

***Addressing Bias:
LGBTQ+ and Gender Issues***

February 2025

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- *Kansas Credit* – If you are seeking Kansas credit, you will need to enter the **two Attendance Verification Words** and your Kansas Bar information into the Program Survey
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<https://www.surveymonkey.com/r/LGB0225>

Sara Marler

(she/her)



- Managing Partner of Marler Law Partners in St. Louis
- Primary focus is family law
- *Trauma-informed law practice*



LGBTQ+ Family Law Attorneys

Without question, legal issues associated with LGBTQ+ rights and family law have been some of the most rapidly evolving areas of the legal industry in recent years.

After all, less than a decade ago, LGBTQ+ marriages were not recognized by most states. This issue was finally resolved with the June 2015 United States Supreme Court ruling in *Obergefell v. Hodges*, which requires all U.S. states to issue marriage licenses to same-sex couples and for all states to recognize same-sex marriage licenses issued by other states.

The attorneys at Marler Law Partners are committed to relentless study of court decisions, policy changes and upcoming challenges to laws discriminating against the LGBTQ+ community.



Outside of just **marriage**, numerous other issues have been resolved by the federal and state courts, such as disputes related to government and **employer benefits, property rights** and **other areas** of family law.

These issues can concern “**second-parent adoptions**,” where in some states, a child born to one party in a same-sex marriage is legally considered to have only one parent – the one who is biologically connected to the child – forcing the other parent to have to adopt the child.

Other issues concern **grandparents and custody, divorce, surrogacy** and **other swiftly changing and legally challenging situations**.

Introduction

Missouri Rule 4-8.4(g)

It is professional misconduct for a lawyer to: . . .

(g) manifest by words or conduct, in representing a client, bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment **based upon race, sex, gender, gender identity, religion, national origin, ethnicity, disability, age, sexual orientation, or marital status**. This Rule 4-8.4(g) **does not preclude legitimate advocacy** when race, sex, **gender, gender identity**, religion, national origin, ethnicity, disability, age, **sexual orientation**, marital status, or other similar factors, are issues. This paragraph does **not limit the ability of a lawyer to accept, decline, or withdraw from a representation** in accordance with Rule 4-1.16.

Missouri Rule 18.01

- All court employees shall perform court duties without manifesting bias or prejudice or engaging in harassment.
- Court employees shall not, in the performance of court duties, by words or conduct, manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment **based upon sex, gender, gender identity, religion, national origin, ethnicity, disability, age, sexual orientation, or marital status.**



Identity v. Orientation v. Expression

Gender identity – A person’s inner sense of being a girl/woman/female, boy/man/male, something else, or having no gender. (*Who you are*)

Sexual orientation – How a person characterizes their emotional and sexual attraction to others. (*Who you are attracted or drawn to*)

Gender expression – The way a person communicates their gender to the world through physical appearance, hairstyle, clothing, etc. Gender expression varies depending on culture, context, and historical period. (*How you express yourself*)

Gender expression does not necessarily indicate one’s gender identity or sexual orientation

LGBTQIA+ and Sexual Orientation

Refers to a broad category of people including those who identify as

- Lesbian
- Gay
- Bisexual
- Transgender
- Queer
- Intersex
- Asexual spectrum

Gender Identity

Agender

Genderqueer

Bigender

Intersex

Cisgender

Non-binary

Demigender

Polygender

Gender fluid

Transgender

Outdated term	Recommended term
Berdache	Two-spirit
Biological female/male	Assigned female/male at birth
Cross-sex hormone therapy; hormone replacement therapy	Gender-affirming hormone therapy
Disorders/differences of sex development	Intersex
Female-to-male (FTM) and Male-to-female (MTF)	Transgender man and transgender woman
Gender nonconforming	Gender non-binary
Hermaphrodite/Ambiguous genitalia	Intersex
Homosexual	Gay or lesbian
Legal name	Administrative name or Name on legal documents
Preferred name	Chosen name or Name used
Preferred pronouns	Pronouns
Sex change/Sex reassignment surgery/Gender reconstruction surgery	Gender-affirming surgery
Sexual preference/lifestyle	Sexual orientation
Transgendered	Transgender

LGBTQ+ in America

- LGBTQ+ identification in America is at 7.6% as of 2024
 - Bisexual adults make up largest proportion of population (4.4% of U.S. adults and 57.3% of LGBTQ+ adults)
 - Gay and lesbian next most common identities
- More than 1 in 5 Gen Z identifies as LGBTQ+
- LGBTQ+ identification more common among women, especially Gen Z and millennial generation

Lived vs. Legal Equality

- Lived equality refers to the actual experiences of LGBTQ+ individuals in their communities and everyday lives, which may not align with their legal rights and protections
- Legal equality alone does not guarantee lived equality

State of the LGBTQ+ Community in 2022

- More than 1 in 3 LGBTQ+ adults report facing some kind of discrimination
- Half of LGBTQ+ adults report experiencing some form of workplace discrimination or harassment because of their sexual orientation, gender identity, or intersex status.
- Nearly 4 in 5 LGBTQ+ report taking at least one action to avoid experiencing discrimination
- More than half of LGBTQ+ adults report that debates about state laws restricting their rights moderately or significantly affected their mental health or made them feel less safe

Source: Center for American Progress (2023)

Battles LGBTQ+ Still Fighting

- Violence
- Parenting
- Employment Discrimination
- Bathrooms and other public accommodations
- Unequal healthcare
- Criminal justice
- Acceptance

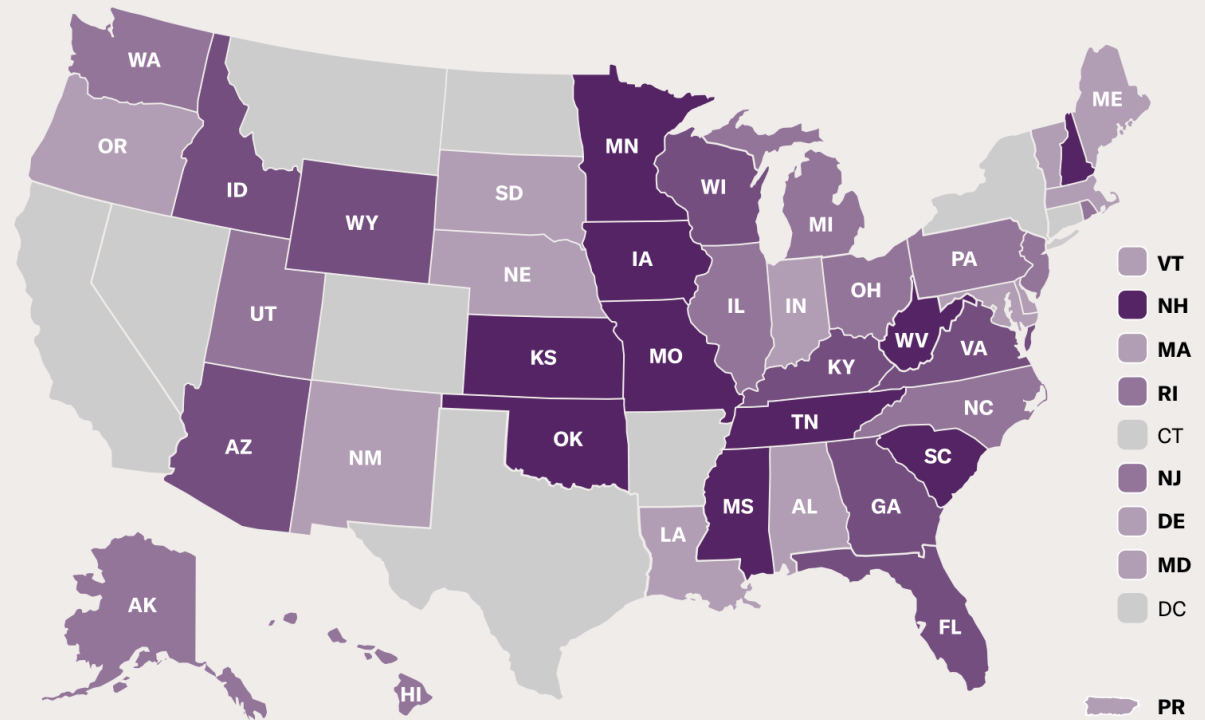
▼ 2024 Legislative Session

In 2024, the ACLU tracked **533** anti-LGBTQ bills in the U.S.

Choose a state on the map to show the different bills targeting LGBTQ rights and take action. While not all of these bills will become law, they all cause harm for LGBTQ people.

Last updated on December 6, 2024 ⓘ

Bills per state



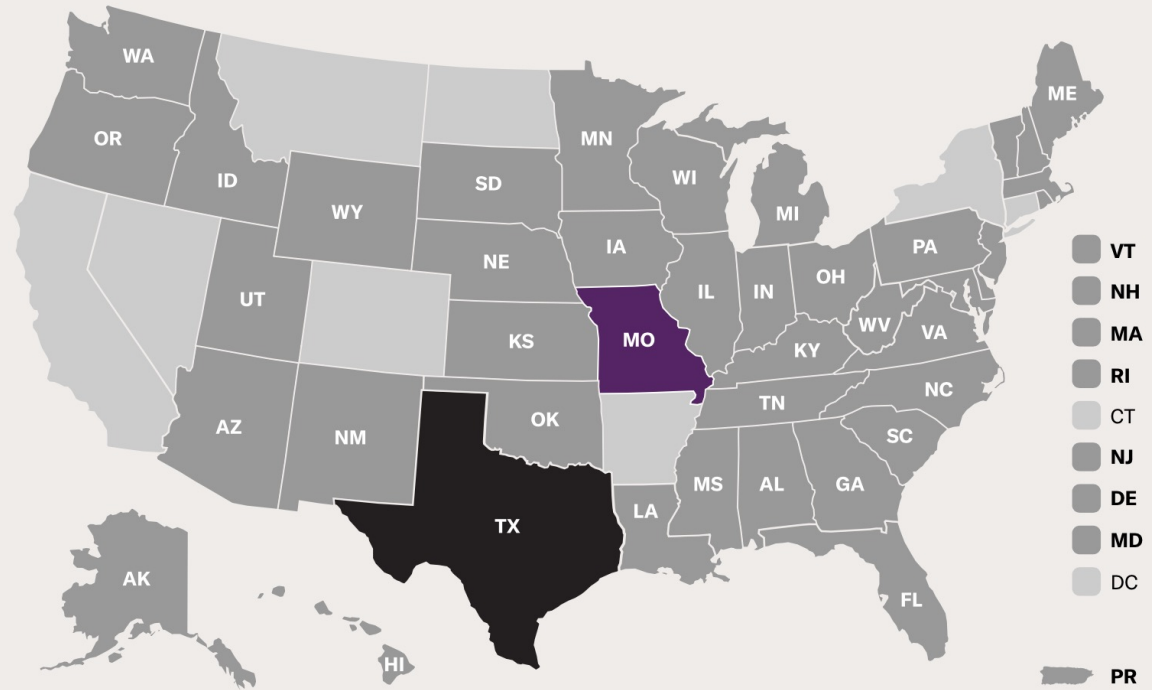
▼ 2024 Legislative Session

In 2024, the ACLU tracked **40** anti-LGBTQ bills in **Missouri**

Choose a state on the map to show the different bills targeting LGBTQ rights and take action. While not all of these bills will become law, they all cause harm for LGBTQ people.

Last updated on December 6, 2024 ⓘ

Bills per state



Recent LGBTQ+Related Legal Actions



PRESIDENTIAL ACTIONS

DEFENDING WOMEN FROM GENDER IDEOLOGY EXTREMISM AND RESTORING BIOLOGICAL TRUTH TO THE FEDERAL GOVERNMENT

EXECUTIVE ORDER

January 20, 2025

Accordingly, my Administration will defend women's rights and protect freedom of conscience by using clear and accurate language and policies that recognize women are biologically female, and men are biologically male.

Sec. 2. Policy and Definitions. It is the policy of the United States to recognize two sexes, male and female. These sexes are not changeable and are grounded in fundamental and incontrovertible reality. Under my direction, the Executive Branch will enforce all sex-protective laws to promote this reality, and the following definitions shall govern all Executive interpretation of and application of Federal law and administration policy:



PRESIDENTIAL ACTIONS

PROTECTING CHILDREN FROM CHEMICAL AND SURGICAL MUTILATION

EXECUTIVE ORDER

January 28, 2025

Section 1. Policy and Purpose. Across the country today, medical professionals are maiming and sterilizing a growing number of impressionable children under the radical and false claim that adults can change a child's sex through a series of irreversible medical interventions. This dangerous trend will be a stain on our Nation's history, and it must end.

Countless children soon regret that they have been mutilated and begin to grasp the horrifying tragedy that they will never be able to conceive children of their own or nurture their children through breastfeeding. Moreover, these vulnerable youths' medical bills may rise throughout their lifetimes, as they are often trapped with lifelong medical complications, a losing war with their own bodies, and, tragically, sterilization.

Accordingly, it is the policy of the United States that it will not fund, sponsor, promote, assist, or support the so-called "transition" of a child from one sex to another, and it will rigorously enforce all laws that prohibit or limit these destructive and life-altering procedures.

Missouri Supreme Court hears case on transgender student's use of school bathrooms

At the core of the argument, judges will have to decide whether a transgender boy can be considered male under the state's human rights act

BY: ANNELISE HANSHAW - FEBRUARY 11, 2025 1:17 PM



Missouri Supreme Court judges heard oral arguments Tuesday morning, including a case on a transgender student who was denied access to multi-stall bathrooms and locker rooms (Annelise Hanshaw/Missouri Independent).

LIVE Join baseball writer Derrick Goad fields your questions during Cardinals game

TOP STORY EDITOR'S PICK

Missouri bill defining 'sex' aimed at helping schools set transgender bathroom policies

Monica Obradovic 6 hrs ago 79



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JEFFERSON CITY — A St. Charles County lawmaker wants to create a legal definition of sex so school districts could bar transgender students from using bathrooms and locker rooms that match their gender identities.

A bill filed by state Sen. Adam Schnelting, R-St. Charles, would define "sex" to mean "the two categories of humans, male and female, into which individuals are divided based on an



Sen. Adam Schnelting, R-St. Charles, testified for his legislation, Senate Bill 76, on Feb. 11, 2025, at a hearing of the Senate Families, Seniors and Health Committee.

Addressing LGBTQ+ Bias In the Legal System

Scenario 1

Lawyer meets with new client who identifies as LGBTQ+

How should Lawyer learn what client wants to be called?

What topics are or are not acceptable to discuss?

What If You Make a Mistake?

- Admit mistake
- Apologize – but don't make it about you
- Learn from/correct your behavior

Scenario 2

Client identifies as LGBTQ+

Client seeks judicial remedy commonly afforded to others but not LGBTQ+

What should lawyer do?

Scenario 3

Client identifies as LGBGTQ+

Client seeks judicial rights afforded to LGBTQ,
but Judge appears unwilling to rule in client's
favor

What should lawyer do?

Scenario 4

Colleague identifies as LGBGT+

Client expresses discomfort working with
LGBTQ+ lawyer

What should lawyer do?

Scenario 5

Judge is LGBT

Lawyer's Client is uncomfortable with
Judge

What should lawyer do?

Canon 2-2.3

- (A) A judge shall perform the duties of judicial office without bias or prejudice.
- (B) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, gender identity, religion, national origin, ethnicity, disability, age, sexual orientation, or marital status, and shall not permit court staff, court officials, or others subject to the judge's direction and control to do so.
- (C) A judge shall require lawyers in proceedings before the court to refrain from manifesting bias or prejudice, or engaging in harassment, including but not limited to race, sex, gender, gender identity, religion, national origin, ethnicity, disability, age, sexual orientation, or marital status, against parties, witnesses, lawyers, or others.
- (D) The restrictions of paragraphs (B) and (C), do not preclude judges or lawyers from making legitimate reference to personal factors or characteristics, when they are relevant to an issue in a proceeding.

Scenario 6

Lawyer is LGBTQ+

What experiences and suggestions would you share for this lawyer?

Closing

Best Practices for Representing LGBTQ+ Clients

- Do not make assumptions about a person's orientation, identity, or pronouns – avoid stereotypes
- Revise internal forms and marketing materials to ensure inclusivity
- Do not “out” clients without permission
- Train all staff in cultural competency
- Prepare for possible bias from the court and be an ally when necessary

Best Practices for Representing LGBTQ+ Clients (cont.)

- Do not use deadnames or incorrect pronouns
- Inquire about sensitive subjects only when you have a legitimate (matter-related) reason to do so

Responsive Language

- I'm sure you didn't mean to be hurtful, but when you use that term . . .
- I know you were just trying to be funny, but I found that joke offensive because . . .
- I know you want to have a respectful and inclusive law practice; those kinds of statements aren't consistent with that.
- I don't believe that's true. I have researched this topic and . . .
- My experience has been different. In my experience . . .
- I used to use those terms, too, but then I heard they can be offensive because . . .
- Better language I've learned is . . .
- All of our clients deserve to be treated fairly & with respect.
- That behavior could be considered discriminatory.

Conclusory Matters

- **Questions** – If you have questions after the program, please email them to Paige Tungate at ptungate@DowneyLawGroup.com
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Timed Agenda

12:00-05 Introduction

12:05-55 Discussion of addressing issues that arise with regard to gender identity and gender issues in law practice and the legal system

Future Programs

March 4 -Tuesday at 3:00 PM CT - *Legal Ethics of Lawyer Collaboration*

March 19 - Wednesday at 12:00 Noon CT - *Trust Accounting Quiz - With Prizes*

April 10 - Thursday at 12:00 Noon CT - *Legal Ethics and Client Development*

April 23 - Wednesday at 12:00 Noon CT - *Addressing Bias - Ableism and Disability Discrimination*

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