UCLA
Documenting Discrimination on the Basis of Sexual Orientation and Gender Identity in State Employment

Title
Missouri - Sexual Orientation and Gender Identity Law and Documentation of Discrimination

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MEMORANDUM

From: Williams Institute

Date: September 2009

RE: Missouri – Sexual Orientation and Gender Identity Law and Documentation of Discrimination

I. OVERVIEW

Missouri has no state statute prohibiting public employment discrimination based on sexual orientation or gender identity. Since 1998, legislators in the Missouri General Assembly have introduced bills that would prohibit discrimination based on sexual orientation and gender identity, specifically in the areas of employment, public accommodations, and housing; none of the attempts have been successful.

At the local level, four major cities - St. Louis, Kansas City, Columbia and University City - have ordinances that prohibit discrimination on the basis of sexual orientation in the employment context. At least one fire department, several school districts, and several public universities have personnel policies that prohibit discrimination on the basis of sexual orientation, and in some cases, gender identity.

The 11-year-long debate over employment anti-discrimination policies at one public state university illustrates the background context of animus and hostility toward LGBT persons. In a 1995 letter to an alumni, Missouri State University President John Keiser wrote that homosexuality is a “biological perversion” and is “intrinsically disordered.” In 2004, a bill was introduced in the Missouri legislature that would have prohibited state agencies - including Missouri State University - from adding sexual orientation to non-discrimination policies. The bill did not pass. In 2006, Missouri State University added “sexual orientation” to its list of protected classes over the repeated objections of President Keiser. As a result, Governor Matt Blunt issued a statement saying the change was “unnecessary and bad.”

Documented examples of discrimination based on sexual orientation and gender identity by state and local governments include:

- In Counce v. Kemna, an inmate claimed he was not promoted in the prison’s kitchen to a higher-paying position as a cook because he was homosexual. In an unreported opinion, the Court granted the defendant’s motion for summary judgment because the inmate had not established that the “denial of prison jobs to homosexuals because of their sexual orientation is a violation of the United States Constitution.” Counce v. Kemna, 2005 WL 579588 (W.D. Mo. 2005).

- Kelly, a gay inmate employee at a correctional facility in Missouri, brought a lawsuit alleging discrimination in violation of the equal protection clause and

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Title VII when he was terminated from his facility bakery job because of his sexual orientation. The court, in deciding whether Kelley was entitled to unconditional leave to proceed in forma pauperis, found that his claim alleging discrimination on the basis of his sexual orientation was not frivolous under the equal protection clause. **Kelly v. Vaughn**, 760 F.Supp. 161 (W.D. Mo. 1991).

- In 2008, a public school physical education teacher reported that she did not have her contract renewed because of her sexual orientation. During the time that she was still employed by the school, she overheard one of the school board members say that, had he known she was a “dyke,” he would never have hired her in the first place.²

- In 2008, a teacher reported that he was not hired by a public school because the administration perceived him to be gay.³

- In 2008, an applicant for a prosecutor position reported that he had his job offer revoked because he was gay.⁴

- In 2007, two sheriff’s office kitchen workers reported that they were fired because they were lesbians.⁵

- In March, a high school history teacher in Mehlville was reprimanded after he informed his students that he is gay. In a class on the Holocaust, the teacher explained that if he had lived during World War II, he could have been persecuted for being gay. Though the students were supportive, several other teachers expressed dismay, and the gay teacher received a memorandum from the assistant superintendent and a school district lawyer informing him that the district “considers it inappropriate conduct for a teacher to discuss facets and beliefs of a personal nature . . . in the classroom.” Though the memo did not specifically mention homosexuality, the school’s principal requested that the teacher not bring up the topic of homosexuality again in class unless it was relevant to the existing curriculum. Two months later, the teacher received a letter from the school district’s law firm reiterating that “Mehlville School District considers your classroom conduct of March 22, 1994 to be inappropriate...” No further action was taken, but another teacher warned, “next year, he’d better watch his step because they may be looking to nab him on some pretense.”⁶

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² E-mail from Jon Davidson, Legal Director, Lambda Legal, to Nan D. Hunter, Legal Scholarship Director, the Williams Institute (Feb. 11, 2009, 12:18:00 EST) (on file with the Williams Institute).
³ E-mail from Ken Choe, Senior Staff Attorney, American Civil Liberties Union, to Nan D. Hunter, Legal Scholarship Director, the Williams Institute (Feb. 26, 2009, 17:09:00 EST) (on file with the Williams Institute).
⁴ *Id.*
⁵ *Id.*
⁶ **PEOPLE FOR THE AMERICAN WAY FOUNDATION, HOSTILE CLIMATE: A STATE BY STATE REPORT ON ANTI-GAY ACTIVITY** 51 (1994 ed.).
Outside the context of employment, state actors have subjected gay citizens to biased treatment. In one instance, which occurred after the U.S. Supreme Court’s 2003 decision in *Lawrence v. Texas* declaring sodomy laws to be unconstitutional, the state Department of Social Services relied on a Missouri law criminalizing same-sex sexual conduct as a basis to deny a foster care license to a lesbian couple. The Director stated that “but for her sexual orientation, it was agreed by all parties that Applicant and her partner have exceptional qualifications to be foster parents.” The denial was overturned by the Missouri Circuit Court, which declared the “sexual misconduct” statute unconstitutional in light of *Lawrence*. In a 1998 custody case, the Missouri Supreme Court upheld the award of custody to the heterosexual father rather than the lesbian mother, after the trial court had forced the mother, under supervision of the guardian ad litem, to tell her two daughters that she was gay.

Part II of this memo discusses state and local legislation, executive orders, occupational licensing requirements, ordinances and policies involving employment discrimination based on sexual orientation and gender identity, and attempts to enact such laws and policies. Part III discusses case law, administrative complaints, and other documented examples of employment discrimination by state and local governments against LGBT people. Part IV discusses state laws and policies outside the employment context.

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7 *Johnston v. Mo. Dep’t of Social Serv.*, 2005 WL 3465711 (Mo. Cir. 2005).
8 *J.A.D. v. F.J.D. III*, 978 S.W.2d 336 (Mo. 1998).
II. SEXUAL ORIENTATION AND GENDER IDENTITY EMPLOYMENT LAW

A. State-Wide Employment Statutes

Currently the state of Missouri has not enacted laws to protect sexual orientation and gender identity from employment discrimination.

B. Attempts to Enact State Legislation

Bills introduced in 2009 – All bills pending as of July 14, 2009

HB518 – To amend existing law to require schools to adopt an anti-bullying policy that includes protection for bullying motivated on the basis of sexual orientation or gender identity. Introduced on January 29, 2009. There has been no activity on this bill as of July 14, 2009.9

HB701 – To amend existing laws to prohibit discrimination in employment, public accommodations, and housing on the basis of sexual orientation and gender identity. Introduced on February 12, 2009. There has been no activity on this bill as of July 14, 2009.10

SB132 – To amend existing law to require school districts to adopt an anti-bullying policy that include protection for bullying motivated on the basis of sexual orientation or gender identity. Introduced on January 7, 2009. There has been no activity on this bill as of July 14, 2009.11

SB500 – To require school districts to adopt policies allowing parents or guardians an opportunity to withhold permission for children to participate in certain activities. Introduced on February 25, 2009. Referred to Senate Education Committee on March 2, 2009. There has been no further activity on this bill as of July 14, 2009.12

SB109 – To amend existing laws to prohibit discrimination in employment, public accommodations, and housing on the basis of sexual orientation and gender identity. Introduced on January 7, 2009. Hearings were held before the Senate Progress and Development Committee on February 25, 2009. There has been no further activity on this bill as of July 14, 2009.13

Bills introduced in 2008

9 H.B. 518 (Mo. 2009).
10 H.B. 701 (Mo. 2009).
11 S.B. 132 (Mo. 2009).
12 S.B. 500 (Mo. 2009).
13 S.B. 109 (Mo. 2009).
SB824 – To amend existing laws to prohibit discrimination in employment, public accommodations, and housing on the basis of sexual orientation and gender identity. No action taken.\textsuperscript{14}

SB1019 – To amend existing laws to prohibit discrimination in employment, public accommodations, and housing on the basis of sexual orientation and gender identity. No action taken.\textsuperscript{15}

HB1776 – To amend existing laws to prohibit discrimination in employment, public accommodations, and housing on the basis of sexual orientation and gender identity. No action taken.\textsuperscript{16}

HB 1751: To amend existing laws for teachers and school administrators to better recognize and stop school bullying. The bill also addresses harassment of LGBT students. The bill was held up by Representative Jane Cunningham, who chairs the Elementary and Secondary Education Committee. \textsuperscript{17}

\textbf{Bills introduced in 2007}

SB266 – To amend existing laws to prohibit discrimination in employment, public accommodations, and housing on the basis of sexual orientation and gender identity. No action taken.\textsuperscript{18}

HB819 – To amend existing laws to prohibit discrimination in employment, public accommodations, and housing on the basis of sexual orientation and gender identity. No action taken.\textsuperscript{19}

\textbf{Bills introduced in 2006}

SB716 – To amend existing laws to prohibit discrimination in employment, public accommodations, and housing on the basis of sexual orientation and gender identity. No action taken.\textsuperscript{20}

HB1593 – To amend existing laws to prohibit discrimination in employment, public accommodations, and housing on the basis of sexual orientation and gender identity. No action taken.\textsuperscript{21}

\textsuperscript{14} S.B. 824 (Mo. 2008).
\textsuperscript{15} S.B. 1019 (Mo. 2008).
\textsuperscript{16} S.B. 1776 (Mo. 2008).
\textsuperscript{17} H.B. 1751 (Mo. 2008).
\textsuperscript{18} S.B. 226 (Mo. 2007).
\textsuperscript{19} H.B. 819 (Mo. 2007).
\textsuperscript{20} S.B. 716 (Mo. 2006).
\textsuperscript{21} H.B. 1593 (Mo. 2006).
HB1458 – To amend existing laws to prohibit discrimination in employment, public accommodations, and housing on the basis of sexual orientation and gender identity. No action taken.22

Bills introduced in 2005

SB293 – To amend existing laws to prohibit discrimination in employment, public accommodations, and housing on the basis of sexual orientation and gender identity. No action taken.23

HB476 – To amend existing laws to prohibit discrimination in employment, public accommodations, and housing on the basis of sexual orientation and gender identity. No action taken.24

Bills introduced in 2004

SB1238 – To amend existing laws to prohibit discrimination in employment, public accommodations, and housing on the basis of sexual orientation and gender identity. No action taken.25

HB1521 – To amend existing laws to prohibit discrimination in employment, public accommodations and housing on the basis of sexual orientation and gender identity. No action taken.26

HB885. This anti-gay bill, introduced by Rep. Kevin Wilson in 2004 with 16 co-sponsors, never passed. It read: “No public institution or any entity that receives state funds shall adopt a discrimination policy that exceeds current federal protections against discrimination.” It was an attempt to force universities to remove references to “sexual orientation” from their non-discrimination policies.27

C. Executive Orders, State Government Personnel Regulations, & Attorney General Opinions

1. Executive Orders

None.

2. State Government Personnel Regulations

Fire Departments:

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22 H.B. 1458 (Mo. 2006).
23 S.B. 293 (Mo. 2005).
24 H.B. 476 (Mo. 2005).
25 S.B. 1238 (Mo. 2004).
26 H.B. 1521 (Mo. 2004).
27 H.B. 885 (Mo. 2004).
Most policies are not available online. The Columbia, Missouri fire department prohibits discrimination in hiring on the basis of sexual orientation.28

School Districts:

The Kansas City School District (Jackson County) non-discrimination policy prohibits discrimination on the basis of both sexual orientation and gender identity.29

School districts whose non-discrimination policies prohibit discrimination on the basis of sexual orientation but make no reference to gender identity include the St. Louis School District (St. Louis City), Francis Howell School District (St. Charles County), and Columbia School District (Boone County).30

Public Universities

Northwest Missouri State University’s non-discrimination policy prohibits discrimination on the basis of both sexual orientation and gender identity.

Schools whose non-discrimination policies prohibit discrimination on the basis of sexual orientation but make no reference to gender identity include the University of Missouri System – Columbia, Kansas City, Rolla, and St. Louis; St. Louis Community College; and Ozarks Technical Community College.31

Missouri State University added “sexual orientation” to the list of factors on which the institution barred bias in 2006. This was after a long-fought battle. After this change, Governor Matt Blunt issued a statement in which he said that Missouri State’s “ever-increasing enrollment is proof that a diverse student body feels welcome on campus,” adding that the change was “unnecessary and bad.” John Keiser, who was president of the university from 1993 to 2005, had repeatedly opposed the change, saying that it wasn’t necessary and that discrimination on the campus was not a problem. No formal complaints of discrimination on the basis of sexual orientation had been filed with the University’s Equal Opportunity Office because the University’s policy did not cover sexual orientation. However, two informal complaints were filed and there were up to seven additional incidences in which people expressed concerns to the Equal Opportunity

Office but did not file complaints. Additionally, Jeanne Thomas, the former dean of the College of Health and Human Services, publicly stated that she left the University because its policy did not protect against discrimination on the basis of sexual orientation. Although Thomas did not experience any direct discrimination, she feared that her sexual orientation could be used against her. Keiser’s stance became particularly hard for student and faculty leaders to accept when a newspaper printed a letter Keiser had sent an alumnus in 1995 saying that homosexuality is a “biological perversion,” and adding that he had always believed that homosexual or lesbian acts are “intrinsically disordered, contrary to natural law, and cannot be approved.”

3. Attorney General Opinions

None.

D. Local Legislation

Four municipalities in Missouri have local human rights ordinances that protect against discrimination based on sexual orientation and/or gender identity: St. Louis, Kansas City, Columbia, and University City. It appears that at least other municipality, Kirkwood, is considering a human rights law.

1. City of St. Louis

In 1992, the St. Louis Board of Alderman adopted St. Louis City Ordinance 62710, which is “intended to eliminate, reduce, and remedy discrimination in housing, unemployment, education, services, public accommodations, and real property transactions and uses, and to provide equal opportunity enforcement.” Ordinance 62710 protects individuals against discrimination because of “race, marital status, familial status, sexual orientation, sex, color, age, religion, disability, national origin or ancestry, or legal source of income.”

The ordinance establishes “a comprehensive civil rights enforcement agency to investigate, conciliate, and recommend remedies of complaints of discrimination,” and provides for penalties for unlawful discrimination. Ordinance 62710 also has a provision prohibiting it from being repealed by referendum.

32 Angela Wilson, Discrimination Policy at SMS under Scrutiny, SPRINGFIELD NEWS-LEADER, May 13, 2001, at 1B.
35 ST. LOUIS CITY ORD. 62710 § 7.
36 ST. LOUIS CITY ORD. 62710 § 7.
According to the New York Times, Ordinance 62710 passed with little opposition or attention.\footnote{37} It was also reported that Ordinance 62710 was one of the strongest local laws of its kind at the time of passage.

2. **Kansas City**

Chapter 38 of the Kansas City Municipal Code contains the human rights and discriminatory practices provisions. It protects against, amongst other things, discrimination in housing, employment, and real estate loans on account of race, religion, color, ancestry, national origin, sex, marital status, handicap, familial status, sexual orientation, or gender identity.\footnote{38} “Gender identity” was added in April of 2008.\footnote{39} Discriminatory practices are punishable by a fine of up to $500.00 and/or imprisonment of not more than 180 days.\footnote{40}

Chapter 38 also creates a Human Relations Division charged with the authority to receive and investigate complaints and assess any necessary penalties.\footnote{41} Kansas City’s Human Relations Division has a Civil Rights Enforcement Section that was established to “[protect] our citizens against discrimination in employment, housing and public accommodations on the basis of race, national origin, sex, religion, disability, age, sexual orientation, familial status, and marital status.”\footnote{42} The Division also has a Human Rights Commission that has empowered certain task forces, including a Gay and Lesbian Issues task force.\footnote{43}

Kansas City School District No. 33 has an anti-discrimination policy that covers discrimination because of “sex, race, religion, color, national origin, ancestry, age, disability, sexual orientation, gender identity, or any other factor prohibited by law.”\footnote{44}

3. **City of Columbia**

In 1991, Columbia adopted Ordinance 13194, which established a Commission on Human Rights and adopted certain human rights provisions.\footnote{45} The Ordinance protects individuals from discrimination or retaliation with respect to employment, housing, public accommodations, real estate loans, or membership in real estate organizations.\footnote{46}

\footnote{38} See KAN. CITY MUNI. CODE § 38-2.
\footnote{40} KAN. CITY MUNI. CODE § 38-131.
\footnote{41} KAN. CITY MUNI. CODE § 38-31 et seq.
\footnote{42} Id.
\footnote{45} COLUMBIA ORD. 13192 (1991).
\footnote{46} COLUMBIA ORD. 13192.
“Protected Category” is defined as “race, color, religion, sex, national origin, ancestry, marital status, handicap, or sexual orientation.”\textsuperscript{47}

Individuals may file discrimination complaints with the Commission on Human Rights, which then has powers to investigate and seek resolution of the dispute. The Ordinance also gives the Commission the power to prosecute individuals and seek a misdemeanor penalty of up to thirty days in prison and/or up to $1,000.00 in fines.\textsuperscript{48}

4. University City

University City prohibits discrimination in housing, public accommodations, employment based on race, color, religion, national origin, ancestry, sex, sexual orientation, disability, or familial status.\textsuperscript{49} Notably, “sexual orientation” is defined as “male or female heterosexuality, homosexuality or bisexuality by inclination, practice, identity or expression, or having a self-image or identity not traditionally associated with one’s gender.”

E. Occupational Licensing Requirements

The State of Missouri requires licensure or registration, or awards certificates in order to operate or practice with respect to 44 professions. Of those, 33 reference moral turpitude or require a degree of good moral or ethical character. However, research has not uncovered any judicial opinions or instances under which an individual was denied a license or certificate on the grounds that he or she lacked the requisite moral character due to sexual orientation or gender expression.

\textsuperscript{47} \textsc{Columbia Ord. 13192}.
\textsuperscript{48} \textit{Id}.
\textsuperscript{49} \textsc{University City Code § 9.08.260 et seq}.
III. DOCUMENTED EXAMPLES OF EMPLOYMENT DISCRIMINATION AGAINST LGBT PEOPLE BY STATE & LOCAL GOVERNMENTS

A. Case Law

1. State & Local Government Employees


   In Counce, an inmate claimed he was not promoted in the prison’s kitchen to a higher-paying position as a cook because he was homosexual. In an unreported opinion, the Court granted the defendant’s motion for summary judgment because the inmate had not established that the “denial of prison jobs to homosexuals because of their sexual orientation is a violation of the United States Constitution.”


   Kelly, a gay inmate employee at a correctional facility in Missouri, brought a lawsuit under 24 U.S.C. § 1983 alleging discrimination in violation of the equal protection clause and Title VII when he was terminated from his facility bakery job because of his sexual orientation. The court, in deciding whether Kelley was entitled to unconditional leave to proceed in forma pauperis, found that his claim alleging discrimination on the basis of his sexual orientation when he was removed from his job as a bakery worker was not frivolous under the equal protection clause.

2. Private Employees

   None.

B. Administrative Complaints

   None – no state law anti-discrimination enforcement mechanism establishes the basis for filing complaints based on sexual orientation or gender identity.

C. Other Documented Examples of Discrimination

   Missouri Public School

   In 2008, a public school physical education teacher reported that she did not have her contract renewed because of her sexual orientation. During the time that she was still

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51 Counce, 2005 WL 579588.
employed by the school, she overheard one of the school board members say that, had he
known she was a “dyke,” he would never have hired her in the first place.\textsuperscript{53}

**Missouri Public School**

In 2008, a teacher reported that he was not hired by a public school because the
administration perceived him to be gay.\textsuperscript{54}

**Prosecuting Attorney’s Office**

In 2008, an applicant for a prosecutor position reported that he had his job offer
revoked because he was gay.\textsuperscript{55}

**Sheriff’s Office**

In 2007, two sheriff’s office kitchen workers reported that they were fired because
they were lesbians.\textsuperscript{56}

**Missouri Public School**

In March, a high school history teacher in Mehlville was reprimanded after he
informed his students that he is gay. In a class on the Holocaust, the teacher explained
that if he had lived during World War II, he could have been persecuted for being gay.
Though the students were supportive, several other teachers expressed dismay, and the
gay teacher received a memorandum from the assistant superintendent and a school
district lawyer informing him that the district “considers it inappropriate conduct for a
teacher to discuss facets and beliefs of a personal nature . . . in the classroom.” Though
the memo did not specifically mention homosexuality, the school’s principal requested
that the teacher not bring up the topic of homosexuality again in class unless it was
relevant to the existing curriculum. Two months later, the teacher received a letter from
the school district’s law firm reiterating that “Mehlville School District considers your
classroom conduct of March 22, 1994 to be inappropriate…” No further action was
taken, but another teacher warned, “next year, he’d better watch his step because they
may be looking to nab him on some pretense.”\textsuperscript{57}

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Director, the Williams Institute (Feb. 11, 2009, 12:18:00 EST) (on file with the Williams Institute).
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Institute).
\textsuperscript{57} PEOPLE FOR THE AMERICAN WAY FOUNDATION, HOSTILE CLIMATE: A STATE BY STATE REPORT ON
ANTI-GAY ACTIVITY 51 (1994 ed.).
IV. NON-EMPLOYMENT SEXUAL ORIENTATION & GENDER IDENTITY RELATED LAW

In addition to state employment law, the following areas of state law were searched for other examples of employment-related discrimination against LGBT people by state and local governments and indicia of animus against LGBT people by the state government, state officials, and employees. As such, this section is not intended to be a comprehensive overview of sexual orientation and gender identity law in these areas.

A. Criminalization of Same-Sex Sexual Behavior

The Missouri sodomy law was overturned in a 1999 intermediate appellate court decision, and all remaining sodomy laws were overturned by the U.S. Supreme Court in 2003 in *Lawrence v. Texas*, 539 U.S. 558, 123 S.Ct. 2472, 156 L.Ed.2d 508 (2003). However, a sexual misconduct law remained on the books in Missouri, which was used to criminalize same-sex sexual relations. This law was repealed in 2006.

B. Hate Crimes

Mo. Rev. Stat. 557.035 – Enhanced penalties for motivational factors in certain crimes includes crimes motivated because of sexual orientation. Sexual orientation is explicitly defined to include “self-image or identity not traditionally associated with one’s gender.”

C. Education

GLSEN – From Teasing to Torment: Report on School Climate in Missouri. This report documents the findings of a 2003 survey aimed at determining the environment LGBT students are facing in Missouri schools. This study shows why anti-bullying legislation is needed.

   Webb City High School (2004): Brad Mathewson was sent home from school for wearing a shirt from the Gay Straight Alliance at his old high school in Fayetteville, Arkansas. The shirt had the name of the GSA and a pink triangle and the words “Make a Difference!”

D. Health Care

   20 Mo. Code of State Regulations 400-2.120 – The accident and health insurance applications relating to HIV infection are prohibited from posing questions designed to determine the sexual orientation of an applicant.

   20 Mo. Code of State Regulations 2150-9.130 – Code of ethics of the anesthesiologist assistants include a requirement to deliver health care services to patients without regard to sexual orientation.

9 Mo. Code of State Regulations 10-7.020 – Psychiatric and substance abuse programs are prohibited from denying admission or services on the basis of sexual orientation.

20 Mo. Code of State Regulations 2150-8.005 – A licensed clinical perfusionist shall deliver health care services without regard to sexual preference.

20 Mo. Code of State Regulations 2235-5.030 – Ethical rules of conduct for psychologists prohibits the imposition of any stereotypes of behavior, values, or roles related to sexual preference on the client which would interfere with the objective provision of therapy.

E. Parenting

13 Mo. Code of State Regulations 35-60.030 – The regulations spelling out the minimum qualifications of foster parents explicitly allow for personal information regarding sexual orientation to be elicited.

Johnston v. Mo. Dep’t of Social Serv., 2005 WL 3465711 (Mo. Cir. 2005).

In Johnston, the Department of Social Services (“DSS”) denied plaintiff’s application for a foster care license solely because of plaintiff’s sexual orientation. The DSS and its Director relied on the Missouri statute which stated, “a person commits the crime of sexual misconduct in the first degree if he has deviate sexual intercourse with another person of the same sex or he purposely subjects another person to sexual contact without that person’s consent,” to conclude that plaintiff “was not a person of reputable character” under 13 CSR 40-60.030(2). The Director also found that “but for her sexual orientation, it was agreed by all parties that Applicant and her partner have exceptional qualifications to be foster parents.” The Court concluded that DSS could not rely on the statute because under Lawrence, the Missouri statute, which purportedly criminalized adult consensual private homosexual conduct, violated the Due Process Clause of the U.S. Constitution, and thus could not be enforced.


In N.K.M., the court affirmed the Circuit Court holding that the mother’s alleged homosexual relationship with her friend did not serve the best interests of the child, and custody was therefore awarded to child’s father. Mother’s continued relationship with the “friend” was in violation of original custody decree which required the discontinuance of any relationship between the mother and the mother’s friend and forbid the mother from living with any non-related female while residing with her daughter.

The court held that,

59 Johnston v. Mo. Dep’t of Social Serv., 2005 WL 3465711 (Mo. Cir. 2005).
60 Id. at *1 (citing MO. REV. STAT. 566.090 (repealed 2006)).
Allowing that homosexuality is a permissible lifestyle—an ‘alternative life style’, as it is termed these days—if voluntarily chosen, yet who would place a child in a milieu where she may be inclined toward it? She may thereby be condemned, in one degree or another, to sexual disorientation, to social ostracism, contempt and unhappiness.”

Also, in response to the Psychiatrist’s finding that no ill effects were evidenced on the 10-year old child, the court provides, “the court does not need to wait, though, till the damage is done.”

L. v. D., 630 S.W.2d 240 (Mo. Ct. App. 1982).

In L. v. D., the court held that the conditions placed on a mother’s visitation rights with respect to her lesbian partner were proper.


In J.L.P., the court affirmed the trial court order requiring the homosexual father who had visitation rights to not expose the child to the presence of gay activists and to “restrict the child’s attendance at a church supporting the practice of homosexuality to the extent that it recognized a ‘holy union’ between homosexuals as the equivalent of marriage.” The trier of fact ignored completely expert witness testimony regarding the impact of a homosexual parent on the sexual development of a child, or the lack thereof.


In G.A. v. D.A., the court held that the welfare of the young son would be better served by awarding custody to the husband rather than his homosexual former wife who lived with her partner. The fact that the former wife was a lesbian “tipped the scales in favor of [the husband],” according to the court. The court reasoned that it cannot ignore the effect of the sexual conduct of a parent on a child’s moral development. It refused to overlook the wife’s sexual orientation.

However, accompanying the decision is a dissenting opinion that, for the first time, addresses the fact that the court had heretofore conclusively presumed a detrimental impact on a child due to a parent’s homosexuality. The dissent argues that this presumption is rebuttable.

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

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62 N.K.M., 606 S.W.2d at 179.
63 L. v. D., 630 S.W.2d 240 (Mo. Ct. App. 1982).
In finding that an award of custody to the husband was not improperly based on the fact that the wife was a lesbian, the Supreme Court of Missouri declined to rule on the propriety of the trial judge’s act of mandating a “telling session” whereby the mother was required, under the supervision of the guardian ad litem, to tell her two daughters of her lesbianism. The court reiterated that it was not error to consider homosexual conduct as one factor in determining custody. However, the court vacated some restrictions on the mother’s visitation rights as excessive. 66

F. Recognition of Same-Sex Couples

1. Marriage, Civil Unions & Domestic Partnership

MO. CONST., Art. I, Sect. 33 explicitly defines marriage as been a man and a woman.

G. Other Non-Employment Sexual Orientation & Gender Identity Related Laws

1. Law Enforcement

The Springfield Operations Manual provides, in “Bias Based Policing,” that

“[i]n the absence of a specific report, racial, ethnic, sexual preference, socioeconomic, age, gender, cultural, or religious characteristics of an individual shall not be a factor in the decision to stop, detain or arrest an individual. In the absence of a specific report, such characteristics shall not be considered as factors constituting reasonable or articulable suspicion that an offense has been committed so as to justify the detention of an individual, or the investigative stop of a motor vehicle. Officers may take into account the reported racial, ethnic, sexual preference, socioeconomic, age, gender, cultural, and/or religious characteristics of an individual based on credible information that links a person of those specific characteristics to a particular criminal incident or to a specific series of crimes.”67

The Springfield Operations Manual also provides in “Prohibited Practices,” that “No employee shall make offensive or derogatory comments based on race, sex, religion, or national origin either directly or to a third party.”68 The manual is silent as to sexual orientation.

In addition, the Springfield Operations Manual provides, in its traffic violations section, that

66J.A.D. v. F.J.D. III, 978 S.W.2d 336 (Mo. 1998).
68SPRINGFIELD OPERATIONS MANUAL § 103.12.
“[a]ll officers shall have clear, articulable, and lawful reasonable suspicion independent of race, national origin, citizenship, religion, ethnicity, age, gender, or sexual orientation to justify any car stop for either traffic or criminal investigation purposes and upon making such car stops shall conduct investigations and enforce the law fairly and equally. All stops, searches, seizures, and arrests shall be conducted and reported in accordance with the law and with the regulations of this Police Department. Officers shall comply with all statutes on the reporting of traffic stop information … promptly and accurately.”69

Finally, the Springfield Operations Manual, in its Criminal Intelligence Management Section, provides that “Under no circumstances shall information be gathered solely on the basis of race, creed, color, national origin, sexual preference, or political or religious beliefs.”70

15 Mo. Code of State Regulations 30-70.020 – The Safe at Home Program related to victims of domestic violence, rape, sexual assault, or stalking requires that application assistants not discriminate against any client on the basis of sexual orientation.

2. Supreme Court Rules

Missouri Supreme Court Rules of Prof. Conduct rule 4-8.4 – “It is professional misconduct for a lawyer to … manifest by words or conduct, in representing a client, bias or prejudice based upon race, sex, religion, national origin, disability, age, or sexual orientation,” except when the above categories are at issue.

Missouri Supreme Court Rule 7.03 – Three additional members of the Missouri Bar Board of Governors shall consist of members of the Missouri Bar who have unique experience and knowledge or who represent diverse elements of the bar. The categories of “diverse elements” include sexual orientation.

3. Social Workers & Therapists

20 Mo. Code of State Regulations 2263-3.140 – The ethical standards for social workers include a requirement for social workers to recognize the effects of sexual orientation as a factor on clients in assessment and planning services.

20 Mo. Code of State Regulations 2233-3.010 – Marital and family therapists are prohibited from imposing on the client any stereotypes of behavior, values, or roles related to sexual preference which would interfere with the objective provision of therapy.

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69SPRINGFIELD OPERATIONS MANUAL § 405.9.
70SPRINGFIELD OPERATIONS MANUAL § 406.1.