wenatchee/Wenatchee Valley, and Yakima.

Pride Foundation

www.pridefoundation.org

- General knowledge of organizations involved in GLBT issues around the state, grants for non-profits, scholarships for students.

BREMERTON/KITSAP

Outkitsap

www.outkitsap.org

- Health and social welfare 501(c) (3) serving LGBT communities of the greater Kitsap Peninsula.

OLYMPIA

Parents/Families/Friends of Lesbians and Gays—PFLAG Olympia

<http://www.pflag-olympia.org>

- Promotes the health and well-being of GLBT persons, their families, and friends through support, education, and advocacy.

Rainbow Community Center

<http://www.rainbowcenteroly.org/>

- Web-based resource and referral center for the LGBT community.

SEATTLE

Parents/Families/Friends of Lesbians and Gays—PFLAG Seattle

www.seattle-pflag.org

- Promotes the health and well-being of GLBT persons, their families, and friends through support, education, and advocacy.

Seattle LGBT Community Center

www.seattlelgbt.org

- Resource and referral center for the LGBT community.

SPOKANE

Rainbow Regional Community Center

www.spokanerainbowcenter.org

- Resource and referral center for the LGBT community in Central, Eastern, Palouse, and other areas.

TACOMA

Rainbow Center of Pierce County

www.rainbowcntr.org

- The Rainbow Center serves the GLBT communities of Pierce County with information, programs, partnerships and educational resources.

GLBT PEOPLE OF COLOR

SEATTLE

Entre Hermanos

www.entrehermanos.org

- Provides social and other support for the LGBT Hispanic community.

WASHINGTON STATE

Northwest Two-Spirit

www.nwtwospiritsociety.org

- Provides education on First Nations and Two-Spirit histories and traditions, to insure community cohesion through the promotion of health, and to provide a social and spiritual outlet for their members.

See **POCAAN**, **Tacoma POCAAN**, and **Yakima POCAAN** under **HIV/AIDS**

HEALTHCARE

SEATTLE

Gay City Health Project

www.gaycity.org

- A health organization for gay, bisexual, and transgender (GBT) men.

Verbena Health

www.verbanhealth.org

- Healthcare advocacy, referrals, services, and clinics for lesbians, bisexual and queer women, and transgendered and transsexual people.

HIV/AIDS

Lifelong AIDS Alliance

http://laa.convio.net/site/TR?fr_id=1100&pg=entry

- Lifelong AIDS Alliance is committed to preventing the spread of HIV, and to providing practical support services and advocating for those whose lives are affected by HIV and AIDS.

People of Color Against AIDS Network (POCAAN)

www.pocaan.org

- Works with communities of color to advocate and ensure equitable access to HIV/AIDS education, prevention, and health care resources.

Seattle Aids Support Group (S.A.S.G.)

www.sasg.org

- Provides emotional support and personal development services to those affected by HIV/AIDS, the GLBTQ community generally, and allies of the GLBTQ community.

OLYMPIA

United Communities AIDS Network

www.ucan-wa.org

- Provides the highest quality of life for all those infected by HIV/AIDS, prevents the transmission of HIV, and increases community awareness about the disease.

SPOKANE

Spokane AIDS Network

www.spokaneaidsnetwork.org

- Dedicated to minimizing the impact of, and maximizing awareness about, AIDS and other consequences of HIV infection on communities and individuals in the Inland Northwest.

TACOMA

Pierce County AIDS Foundation

www.piercecountyaids.org

- Prevents HIV infection through education and information, assists persons affected by HIV/AIDS, addresses related health problems, and combats associated stigma and discrimination.

Tacoma People of Color Against AIDS Network (POCAAN)

www.pocaan.org

YAKIMA

Yakima People of Color Against AIDS Network (POCAAN)

www.pocaan.org

LEGAL/CIVIL RIGHTS

NATIONAL

Many national organizations have local offices or links.

American Civil Liberties Union—Gay and Lesbian Rights Project

<http://www.aclu.org/LesbianGayRights/LesbianGayRightsMain.cfm>

- Protection and extension of civil liberties.

Human Rights Campaign

www.hrc.org

- Bipartisan GLBT right organization. Provides legal information for each state as well information on youth, parenting, home ownership, marriage, links to professional organizations (e.g. American Psychiatric Association), and census reports.

Lambda Legal

www.lambdalegal.org

- National GLBT and HIV positive people civil rights organization focusing on impact litigation, education and public policy work.

National Center for Lesbian Rights

www.ncrlrights.org

- Focus on six main areas of homophobia in sports, immigration, youth law, elder law, family law and transgender law.

National Gay and Lesbian Taskforce

www.thetaskforce.org

- Civil rights focused organization providing training, advocacy, policy institutes and political organizing on a national and state level.

WASHINGTON STATE

Northwest Women's Law Center

www.nwwlc.org

- Provides direct-service, public advocacy, and impact litigation on a wide-range of issues effecting women, including LBT rights.

LESBIAN SPECIFIC

SEATTLE

The Lesbian Resource Center

www.lrc.net

- A community-based organization committed to advancing the status of lesbians by combating oppression and by promoting empowerment, visibility, and social change.

TACOMA

Tacoma Lesbian Concern

www.tacomalesbianconcern.org

- Provides opportunities for socializing, arranges supportive networking, and furnishes political education and awareness.

SENIORS

NATIONAL

Senior Action in a Gay Environment

www.sageusa.org

- Senior GLBTQ information including training tools for nursing home staff.

TRANSGENDER/TRANSSEXUAL/GENDER

NATIONAL

Gender Public Advocacy Coalition

www.gpac.org

- Provides a Gender Law guide and public education on violence prevention, workplace issues, fairness, and youth.

Transgender Law and Policy Institute

www.transgenderlaw.org

- Includes case law and legislation, news links and media information.

SEATTLE

Ingersoll Gender Center

www.ingersollcenter.org

- Ingersoll Center is able to offer a full range of services to gender dysphoric clients such as referrals to therapists, support and peer counseling pertaining to issues of daily living, changes in lifestyle, preparation for surgery, and post-operative care.

YOUTH

BELLINGHAM

Northwest Youth Services

www.northwestyouthservices.org

- Mental health clinical supervision and support and other services for their “Just Us” program.

OLYMPIA

Stonewall Youth

www.stonewallyouth.org

- Supports, informs, and advocates for youth up to 21 years old who identify as GLBT or who have questions about their sexual orientation or gender identity.

SEATTLE

American Friends Service Committee

www.afsc.org

- Empowering GLBT and Questioning Youth and the adults who work with them to end homophobia and intersecting oppressions through community education panels, individual internships, and school-based education.

SEATTLE YOUTH TRANSITIONAL LIVING

YMCA Transitions

www.seattleyymca.org

- Transitional living program for youth with no felony convictions that is sensitive to sexual minority youth.

Isis House of YouthCare

www.youthcare.org

Phone 206-694-4500

800-495-7802 (24 Hour Help & Referral Line)

- Isis House of YouthCare is the only transitional living program for sexual minority youth in Western Washington.

SPOKANE

Odyssey Youth Center

<http://www.odysseyyouth.org/>

- A support center for GLBT youth.

TACOMA

Oasis Youth Center, a program of the Pierce County AIDS Foundation
www.piercecountyaims.org

- Oasis is a drop-in center for GLBT and questioning youth.

VANCOUVER

Children's Home Society of southwestern Washington
www.childrenshomesociety.org

- Includes GLBT youth support program.

WASHINGTON STATE

Lambert House
www.lamberthouse.org

- A center for GLBT and Questioning youth and their allies that encourages empowerment through the development of leadership, social, and life skills.

Orion Center
www.youthcare.org

- Homeless youth drop-in center includes case management, health education, food and clothing banks.

Safe Schools Coalition
www.safeschoolscoalition.org

- Excellent and extensive resources and links on youth, schools, and other GLBT organizations, information, Washington State, and Federal law.

Seattle Young People's Project (SYPP)
www.sypp.org

- SYPP is a youth-led/adult supported social change organization. Queer Youth Rights meetings are open for all queer youth and straight allies to discuss the needs of LGBTQ youth and to develop a workshop for teachers on how they can best support LGBT youth.

Appendix G:
Final Bill Report SSB 5336;
Laws of 2007

FINAL BILL REPORT

SSB 5336

C 156 L 07

Synopsis as Enacted

Brief Description: Protecting individuals in domestic partnerships by granting certain rights and benefits.

Sponsors: Senate Committee on Government Operations & Elections (originally sponsored by Senators Murray, Kohl-Welles, Fairley, Prentice, Regala, Oemig, Tom, Kline, Hobbs, Pridemore, Keiser, Berkey, Franklin, Brown, Weinstein, Rockefeller, Poulsen, Fraser, Jacobsen, Spanel and McAuliffe).

Senate Committee on Government Operations & Elections

House Committee on Judiciary

Background: A number of state laws provide automatic rights and powers to spouses. In the health care context, health care providers can secure informed consent for a patient who is not competent from the patient's spouse, and disclose information about a patient without the patient's authorization to immediate family members of the patient and other individuals with whom the patient is known to have a close personal relationship.

Upon dissolution or invalidation of a marriage, the designation of a spouse as the beneficiary for various nonprobate assets is automatically revoked. Similarly, when a person has granted his or her spouse power of attorney, that power is revoked upon dissolution, legal separation, or invalidation of the marriage.

Spouses have the authority to consent to autopsies and make anatomical gifts. Spouses enjoy protections regarding the title to cemetery plots and rights of interment. If an individual dies intestate, or without a will, his or her spouse has certain inheritance rights and rights to administer the decedent's estate.

Same-sex domestic partners of public employees are eligible to participate in Public Employees Benefits Board (PEBB) insurance coverage. In order to qualify, same-sex domestic partners must meet PEBB eligibility rules and submit a declaration of same-sex domestic partnership.

Summary: The state domestic partnership registry is created in the Office of the Secretary of State (OSOS). The OSOS is directed to prepare separate forms for the declaration and the termination of a state registered domestic partnership. The forms must contain statements that registration and termination may affect property and inheritance rights and that rights conferred by registration may be superseded by a will, deed, or other instrument.

Individuals seeking to enter into a state registered domestic partnership must:

- share a common residence;
- be at least 18 years of age;

- not be married to, nor be in a state registered domestic partnership with, someone other than the person with whom they are entering into a domestic partnership;
- be capable of consenting to the partnership;
- not be nearer of kin than second cousins nor be a sibling, child, grandchild, aunt, uncle, niece, or nephew to the other person; and
- be members of the same sex, or one of the persons must be at least 62 years of age.

Domestic partnerships created by subdivisions of the state are not state registered domestic partnerships.

Registration: Declarations of state registered domestic partnerships are filed with the OSOS along with a filing fee as set by the OSOS to cover costs, provided the fee does not exceed fifty dollars. The declarations must be notarized and signed by both parties. The OSOS must provide a certificate of state registered domestic partnership to each party on the declaration, maintain a permanent record of each declaration, and submit a record of the declaration and certificate to the state registrar of vital statistics.

The OSOS is required to maintain a list of jurisdictions that have notified the OSOS that the jurisdiction is using the definition of domestic partnership created in the bill in order to provide benefits to its employees. The OSOS is required to post this list on the web page and send a copy of the list to partners along with the certificate of domestic partnership.

Termination: State registered domestic partnerships can be terminated by either party filing a notice of termination with the OSOS and paying the accompanying filing fee. The termination notice must be notarized and signed by at least one party. If the notice is not signed by both parties, the party seeking termination must file an affidavit stating that the other party has been served notice of the termination, or that the other party could not be located after a reasonable effort including publication of the termination notice in a newspaper of general circulation in the county where the residence most recently shared by the partners is located. The effective date of the termination is 90 days after the date the notice was filed.

Partnerships are automatically terminated if either or both parties enter into a marriage that is recognized as valid in this state. The OSOS must provide a certificate of termination to each party, maintain a record of each termination, and submit a record of the certificate of termination to the state registrar of vital statistics.

Extension of Rights to Domestic Partners: Certain powers and rights granted to spouses are granted to domestic partners as follows:

- health care facility visitation rights;
- ability to grant informed consent for health care for a patient who is not competent;
- authority of health care providers to disclose information about a patient without the patient's authorization to the patient's state registered domestic partner;
- automatic revocation of the designation of a domestic partner as the beneficiary for nonprobate assets upon termination of the partnership;
- automatic revocation of power of attorney granted to domestic partner upon termination of the partnership;
- title and rights to cemetery plots and rights of interment;
- ability to authorize autopsies and request copies of autopsy reports and records;
- right to control the disposition of the remains of a deceased person;

- ability to consent to removal of human remains from a cemetery plot;
- ability to make anatomical gifts;
- inheritance rights when the domestic partner dies without a will;
- administration of an estate if the domestic partner died without a will or if the representative named in the will declined or was unable to serve;
- beneficiary rights in wrongful death actions; and
- ability to designate a partner's physician as the attorney-in-fact.

PEBB Benefits: A certificate of domestic partnership issued to a same sex couple by the OSOS fulfills eligibility requirements for the same sex partner of the public employee to receive benefits.

Information recorded on death certificates must include domestic partnership status and the surviving partner's information to the same extent that such information is recorded for marital status and the surviving spouse's information.

Votes on Final Passage:

Senate	28	19
House	63	35

Effective: July 22, 2007

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5336

Chapter 156, Laws of 2007

60th Legislature
2007 Regular Session

DOMESTIC PARTNERSHIPS

EFFECTIVE DATE: 07/22/07

Passed by the Senate March 1, 2007
YEAS 28 NAYS 19

BRAD OWEN

President of the Senate

Passed by the House April 10, 2007
YEAS 63 NAYS 35

FRANK CHOPP

Speaker of the House of Representatives

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5336** as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN

Secretary

Approved April 21, 2007, 9:56 a.m.

FILED

April 23, 2007

CHRISTINE GREGOIRE

Governor of the State of Washington

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5336

Passed Legislature - 2007 Regular Session

State of Washington

60th Legislature

2007 Regular Session

By Senate Committee on Government Operations & Elections (originally sponsored by Senators Murray, Kohl-Welles, Fairley, Prentice, Regala, Oemig, Tom, Kline, Hobbs, Pridemore, Keiser, Berkey, Franklin, Brown, Weinstein, Rockefeller, Poulsen, Fraser, Jacobsen, Spanel and McAuliffe)

READ FIRST TIME 02/05/07.

1 AN ACT Relating to protecting individuals in domestic partnerships
2 by granting certain rights and benefits; amending RCW 41.05.065,
3 7.70.065, 70.02.050, 11.07.010, 11.94.080, 68.32.020, 68.32.030,
4 68.32.040, 68.32.060, 68.32.110, 68.32.130, 68.50.100, 68.50.101,
5 68.50.105, 68.50.160, 68.50.200, 68.50.550, 11.04.015, 11.28.120,
6 4.20.020, 4.20.060, and 11.94.010; adding a new section to chapter
7 43.07 RCW; adding a new section to chapter 41.05 RCW; adding a new
8 section to chapter 70.58 RCW; and adding a new chapter to Title 26 RCW.

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

10 NEW SECTION. **Sec. 1.** Many Washingtonians are in intimate,
11 committed, and exclusive relationships with another person to whom they
12 are not legally married. These relationships are important to the
13 individuals involved and their families; they also benefit the public
14 by providing a private source of mutual support for the financial,
15 physical, and emotional health of those individuals and their families.
16 The public has an interest in providing a legal framework for such
17 mutually supportive relationships, whether the partners are of the same
18 or different sexes, and irrespective of their sexual orientation.

1 The legislature finds that same sex couples, because they cannot
2 marry in this state, do not automatically have the same access that
3 married couples have to certain rights and benefits, such as those
4 associated with hospital visitation, health care decision-making, organ
5 donation decisions, and other issues related to illness, incapacity,
6 and death. Although many of these rights and benefits may be secured
7 by private agreement, doing so often is costly and complex.

8 The legislature also finds that the public interest would be served
9 by extending rights and benefits to different sex couples in which
10 either or both of the partners is at least sixty-two years of age.
11 While these couples are entitled to marry under the state's marriage
12 statutes, some social security and pension laws nevertheless make it
13 impractical for these couples to marry. For this reason, this act
14 specifically allows couples to enter into a state registered domestic
15 partnership if one of the persons is at least sixty-two years of age,
16 the age at which many people choose to retire and are eligible to begin
17 collecting social security and pension benefits.

18 The rights granted to state registered domestic partners in this
19 act will further Washington's interest in promoting family
20 relationships and protecting family members during life crises. This
21 act does not affect marriage or any other ways in which legal rights
22 and responsibilities between two adults may be created, recognized, or
23 given effect in Washington.

24 NEW SECTION. **Sec. 2.** The definitions in this section apply
25 throughout this chapter unless the context clearly requires otherwise.

26 (1) "State registered domestic partners" means two adults who meet
27 the requirements for a valid state registered domestic partnership as
28 established by section 4 of this act and who have been issued a
29 certificate of state registered domestic partnership by the secretary.

30 (2) "Secretary" means the secretary of state's office.

31 (3) "Share a common residence" means inhabit the same residence.
32 Two persons shall be considered to share a common residence even if:

33 (a) Only one of the domestic partners has legal ownership of the
34 common residence;

35 (b) One or both domestic partners have additional residences not
36 shared with the other domestic partner; or

1 (c) One domestic partner leaves the common residence with the
2 intent to return.

3 NEW SECTION. **Sec. 3.** A new section is added to chapter 43.07 RCW
4 to read as follows:

5 (1) The state domestic partnership registry is created within the
6 secretary of state's office.

7 (2)(a) The secretary shall prepare forms entitled "declaration of
8 state registered domestic partnership" and "notice of termination of
9 state registered domestic partnership" to meet the requirements of
10 sections 1, 2, 4, and 8 of this act.

11 (b) The "declaration of state registered domestic partnership" form
12 must contain a statement that registration may affect property and
13 inheritance rights, that registration is not a substitute for a will,
14 deed, or partnership agreement, and that any rights conferred by
15 registration may be completely superseded by a will, deed, or other
16 instrument that may be executed by either party. The form must also
17 contain instructions on how the partnership may be terminated.

18 (c) The "notice of termination of state registered domestic
19 partnership" form must contain a statement that termination may affect
20 property and inheritance rights, including beneficiary designations,
21 and other agreements, such as the appointment of a state registered
22 domestic partner as an attorney in fact under a power of attorney.

23 (3) The secretary shall distribute these forms to each county
24 clerk. These forms shall be available to the public at the secretary
25 of state's office, each county clerk, and on the internet.

26 (4) The secretary shall adopt rules necessary to implement the
27 administration of the state domestic partnership registry.

28 NEW SECTION. **Sec. 4.** To enter into a state registered domestic
29 partnership the two persons involved must meet the following
30 requirements:

31 (1) Both persons share a common residence;

32 (2) Both persons are at least eighteen years of age;

33 (3) Neither person is married to someone other than the party to
34 the domestic partnership and neither person is in a state registered
35 domestic partnership with another person;

1 (4) Both persons are capable of consenting to the domestic
2 partnership;

3 (5) Both of the following are true:

4 (a) The persons are not nearer of kin to each other than second
5 cousins, whether of the whole or half blood computing by the rules of
6 the civil law; and

7 (b) Neither person is a sibling, child, grandchild, aunt, uncle,
8 niece, or nephew to the other person; and

9 (6) Either (a) both persons are members of the same sex; or (b) at
10 least one of the persons is sixty-two years of age or older.

11 NEW SECTION. **Sec. 5.** (1) Two persons desiring to become state
12 registered domestic partners who meet the requirements of section 4 of
13 this act may register their domestic partnership by filing a
14 declaration of state registered domestic partnership with the secretary
15 and paying the filing fee established pursuant to subsection (4) of
16 this section. The declaration must be signed by both parties and
17 notarized.

18 (2) Upon receipt of a signed, notarized declaration and the filing
19 fee, the secretary shall register the declaration and provide a
20 certificate of state registered domestic partnership to each party
21 named on the declaration.

22 (3) The secretary shall permanently maintain a record of each
23 declaration of state registered domestic partnership filed with the
24 secretary. The secretary shall provide the state registrar of vital
25 statistics with records of declarations of state registered domestic
26 partnerships.

27 (4) The secretary shall set by rule and collect a reasonable fee
28 for filing the declaration, calculated to cover the secretary's costs,
29 but not to exceed fifty dollars. Fees collected under this section are
30 expressly designated for deposit in the secretary of state's revolving
31 fund established under RCW 43.07.130.

32 NEW SECTION. **Sec. 6.** (1)(a) A party to a state registered
33 domestic partnership may terminate the relationship by filing a notice
34 of termination of the state registered domestic partnership with the
35 secretary and paying the filing fee established pursuant to subsection
36 (5) of this section. The notice must be signed by one or both parties

1 and notarized. If the notice is not signed by both parties, the party
2 seeking termination must also file with the secretary an affidavit
3 stating either that the other party has been served in writing in the
4 manner prescribed for the service of summons in a civil action, that a
5 notice of termination is being filed or that the party seeking
6 termination has not been able to find the other party after reasonable
7 effort and that notice has been made by publication pursuant to (b) of
8 this subsection.

9 (b) When the other party cannot be found after reasonable effort,
10 the party seeking termination may provide notice by publication in a
11 newspaper of general circulation in the county in which the residence
12 most recently shared by the domestic partners is located. Notice must
13 be published at least once.

14 (2) The state registered domestic partnership shall be terminated
15 effective ninety days after the date of filing the notice of
16 termination and payment of the filing fee.

17 (3) Upon receipt of a signed, notarized notice of termination,
18 affidavit, if required, and the filing fee, the secretary shall
19 register the notice of termination and provide a certificate of
20 termination of the state registered domestic partnership to each party
21 named on the notice. The secretary shall maintain a record of each
22 notice of termination filed with the secretary and each certificate of
23 termination issued by the secretary. The secretary shall provide the
24 state registrar of vital statistics with records of terminations of
25 state registered domestic partnerships, except for those state
26 registered domestic partnerships terminated under subsection (4) of
27 this section.

28 (4) A state registered domestic partnership is automatically
29 terminated if, subsequent to the registration of the domestic
30 partnership with the secretary, either or both the parties enter into
31 a marriage that is recognized as valid in this state, either with each
32 other or with another person.

33 (5) The secretary shall set by rule and collect a reasonable fee
34 for filing the declaration, calculated to cover the secretary's costs,
35 but not to exceed fifty dollars. Fees collected under this section are
36 expressly designated for deposit in the secretary of state's revolving
37 fund established under RCW 43.07.130.

1 NEW SECTION. **Sec. 7.** (1)(a) A domestic partnership created by a
2 subdivision of the state is not a state registered domestic partnership
3 for the purposes of a state registered domestic partnership under this
4 chapter. Those persons desiring to become state registered domestic
5 partners under this chapter must register pursuant to section 5 of this
6 act.

7 (b) A subdivision of the state that provides benefits to the
8 domestic partners of its employees and chooses to use the definition of
9 state registered domestic partner as set forth in section 2 of this act
10 must allow the certificate issued by the secretary of state to satisfy
11 any registration requirements of the subdivision. A subdivision that
12 uses the definition of state registered domestic partner as set forth
13 in section 2 of this act shall notify the secretary of state. The
14 secretary of state shall compile and maintain a list of all
15 subdivisions that have filed such notice. The secretary of state shall
16 post this list on the secretary's web page and provide a copy of the
17 list to each person that receives a certificate of state registered
18 domestic partnership under section 5(2) of this act.

19 (c) Nothing in this section shall affect domestic partnerships
20 created by any public entity.

21 (2) Nothing in this act affects any remedy available in common law.

22 NEW SECTION. **Sec. 8.** A patient's state registered domestic
23 partner shall have the same rights as a spouse with respect to
24 visitation of the patient in a health care facility as defined in RCW
25 48.43.005.

26 NEW SECTION. **Sec. 9.** A new section is added to chapter 41.05 RCW
27 to read as follows:

28 A certificate of domestic partnership issued to a couple of the
29 same sex under the provisions of section 4 of this act shall be
30 recognized as evidence of a qualified same sex domestic partnership
31 fulfilling all necessary eligibility criteria for the partner of the
32 employee to receive benefits. Nothing in this section affects the
33 requirements of same sex domestic partners to complete documentation
34 related to federal tax status that may currently be required by the
35 board for employees choosing to make premium payments on a pretax
36 basis.

1 **Sec. 10.** RCW 41.05.065 and 2006 c 299 s 2 are each amended to read
2 as follows:

3 (1) The board shall study all matters connected with the provision
4 of health care coverage, life insurance, liability insurance,
5 accidental death and dismemberment insurance, and disability income
6 insurance or any of, or a combination of, the enumerated types of
7 insurance for employees and their dependents on the best basis possible
8 with relation both to the welfare of the employees and to the state.
9 However, liability insurance shall not be made available to dependents.

10 (2) The board shall develop employee benefit plans that include
11 comprehensive health care benefits for all employees. In developing
12 these plans, the board shall consider the following elements:

13 (a) Methods of maximizing cost containment while ensuring access to
14 quality health care;

15 (b) Development of provider arrangements that encourage cost
16 containment and ensure access to quality care, including but not
17 limited to prepaid delivery systems and prospective payment methods;

18 (c) Wellness incentives that focus on proven strategies, such as
19 smoking cessation, injury and accident prevention, reduction of alcohol
20 misuse, appropriate weight reduction, exercise, automobile and
21 motorcycle safety, blood cholesterol reduction, and nutrition
22 education;

23 (d) Utilization review procedures including, but not limited to a
24 cost-efficient method for prior authorization of services, hospital
25 inpatient length of stay review, requirements for use of outpatient
26 surgeries and second opinions for surgeries, review of invoices or
27 claims submitted by service providers, and performance audit of
28 providers;

29 (e) Effective coordination of benefits;

30 (f) Minimum standards for insuring entities; and

31 (g) Minimum scope and content of public employee benefit plans to
32 be offered to enrollees participating in the employee health benefit
33 plans. To maintain the comprehensive nature of employee health care
34 benefits, employee eligibility criteria related to the number of hours
35 worked and the benefits provided to employees shall be substantially
36 equivalent to the state employees' health benefits plan and eligibility
37 criteria in effect on January 1, 1993. Nothing in this subsection
38 (2)(g) shall prohibit changes or increases in employee point-of-service

1 payments or employee premium payments for benefits or the
2 administration of a high deductible health plan in conjunction with a
3 health savings account.

4 (3) The board shall design benefits and determine the terms and
5 conditions of employee and retired employee participation and coverage,
6 including establishment of eligibility criteria subject to the
7 requirements of section 9 of this act. The same terms and conditions
8 of participation and coverage, including eligibility criteria, shall
9 apply to state employees and to school district employees and
10 educational service district employees.

11 (4) The board may authorize premium contributions for an employee
12 and the employee's dependents in a manner that encourages the use of
13 cost-efficient managed health care systems. During the 2005-2007
14 fiscal biennium, the board may only authorize premium contributions for
15 an employee and the employee's dependents that are the same, regardless
16 of an employee's status as represented or nonrepresented by a
17 collective bargaining unit under the personnel system reform act of
18 2002. The board shall require participating school district and
19 educational service district employees to pay at least the same
20 employee premiums by plan and family size as state employees pay.

21 (5) The board shall develop a health savings account option for
22 employees that conform to section 223, Part VII of subchapter B of
23 chapter 1 of the internal revenue code of 1986. The board shall comply
24 with all applicable federal standards related to the establishment of
25 health savings accounts.

26 (6) Notwithstanding any other provision of this chapter, the board
27 shall develop a high deductible health plan to be offered in
28 conjunction with a health savings account developed under subsection
29 (5) of this section.

30 (7) Employees shall choose participation in one of the health care
31 benefit plans developed by the board and may be permitted to waive
32 coverage under terms and conditions established by the board.

33 (8) The board shall review plans proposed by insuring entities that
34 desire to offer property insurance and/or accident and casualty
35 insurance to state employees through payroll deduction. The board may
36 approve any such plan for payroll deduction by insuring entities
37 holding a valid certificate of authority in the state of Washington and

1 which the board determines to be in the best interests of employees and
2 the state. The board shall promulgate rules setting forth criteria by
3 which it shall evaluate the plans.

4 (9) Before January 1, 1998, the public employees' benefits board
5 shall make available one or more fully insured long-term care insurance
6 plans that comply with the requirements of chapter 48.84 RCW. Such
7 programs shall be made available to eligible employees, retired
8 employees, and retired school employees as well as eligible dependents
9 which, for the purpose of this section, includes the parents of the
10 employee or retiree and the parents of the spouse of the employee or
11 retiree. Employees of local governments and employees of political
12 subdivisions not otherwise enrolled in the public employees' benefits
13 board sponsored medical programs may enroll under terms and conditions
14 established by the administrator, if it does not jeopardize the
15 financial viability of the public employees' benefits board's long-term
16 care offering.

17 (a) Participation of eligible employees or retired employees and
18 retired school employees in any long-term care insurance plan made
19 available by the public employees' benefits board is voluntary and
20 shall not be subject to binding arbitration under chapter 41.56 RCW.
21 Participation is subject to reasonable underwriting guidelines and
22 eligibility rules established by the public employees' benefits board
23 and the health care authority.

24 (b) The employee, retired employee, and retired school employee are
25 solely responsible for the payment of the premium rates developed by
26 the health care authority. The health care authority is authorized to
27 charge a reasonable administrative fee in addition to the premium
28 charged by the long-term care insurer, which shall include the health
29 care authority's cost of administration, marketing, and consumer
30 education materials prepared by the health care authority and the
31 office of the insurance commissioner.

32 (c) To the extent administratively possible, the state shall
33 establish an automatic payroll or pension deduction system for the
34 payment of the long-term care insurance premiums.

35 (d) The public employees' benefits board and the health care
36 authority shall establish a technical advisory committee to provide
37 advice in the development of the benefit design and establishment of
38 underwriting guidelines and eligibility rules. The committee shall

1 also advise the board and authority on effective and cost-effective
2 ways to market and distribute the long-term care product. The
3 technical advisory committee shall be comprised, at a minimum, of
4 representatives of the office of the insurance commissioner, providers
5 of long-term care services, licensed insurance agents with expertise in
6 long-term care insurance, employees, retired employees, retired school
7 employees, and other interested parties determined to be appropriate by
8 the board.

9 (e) The health care authority shall offer employees, retired
10 employees, and retired school employees the option of purchasing long-
11 term care insurance through licensed agents or brokers appointed by the
12 long-term care insurer. The authority, in consultation with the public
13 employees' benefits board, shall establish marketing procedures and may
14 consider all premium components as a part of the contract negotiations
15 with the long-term care insurer.

16 (f) In developing the long-term care insurance benefit designs, the
17 public employees' benefits board shall include an alternative plan of
18 care benefit, including adult day services, as approved by the office
19 of the insurance commissioner.

20 (g) The health care authority, with the cooperation of the office
21 of the insurance commissioner, shall develop a consumer education
22 program for the eligible employees, retired employees, and retired
23 school employees designed to provide education on the potential need
24 for long-term care, methods of financing long-term care, and the
25 availability of long-term care insurance products including the
26 products offered by the board.

27 (h) By December 1998, the health care authority, in consultation
28 with the public employees' benefits board, shall submit a report to the
29 appropriate committees of the legislature, including an analysis of the
30 marketing and distribution of the long-term care insurance provided
31 under this section.

32 **Sec. 11.** RCW 7.70.065 and 2006 c 93 s 1 are each amended to read
33 as follows:

34 (1) Informed consent for health care for a patient who is not
35 competent, as defined in RCW 11.88.010(1)(e), to consent may be
36 obtained from a person authorized to consent on behalf of such patient.

1 (a) Persons authorized to provide informed consent to health care
2 on behalf of a patient who is not competent to consent, based upon a
3 reason other than incapacity as defined in RCW 11.88.010(1)(d), shall
4 be a member of one of the following classes of persons in the following
5 order of priority:

6 (i) The appointed guardian of the patient, if any;

7 (ii) The individual, if any, to whom the patient has given a
8 durable power of attorney that encompasses the authority to make health
9 care decisions;

10 (iii) The patient's spouse or state registered domestic partner;

11 (iv) Children of the patient who are at least eighteen years of
12 age;

13 (v) Parents of the patient; and

14 (vi) Adult brothers and sisters of the patient.

15 (b) If the health care provider seeking informed consent for
16 proposed health care of the patient who is not competent to consent
17 under RCW 11.88.010(1)(e), other than a person determined to be
18 incapacitated because he or she is under the age of majority and who is
19 not otherwise authorized to provide informed consent, makes reasonable
20 efforts to locate and secure authorization from a competent person in
21 the first or succeeding class and finds no such person available,
22 authorization may be given by any person in the next class in the order
23 of descending priority. However, no person under this section may
24 provide informed consent to health care:

25 (i) If a person of higher priority under this section has refused
26 to give such authorization; or

27 (ii) If there are two or more individuals in the same class and the
28 decision is not unanimous among all available members of that class.

29 (c) Before any person authorized to provide informed consent on
30 behalf of a patient not competent to consent under RCW 11.88.010(1)(e),
31 other than a person determined to be incapacitated because he or she is
32 under the age of majority and who is not otherwise authorized to
33 provide informed consent, exercises that authority, the person must
34 first determine in good faith that that patient, if competent, would
35 consent to the proposed health care. If such a determination cannot be
36 made, the decision to consent to the proposed health care may be made
37 only after determining that the proposed health care is in the
38 patient's best interests.

1 (2) Informed consent for health care, including mental health care,
2 for a patient who is not competent, as defined in RCW 11.88.010(1)(e),
3 because he or she is under the age of majority and who is not otherwise
4 authorized to provide informed consent, may be obtained from a person
5 authorized to consent on behalf of such a patient.

6 (a) Persons authorized to provide informed consent to health care,
7 including mental health care, on behalf of a patient who is
8 incapacitated, as defined in RCW 11.88.010(1)(e), because he or she is
9 under the age of majority and who is not otherwise authorized to
10 provide informed consent, shall be a member of one of the following
11 classes of persons in the following order of priority:

12 (i) The appointed guardian, or legal custodian authorized pursuant
13 to Title 26 RCW, of the minor patient, if any;

14 (ii) A person authorized by the court to consent to medical care
15 for a child in out-of-home placement pursuant to chapter 13.32A or
16 13.34 RCW, if any;

17 (iii) Parents of the minor patient;

18 (iv) The individual, if any, to whom the minor's parent has given
19 a signed authorization to make health care decisions for the minor
20 patient; and

21 (v) A competent adult representing himself or herself to be a
22 relative responsible for the health care of such minor patient or a
23 competent adult who has signed and dated a declaration under penalty of
24 perjury pursuant to RCW 9A.72.085 stating that the adult person is a
25 relative responsible for the health care of the minor patient. Such
26 declaration shall be effective for up to six months from the date of
27 the declaration.

28 (b) A health care provider may, but is not required to, rely on the
29 representations or declaration of a person claiming to be a relative
30 responsible for the care of the minor patient, under (a)(v) of this
31 subsection, if the health care provider does not have actual notice of
32 the falsity of any of the statements made by the person claiming to be
33 a relative responsible for the health care of the minor patient.

34 (c) A health care facility or a health care provider may, in its
35 discretion, require documentation of a person's claimed status as being
36 a relative responsible for the health care of the minor patient.
37 However, there is no obligation to require such documentation.

1 (d) The health care provider or health care facility where services
2 are rendered shall be immune from suit in any action, civil or
3 criminal, or from professional or other disciplinary action when such
4 reliance is based on a declaration signed under penalty of perjury
5 pursuant to RCW 9A.72.085 stating that the adult person is a relative
6 responsible for the health care of the minor patient under (a)(v) of
7 this subsection.

8 (3) For the purposes of this section, "health care," "health care
9 provider," and "health care facility" shall be defined as established
10 in RCW 70.02.010.

11 **Sec. 12.** RCW 70.02.050 and 2006 c 235 s 3 are each amended to read
12 as follows:

13 (1) A health care provider or health care facility may disclose
14 health care information about a patient without the patient's
15 authorization to the extent a recipient needs to know the information,
16 if the disclosure is:

17 (a) To a person who the provider or facility reasonably believes is
18 providing health care to the patient;

19 (b) To any other person who requires health care information for
20 health care education, or to provide planning, quality assurance, peer
21 review, or administrative, legal, financial, actuarial services to, or
22 other health care operations for or on behalf of the health care
23 provider or health care facility; or for assisting the health care
24 provider or health care facility in the delivery of health care and the
25 health care provider or health care facility reasonably believes that
26 the person:

27 (i) Will not use or disclose the health care information for any
28 other purpose; and

29 (ii) Will take appropriate steps to protect the health care
30 information;

31 (c) To any other health care provider or health care facility
32 reasonably believed to have previously provided health care to the
33 patient, to the extent necessary to provide health care to the patient,
34 unless the patient has instructed the health care provider or health
35 care facility in writing not to make the disclosure;

36 (d) To any person if the health care provider or health care
37 facility reasonably believes that disclosure will avoid or minimize an

1 imminent danger to the health or safety of the patient or any other
2 individual, however there is no obligation under this chapter on the
3 part of the provider or facility to so disclose;

4 (e) To immediate family members of the patient, including a
5 patient's state registered domestic partner, or any other individual
6 with whom the patient is known to have a close personal relationship,
7 if made in accordance with good medical or other professional practice,
8 unless the patient has instructed the health care provider or health
9 care facility in writing not to make the disclosure;

10 (f) To a health care provider or health care facility who is the
11 successor in interest to the health care provider or health care
12 facility maintaining the health care information;

13 (g) For use in a research project that an institutional review
14 board has determined:

15 (i) Is of sufficient importance to outweigh the intrusion into the
16 privacy of the patient that would result from the disclosure;

17 (ii) Is impracticable without the use or disclosure of the health
18 care information in individually identifiable form;

19 (iii) Contains reasonable safeguards to protect the information
20 from redisclosure;

21 (iv) Contains reasonable safeguards to protect against identifying,
22 directly or indirectly, any patient in any report of the research
23 project; and

24 (v) Contains procedures to remove or destroy at the earliest
25 opportunity, consistent with the purposes of the project, information
26 that would enable the patient to be identified, unless an institutional
27 review board authorizes retention of identifying information for
28 purposes of another research project;

29 (h) To a person who obtains information for purposes of an audit,
30 if that person agrees in writing to:

31 (i) Remove or destroy, at the earliest opportunity consistent with
32 the purpose of the audit, information that would enable the patient to
33 be identified; and

34 (ii) Not to disclose the information further, except to accomplish
35 the audit or report unlawful or improper conduct involving fraud in
36 payment for health care by a health care provider or patient, or other
37 unlawful conduct by the health care provider;

1 (i) To an official of a penal or other custodial institution in
2 which the patient is detained;

3 (j) To provide directory information, unless the patient has
4 instructed the health care provider or health care facility not to make
5 the disclosure;

6 (k) To fire, police, sheriff, or another public authority, that
7 brought, or caused to be brought, the patient to the health care
8 facility or health care provider if the disclosure is limited to the
9 patient's name, residence, sex, age, occupation, condition, diagnosis,
10 estimated or actual discharge date, or extent and location of injuries
11 as determined by a physician, and whether the patient was conscious
12 when admitted;

13 (l) To federal, state, or local law enforcement authorities and the
14 health care provider, health care facility, or third-party payor
15 believes in good faith that the health care information disclosed
16 constitutes evidence of criminal conduct that occurred on the premises
17 of the health care provider, health care facility, or third-party
18 payor;

19 (m) To another health care provider, health care facility, or
20 third-party payor for the health care operations of the health care
21 provider, health care facility, or third-party payor that receives the
22 information, if each entity has or had a relationship with the patient
23 who is the subject of the health care information being requested, the
24 health care information pertains to such relationship, and the
25 disclosure is for the purposes described in RCW 70.02.010(8) (a) and
26 (b); or

27 (n) For payment.

28 (2) A health care provider shall disclose health care information
29 about a patient without the patient's authorization if the disclosure
30 is:

31 (a) To federal, state, or local public health authorities, to the
32 extent the health care provider is required by law to report health
33 care information; when needed to determine compliance with state or
34 federal licensure, certification or registration rules or laws; or when
35 needed to protect the public health;

36 (b) To federal, state, or local law enforcement authorities to the
37 extent the health care provider is required by law;

(c) To federal, state, or local law enforcement authorities, upon receipt of a written or oral request made to a nursing supervisor, administrator, or designated privacy official, in a case in which the patient is being treated or has been treated for a bullet wound, gunshot wound, powder burn, or other injury arising from or caused by the discharge of a firearm, or an injury caused by a knife, an ice pick, or any other sharp or pointed instrument which federal, state, or local law enforcement authorities reasonably believe to have been intentionally inflicted upon a person, or a blunt force injury that federal, state, or local law enforcement authorities reasonably believe resulted from a criminal act, the following information, if known:

- (i) The name of the patient;
 - (ii) The patient's residence;
 - (iii) The patient's sex;
 - (iv) The patient's age;
 - (v) The patient's condition;
 - (vi) The patient's diagnosis, or extent and location of injuries as determined by a health care provider;
 - (vii) Whether the patient was conscious when admitted;
 - (viii) The name of the health care provider making the determination in (c)(v), (vi), and (vii) of this subsection;
 - (ix) Whether the patient has been transferred to another facility;
- and
- (x) The patient's discharge time and date;
- (d) To county coroners and medical examiners for the investigations of deaths;
- (e) Pursuant to compulsory process in accordance with RCW 70.02.060.

(3) All state or local agencies obtaining patient health care information pursuant to this section shall adopt rules establishing their record acquisition, retention, and security policies that are consistent with this chapter.

Sec. 13. RCW 11.07.010 and 2002 c 18 s 1 are each amended to read as follows:

(1) This section applies to all nonprobate assets, wherever situated, held at the time of entry by a superior court of this state

1 of a decree of dissolution of marriage or a declaration of invalidity
2 or certification of termination of a state registered domestic
3 partnership.

4 (2)(a) If a marriage is dissolved or invalidated, or a state
5 registered domestic partnership terminated, a provision made prior to
6 that event that relates to the payment or transfer at death of the
7 decedent's interest in a nonprobate asset in favor of or granting an
8 interest or power to the decedent's former spouse or state registered
9 domestic partner, is revoked. A provision affected by this section
10 must be interpreted, and the nonprobate asset affected passes, as if
11 the former spouse or former state registered domestic partner, failed
12 to survive the decedent, having died at the time of entry of the decree
13 of dissolution or declaration of invalidity or termination of state
14 registered domestic partnership.

15 (b) This subsection does not apply if and to the extent that:

16 (i) The instrument governing disposition of the nonprobate asset
17 expressly provides otherwise;

18 (ii) The decree of dissolution ((~~or~~)), declaration of invalidity,
19 or other court order requires that the decedent maintain a nonprobate
20 asset for the benefit of a former spouse or former state registered
21 domestic partner or children of the marriage, payable on the decedent's
22 death either outright or in trust, and other nonprobate assets of the
23 decedent fulfilling such a requirement for the benefit of the former
24 spouse or former state registered domestic partner or children of the
25 marriage do not exist at the decedent's death; ((~~or~~))

26 (iii) A court order requires that the decedent maintain a
27 nonprobate asset for the benefit of another, payable on the decedent's
28 death either outright or in a trust, and other nonprobate assets of the
29 decedent fulfilling such a requirement do not exist at the decedent's
30 death; or

31 (iv) If not for this subsection, the decedent could not have
32 effected the revocation by unilateral action because of the terms of
33 the decree ((~~or~~)), declaration, termination of state registered
34 domestic partnership, or for any other reason, immediately after the
35 entry of the decree of dissolution ((~~or~~)), declaration of invalidity,
36 or termination of state registered domestic partnership.

37 (3)(a) A payor or other third party in possession or control of a
38 nonprobate asset at the time of the decedent's death is not liable for

1 making a payment or transferring an interest in a nonprobate asset to
2 a decedent's former spouse or state registered domestic partner, whose
3 interest in the nonprobate asset is revoked under this section, or for
4 taking another action in reliance on the validity of the instrument
5 governing disposition of the nonprobate asset, before the payor or
6 other third party has actual knowledge of the dissolution or other
7 invalidation of marriage or termination of the state registered
8 domestic partnership. A payor or other third party is liable for a
9 payment or transfer made or other action taken after the payor or other
10 third party has actual knowledge of a revocation under this section.

11 (b) This section does not require a payor or other third party to
12 pay or transfer a nonprobate asset to a beneficiary designated in a
13 governing instrument affected by the dissolution or other invalidation
14 of marriage or termination of state registered domestic partnership, or
15 to another person claiming an interest in the nonprobate asset, if the
16 payor or third party has actual knowledge of the existence of a dispute
17 between the former spouse or former state registered domestic partner,
18 and the beneficiaries or other persons concerning rights of ownership
19 of the nonprobate asset as a result of the application of this section
20 among the former spouse or former state registered domestic partner,
21 and the beneficiaries or among other persons, or if the payor or third
22 party is otherwise uncertain as to who is entitled to the nonprobate
23 asset under this section. In such a case, the payor or third party
24 may, without liability, notify in writing all beneficiaries or other
25 persons claiming an interest in the nonprobate asset of either the
26 existence of the dispute or its uncertainty as to who is entitled to
27 payment or transfer of the nonprobate asset. The payor or third party
28 may also, without liability, refuse to pay or transfer a nonprobate
29 asset in such a circumstance to a beneficiary or other person claiming
30 an interest until the time that either:

31 (i) All beneficiaries and other interested persons claiming an
32 interest have consented in writing to the payment or transfer; or

33 (ii) The payment or transfer is authorized or directed by a court
34 of proper jurisdiction.

35 (c) Notwithstanding subsections (1) and (2) of this section and (a)
36 and (b) of this subsection, a payor or other third party having actual
37 knowledge of the existence of a dispute between beneficiaries or other
38 persons concerning rights to a nonprobate asset as a result of the

1 application of this section may condition the payment or transfer of
2 the nonprobate asset on execution, in a form and with security
3 acceptable to the payor or other third party, of a bond in an amount
4 that is double the fair market value of the nonprobate asset at the
5 time of the decedent's death or the amount of an adverse claim,
6 whichever is the lesser, or of a similar instrument to provide security
7 to the payor or other third party, indemnifying the payor or other
8 third party for any liability, loss, damage, costs, and expenses for
9 and on account of payment or transfer of the nonprobate asset.

10 (d) As used in this subsection, "actual knowledge" means, for a
11 payor or other third party in possession or control of the nonprobate
12 asset at or following the decedent's death, written notice to the payor
13 or other third party, or to an officer of a payor or third party in the
14 course of his or her employment, received after the decedent's death
15 and within a time that is sufficient to afford the payor or third party
16 a reasonable opportunity to act upon the knowledge. The notice must
17 identify the nonprobate asset with reasonable specificity. The notice
18 also must be sufficient to inform the payor or other third party of the
19 revocation of the provisions in favor of the decedent's spouse or state
20 registered domestic partner, by reason of the dissolution or
21 invalidation of marriage or termination of state registered domestic
22 partnership, or to inform the payor or third party of a dispute
23 concerning rights to a nonprobate asset as a result of the application
24 of this section. Receipt of the notice for a period of more than
25 thirty days is presumed to be received within a time that is sufficient
26 to afford the payor or third party a reasonable opportunity to act upon
27 the knowledge, but receipt of the notice for a period of less than five
28 business days is presumed not to be a sufficient time for these
29 purposes. These presumptions may be rebutted only by clear and
30 convincing evidence to the contrary.

31 (4)(a) A person who purchases a nonprobate asset from a former
32 spouse, former state registered domestic partner, or other person, for
33 value and without actual knowledge, or who receives from a former
34 spouse, former state registered domestic partner, or other person
35 payment or transfer of a nonprobate asset without actual knowledge and
36 in partial or full satisfaction of a legally enforceable obligation, is
37 neither obligated under this section to return the payment, property,
38 or benefit nor is liable under this section for the amount of the

1 payment or the value of the nonprobate asset. However, a former
2 spouse, former state registered domestic partner, or other person who,
3 with actual knowledge, not for value, or not in satisfaction of a
4 legally enforceable obligation, receives payment or transfer of a
5 nonprobate asset to which that person is not entitled under this
6 section is obligated to return the payment or nonprobate asset, or is
7 personally liable for the amount of the payment or value of the
8 nonprobate asset, to the person who is entitled to it under this
9 section.

10 (b) As used in this subsection, "actual knowledge" means, for a
11 person described in (a) of this subsection who purchases or receives a
12 nonprobate asset from a former spouse, former state registered domestic
13 partner, or other person, personal knowledge or possession of documents
14 relating to the revocation upon dissolution or invalidation of marriage
15 of provisions relating to the payment or transfer at the decedent's
16 death of the nonprobate asset, received within a time after the
17 decedent's death and before the purchase or receipt that is sufficient
18 to afford the person purchasing or receiving the nonprobate asset
19 reasonable opportunity to act upon the knowledge. Receipt of the
20 personal knowledge or possession of the documents for a period of more
21 than thirty days is presumed to be received within a time that is
22 sufficient to afford the payor or third party a reasonable opportunity
23 to act upon the knowledge, but receipt of the notice for a period of
24 less than five business days is presumed not to be a sufficient time
25 for these purposes. These presumptions may be rebutted only by clear
26 and convincing evidence to the contrary.

27 (5) As used in this section, "nonprobate asset" means those rights
28 and interests of a person having beneficial ownership of an asset that
29 pass on the person's death under only the following written instruments
30 or arrangements other than the decedent's will:

31 (a) A payable-on-death provision of a life insurance policy,
32 employee benefit plan, annuity or similar contract, or individual
33 retirement account, unless provided otherwise by controlling federal
34 law;

35 (b) A payable-on-death, trust, or joint with right of survivorship
36 bank account;

37 (c) A trust of which the person is a grantor and that becomes
38 effective or irrevocable only upon the person's death; or

1 (d) Transfer on death beneficiary designations of a transfer on
2 death or pay on death security, if such designations are authorized
3 under Washington law.

4 For the general definition in this title of "nonprobate asset," see
5 RCW 11.02.005(15) and for the definition of "nonprobate asset" relating
6 to testamentary disposition of nonprobate assets, see RCW 11.11.010(7).

7 (6) This section is remedial in nature and applies as of July 25,
8 1993, to decrees of dissolution and declarations of invalidity entered
9 after July 24, 1993, and this section applies as of January 1, 1995, to
10 decrees of dissolution and declarations of invalidity entered before
11 July 25, 1993.

12 **Sec. 14.** RCW 11.94.080 and 2001 c 203 s 1 are each amended to read
13 as follows:

14 (1) An appointment of a principal's spouse or state registered
15 domestic partner, as attorney in fact, including appointment as
16 successor or coattorney in fact, under a power of attorney shall be
17 revoked upon entry of a decree of dissolution or legal separation or
18 declaration of invalidity of the marriage or termination of the state
19 registered domestic partnership of the principal and the attorney in
20 fact, unless the power of attorney or the decree provides otherwise.
21 The effect of this revocation shall be as if the spouse or state
22 registered domestic partner, resigned as attorney in fact, or if named
23 as successor attorney in fact, renounced the appointment, as of the
24 date of entry of the decree or declaration or filing of the certificate
25 of termination of the state registered domestic partnership, and the
26 power of attorney shall otherwise remain in effect with respect to
27 appointments of other persons as attorney in fact for the principal or
28 procedures prescribed in the power of attorney to appoint other
29 persons, and any terms relating to service by persons as attorney in
30 fact.

31 (2) This section applies to all decrees of dissolution and
32 declarations of invalidity of marriage entered after July 22, 2001.

33 **Sec. 15.** RCW 68.32.020 and 2005 c 365 s 92 are each amended to
34 read as follows:

35 The spouse or state registered domestic partner, of an owner of any
36 plot or right of interment containing more than one placement space has

1 a vested right of placement in the plot and any person thereafter
2 becoming the spouse or state registered domestic partner, of the owner
3 has a vested right of placement in the plot if more than one space is
4 unoccupied at the time the person becomes the spouse or state
5 registered domestic partner, of the owner.

6 **Sec. 16.** RCW 68.32.030 and 2005 c 365 s 93 are each amended to
7 read as follows:

8 No conveyance or other action of the owner without the written
9 consent of the spouse or state registered domestic partner, of the
10 owner divests the spouse or state registered domestic partner, of a
11 vested right of placement. A final decree of divorce between them or
12 certification of termination of the state registered domestic
13 partnership terminates the vested right of placement unless otherwise
14 provided in the decree.

15 **Sec. 17.** RCW 68.32.040 and 2005 c 365 s 94 are each amended to
16 read as follows:

17 If no placement is made in a plot or right of interment, which has
18 been transferred by deed or certificate of ownership to an individual
19 owner, the title descends to the surviving spouse or state registered
20 domestic partner. If there is no surviving spouse or state registered
21 domestic partner, the title descends to the heirs at law of the owner.
22 Following death of the owner, if all remains previously placed are
23 lawfully removed and the owner did not dispose of the plot or right of
24 interment by specific devise or by a written declaration filed and
25 recorded in the office of the cemetery authority, the title descends to
26 the surviving spouse or state registered domestic partner. If there is
27 no surviving spouse or state registered domestic partner, the title
28 descends to the heirs at law of the owner.

29 **Sec. 18.** RCW 68.32.060 and 2005 c 365 s 96 are each amended to
30 read as follows:

31 Whenever an interment of the human remains of a member or of a
32 relative of a member of the family of the record owner or of the
33 remains of the record owner is made in a plot transferred by deed or
34 certificate of ownership to an individual owner and both the owner and
35 the surviving spouse or state registered domestic partner, if any, die

1 with children then living without making disposition of the plot either
2 by a specific devise, or by a written declaration filed and recorded in
3 the office of the cemetery authority, the plot shall thereafter be held
4 as a family plot and shall be subject to sale only upon agreement of
5 the children of the owner living at the time of sale.

6 **Sec. 19.** RCW 68.32.110 and 2005 c 365 s 101 are each amended to
7 read as follows:

8 In a family plot one right of interment may be used for the owner's
9 interment and one for the owner's surviving spouse or state registered
10 domestic partner, if any. Any unoccupied spaces may then be used by
11 the remaining parents and children of the deceased owner, if any, then
12 to the spouse or state registered domestic partner of any child of the
13 owner, then to the heirs at law of the owner, in the order of death.

14 **Sec. 20.** RCW 68.32.130 and 2005 c 365 s 102 are each amended to
15 read as follows:

16 Any surviving spouse, state registered domestic partner, parent,
17 child, or heir having a right of placement in a family plot may waive
18 such right in favor of any other relative ((or)), spouse, or state
19 registered domestic partner of a relative of the deceased owner. Upon
20 such a waiver, the remains of the person in whose favor the waiver is
21 made may be placed in the plot.

22 **Sec. 21.** RCW 68.50.100 and 2003 c 53 s 307 are each amended to
23 read as follows:

24 (1) The right to dissect a dead body shall be limited to cases
25 specially provided by statute or by the direction or will of the
26 deceased; cases where a coroner is authorized to hold an inquest upon
27 the body, and then only as he or she may authorize dissection; and
28 cases where the spouse, state registered domestic partner, or next of
29 kin charged by law with the duty of burial shall authorize dissection
30 for the purpose of ascertaining the cause of death, and then only to
31 the extent so authorized: PROVIDED, That the coroner, in his or her
32 discretion, may make or cause to be made by a competent pathologist,
33 toxicologist, or physician, an autopsy or postmortem in any case in
34 which the coroner has jurisdiction of a body: PROVIDED, FURTHER, That
35 the coroner may with the approval of the University of Washington and

1 with the consent of a parent or guardian deliver any body of a deceased
2 person under the age of three years over which he or she has
3 jurisdiction to the University of Washington medical school for the
4 purpose of having an autopsy made to determine the cause of death.

5 (2) Every person who shall make, cause, or procure to be made any
6 dissection of a body, except as provided in this section, is guilty of
7 a gross misdemeanor.

8 **Sec. 22.** RCW 68.50.101 and 1987 c 331 s 57 are each amended to
9 read as follows:

10 Autopsy or post mortem may be performed in any case where
11 authorization has been given by a member of one of the following
12 classes of persons in the following order of priority:

13 (1) The surviving spouse or state registered domestic partner;

14 (2) Any child of the decedent who is eighteen years of age or
15 older;

16 (3) One of the parents of the decedent;

17 (4) Any adult brother or sister of the decedent;

18 (5) A person who was guardian of the decedent at the time of death;

19 (6) Any other person or agency authorized or under an obligation to
20 dispose of the remains of the decedent. The chief official of any such
21 agency shall designate one or more persons to execute authorizations
22 pursuant to the provisions of this section.

23 If the person seeking authority to perform an autopsy or post
24 mortem makes reasonable efforts to locate and secure authorization from
25 a competent person in the first or succeeding class and finds no such
26 person available, authorization may be given by any person in the next
27 class, in the order of descending priority. However, no person under
28 this section shall have the power to authorize an autopsy or post
29 mortem if a person of higher priority under this section has refused
30 such authorization: PROVIDED, That this section shall not affect
31 autopsies performed pursuant to RCW 68.50.010 or 68.50.103.

32 **Sec. 23.** RCW 68.50.105 and 1987 c 331 s 58 are each amended to
33 read as follows:

34 Reports and records of autopsies or post mortems shall be
35 confidential, except that the following persons may examine and obtain
36 copies of any such report or record: The personal representative of

1 the decedent as defined in RCW 11.02.005, any family member, the
2 attending physician, the prosecuting attorney or law enforcement
3 agencies having jurisdiction, public health officials, or to the
4 department of labor and industries in cases in which it has an interest
5 under RCW 68.50.103.

6 The coroner, the medical examiner, or the attending physician
7 shall, upon request, meet with the family of the decedent to discuss
8 the findings of the autopsy or post mortem. For the purposes of this
9 section, the term "family" means the surviving spouse, state registered
10 domestic partner, or any child, parent, grandparent, grandchild,
11 brother, or sister of the decedent, or any person who was guardian of
12 the decedent at the time of death.

13 **Sec. 24.** RCW 68.50.160 and 2005 c 365 s 141 are each amended to
14 read as follows:

15 (1) A person has the right to control the disposition of his or her
16 own remains without the predeath or postdeath consent of another
17 person. A valid written document expressing the decedent's wishes
18 regarding the place or method of disposition of his or her remains,
19 signed by the decedent in the presence of a witness, is sufficient
20 legal authorization for the procedures to be accomplished.

21 (2) Prearrangements that are prepaid, or filed with a licensed
22 funeral establishment or cemetery authority, under RCW 18.39.280
23 through 18.39.345 and chapter 68.46 RCW are not subject to cancellation
24 or substantial revision by survivors. Absent actual knowledge of
25 contrary legal authorization under this section, a licensed funeral
26 establishment or cemetery authority shall not be held criminally nor
27 civilly liable for acting upon such prearrangements.

28 (3) If the decedent has not made a prearrangement as set forth in
29 subsection (2) of this section or the costs of executing the decedent's
30 wishes regarding the disposition of the decedent's remains exceeds a
31 reasonable amount or directions have not been given by the decedent,
32 the right to control the disposition of the remains of a deceased
33 person vests in, and the duty of disposition and the liability for the
34 reasonable cost of preparation, care, and disposition of such remains
35 devolves upon the following in the order named:

36 (a) The surviving spouse or state registered domestic partner.

37 (b) The surviving adult children of the decedent.

1 (c) The surviving parents of the decedent.
2 (d) The surviving siblings of the decedent.
3 (e) A person acting as a representative of the decedent under the
4 signed authorization of the decedent.

5 (4) If a cemetery authority as defined in RCW 68.04.190 or a
6 funeral establishment licensed under chapter 18.39 RCW has made a good
7 faith effort to locate the person cited in subsection (3)(a) through
8 (e) of this section or the legal representative of the decedent's
9 estate, the cemetery authority or funeral establishment shall have the
10 right to rely on an authority to bury or cremate the human remains,
11 executed by the most responsible party available, and the cemetery
12 authority or funeral establishment may not be held criminally or
13 civilly liable for burying or cremating the human remains. In the
14 event any government agency provides the funds for the disposition of
15 any human remains and the government agency elects to provide funds for
16 cremation only, the cemetery authority or funeral establishment may not
17 be held criminally or civilly liable for cremating the human remains.

18 (5) The liability for the reasonable cost of preparation, care, and
19 disposition devolves jointly and severally upon all kin of the decedent
20 in the same degree of kindred, in the order listed in subsection (3) of
21 this section, and upon the estate of the decedent.

22 **Sec. 25.** RCW 68.50.200 and 2005 c 365 s 144 are each amended to
23 read as follows:

24 Human remains may be removed from a plot in a cemetery with the
25 consent of the cemetery authority and the written consent of one of the
26 following in the order named:

- 27 (1) The surviving spouse or state registered domestic partner.
28 (2) The surviving children of the decedent.
29 (3) The surviving parents of the decedent.
30 (4) The surviving brothers or sisters of the decedent.

31 If the required consent cannot be obtained, permission by the
32 superior court of the county where the cemetery is situated is
33 sufficient: PROVIDED, That the permission shall not violate the terms
34 of a written contract or the rules and regulations of the cemetery
35 authority.

1 **Sec. 26.** RCW 68.50.550 and 1993 c 228 s 4 are each amended to read
2 as follows:

3 (1) A member of the following classes of persons, in the order of
4 priority listed, absent contrary instructions by the decedent, may make
5 an anatomical gift of all or a part of the decedent's body for an
6 authorized purpose, unless the decedent, at the time of death, had made
7 an unrevoked refusal to make that anatomical gift:

8 (a) The appointed guardian of the person of the decedent at the
9 time of death;

10 (b) The individual, if any, to whom the decedent had given a
11 durable power of attorney that encompassed the authority to make health
12 care decisions;

13 (c) The spouse or state registered domestic partner, of the
14 decedent;

15 (d) A son or daughter of the decedent who is at least eighteen
16 years of age;

17 (e) Either parent of the decedent;

18 (f) A brother or sister of the decedent who is at least eighteen
19 years of age;

20 (g) A grandparent of the decedent.

21 (2) An anatomical gift may not be made by a person listed in
22 subsection (1) of this section if:

23 (a) A person in a prior class is available at the time of death to
24 make an anatomical gift;

25 (b) The person proposing to make an anatomical gift knows of a
26 refusal or contrary indications by the decedent; or

27 (c) The person proposing to make an anatomical gift knows of an
28 objection to making an anatomical gift by a member of the person's
29 class or a prior class.

30 (3) An anatomical gift by a person authorized under subsection (1)
31 of this section must be made by (a) a document of gift signed by the
32 person or (b) the person's telegraphic, recorded telephonic, or other
33 recorded message, or other form of communication from the person that
34 is contemporaneously reduced to writing and signed by the recipient of
35 the communication.

36 (4) An anatomical gift by a person authorized under subsection (1)
37 of this section may be revoked by a member of the same or a prior class

1 if, before procedures have begun for the removal of a part from the
2 body of the decedent, the physician, surgeon, technician, or enucleator
3 removing the part knows of the revocation.

4 (5) A failure to make an anatomical gift under subsection (1) of
5 this section is not an objection to the making of an anatomical gift.

6 **Sec. 27.** RCW 11.04.015 and 1974 ex.s. c 117 s 6 are each amended
7 to read as follows:

8 The net estate of a person dying intestate, or that portion thereof
9 with respect to which the person shall have died intestate, shall
10 descend subject to the provisions of RCW 11.04.250 and 11.02.070, and
11 shall be distributed as follows:

12 (1) Share of surviving spouse or state registered domestic partner.
13 The surviving spouse or state registered domestic partner shall receive
14 the following share:

15 (a) All of the decedent's share of the net community estate; and

16 (b) One-half of the net separate estate if the intestate is
17 survived by issue; or

18 (c) Three-quarters of the net separate estate if there is no
19 surviving issue, but the intestate is survived by one or more of his
20 parents, or by one or more of the issue of one or more of his parents;
21 or

22 (d) All of the net separate estate, if there is no surviving issue
23 nor parent nor issue of parent.

24 (2) Shares of others than surviving spouse or state registered
25 domestic partner. The share of the net estate not distributable to the
26 surviving spouse or state registered domestic partner, or the entire
27 net estate if there is no surviving spouse or state registered domestic
28 partner, shall descend and be distributed as follows:

29 (a) To the issue of the intestate; if they are all in the same
30 degree of kinship to the intestate, they shall take equally, or if of
31 unequal degree, then those of more remote degree shall take by
32 representation.

33 (b) If the intestate not be survived by issue, then to the parent
34 or parents who survive the intestate.

35 (c) If the intestate not be survived by issue or by either parent,
36 then to those issue of the parent or parents who survive the intestate;

1 if they are all in the same degree of kinship to the intestate, they
2 shall take equally, or, if of unequal degree, then those of more remote
3 degree shall take by representation.

4 (d) If the intestate not be survived by issue or by either parent,
5 or by any issue of the parent or parents who survive the intestate,
6 then to the grandparent or grandparents who survive the intestate; if
7 both maternal and paternal grandparents survive the intestate, the
8 maternal grandparent or grandparents shall take one-half and the
9 paternal grandparent or grandparents shall take one-half.

10 (e) If the intestate not be survived by issue or by either parent,
11 or by any issue of the parent or parents or by any grandparent or
12 grandparents, then to those issue of any grandparent or grandparents
13 who survive the intestate; taken as a group, the issue of the maternal
14 grandparent or grandparents shall share equally with the issue of the
15 paternal grandparent or grandparents, also taken as a group; within
16 each such group, all members share equally if they are all in the same
17 degree of kinship to the intestate, or, if some be of unequal degree,
18 then those of more remote degree shall take by representation.

19 **Sec. 28.** RCW 11.28.120 and 1995 1st sp.s. c 18 s 61 are each
20 amended to read as follows:

21 Administration of an estate if the decedent died intestate or if
22 the personal representative or representatives named in the will
23 declined or were unable to serve shall be granted to some one or more
24 of the persons hereinafter mentioned, and they shall be respectively
25 entitled in the following order:

26 (1) The surviving spouse or state registered domestic partner, or
27 such person as he or she may request to have appointed.

28 (2) The next of kin in the following order: (a) Child or children;
29 (b) father or mother; (c) brothers or sisters; (d) grandchildren; (e)
30 nephews or nieces.

31 (3) The trustee named by the decedent in an inter vivos trust
32 instrument, testamentary trustee named in the will, guardian of the
33 person or estate of the decedent, or attorney in fact appointed by the
34 decedent, if any such a fiduciary controlled or potentially controlled
35 substantially all of the decedent's probate and nonprobate assets.

36 (4) One or more of the beneficiaries or transferees of the
37 decedent's probate or nonprobate assets.

1 (5)(a) The director of revenue, or the director's designee, for
2 those estates having property subject to the provisions of chapter
3 11.08 RCW; however, the director may waive this right.

4 (b) The secretary of the department of social and health services
5 for those estates owing debts for long-term care services as defined in
6 RCW 74.39A.008; however the secretary may waive this right.

7 (6) One or more of the principal creditors.

8 (7) If the persons so entitled shall fail for more than forty days
9 after the death of the decedent to present a petition for letters of
10 administration, or if it appears to the satisfaction of the court that
11 there is no next of kin, as above specified eligible to appointment, or
12 they waive their right, and there are no principal creditor or
13 creditors, or such creditor or creditors waive their right, then the
14 court may appoint any suitable person to administer such estate.

15 **Sec. 29.** RCW 4.20.020 and 1985 c 139 s 1 are each amended to read
16 as follows:

17 Every such action shall be for the benefit of the wife, husband,
18 state registered domestic partner, child or children, including
19 stepchildren, of the person whose death shall have been so caused. If
20 there be no wife ((or)), husband, state registered domestic partner, or
21 such child or children, such action may be maintained for the benefit
22 of the parents, sisters, or brothers, who may be dependent upon the
23 deceased person for support, and who are resident within the United
24 States at the time of his death.

25 In every such action the jury may give such damages as, under all
26 circumstances of the case, may to them seem just.

27 **Sec. 30.** RCW 4.20.060 and 1985 c 139 s 2 are each amended to read
28 as follows:

29 No action for a personal injury to any person occasioning death
30 shall abate, nor shall such right of action determine, by reason of
31 such death, if such person has a surviving spouse, state registered
32 domestic partner, or child living, including stepchildren, or leaving
33 no surviving spouse, state registered domestic partner, or such
34 children, if there is dependent upon the deceased for support and
35 resident within the United States at the time of decedent's death,
36 parents, sisters, or brothers; but such action may be prosecuted, or

1 commenced and prosecuted, by the executor or administrator of the
2 deceased, in favor of such surviving spouse or state registered
3 domestic partner, or in favor of the surviving spouse or state
4 registered domestic partner and such children, or if no surviving
5 spouse or state registered domestic partner, in favor of such child or
6 children, or if no surviving spouse, state registered domestic partner,
7 or such child or children, then in favor of the decedent's parents,
8 sisters, or brothers who may be dependent upon such person for support,
9 and resident in the United States at the time of decedent's death.

10 **Sec. 31.** RCW 11.94.010 and 2005 c 97 s 12 are each amended to read
11 as follows:

12 (1) Whenever a principal designates another as his or her attorney
13 in fact or agent, by a power of attorney in writing, and the writing
14 contains the words "This power of attorney shall not be affected by
15 disability of the principal," or "This power of attorney shall become
16 effective upon the disability of the principal," or similar words
17 showing the intent of the principal that the authority conferred shall
18 be exercisable notwithstanding the principal's disability, the
19 authority of the attorney in fact or agent is exercisable on behalf of
20 the principal as provided notwithstanding later disability or
21 incapacity of the principal at law or later uncertainty as to whether
22 the principal is dead or alive. All acts done by the attorney in fact
23 or agent pursuant to the power during any period of disability or
24 incompetence or uncertainty as to whether the principal is dead or
25 alive have the same effect and inure to the benefit of and bind the
26 principal or the principal's guardian or heirs, devisees, and personal
27 representative as if the principal were alive, competent, and not
28 disabled. A principal may nominate, by a durable power of attorney,
29 the guardian or limited guardian of his or her estate or person for
30 consideration by the court if protective proceedings for the
31 principal's person or estate are thereafter commenced. The court shall
32 make its appointment in accordance with the principal's most recent
33 nomination in a durable power of attorney except for good cause or
34 disqualification. If a guardian thereafter is appointed for the
35 principal, the attorney in fact or agent, during the continuance of the
36 appointment, shall account to the guardian rather than the principal.

1 The guardian has the same power the principal would have had if the
2 principal were not disabled or incompetent, to revoke, suspend or
3 terminate all or any part of the power of attorney or agency.

4 (2) Persons shall place reasonable reliance on any determination of
5 disability or incompetence as provided in the instrument that specifies
6 the time and the circumstances under which the power of attorney
7 document becomes effective.

8 (3)(a) A principal may authorize his or her attorney-in-fact to
9 provide informed consent for health care decisions on the principal's
10 behalf. If a principal has appointed more than one agent with
11 authority to make mental health treatment decisions in accordance with
12 a directive under chapter 71.32 RCW, to the extent of any conflict, the
13 most recently appointed agent shall be treated as the principal's agent
14 for mental health treatment decisions unless provided otherwise in
15 either appointment.

16 (b) Unless he or she is the spouse, state registered domestic
17 partner, or adult child or brother or sister of the principal, none of
18 the following persons may act as the attorney-in-fact for the
19 principal: Any of the principal's physicians, the physicians'
20 employees, or the owners, administrators, or employees of the health
21 care facility or long-term care facility as defined in RCW 43.190.020
22 where the principal resides or receives care. Except when the
23 principal has consented in a mental health advance directive executed
24 under chapter 71.32 RCW to inpatient admission or electroconvulsive
25 therapy, this authorization is subject to the same limitations as those
26 that apply to a guardian under RCW 11.92.043(5) (a) through (c).

27 (4) A parent or guardian, by a properly executed power of attorney,
28 may authorize an attorney in fact to make health care decisions on
29 behalf of one or more of his or her children, or children for whom he
30 or she is the legal guardian, who are under the age of majority as
31 defined in RCW 26.28.015, to be effective if the child has no other
32 parent or legal representative readily available and authorized to give
33 such consent.

34 (5) A principal may further nominate a guardian or guardians of the
35 person, or of the estate or both, of a minor child, whether born at the
36 time of making the durable power of attorney or afterwards, to continue
37 during the disability of the principal, during the minority of the

1 child or for any less time by including such a provision in his or her
2 power of attorney.

3 (6) The authority of any guardian of the person of any minor child
4 shall supersede the authority of a designated attorney in fact to make
5 health care decisions for the minor only after such designated guardian
6 has been appointed by the court.

7 (7) In the event a conflict between the provisions of a will
8 nominating a testamentary guardian under the authority of RCW 11.88.080
9 and the nomination of a guardian under the authority of this statute,
10 the most recent designation shall control.

11 NEW SECTION. **Sec. 32.** A new section is added to chapter 70.58 RCW
12 to read as follows:

13 Information recorded on death certificates shall include domestic
14 partnership status and the surviving partner's information to the same
15 extent such information is recorded for marital status and the
16 surviving spouse's information.

17 NEW SECTION. **Sec. 33.** Sections 1, 2, and 4 through 8 of this act
18 constitute a new chapter in Title 26 RCW.

Passed by the Senate March 1, 2007.

Passed by the House April 10, 2007.

Approved by the Governor April 21, 2007.

Filed in Office of Secretary of State April 23, 2007.