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“Domestic relations” refers to the complex legal rights of women involving marriage, civil unions, separation, divorce, child support enforcement, establishing parentage, and the rights of couples who have not married or joined in civil unions.

## Marriage

Marriage in Vermont is defined as “the legally recognized union of two people.” This means that same-sex couples may legally marry in Vermont.

Vermont does not recognize “common law” marriages. The fact that you consider yourself married, or the fact that you have lived together for a certain number of years, does not mean that you will be considered “married” under the law.

You cannot marry your parent, grandparent, child, grandchild, sibling, niece or nephew, aunt or uncle.

A person between the ages of 16 and 18 can be married with the consent of a parent or guardian. No person under the age of 16 may legally marry.

**In order to become legally married in Vermont, you need to:**

- get a marriage license from the town clerk where either you or your partner resides;
- get married within sixty days of the date the license is issued;
- have the marriage “solemnized” (performed or just signed) by a Vermont clergy person, judge, justice of the peace, a clergy from outside Vermont if that person gets appropriate approval before

the marriage from the Probate Division of the Superior Court of the County in which the marriage is to occur, or a **“temporary officiate.”**

- have the marriage license filed with the town clerk within ten days after the marriage (usually by the person who performs the marriage). If you miss the filing deadline for your marriage license, you can file a “delayed certificate of marriage” with the Probate Division that covers the town where the license was issued.

A “temporary officiate” may solemnize a marriage if authorized by the Secretary of State. In addition to a clergy person, judge, or justice of the peace, any individual may apply to solemnize a specific marriage ceremony. The individual must be at least 18 years old and complete the application within 10 days prior to the ceremony.

**You do not need to have a blood test before getting married. You do not need to have anyone other than the person performing the marriage sign or “witness” the marriage license.**

Religious organizations are not required to provide services related to marriage ceremonies. A church or clergy member may legally decline to perform a marriage ceremony or to provide accommodations for the marriage ceremony for any reason.

The legal status of a married same-sex couple when they leave the state is unclear. Some states will recognize and respect the legal marriage. Individuals, businesses, or governments in other states may not. For most purposes, the federal government will not currently recognize a same-sex couple’s marriage. This is the subject of ongoing litigation in courts and pending legislation in Congress. The law in this area is changing quickly. You should consult a lawyer if you have questions.

## **Civil Unions**

In 2000, Vermont allowed for same-sex couples to be joined in a civil union. **In 2009 Vermont allowed same-sex couples to legally marry and couples may no longer establish civil unions.**

**A couple already joined in a civil union that was established before September 1st, 2009 will continue to have the same legal benefits, protections and responsibilities provided under Vermont law to married couples.** A couple in a civil union may marry one another without terminating the civil union. The civil union will continue to exist.

Since you have the same rights under Vermont law as spouses in a marriage, all of the places in Vermont law which refer to “spouse,” “family,” “immediate family,” “dependent,” “next of kin,” etc., also apply to you as a spouse in a civil union. This includes a large number of laws, for example: property ownership; probate; adoption; abuse protection; discrimination on the basis of marital status; compensation to spouses under victims’ compensation and workers’ compensation; notification, treatment and decisions; family leave benefits; public assistance benefits; and state income taxes.

Under domestic relations law in Vermont, if you want to **dissolve a civil union**, you have to go through Vermont family court in the same way you would terminate a marriage. In other words, all of the following sections regarding legal separation, divorce and child support also apply to people who are going through the process to dissolve their civil union. If you have a civil union and a marriage and wish to terminate the partnership, they can be terminated in one court order, at the same time.

## Legal Separation

Under Vermont law, a “legal separation” can be granted for the same grounds as in a divorce. It can stay in effect for a limited or an unlimited time. It can also be entered into by agreement or by court order. Since it is not a divorce, you cannot remarry. In almost every other respect, however, a legal separation is the same as a divorce. You also have to go through the same process as you do in a divorce.

## Divorce

**The term “divorce” refers to the dissolution of a marriage or civil union.** Generally divorce is one of the most difficult legal problems that many women will face. Getting a divorce may be either complicated and costly, or straightforward and relatively inexpensive, depending on the circumstances in each case. **The complexity of a divorce or legal separation depends on how well the parties relate to each other and how many issues are in contention.**

The terms of most divorces in Vermont are the result of negotiated agreements between the parties, which are then formally approved by a Superior Court judge. A much smaller percentage (about 20%) are cases where the parties cannot reach agreement (“**contested cases**”) and where the terms of the divorce are decided by a judge after a hearing in court.

The major issues to be decided in a divorce usually include:

- who the children will live with and how they will be supported;
- how the property will be divided;
- who will be responsible for paying outstanding bills;
- whether there will be any spousal maintenance (alimony).

The most common ground for divorce in Vermont is a showing that you have **lived apart for at least six months and that there is no reasonable chance of “reconciliation”** (i.e. you and your spouse will not get back together).

**You do not have to have lived apart for six months before filing for divorce, but you have to have lived apart for six months by the time your divorce is granted (the final hearing).** It is also possible to claim that you have lived apart for six months, even though you are living under the same roof, if you have stopped having a marital relationship.

Although used infrequently, the **other grounds for divorce** in Vermont are: intolerable severity; nonsupport; imprisonment for three or more years; adultery; incurable insanity; willful desertion or absence for seven years while not being heard of during that time.

**You have to have lived in Vermont for at least six months before you can start a divorce.** The divorce process is handled in Vermont through the Family Division of the Superior Court in each county. ([See VCW’s Resource Directory – Family Division and Office of Child Support section.](#)) **Each county has its own Superior Court and the process in each may be somewhat different.** The Family Division can decide cases involving divorce, separation, child support, parental rights and responsibilities (custody), parent-child contact (visitation), grandparent visitation, paternity, abuse prevention, juvenile delinquency, abuse and neglect, and certain mental health proceedings.

Depending on the county, various stages of your divorce may be in front of a **Family Division Magistrate** (especially if there are children of the marriage), a **Superior Court Judge**, or, in rarer cases, an **Assistant (“Side”) Judge**.

## **Representing Yourself, Going to a Mediator or Hiring a Lawyer**

Whether you are thinking of divorcing your spouse, or if your spouse has started a divorce against you, one of the first questions you will have to decide is whether to hire a lawyer or to represent yourself.

You might consider representing yourself (“**pro se**”) if the decision to get a divorce is mutual and you and your spouse are able to communicate well and can work out such things as the division of your property, who will pay the outstanding bills, whether any spousal maintenance (alimony) will be paid, and, if you have children, the parental rights of each parent.

**Except for relief from abuse petitions and child support hearings, the court orders all parties representing themselves to attend a Pro Se Litigant Education Program before they appear in court.** These classes are one hour long and designed to inform you and your spouse about your responsibilities while representing yourself, courtroom procedures, and support that may be available to your family to deal with problems that may arise during the divorce process. There are also some informative pamphlets provided by the Family Division of the Superior Court, and also available on the Vermont Judiciary website, which explain the divorce process and how to fill out the appropriate forms. ([See VCW’s Resource Directory – Legal section.](#))

**Before deciding whether you and your spouse need to hire separate lawyers, you might want to hire a mediator together to help you resolve any disputes or conflicts regarding the difficult issues in your divorce.** A mediator is a trained, neutral third person who might be able to help you and your spouse design a mutually acceptable divorce agreement. If mediation is successful, it is recommended that you have the written agreement reviewed by a lawyer to make sure that it has been properly done, before sending it to the court.

It may be advisable to **hire a lawyer** to help you through the process if:

- you and your spouse have too many disagreements about the terms of the divorce, such as custody of the children, distribution of property, responsibility for debts; etc.;
- your spouse has a lawyer or is a lawyer;
- there are substantial assets to be divided;
- there has been physical or emotional abuse in the marriage.

**If your spouse has hired a lawyer, it is advisable for you to consider hiring your own lawyer to represent your interests. You should not take advice from your spouse’s lawyer since that person is not allowed to represent both of you.**

If you **decide to hire an attorney**, you should talk to several until you find one you like. ([See VCW’s Resource Directory – Legal section.](#)) Choosing a lawyer is highly personal. If there are serious disputes in the divorce, you should make sure that you are hiring an attorney who understands you and your needs. You should discuss how much the lawyer will charge you (“fees”) and how you will be billed. Most lawyers charge an hourly rate, require a down payment (“a retainer”) and are not able to give you an estimate of how much the whole divorce process will cost. This is because of all the variables involved in the process. However, it is important to learn what the charge will be based on, to put the agreement in writing and to work out a payment schedule, if necessary.

## When Abuse Is Involved

If you have already received a **Relief From Abuse Order** you should inform the court of that at the time you, or your spouse, begin the divorce process. ([See the Violence Against Women and Children chapter of \*The Legal Rights of Women in Vermont\*](#) for information about how to obtain a Relief From Abuse Order.) The court will then combine your abuse case with your divorce case. Your Relief From Abuse Order will stay in effect even after you begin your divorce. The order can be extended, while the divorce is pending, beyond the date the order was originally supposed to expire. This can be done by writing to the court (making a motion) and showing that it is necessary to protect you or your children. There is no need to show that any new abuse has occurred or that there has been **any change in circumstances when asking for the order to be extended while the divorce is pending.**

**If you have already started your divorce case and need to be protected from abuse, you can either go to court for a Relief From Abuse Order or make a motion to the court asking for relief from abuse as part of your divorce case.** Make sure you deliver any new or amended court order to the police (i.e. a changed Relief From Abuse Order or Temporary Order) so they know which order is the most current and which should be enforced.

Going through the Relief From Abuse process does not result in a divorce. A divorce must be filed to terminate the marriage.

## Divorce and Active Military Service

The law protects a spouse on active duty in the military. Sometimes hearings are postponed or suspended until the service member can participate. The purpose of the law is to enable service members to devote full attention to their military duties.

If the ability of the service member to either defend or pursue a court matter is affected by his or her military service, the court is required to wait. So, if a spouse cannot attend a hearing due to military service, and the outcome will depend on his participation, the hearing may be postponed.

Under normal circumstances, however, **temporary decisions** regarding parental rights and responsibilities and child support will be decided in the absence of the service member spouse in order to protect the best interest of the children involved.

In 2010 a new law called the **Military Parents Rights Act** was passed to address parental rights and responsibilities and parent-child contact when a military parent is deployed for service and has active or pending court orders related to custody or visitation.

The new law directs the court, upon motion of one of the parents, to enter a **temporary order modifying parental rights and responsibility or parent-child contact for the duration of the deployment and for a pre-established transition period after deployment ends.** The law also prevents the court from entering any final order until 90 days after deployment has ended. However, deployment, in and of itself does not constitute the “real, substantial, and unanticipated change in circumstances” necessary to modify parental rights and responsibilities or contact.

**The deploying parent may also delegate parent-child contact rights to another person for the duration of the deployment if the court finds that it’s in the child’s best interest.**

Reservists and members of the National Guard are also protected by this law while on active duty.

## Uncontested Divorces

An **uncontested divorce** is when you and your spouse have agreed to get a divorce and are able to work out all the important terms. You can go through this “uncontested” process whether or not you are represented by a lawyer and as long as you do not need the court to decide any contested issues. Some of the documents/forms referred to below can be obtained from your local Superior Court or on line. ([See VCW’s Resource Directory – Family Division and Office of Child Support section.](#))

### When There Are No Minor Children Involved

The following will give you a general idea of the process for a completely **uncontested divorce when there are no children involved**.

1. **File a Summons and Complaint for divorce** (along with some other documents) in the Family Division of the Superior Court of the county in which you or your spouse resides. **In order to start a divorce you have to have lived in Vermont for at least 6 months.**
2. **“Serve” (deliver) the Summons and Complaint to your spouse.** In uncontested divorces, this is usually done by having the person who receives the documents sign a form agreeing to “accept service” of them. Otherwise, the papers need to be served by a sheriff or by some other approved method.
3. **Work out a final divorce agreement** with your spouse on issues such as how property will be divided; who, if anyone, will pay spousal maintenance (“alimony”); who will pay any outstanding bills; and whether you wish to change your last name. Consider using a mediator to help you, if needed. Also consider having a lawyer look over this final agreement.
4. **File the final agreement** with the court.
5. **Attend the “uncontested final hearing”** in Family Division of the Superior Court, if you are the person who filed the original divorce papers (the plaintiff). **In order to be granted a divorce, you or your spouse will have to have lived in Vermont for at least a year.** At the final hearing you will give certain information to the Judge, such as:
  - you or your spouse has lived in Vermont for one year;
  - one of you has lived in this county when you filed your divorce;
  - you and your spouse have lived separate and apart for at least six months; and,
  - there is no reasonable possibility that you will get back together again.
6. The Judge will then usually sign a **Final Divorce Order** at the end of the hearing. In most cases this will be the same as the final agreement you filed with the court. (It is possible that the court will sign the Final Divorce Order without holding a final hearing. Since this differs in each Family Division, you should check with the Family Division in your county for more information.)
7. **You and your spouse sign an “Acceptance of Service” form**, acknowledging that you received the Final Divorce Order. If your spouse is not present at the final hearing, the Order will need to be served on that person. You are both required to follow the terms of this final order.

8. **The divorce becomes final at the completion of a waiting period (called a “nisi period”).** This is usually three months after the final divorce order is signed by the judge unless you ask, and the court agrees, to make it shorter. Some reasons for shortening the time are that you intend to remarry or you want to file taxes as a single person at the end of the year.

## When Minor Children Are Involved

If you and your spouse have minor children almost everything described above still applies, but you also need to be aware of a number of **additional forms, procedures and requirements** in order to go through an uncontested divorce.

If either of you are in the military or National Guard and are about to be deployed, see the section above entitled Divorce and Active Military Service.

1. Reach an agreement on **parental rights and responsibilities (“custody”)**. There are two major parts to “custody.” One is called **legal rights and responsibility** (the right to make major life decisions for the child, such as education, medical and dental care, religion, and travel arrangements). The other is called **physical rights and responsibility** (the right to provide routine daily care and control of the child - this is usually the parent with whom the child will primarily live). If both parents are in agreement, legal and physical rights and responsibilities may be **shared, divided** or **split** between the parents.
2. Reach an agreement on **parent-child contact (“visitation”)**. Depending on how much time the children will be living with each parent, you should figure out a schedule or arrangement for the other parent to spend time with the children. This can be as loose or structured as you would like, depending on your ability to calmly work out issues regarding your children with your spouse.
3. Attend a **child support hearing**. Once a divorce is started, a hearing to determine child support is almost always immediately scheduled. This is either a hearing with a Magistrate for the Family Division, or a conference with a Case Manager for the Family Division. You will have to exchange information about each of your income and assets in order to determine who is to pay child support and in what amount, according to the **“child support guidelines”** that have been established in Vermont.

It is possible for you to work out an agreement about child support in advance of this hearing. You can do this by each filling out the required paperwork including a **separate Affidavit of Income and Assets** from you and your spouse and a **joint Child Support Worksheet**. These forms utilize Vermont’s child support guidelines, which figure out how the children will receive the same proportion of parental income after the parents’ separation as they would receive if their parents were living together. Depending on the rules of your Family Division, you may not need to attend the child support hearing if you have already worked out an appropriate agreement.

Parents can also agree to change the support to be paid if they believe that the guidelines would be unfair. If parents agree to **change the support from the guidelines**, they have to write down why the change is appropriate, taking into account many specific factors. The Magistrate’s role is to protect the children. If an agreement changes the amount of support under the guidelines, and the reasons for the change do not make sense to the Magistrate, the parents’ agreement may not be approved.

If you and your spouse agree upon child support payments, you should decide whether it is to be paid until the child reaches adulthood or for a longer period of time. In Vermont, “adulthood” is achieved when the child is 18 years of age or when s/he finishes high school, whichever event occurs later. **It is up to you and your spouse whether to include a provision about how your child’s college education will be paid for, since the court cannot, on its own, order either party to pay for college.** The court may extend child support up to the age of 22 if a child has significant physical, mental, or developmental disabilities. You must show documentation of the disability. **What parent is responsible for the medical and health support of the children will also be included in the order.** See section below on “Child Support” and “Wage Withholding” for more detailed information about the child support guidelines, the information that must be exchanged, how to go about deviating from the guidelines and how to deal with the “wage garnishment” requirement in child support orders.

4. Work out a **final divorce agreement or stipulation** and file it with the court. This should include all your agreements regarding parental rights and responsibilities, child support, property division, payment of outstanding bills, spousal maintenance (“alimony” - if any), name changes, and any other issues that are important to you. Keep in mind that **once an agreement on property division is reached and ordered by the court as part of the Final Divorce Order, it cannot be changed at a later time by the court.**
5. The **final divorce hearing** cannot be scheduled until six months have passed from the time the divorce process began (the time the complaint for divorce was filed in court). **This is because Vermont law imposes a mandatory six-month waiting period for divorces that involve minor children.**

## Contested Divorces

Sometimes there are matters that you and your spouse cannot resolve on your own, with the help of a mediator, or through your lawyers. The following sections describe the **major issues that a court might need to decide** if you are unable to reach an agreement regarding them with your spouse.

### Temporary Hearings

If you and your spouse cannot agree on how to arrange your lives while the divorce is pending, you may need to have a **Temporary Hearing in the Family Division of the Superior Court** to decide these issues. Some of the issues that might need to be decided at a Temporary Hearing include:

- who has the right to temporarily live in the **marital home** while the divorce is pending;
- whether either spouse is entitled to spousal maintenance (“**alimony**”);
- **where the children will live**, how and when they will have contact with the other parent (“**visitation**”), how much will be paid in **child support**, how decisions affecting the children will be made, etc.;
- who will have temporary possession of **personal property** (such as cars, tools, clothing, furniture, etc.);
- who will have temporary responsibility **for paying the debts** (such as the mortgage, taxes and insurance on the home, credit card bills, and other bills of the marriage)

After hearing from both sides, the court will issue a Temporary Order that will be in effect until it is changed at or before the Final Divorce Hearing.

## **Division of Property**

If you and your spouse cannot decide how to divide your “**marital property**” the court will make this decision for you. The “marital property” includes everything you and your spouse own, either by yourself or together, at the time of your divorce. This can include anything you or your spouse has inherited, property given to either of you, property either of you owned before the marriage and anything you and/or your spouse acquired during the marriage, including certain job-related benefits. It does not matter who has title to the property or who paid for it. **The biggest issue usually involves valuing your marital home and any other major assets, including businesses and pension plans.**

The court will divide the property in question in a way that seems fair to the court. The court, by law, has to look at several factors to determine how the property should be divided. The judge will decide how much weight to give each factor based on the individual case. These include:

- the length of the marriage;
- the age and health of the parties;
- the job, source and amount of income of each spouse;
- vocational skills and employability of each spouse;
- the contribution by one spouse to the education, training or increased earning power of the other;
- the value of all property interests, liabilities and needs of each spouse;
- whether the property settlement is instead of, or in addition to, spousal maintenance (alimony);
- the opportunity of each spouse for acquiring property and income in the future;
- the desirability of awarding the family home or the right to live there for reasonable periods to the spouse having custody of the children;
- the party through whom the property was acquired;
- the contribution of each spouse in obtaining and maintaining the property including the non-monetary contribution of a homemaker spouse; and
- the respective merits of the parties (e.g. what the behavior of each spouse was during and after their separation, whether either party was abusive or abused alcohol.)

**Once the court has issued a final divorce order, the property division cannot be changed at a later time.**

## **Debts**

If you and your spouse cannot decide who is going to be responsible for paying each of your outstanding bills and debts, the court will make these decisions for you. This can happen either as part of a Temporary Order (while you are separated and the divorce is pending), and/or as part of the court’s Final Order (when you get your divorce). Such debts can include bank and personal loans, credit cards, medical bills, utility bills, etc.

The division of debts is part of the total property settlement. The court will divide them fairly, taking into consideration who incurred the debt and for what purpose.

Be aware that if your spouse has been ordered by the court to pay for a **jointly incurred loan** (a loan which both of you originally signed for) but does not do so, it is possible for you to be sued for that debt by the creditor. If this happens, you can ask the court to force the non-paying spouse to pay, but this still does not relieve you of your liability for the debt.

On the other hand, **a spouse is generally not liable for the debts of her/his spouse**. Thus, a creditor cannot come after you for a debt that is solely your spouse's. Although the court can order you to pay such a debt, the creditor cannot legally hold you responsible for it.

## **Spousal Maintenance (“Alimony”)**

Spousal maintenance is more familiarly referred to as “alimony.” This is the payment of support by one spouse to the other spouse. The purpose of spousal maintenance is to prevent financial and social hardship and disruption that the divorce may cause a person who has been dependent on the other spouse for financial support. **Either spouse is eligible to receive such maintenance, if it is appropriate.** The court may order or approve the payment of spousal maintenance when one spouse lacks sufficient resources (income and/or property) to provide for her/his own reasonable needs or is unable to support herself/himself through employment at the standard of living established in the marriage.

**The court considers the following when making a decision about spousal maintenance:**

- the money and property available to the spouse who is asking for maintenance, the property awarded in the divorce, the spouse's ability to meet her/his needs independently and whether the amount of child support includes any money for the spouse (such as a housing allowance);
- the time it will take and the cost to get sufficient education or training to enable the spouse seeking maintenance to find appropriate employment;
- the standard of living during the marriage;
- the length of the marriage;
- the age and physical and emotional condition of each spouse;
- the ability of the other spouse to meet her/his reasonable needs while also meeting the needs of the spouse seeking maintenance;
- an adjustment for inflation.

**If you want to seek spousal maintenance, you must ask for it during the divorce process because you cannot ask for it after the divorce is final.** Once spousal maintenance is ordered by the court, the amount and length of time it is ordered may be changed later if there is an unanticipated substantial change of circumstances. While maintenance often ends when you remarry, it sometimes continues past remarriage. For example, if it is ordered in part as repayment for the contributions you made to the marriage partnership (such as helping a spouse through school), or if the remarriage does not improve your financial security.

## **Parental Rights and Responsibilities (“Custody”)**

Often, the most significant issue in contested divorces is who will have custody of the children. This is referred to as **parental rights and responsibilities**.

There are two major parts to parental rights and responsibilities (“custody”). One is called **legal rights and responsibilities** --the right to make major life decisions for the child, such as

education, medical and dental care, religion and travel arrangements. The other is called **physical rights and responsibilities** --the right to provide routine daily care and control of the child - this is usually the parent with whom the child will primarily live.

Any voluntary agreement between the two parents regarding the care of the child will be considered in the best interests of the child by the court.

When parents are in dispute over the custody of their children the court will decide how to assign these parental rights and responsibilities - in other words, who will be the primary parent.

**Vermont law requires that the court take the following factors into consideration when deciding which parent should be awarded legal and/or physical rights and responsibilities of the child:**

- the relationship of the child with each parent and the ability and disposition of each parent to provide the child with love, affection and guidance;
- the ability and disposition of each parent to assure that the child receives adequate food, clothing, medical care, other material needs and a safe environment;
- the ability and disposition of each parent to meet the child's present and future developmental needs;
- the quality of the child's adjustment to the child's present housing, school and community and the potential effect of any change;
- the ability and disposition of each parent to foster a positive relationship and frequent and continuing contact with the other parent, including physical contact, except where contact will result in harm to the child or to a parent;
- the quality of the child's relationship with the primary care provider, if appropriate given the child's age and development;
- the relationship of the child with any other person who may significantly affect the child; and
- the ability and disposition of the parents to communicate, cooperate with each other and make joint decisions concerning the children where parental rights and responsibilities are to be shared or divided;
- evidence of abuse and the impact of the abuse on the child and on the relationship between the child and the abusing parent.

**The court may NOT consider the sex of the child, the sex of the parent, or the financial resources of a parent in reaching a decision.**

If you or your ex spouse is in the military and are about to be deployed, custodial and/or visitation rights may need to be changed or modified. See section above on Divorce and Active Military Service.

For information about changing a court's decision on parental rights and responsibilities see section below on Changing Court Orders.

## **Child Custody When One Parent is in Another State**

As of July 1, 2011, Vermont adopted the Uniform Child Custody jurisdiction and Enforcement Act. (UCCJEA) At that time only Massachusetts and Puerto Rico had not adopted this act. When both parents do not live in the same state at the time of the first determination of child custody or when either parent goes back to court to seek to modify child custody and one parent is in another state, this

law is used to determine which state court will be considered the child's home state where the case will be heard.

**In general, the child's home state is defined as the state where the child has lived with a parent for six consecutive months prior to the start of the initial custody proceeding, or since birth for a child under six months of age.)**

**Once a state court has made a custody determination, that state keeps jurisdiction over all matters concerning the child, unless:**

- A court of the state with jurisdiction determines that the child or the child and a parent do not have a significant connection with the state, AND evidence concerning the child's custody determination is not available in the state;
- A court of the state with jurisdiction, or any other state, determines that the child and both parents or acting parents do not reside in the state any longer.

If the child has not lived in any state for at least six months, establishing a "home state" is more complex. Multi-state custodial issues can be difficult. It is advisable to consult a lawyer to help you.

## **Children's Rights in Contested Custody Cases**

A child cannot choose which parent to live with just because the child has reached a particular age.

Because decisions regarding children can be very difficult to make, the courts sometimes seek the advice of other professionals, such as psychiatrists and social workers, when parental rights are contested. **The court may appoint a guardian ad litem to represent the best interests of the child.** A guardian ad litem is a person who looks out for the child's interests in court. The guardian ad litem will communicate with the child, the parents, parent's lawyers, judges, social workers, and other parties involved. Some states use public defenders, but in Vermont all guardian ad litem are volunteers.

Vermont law discourages testimony of minor children. Before a child may testify, a guardian ad litem must be appointed for the child and a hearing must be held to determine whether the testimony of the child is needed, whether the importance of the testimony outweighs the potential harm to the child and whether the evidence cannot be obtained from another source. **If the testimony of the child is found to be necessary, a lawyer must be appointed to represent that child.**

## **Parent/Child Contact ("Visitation")**

In contested cases, the court will also decide the extent and frequency of contact that a child will have with each parent. This is familiarly known as "**visitation.**" Even if one parent is given the sole legal responsibility for the children, the other parent will be given the right to have parent-child contact.

It is the public policy of Vermont that after parents have separated, it is in the best interests of minor children to have maximum physical and emotional contact with both parents, unless direct physical harm or significant emotional harm to the child or a parent is likely to result from such contact. If there is a risk to the child, limitations may be placed on the parent such as restricting where the parent may visit the child or prohibiting alcohol and drug use during visitation.

**Even when there are serious concerns about a child's safety, a parent will usually not be denied contact completely.** If a parent has been convicted of domestic assault within the last ten years or has been found to have committed abuse against a family member, the court can place restrictions on visitation. The contact may be ordered to occur only under the supervision of an appropriate person or structured to protect the child and give the parent the opportunity to change and to be more responsible as a parent. The court may prohibit overnight visits. Some counties have **"supervised visitation centers"** which can be used when a child is at risk. The court may order that exchange of the child occurs in a safe and neutral setting to protect an abused parent. Even if the abusive parent is allowed contact, the court can still order the address of the parent and child to be kept confidential, so the abusive parent does not know where they live. Denying a parent contact with the child is extremely rare and usually only ordered by a court when all other options have failed.

How much time a spouse can spend with the child does not depend on how much child support is being paid, or even if it is being paid. **If a spouse does not pay child support, the custodial spouse cannot prevent that spouse from spending time with the children.** Although you are entitled to enforce payment of child support through the courts, you may not do so by limiting visitation rights. In fact, a parent can file a motion asking the court to enforce visitation rights, if they have been denied by the custodial parent. Similarly, if one parent refuses the other parent contact with the children, this does not permit or excuse non-payment of child support.

Courts cannot force a parent to spend time with their children.

If one parent decides to relocate, the parenting arrangement may have to be renegotiated to ensure the children still have the opportunity to spend time with both parents. However, **one parent cannot prevent the other parent from moving out of state.** Upon agreement to relocate, the portion of the divorce order regarding visitation will probably have to be reworked by the court or by agreement. If the relocation will cause a dramatic impact on the relationship of the children with the non-relocating parent, the court may consider modifying an existing custody arrangement where relocation is an issue. **If you take the children out of state in violation of the custody order, you can be charged with custodial interference or contempt of court.**

## **Grandparents' Visitation**

Grandparents cannot become a party to the divorce proceedings or a custody case. However, a court can award grandparents the right to visit their grandchildren if the grandparents have made a written request to the court during an ongoing divorce case. The court will determine if this formal order for visitation is in the best interest of the grandchildren. Grandparents also have the right to seek formal visitation if the parent of the child has died, is physically or mentally incapable of making a decision, or has abandoned the child.

A parent who is in the military and is being deployed may delegate his/her parent-child contact rights to another person for the duration of the deployment, if the court finds that it's in the child's best interest. (See section above on Divorce and Active Military Service.)

## **Child Support**

The impact of divorce on children can be severe, both emotionally and economically. Children who grow up in single parent families have a much greater risk of living in poverty than children who live with both parents. Even when parents have a steady income, it is more expensive to maintain two separate households than it is to maintain one.

Both parents have a legal and moral obligation to support their children. The purpose of child support is to help ensure that the children will be supported in the same manner as they would have had the parents continued to live in the same household.

**Child support is typically determined during the separation or divorce process, or as part of a legal action to identify the father. But it can be decided any time the parents are not living together.**

If you are separated, a **custody (parental rights and responsibilities) order is required before you can obtain a support order.** A Superior Court Judge can issue a custody order based on an agreement between you and the other parent. If you cannot agree, the Judge will determine custody after a hearing. In most cases the Judge may grant temporary custody until a final decision is reached.

Vermont law has established “**child support guidelines**” to calculate the amount of child support to be paid by the non-custodial parent. The guidelines take into account both parents’ entire financial situation, including the expenses of the non-custodial parent for other child support or a second family. The guidelines are based on the principle that children should have the same share of their family’s economic resources as they would have if the family had remained together. ([See VCW’s Resource Directory – Family Division and Office of Child Support section.](#))

The following steps must be taken to determine support obligations:

1. Both parents must complete a form called “**Affidavit of Income and Assets.**” An affidavit is a statement witnessed by a notary or an officer of the court who can administer oaths. These forms must be exchanged between the spouses and also filed with the court.
2. Each parent has the right to see the other parent’s four most recent pay stubs, or if the parent is self-employed, the business records of income and expenses.
3. Each parent must exchange income tax returns for the past two years and file a form with the court stating that the exchange has taken place.
4. Once the gross incomes of both parents have been determined, the child support guideline tables are used to find the “after tax income” for each parent. Deductions may be given to parents who:
  - pay for the health insurance of the children (the court will require that parents pay) ;
  - have other minor children living in his or her household;
  - pay other child support obligations;
  - are self employed;
  - pay spousal support;
  - have a child in DCF custody and pay additional housing and out of pocket expenses.

Child support orders may not take into account any unemployment that is voluntary. For example, a parent cannot get out of making child support payments simply by quitting his/her job.

The calculations may also take into account the cost of any childcare that is required for a parent to work or go to school, and the cost of extraordinary educational and medical expenses for the children.

The guidelines also take into consideration how much time the children will spend with each parent

(whether there is sole physical custody with one parent or shared physical custody), or whether the physical custody of the children is being divided between the parents (with some children living with one parent and some with the other).

The guidelines include a **self-support reserve**. This is an amount that the paying parent is allowed for his or her own expenses.

In addition to establishing the child support amount, the Magistrate will also make orders for the **children’s medical and health support, if that has not already been agreed to by the parents**. Either parent may be ordered to include and pay for health insurance for the children if either has a reasonable policy through their employment. Any health expenses of the children that are not covered by insurance (medical, dental, orthodontic, optical, prescription, etc.) may be part of the shared obligation of the parents.

The court may order that support payments have to be made until each child reaches adulthood. In Vermont, “adulthood” is achieved when the child is 18 years of age or finishes high school, whichever event occurs later. Again, the court may determine many variations of the obligation termination depending on the specific circumstances of each family. If your child has significant physical, mental or developmental disabilities, you may petition the court to extend child support up to the age of 22. You must provide documentation of your child’s disability.

The court will consider the factors listed below, under **reason for a deviation**, in its decision. If there are special circumstances not addressed by the Vermont guidelines – circumstances that you feel entitle you to pay less or receive more child support than otherwise required – you can ask Family Division of Superior Court to grant a “deviation” from the guidelines any time child support is being determined.

There must be a specific **reason for a deviation**, such as:

- the financial resources of the children or either parent; sometimes including the resources of a new spouse;
- any special physical or emotional needs of the children;
- the educational needs of the children;
- the educational needs of either parent if the education is pursued for the purpose of improving the parent’s earning potential; or
- extraordinary travel expenses incurred by a non-custodial parent in order to exercise his or her parent-children visitation rights.

**After the hearing, either parent may request that the child support order be changed. The requested change may be granted when a support order has been in place for 3 or more years, or when an unanticipated event occurs that greatly affects a parent’s ability to pay child support.** Either parent may file a motion with the court to modify the child support order, to increase or decrease the amount paid. Examples of unexpected changes in circumstances are loss of employment or a considerable reduction or increase in salary or wages.

## **Wage Withholding**

**Under Vermont law, child support orders must require an employer to withhold the child support payment from the paying parent’s wages or other source of regular income, even if the parent is not behind in making payments.**

The employer is instructed to withhold the support from each paycheck and forward it to the Office of Child Support (OCS) Registry that keeps a record of the payment and then forwards it to the receiving parent. If services are limited to recording and distributing support payments through the OCS Registry, the case is a **Registry-Only Case** and there is a \$5 monthly fee. Otherwise, all OCS services are free at this time. **OCS will provide enforcement, payment tracking, and the like, only after a parent applies for services by filling out an application or is receiving Reach Up benefits.**

The purpose of withholding is not to punish the parent making the payment but to protect the child and to set up a simple system to help payments be more regular. Withholding also makes life easier for the paying parent since it saves time and protects that parent from deciding not to pay if money is tight.

**Under the Vermont withholding law, child support - just like taxes - is deducted automatically from a person's paycheck.** Wage withholding cannot be ordered when the parent is self-employed, although other methods for ensuring collection may be used.

**In some cases, where both parents agree in writing that they do not want withholding, the Magistrate may approve what is called a direct payment order.** Under direct payment, the paying parent has sole responsibility to ensure that the child support is paid in full and on time according to the terms of the court order. Under such arrangement there is no third party (i.e. the Office of Child Support Registry) to keep track of each payment. Parents must keep their own written records of the payments.

If parents cannot agree on direct payment, but one parent feels strongly that withholding shouldn't occur, the Magistrate will consider whether there is a history of financial responsibility by that parent towards the family. If the Magistrate finds support has been paid regularly by the paying parent in the past, the court may approve a direct payment order.

If you have a direct payment order, however, payments must always be made on time. **If a parent with a direct payment order is ever late by 7 days or more with a single payment, the court, upon request by the other parent, will revoke the right to make direct payment and order that all future payments be withheld from the paying parent's paycheck.** Also, if a parent has applied to the Office of Child Support for services, OCS may issue an administrative wage withholding order without going back to court.

## **Child Support Maintenance Supplement**

If the lifestyle of the children would be significantly better if the custodial parent received more help from the non-custodial parent, the court can order that **parent to pay an additional amount of child support (a "child support maintenance supplement")**. This can occur only if the primary custodial parent requests such a supplement.

The court will take into account the financial circumstances of both parents, including their gross income, assets, debts and the amount of child support being paid. Also, **you cannot receive a maintenance supplement unless it is ordered in the first child support order between the parties, and you have your children with you more than 50% of the time.**

## Bankruptcy

If the spouse who is required to pay child support files for bankruptcy, he or she will still be responsible for paying child support and any back child support (arrearages) that has not been paid. This is considered a **“non-dischargeable debt.”** It is also likely that the bankruptcy will not interfere with a spouse’s obligation to pay any alimony or maintenance.

However, depending on the type of bankruptcy filed, a “stay” might be placed on payments during the bankruptcy proceedings. This means that the person who owes support may not have to pay until the bankruptcy is settled. If this happens, you can ask the court to lift the stay, but they are not required to do so. **When the bankruptcy is settled, “domestic support obligations” take top priority in any distributions made to creditors.**

If the person filing for bankruptcy owes some property as part of the divorce order to an ex-spouse, this property award cannot be canceled (“discharged”) by the Bankruptcy Court.

If your spouse has been ordered to make payments on a certain loan (including such things as credit card payments and mortgages) and this obligation is “discharged” (canceled) by the Bankruptcy Court, **if the loan was originally signed by both of you the creditor can try to collect it from you despite the final divorce order from the court.**

## Child Support Enforcement

If one parent stops making child support payments which have been ordered by the court, or begins paying less than what the court ordered, the following options exist for enforcement:

1. The Office of Child Support (a Vermont state agency) provides free assistance for anyone in Vermont, regardless of income, in enforcing child support orders and collecting unpaid child support. ([See VCW’s Resource Directory – Family Division and Office of Child Support](#) for a link to the OCS office nearest you.)

2. You can go back to court on your own (or with a lawyer) and file a **“Petition to Enforce.”**

As was noted in a previous section, if a non-custodial parent fails to pay court ordered child support, that is **not** a basis to refuse the parent-child contact.

Conversely, if a custodial parent refuses to honor the non-custodial parent’s visitation rights, that is also **not** a basis for the non-custodial parent to stop paying child support. To do either of these things will place you in danger of being found in contempt by the court.

## Office of Child Support Option

In order to get assistance from the **Office of Child Support (“OCS”)**, you need to apply for their services by filling out a written application. In most cases, parents who have custody and who are getting public assistance or Medicaid are automatically referred to OCS for services. They do not have to apply. Everyone else must apply before OCS can provide services.

**OCS has the authority to take the following collection actions through an administrative process rather than by going back to court:**

- When payments are one month overdue, OCS can order wage withholding (if it was not included in the original court order) or it can increase the amount of wage withholding to help repay owed child support.
- When payments are 3 months overdue, OCS can intercept property such as bank accounts, by issuing a lien or trustee process on the property in order to collect the child support owed.
- If the amount owed is more than 3 months of support, OCS can report the debt to credit bureaus so that the delinquent parent will have difficulty getting loans unless the support is paid.
- If the delinquent parent has won the lottery in Vermont, OCS can withhold and use those lottery winnings to pay for any owed child support.
- Depending on the circumstances, OCS may be able to intercept the delinquent parent's federal and state tax refunds and use that to pay for any owed child support.

While OCS may take these actions to help you obtain child support, **OCS cannot directly represent you.** In addition, it is important to understand that OCS staffing is limited and caseloads are high.

### **Court Option--Petition to Enforce**

If you choose to go to court to enforce a child support order, you will need to file a **Petition to Enforce**. In this petition you should state how much support is owed and ask the court to order it to be repaid. You must also attach an **Affidavit** (a statement witnessed by a notary or an officer of the court who can administer oaths) that describes how the other parent has violated the order. It is also possible for the Office of Child Support (if you are receiving services from OCS) to file a Petition to Enforce in court, so that it can seek remedies that are beyond its administrative abilities to order.

After the other parent has been served with all the paperwork filed with the court, an **enforcement hearing** will be held. The court might order any of the following, depending on what is determined at the enforcement hearing:

- Payment of the back child support in a **lump sum**, if the delinquent parent is able to do so.
- A **repayment plan** to pay all the back child support over time.
- A **child support surcharge** can be imposed on past due child support. The surcharge is computed and assessed monthly. For the period July 1, 2004 to December 31, 2011 the rate is 1 % per month. Beginning January 1, 2012 the rate is ½ % per month. A court may cancel all or part of the accumulated surcharge if it finds that the obligated parent has become unable to comply with the underlying child support order.
- In some cases, the court may require that property owned by the delinquent parent be held “**in escrow**” (by a neutral third person called an escrow agent) to guarantee he or she will pay the support due. The property held can't be worth more than four months of support payments.
- An order **to participate in employment, educational or training related activities** if the court finds that they would help address the reasons why the parent has not paid or has fallen behind in paying child support.
- An order to participate **in substance abuse or other counseling** if the court believes it will help the non-paying parent keep stable employment.
- If the delinquent parent is unemployed, the court can order that person to **seek work or community service immediately**. The court will also order that person to report to the court, the other parent or the Office of Child Support on a weekly basis regarding the efforts to find work. **If the parent fails to look for work, the court can find the parent in contempt of court.**

- The court can order that parent to pay the other parent's attorney fees and costs that they had to pay for having to come to court to enforce the child support order.
- If the court finds that the delinquent parent owes child support under a previous order of the court and that there is a delinquency of at least two-twelfths of the annual child support obligation, the court can order the **suspension of the delinquent parent's motor vehicle license (driver's license)**. The license will be reinstated after notification from the court or the Office of Child Support that the child support has been paid.
- If the delinquent parent has a **professional license, or a hunting or fishing license issued within Vermont, you or OCS can also ask that the court suspend such a license**. The parent's license may not be renewed (unless the parent can show s/he is up to date in child support payments or has made a plan to become current).

**The court may not order a delinquent parent to pay back payments of child support if the parent needs to use his or her self-support reserve to make the payments.** The court may make an exception to this rule if the parent filing the petition presents a good reason why payment should be ordered. It is still the delinquent parent's responsibility to repay the support when his or her income is above the self-support reserve.

## Contempt

If the court determines that a parent willfully disobeyed a court order to pay child support, and had the ability or capacity to pay, the court can find that person in **contempt of court**. The penalty for contempt of court in such a situation could include the payment of a fine or putting the person in jail until the support that is owed is fully or partially paid. Contempt is the last resort to make a parent comply with an order.

## Enforcement of Interstate Child Support Orders

As of January 1998, **Vermont adopted the federal Uniform Interstate Family Support Act (UIFSA)**. This tool governs interstate child support enforcement and has been adopted by every state. UIFSA is designed to make it easier and quicker to process child support enforcement cases when dealing with out-of-state parents, by allowing cases to be brought in one state instead of two. There is also a provision for direct withholding which should help children receive support more quickly since payments will not have to be routed through more than one state.

In the remaining cases that still require action by more than one state, UIFSA seeks to improve the processing of such enforcement orders by:

- providing for only one support order at a time governing the same parents and child, thereby eliminating confusion associated with multiple orders;
- providing for the enforcement of orders without the possibility of modification or the establishment of an unwanted new order, in contrast to existing law in many states;
- improving communication and cooperation between states by providing for improved transmission of evidence and assistance with discovery;
- encouraging use of expedited administrative procedures.

**It is important to understand that multi-state activities may be a very time-consuming process. When multiple states are involved, there is a natural delay in most processes due to the number of agencies and people managing your case.**

## Changing or Modifying Court Orders

If you want to change the terms of your final divorce order regarding parental rights and responsibilities (custody), parent-child contact (visitation), or child support you must go back to court. You would do this by filing a **Motion to Modify** and an accompanying **Affidavit**. The court will only grant a change if you can show that there has been a **real, substantial and unanticipated change of circumstances and that granting the modification would be in the best interests of the child**. The court may hold a hearing on your motion, but it can also deny it without a hearing if the court believes insufficient facts have been stated to support granting the requested changes. **Either party can file a motion in court asking for a modification of a prior court order.**

**Note that if one parent has moved out of state, motions to modify must be done in the child's home state which is usually the state in which the original orders were made.** (Please see the Child Custody When One Parent is in Another State section earlier in this chapter.)

If you are seeking a change in the **child support** portion of the final divorce order, you have the right to have the order reviewed at least **once every three years**, even without a preliminary showing that there has been a “real, substantial and unanticipated change of circumstances.”

Reasons for seeking a modification of a child support order may include:

- substantial changes in one parent's income (at least 10% up or down);
- involuntary loss of employment;
- replacement of wages by unemployment compensation, worker's compensation or disability benefits;
- a promotion, a higher paying job or a substantial inheritance;
- changes in the parenting plan, such as when the children live with the non-primary parent for longer periods of time .

**A non-custodial parent cannot ask the court to change (lower) an existing child support order simply because a new dependent resides in his or her household.** If the parent to whom child support is being paid petitions the court for an increase in child support, however, the court can take into account any new dependents that are in the non-custodial parent's household.

Sometimes parents agree to make informal changes to a child support or other divorce related order. This can be done, but **such informal changes cannot then be enforced by the court**. If you receive services from OCS, they cannot be responsible for informal agreements either. Therefore, if you want any such modifications to be enforceable, you should present them to the court for its approval. If approved by the court, it becomes a new order and can then be enforced.

## Separation of Unmarried Couples and Couples Not Joined by Civil Union

The laws of divorce in Vermont do not apply to a couple who is neither married nor in a civil union. If such a couple separates and is unable to reach an agreement as to how to divide their joint property, either or both parties can bring a case in the Civil Division of Superior Court to decide this question. The court will usually treat it as though you had been in a business partnership together, instead of following divorce law. The judge may also simply try to divide the property in the manner that seems most fair to both parties. **Because the laws are not well suited to resolving disputes that arise when unmarried couples separate, you may want to seriously consider alternative dispute resolution processes such as mediation or arbitration.**

When a couple who is neither married nor in a civil union separate, and they are both legal parents (due to adoption, parentage proceedings or voluntary acknowledgment), the **Family Division of the Superior Court, in a parentage action, can decide cases regarding parental rights and responsibilities, parent-child contact, and child support with respect to the children.**

### Establishing Parentage

When a child is born to a woman who is neither married nor in a civil union, the law does not recognize the parentage of the father until it is legally established by a parentage action. This can be done through a voluntary acknowledgment or by filing an action in the Family Division of the Superior Court. To voluntarily acknowledge parentage, you must fill out a **Voluntary Acknowledgment of Parentage** form.

A parent seeking to establish that a person is the child's other biological or legal parent, or a parent seeking to establish that he or she is the child's biological or legal parent, may file a **parentage action in the Family Division of the Superior Court.**

Where a child has been born or adopted by parents who subsequently marry, establishing parentage can also be made part of a case for divorce, annulment or separate maintenance.

**The Office of Child Support (OCS) may also file a case to establish parentage in the Family Division of the Superior Court if a parent has applied for OCS services. The OCS can also arrange and pay for any necessary genetic testing.**

**The person who is seeking to have parentage established can ask the court to require the child, the person alleged to be the parent and any acknowledged parent to submit to appropriate genetic testing to determine parentage.** The only way to avoid such testing is if the court finds that there is **“good cause” to exempt the person from testing.** The court may do so if the alleged parent has a history of abuse, violence, or criminal behavior and it would not be in the best interest of the child to establish this person as the parent. The OCS may also require all parties to appear for genetic testing at the time of filing.

Once the results of the tests are obtained by either party, they must be made available to the other party. If the test results are going to be used at the hearing, this fact must be given to the other side and the test results must be made available at least 15 days before the hearing.

**If the alleged parent refuses to comply with an order to submit to genetic testing, he or she will be presumed to be the parent.** If the probability that the alleged parent is the biological parent is greater than 98 percent, as established by a scientifically reliable genetic test, that person will be presumed to be the parent. Once parentage is established the court will then seek to establish parental rights and responsibilities, parent/child contact and child support.

## **Child Snatching**

If you have custody of the children and your spouse, former spouse, or relative with visitation rights “snatches” them or refuses to return them from visitation, **you may contact the police and the state’s attorney in the county in which you live.** Under Vermont law, it is a crime for a relative to take or keep a minor child from the lawful custodian if they do not have the legal right to do so. This is called “**custodial interference**” and can be punishable by up to 5 years in prison and/or a fine up to \$5,000. If anyone snatches your child, immediately contact the police.

The Vermont Office of Child Support (OCS) has “parent locator” services, which may be of help to you if you do not know where your children are. The police typically will not issue an Amber alert for a child involved in a custody dispute.

## **Relevant Laws**

### **Vermont:**

Child Support Enforcement, 15 V.S.A. §§ 606, 780, et seq.  
Civil Unions, 15 V.S.A. Chapter 23; 18 V.S.A. Chapter 106 (repealed, 2009)  
Custodial Interference, 13 V.S.A. §2451  
Divorce, 15 V.S.A. Chapter 11  
Family Court, 4 V.S.A. Chapter 10  
Grandparents Visitation, 15 V.S.A. §1011, et seq.  
Legal Separation, 15 V.S.A. §§555, 753  
Marriage, 15 V.S.A. Chapter 1  
Marriage Records and Licenses, 18 V.S.A. §5131, et seq.  
Military Parents’ Rights, 15 V.S.A. § 681, et seq.  
Office of Child Support, 33 V.S.A. § 4101, et seq.  
Parentage Proceedings, 15 V.S.A. § 301, et seq.  
Public Accommodations, 9 V.S.A §4502  
Uniform Child Custody Jurisdiction and Enforcement Act, 15 V.S.A. §1061, et seq.  
Uniform Interstate Family Support Act (UIFSA), 15B V.S.A. Chapters 1 - 9  
Vermont Rules for Family Proceedings  
Baker v. Vermont, 1999 (that same-sex couples are entitled the same benefits as opposite-sex couples)

### **Federal:**

Bankruptcy Code, 11 U.S.C. §§523 (a)(5) and (15)  
Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub.L.109-8  
Child Support Recovery Act of 1992, Pub.L.102-521- amended by  
Deadbeat Parents Punishment Act of 1998 18 U.S.C. § 228

Defense of Marriage Act of 1996, Pub.L.104-199  
Family Support Act of 1988, Pub.L.100-485  
Personal Responsibility & Work Opportunity Act of 1996, Pub.L.104-193

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