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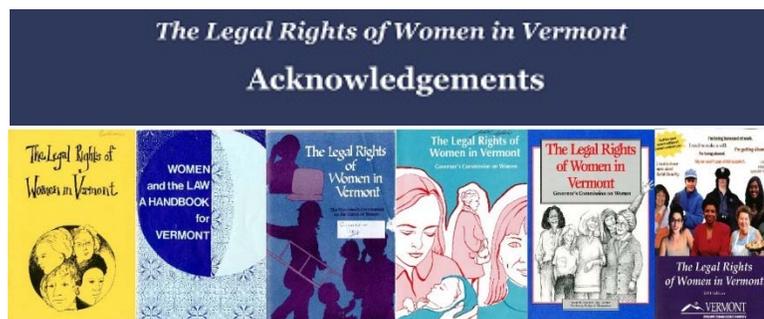
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7th Edition Cheryl Hanna Legal Rights of Women Interns:

We welcomed Vermont Law School (VLS) students Arden Florian '16 and Maeve Callaghan '16 as participants in the Cheryl Hanna Legal Rights of Women Internship in spring 2015. These interns researched state and federal statutes and worked with experts in the field to update this handbook. VLS professor Cheryl Hanna, an expert on constitutional law, women's rights, and the Supreme Court, passed away in 2014. She was a frequent partner in and advocate of VCW's work and had recruited and supervised VLS students to update this publication in 2011. VCW named this internship after her in tribute. She is missed. Said Marc Mihaly, president and dean of Vermont Law School, "Cheryl was a role model to many on the VLS campus and beyond, and we are pleased to see her legacy continue in the work of our mission-driven students."

Introduction

The goal of *The Legal Rights of Women in Vermont* handbook is to help you begin to understand your rights and responsibilities under Vermont and Federal Law. Since 1977, this handbook has been a source of information for Vermont women, their families, and professionals that serve them. Written in plain and simple language, *Legal Rights* covers issues affecting all Vermonters.

This publication has been developed with legal assistance, but does not constitute legal opinion or advice. Legal advice should come from an attorney of your choice who can take into account all the factors relevant to your particular situation.

Laws change. At the end of each chapter, readers will find a date indicating the last time the chapter was reviewed and updated.

Throughout this publication are references to Vermont Commission on Women's *Resource Directory*. The directory can help you locate the most local and most appropriate resources related to the issue.

If you are using the online version of *The Legal Rights of Women in Vermont*, words or phrases colored blue and underlined link directly to the appropriate section of the *Resource Directory* or to another chapter of *The Legal Rights of Women in Vermont*.

At the end of each chapter are links to the relevant Vermont and Federal statutes online. Helpful information to read the statutes: "12 V.S.A. § 5131. *et. seq*" means Title 12 of the Vermont statutes, section 5131 and following sections. Although there are chapters listed under each title (which will help you locate the material more quickly) section numbers are consecutive throughout the entire title.

This publication is produced by the Vermont Commission on Women (VCW). VCW is a non-partisan state agency advancing rights and opportunities for women and girls. Launched in 1964 by a call to action from President Kennedy, sixteen volunteer commissioners, along with representatives from organizations concerned with women's issues, guide VCW's public education, coalition building, and advocacy efforts.

If you have questions or comments about this publication, please contact:



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This chapter includes information about:

- Who Can Adopt
- Who Can Be Adopted
- Procedure for Adoption
- Rights of People Who Have Been Adopted
- Adoption of Stepchildren and Others
- Guardianship of a Minor
- Emancipation of a Minor

If you are considering adoption, have been adopted, wish to be appointed guardian for a minor child, or want to understand how to become an emancipated minor, this chapter will help you understand your rights under Vermont law.

Who Can Adopt

You may **petition for adoption in the Vermont Superior Court Probate Division** if:

- a child has been placed with you for the purpose of adoption;
- you have been selected as a possible adoptive parent by a person authorized to make such a selection;
- you had physical custody of a child for at least six months just before the filing of the adoption petition, if the filing of the petition is allowed by the court;
- you are the child's stepparent;
- you want to adopt an emancipated minor or an adult.

A couple who is neither married nor in a civil union can adopt a child. Some Vermont Probate Division judges permit joint adoptions, while others may require the parties to go through a "stepparent or second parent" adoption procedure which is explained in a later section.

If the couple ends their domestic relationship after the adoption, the Family Division of the Superior Court will determine the rights and responsibilities of each parent, as well as any parent-child contact and child support. In these situations, child custody and support are treated just as they would be in a divorce proceeding.

Who Can Be Adopted

A **minor child** can only be adopted if he/she has been placed for adoption by:

- a parent who has legal and physical custody of the child;

- a guardian who has been authorized by the courts to place the child for adoption;
- an agency to which the child has been given for the purposes of adoption by the parent or guardian; or
- an agency that has been expressly authorized by a court order that has terminated parental rights.

A parent who has legal and physical custody of a child cannot place the child for adoption if the other parent has legal custody or visitation rights with the child and that parent's whereabouts are known. An exception is made if the other parent has agreed in writing to the adoption placement or has been sent an appropriate notice of the proposed adoption. This allows the other parent to object to the adoption and take whatever steps may be available to that parent during the court's consideration of the adoption. Except in those cases in which a birth parent is unknown, a reasonable effort must be made to notify that parent of the proposed adoption.

An **emancipated minor or adult can be adopted.** The process is essentially the same, except that the emancipated minor or adult has to file the petition for adoption along with the person who wishes to adopt them. This means that the person who is being adopted must understand the consequences of the adoption and how that will affect their legal rights.

Procedure for Adoption

Formal Petition for Adoption

There are many requirements that have to be met and appropriate documents that have to be filed with the court while going through an adoption proceeding. Some of these include the preplacement evaluation, the final evaluation, appropriate documents relating to the child, the status of the birth parents, and the appropriate documents from the adoption agency (if one was used).

The Probate Division will grant a petition for adoption if it finds that:

- the adoption is in the best interest of the child,
- notice of the pending adoption has been given to the appropriate people and entities,
- every necessary consent, relinquishment, waiver, disclaimer in paternal interest, judicial order terminating parental rights, or other document has been filed with the court,
- all appropriate evaluations have been filed with, and considered by, the court,
- the person(s) seeking to adopt is a suitable parent for the child,
- the person(s) seeking to adopt has received all the health and background information about the child which is required to be provided by law, if applicable, any legal requirement governing an interstate or intercountry placement for adoption has been met,

- the Indian Child Welfare Act is not applicable, or that its requirements have been met.

Once a child has been placed with you for purposes of adoption, you must file a **formal petition for adoption at the Probate Division of the Vermont Superior Court** within 45 days, unless you are a foster parent, relative, or stepparent.

Preplacement Evaluation

Before you can start the formal process to become an adoptive parent, you must have a favorable preplacement evaluation. The evaluation must have been conducted no more than one year prior to placement or it will have to be updated. **There are a few exceptions to this rule, but a favorable evaluation will have to be received in all cases before a final adoption can take place.** This is required in placements by an agency and private placement by the parents.

Preplacement evaluations must be performed by an evaluator authorized by the Vermont Department for Children and Families. The evaluation has to be completed within 90 days after it is requested, unless the Probate Division allows for a longer time.

If you receive an evaluation saying that you are not suited to be an adoptive parent, you have 90 days from the time you receive the unfavorable evaluation to petition for a review by the Probate Division.

Disclosure of Information to Adoptive Parents

The **Vermont Adoption Act** includes a long list of the types of information that need to be provided. Before a child is placed for adoption, either by a birth parent or an adoption agency, a fairly complete social and health history of the child as well as of the child's birth parents and extended family must be given to the prospective adoptive parents. This information must be provided if it is reasonably available from the parents, relatives or guardian of the child, the agency, any person who had physical custody of the child for 30 days or more, or any person who has provided health, psychological, educational or similar services to the child. It also specifically requires adoption agencies to inform the adoptive parents of any unique requirements or special needs the child has and that the agency is aware of. This includes any adoption subsidies for which the child might be eligible.

Rights of Birth Parents

In many cases, the birth parents may have given up or "relinquished" their parental rights to an adoption agency. The agency then places the child with a proposed adoptive family.

Before an adoption can take place, the woman who gave birth to the child must consent to the adoption and relinquish her parental rights, unless the court has terminated her parental rights. The father may have to consent and

relinquish his rights, which is explained in more detail below. If the child is under the care of a guardian who is not the parent, the guardian(s) may have to consent if they are legally recognized as the mother or father, or the court has otherwise given them authority to consent to adoption. **If the parents are minors, they can only consent to adoption and relinquish parental rights if they have been advised by an attorney who is not representing the adoption agency.** If the birth parents are making a direct placement of the child without going through an adoption agency, they must sign a consent in order for the adoption to occur. The same timelines apply to direct placement as adoption through an agency.

A “relinquishment” is signed in the presence of a judge. This relinquishment hearing cannot be scheduled until **the child is at least 36 hours old.** Any relinquishment may be revoked within 21 days of having signed it by simply notifying the court in which the document was signed. **If the relinquishment is not revoked within 21 days, the adoption becomes final and irrevocable unless a court orders otherwise.**

Rights of Birth Fathers

Consent of the biological father of the child to be adopted is not required under certain circumstances. If the biological father was not married to the birth mother, he signed a notarized statement denying paternity or disclaiming any interest in the child after the child was conceived, and he acknowledged that his statement is irrevocable.

Otherwise, the following men must be notified of the pending adoption and must either sign a consent to the adoption or take other action to contest the adoption:

- the biological father of the child, if he is identified by the birth mother or is otherwise known to the Probate Division;
- a man who was married to the birth mother at the time the child was born, or was legally separated, or had the marriage terminated within 300 days of the child’s birth;
- a man who was not married to the birth mother at the time the child was born, but has formally acknowledged that he is the father of the child, or has filed a notice to retain parental rights, and has demonstrated a commitment to the responsibilities of parenthood by setting up a custodial, personal or financial relationship with the child, or can show that he was prevented from or unable to do so;
- a man whom the person seeking adoption knows is claiming to be or who is named as the father or possible father of the child when paternity of the child has not yet been determined by a court (unless he has already signed a formal statement denying paternity or disclaiming any interest in the child).

Notice of the adoption petition is not required to be sent to any of the above men if their parental rights were formally terminated by a court.

Rights of People Who Have Been Adopted

All records of an adoption will be permanently held by the **Vermont Adoption Registry** (see VCW's Resource Directory – Adoption section) and sealed for 99 years after the adopted person's date of birth, except as outlined below:

Access to information depends on when the adoption was finalized. **If the adoption was finalized before July 1, 1986**, the adoption registry can only release identifying information if the birth parent agreed to be identified at your request when the adoption was finalized. This is called a "consent to disclose." **If the adoption was finalized after July 1, 1986**, the adoption registry will probably provide the information requested even without the consent of the birth parent.

If you have been adopted and are at least 18 years old, or if you are the child of someone who was adopted and has passed away, you may request information about the birth parents. If you have been adopted and are at least 18 years old, you may seek to **identify your birth parents** or the person who terminated their parental rights and other identifying information kept by the official Vermont Adoption Registry.

If you do not need their names, but just want information about them, you will request **"non- identifying information."**

Who can request non-identifying information:

- adoptee 18 years or older;
- emancipated adoptees;
- adoptive parents or adoptee's legal custodians / guardians;
- direct descendants of deceased adoptees;
- birthparents;
- birth grandparents; or
- birth siblings.

If you have a serious health condition and want information relating to your family health history, you can submit a certified statement from a physician explaining why you need this information to the court if it denies your request.

Non-identifying information includes either:

- a detailed summary of information in the adoption record (for example – birth parents, birth siblings, adoptee's genetic information or social background); or
- a summary of the adoption record (for example – adoptee's history after parental rights were relinquished, the adoption, or the adoptive parents.).

Anyone who is denied non-identifying information that they are entitled to may petition the court to obtain the information.

A person who has been adopted and is at least 18 years old can give permission to the registry to disclose their own identifying information to the adoptee's birth parent or sibling of the adoptee, if the sibling is at least 18 years old.

The identifying information kept by the Adoption Registry includes:

- the adoptee's birth date, name at birth and after adoption;
- the names and addresses of the adoptee's former parents and adoptive parents;
- the date and court in which a consent or relinquishment of parental rights was filed;
- the date and court in which the petition for adoption was filed;
- any agency which was involved in the adoption;
- the date and nature of the results of the adoption petition;
- any consent for disclosure or document requesting non-disclosure;
- any non-identifying background information that was provided to the adoptive parents, such as the social and health histories of the adopted child and the child's birth parents.

Who can request identifying information:

- adoptee 18 years or older;
- emancipated adoptee;
- direct descendants of deceased adoptee;
- birthparents; or
- birth siblings 18 years or older.

If adoptees are denied identifying information by the Registry, they can petition the court for the information. However, if the birth parent filed a formal request to never have their identity released to you, then the court cannot release their identity to you. This is called a **"request for non-disclosure"** and is an official document that any birth parent who releases their parental rights can file with the court. The birth parent can withdraw the request for non-disclosure at any time.

In certain limited circumstances the probate division is authorized to release identifying information to a person who was adopted despite the fact that no "consent to disclose" document was filed with the registry. The court must make a reasonable effort to locate the birth parent in advance of the hearing for the purpose of determining the birth parent's position on the issue.

Adoption of Stepchildren and Others

Ordinarily, in order for a child to be adopted, the parental rights of the child's prior legal parents must be terminated.

Vermont law provides an exception for the adoption of a minor stepchild, or the minor child (biological or adopted) of one's partner. You may adopt the minor child of your spouse or unmarried partner of either sex, if your spouse or partner:

- has sole legal and physical custody of the child and the spouse or partner has had physical custody of the child for the six months before the adoption petition was filed;
- has joint legal custody and the child has resided primarily with the spouse and stepparent for the 12 months before the adoption petition was filed.

Such a stepparent or second parent adoption will not terminate the parental rights of the adoptive stepparent's or second parent's spouse or partner, although such an adoption does terminate any former parent's parental rights. **For that reason, you must** generally get the written consent of the child's other legal parent in order to obtain a stepparent or second parent adoption. If the parent whose rights will be terminated will not consent to the adoption, the other parent can file a Petition for Termination of Parental Rights. The petition is not a guarantee to terminate the parental rights. The court may also require a formal evaluation of the stepparent in order to assure that adoption is in the best interest of the child.

A stepparent or partner who wishes to adopt must file a **Petition to Adopt Minor by Stepparent** with the Probate Court.

In addition, the law provides for the adoption of an **emancipated minor, an adult, or any adult who has been found to be incompetent by the court.** Vermont law does not allow a person to adopt his or her spouse.

Guardianship of a Minor

Guardianship is different from adoption in that it does not end the legal relationship between a parent and a child. Typically, a guardian takes care of a child's personal needs, including shelter, education, and medical care. Financial obligations of the parent are not ended. A guardianship usually ends when the child is 18 years of age.

In Vermont, biological parents or interested potential guardians may petition the Probate Division for an **Order of Guardianship of a Minor** who is under the age of 18 for one or more of the following reasons:

- the child has no living parent;
- the biological parent is unsuitable to have custody of the child;
- the parents agree that the transfer of custody to a legal guardian would be in the best interest in the child and **is not solely for the purpose of establishing a residence for school.**

Two individuals may be named. The Probate Division can appoint a parent, a family member or an individual who is not related to the child. Vermont law also allows parents to name their choice for guardian in their will, in case both parents die before the children are 18 years of age.

Minors, 14 years or older may choose their guardian, subject to court approval.

Emancipation of a Minor

If you have reached a point where you feel you can no longer live with your parents, you have a couple of options. You can file with the Probate Division to have someone besides your parents appointed as a guardian or you can ask the court to emancipate you. The choice to seek either emancipation or a guardianship is a serious one with a number of repercussions.

As explained above, guardianship allows you to have another family member or family friend act as your guardian and can be a less drastic compromise to problems with your parents.

Emancipation means the release of a minor from the legal control of his or her parents. You are also considered an emancipated minor if you are or have been married, or if you are on active duty with any branch of the armed forces. **An emancipation order may not be used for the purpose of obtaining residency and in-state tuition or benefits at the University of Vermont or Vermont state colleges.**

If you are 16 years old or older, and feel you cannot live with your parents, you may ask the Probate Division to emancipate you. You need to tell the Probate Division your name, date of birth, residence, and why you want to be emancipated. You also need to tell the Probate Division who your parents are and where they live.

To be emancipated, you must show that it is in your best interest to be emancipated and that you:

- have lived separate and apart from your parents, custodians, or guardians for at least three months before the hearing;
- are managing your own financial matters and **are able to demonstrate the ability to be self-sufficient in your economic and personal affairs without being on public assistance;**
- have, or are working toward a high school diploma, GED, or equivalent; and
- are not under the custody of the Department for Children and Families or the Commissioner of Corrections.

Emancipation may mean that you no longer qualify to be covered by the health insurance of your parent or guardian.

Relevant Laws

Vermont:

Adoption Act, 15A V.S.A. Chapters 1-7

Emancipation of a Minor, 12 V.S.A. Chapter 217

Guardianship of a Minor, 14 V.S.A. Chapter 111 §2621 et seq.

Federal:

Indian Child Welfare Act, 25 U.S.C.A. §1901 et seq.

Updated 7/15/16 – LT

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New Car Lemon Law

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Three-Day Right-to-Cancel

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Credit Discrimination

Debt Collection Practices

Credit Bureaus and Consumer Reporting Agencies

Consumers have substantial protections under both federal and Vermont law against unfair business practices. Women should know these protections to avoid poor outcomes.

Consumer Fraud Protection and Recovery

Protect yourself against fraud by guarding personal information—such as your Social Security number, date of birth, bank account number and credit card numbers.

Never disclose personal information over the internet, telephone, or through the mail unless you initiated the contact AND you know the person or business at the other end.

Scammers ask for money in return for promises of money, jobs, romance, marriage or other perceived needs.

Never send money to someone that you don't know personally. Do not send money to third parties.

Telemarketing

Callers trying to sell goods or services over the telephone are called **telemarketers**. Computer-generated calls are called “robocalls.”

Scammers can trick CallerID, often pretending to be a local utility, the Internal Revenue Service (IRS), or other important organizations. Don't trust CallerID.

Utilities and the IRS do not make threatening phone calls. If you receive such a call, do not engage. If you are concerned that you might owe some money, hang up. Look up the correct number for the organization and call that number yourself.

There are limited protections against these robocalls and scammers. If you are getting calls on your cell phone, there are smartphone apps designed to block these calls. Telecommunications carriers are working for more effective solutions.

If you want to reduce telemarketing calls, you can register your number with the Federal Trade Commission's (FTC) **“Do Not Call” List** at donotcall.gov or by calling toll-free 888-382-1222. Call from the number you wish to register.

If you received a telemarketing call that you believe is covered by the Do Not Call List after you have registered your phone number, you can file a complaint at donotcall.gov using the Report Unwanted Calls page.

You can tell companies or charities not covered by the federal list to put your phone number on their own “Do Not Call” list.

Scams

Scams and fraud cost Vermonters hundreds of thousands of dollars every year. Scammers use every tool available to steal money and information from consumers. Scams often originate overseas and use sophisticated technology, and are challenging for traditional law enforcement to stop.

The Vermont Attorney General operates the Consumer Assistance Program (CAP) to protect and assist Vermonters. Vermonters can sign up to receive instant scam alerts by text, voice or e-mail message from the Attorney General about new scams as they hit Vermont. Sign up to receive scam alerts by calling the CAP at 800-649-2424 or by visiting consumer.vermont.gov.

If you or someone you know are being targeted by scammers, act to prevent loss. There are a few simple steps you can take:

- **Hang up** - Scammers will try to keep you on the phone. The best way to avoid

getting scammed is simply to hang up the phone. Don't try to talk, just end the call: if the conversation is online or by text/email, stop responding and block the sender immediately;

- **Call CAP** - Whether you need help for yourself or someone else, CAP is available to help. Outside of normal business hours, send an e-mail or leave a voice message. If you need immediate assistance, contact your local law enforcement agency or call 2-1-1 for information and referrals to other helping agencies. If a large amount of money is involved, time is of the essence;
- **Stop payments** - If money has been sent (by wire transfer, mail, gift card, or any other means), contact the bank or institution you sent it through right away to stop the money before it is picked up.

Identity Theft

Identity theft occurs when someone uses your personal information for their own personal gain. Identity theft can happen in a variety of ways. Some examples of how your personal information might be stolen include:

- A thief stealing your wallet or purse containing your ID, credit or bank cards;
- Someone stealing your mail containing personal information such as bills or bank account statements;
- Someone rummaging through your trash to find discarded documents containing personal information;
- Someone obtaining personal information you shared over the Internet. For example, financial information you sent in an e-mail to someone posing as a bank or government employee; or
- Someone hacking into your email or into a computer database with your information in it.

Take the following steps to avoid identity theft:

- Keep all items with personal information in a safe place.
- Before you throw away papers with personal information, shred or tear them.
- Install two-factor authentication for your email. Two-factor authentication requires a number generated on your cell phone in order to log into your email, thus preventing someone who has just your password from accessing your email.
- Don't carry your Social Security card. Give your Social Security number only when it is absolutely necessary and then only to a business that you yourself contacted.
- Don't give personal information over the phone, through the mail or over the Internet unless you've made the contact and know the recipient.
- Check your bank statements carefully every month to ensure that you authorized all withdrawals.
- Review your credit reports annually to check for irregularities in your credit.

If you find yourself the victim of identity theft:

- Immediately close any accounts that have been tampered with or opened without your consent;
- File a police report, and file a complaint with CAP;
- Place fraud alerts on your credit reports and review your credit reports;
- Keep copies of all papers and police reports relating to your identity theft, and;
- Keep a record of all contacts you've made.

For more information on how to report and recover from identity theft, visit the Federal Trade Commission's website: identitytheft.gov.

Contests and Prizes

Vermont law prohibits deceptive practices in respect to contests, games of chance, games of skill, sweepstakes, giveaways or other promotion. In these situations, no one can:

- Tell you that you are a "winner" or "selected" as part of a promotional scheme;
- Require you to purchase anything, pay an entry fee or service charge to enter or remain eligible;
- Mislead you as to your chances of winning, the number of winners, the value of the prizes, or the availability of prizes;
- Indicate that you are a "winner" or have been "selected" when it is a promotional scheme in which many or all of those "entering" receive the same "prize" or "opportunity."

Sports Fantasy Games

There is an exception and special rules for fantasy sports games. Fantasy sports games are "virtual games" on the Internet. The games have rules set by the operator of the game. Vermont law requires anyone playing fantasy sports to be an adult. The company must limit and disclose the number of people entering. The company must prevent those using computer algorithms from having a competitive advantage. The fantasy game should allow only one account per player. The fantasy game should allow the player to restrict her own participation, and to give those who do information regarding addiction and compulsive behavior. A player must be able to see their history, including money spent, games played, and prizes awarded. A fantasy sports game may award cash prizes.

Gift Cards

Gift certificates must be valid for at least five years. If no date is indicated, the gift certificate does not expire. However, gift cards not tied to a cash value, such as for a yoga class, may not be subject to this rule.

Paid Fundraising

Charities and other nonprofits may ask you for a donation. Often, the person who contacts you is a paid fundraiser working for a business paid to solicit donations. The bulk of the donations may go to the commercial fundraisers, not the nonprofit. Be cautious and make informed decisions about your giving.

Vermont's Charitable Solicitations Law regulates the activities of paid fundraisers in Vermont. Before you donate, paid fundraisers must tell you that:

- They are being paid to solicit donations; and
- You may contact the CAP Attorney General's office to find out what percentage of the money collected will go to the fundraiser and what percentage will go to the charity.

Additionally, paid fundraisers cannot use unfair or deceptive practices to solicit contributions. Some examples of unfair or deceptive practices include misrepresenting the fundraiser's identity, the fundraiser's affiliation, how the donation will be used, or how past donations have been used.

Take steps to ensure your money goes where you intend:

- Do not allow a charitable solicitor to pressure you into donating over the phone. A legitimate charity will always be willing to give you time and send you additional material to help in your decision-making process. Ask to have the information sent to you.
- Never donate in cash. Use a check or credit card made payable to the charity, not to the individual solicitor.
- Beware of organizations that have similar sounding names to those of well-known and respected charities.

CAP can also tell you if any complaints have been filed against a charity or a commercial fundraiser.

Home Heating Fuels

Vermont does not regulate the *price* of heating oil, kerosene or other fuels used for heating. However, Vermont law does provide protections on "**pre-buy**" contracts. For pre-buy contracts, the law requires fuel dealers to:

- Use a written contract;
- Disclose the amount you paid and the maximum number of gallons to which the dealer is committed;
- Obtain a surety bond, letter of credit or a fuel-futures contract to protect your purchase;
- Reimburse you within thirty (30) days of the end of the contract for any unused portion, unless you agreed otherwise.

Vermont law regulates many aspects of propane fuel suppliers. A propane supplier cannot disconnect **propane service** without your consent, unless:

- You are delinquent in payment of more than \$60;
- Your bill is at least 60 days past due;
- The gas company has provided you with an opportunity for a reasonable repayment plan for the delinquent bill; and
- The gas company has provided you with a notice of disconnection between fourteen (14) and thirty (30) days before disconnection.

There are additional provisions that prohibit disconnection of service:

- When the disconnection would cause an immediate and serious hazard to you or your family's health during the heating season (you would be required to present a physician's note);
- When the delinquent charge or bill is more than two (2) years old;
- When you are following the terms of your repayment plan; or
- When the propane supplier has not made reasonable attempts to give oral notice of disconnection during the heating season, if gas is your primary heating source.

New Car Lemon Law

You have the right to return a new car for a new replacement car if you purchased a "lemon." You can also get a cash refund.

A "lemon" is a car that cannot be properly repaired after a "reasonable number of attempts." The car is a lemon if it had:

- Three unsuccessful repair attempts for the same problem, so long as the first attempted repair occurs during the warranty period; or
- The car is out of service for a total of thirty (30) or more days during the warranty period.

The **New Motor Vehicle Arbitration Board** resolves warranty issues. To pursue your rights, you must file a claim within one year of the expiration of the manufacturer's written warranty. Contact the Vermont Motor Vehicle Arbitration Board to receive more information. (See VCW's Resource Directory – Consumer Issues section.)

Home Improvement Fraud

The key qualities of any contractor are skill, reliability, efficiency, and honesty. Here are some tips for hiring a contractor to do work at your home:

- Research a proposed contractor by word-of-mouth, online, and other credible contacts **BEFORE** agreeing to any work.
- Before hiring a contractor, contact CAP to find out if complaints have been filed

against the contractor.

- Get a written, signed agreement.
- Put little-to-no money down except for materials that are delivered to your site.
- Pay only for work that has been completed.
- Have an agreed “hold-back” until all work is satisfactorily completed.

Vermont has criminal penalties for home improvement fraud. If you believe you have been the victim of home improvement fraud, contact CAP and contact your local police.

The State registry of all persons who have been found guilty of committing “home improvement fraud” is available at uvm.edu/consumer/consumers.

Three-Day Right-to-Cancel

If you are contacted by a business at your home or over the phone, Vermont law requires that you be given notice that you have three business days to cancel any agreement. If you have not received this required notice, you may be able to cancel your purchase or contract.

Discount Membership Programs

Vermont requires businesses that offer membership for discount programs to disclose:

- The goods or services eligible for a discount and the amount of each discount.
- The cost and length of the program; the length cannot be more than 18 months.
- That you have 30 days to cancel and receive a full refund, from the time that you receive the notice.
- How often you will be charged and the method of payment.
- Contact information for the program and instructions on how to cancel a membership.

Rent-To-Own Items

Vermont limits rent-to-own prices by limiting the markup on merchandise to 75% to 150%, depending on the item. Small electronics and appliances are limited to a 75% markup over cost, whereas larger electronics and other items may be marked up 100% over cost. Furniture can be marked up 150% (cost plus 150% of cost). The seller must disclose all charges, the additional cost of rent to own, the number and amount of payments, and the total price.

Rent-to-own companies must also state whether the item is new or used. Used items must be priced 10% lower than the same item sold as new. The seller must disclose existing damage, when the seller acquired the item, and the number of previous customers who had the merchandise.

Consumers have rights even when they default. If the item is returned, there is a six-month window to reinstate the agreement.

Third-Party Telephone Billing

Vermont law prohibits “cramming.” Cramming is when an unrelated company puts charges on your telephone bill. Here are the only exceptions:

- Services regulated by the Vermont Public Service Board;
- Direct-dial services that you initiate (such as a 900 number); and
- Operator-assisted telephone calls, collect calls, or telephone calls to or from correctional center inmates.

Illegal Lending

Payday loans are illegal in Vermont. Interest on other loans is capped at 24% annually. The exception is credit cards, which can exceed 24% because they are usually subject to federal law. Lenders in Vermont must be licensed and must follow all other requirements included in Vermont statutes. Debt collectors cannot attempt to collect debts that are a result of an illegal loan.

Addressing Consumer Fraud

The Vermont Attorney General’s Office’s Consumer Protection Unit investigates and prosecutes businesses that violate Vermont’s consumer protection laws. Contact CAP for more information on any consumer topic. Contact CAP if you want to file a complaint about a business or want complaint histories for a business. Help others by reporting attempted scams to CAP.

You also have rights to file your own legal action. Vermont’s consumer fraud law allows individuals to recover attorney’s fees if they win a consumer fraud suit.

Credit Transactions

Credit Discrimination

Both federal and state law prohibit banks and other lending institutions from treating any applicant differently based on their race, color, religion, national origin, sex or marital status, age, or because the applicant receives public assistance. Additionally, Vermont law prohibits discrimination because of sexual orientation.

Debt Collection Practices

A creditor or debt collection agency acting on a creditor’s behalf may contact you when you fail to pay a debt such as your credit card, your home mortgage or a personal loan. However, when collecting a debt, your creditor, an attorney or a third-party collection agency cannot engage in certain abusive debt collection practices. Debt collectors may:

- Not misrepresent who they are or who they work for;
- Not falsely imply the amount of the debt or any legal action that can be taken;
- Only contact you between 8:00 a.m. and 9:00 p.m.;
- Not continually call your phone or harass you. During a phone call, a debt collector must identify him/herself and may not threaten violence against you or your family or use profane language;
- Only contact you at work if he or she cannot reach you at home in between 8:00 a.m. and 9:00 p.m.;
- Not call you more than one time a week at work and must stop calling you at work if you tell the debt collector not to contact you at work.

You have additional rights if your debt is being collected by a debt collection agency or an attorney who collects debts on a regular basis. These rights include:

- You must receive written notice containing the amount of the debt, the name of the creditor, and what action you may take if you do not believe you owe the money;
- You can stop future contact by writing a letter telling the debt collection agency or attorney to stop. Once an agency receives your letter, it may not contact you again except to say there will be no further contact or to notify you if the agency or the creditor intends to take some specific action, such as filing a lawsuit against you. You should send the letter by certified mail, return receipt requested, so that you have evidence that you sent the letter and that it was received by the agency.

A collector may not contact you if, within 30 days after you are first contacted, you send the collection agency a letter stating you do not owe the money. However, a collector can renew collection activities if you are sent proof of the debt.

If you receive a suspicious debt collections call:

- Always ask the debt collector to provide you with written documentation that substantiates the debt they are trying to collect; and

Contact the original creditor and ask whether the debt has been paid. If it has not, confirm that the debt was sold to a third-party collector and verify the identity of the debt collector.

Credit Bureaus and Consumer Reporting Agencies

Federal and state laws ensure the accuracy and privacy of information kept by credit bureaus and consumer reporting agencies. These laws provide greater protection and control to you over the information credit bureaus and consumer reporting agencies are distributing about you to creditors, insurance companies, and employers.

The federal **Fair Credit Reporting Act** provides that:

- You must be told if information in your credit report has been used to take adverse

action against you and the name, address, and phone number of the credit reporting agency that provided the information.

- You have the right to request and obtain all the information about you in the files of a consumer reporting agency. **All consumers are entitled to a free copy of their credit report, at their request, once every 12 months from each of the nationwide consumer reporting companies — Equifax, Experian, and TransUnion.** AnnualCreditReport.com is a centralized service for consumers to request free annual credit reports.
- You have the right to dispute incomplete or inaccurate information in your file. Your claim must be investigated unless it is frivolous.
- Consumer reporting agencies must correct or delete inaccurate, incomplete or unverifiable information – usually within 30 days.
- Consumer reporting agencies cannot report most negative information that is more than seven years old and bankruptcy information that is over 10 years old.
- Identity theft victims and active duty military personnel have additional rights.

Vermont law also allows you to receive one free copy of your credit report every 12 months from each credit reporting agency. The credit report must include your credit score; the names of people requesting information in your credit report during the prior 12-month period and the date of each request; and a clear explanation of the information.

For security reasons, you will need to verify your identity in order to obtain your free credit report. You will be required to provide your name, date of birth, Social Security number, and current address. If you have not lived at your current address for at least two years, you will need to provide your previous address as well.

Relevant Laws

Vermont:

Vermont Debt Adjusters Act, 8 V.S.A. ch. 133

Charitable Solicitations, 9 V.S.A. §2471

Consumer Protection Act, 9 V.S.A. §2451, et seq.

Lemon Law (New Motor Vehicle Arbitration Act), 9 V.S.A. §4170, et seq.

Vermont Attorney General Consumer Protection Rules 104, 109, 112, 111, & 113

Federal:

Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C.A. §6101, et seq.

Equal Credit Opportunity Act, 15 U.S.C.A. §1691, et seq.

Fair Credit Reporting Act, 15 U.S.C.A. §1681, et seq.

The Fair and Accurate Credit Transactions Act (FACT Act)

Federal Trade Commission Rules

Telemarketing Sales Rule – 16 C.F.R. pt. 310

Updated 11/9/17 - LT

This chapter includes information about:

- Marriage
- Civil Unions
- Legal Separation
- Divorce
- Establishing Parentage
- Child Support
- Child Support Enforcement
- Enforcement of a Court Order
- Changing or Modifying Court Orders
- Separation of Unmarried Couples and Couples Not Joined by Civil Union
- Child Snatching

“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.

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. You cannot marry your parent, grandparent, child, grandchild, sibling, niece or nephew, aunt or uncle. You do not need to have a blood test before getting married.

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.

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 (the application allows for the choice between bride, groom, or spouse);
- 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 person 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. A “temporary officiate” may solemnize a marriage if authorized by the Secretary of State. The individual must be at least 18 years old and complete an application within 10 days prior to the ceremony;

- you do not need to have anyone other than the person performing the marriage sign or “witness” the marriage license.
- 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.

If you are participating in the confidential address program and applying for a marriage license, you can notify the town to keep your address confidential. This means the town clerk will not disclose your address on any public records.

In 2015, the Supreme Court of the United States decided that marriage was a fundamental right protected under Constitution. Furthermore, the Court decided that same-sex couples have the same right as opposite-sex couples to marriage. Because of the decision, no state can deny legal marriage to same-sex couples. However, 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.

Civil Unions

A civil union means two eligible people have established a relationship under Vermont law and may receive provided benefits and protections. In 2000, Vermont became the first state that 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, medical 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 be entered into by written agreement or by court order, and uses the same process as a divorce. It can stay in effect for a limited or an unlimited time.

Since it is not a divorce, you cannot remarry. In almost every other respect, however, a legal separation is the same as a divorce, providing division of property and arrangements for how you will care for and provide for your children.

Divorce

The term “divorce” refers to the dissolution of a marriage or civil union.

Divorce can be one of the most difficult legal problems that people 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 contested.**

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 7%) are cases where the parties cannot reach agreement 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 when the children will see each parent;
- how the parents will make decisions for the children and how they will be supported;
- how the marital property will be divided;
- who will be responsible for paying outstanding bills;
- whether there will be any spousal maintenance (alimony).

Vermont is a no-fault divorce state. 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). 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 marital relations. 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). When filing using this ground for divorce, you do not need to demonstrate any showing of fault by either party. **You can file for and get divorced even if your spouse does not want to.** Your spouse *cannot* prevent your divorce action from moving forward because they do not want a divorce. If one party denies under oath living apart

for six months, the court will consider factors such as the circumstances for filing for divorce and the possibility of reconciliation. After considering the factors, the court may schedule a hearing for a later date or make a decision based on the factors.

Although used infrequently, the **other grounds for divorce** in Vermont are: intolerable severity; nonsupport; imprisonment for three or more years; adultery; permanent mental incapacity; 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 and a year for a divorce to be granted. 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.) 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.

Each county has its own Superior Court and the process in each may be somewhat different. Depending on the county, various stages of your divorce may be in front of a **Family Division Magistrate** (especially if you and your spouse have children), a **Superior Court Judge**, or, in rarer cases, an **Assistant (“Side”) Judge**. It is common at an evidentiary hearing for a **Superior Court Judge** and two **Assistant Judges** to be present. The roll of the Assistant Judges is fact-finding.

Hiring a Lawyer, Representing Yourself or Going to a Mediator

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.

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 or debts to be divided or you believe your spouse may be hiding assets;
- 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 and is representing your spouse's interests. If you find your spouse's lawyer intimidating, you may request that communication occur in writing to give yourself time to consider and thoughtfully respond.

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 property, including items such as furniture, vehicles, financial and retirement accounts, 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 will order 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 rights and 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, 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.)

You can decide to hire an attorney at any stage in the process, and you have the right to fire your attorney at any time as well.

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 create a mutually acceptable divorce agreement. Mediators help parties communicate in an informal and confidential setting.

When choosing a mediator, make sure they do the following:

- inform you of their mediation training and experience;
- explain the mediation process; and
- give you an estimate of the time and fees involved.

If mediation is successful, it is recommended that you have the written agreement reviewed by a lawyer before sending it to the court. A lawyer can review your agreement to ensure it covers all of the necessary topics, protects your rights, that the language reflects your intentions, and can help spot any red flags, or potential areas of concern or contention. The Vermont Superior Court, Family Division offers a list of mediators in each county that participate in an income-based sliding fee scale program.

If you **decide to hire an attorney**, you should talk to several until you find one you like and trust. You may consider researching lawyers online. Choosing a lawyer is highly personal. (See VCW’s Resource Directory – Legal section.) 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

Going through the Relief from Abuse (RFA) process does not result in a divorce. A divorce must be filed to terminate the marriage. See the Violence Against Women and Children chapter of *The Legal Rights of Women in Vermont* for information about how to obtain a RFA Order.) The court may combine your abuse case with your divorce case.

If you have already received a **RFA Order** you should inform the court of that at the time you, or your spouse, begin the divorce process. Your RFA Order will stay in effect even after you begin your divorce. The order can be extended beyond the date the order was originally supposed to expire. This can be done by **filing a motion to extend before the current order expires** (typically one to two months before) 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.**

If you have already started your divorce case and need to be protected from abuse, you can either go to court for a RFA 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 RFA Order or Temporary Order) so they know which order is the most current and which should be enforced.

Divorce and Active Military Service

The law protects a spouse on active duty in the military. 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. Sometimes hearings are postponed or suspended until the service member can participate. 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, 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.

A law called the **Military Parents Rights Act** addresses parental rights and responsibilities and parent-child contact when a military parent is deployed and has active or pending court orders related to custody or visitation. Reservists and members of the National Guard are also protected by this law while on active duty. The 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.**

Divorce Filings and the Divorce Process

In order to get divorced in Vermont, there are a number of forms that must be filed and issues that must be decided. You and your spouse can submit written agreements about any or all of the issues in your divorce at any time. If you reach a written agreement about any terms in your divorce, you should submit the agreement signed by both you and your spouse to the Court promptly, as it may eliminate the need to conduct scheduled hearings. You should think carefully about the short and long term impacts of any agreement you make with your spouse; it can be difficult to undo a written agreement. You may want to consult with a lawyer before you sign an agreement.

If you and your spouse reach written agreement (stipulation) on all terms in your divorce and file it *at the time of filing your initial complaint for divorce*, you are eligible to file at a significantly reduced cost. You can go through this stipulated divorce 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. Most of the documents/forms referred to below can be obtained from your local Superior Court or online. (See VCW’s Resource Directory – Family Division and Office of Child Support section.)

The following will give you a general idea of the process for a divorce. Every step listed below may not happen in every case. If you and your spouse file a written stipulation or agreement on one or more of the outstanding issues, steps may be eliminated.

1) **File a Summons, Complaint, and Notice of Appearance for divorce** (along with an Information Sheet, Health Department Record of Divorce, 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.** If you have difficulty paying the filing fee, you can complete and file an application to waive filing fees and service costs.

If you and your spouse have minor children together, you will also need to file an Affidavit of Income and Assets and the first page of a Child Support Order

2) **“Serve” (deliver) the initial divorce filings** (and some additional documents) **on your spouse.** In some divorces, this is done by having the person who receives the documents sign a form agreeing to “accept service” of them, either in person or by mail. Otherwise, the papers need to be served by a sheriff. File proof that your spouse has been served with the Court, such as the signed Acceptance of Service form, or confirmation from the post office like a signed, certified, return receipt requested slip. If a sheriff cannot serve process on your spouse, you may need to petition the Court to allow you to meet this requirement by some other approved method.

If you and your spouse have minor children together, the Court will serve your spouse by mail.

3) **The Court will usually issue an Interim Domestic Order** which prohibits selling marital property; spending marital funds on expenses other than routine living expense; preventing access to bank accounts or financial assets; and canceling insurance policies or removing coverage.

If you and your spouse have minor children together, this order will also prohibit either parent from removing the children from the state for extended periods. This order remains in effect until modified by the court. If your spouse does not follow this order, you can file a motion to enforce.

4) **Your spouse files their answer to your complaint with the Court. This may include a counterclaim for divorce, parental rights and responsibilities, child support, and/or spousal maintenance.** You should receive a copy from your spouse, or, if you have minor children together, from the Court.

5) **Attend the initial Case Manager Conference (CMC)** with your spouse. The Court will give both you and your spouse a “Notice of Hearing” for each scheduled court hearing and conference in your divorce case. It is not necessary for you to bring evidence or witnesses about your case to a Case Manager Conference, except for specific financial documents listed at the bottom of your Notice of Hearing.

The Case Manager is not a judge, but is employed by the court to work with families that are dissolving at the initial stages of their case. Their primary role is see if you and your spouse are in agreement about any issues in your divorce, and to help write and file an agreement. The Case Manager will also assess what issues may need to be resolved by a Court on a temporary basis, and can ask the Clerk to schedule necessary hearings. The Case Manager may also explain relevant parts of the law and the divorce process to you and your spouse during the meeting. The Case Manager cannot issue or approve Court orders. If you and your spouse do reach an agreement but you would like to think about it for a few days, you have a right to do so. **If you and your spouse do not agree about any issues in your case, no order will be issued at the Case Manager Conference.**

If you do not feel it is safe to be in the same room with your spouse for the case manager’s conference, you can call and speak to the case manager about your concerns and ask for alternative arrangements in advance.

6) **Attend the Pro Se Education Class**, a free one-hour class offered by the court. The classes are conducted by an attorney who regularly practices in the Family Court. The purpose is to educate litigants about the following: your rights and responsibilities while representing yourself, courtroom etiquette and procedures, and services available through outside agencies to help with problems affecting families.

7) *If you and your spouse have minor children together, you will also need to **attend the Coping with Separation and Divorce Seminar** offered through the UVM*

Extension. This is a four-hour parenting seminar required by the Court for parents of minor children going through divorce or parentage proceedings. There is an application for a reduced fee available on the court website if you have trouble paying the registration fee.

8) **Attend any scheduled 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. You may need to file a written motion with the Court to ask that a hearing be scheduled. A temporary hearing is an evidentiary hearing before a judge. You will be expected to provide testimony and other evidence such as documents, printed photographs, or witnesses to support your position.

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**”);
- who will have temporary possession of **personal property** (such as cars, tools, clothing, furniture, etc.);
- who will have temporary responsibility **for paying debts** such as the mortgage, taxes and insurance on the home, credit card bills, and other bills

...and if you and your spouse have minor children together:

- 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.

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.

9) **Attend one or more Status Conferences.** A Status Conference is a short hearing, typically 15 or 30 minutes before the Judge. The purpose of a Status Conference is for the Court to understand how things are going for you, your spouse, and your children, whether you think you may be able to reach an agreement in your divorce, and how much time a final hearing is likely to take. The Judge may ask what issues you believe you will need the Court to decide, how many witnesses you will present, and when you will be prepared for a final hearing.

10) **Attend one or more Final Hearings.** If you cannot reach a final agreement with your spouse, the Court will schedule one or more “contested final hearings” before the Judge to resolve any outstanding issues in your divorce.

These may include the division of property and debts, spousal maintenance (alimony), *and if you and your spouse have minor children together*, parental rights and responsibilities (custody), parent child contact (visitation), child support, and (rarely),

grandparents' visitation. **See below for a more detailed explanation of each of these matters and the factors the Court considers in making decisions.** At a contested hearing, you will be expected to give your own testimony, to present other evidence such as witnesses and documents supporting your position, and you will have the opportunity to ask your spouse questions. The Court may issue an order from the bench on the date of the hearing or may take the matter under advisement for weeks.

If you and your spouse have reached a final agreement, attend the “uncontested final hearing”. 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.

If neither you or your spouse is the subject of a relief from abuse order, and if you and your spouse both agree, you can file a stipulation and motion to waive the final hearing.

11) The Judge will then sign a **Final Divorce Order**. **At an uncontested final hearing, this usually happens** at the end of the hearing. In most cases this will be the same as the final agreement you filed with the court. **If you had a contested final hearing**, the court will serve you and your spouse with the final divorce order. In some cases, this could happen the day of your hearing, but more commonly the order will arrive in the mail weeks after your last final hearing. **You are both required to follow the terms of this final order.**

12) **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. **If your final hearing is waived**, the divorce order will need to be served on both parties.

13) **If you receive an unfavorable ruling after a contested hearing, the deadline for filing an appeal is 30 days after the clerk enters the order on the docket.** If you decide to file an appeal, you would file with the Family Court clerk. You should consider hiring a lawyer to help you go forward with an appeal. Although the filing fee for an appeal can be waived, other costs cannot. Be aware that appeals are usually costly and time consuming.

14) **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 or waiving the time are that you intend to remarry or you want to file taxes as a single person at the end of the year.

Factors the Court Considers in Divorce Cases

During the course of your divorce, the following matters may need to be resolved. There are statutes that tell judges what factors they may consider and are prohibited from considering when making these decisions. The factors the Court considers are the same for temporary and final orders, although the Court is likely to spend more time hearing evidence before issuing a final order than a temporary one.

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. **The biggest issue usually involves valuing your marital home and any other major assets, including businesses and pension plans.**

The court, by law, has to look at several factors to determine how the property should be divided fairly. 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.)

It does not matter who has title to the property or who paid for it. Once the court has issued a final divorce order, the property division cannot be changed.

Debts

The division of debts is part of the total property settlement. Such debts can include bank and personal loans, credit cards, medical bills, utility bills, etc. The court will divide them fairly, taking into consideration who incurred the debt and for what purpose. 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).

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 when a spouse has been dependent on the other spouse for financial support.** 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. **Either spouse is eligible to receive such maintenance, if it is appropriate.**

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. 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. Once spousal maintenance is ordered by the court, the amount and length of time it is ordered may be changed later if there is a substantial, unanticipated change of circumstances.

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, religious affiliation and activities, 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. If you and your spouse agree, you can share parental rights and responsibilities for your children.

It is possible for parents to share legal rights and responsibilities and have one parent have sole physical rights and responsibilities or vice-a-versa.

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. The court discourages parents from having the judge make parenting decisions for them. It is common for parents to agree to share parental rights and responsibilities, particularly when parents are able to discuss and make decisions jointly regarding their children.

However, 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. **If you and your spouse do not agree to, the Court cannot order you to share parental rights and responsibilities.**

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;
- 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; and
- 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 or When the Children Have Moved from One State to Another

Vermont has adopted the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). At the time of this writing, only Massachusetts and Puerto Rico have 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 most recently 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.)** If the child has not lived in any state for at least six months, establishing a “home state” is more complex.

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.

Multi-state custodial issues can be difficult and complex. 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.

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 by the court to represent that child.**

Parent/Child Contact (“Visitation”)

Visitation is a term used to describe parent and child contact. Even if one parent is given the sole parental rights and responsibilities for the children, the other parent will be given the right to have parent-child contact. In contested cases, the court will also decide the extent and frequency of contact that a child will have with each parent.

In Vermont, the Court presumes 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. 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. 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. The court may prohibit overnight visits. Where abuse has been present, the court can 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.

Refusal to comply or interference with court ordered visitation may be grounds to modify the custody order, and can be a factor in determining what custody arrangement is in the best interests of the children in the future. If you have a reason to believe that an upcoming court ordered visit may be dangerous for your child, you have a right to file a motion with the court asking them to suspend visitation until a hearing can be held about your concerns.

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.

One parent cannot prevent the other parent from moving out of state. If one parent decides to relocate, the parenting arrangements, including parental rights and responsibilities, may have to be renegotiated to ensure the new arrangement is in the best interests of the children and the children still have the opportunity to spend time with both parents

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 as early as possible during an ongoing custody 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.

Establishing Parentage

If the parents of a child are not married or in a civil union, the State of Vermont only recognizes the parental rights of the mother, and does not recognize the parentage of the father until it is legally established by a parentage action. This can be done by filing an action in the Family Division of the Superior Court.

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 in the same manner as in a divorce proceeding. See above section on Divorce and following section on Child Support.

Child Support

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

The parent receiving child support can spend child support income on any living expenses, including rent, food, clothing, utility bills, or transportation expenses. There is no requirement that child support income be spent directly on items for the children or school or activity expenses.

Initial Child Support Order

Child support is typically determined during the separation or divorce process, or as part of a parentage action. A parental rights and responsibilities and parent child contact order is required before you can obtain a support order.

Once an order regarding parental rights and responsibilities and parent child contact is issued, a child support hearing is scheduled. This is either a hearing with a Magistrate Judge 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.

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. You can do this by filing required paperwork including **a separate Affidavit of Income and Assets** from each parent, a completed **Child Support Order** signed by both parents, and accompanied by the **child support guideline results** for your family. The Office of Child Support can help you with the guideline calculations, or you can download the Child Support Calculator from the Vermont Office of Child Support website which utilizes the child support guidelines, enter the indicated information, and print the results. The printed calculation should be included with your child support agreement to help demonstrate to the Court that the agreement you reached is fair to your children.

If you and the other parent 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 they finish high school, whichever event occurs later. 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.

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. Which parent is responsible for the medical and health support of the children will also be included in the order.

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 cannot reach an agreement regarding child support, the amount owed will be decided by the Magistrate Judge. 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 should file their four most recent pay stubs, or if the parent is self-employed, the business records of income and expenses.
3. Each parent should file their income tax returns for the past two years.
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 Guidelines

Vermont law has established **child support guidelines** to calculate the amount of child support to be paid by the non-custodial parent. 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. 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. (See VCW’s Resource Directory – Family Division and Office of Child Support section.)

The guidelines include a **self-support reserve**. This is an amount that the paying parent is allowed for his or her own 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 their 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. This is done by calculating the percentage of overnights the children spend with each parent per year, based on the existing court order.

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.

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.

Child Support 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. Under the Vermont withholding law, child support - just like taxes - is deducted automatically from person's paycheck. 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.

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.

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. 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.

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 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.

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.

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. 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.** 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.

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 (arrears) that has not been paid. This is considered a non-dischargeable debt.

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.**

It is also unlikely that the bankruptcy will interfere with a spouse’s obligation to pay any alimony or maintenance. If the person filing for bankruptcy owes 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 loan original signed by both of you, including such things as credit card payments and mortgages, and this obligation is discharged (canceled) by the Bankruptcy Court, **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 written **Motion 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 increase the amount of wage withholding to pay owed child support.
- When payments are 3 months overdue, OCS can intercept property such as bank accounts, by issuing a lien or trustee process 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--Motion to Enforce

If you choose to go to court to enforce a child support order, you will need to file a written **Motion to Enforce**. In this motion 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 Motion 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. 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.
- 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.
- The court can order the delinquent parent to pay the enforcing 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 delinquent parent has a **professional license** (ex. medical professions, accountants, cosmetologists, tattoo artists, etc.), **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 they are 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, as defined in the child support guidelines. It is still the delinquent parent's responsibility to repay the support when his or her income is above the self-support reserve. The court may make an exception to this rule if the parent filing the petition presents a good reason why payment should be ordered.

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**. Contempt is the last resort to make a parent comply with an order. 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.

Interstate Child Support Orders

Every U.S. state, including Vermont, has adopted the federal Uniform Interstate Family Support Act (UIFSA). The UIFSA provides guidance regarding which state has jurisdiction to issue initial child support orders, and says that state will retain exclusive jurisdiction to modify that child support order for the remainder of the obligation, unless both parties have moved out of the state that issued the original order.

UIFSA provides for interstate wage withholding by allowing enforcement a support order in another jurisdiction if the noncustodial parent's employer is known. Wage withholding can be initiated in one state and sent directly to an employer in another without involving the child support agency in that state.

Enforcement of a Court Order

If the other party is not following a court order you can file a Petition or Motion to Enforce to ask the court to enforce the order, accompanied by an affidavit. Your spouse must be served with your petition before an Enforcement Hearing is held. At the hearing, you will need to explain what part of the order has not been followed and why, and provide any available evidence supporting your position. If the issue cannot be resolved, the judge will order enforcement. One form of enforcement is contempt. Contempt is willful disobedience of a court order. If the judge determines you or your spouse has willfully disobeyed the divorce order and has the capacity to comply, the judge may order jail until compliance.

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. If you and your former spouse agree about the changes, you can write, sign, and file a new agreement for approval by the judge. If you do not agree about the changes, you must file a motion to modify the prior court order.

Modification of Parental Rights and Responsibilities and Parent-Child Contact

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**. You would do this by filing a **Motion to Modify** and an accompanying **Affidavit**. 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.

Reasons for seeking a modification of parental rights and responsibilities or parent child contact may include:

- the relocation of either party;
- reports made to the Department of Children and Families;
- child abuse, endangerment, or neglect;
- conviction of a crime of one party;
- a pattern of missing scheduled parent child contact;
- a pattern of one party denying court ordered parent child contact to the other party;

Your written motion should explain what real, substantial, and unanticipated change of circumstances has occurred since the last court order was issued, what change you are

asking for, and why that is best for your children. The court will expect you to be able to provide evidence such as testimony, photographs, and documents to support the claims you make in your motion.

Modification of Child Support

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. If it has been less than three years since your last modification, you will need to show 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.

Note that motions to modify must be done in the state in which the original orders were made, unless neither parents or the child still reside there. (Please see the Child Custody When One Parent is in Another State or When the Children Have Moved from One State to Another section or the earlier in this chapter.)

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 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.**

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. §5160 - 5165 (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. Chapter 18

Legal Separation, 15 V.S.A. §§555, 753

Marriage, 15 V.S.A. Chapter 1

Marriage Records and Licenses, 18 V.S.A. Chapter 105

Military Parents’ Rights, 15 V.S.A. § 681, et seq.

Office of Child Support, 33 V.S.A. § Chapter 41

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. Chapter 20

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

Obergefell v. Hodges, 2015 (that the right to marry is a fundamental and inherent right and the states must recognize lawful same-sex marriages performed in other states)

Updated 8/5/16 HM

This chapter includes information about:

- Discrimination, Harassment, Hazing and Bullying
- No Child Left Behind Act
- Students With Disabilities
- Education of Pregnant and Parenting Students
- Grants for Students Formerly in DCF Custody

Women need to be aware of their rights and their children's rights regarding discrimination, harassment, bullying, hazing, the rights of students with disabilities as well as the rights of pregnant and parenting students in schools and other educational institutions. It is the policy of the State of Vermont that all Vermont educational institutions provide safe, orderly, civil, and positive learning environments. No Vermont student should feel threatened or be discriminated against while enrolled in a Vermont school.

Discrimination, Harassment, Hazing and Bullying

Discrimination

Students have the right to an education in an environment that is free from discrimination. **Under the federal law, Title IX of the Education Amendments of 1972, discrimination on the basis of sex is prohibited.** Title IX (Title nine) applies to all educational programs or activities that receive federal assistance, regardless of which part of the program or activity receives the federal assistance. Title IX also prohibits stereotyped or sex-biased athletics, course assignments and student counseling. The United States Supreme Court has also held that students cannot be discriminated against on the basis of gender under the 14th Amendment to the Constitution. This can include sex segregation in schools and classrooms.

Vermont law also prohibits sex discrimination in schools. This can be found in the public accommodations provisions of Vermont's Fair Housing and Public Accommodations Act. The definition of "a place of public accommodation" is written to specifically include "schools." **In addition to sex discrimination, Vermont law also prohibits discrimination against students on the basis of their race, color, religion, national origin, marital status, sexual orientation, gender identity, and disability.**

One of the few exceptions to the laws against sex discrimination in schools is for **single-sex sports teams**, but this usually applies only if there are equal opportunities for girls and boys to play the same sport. For example, if there is a boys' soccer team and a girls' soccer team, they can be separated by sex. If there is only one soccer team at the school generally, it must be open to both girls and boys.

If you believe a student or school employee or representative has engaged in discriminatory behavior towards you or your child, first contact your local school district. If your local school district fails to remedy the situation, you may contact the Vermont Human Rights Commission or the U.S.

Department of Education, Office of Civil Rights. The Vermont Partnership for Fairness and Diversity also helps victims, families and communities address issues of harassment and discrimination. (See VCW's Resource Directory - Education section.)

Harassment

Vermont's anti-harassment laws make it clear that **harassment of students on the basis of race, color, religion, national origin, marital status, sex, sexual orientation, gender identity or disability is unlawful**. It is possible that a student could suffer unlawful harassment by a teacher, administrator, school staff person, school bus driver, school contractor or another student.

Harassment means one or more incidents of: **verbal, written, visual, or physical conduct, including any incident conducted by electronic means**, based on or motivated by a student's or a student's family member's actual or perceived race, creed, color, national origin, marital status, sex, sexual orientation, gender identity, or disability that **has the purpose or effect of interfering with a student's educational performance or access to school resources or creating an intimidating, hostile, or offensive environment**.

Harassment of any type includes the use of epithets, stereotypes, slurs, comments, insults, derogatory remarks, gestures, threats, graffiti, display, or circulation of written or visual material, taunts on manner of speech, and negative references to customs related to any of these protected categories.

Types of Harassment

Sexual Harassment

Sexual harassment means conduct that includes unwelcome sexual advances, requests for sexual favors, or other verbal, written, visual or physical conduct of a sexual nature.

Additionally, one of two conditions must be present:

- submission to that conduct is made either explicitly or implicitly a term or condition of a student's education; (For example, when a teacher promises a higher grade in exchange for the performance of sexual favors) **or**
- submission to or rejection of such conduct by a student is used as a component of the basis for decisions affecting that student. (For example, when a student is rejected for a particular sports team because she has refused the sexual advances of the coach.)

Racial Harassment

Racial harassment is conduct that is directed at the characteristics of a student's or a student's family member's **actual or perceived** race or color.

Just as sexual harassment and discrimination of students is prohibited under Title IX of the federal law, harassment and discrimination on the basis of race, color and national origin is prohibited under federal Title VI of the Civil Rights Act of 1964. In 1994 the Office of Civil Rights for the U.S. Department of Education issued guidelines regarding how to appropriately recognize and deal with harassment of students based on race, color and national origin.

Other Forms of Harassment

Harassment that is not of sexual or racial nature is still prohibited. Other types of harassment include conduct directed at the characteristics of a student's or a student's family member's actual or perceived creed, national origin, marital status, sex, sexual orientation, gender identity, or disability.

Furthermore, harassment and discrimination of students on the basis of their disability is also prohibited under Section 504 of the federal Rehabilitation Act of 1973 and the Americans With Disabilities Act, Title III.

Hazing

Since 2000, "hazing" of students is against Vermont law and is subject to both civil and criminal penalties. **Hazing is committed when a student is subjected to some act in connection with pledging, being initiated into, affiliating with, holding office in, or maintaining membership in any organization affiliated with an educational institution if the act has the purpose or effect of endangering the mental or physical health of a student.** Endangering of mental or physical health can be humiliating, intimidating or demeaning the student. Hazing acts include soliciting, directing, aiding, failing to take reasonable measures to prevent or otherwise participating actively or passively in the above acts. The hazing acts are illegal even if the student consents.

Vermont law requires that each school board develop a policy to prevent hazing.

Addressing Discrimination, Harassment and Bullying

Educational institutions in Vermont are required to have harassment, bullying and hazing prevention policies. This includes public school and approved or recognized independent schools. Universities or post-secondary schools are required to have harassment and hazing prevention policies. You should receive a copy of the school's policy annually before the start of curricular and co-curricular activities for the year. A copy of the school's prevention

policies is frequently included in the parent/student handbook. The school's policy should identify by name the individuals at your child's school who are designated to receive complaints.

What to do if you or your child has been harassed:

Vermont law requires school harassment prevention policies to include a procedure that directs students, staff, parents and guardians how to report violations and file complaints. Once the school is notified of the misconduct, they are required to promptly investigate to determine if harassment occurred. The school is required to give both the alleged victim and alleged perpetrator (or to their parents or guardians, if minors) a copy of the discrimination policy. The school or university may impose disciplinary consequences upon students for misconduct.

If the harassment is directed at a student:

- 1. Follow the school's procedure to file a complaint.** School officials are required to investigate the complaint. School officials may make alternative dispute resolutions methods, such as mediation
- 2. Request an independent review.** If you are dissatisfied with the school's findings or response to the problem, you may contact the superintendent or headmaster of schools in writing to request an independent review by a neutral third party.
- 3. File a complaint** with the Vermont Human Rights Commission or the US Department of Education, Office of Civil Rights.
- 4. Consult a private attorney.**

If the harassment is directed at an adult it depends on whether the perpetrator is a student or another adult. If a student harasses an adult, contact the school. If an adult harasses another adult in the school setting, you must call the Attorney General's Office, Civil Rights Unit. This kind of complaint may be considered a part of private employment discrimination. (See the Employment chapter of *The Legal Rights of Women in Vermont*.)

Bullying

In 2004, Vermont passed **An Act Relating to Bullying Prevention Policies**. This act prohibits bullying in primary and secondary schools. Bullying is described as a form of dangerous and disrespectful behavior that will not be tolerated.

In 2011, this law was amended to include **bullying and harassment by electronic means such as cell phones or computers**, whether it happened during the school day, or after school hours, or at home.

Principals and superintendants were also given the right to suspend or expel a student who used electronic means to bully another student outside of the school day or not on

school property as long as it could be shown to **pose a clear and substantial interference with another student's right to access educational programs.**

Bullying is defined as any overt act or combination of acts, including an act conducted by electronic means, directed against a student by another student or group of students and which:

- is repeated over time;
- is intended to ridicule, humiliate, or intimidate the student; and
- occurs during the school day on school property, on a school bus, or at a school-sponsored activity, or before or after the school day on a school bus or at a school-sponsored activity; or
- does **not** occur during the school day on school property, on a school bus, or at a school-sponsored activity and can be shown to pose a clear and substantial interference with another student's right to access educational programs.

This prohibition should be in the school's handbook and should make students aware of the prohibition against bullying, the penalties for bullying and the procedures for reporting bullying. Schools are required to have a comprehensive plan for dealing with student misbehavior.

Under federal law, schools that have computers with internet access and are receiving internet services at a discounted rate must enforce a federal standard of internet safety. That includes student education on appropriate online behavior, such as social networking websites, chat rooms, and cyberbullying awareness and response.

School administrators are also required to notify the parent or guardian of a student who commits an act of bullying. If a student is under 18, the school is required to notify the parent or guardian of the student who is a victim of bullying.

If you or your child is being bullied:

Students may anonymously report acts of bullying to teacher and school administrators. Parents or guardians may file a written report of suspected bullying with the school. **Any teacher or other school staff who witness acts of bullying or receives student reports of bullying are required to notify school administrators.** School administrators are required to investigate any written reports filed and if a complaint is made orally, the complaint will be reduced to writing.

Bullying and Harassment by Electronic Means

Vermont criminal law also prohibits the use of the telephone or other electronic communications to terrify, intimidate, threaten, harass or annoy you or your children. **This is a criminal offense.** In addition to using the avenues described above to address the issue, you may also contact the police.

No Child Left Behind Act

The No Child Left Behind Act of 2001 requires that all public school students must achieve certain levels of achievement in reading and math. Schools that have not made adequate yearly progress (AYP) for three or more years are **required to offer additional services, such as tutoring outside the regular school day, to eligible students**. If you need information about service providers or to find out if you or your child is eligible, contact your local school or supervisory union/district office.

Students With Disabilities

The Individuals with Disabilities Education Act and Vermont's Special Education Rules, establish criteria to determine eligibility as a child with a disability. Such disability categories include, for example, autism spectrum disorders, traumatic brain injury and emotional disturbance. Children with attention deficit disorder (ADD) or attention deficit/hyperactivity disorder (ADHD) may qualify if the disorder adversely affects his or her educational performance. *Please note that this is only a very partial list of disabilities.*

If your child is under the age of three and you have a concern about your child's development or suspect a disability, you should contact the Children's Integrated Services Program (CIS) that is part of the Vermont Department for Children and Families (DCF). To find the CIS coordinator in your area, call 211.

Under federal and State law, **all children with a disability from 3 through 21 years of age are entitled to a free appropriate public education**. Each school district must ensure that the **same educational programs and extracurricular activities** are available to children receiving special education that are available to students without disabilities. In addition, federal and State law vest the parents of children with disabilities with a variety of procedural rights to ensure the provision of a free appropriate education.

School districts have an affirmative obligation to identify and evaluate children and youths suspected of having a disability. If you have a child between the ages of 3-21 that you, the school or a social service agency thinks may have a disability that qualifies her/him for special education services, you or the school may **request that your child receive a comprehensive special education evaluation**. If your child has never been evaluated, **your consent to the testing is required before the evaluation can take place**.

This evaluation will determine:

- whether your child has a disability;
- whether that disability negatively affects your child's performance at school in one or more of the basic skill areas; and
- whether your child needs specialized instruction to meet his or her needs.

If your child has never been evaluated, **your consent to the testing is required before the evaluation can take place**. The school's **Evaluation and Planning Team (EPT)** must develop a plan to evaluate your child, including information provided by you. **You are a member of the EPT and have the right to receive a copy and review the comprehensive evaluation report, as well as have it explained to you.** If you disagree with the results of the school's comprehensive evaluation you have the right to request an independent evaluation at the school's expense. If the evaluation finds that your child meets the three criteria listed above (often referred to as the "three gates)," your child will be entitled to receive **special education and related services**.

Special education services consist of specialized instruction designed to meet a child's unique educational needs, including extended school year services. Related services encompass a wide array of special services. These include but are not limited to including **counseling, individualized classes, occupational therapy, physical therapy, recreational programs, certain medical services, speech/language therapy, transportation, and residential programs**. Students who receive special education services must be re-evaluated at least every 3 years. A re-evaluation also is required if **you** or the school request it or if the school proposes a **significant change** in your child's program or placement.

Federal and state law require a school district to develop and implement an **Individualized Education Program (IEP) for your child** based on his or her unique, individual needs. Whenever the IEP team for your child meets, you have the right to be given advance written notice of the meeting.

Your child's IEP must include certain specific information. Included in an IEP are the details of the special programming your child is eligible to receive. This includes details such as:

- goal setting objectives;
- a detailed description of services to be provided;
- the reasons for those services;
- any accommodations to be made available to your child.

There are extensive guidelines about what needs to be included in your child's IEP. Your school is required to give you a copy of the **Parental Safeguards Notice (parental rights)** so that you know what your rights are in this process. It is important that you work closely with the special educator at your child's school to be sure all the specific information is included in your child's IEP and that your child's needs are being met.

Addressing Disagreements about Your Child's IEP

If you disagree with any aspect of your child's educational program or placement you can:

- request a meeting with your child's IEP team at the school;

- submit a written request for mediation to the Vermont Department of Education. Mediation of the problem can only occur if the school agrees to go to mediation;
- request a due process hearing by writing to the Commissioner of Education if you cannot work out your problems with the school through negotiation or mediation. You may want the help of a lawyer if you choose this option;
- appeal an unfavorable due process decision by filing a complaint in State or federal court.

If you disagree with the results of an evaluation, you can request that the school re-evaluate your child or request an independent evaluation. (These options may only be available in certain circumstances.)

If you have problems with how the school is generally dealing with your child, you can file an administrative complaint with the Vermont Department of Education and have the Commissioner of Education make a decision based on an investigation of your complaint.

If you disagree with the Commissioner's decision, you can ask the U.S. Department of Education to review the decision.

If you believe the school has not complied with the Individuals with Disabilities Act (IDEA) or the federal regulations governing special education, you can file an administrative complaint with the Vermont Agency of Education and have the Secretary of Education make a decision based on an investigation of your complaint.

Additional Rights

If an evaluation determines that **your child has a disability but is not eligible for special education, your child might still be eligible for some reasonable accommodations and certain services.** These rights are available under Section 504 of the federal Rehabilitation Act of 1973 and under the Americans with Disabilities Act, Title III. The school must inform parents of these rights, write a plan under Section 504 and provide reasonable accommodations and/or services for eligible students.

Education of Pregnant and Parenting Students

Both Vermont and federal law protect students who are pregnant or parenting from being discriminated against by their schools. Schools must provide **an opportunity for pregnant or parenting students to participate in and complete their public school education, and to do so without being subjected to discrimination.**

Vermont law defines a pregnant or parenting student as a legal student who is pregnant, or has given birth and has placed a child for adoption, or has experienced a miscarriage, if any of these has occurred within one year before the public or approved independent school or the approved education program receives a request for enrollment or attendance; or is the parent of a child. Vermont laws allow a pregnant or postpartum

student to attend any approved public school in Vermont or an adjacent state, an approved independent school in Vermont, or another educational program approved by the Vermont State Board of Education. The law also requires the state to pay the educational costs for a pregnant or postpartum student who wants to attend a state board-approved educational program in a 24-hour residential facility for up to eight months after the student has given birth. This can be extended if there is a plan for reintegrating the student into the community that is approved by the Vermont Secretary of Education.

Grants for Students Formerly in DCF Custody

Vermont law has established a financial aid grant program for students who were in the custody of the Department for Children and Families (DCF) for at least six months between the ages of 16 and 18 and who are now between the ages of 18-24 and enrolled in a degree program at a Vermont College.

These grants (up to \$3,000) are available only after individual and family contributions and other forms of grant and gift financial aid resources have been tapped. VSAC or college financial aid departments can help you or your student through the process.

Relevant Laws

Vermont:

Bullying, Harassment and Hazing laws: 16 V.S.A. §§ 11(a)(26) (32), (a)(30), (33)(A), 140b, 151-154, 164-166, 178, §570, §570a, §570b, §570f, §570i, §570j, 1161(a)(6)

Fair Housing and Public Accommodations Act, 9 V.S.A. §§ 4501, 4502

Disturbing the Peace by Use of Telephone or Other Electronic Communications, 13 V.S.A. § 1027(a)

Pregnant students 16 V.S.A. § 1073

Special Education Act, 16 V.S.A. § 2941, et seq.

State Board of Education Manual of Rules and Practices, Rules 1250, 1251, 1252, 2360-2369

Grants for students formerly in DCF custody, 16 V.S.A. § 2845

Federal:

Americans with Disabilities Act, Title III, 42 U.S.C.A. §12101, et seq.

Federal regulations for IDEA, 34 CFR Part 300

Individuals with Disabilities Education Act (IDEA), 20 U.S.C.A. §1400, et seq.

Individuals with Disabilities Education Improvement Act of 2004

Section 504 of the Rehabilitation Act of 1973, 29 U.S.C.A. §794, et seq.

Title IX of the Education Amendments Act of 1972, 20 U.S.C.A. §1681, et seq.

Title VI of the Civil Rights Act of 1964, 42 U.S.C.A. §2000d

No Child Left Behind Act of 2001, 20 U.S.C.A. § 6301, et seq.

47 USC §254(h)(5)

Updated 7/13/16 LT

This chapter includes information about:

- Wages
- Flexible Working Arrangements
- Parental, Medical, Earned Sick Leave, and Other Types of Work Leave
- Workplace Health and Hygiene
- Drug Testing
- Unemployment Compensation
- Workers' Compensation
- Discrimination and Harassment
 - Sex or Gender Discrimination
 - Questions Employers May Ask
 - Pay Discrimination
 - Sexual Harassment
 - Pregnancy Discrimination
 - Nursing Mothers
 - Other Forms of Employment Discrimination
 - Disability
 - Reasonable Accommodation
 - Retaliation and Whistleblower Protection
 - Polygraph Protection
- Labor Trafficking

Workers have many state and federal legal rights that are relevant to various stages in employment. These include discrimination, harassment, parental and family leave, earned sick time, pregnancy and breastfeeding, drug testing, minimum wage, overtime, military and National Guard duty, unemployment compensation, workers' compensation, labor trafficking as well as others.

In general, Vermont law applies to more employers than federal law does. If you suspect discrimination in the workplace, contact the Civil Rights Division of the Vermont Attorney General's Office. If you are a state employee, contact the Vermont Human Rights Commission. (See VCW's Resource Directory – Employment section for contact information.)

Wages

Minimum Wage

The Federal Fair Labor Standards Act (FLSA), and the Vermont Minimum Wage Act, set the minimum hourly wage rates for all “covered employees.” Covered employees are all individuals employed or permitted to work by an employer except the following: casual baby sitters and companions for the aged and infirm;

executive, administrative, and professional employees; outside sales people; employees of certain small, local retail or service establishments; and some agricultural workers.

Tipped Minimum Wage

If you work in a hotel, motel, tourist place or restaurant and customarily and regularly receive more than \$120 per month in tips for direct and personal customer service you may be considered a tipped employee.

Examples of tipped employees include wait staff, bartenders, housekeepers, counter servers and bellhops.

The basic hourly wage for tipped employees in Vermont for 2017 is \$5.00. The tipped worker's total earnings from wages and tips during a pay period must equal or be larger than the minimum wage (\$10.00 in 2017). If the combined amount of the basic wage and tips does not meet that requirement, the employer must make up the difference.

Other Wage Regulations

Annual increases in both the state minimum and tipped minimum wage rate are based on increases in the August Consumer Price Index (CPI) or five percent, whichever is smaller. Vermont law does not allow the minimum wage to go down.

The minimum hourly rate for all covered employees for 2017 is 10.00. The wage will increase to \$10.50, effective 01/01/2018. You should check with the Vermont Department of Labor and Industry to find out if the state or federal rates have been changed by the time you consult this guide.

Under certain conditions, lower rates may be paid to learners, workers with disabilities, and students. A learning wage of 85% of minimum wage may be paid for a total of 240 hours only and the person must be 20 years old or younger. This does not include the hotel, motel, tourist place, or restaurant industry. Only retail, wholesale, and service establishments are covered.

Both federal and state laws permit lodging, board or other facilities provided by an employer to be considered as a part of wages.

Overtime Pay

Many covered workers are entitled to one and a half times their regular rate of pay when they work more than 40 hours per week.

Vermont law exempts from this overtime requirement employees of:

- retail or service establishments;
- hotels, motels or restaurants;
- the state and political subdivisions of the state;

- certain amusement or recreational establishments;
- certain employees engaged in transportation.

Your employer must pay you overtime wages for any time over 40 hours in a work week and cannot require you to take compensatory time or time off at a later time instead.

If your 40 hours includes working on the weekend, this “weekend work” is not entitled to overtime pay. Neither federal nor state law requires time-and-a-half pay for weekends or holiday work or, generally, for daily overtime, if these are part of your basic 40 hours.

Wage Supplements/Benefits

An employer is not required to provide you with paid or unpaid holidays (such as Memorial Day or Thanksgiving), paid or unpaid sick leave (except as provided by state and federal parental and family leave laws), paid or unpaid vacation time or severance pay when you leave the business. However, if your employer has given you a written agreement in the form of an employee handbook, memorandum, or correspondence, etc., providing for vacation time, sick leave, holidays and/or severance pay, then the employer must give you those benefits.

In the case where benefits and/or wage supplements are offered in a collective bargaining agreement (union contract), you should contact your union representative.

If you have concerns about unpaid retirement or profit sharing plans, you should contact the Employee Benefits Security Administration Division of the U.S. Department of Labor.

Termination and Severance Pay

Vermont is considered an “**employment at will**” state. **You can be terminated from your job for any reason as long as you are over 18 and the termination was not due to your being a member of a “protected class” as described in the discrimination section of this chapter, e.g. race, color, national origin, religion, sex, age or mental or physical disability.**

It is also unlawful to retaliate or discriminate against employees or applicants that have alleged employment discrimination.

Vermont law also prohibits discrimination based on sexual orientation, HIV status, and place of birth. If you feel you have been discharged due to discrimination, you should contact the Vermont Attorney General's office, Civil Rights Division.

As noted in the previous section, the law does not require discharge notices or severance pay (pay given in place of notice). However, if your Vermont employer has offered vacation, sick, or severance pay to you, in writing, Vermont law will help you receive these “wage supplements.”

Addressing Violations of Minimum Wage and Overtime Law

For help with addressing violations of minimum wage and overtime law violations, you can:

- consult with a private attorney;
- contact the Vermont Department of Labor, Wage and Hour Division;
- contact the U.S. Department of Labor, Wage and Hour Division.

For contact information and other resources, see VCW's Resource Directory – Employment section.

Flexible Working Arrangements

Vermont employees have the right to request flexible working arrangements and employers must discuss and consider these requests.

The law defines flexible working arrangements as “intermediate or long-term changes in the employee’s regular working arrangements, including changes in the number of days or hours worked, changes in the time the employee arrives at or departs from work, work from home, or job-sharing.” This law applies to all Vermont employees and gives them the right to request a flexible working arrangement for any reason and requires employers to discuss and consider such requests at least twice per calendar year.

The law does not change existing legal rights of employers and employees to create, terminate, or modify flexible working arrangements. Instead, it provides the framework for meaningful dialogue about whether such arrangements would work for both parties. Importantly, the law also protects employees seeking flexible working arrangements from retaliation or discrimination.

This law doesn’t apply to other forms of leave that may already be required by Vermont or federal law, such as parental or family leave, accommodations for disabilities, or workers’ compensation injuries. The law does not diminish rights set forth in labor contracts. It also doesn’t apply to routine shift scheduling or vacation requests.

Employees may make the request verbally or in writing. The request should be as specific as possible, and employees should be prepared to discuss how the arrangement would still allow the employer to meet business needs.

The employer must then discuss the request in good faith, a legal term meaning honestly and fairly. The discussion can take place in person or over the telephone. During the discussion, either party may propose alternatives to the arrangement requested.

The employer has the duty to consider in good faith whether the requested arrangement could be granted in a manner that is not inconsistent with its business operations or its legal or contractual obligations. The law identifies several factors the employer may

consider: (1) the burden of additional costs; (2) the effect on aggregate employee morale; (3) the effect on ability to meet consumer demand; (4) an inability to reorganize work among existing staff; (5) an inability to recruit additional staff; (6) a detrimental impact on business quality or performance; (7) an insufficiency of work during periods the employee proposes to work; and (8) planned structural changes to the business.

The law requires employers to notify employees of their decision. If the request was submitted in writing, the employer must state any complete or partial denial of the request in writing.

Parental, Medical, Earned Sick, and Other Types of Work Leave

Federal and State law ensures that employees have the legal right to take long-term and short-term leaves from their jobs. Under the Family and Medical Leave Act (FMLA) and Vermont's Parental and Family Leave Act, covered employers must provide leave for pregnancy, the birth or adoption of a child, serious illness of yourself or a family member, some school activities, and some medical appointments. **Since federal and state law differ, especially in their application to employers of different sizes and for different kinds of leave, it is important to read the following descriptions carefully.**

Parental Leave

If you have worked for your current employer for an average of at least 30 hours a week for twelve months and your employer has at least 10 employees who work a minimum average of 30 hours per week during a year, you are entitled to take a parental leave. You can take a parental leave at any of the following times: during your pregnancy, following the birth of your child, or within a year after a child up to the age of 16 years has been placed in your home for adoption.

Family (Medical) Leave

The Family and Medical Leave Act (FMLA) allows eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons.

If you have worked for your current employer for an average of at least 30 hours a week for twelve months and your employer has at least 15 employees who work a minimum average of 30 hours per week during a year, you are entitled to take a family (medical) leave.

You can take a family leave for your own serious illness or the serious illness of your child, stepchild, ward who lives with you, foster child, parent, spouse, or your spouse's parent. The U.S. Department of Labor clarified the definition of "son and daughter" under the Family and Medical Leave Act to ensure that an employee who assumes the role of caring for a child receives parental rights to family leave regardless of the legal or biological relationship. A "serious illness" is defined in the Vermont law as an accident,

disease or physical or mental condition that poses imminent danger of death, requires inpatient care in a hospital or requires continuing in-home care under the direction of a physician.

Family Leave cannot be extended past 12 weeks, either alone or in combination with Parental Leave.

Length and Conditions of Parental or Family Leave

Parental or family leave can be taken for up to 12 weeks during any 12-month period. You can take more than one leave during a 12-month period but you are not entitled to take more than a total of 12 weeks unless your employer is willing to give it to you.

Both parental leave and family leave run concurrently, allowing you a maximum of 12 weeks leave between both categories.

Employees are guaranteed up to 12 weeks of unpaid leave during pregnancy and/ or following the birth of an employee's child. It is important that you give reasonable written notice to your employer that you want to take a leave, including when you want the leave to start and when you plan to return to work.

Vermont law only requires that your employer provide you with an unpaid leave, unless you would otherwise be entitled to take paid leave under existing policies or collective bargaining agreements. In addition, if you have any unused leave time coming to you at work (whether it is accrued vacation, sick leave, or other form of paid leave) you have the right to use up to six weeks of that paid leave as part of your parental or family leave. After six weeks, it is up to the employer to choose whether or not to apply accumulated paid leave time.

If you are taking a leave due to serious illness, and your employer requests it, you are required to provide information from a certified health provider explaining why you need to take the leave and for how long. Your employer may also ask your health provider for certification that you are fit to return to work.

Your employer is required to continue your employment benefits while you are on leave and under the same conditions as if you had been working. However, your employer can require you to pay the "employee's contribution" to those benefits, which is the amount that would normally come out of your paycheck. When you return to work, you are entitled to the same or comparable job that you left.

In 2012, the Vermont Supreme Court ruled that annual and sick leave accruals are not employee benefits. **Therefore, your employer is not required to accrue vacation and sick leave hours for the unpaid hours that you take off for either short-term or long-term family or parental leave.** However, your employer may continue to allow you to accrue vacation and sick time during either short or long-term leave.

If you work for an employer who employs 50 or more employees, you might have some additional rights under the federal Family and Medical Leave Act.

Short-Term Family Leave

Vermont law also allows you to take a number of short-term leaves each year if they are related to certain school activities or medical appointments of you or your family members. The law covering short-term family leaves applies to employees who have worked an average of at least 30 hours a week for a year for an employer that employs 15 or more employees.

Short-term leaves may be taken by an employee to participate in the academically-related preschool or school activities of that person's child, stepchild, foster child or ward. These include such things as parent-teacher conferences.

An employee may also use a short-term leave to attend routine medical or dental appointments, or to respond to medical emergencies, of their child, stepchild, foster child or ward, and of their parent, spouse or parent-in-law. The law also allows an employee to go with a parent, spouse or parent-in-law to other types of appointments for professional services relating to their care and well-being. Examples might include accompanying the family member to meetings with nursing homes or home health care providers.

The law allows an employee to take up to 4 hours of unpaid leave in any 30-day period as long as not more than 24 hours are taken in any 12-month period. An employer can require an employee to take off at least two hours for each requested leave, even if the employee believes the activity or appointment will take less time. An employee can choose to use any accrued paid vacation or personal leave rather than taking the time off as unpaid leave.

If an employee wishes to take a short-term family leave, after trying to schedule the appointment outside of regular working hours, she must tell her employer as soon as possible. The notice to the employer cannot be less than seven days before the leave is to be taken. This prior notice requirement does not apply in emergencies, when being held to at least a seven-day notice would have a negative impact on the family member.

Retaliation Prohibited

An employer cannot fire or retaliate in any other manner against an employee who exercises the right to take any leave as defined in these laws.

Earned Sick Leave

A state law effective January 2017 requires employers to provide earned paid sick time to their employees who work an average of 18 hours per week or more (excluding seasonal workers who work fewer than 20 weeks per year, temporary employees scheduled to work fewer than 20 weeks, and certain per diem or intermittent workers). Small businesses with fewer than five full time workers have an extension until January

1, 2018. Employers may institute a one-year waiting period for all employees in the first year this act is effective. New businesses are exempt for one year after hiring their first employee.

Employees must earn the equivalent of at least 1 hour of paid time for every 52 hours worked. Employers can limit employees to using 40 hours of earned paid sick time per year. Employers can also opt to require a one-year waiting period for new-hires, during which they must earn but may not use earned sick time.

Employees may use their earned time off:

- if they are ill or injured;
- to obtain professional health care;
- to care for a sick or injured parent, grandparent, child, brother, sister, parent-in-law, grandchild, or foster child, including to help them obtain health care;
- to arrange for social or legal services, obtain medical care or counseling for themselves, a parent, grandparent, spouse, child, brother, sister, parent-in-law, grandchild, or a foster child who is a victim of, or who is relocating as a result of domestic violence, sexual assault, or stalking; or
- to care for a parent, grandparent, spouse, child, brother, sister, parent-in-law, grandchild, or foster child because the school or business where that individual is normally located during the employee's workday is closed for public health or safety reasons.

Military and National Guard Leave

The Uniformed Services Employment and Reemployment Rights Act (USERRA) provides employees who are called up to perform military service with reemployment rights. **If you miss work because you are called to military service, USERRA protects you for up to five years.**

If your military leave lasts less than 90 days, your employer must promptly return you to the job you would have had during that time. If your leave lasts more than 90 days, your employer may substitute a different job with the same pay, status, and seniority as the job you would have had. You continue to accrue seniority while on military leave and must be given any raises and promotions associated with that seniority. If you have health insurance, your employer must continue to offer it for up to 18 months after military leave, with restrictions on how much your employer can charge for continued coverage.

If you are a member of the reserve components of the armed forces (e.g. National Guard), Vermont law entitles you to 15 calendar days of employment leave. Your employer may not deduct sick leave or vacation days during this period. Your employer must reinstate you to the same position, with the same status, pay and seniority as you previously had. Whether this leave is paid is up to your employer.

Whether you are a member or reserve member of the armed forces, you must provide your employer with a reasonable notification of your military leave, if possible.

Military Family Leave Entitlements

The Family and Medical Leave Act (FMLA) also provides employment leave for parents, spouses, and children of members of the armed forces. The FMLA allows qualified employees to take up to 12 weeks leave in a 12-month period for any “qualifying exigency” arising out of the active duty of their parent, child or spouse. “Qualifying exigencies” arising out of active duty include:

- short-notice deployment (deployment on 7 days or less notice) allows for seven calendar days off, beginning on the day the military member receives notice of deployment;
- military events and related activities;
- childcare and related activities;
- making financial and legal arrangements to address the military member’s absence such as preparing and executing financial and healthcare powers of attorney or obtaining military identification cards;
- rest and recuperation before deployment (15-day maximum leave);
- attending qualified post-deployment activities up to 90 days following the termination of the military member’s covered active duty;
- attending counseling arising from the active duty status of the military member.

The FMLA allows qualified employees up to 26 weeks of job-protected leave in a 12-month period to care for a service member with a serious injury or illness. This leave may be used intermittently whenever medically necessary to care for a covered service member. To qualify for either of the above military family leave entitlements, you must:

- work for a covered employer (all public agencies, local schools, and private employers with 50 or more employees in 20 or more work weeks during the year);
- have worked for the employer for at least 12 months;
- have worked at least 1,250 hours over the last 12 months; and
- Work at a location where at least 50 employees are employed within 75 miles of the employer.

Uniformed Services Discrimination Prohibited

Under federal law, it is illegal for an employer to discriminate against a member of the uniformed services in relation to employment, promotion, or any workplace benefits.

Preference in Hiring Ex-Service Personnel for State Positions

Vermont law requires that ex-service personnel who have a service-connected disability, their spouses, or their spouses who have a disability in their own right, be given

preference in hiring and retention for positions funded by state payroll dollars. This preference also extends to the unremarried widows and widowers of ex-service personnel. Preference must also be given to ex-service personnel who were on active duty during a war or campaign for which a campaign badge has been authorized and have been honorably discharged.

Teacher's Sick Leave

Full-time public school teachers under contract to teach the regular school year are allowed a minimum of ten school days' sick leave with full pay during each school year. Any unused sick leave will accumulate up to a minimum of twenty days, for the duration of employment in the same school district.

Juror and Witness Leave

Employees in Vermont are considered employed while serving as a juror, for purposes of determining seniority, fringe benefits, credit toward vacations and other rights, privileges, and benefits of employment. **Your employer cannot discriminate against you or lay you off because of your jury service.**

The same law applies to employees serving as witnesses to any legal proceeding at which the state is authorized to hear testimony under oath. If you or a family member has been a victim of a listed crime, or you are a representative of a victim, your employer may not discharge or discipline you for honoring a subpoena to testify.

Town Meeting

Vermont law makes town meeting a holiday for employees of state government. **The law also gives Vermont employees the right to take unpaid leave from work for town meeting.** You must provide your employer with notice 7 days prior to your absence, and your absence cannot interfere with the essential operations of the business or entity that you work for. Students over 18 also have the right to attend town meeting, unless they are in state custody at a secure facility. These students may not be treated as truants for missing school to attend town meetings.

Addressing an Employer's Violation of the Parental and Family Leave Law

For help with addressing an employer's violation of these laws, you can:

- file a complaint with the Vermont Attorney General's Office, Civil Rights Unit;
- file a complaint with your county's State's Attorney;
- file a complaint with the Vermont Human Rights Commission (only for employees of state government agencies);
- file a complaint with the U.S. Department of Labor, Wage and Hour Division (under the federal FMLA, if you work for an employer that has 50 or more employees);
- Consult with a private attorney.

For contact information and other resources, see VCW's Resource Directory – Employment section.

Workplace Health and Hygiene

Under Vermont law, your employer must provide you with “reasonable opportunity” to eat and use toilet facilities in order to protect your health and hygiene. Federal law mandates that if your employer provides a lunch period, it is counted as “hours worked” and must be paid unless the lunch period lasts at least thirty minutes and you are completely uninterrupted and free from work.

Drug Testing

Vermont law prohibits employers from requiring, or even asking, their employees or prospective employees to submit to drug or alcohol testing, except under specific circumstances. (There may be exceptions for some kinds of jobs that are subject to federal regulations.)

An employer can prohibit an employee from using illegal drugs or alcohol during work hours or being under the influence during work hours.

Employers in Vermont are not allowed to do random or company-wide drug testing of their employees unless a federal law or regulation requires it. An employer can require an employee to undergo a drug test if all of the following conditions are met:

- there is a very strong reason (“probable cause”) to believe that the particular employee is using, or is under the influence of drugs;
- the employer has an employee assistance program for treatment of drug or alcohol abuse, or makes such treatment available through insurance coverage; and
- the employer does not terminate the employee for having a positive test result if the employee agrees to attend and successfully completes a rehabilitation program (although employees can be suspended for up to three months in order to do the program).

Employers are not prohibited from firing employees who engage in a treatment program and later test positive for drug use.

If you are applying for a job, employers can only require you to take a drug test if they have offered you a job and then made it contingent on your having a negative drug test as part of a comprehensive medical exam. Don't worry if you are taking a prescription drug or over-the-counter drugs for treatment of an illness or condition, since these are not allowed to be included in the test results.

If your employer is allowed to administer a drug test, there are some restrictions. First, the test can only be used to detect alcohol or drugs at nontherapeutic levels. Drugs detected at a therapeutic level are considered a negative test result. Second, the test

cannot require a blood sample. Finally, if the laboratory finds a positive result, a second test must be performed to confirm the test results.

Unemployment Compensation

You might be eligible to receive unemployment compensation benefits if you have been laid off from your job or, under some circumstances, if you quit or were fired. Whether you can receive unemployment compensation benefits will depend on many factors. These can include why you were terminated, how long you worked and how much you have been paid over a particular time period.

To find out if you qualify for unemployment compensation benefits, contact the Vermont Department of Labor. (See VCW's Resource Directory – Employment section for contact information.)

Domestic and Sexual Violence Transitional Employment Benefits

You may be eligible for up to 26 weeks of unemployment payments (a state-funded program) if:

- you leave your job due to circumstances directly resulting from domestic violence, sexual assault or stalking;
- you fear that the violence will continue at, or on the way to or from work; and you intend to move away to protect yourself and/or your family; or
- you are fired from your job because of the violence.

To be eligible you need to try to find reasonable alternatives before quitting, such as asking your employer to transfer you to another (safer) job location. You also need to provide documentation of the domestic or sexual violence including a sworn statement from you, police records, court records, such as a relief from abuse order, or other documentation of the violence from an attorney, clergy person, or health care provider.

If you are denied unemployment benefits and you feel that you qualify under this program, contact the Vermont Department of Labor. (See VCW's Resource Directory – Employment section.)

Workers' Compensation

If you have suffered a work-related injury or an occupation-related disease, you might be able to receive workers' compensation benefits. A work injury is an injury that arises out of and in the course of employment. Injuries that are not covered under workers' compensation include an employee intentionally hurting themselves, injury while intoxicated at work, and an employee's failure to use a safety appliance.

If you think you might be eligible, you must notify your employer, who then has 72 hours to report the injury to the Workers' Compensation Division of the Vermont Department of Labor. At the same time, your employer's insurance

adjuster is notified, who then has 21 days to investigate and decide whether or not to accept your claim. Make sure when you seek medical care for your injury or your illness that the doctor/medical facility knows that you believe that your injury/illness is work-related.

If you are injured on the job, you may be entitled to:

- payment of medical bills associated with that injury, including mileage to and from the doctor;
- temporary total or partial disability payments between the time of your injury and the time you can either return to work or you have improved medically as much as you are going to improve;
- permanent partial or total disability benefits for any permanent injury you have suffered;
- prescription drugs, medical equipment and reasonably necessary assistive devices and modifications to employee's home or car;
- vocational rehabilitation services to help you return to the work force;
- reinstatement to the first suitable, available position when you are able to return to work following your injury (as long as your recovery occurs within two years of the injury and you work for an employer who has at least 10 employees).

It is unlawful for your employer to retaliate because of a workers' compensation claim. See the section Retaliation and Whistleblower Protection below. If your claim is denied, you have the right to contest it by contacting the Workers' Compensation Division of the Vermont Department of Labor. (See VCW's Resource Directory – Employment section.)

Discrimination and Harassment

Employment discrimination occurs when an employer treats applicants or employees unfavorably because of certain protected characteristics (e.g., age, race, or sex) or because they engage in certain legally-protected activities (e.g., opposing or complaining of discrimination or requesting workplace accommodations). In many instances, employment discrimination is an intentional act. However, discrimination may also occur even if the employer is acting in good faith — such as when (i) neutral employment standards unnecessarily screen out certain classes of employees or applicants or (ii) employees of different sexes are not paid the same for performing the same work.

Employment discrimination is prohibited under both federal and state law. The five major federal laws are:

- Title VII of the federal Civil Rights Act of 1964, which prohibits employment discrimination based on the employee's race, color, religion, sex or national origin. The Equal Employment Opportunity Commission (EEOC), the federal agency responsible for enforcing Title VII, has taken the position that Title VII prohibits discrimination against LGBTQ individuals on the ground that it is a form of unlawful sex discrimination;

- The Pregnancy Discrimination Act (PDA), which amended Title VII to clarify that pregnancy discrimination is a form of sex discrimination, and requires workplace accommodations for pregnant individuals on the same basis as those provided other workers facing similar physical limitations;
- The Equal Pay Act of 1963 (EPA), which requires equal pay for equal work;
- The Americans with Disabilities Act (ADA), which prohibits employment discrimination against qualified individuals with disabilities and requires reasonable accommodation of individuals; and
- the Age Discrimination in Employment Act (ADEA), which prohibits discrimination against individuals 40 and older.

In most instances, whether a federal law applies to an employer depends upon the size of the employer. Title VII, the PDA, and the ADA apply to employers with 15 or more employees. The ADEA applies to employers with 20 or more employees. However, the EPA applies to employers of any size, provided they are involved in interstate commerce.

Federal prohibitions against employment discrimination may also apply under Executive Orders. Specifically, Executive Orders 11246 and 11375 require entities that receive federal contracts or grants of at least \$10,000 to maintain workplaces free of discrimination on the basis of sex, race, color, religion and national origin.

Vermont's employment discrimination laws are similar to the federal laws but apply to all Vermont employers, regardless of size. The principal Vermont law is referred to as the Fair Employment Practices Act (FEPA).

The FEPA prohibits the same categories of discrimination as federal laws and adds a few additional categories:

- Sexual orientation;
- Gender identity;
- Place of birth;
- Ancestry; and
- HIV status

In addition, FEPA protects the same workplace activities protected by federal law (e.g., complaints of discrimination, requests for reasonable accommodation) and adds additional protected activities such as inquiring about, disclosing, and discussing wages. Some examples of prohibited employment policies and/or practices:

- **Job advertisements.** It is illegal for an employer to publish a job advertisement that shows a preference for or discourages someone from applying for a job based on their protected category. For example, a help-wanted ad that seeks "females" or "recent college graduates" may discourage men and people over 40 from applying and may violate the law;
- **Recruitment.** It is illegal for an employer to recruit new employees in a way that discriminates against the protected class. For example, an employer's reliance on

word-of-mouth recruitment by its mostly Hispanic work force may violate the law if the result is that almost all new hires are Hispanic;

- **Application and hiring.** It is illegal for an employer to discriminate against a job applicant because of his/ her protected class. For example, an employer may not refuse to give employment applications to people of a certain race;
- **Job referrals.** It is illegal for an employer, employment agency or union to take into account a person's protected class when making decisions about job referrals;
- **Job assignment and promotion.** It is illegal for an employer to make decisions about job assignments and promotions based on an employee's protected class. For example, an employer may not give preference to employees of a certain race when making shift assignments and may not segregate employees of a particular national origin from other employees or from customers;
- **Pay and benefits.** It is illegal for an employer to discriminate against an employee in the payment of wages or employee benefits on the basis of a person's protected class. For example, an employer may not pay Hispanic workers less than African-American workers because of their national origin; and men and women in the same workplace must be given equal pay for equal work;
- **Discipline and discharge.** An employer may not take into account a person's protected class when making decisions about discipline or discharge. For example, if two employees commit a similar offense, an employer may not discipline them differently because of their race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information;
- **Employment references.** It is illegal for an employer to give a negative or false employment reference because of a person's protected class.

Sex or Gender Discrimination

Sex or gender discrimination is treating an employee or applicant unfavorably because of that person's sex or gender. Unlawful sex discrimination can occur at any stage of the employment process. Sex or gender discrimination may have taken place if employees are treated unequally or are subjected to different terms or conditions because of being a woman in any of the following areas of employment:

- **Recruitment.** For example, only recruiting from male-dominated fields;
- **Hiring.** For example, discouraging women from applying; not giving equal consideration to or refusing to hire;
- **Firing.** For example, using different standards for women and men in deciding whether to terminate;
- **Training.** For example, not providing equal training opportunities to women and men;
- **Job assignments.** For example, making assumptions about what work women can do;
- **Promotions.** For example, promoting a man over a more qualified woman; routinely passing over women for promotion;
- **Pay.** For example, paying women at a different rate than men for the same or substantially similar work;

- **Benefits.** For example, providing different benefits to women than men, such as pension and life insurance plans, health insurance and dates of optional retirement;
- **Layoffs.** For example, applying sexist and unequal standards when making lay-off decisions, such as thinking it would be harder on a family for a man to lose his job than a woman to lose hers;
- **Leave.** For example, not allowing women to take leaves in the same way or for the same reasons as men;
- **Treatment** on the job, e.g. discipline, harassment (see the section on Sexual Harassment later in this chapter);
- **All other employment-related activities.**

Questions Employers May Ask

Employer questions that are not a per se violation of the law, but might be indicative of an intent to discriminate and therefore not wise to ask or answer:

- Are you pregnant?
- Are you married?
- Do you have children or plan to?
- What is your race, color, or ethnicity?
- What is your religious affiliation? There are exceptions for religious organizations, e.g., a Catholic high school could lawfully prefer Catholic employees.
- How old are you? (Age can be a legitimate hiring criterion for certain jobs, for example: wait staff may need to be 21 to serve alcohol.)

Employer questions that are illegal to ask:

Are you disabled? Under the ADA (Americans with Disabilities Act), it is illegal to inquire about disability status before extending a conditional job offer. Once a job offer has been extended, the employer may make medical-related inquiries, including physical exams, as consistent with business necessity. For example, a candidate offered the position of police officer may be told that employment is contingent upon passing a physical exam, which may include inquiries about the person's medical history.

Do you socially drink or smoke? Under federal and Vermont law, smokers are not a legally protected category, however, asking about drinking may elicit disability-related answers ("No, I'm an alcoholic") and thus could be a violation of the ADA.

Pay Discrimination

Pay discrimination occurs when an employer pays lower compensation to an employee on the basis of sex for jobs that require substantially equal skill, effort and responsibility, and that are performed under similar working conditions within the same establishment. Compensation can include salary, overtime pay, bonuses, stock options, profit sharing and bonus plans, life insurance, vacation and holiday pay, cleaning or gasoline allowances, hotel accommodations, reimbursement for travel expenses and benefits. If you earn less than a male coworker for equal work that

requires equal skill, effort, and responsibility, and is performed under similar work conditions, your employer may be engaging in pay discrimination.

Employers may pay different wages based on seniority, merits, or other earning systems, but cannot arbitrarily pay women less than men.

Vermont's Fair Employment Practices Act, Title VII of the federal Civil Rights Act of 1964 and the federal Equal Pay Act of 1963 all offer protection from pay discrimination, depending on the circumstances of your case. The federal government also passed the Lilly Ledbetter Fair Pay Act of 2009. This Act gives employees a new cause of action against their employer each time discriminatory wages or compensation is paid. It allows victims of pay discrimination to challenge unequal wages well after the employee was first hired.

Vermont law also prohibits employers from denying their employees the right to disclose wages and to discuss wages with co-workers. Any attempt to punish or silence you or another employee, regardless of their sex, for disclosing wages or inquiring about a coworkers' wages is also considered pay discrimination. An employer cannot require you to sign a statement as a condition of employment that you will not disclose your wages to anyone, nor can they put a clause in their personnel manual that forbids you from discussing your salary with other employees.

Sexual Harassment

Employers are responsible for maintaining a workplace free of sexual harassment. The U.S. Equal Employment Opportunity Commission (EEOC) publishes guidelines on sexual harassment. These guidelines help form the basis of sexual harassment law that has been developing in state and federal courts.

Vermont law defines sexual harassment as follows: a form of sex discrimination and means unwelcome sexual advances, requests for sexual favors, or offensive comments about a person's sex when:

- (1) submission to that conduct is made either explicitly or implicitly a term or condition of employment; or
- (2) submission to or rejection of such conduct by an individual is used as a component of the basis for employment decisions affecting that individual; or
- (3) the conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment.

There are two forms of sexual harassment:

- (1.) **"Quid pro quo"** ("this for that") sexual harassment involves situations where an employer or supervisory level employee requests or requires a person (most often a woman) to exchange sexual favors for some job benefit (for example, being hired, promoted, getting some fringe benefit) or to prevent some negative job-related action (for example, being fired, getting a bad evaluation, not being allowed to go for special

training). An employer can be held responsible for quid pro quo harassment whether or not the employer was aware that it had occurred.

(2.) “**Hostile environment**” sexual harassment occurs when the conduct of behavior is:

- either sexual in nature or directed at only one sex; and
- frequent or repeated behavior, or a single severe incident (otherwise referred to as either “severe or pervasive”); and
- unwelcome; and
- unreasonably interfering with a person’s ability to perform work, or creating an abusive environment within which to work.

You do not need to be the “victim” of the harassment in order to claim a “hostile environment.”

An employer will usually be held responsible for harassment that is committed by a supervisor or manager, especially if some adverse action happens to you or to another employee as part of the harassment, or as punishment for not giving in to the harassment.

If a coworker causes the harassment, the employer may be held liable if the employer knew or should have known of the harassment and failed to take prompt and appropriate action in response to this knowledge.

If harassment by a supervisor/manager has occurred, but there hasn’t been any adverse action by the supervisor/manager, the employer can only escape liability if it has taken reasonable steps to prevent harassment, has promptly and appropriately addressed claims of harassment, and the victim unreasonably fails to use the employer’s grievance or complaint process.

Under Vermont’s Sexual Harassment in Employment Act, all employers are required to have a sexual harassment policy. Employers must provide it to every employee and display it on a poster that describes the employer’s policy against sexual harassment. The policy and poster also must include a description of how an employee could file a complaint with an appropriate state and federal agency. If the employer has more than five employees, the policy and poster are also required to provide a description of how an employee could file an internal complaint with the employer.

Pregnancy Discrimination

Pregnancy discrimination is treating a woman unfavorably because of pregnancy, childbirth, or a medical condition related to pregnancy or childbirth. **Discrimination that is directed at women because they are pregnant is another form of unlawful sex discrimination in employment.** Congress enacted the Pregnancy Discrimination Act, making it clear that a woman cannot be discriminated against in employment simply because she is pregnant. This means that an employer cannot make assumptions about what types of jobs a pregnant woman is capable of performing,

cannot refuse to hire a pregnant woman and cannot fire a woman because she is pregnant. Furthermore, if a woman is temporarily unable to perform her job due to a medical condition related to pregnancy or childbirth, she must be treated the same way as any other temporarily disabled employee. This includes allowing her to take a disability leave, or leave without pay.

A recent U.S. Supreme Court case, *Young v. UPS*, ruled that employers couldn't intentionally discriminate against pregnant employees, but the employer is only obligated to accommodate pregnant workers to the extent they accommodate other employees who are similarly situated in their ability to work.

The Vermont Supreme Court specifically recognized that sex discrimination under Vermont's Fair Employment Practices Act also covers discrimination on the basis of pregnancy.

A new Vermont law, effective January 1, 2018 requires employers to provide reasonable accommodations to pregnant workers who request them, unless it would be an undue hardship on the employer. Those accommodations include, but are not limited to, a seat, access to water, lift restrictions, and climbing restrictions. The new law extends the same rights and standards with respect to the provision of a reasonable accommodation as a qualified individual with a disability, regardless of whether the pregnant individual qualifies as a person with a disability.

Nursing Mothers in the Workplace

Vermont law protects nursing mothers in the workplace for up to three years following the birth of a child. Employers must provide a reasonable time and place for mothers to express breast milk in privacy throughout the day, unless it would substantially disrupt the employer's operations. A reasonable place does not include a bathroom stall. Whether these breaks are compensated is left to the employer's discretion, unless modified by a collective bargaining agreement.

Other Forms of Employment Discrimination

Vermont extends protection of many anti-discrimination laws, including the Fair Employment Practices Act, to cover people who are gay, lesbian, bisexual, and those experiencing gender identity discrimination. The same legal rights that make it unlawful to discriminate against or to harass people on the basis of sex also apply to people who experience discrimination or harassment because of their sexual orientation or gender identity.

In addition to sex and sexual orientation, it is important to understand that the law prohibits discrimination or harassment in hiring, pay, work conditions, promotions, discipline, treatment on the job, etc., against any person because of:

- **Race** (for example, African American, Asian American, Native American);
- **Color** (any type of skin color);

- **National origin** (being from outside the U.S.);
- **Religion** (an employer has to make reasonable accommodations for an employee's religious practices or beliefs);
- **Genetic information** (information about an individual's genetic tests, including family members);
- **Gender identity** (whether you identify yourself, or are perceived as, male or female, regardless of your assigned sex at birth);
- **Ancestry** (your family background or heritage);
- **Place of birth** (where you were born, inside or outside the U.S.);
- **Age** (18 years of age or older - can be because you are young or because you are older), it is lawful for an employer to use age as an occupational qualification that is reasonably necessary for the normal operation of a particular business;
- Having a **positive HIV**-related blood test;
- **Physical or mental disability**;

Discrimination on any of these bases is unlawful and can be addressed through the same avenues as sex discrimination.

Disability

People with physical or mental disabilities face particular challenges in the workplace that require not only equal treatment but additional safeguards. People are considered to have a disability if they have, are regarded as having, or have a history of, a physical or mental impairment that substantially limits their ability to do such things as walking, talking, seeing, hearing, speaking, learning or working.

It is against the law for a “qualified person with a disability” to be discriminated against in employment. A “qualified person with a disability” is a person with a disability who is capable of performing the essential functions of the job with or without a reasonable accommodation made for the disability.

Vermont's Fair Employment Practices Act (covering all Vermont employees) and Title I of the federal Americans with Disabilities Act (if you work for an employer with 15 or more employees) both provide safeguards against disability discrimination.

Federal law bans disability discrimination in regards to job application procedures, hiring, advancement, discharge, employee compensation, job training and other terms. **Federal law also bans discrimination against employees for being associated with a person with a disability.** For example, a company cannot refuse to hire you because you have a disabled child or have high health costs and would be eligible to be covered under the company's employee health plan.

Employers cannot ask applicants to answer medical questions, take a medical exam, or identify a disability. An employer may ask an applicant whether or how they can perform the job. After the applicant is offered the job, an employer can condition employment by requiring the applicant to answer medical questions or to pass a medical

exam. An employer must require the same questions or the same exam of employees for the same job.

Reasonable Accommodations

Federal and State law require employers to make reasonable accommodations at the job that would enable a person to perform the job's essential functions or tasks. **A "reasonable accommodation" is any change or adjustment to a job or work environment that permits a qualified applicant or employee with a disability to participate in the job application process, to perform the essential functions of a job, or to enjoy benefits and privileges of employment equal to those enjoyed by employees without disabilities.** For example, reasonable accommodations may include:

- provision or modification of equipment or devices;
- job restructuring;
- part-time or modified work schedules;
- reassignment to a vacant position;
- adjustment or modification of examinations, training materials, or policies;
- provision of readers and interpreters;
- provision of readily accessible and usable workplaces for people with disabilities.

An employee must ask for the reasonable accommodation. Examples might include provision of particular devices to assist in doing the job, modifications to office space, job restructuring or modified work schedules. An employer might refuse to grant the request if it can show that the request is not reasonable, or if it would cause an undue hardship to the employer, e.g. excessive cost or disruption. An employer cannot refuse a reasonable accommodation because it involves some cost.

The Americans with Disabilities Act also prohibits employers from asking job applicants if they have a disability or asking specifics about a disability, unless it relates to an employee's or a prospective employee's request for a reasonable accommodation.

Employers may not withdraw an employment offer based on the information obtained in a medical examination, unless it is job-related or necessary for the conduct of the employer's business. **However, the job offer may be withdrawn if the employee's disability constitutes a "direct threat" to the health and safety of the employee and others and no reasonable accommodation is available.**

Retaliation and Whistleblower Protection

Employers are prohibited by both Vermont and federal employment discrimination laws from taking any retaliatory action against an employee who complains of discrimination or harassment to an employer or to a state or federal enforcement agency. This protection also applies to employees who cooperate with, or provide support to, an investigation into a claim of discrimination or

harassment. Retaliation is an adverse action against an employee. Examples of retaliation are:

- firing or laying off;
- failure to hire;
- blacklisting;
- demoting;
- denying overtime or promotion;
- reducing hours or pay;
- denial of benefits;
- disciplining;
- intimidation;
- harassment; or
- making threats.

Vermont law also protects hospital and nursing home employees against employer retaliation. If you work in a hospital or nursing home, your employer may not retaliate against you for reporting any activity or policy you reasonably believe violates the law, or any activity or policy you reasonably believe constitutes improper patient care. Your employer may not retaliate against you for refusing to participate in any activity you reasonably believe illegal or constitutes improper patient care.

It is also against the law in Vermont for an employer to fire or to discriminate against you for filing a workers' compensation claim. It is also unlawful for an employer to refuse to hire an applicant because the applicant filed a workers' compensation claim. See section later in this chapter on Workers' Compensation.

You must report the alleged violation to a supervisor, and give your employer a reasonable opportunity to address the problem.

Polygraph Protection

Vermont employers are generally prohibited from subjecting you to a polygraph (or "lie detector") test. Employers cannot refuse to hire, promote, or change your status of employment if you refuse a polygraph test.

Please note however, the following employers are allowed to administer polygraph tests:

- Department of Public Safety;
- Department of Motor Vehicles, for law enforcement positions;
- Police and Sherriff's departments, for sworn officers of the law;
- Employers whose primary business is in the sale of precious metals or jewelry;
- Employers whose business includes the manufacture or sale of certain regulated drugs, for employees in direct contact with those drugs;
- Employers required to administer polygraph tests under federal law.

Addressing Discrimination and Retaliation

If you believe you have suffered discrimination, harassment or retaliation in employment, you have a number of options. You may choose more than one of the following options:

- follow your employer's internal complaint procedures;
- file a complaint with the Vermont Attorney General's Office, Civil Rights Unit;
- file a complaint with the Vermont Human Rights Commission (only if you are an employee of a state agency);
- file a complaint with the U.S. Equal Employment Opportunity Commission (EEOC);
- file a complaint with the Office of Federal Contract Compliance (only if you believe your employer receives some federal funding);
- file a complaint with the U.S. Dept. of Justice Office of Special Counsel for Immigration-Related Unfair Employment Practices (if your complaint involves national origin or citizenship discrimination);
- consult with a private attorney.

(See VCW's Resource Directory – Legal section for contact information.)

At the state level, potential remedies may include: reinstatement to your job; back wages and benefits; emotional distress damages; reasonable cost of your attorney's fees; and particular requirements that must be met by your employer.

If you bring your case in federal court, the 1991 Civil Rights Act enables employees who have suffered intentional discrimination or harassment to be awarded money damages. Federal law places a limit on the amount of money that can be awarded by a court. For example, an individual can only recover up to \$50,000 if the employer has 100 or fewer employees; up to \$100,000 if it has 101 to 200 employees; up to \$200,000 if it has 201 to 500 employees; and up to \$300,000 if it has more than 500 employees.

Labor Trafficking

In 2011, Vermont became the 42nd state to pass human trafficking legislation. This law includes labor trafficking as well as sex trafficking. If you feel that you have been forced to stay in a job or perform a service through force, fraud or coercion, you may be a victim of labor trafficking. You do not need to be an immigrant or have moved to Vermont for the job. It does not matter if you originally consented to do the job or signed a contract.

An employer may not withhold your identification card or passport or threaten to withhold food or medical care.

Examples of labor trafficking may include working as a domestic servant (nanny or maid), in a sweat shop, in the meat packing industry, as a janitor, restaurant or food service worker, a migrant, a farm worker, or in the hotel or tourist industry.

Note that you may be eligible for victim’s assistance services and legal help, including immigration assistance, as soon as a law enforcement officer finds there is a probable cause of labor trafficking.

For a full description of this law including the legal definition of coercion, criminal penalties for trafficking, and your rights as a victim including immigration assistance, please see the Violence Against Women and Children chapter of *The Legal Rights of Women in Vermont*.

Relevant Laws

Vermont:

Absence on Military Service and Training, 21 V.S.A. §491 – 493
Accommodations for pregnant employees, 21 V.S.A. § 495d
Drug Testing law, 21 V.S.A. § 511, et seq.
Earned Sick Time, 21 V.S.A. Chapter 5, subchapter 4b
Employment Conditions, 21 V.S.A. § 304
Fair Employment Practices Act, 21 V.S.A. §495, et seq.
Flexible Working Arrangements, 21 V.S.A. §309
Human Trafficking, 13 V.S.A. §2651, et seq.
Juror and Witness Work Leave, 21 V.S.A. § 499
Town Meeting, 21 V.S.A. §472b.
Military Preference in Appointment to State Jobs, 20 V.S.A. §1543
Minimum Wage and Hour Act, 21 V.S.A. §381, et seq.
Nursing Mothers in the Workplace, 21 V.S.A. §305
Parental and Family Leave, 21 V.S.A. §470, et seq.
Polygraph Testing as Condition for Employment, 21 V.S.A. §494a-b
Sexual Harassment in the Workplace, 21 V.S.A. §495d (13), 495h
Sick Leave, 16 V.S.A. §1755
Subpoena to Testify, 13 V.S.A. §5313
Unemployment Benefits for Victims of Domestic and Sexual Violence, 21 V.S.A. §1251, et seq.
Unemployment Compensation Act, 21 V.S.A. §1302, et seq.
Whistleblower Protection, 28 V.S.A. §507
Workers’ Compensation Act, 21 V.S.A. §601, et seq.
Workers’ Compensation Act (discrimination), 21 V.S.A. §710

Federal:

Age Discrimination in Employment Act of 1967 (ADEA), 29 U.S.C.A. §621, et seq.
Americans With Disabilities Act of 1990 (ADA), Title I, 42 U.S.C.A. §12101, et seq.
Civil Rights Act of 1991, Pub.L.102-166 (Amendments to Title VII)
Equal Pay Act of 1963, 29 U.S.C.A. §206(d)(1)
Fair Labor Standards Act, 29 U.S.C.A. §201, et seq.
Family and Medical Leave Act of 1993, 29 U.S.C.A. §2601, et seq.
Pregnancy Discrimination Act of 1978, 42 U.S.C.A. §2000e(k)
Rehabilitation Act of 1973, Section 501, 29 U.S.C.A. §791

Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. §4301 – 4335.

Title VII of the Civil Rights Acts of 1964 and 1991, 42 U.S.C.A. §2000e

Lilly Ledbetter Fair Pay Act of 2009, Section 706(e), 42 U.S.C. §2000e

Rights and Protections Under Employee Polygraph Protection Act, 2 U.S.C.A. 1314

Prohibiting Employment Discrimination on the Basis of Genetic Information, 42 U.S.C.A. 2000ff, et seq.

Updated 7/11/17 - LT

This chapter includes information about:

- Women's Rights When Renting or Buying a Home
- Rights and Responsibilities of Tenants and Landlords in Vermont
- Mobile Home Park Residents' Rights
- Property Taxes
- Property Rights in a Marriage/Civil Union
- Property Rights of Unmarried Couples

Knowledge of your rental and property rights under Vermont and federal laws is an important way in which you can protect yourself and your family.

Women's Rights When Renting or Buying a Home

In Vermont, it is unlawful to discriminate against a person in getting a mortgage loan or renting housing based on: race, sex, sexual orientation, gender identity, age, marital status, religion, color, national origin, disability, or because a person has minor children, or because a person is a recipient of public assistance (i.e. welfare, Section 8), or because a person is a victim of domestic violence.

Just because these laws exist, that does not mean all landlords, banks, credit card companies, spouses, and co-signers abide by them. Often, people try to get around the law with contract terms. **If you believe you have been discriminated against in getting a mortgage loan or renting housing visit www.vtlawhelp.org for assistance.**

Rights and Responsibilities of Tenants and Landlords in Vermont

For the most accurate and most up-to-date description of the rights and responsibilities of landlords and tenants in Vermont, please go to "**Renting in Vermont, Information Handbook for Tenant and Landlords**", a publication of Vermont Tenants, Inc. a program of the coordinated Statewide Housing Services division of the Champlain Valley Office of Economic Opportunity. This publication includes information about evictions, lead paint, housing discrimination, rental agreements, rental applications and application fees, security deposits, privacy and access, rent increases, housing conditions, addressing housing, health and safety problems, unclaimed or left behind property, ending a tenancy. (The document was developed with legal assistance, but does not constitute legal opinion or advice.) Vermont Tenants help line number is: 802-864-0099 or toll free 800-287-7971.

Rental Housing Health Codes

Renters have a right to safe, habitable housing. Vermont's Rental Housing Health Code sets out the minimum standards for health and habitability. If you believe your rental housing does not meet the minimum standards contact Vermont's Department of Health toll free at

(800) 439-8550 during business hours or at (800) 640-4374 after-hours, weekends, or holidays. You can find your town health officer by visiting the Department of Health's website.

Mobile Home Park Residents' Rights

For the most accurate and most up-to-date description of your rights as a mobile home park resident, please go to "Guide to Your Rights as a Mobile Home Park Resident in Vermont" published by The Mobile Home Project of the Coordinated Statewide Housing Services division of Champlain Valley Office of Economic Opportunity. Contact The Mobile Home Project at 802-660-3455 x204.

Property Taxes

Vermont resident homeowners must annually file a Declaration of Homestead on their principal dwelling as of April 1st of the current year. A Vermont homestead is the principal dwelling and parcel of land surrounding the dwelling, owned by a resident individual as of April 1 and occupied as a primary residence. If your homestead is rented on April 1, it may still be declared as your homestead if you occupy it for at least 183 days out of the calendar year.

Adjustments to Property Tax

Filing a Homestead Declaration entitles you to a lower tax rate. Approximately two-thirds of Vermonters file a Homestead Declaration. If a homeowner does not file the Homestead Declaration, their property will be taxed at the higher rate.

Eligible Homestead owners must annually file a claim to receive an adjustment to property tax. An adjustment is not available to households whose income is \$109,000 or more.

You may be eligible for an adjustment if:

- You have filed a valid Vermont Homestead Declaration;
- You were a Vermont resident all of the prior calendar year; and
- You are not claimed as a dependent of another taxpayer for the prior tax year.

You will not receive a Property Tax Adjustment unless you file a Homestead Declaration, a Property Tax Adjustment Claim, and a Household Income schedule.

Requesting an Abatement

If you cannot pay your property taxes because your income is low, your town or city may give you a property tax abatement. **This means any taxes you would owe are forgiven and you do not have to pay them.** Anyone can ask their local Board of Abatement or Selectman, but it is up to the town whether to grant the request. The time to ask for an abatement is when you receive your bill.

Rights to Redeem After Town has Sold Property for Unpaid Taxes

A Vermont city or town may take a person's home and sell it in order to pay back property taxes that are owed.

Before a town can sell your house at a tax sale, they must send you written notice of the time and place of the sale by registered mail at least 10 days before the sale. The notice must explain your right to request a tax abatement to stop the sale. Vermont towns can only sell as much of your property as is necessary to satisfy the tax debt.

After the town sells your home at a tax sale, you can still get your home back. This is called the redemption period.

You have 12 months from the time of the tax sale to pay the town the amount of money it sold your home for at the tax sale. If you pay the town the whole amount plus interest before the 12 months are up, you can keep your home. Also, you may continue to live in your home for the whole 12 months even if you don't pay the taxes during that time.

Property Rights in a Marriage/Civil Union

Under Vermont law, a **woman who is married may own real estate as well as personal property in her own name**. When two individuals enter into a marriage neither spouse automatically gains any ownership rights in the other's property. Instead, the property a spouse owns before a marriage remains the property of that spouse alone. Hence, creditors cannot attach the property of one spouse to pay the other spouse's debts. A salary is also considered the sole property of the spouse who earns it. Neither spouse is responsible for the debts incurred solely by the other before, after, or during marriage.

During a divorce, all property is considered part of the marital estate – regardless of whether the property was purchased jointly by the couple or was solely owned by one person before or during the marriage - and can be subject to distribution by the court. (See the Domestic Relations chapter of the *Legal Rights of Women in Vermont*.)

All debts are the legal responsibility of the person (or persons) who made an agreement to pay the debt. A spouse can contract for debt solely in his or her own name. If two people (married or not) both agree to make a contract for debt, both people are responsible for the whole debt. A spouse is not responsible for debts incurred by the other spouse, unless the debt is undertaken jointly. The fact of marriage does not make one spouse responsible for the debt incurred by the other spouse. (A note on **identity theft**: A spouse has no right to use your name to incur debt or to open accounts in your name. If they do, you could defend against the creditor by claiming identity theft (although the timeline for such a defense is very limited). If you suspect your identity is being used to incur debts against your will or without your knowledge, visit Vermont Law Help at vtlawhelp.org for assistance.

If a married couple owns property jointly in the legal form known as “**tenancy by the entirety**,” each spouse has the right to purchase goods and services for the upkeep of

the property. Neither spouse needs the other's consent. However, **your spouse must have your consent for any mortgage or document that conveys (gives away) an interest in their homestead. Also, creditors of one spouse cannot force a sale of the property to collect the debt.**

In Vermont, **parties to a civil union have the same benefits, protections and responsibilities as are granted to spouses in a civil marriage as outlined in this section.**

Bankruptcy-Affected Property Division in Divorce

Filing for bankruptcy can affect a divorce property settlement. Spouses can file bankruptcy jointly or individually. If a spouse files individually, that spouse can be discharged of responsibility to pay debt that is jointly held by both spouses, leaving the other spouse solely responsible for the debt. If a spouse's debt is cancelled in bankruptcy prior to a divorce being filed, the divorce court can't make the discharged spouse responsible for that debt.

Typically, if one spouse owes the other spouse some property as part of a divorce order, this property award can be "discharged," or canceled, in bankruptcy.

If a divorce assigns responsibility for debts, it is possible for the responsible party to later discharge the debt in bankruptcy. It is possible that an award of property by the divorce court can be compromised by the other spouse's bankruptcy. To guard against this, the separation agreement or the court order needs to specify that the assignment or award is a "domestic support obligation" and is "in the nature of alimony, maintenance or support."

Property Rights of Unmarried Couples

Unmarried couples can own property together, and be named on the same deed, either as:

- **“Tenants in common”** – As tenants in common, when one partner dies, that partner's interest in the property passes according to that partner's will, or if no will exists, according to Vermont law.
- **“Joint tenants (with rights of survivorship)”** – When one joint tenant dies that partner's interest in the property passes to the other partner. This means that the surviving partner has full ownership rights to the entire property.

Neither partner in an unmarried couple is responsible for the personal debts of the other unless:

- the debt is entered into together, such as in a joint credit card; or
- the partners enter into a valid and enforceable contract to be responsible for each other's debts.

Partition

If one joint tenant or tenant in common wishes to end the joint tenancy or tenancy in common, they can file an action for partition. The court will then divide the property by

adding up each individual's contribution to the mortgage, taxes and insurance and divide the equity based on the amount contributed.

Relevant Laws

Vermont:

Residential Rental Agreements Act (Landlord-Tenant Law), 9 V.S.A. Chapter 137
Ejectment (a.k.a. Evictions), 12 V.S.A. Chapter 169
Lead Poisoning, 18 V.S.A. Chapter 38
Fair Housing and Public Accommodations Act, 9 V.S.A. §4503, et seq.
Mobile Home Park Act, 10 V.S.A. §6201, et seq.
Married Women's Property Act, 15 V.S.A. §61, et seq.
Benefits, Protections and Responsibilities of Parties to a Civil Union, 15 V.S.A. §1204
Vermont Department of Health, Rental Housing Health Code - (Vermont Health Regulations Chapter 5, Environmental Health Subchapter 16, Rental Housing Code)
City of Burlington, Vermont, Minimum Housing Standards Ordinance – Chapter 18
Housing, Article I-IV
Barre City Ordinances

Federal:

Fair Housing Act (Title VIII), 42 U.S.C.A. §3601, et seq. Fair Housing Amendments Act of 1988, Pub.L.100-430

Updated 12-2-16 — LT

This chapter includes information about:

- Becoming a Lawful Permanent Resident (Getting your “Green Card”)
- Removal (Deportation) Proceedings
- Special Provisions for Battered Immigrants
- Special Provisions for Victims of Human Trafficking
- Special Immigrant Juvenile Status
- Immigration and Benefits

The immigration system in the United States is complex. This section provides a brief overview of how you can apply to become a permanent lawful resident, what happens if you are facing deportation, are a young person, are an immigrant who has been abused or are a victim of human trafficking.

More information and links to resources can be found in [VCW's Resource Directory – Legal section](#), including a link to the [U.S. Citizenship and Immigration Services website](#). All of the forms and accompanying instructions mentioned in this chapter are also available on this website.

Forms that you might be required to fill out come with detailed instructions. You must read them very carefully, paying particular attention to the following:

- the filing fee (made payable to the United States Department of Homeland Security);
- where to file the form and supporting documentation (there are service centers all over the country, and the center closest to you may not necessarily be the one that processes the type of application you are applying for); and
- supporting documentation (paying particular attention to what documents need to be originals, as well as what documents require a notary seal or must be certified).

Becoming a Lawful Permanent Resident (Getting your “Green Card”)

A Lawful Permanent Resident is any person, not a citizen of the United States, who is residing in the U.S. under legally recognized and lawfully recorded permanent residence as an immigrant. Also known as "Permanent Resident Alien," "Resident Alien Permit Holder," and "Green Card Holder." Many laws use the term “aliens.”

In general, to meet the requirements for permanent residence in the United States, you must:

- be eligible for one of the immigrant categories established in the Immigration and Nationality Act (INA);
- have a qualifying immigrant petition filed and approved for you (with a few

- exceptions);
- have an immigrant visa immediately available; and
- be admissible to the United States.

All applicants for an immigrant visa or adjustment of status must prove they are eligible for admission to the United States. The grounds of inadmissibility are determined by the particular category under which you are immigrating. Inadmissibility could be based on many grounds, such as health-related, criminal, security-related or other.

Your adjustment of status application or immigrant visa application will be denied if you are found to be inadmissible to the United States. In some cases, if you are found to be inadmissible to the United States, you may be eligible to file Form I-601, a waiver of inadmissibility.

There are five main paths to **obtaining lawful permanent resident (“LPR”) status, also known as having a “green card,”** that allows an “alien” (the legal term used to describe people who are not citizens of the United States) to live and work in the U.S. indefinitely, and eventually to apply to be a citizen. These five paths are:

- family-based immigration;
- employment-based immigration;
- diversity lottery immigration;
- refugee or asylum status; or
- humanitarian relief (including VAWA, U-status, T-status, or Special Immigrant Juvenile status).

To become a lawful permanent resident you file **Form I-485**. In most cases, after you have LPR status for five years, you may apply to be a United States citizen. The application to naturalize is done using **Form N-400**.

Family-based Immigration

Family-based petitions are the most common way that “aliens” become LPRs. You may be eligible to get a Green Card as:

- an immediate relative of a U.S. citizen, including spouses, unmarried children under the age of 21, and parents of U.S. citizen petitioners 21 or older;
- a family member of a U.S. citizen fitting into a preference category, including unmarried sons or daughter over the age of 21, married children of any age, and brothers and sisters of U.S. citizen petitioners 21 or older;
- a family member of a green card holder, including spouses and unmarried children of the sponsoring green card holder; or
- a member of a special category, including battered spouse or child (VAWA), a K nonimmigrant, a person born to a foreign diplomat in the United States, a V nonimmigrant or a widow(er) of a U.S. citizen.

Family-based petitions are filed with the United States Citizenship and Immigration Services (“USCIS”) on **Form I-130**. LPRs may also use **Form I-130** to apply for their spouses and children. The wait time for each category varies. Though spouses, children, and parents are considered “**immediate relatives**,” the whole process can take two years, and sometimes longer. **For brothers and sisters**, the wait may be up to twenty years before they can apply for a green card, depending on the citizenship of that sibling.

In the past, same-sex marriages were not recognized under immigration law. However, after the U.S. Supreme Court decision in *U.S. vs. Windsor*, on June 26, 2013, holding Section 3 of the Defense of Marriage Act unconstitutional, **same-sex legally married couples are entitled to the same federal benefits, including immigration benefits, as opposite-sex married couples.**

To obtain LPR status through marriage, you and your spouse must be able to show that you entered the marriage in good faith (meaning not solely for immigration purposes) and meet with a USCIS officer. The process includes filing a form and documentation with the proper office, and then in most cases, both of you attending an interview with a USCIS officer. If your application is approved, the immigrant spouse will receive her/his green card. If the two of you had been married for less than *two years* at the time of your approval for residency, then you will receive what is referred to as **two-year conditional LPR status**. Conditional status gives you what is known as a **temporary green card**, which expires in two years. Within ninety days of that card expiring, you must file **Form I-751** to remove the conditions and receive a permanent green card.

If you are still married to the United States citizen, you may file a joint petition to remove the conditions, and may be asked to attend another interview. USCIS may waive this part of the process in their discretion. For example, if you and your spouse have a child together and submit a copy of the birth certificate with both names on it, or other ample evidence, the officer may presume that the good faith marriage is still intact.

You may also file your own petition (also using **Form I-751**) if you fit into one of the following limited circumstances:

- you entered the marriage in good faith but your spouse died;
- you entered into the marriage in good faith but it subsequently ended in divorce or annulment;
- you entered into the marriage in good faith, but you have been battered or subjected to extreme cruelty by your citizen or LPR spouse; or
- the termination of your status and removal would result in extreme hardship. The standard for “**extreme hardship**” is a high burden.

For all of these exceptions to the joint-petition requirement, except the “extreme hardship waiver”, you must prove that you entered into the marriage in good faith, and not solely for immigration purposes.

If you satisfy all of the requirements, the conditions will be removed and you will receive a lawful permanent resident (“green”) card. Though the card will indicate that it

expires in ten years, your status does not expire, and so you may renew the card indefinitely, regardless of the status of your marriage at that point.

Employment-based Immigration

The main ways to immigrate based on a job offer or employment are listed below:

- a job offer;
- investment (may be available to investors/ entrepreneurs who are making an investment in an enterprise that creates new U.S. jobs);
- self petition (some categories allow you to file for yourself if deemed “Aliens of Extraordinary Ability” or granted a National Interest Waiver); and/or
- special categories of jobs (such as broadcaster, international organization employee, religious worker, etc.).

Employment-based petitions, based on a job offer, require an employer to apply for an immigrant employee. In order to qualify for a green card under this category, the employer must show, among other things, that a **qualified U.S. citizen is unavailable to do the job.** The employer usually handles this process. There are also employment and business visas that may allow foreign-born individuals to work in the United States, but which do not provide a path to LPR status.

Diversity-based Lottery Immigration

The “**diversity lottery**” is conducted every year and selects up to 50,000 (or an amount decided by Congress) eligible applicants. Usually these applications are filed at the embassies or consulates in the immigrant’s home country.

Refugee or Asylum Status

A person can apply for **LPR as a refugee or asylee.** The difference between refugees and asylees is the **place of application.** Refugees come to the United States with refugee status; Asylum seekers apply for refugee status once they are in the United States. Refugees are required by law to apply for permanent resident status 1 year after being admitted to the United States. As an asylee, you are not required to apply for permanent resident status after being granted asylum for 1 year, although it may be in your best interest to do so.

To meet the status of a refugee, you must show that you have suffered or have a well-founded fear of future persecution on account of one of five protected grounds: race, religion, nationality, political opinion, or membership in a particular social group. The persecution must be by the government or a group that the government is unable or unwilling to control.

In addition, you must establish that you are unable or unwilling to get protection in **your** country of origin, that the fear of persecution is countrywide, and that you have not settled in another country after leaving your country of origin. Finally, you must

demonstrate that you are eligible for asylum as a matter of discretion, which is usually done by showing that you are a good person and have little or no criminal history.

You can apply as a refugee for protection from abroad, such as from a refugee camp, or through an international organization. You may apply for asylum once you enter the United States. You must file your asylum application within one year of coming to the United States, unless there is a compelling reason why you were not able to do so, on **Form I-589**.

After one year in asylum or refugee status you may apply for lawful permanent resident (“green”) card status. To apply for a green card as a refugee or asylee, you need to file Form I-485.

Anyone applying for LPR status must show that they are “**admissible**” to the United States. Some common grounds which might cause one to be “**inadmissible**” include:

- health-related grounds (communicable diseases, physical and mental disorders, drug addictions, etc.);
- criminal grounds (depending on the crime);
- security-related grounds (such as ties to terrorist organizations);
- public charge grounds (for example, if the person receives certain benefits, or is likely to require them in the future, unless they fit an exception);
- labor certification grounds;
- illegal entry and immigration violations (including entering without inspection, previous removal, etc.);
- documentation grounds; and
- other miscellaneous grounds (including polygamists, unlawful voters, etc.).

Other Ways

Green Card Through the Legal Immigration Family Equity (LIFE) Act

You may be eligible to receive a green card through Section 245(i) if you:

- are the beneficiary of a qualified immigrant petition (Form I-130 or I-140) or application for labor certification (Form ETA-750) filed on or before April 30, 2001;
- were physically present in the United States on December 21, 2000, if you are the principal beneficiary and the petition was filed between January 15, 1998 and April 30, 2001;
- are currently the beneficiary of a qualifying immigrant petition (either the original Form I-130 or I-140 through which you are grandfathered or through a subsequently filed immigrant petition);
- have a visa immediately available to you;
- are admissible to the United States.

Green Card for a Person Born in the United States to a Foreign Diplomat

You may be eligible to receive a green card (permanent residence) through creation of record if you meet all of the following conditions:

- you were born in the United States to a foreign diplomat;
- you have had residence in this country continuously since birth;
- you have not abandoned your residence in the United States.

Green Card for an Amerasian Child of a U.S. Citizen

You may be eligible to receive a green card (permanent residence) as an Amerasian if you meet all of the following conditions:

- you were born in Korea, Vietnam, Laos, Kampuchea, or Thailand between January 1, 1951 and October 21, 1982 and were fathered by a U.S. citizen;
- you have a financial sponsor in the United States who is 21 years of age or older, of good moral character, and is either a U.S. citizen or permanent resident;
- you are admissible to the United States;
- an immigrant visa is immediately available to you.

Green Card for an American Indian Born in Canada

You may be eligible to receive a green card (permanent residence) as an American Indian born in Canada if you:

- have 50% or more of blood of the American Indian race;
- were born in Canada.

Green Card for a Cuban Native or Citizen

Cuban natives or citizens can apply for a green card while in the United States if they have been present in the United States for at least 1 year, have been admitted or paroled and are admissible as immigrants.

Green Card for a Haitian Refugee

You may be eligible to get a green card through the HRIFA provisions if you:

- are a national of Haiti;
- qualify as a dependent applicant under HRIFA (see below);
- are admissible to the United States;
- have been continuously present in the United States since December 31, 1995. (This requirement only applies to unmarried sons or daughters over the age of 21 of the principal applicant.);
- are physically present in the United States when the application is filed.

Green Card for an Informant (S Nonimmigrant)

An S nonimmigrant is an individual who has assisted a law enforcement agency as a witness or informant. A law enforcement agency may submit an application for permanent residence (a green card) on behalf of a witness or informant when the individual has completed the terms and conditions of his or her S classification. Only a federal or state law enforcement agency or a U.S. Attorney's office may submit a request for permanent residence as an S nonimmigrant on behalf of a witness or informant. The requesting agency must also be the same agency that initially requested S nonimmigrant status on behalf of the individual. Qualifying family members of the principal S nonimmigrant may also be eligible to apply for a green card.

Green Card Through the Indochinese Parole Adjustment Act

You may be eligible to get a green card (permanent residence) under the Indochinese Parole Adjustment Act if you meet all of the following conditions:

- You are a native or citizen of Vietnam, Kampuchea (Cambodia), or Laos;
- You were inspected and paroled into the United States before October 1, 1997;
- You were paroled into the United States from Vietnam under the auspices of the Orderly Departure Program (ODP), a refugee camp in East Asia, or a displaced person camp administered by the United Nations High Commissioner for Refugees (UNHCR) in Thailand;
- You were physically present in the United States prior to and on October 1, 1997;
- You are admissible to the United States.

Removal (Deportation) Proceedings

The United States government can place individuals in removal proceedings when the immigrant has been found violating the immigration laws. Immigrants could be considered for a formal removal if they were inadmissible at the time of entry, commit certain criminal offenses, fail to register, falsified documents, became a public charge within five years of entry, or violate immigration status conditions.

If the Department of Homeland Security is trying to remove you from the United States, you have the right to have an attorney, but the government will not pay for it, except in very limited circumstances, such as if you are not competent or are a victim of human trafficking. An inability to pay for a lawyer is not reason for the government to appoint one. You may represent yourself (**pro se**).

Depending on the facts of the case, there may be ways to avoid deportation. Examples include being eligible for permanent resident status (see above), by filing for asylum or **Withholding of Removal** (Individuals eligible for withholding of removal are those who do not meet all the asylum requirements but who can still prove that they would "more likely than not" face persecution on account of one of the five protected statutory grounds.

Another example is **Cancellation of Removal**, which is for LPRs who have been here, had their status for at least five years, been in the country for at least seven and had not been convicted of any aggravated felony. This could also be non-LPRs who have been in the country for at least ten years, whose removal would cause exceptional and extremely unusual hardship to the immigrant's U.S. citizen or LPR spouse, parent or child.

Another example is **Withholding of Removal under the Convention Against Torture**, for example, if it is "more likely than not" that you would be tortured if sent back to your country.

Special Provisions for Battered Immigrants

If you are an immigrant survivor of domestic violence or your non-citizen child is a survivor of domestic violence, you may be eligible for legal status in certain situations.

In general, to be eligible for a Violence Against Women Act ("VAWA") self-petition, you must show that:

- your spouse or parent is a citizen or LPR;
- you lived with the spouse in the United States;
- you married the person in good faith and not solely for immigration purposes;
- you were the victim of battery or extreme cruelty by the citizen or LPR spouse or parent; and
- you have good moral character.

Under the VAWA, abused spouses and children of United States may self-petition for lawful status, which can then lead to work permits and green cards. **Self-petitions may also be filed by abused parents of adult citizens and parents of children who have been abused by the other LPR or citizen parent.**

You may file self-petitions at any time in the marriage. You can file regardless of whether your abusive spouse has filed an **I-130** petition on your behalf, within two years of your spouse's death or divorce from him/her, or loss of the spouse's LPR status **if the loss was related to domestic violence.**

You may also be able to file a self-petition if you aren't still married to your abusive spouse if:

- you believed you were legally married to your abusive spouse but the marriage is not legitimate solely because of the bigamy of your abusive spouse;
- your abusive spouse died within 2 years of filing the petition;
- your abusive spouse lost or renounced his / her citizenship or lawful residence status due to an incident of domestic violence; or
- your marriage to your abusive spouse was terminated within the 2 years prior to filing of the petition, and there is a connection between the termination of the marriage and the battery or extreme cruelty.

As mentioned before, there are also provisions for abused spouses with conditional green cards to waive the joint-filing requirement and self-petition for the removal of the conditions using Form **I-751** (please see the Family-based Immigration section within this chapter).

The U visa is a form of relief for victims of certain crimes who assist in the investigation or prosecution of the crime. Any non-citizen who is a victim of a qualifying crime might be eligible for a U visa regardless of whether they are in valid immigration status. Qualifying crimes include rape, incest, domestic violence, trafficking, abusive sexual conduct, prostitution, sexual exploitation, being held hostage, involuntary servitude, kidnapping, blackmail, murder, and felonious assault, among others.

Eligibility for a U visa requires that:

- you have suffered “substantial physical or mental abuse” as a result of being the victim of criminal activity;
- you possess information concerning the criminal activity;
- the criminal activity violated a law of the United States; and
- you have been helpful, or are likely to be helpful to a federal, state, or local law enforcement official.

Applicants must file **Form I-918**. If you are under sixteen years of age, the parent or guardian may be the one who possesses the information and assists the law enforcement official. All applicants will need to have a certificate (on **Form I-918B**) signed by a law enforcement official.

Immigrants who have been granted U nonimmigrant status may file for a green card if all of the following conditions are met:

- have been physically present in the United States for a continuous period of at least 3 years since the first date of admission as a U nonimmigrant and continue to hold that status at the time of application for adjustment of status;
- have not unreasonably refused to provide assistance in the criminal investigation or prosecution;
- are not inadmissible under 212(a)(3)(E) of the Immigration Nationality Act; and
- have established that their presence in the United States is justified on humanitarian grounds, to ensure family unity or is in the public interest.

To obtain a green card, apply using Form I-485.

Special Provisions for Victims of Human Trafficking

The definition of human trafficking in Vermont law is the same as what federal law calls, “a severe form of human trafficking”: sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or the recruitment,

harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subsection to involuntary servitude, peonage, debt bondage, or slavery.

If a law enforcement officer or a state legal representative such as a state's attorney or the office of the attorney general thinks that you might be a victim of human trafficking, you may be eligible for either a T Visa or a U Visa or both.

To be eligible for a T visa, you must:

- be a victim of human trafficking;
- comply with any reasonable request for assistance from law enforcement in the investigation or prosecution (there is an exception if you are under the age of eighteen);
- submit proof of reasonable cooperation with a trafficking investigation;
- be physically present in the United States due to trafficking; and
- suffer extreme hardship involving unusual and severe harm if removed.

T visa applicants can file **Form I-914** with a certification from law enforcement official (using **Form I-914B**) as proof of reasonable cooperation with an investigation.

If you qualify, you have the right to decide which visa or both you would like to apply for.

For more information about human trafficking see the Violence Against Women and Children chapter of *The Legal Rights of Women in Vermont*, the website of the Vermont Human Trafficking Task Force, and the Vermont Human Trafficking Crisis Response Protocol, which provides instructions and information for anyone in Vermont that may have contact with potential victims of sex or labor trafficking.

Special Immigrant Juvenile Status

Abused, neglected or abandoned immigrant children may be eligible for immigration relief. Applying for SIJ is a two-step process.

First, a state court in the United States having jurisdiction over matters regarding care and custody of juveniles must issue an order with the following "special findings":

- The child is a dependent of the court and has been legally placed with a state agency, a private agency or a private person;
- It is not in the child's best interest to return to her/his home country (or the country s/he last lived in); and
- The child cannot be reunited with one or both parents because of ANY of the following – abuse, abandonment, neglect, or similar reason under state law.

Second, the child must then apply for Special Immigrant Juvenile Status using Form I-360 and lawful permanent residency using Form I-485 with USCIS. The child must include a certified copy of the state court's "special findings" with the I-360 application. As well, the child must:

- be unmarried and under the age of twenty-one;
- remain under the jurisdiction of the juvenile court at the time of filing the I-485 application with USCIS. **Note: as of the writing of this guide, there is some confusion in the law regarding whether an unmarried child under 21 who files after aging-out of juvenile court jurisdiction can still be eligible for SIJS. To be safe, the child's I-485 application should be filed while the child is still under the jurisdiction of the juvenile court. In Vermont, this would be before the child turns 18.*

It is important to note that if a child gets her/his green card through SIJS, then s/he can never petition for a green card for her/his parents.

Immigration and Benefits

Immigrants qualify for some public benefits that are available to citizens.

As a permanent resident, you have the right to:

- live and work anywhere permanently in the United States;
- get Social Security, Supplemental Security Income, and Medicare benefits, if you are eligible;
- own property in the United State;
- attend public school and college.

As a permanent resident, it is your responsibility to:

- obey all federal, state and local laws;
- pay federal, state and local income taxes;
- maintain your immigration status; and
- notify the USCIS when you change your address.

Different programs have specific requirements and therefore you should talk directly to the agency that administers the benefit to determine your eligibility. **If you have immigrant status and have a child who is a citizen of the United States, you may apply for benefits on the child's behalf.**

However, Vermont has not passed any state legislation regarding this issue. **A child born in the United States has all of the rights of every other citizen, regardless of her parents' immigration status.**

LPR children are eligible for in-state tuition at public universities and colleges. Some states also offer in-state tuition to undocumented immigrants who have lived in the state for a certain period of time.

However, even if you are eligible for a benefit program, it **may impact your eligibility for a green card because you may be considered a public charge.**

Relevant Laws

Vermont:

Human Trafficking, 13 V.S.A. §2663

Federal:

Immigration and Nationality Act (INA)

Title 8 of the Code of Federal Regulations (8 C.F.R.)

Severe form of trafficking 22 U.S.C. §7105

Cuban Adjustment Act of 1996

Haitian Refugee Immigration Fairness Act

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This chapter includes information about:

General Insurance Law

Life Insurance

Disability Insurance

Credit Insurance

Filing a Complaint

Health Insurance

Affordable Care Act and Vermont Health Connect

Continuing Group Policy Coverage

Managed Care Plans

Medicare

Self-Insured Group Health Plans

Coverage of Pregnancy and Pregnancy-Related Conditions

Coverage of Children

Coverage of Contraceptives

Coverage of Abortion

Sexual Assault Examinations

Cancer

Diabetes

Chiropractic Care

Craniofacial Disorders

Mental Health and Substance Abuse Disorders

HIV/AIDS

Naturopathic Care

Long-term Care Insurance

Health Insurance Consumer Help

Health Privacy

Insurance availability and coverage can be a confusing area for many people. This chapter explains general insurance law in Vermont, life insurance, disability insurance, credit insurance, filing an insurance complaint, and health insurance.

General Insurance Law

The insurance industry is prohibited from engaging in unfair or deceptive practices. The law protects people from unfair discrimination by agents, brokers, and insurance companies.

Underwriting is the way in which an insurance company decides whether or not to insure a particular person, group of people, business, home, etc. Rating is the way in which a company decides what rates to charge. **In Vermont, discriminating against people on the basis of sex, sexual orientation, or marital status in the areas of underwriting and rating is an unfair practice, and is against the law.** The law prohibits insurers from offering a different rating period, different deductibles, or other terms of insurance to women or non-married people than it does to men or married people in the same situations. Examples include: an application containing medical history questions cannot have a section labeled “females only”; a company cannot require a woman to buy a family policy in order to obtain maternity coverage for herself.

While it is illegal to discriminate in the areas of rating and underwriting, it is legal to charge different premium rates for women and men for certain kinds of insurance, including life insurance and car insurance.

Life Insurance

Many life insurance products on the market today that were not available in the past. Some examples of the types of life insurance policies available are:

- **“Term” life insurance** provides you with coverage for a specific period of time (or a “policy term”) with specific beginning and ending dates. The insurance will only pay the benefit if you die within the policy term. Term insurance generally provides the largest amount of insurance protection for the least cost for young individuals in good health, but may become unaffordable for older individuals.
- **“Whole” life insurance** provides you with coverage for your whole life as long as you continue to pay the premiums. Coverage includes both a death benefit and a cash savings feature that places some of your money into an interest-bearing account. The plan accumulates cash value that you may borrow against, or if you decide to “surrender” (or cash in) your policy, the insurance company will pay you.
- **“Universal” life insurance** provides permanent insurance with a cash value element – like whole life insurance. However, your premiums are placed into the insurance company’s investment fund. Gains or losses in the company’s investments will determine the premiums you pay and your plan’s cash value. Your cash value can be used in the same manner as in a whole life insurance plan.
- **“Variable” life insurance** provides permanent insurance in which you invest your premiums into a variety of investment options, such as bond funds or stock funds. The amount of your death benefit and cash value will depend on the performance of your investments – this means your policy’s value can potentially go down to zero.

- **An “annuity”** – there are many different types of annuities available. One example of an annuity is an insurance policy that provides an annual or monthly income for as long as a person lives, rather than a lump sum when a person dies.

You may receive your life insurance plan through either an individual or a group policy. A **group policy** is often available to you through your employer, union, or an association in which you are a member.

It is important to consider your purpose for purchasing life insurance, to calculate the amount you will be able to pay in premiums, and determine the amount of insurance you need or want. Additionally, you should note any charges, such as surrender or cancellation charges, and taxes that will apply to different policies’ benefits. These factors will help you compare different policies to find the one that is most appropriate for you and your family. You may want to shop around to find the best rate.

Disability Insurance

This type of protection is designed to help replace lost income if you become sick or are injured either mentally or physically. There is great variability in the market for disability insurance, which may make it a difficult type of insurance to obtain especially for homemakers. Disability insurance is sold according to a formula that allows for Social Security benefits (see below). Coverage and availability of disability insurance may depend on the company, the applicant’s salary level, and the length of the policy. Coverage and availability can also depend on whether the policy rate is guaranteed to be renewed from year to year. If it is, the company’s selling guidelines are probably stricter.

Don’t buy life or disability insurance without first considering the benefits you may be entitled to from the Social Security Administration. Depending on eligibility status, you may be entitled to receive child-rearing or retirement benefits. If your Social Security benefits are high, you may not need as much life or disability insurance.

Credit Insurance

When you borrow money for a car, house, or other major purchase, credit insurance is frequently offered by the lender. Credit insurance will pay off a loan if you die (credit life insurance) or make monthly payments if you are disabled (credit accident and health insurance).

Lenders cannot make you buy credit insurance as a condition of receiving the loan. Credit insurance generally has three conditions that must be met, including:

- good health;
- gainful employment; and
- appropriate age at the time of the loan – usually under sixty-five (65) years of age.

Credit insurance is generally more expensive than other types of life or disability

insurance for younger borrowers. Your existing life or disability policies may cover you for the additional obligation of a new loan.

If you are interested in purchasing credit insurance, you should check your existing policies and comparison shop before checking the “yes, I want credit insurance” box on your loan papers.

Filing a Complaint

If you have a dispute with an insurance company, you can file a complaint with the Vermont Department of Financial Regulation, Insurance Consumer Services Division. You can file a complaint by mail or electronically, at www.dfr.vermont.gov/insurance/insurance-consumer/file-insurance-complaint.

Health Insurance

Laws concerning health insurance are continuously changing to keep pace with the ongoing changes in both the traditional health insurance and managed health care systems.

Under Vermont health insurance law, couples in a civil union are treated the same way as married couples. This includes employers outside of Vermont providing health insurance for employees in Vermont. Vermont law also prohibits gender identity discrimination in health coverage; insurers cannot exclude coverage for medically necessary health care services for transgender people, including transition-related surgeries and other care provided for gender dysphoria and related conditions.

Health insurance includes a variety of different insurance products including: indemnity plans, Health Maintenance Organizations (HMOs), Preferred Provider Organizations (PPOs), Medicare supplemental insurance, long-term care insurance, accident insurance, and other disease-specific insurance like coverage for cancer, student insurance, or dental insurance. Some health insurance products provide comprehensive coverage, while other health insurance products such as dental insurance will provide only limited and specific coverage.

Vermont Health Connect

The Federal Affordable Care Act (ACA) was enacted in 2010. While its rules and protections are under scrutiny and subject to change, women benefit considerably from the ACA. Preventive health care needs for women, like annual well-women exams and cancer screenings, are available without a co-pay. Women no longer have to pay more for health insurance than men and can no longer be denied insurance coverage for pre-existing conditions like breast cancer, having a C-section or being the victim of domestic violence. The ACA also prohibits discrimination based on gender identity in any health program receiving federal funds or by an entity established under the ACA, including Health Insurance Marketplaces, ensuring that medically necessary services for transgender people are covered. Other protections of the ACA include allowing young

adults to stay on their parents' coverage until 26 years of age, and insurers cannot impose a lifetime or annual coverage limit on essential benefits.

The ACA requires each state to have a health benefit exchange where individuals and small businesses (50 or fewer full-time employees) purchase standardized health insurance. In Vermont, the exchange or "online marketplace" is called **Vermont Health Connect (VHC)**. VHC is created and managed by the State's Department of Vermont Health Access (DVHA), part of the State of Vermont's Agency of Human Services.

Through VHC, Vermonters can compare health insurance options, enroll in a health plan, and if they qualify, secure financial help to pay for care. Both public health care programs (Medicaid, Dr. Dynasaur) and private insurance plans are available. VHC offers cost and coverage comparisons allowing participants to choose plans based on medical needs and financial resources. Plans are categorized into four "metal" levels based on cost structure: bronze, silver, gold, and platinum. The levels vary in the amount of monthly premium versus out-of-pocket costs. **For full details on Vermont Health Connect (VHC), go to healthconnect.vermont.gov.**

Who Can Enroll

VHC is for Vermonters who do not have health insurance; who purchase insurance for themselves; who are offered unaffordable coverage by their employers; who have Medicaid or Dr. Dynasaur; and for small businesses with up to 50 full time employees. Those who were enrolled in Catamount or Vermont Health Access Program (VHAP) became eligible for expanded Medicaid or private insurance with subsidies to help pay for the cost of coverage through VHC.

Medicare coverage stays the same and is not affected by VHC, but as part of the ACA, Medicare enrollees who reach the drug coverage "donut hole" get rebates while the hole is slowly closed (by 2020). Additionally, Medicare now covers certain preventive services, like mammograms, colonoscopies and free yearly wellness visits.

You must sign up for health insurance on VHC during open enrollment, unless you have a "qualifying life event." A "qualifying life event" allows you to purchase insurance outside of the open enrollment period.

A qualifying life event can be:

- Losing your coverage (for reasons other than failure to pay your premium);
- Having a child, gaining a dependent, or getting married or divorced;
- Becoming a U.S. citizen; or
- Experiencing a change in your household income that may affect your tax credit.

Services Covered

The Affordable Care Act mandates 10 essential services to be covered by every insurance plan through VHC:

- Preventive and wellness services and chronic disease management;
- Prescription drugs;
- Emergency services;
- Hospitalization (such as surgery);
- Laboratory services;
- Ambulatory patient services (outpatient care);
- Maternity and newborn care;
- Mental health and substance use disorder services, including behavioral health treatment;
- Rehabilitative and habilitative services and devices (services and devices to help people with injuries, disabilities, or chronic conditions to gain or recover mental and physical skills); and
- Pediatric services.

Coverage for Women’s Health Care

In addition, all VHC plans must cover the following health services for women without charging a copayment, coinsurance or deductible when the services are provided by an in-network provider:

- Well-woman visits for women under 65 (visits include a full checkup, vaccinations, screenings, tests, education, and counseling);
- Osteoporosis screening for women over age 60, depending on risk factors;
- Domestic and interpersonal violence screening and counseling for all women;
- Sexually transmitted infections counseling for sexually active women;
- Folic acid supplements for women who may become pregnant;
- Breast Cancer Genetic Test Counseling (BRCA) for women at higher risk for breast cancer;
- Breast Cancer Mammography screenings every 1 to 2 years for women over 40;
- Breast cancer chemoprevention counseling for women at higher risk;
- Cervical cancer screening for sexually active women;
- Chlamydia infection screening for younger women and other women at higher risk;
- Gonorrhea screening for all women at higher risk;
- HIV screening and counseling for sexually active women;
- Human Papillomavirus (HPV) DNA test every 3 years for women with normal cytology results who are 30 or older;
- Syphilis screening for all pregnant women or other women at increased risk;
- All Food and Drug Administration-approved contraceptive methods prescribed by a woman’s doctor are covered (including barrier methods that are used during intercourse – like diaphragms and sponges; hormonal methods – like birth control pills and vaginal rings; implanted devices – like intrauterine devices (IUDs); emergency contraception – like Plan B ® and ella ®; sterilization products; patient education and counseling); and
- Tobacco use screening and interventions for all women, and expanded counseling for pregnant tobacco users.

Coverage for Pregnant Women

VHC plans must cover the following health services for women without charging a copayment, coinsurance or deductible when the services are provided by an in-network provider:

- Anemia screening on a routine basis;
- Comprehensive breastfeeding support and counseling from trained providers;
- access to breastfeeding supplies;
- Gestational diabetes screening for women 24 to 28 weeks pregnant and those at high risk of developing gestational diabetes;
- Hepatitis B screening for pregnant women at their first prenatal visit;
- Syphilis screening for all pregnant women;
- Rh Incompatibility screening for all pregnant women and follow-up testing for women at higher risk; and
- Urinary tract or other infection screening for pregnant women.

Continuing Group Policy Coverage

If you receive your health (medical, dental or hospital) coverage through your or your spouse's employer or association's group policy, **you may be eligible to continue your hospital and medical insurance if your coverage is terminated for one of the following reasons:**

- Termination of your employment;
- Divorce or legal separation of the covered employee from you;
- Ceasing to be a dependent child under the policy;
- Covered employee receiving Medicare; or
- Death of the covered employee.

The length of time that you remain eligible depends on the reason for termination and the law that applies. Coverage continues for eighteen (18) months under both federal and state law. However, if you lost coverage due to a divorce or became disabled during the initial 18 months, and your company falls under the federal law COBRA, you remain eligible for thirty-six (36) months. Coverage for family members with qualifying events may also be extended to thirty-six (36) months. If your employer had more than 20 employees, you may be eligible under federal law (COBRA). If the employer had fewer than 20 employees, you may be eligible under the Vermont law (VIPER). If you become disabled, the premium can increase to 150% of the original premium during the second 18 months.

To continue your coverage, you must notify the insurer, policyholder, or agent in writing of your decision within sixty (60) days of your termination, or receiving your notice of eligibility for continuation of insurance.

To continue your coverage, you will be required to pay the insurance plan's full premium (your own share of the premium plus the employer's share plus no more than a 2%

administrative fee.) Since it is at a group health insurance rate, it may be less expensive than individual health coverage, but depending on family income, it may be even less expensive for you to enroll in a VHC plan.

Managed Care Health Plans

Managed care is a kind of health insurance where the plan provides health care and coverage through its own network of doctors, hospitals, and other health care providers. There are several different types of managed care health plans available to consumers. Health Maintenance Organizations (HMOs) are the best-known type of managed care. However, other managed care plans exist, such as Preferred Provider Organizations (PPO) or Point-of-Service (POS) plans that combine some elements of more traditional “fee-for-service” plans.

Under some managed care health plans, such as HMOs, you must choose a doctor from your plan’s health network to be your “primary care provider.” Your primary care provider will keep track of all your care and provide you with referrals when you need to see a specialist.

When choosing between managed health care plans, you should consider the following questions to determine which plan works best for you and your family:

- What are the health needs of you and your family?
- Which doctors, hospitals, and pharmacies are included in each network?
- How much will you pay for the premium, office visits, prescription drugs, and other services?

As an individual insured through a managed care plan, you have certain rights and protections under Vermont law. These protections include your right to quality health care, information about how your plan works, and the right to covered services under the terms of your contract.

Other areas covered include:

- **The right to emergency services.** If you have a medical problem that you reasonably believe poses serious risks to your health, managed care plans must pay for your visit to an emergency room, even if it later turns out there was no emergency. (If possible, contact your insurance provider before your visit. Otherwise, you should contact your insurer promptly afterwards as to the reasons why you sought emergency care.)
- **Reasonable access to the plan’s providers.** Managed care plans are required to have enough providers, both primary and specialty care, to care for all of their members. This means that you should be able to see providers relatively close to your home and without having to wait an unreasonable time to get an appointment.
- **Access to specialty services.** Plans must allow you to see specialists as necessary. This includes the use of “standing referrals” to specialists if you have a condition requiring ongoing care. Plans must also allow specialists to coordinate your care if

you have life-threatening, degenerative or disabling conditions.

- **Direct access by women to gynecological health care services.** Plans must allow women to see their network gynecological health care providers (OB/GYNs or Planned Parenthood, for example) at least twice a year without a referral from their primary care provider for reproductive and gynecological health care services, plus any necessary follow-up services.
- **Continuity of care.** If you are pregnant and in your second or third trimester when you join an HMO, or if you have a life-threatening, disabling or degenerative condition, the plan must allow you to continue using your out-of-network provider for up to 60 days after your enrollment. You get the same 60-day transition period if your provider is in the plan's network, but decides to leave.
- **Consumer information.** When you enroll, or upon request, managed care plans must give you basic information about how their plans work and what services are covered. You will also get a handbook that clearly describes in detail what you need to do to get services.
- **Confidentiality of medical records.** Managed care plans must ensure the confidential handling of your personal health care information. They must also allow you to see your medical records, and to copy them for reasonable fees.

You have additional rights regarding your questions and complaints. These rights include:

- The right to be told in writing why you were denied treatment that you and your doctor think is necessary;
- The right to file a complaint or appeal with your plan concerning any problems;
- The right to a quick response, in writing, to your complaint or appeal; and
- The right to file an appeal outside of your plan.

If you have a problem or question, you should start by calling the member services department of your plan. Additional help can be found by contacting the Vermont Department of Financial Regulation, Insurance Division or calling the Vermont Health Care Advocate. See VCW's Resource Directory – Women's Health section for information.

Medicare

Medicare is a health insurance program for people age sixty-five (65) or older, and people under age sixty-five (65) with certain disabilities. Medicare has different parts that help to cover specific services.

Medicare Part A (Hospital Insurance) - helps cover inpatient care in hospitals, skilled nursing facilities, hospices, and home health care.

Medicare will only cover home health care services provided by a "Medicare-certified"

provider or agency. It does not cover routine long-term care services provided in either a nursing home or at home. Note that coverage for skilled nursing facilities is only provided for rehabilitation services, such as recovery from hip replacement surgery or a stroke, or services that lead to improved function.

Medicare Part B (Medical Insurance) - helps cover doctors' services and outpatient care. It provides coverage for some preventive services to help maintain your health and to keep certain illnesses from getting worse. **If you do not apply for Medicare Part B when you turn 65 and you are not covered by an employer-sponsored health insurance plan, it may cost you a 10% increase in premiums for every year that you delay.**

Medicare Part C (Medicare Advantage Plans) – is an optional managed care system that is run by private companies approved by Medicare. Enrollment excludes you from coverage under Medicare Part A and B and perhaps D. There is an open enrollment period each year if you wish to change plans or go from an advantage plan to a traditional plan.

Medicare Part D (Medicare Prescription Drug Coverage) – is a plan that helps individuals pay the cost of prescription drugs. Part D plans are offered by private insurance companies. They may have different premiums and different costs for different drugs. **Make sure that when you choose a Part D provider that the plan covers the drugs you are prescribed.** There are calculators available on the Medicare website that will help you evaluate the costs of each plan offered in Vermont for the drugs that you are currently taking.

There is an open enrollment period each year from November to December if you wish to change drug plans. However, unless you are covered by another prescription drug plan that offers the same or better coverage than Medicare Part D, **every year that you delay in enrolling in Part D will cause a premium increase.**

Medicare Supplemental Insurance

If you are on Original Medicare (Medicare Part A & B), you may want to purchase additional insurance to cover health care expenses not covered by Medicare, called Medicare Supplemental Insurance. Medicare Supplemental Insurance is health insurance provided by private insurance companies that helps you pay for some of the gaps in Original Medicare like copayments, coinsurance, deductibles and prescription drugs.

Medicare Supplemental Insurance is regulated by both federal and state laws. Insurance companies can only sell certain “standardized” Medicare Supplemental Insurance plans. There are a number of different standardized Medicare Supplemental Insurance plans available. Each type of Medicare Supplemental Insurance plan must offer the same set of basic benefits. However, different insurance companies can sell each type of plan at different rates. Since prices can vary widely between insurance companies, you should comparison shop and carefully weigh your options.

Having Medicare Supplemental Insurance plan may help lower your out-of-pocket costs and give you more health insurance. However, purchasing Medicare Supplemental Insurance may not reduce everyone's out-of-pocket costs – especially if you are already covered for health care expenses not paid by Medicare through group health insurance or Medicaid. **Therefore, you should consider your personal coverage needs before purchasing any Medicare Supplemental Insurance plan.**

It is important to know that Medicare Supplemental Insurance policies only cover the policyholder. **Thus, each spouse would have to purchase their own Medicare Supplemental Insurance plan in order to be covered.** Additionally, individuals covered under a Medicare Advantage Plan (Part C) do not need and cannot use Medicare Supplemental Insurance policies.

Generally, you must have Medicare Part A and Part B to buy a Medicare Supplemental Insurance plan. In Vermont, all companies selling Medicare Supplemental Insurance must accept you into any plan of your choice during an “open enrollment” period.

Your six-month open enrollment period begins on the first day of the first month in which:

- You turn 65 years old or older; and
- You are enrolled in Medicare Part B

If you apply for a Medicare Supplemental Insurance plan after this six-month period, you may be subject to some pre-existing condition benefit limitations or denied coverage. In Vermont, all Medicare Supplemental Insurance plans are “guaranteed renewable.” A guaranteed renewable plan means that an insurance carrier can only cancel your coverage because of non-payment of premiums or material misrepresentation on your application.

Self-Insured Group Health Plans (ERISA Plans)

Some Vermont businesses or national corporations that have employees in Vermont may choose to **self-insure**. In a self-insured group health plan (or a 'self-funded' plan as it is also called) the employer assumes the financial risk for providing health care benefits to its employees although they may buy “stop-loss” insurance for medical claims above a certain amount. That is, they offer a health plan to their employees where, instead of buying a health insurance policy for their employees from an insurance company such as Aetna, CIGNA, MVP or Blue Cross, they pay the medical costs incurred by their employees themselves. **These plans are not subject to state health insurance regulations or state-mandated benefits but are regulated under federal law (ERISA).**

Businesses that choose to self-insure usually hire an insurance company like Blue Cross, Aetna or CIGNA to set the fees paid to doctors and other health care providers and to process their claims. In this case, the insurance companies are acting as plan administrators and are called Third Party Administrators (TPA's). The TPA will give you an “insurance card” that you will use when you go for medical care. The medical care

provider will list you as having “Blue Cross” or “Aetna” or “CIGNA” as your insurance company. If you have a question about a claim or coverage, you will call the insurance company.

The State of Vermont ‘self-insures’ its employees. If you are not sure whether your employer has a group health insurance policy that must conform to state insurance law or self-insures, you should contact your HR person at work and ask if the company has a group health insurance plan or a self-insured ERISA health plan.

Pregnancy and Pregnancy-Related Conditions

Federal and state laws require health insurance policies to treat pregnancy and pregnancy-related conditions the same as an illness or disease. Maternity coverage must be provided on health insurance policies sold in Vermont. This includes coverage for medical expenses resulting from pregnancy, childbirth, prenatal care, and related conditions and complications. This coverage is subject to the same deductibles, durational limits and co-insurance factors as other conditions, illnesses or accidents covered by the policy.

There are many different birthing professionals that a pregnant woman may consider to aid her in the birthing process. Many women will choose to use an obstetrician (OB) or nurse midwife to give birth in a traditional hospital setting. Other women may want to use a midwife or a naturopathic physician to aid them in an alternative setting, like the home. Regardless of the birthing professional – obstetrician, midwife, you choose, that professional must be licensed by the state to practice in Vermont.

Home Births

Vermont law requires that a health insurance plan providing maternity benefits also provide coverage for the services of a certified nurse midwife or a licensed midwife for a home birth. Coverage for services provided by these professionals cannot have greater co-pays, deductibles or co-insurance charges than those for similar services, but an insurance plan may require that the nurse midwife or midwife be a provider in their network.

If you have a question about whether or not a particular professional or service will be covered by your insurance, you should review your policy and contact your provider.

Maternity Stays (Hospital Stays – Postpartum)

Federal law requires health care insurance providers to cover specific minimum maternity stays. These requirements ensure that providers will cover a woman’s stay in a hospital after giving birth for:

- at least forty-eight (48) hours after a vaginal delivery; and
- at least ninety-six (96) hours following a cesarean delivery.

Health Insurance Coverage of Children

Newborns

Vermont law requires all health insurance policies – whether for a single person or a family - to **provide coverage for newborns for the first sixty (60) days after birth**. The policy must cover the newborn regardless of whether you informed the insurance company of the child's anticipated birth. The policy must include coverage for injury, sickness, and for the necessary care and treatment of medically diagnosed congenital defects and birth abnormalities.

The insurance company cannot require you to pay any additional premium for the newborn's coverage for the first sixty (60) days after birth. **However, the company can require an additional premium for coverage beyond the first sixty (60) days. Coverage may terminate after the sixty (60) days have passed, if you do not pay the additional premium, but the termination cannot be retroactive back to birth.**

Health Insurance and Child Support Orders

Vermont law makes it easier for divorced parents to obtain health care coverage for their children under their own health plan. A health insurer cannot deny a child enrollment under a parent's health plan because: the child's parents were not married at the time of birth; the child was not claimed as a dependent on the parent's federal tax return; or the child does not reside with the parent or in the insurer's service area.

When a child support order requires a parent to provide health insurance coverage for a child, and the parent is eligible for family health coverage, **the parent's employer and the health care insurer must allow the child to be enrolled regardless of any open enrollment season restrictions**. The parent who is required by a child support order to provide medical support for the child, must notify the health insurer of the court child support order. **The insurer will have ten (10) days from the notice to enroll the child.**

The child cannot be eliminated from coverage unless: this portion of the child support order is no longer in effect; the child is or will be enrolled in comparable health coverage through another insurer; or the employer has eliminated family health coverage for all its employees.

When a child has coverage under one parent's health plan, the insurer must provide information to both parents about how the child can obtain benefits and make claims for the child. Each parent has the right to appeal any denials of claims without the approval of the other parent.

Adopted Children

Vermont law requires all health plans that provide coverage for participants' or

beneficiaries' dependent children treat adopted children the same as biological children. This applies to **all children who have been placed for adoption, even if the adoption has not become final.**

Childhood Vaccines

Under Vermont law, a health insurer must maintain their childhood vaccine coverage at the same level as plans issued on or before May 1, 1993 for similar health insurance plans issued today. **Effectively, this mandates coverage for childhood vaccines in Vermont.**

Contraceptives

Under Vermont law, if your health insurance policy covers prescription drugs, then you are entitled to coverage for buying any prescription contraceptives and prescription contraceptive devices approved by the federal Food and Drug Administration. You are also covered for any outpatient contraceptive services including office visits and sterilization procedures.

Abortion

All plans under VHC cover abortion services. Under VHC, abortion services are considered outpatient hospital services. This means that individuals will have part of that service covered, depending on the plan they choose. For questions about particular abortion services and reimbursement rates, please contact the exchange's insurance carriers directly.

There is no requirement in the ACA that health care plans cover abortion, nor is there a prohibition preventing plans from covering abortion. Rather, ACA gives health care plans participating in state exchanges the ability to determine whether or not to cover abortion services. However, the Act explicitly allows states to pass a law to ban abortion coverage in any exchange established in the state. In 2010, five states enacted such laws. Vermont did not enact such a law, often referred to as the Nelson Amendment. Absent a state law to the contrary, health care plans inside the exchanges in each state will decide whether to cover abortion. Health care plans in those state exchanges can choose to cover all abortion services, some abortion services, or no abortion services.

Services for Victims of Sexual Assault

A health insurance plan cannot impose a co-payment for a sexual assault examination of a victim of alleged sexual assault. A sexual assault examination can include the following:

- Physical examination of the patient;
- Treatment of the patient's injuries;
- Providing care for sexually transmitted infections;
- Assessing pregnancy risk;

- Discussing treatment options, including reproductive health services, screening for human immunodeficiency virus, and prophylactic treatment; and
- Providing instructions and referrals for follow-up care.

Cancer

Mammograms

Vermont law requires that insurers cover the full cost of mammogram screenings, including call-back screenings, for breast cancer. The coverage includes both the low-dose x-ray procedure and the interpretation of x-rays by a qualified physician. Your insurance company may not charge you a co-pay or require you to pay a deductible or a percentage of the bill.

If you are forty (40) years or older, your health insurance plan coverage must provide for an annual screening. Otherwise, coverage for screening is available whenever a health care provider recommends it. For example, if you have a family history of breast cancer, you may be at a higher risk than other women. As a result, your health care provider may recommend a mammogram screening, regardless of your age.

Colorectal Cancer

Vermont law requires that insurers provide coverage for colorectal cancer screening by providing individuals who are 50 years of age or older with the option of an annual fecal occult blood testing plus one flexible sigmoidoscopy every five years; or one colonoscopy every 10 years. However, if you are considered to be at high risk for colorectal cancer, screening examinations and laboratory tests will be covered as recommended by your treating physician. Your insurance company must cover the full cost of the colorectal cancer screening, and may not charge you a co-pay or require you to pay a deductible or a percentage of the bill.

Clinical Trials for Cancer Patients

Vermont law requires that all health benefit plans in the state provide coverage for routine costs for patients who participate in cancer clinical trials. The coverage is limited to approved cancer clinical trials under the following cancer care providers:

- University of Vermont Medical Center;
- Norris Cotton Cancer Center at Dartmouth-Hitchcock Medical Center; or
- Approved clinical trials administered by a hospital and its affiliated, qualified cancer care providers.

Medically Necessary Care and Treatment of Cancer

All health insurance plans are required by Vermont law to cover “medically necessary growth cell stimulating factor injections” which are taken as part of a chemotherapy

program. Additionally, insurers are mandated to cover the cost of orally administered medications and the off-label use of prescription drugs to kill or slow the growth of cancer. All health benefit plans issued in Vermont must also provide coverage for routine costs for patients who participate in cancer clinical trials.

Diabetes

Under Vermont law, all health insurers must cover equipment, supplies and outpatient self-management training and education, including medical nutrition therapy, for the treatment of diabetes. This applies to insulin-dependent diabetes, insulin-using diabetes, gestational diabetes, and noninsulin-using diabetes. Diabetes treatment must be prescribed by a health care professional who is legally authorized to prescribe such items under Vermont law. The plan may require that your provider be under contract with the insurer. Coverage for diabetes can be subject to your policy's limits, deductibles, and/or coinsurance requirements.

Chiropractic Care

Vermont law requires your health insurance plan to cover clinically necessary health care services provided by a licensed chiropractor. There are some limitations on the type of chiropractic services that are covered, so check with your health plan or with the **Vermont Department of Financial Regulation, Insurance Division**. See VCW's Resource Directory - Women's Health section for contact information.

Your health plan may require that your chiropractic services be provided by a licensed chiropractic physician under contract with your insurer or upon referral by your health care provider. Additionally, you may be required by your insurer to pay reasonable deductibles, co-payments and co-insurance amounts, or subject to benefit limits.

Craniofacial Disorders Coverage

Under Vermont law, all health insurers are required to provide coverage for the diagnosis and medically necessary treatment of musculoskeletal disorders that affect any bone or joint in the face, neck, or head. The musculoskeletal disorder must be the result of an accident, trauma, congenital defect, developmental defect, or disease.

Medical services may be provided by either a physician or dentist. However, **a referral may be required from your plan's participating health care provider**. Additionally, your insurer may require you to receive treatment from a physician or dentist under contract with the insurer. Coverage for craniofacial disorders does not include dental services for dental disorders or dental disease mainly affecting the gums, teeth, or alveolar ridge.

Mental Health and Substance Abuse Disorders

Vermont law recognizes that treatment for mental health conditions is an important part of health care. Thus, **all health insurers must provide coverage in their plans**

for the treatment of mental health conditions, any condition or disorder involving mental illness, and alcohol or substance abuse. The Vermont Department of Financial Regulation's Insurance Division reviews health insurance plans to ensure that they do not lessen or try to counteract the purpose of Vermont's mental health law.

Health insurance plans cannot set different deductibles or out-of-pocket limits for mental health conditions and physical health conditions - they must provide the same benefit coverage for physical and mental health conditions. Health insurance plans cannot put a greater financial burden on you to access mental health treatment than for treatment of a physical health condition. For example, if there is no limitation on the number of visits you can make to the doctor for a physical condition, then no limits can be placed on mental health visits. If any limits are set, they have to be the same for mental health as for physical problems. However, your insurer may charge you the same deductible and/or co-pay that you would be charged for visiting a specialist for a physical condition.

HIV/AIDS

You should be aware that two kinds of HIV testing are available in Vermont: "anonymous" and "confidential." In **anonymous testing**, all information regarding your HIV test is recorded by a random testing code number, not your name. Your name will not be recorded with the HIV test information, reported to the laboratory, or the Vermont Department of Health. In **confidential testing**, you will provide your name only to your test counselor. Your test is assigned a unique identifier code that will be used by the laboratory and the department of health. Your results and the fact that you had an HIV test may be placed in your medical records.

Although no law requires you to have an HIV test, **the Health Department strongly recommends that all expectant mothers get tested for HIV.** Early detection of HIV can help a physician better treat you and prevent your child from becoming infected with HIV. You may want to contact your insurance provider to find out whether your policy will cover your HIV test.

Insurance companies can require applicants for insurance to be tested for their HIV status. This test may be used by the insurance company to decide whether or not to sell you insurance coverage.

Testing for HIV may only be carried out after the insurance company provides you with appropriate notification and after you have given written informed consent. You have the option to consult with a personal physician, counselor, or the Vermont Department of Health before deciding whether to consent to the test. If you decide to pursue this option, it will be at your own expense. Additionally, you can obtain an anonymous test before deciding to consent to the insurance policy test. It is important to know that refusal to consent to the test could cancel your insurance application.

Your consent to the test must be voluntary and can be given only after you have been

given both an oral and written explanation. The explanation of the test must include: the test's relationship to AIDS, the insurer's purpose for seeking the test, potential uses and disclosures of the results, accuracy limitations of and the meaning of the test's results.

If you consent to be tested, the insurance company may request a sample of your blood, urine, or oral fluids to conduct the test. The insurance company must pay for the test. You have the choice to receive the test results directly or designate another person through whom you want to receive the results.

Your test results will be treated confidentially, but **any HIV-positive test will be reported by the insurance company to the Vermont Department of Health and the Medical Information Bureau using a code identifier.**

There are retesting procedures available, but will depend on the results of your test.

In addition to testing requirements, **an insurance company cannot ask if you have sought AIDS-related counseling or have been tested for HIV/AIDS in the past.** The insurance company may also ask you whether you have ever been diagnosed as having HIV/AIDS, provided such diagnosis was given by a licensed medical physician.

See VCW's Resource Directory – Women's Health section for community agencies and hotlines that can help you. See the Public Assistance and Government Benefits chapter in *The Legal Rights of Women in Vermont* for information on state insurance programs for individuals with HIV/AIDS who may have been denied health insurance because of their HIV status or who have exhausted their health plan benefits.

Naturopathic Care

Under Vermont law, a health insurance plan must pay a physician licensed to practice natural medicine (a naturopathic physician) in Vermont for providing medical services that are covered by the plan. However, the treatment provided by the naturopathic physician must fall within the scope of practice described by Vermont law. For example, an insurance company would not be required to cover most surgical procedures provided by a naturopathic physician.

Your insurance company's coverage of health care services provided by naturopathic physicians may be subject to reasonable deductibles, co-payment and co-insurance amounts, and fee or benefit limits. Any amounts or limits cannot be used to discriminate against naturopathic care and cannot be more restrictive than those imposed on other services provided by a health care professional. A health insurance plan may require you receive your naturopathic care from a licensed naturopathic physician under contract with the insurer.

Long-term Care Insurance

Another type of insurance you may want to consider is "long-term care insurance."

Long-term care insurance is a policy that covers necessary health services – such as therapy or rehabilitation – provided in a setting other than an acute care unit of a hospital for a period of twelve (12) or more successive months. In Vermont, long-term care insurance policies must cover nursing home care, home health care, options for adult day care as well as inflation protection.

As noted in the previous section on Medicare, Medicare only covers care in a nursing home or in your home for short periods of time when the objective is rehabilitation following joint replacement, or a stroke or an illness where your functioning can be improved by care. Like life insurance, the older you are when you take out a long-term care policy, the more expensive the premiums.

Health Insurance Consumer Help

The Vermont Department of Financial Regulation's Insurance Division offers a number of consumer assistance services focused on health insurance. They can:

- Give you information on health insurance and health insurance law.
- Help you understand your health insurance policy by explaining the provisions in your health plan.
- Confirm what health insurance products and premium rates can be sold in Vermont.
- Make suggestions on how you can resolve complaints with your insurer.
- Review your insurance complaint information to determine if your insurer has violated applicable laws and if a denial of a health claim qualifies for an independent external review.

Additionally, there are a number of other consumer assistance programs available to help you with health insurance. Some of these include:

- Vermont's Health Care Advocate assists Vermonters in resolving problems and complaints with their health insurance (a free statewide service).
- Green Mountain Care provides Vermonters with information on Medicaid and Dr. Dynasaur.

See VCW's Resource Directory – Women's Health section for links to these offices.

Appealing Your Insurer's Denial of a Health Insurance Claim

If your health insurance company denies coverage for services you think should be covered, talk to your doctor's office or health care provider. If your concern is not addressed, tell your insurance plan you want to file a complaint, and complete their internal process. If you cannot resolve your problem through the insurer's internal appeal process, you may have the right to pursue an independent external appeal.

To qualify for an independent external review, the insurer must have denied coverage for one of the following reasons:

- The service is not medically necessary, or

- The selection of a health care provider is limited in a way that is not allowed by your contract or by law, or
- The service is considered to be experimental, investigational, or an “off-label” use of a drug, or
- A medically-based decision was made that your condition was “pre-existing”, and
- Was not a covered benefit under your plan.

Call the Department of Financial Regulation for help determining if you qualify. If it appears that you qualify, you can file an application for an independent external review with the Department of Financial Regulation’s Insurance Division. There is a \$25 filing fee that may be waived. **You must request an external independent review within 120 days or 4 months (whichever is longer) of receiving the final denial letter from your insurer.** See VCW’s Resource Directory – Women’s Health section for links to these offices.

Health Privacy

Under the Health Insurance Portability and Accountability Act (HIPAA), the United States Department of Health and Human Services issued “Privacy Rules” that define and limit the circumstances in which your protected health information may be used or disclosed by “covered entities.” These covered entities include:

- Most doctors, nurses, pharmacies, hospitals, clinics, nursing homes, and many other health care providers;
- Health insurance companies, HMOs, most employer group health plans; and
- Certain government programs that pay for health care, such as Medicare and Medicaid.

The covered entities cannot use or disclose your protected health information, unless it is permitted or required by law, or you approve the use or the disclosure in writing.

Generally, this means that your health information cannot be given to your employer, used or shared for sales calls or advertising, or used or shared for most other purposes unless you give permission.

The information that can or could be used to identify you is protected under these Privacy Rules. This information includes:

- Your past, present, or future information on your physical or mental health or condition;
- The health care that is provided to you; and
- The past, present, or future payments made for your health care.

Relevant Laws

Vermont:

Continuity of Group Coverage (VIPER), 8 V.S.A. § 4090 Credit Insurance, 8 V.S.A.

Chapter 109

Health Insurance, 8 V.S.A. Chapter 107

HIV/AIDS, 8 V.S.A. §§ 4724(20); 18 V.S.A. § 1001
Home Births, 8 V.S.A. § 4099d HMO's, 8 V.S.A. § 5101, et seq.
8 V.S.A. § 15
18 V.S.A. §7254.
Insurance Trade Practices, 8 V.S.A. § 4721, et seq.
Liability Insurance, 8 V.S.A. Chapter 113
Life Insurance, 8 V.S.A. § 3700, et seq.
Long-Term Care Insurance, 8 V.S.A. § 8081, et seq.
Vermont Legislature 2009 - Act 61: Implementing Health Care Provisions of the
American Recovery and Reinvestment Act
8 Vt. Code R. § 4080f

Federal:

COBRA 1986
Health Care and Education Reconciliation Act of 2010
Health Insurance Portability and Accessibility Act of 1996 (HIPAA), Pub. Law 104-191
Patient Protection and Affordable Care Act (PPACA) Pub. Law 111-148
U.S. Department of Health and Human Services, Standards for Privacy of Individually
Identifiable Health Information ("Privacy Rule") - 45 C.F.R. Part 160 and Part 164,
Subparts A and E

Updated 12-1-17 LT

This chapter includes information about:

Name Changes

Gender Marker Changes

Name Changes

Although it is commonly believed that you can change your name by simply using a new name consistently, and notifying your bank, credit card company and other places you do business, this is not the same as a legal name change. The Social Security Administration, the Vermont Department of Taxes and other governmental agencies may not allow you to register a name change unless you have official documentation in the form of a name change order from the Probate Division of the Vermont Superior Court, a marriage certificate, or a divorce order. You may also apply to the Probate Division of the Vermont Superior Court to change your name and your gender.

There are three basic ways to change your name in Vermont:

- file a name change petition in the Probate Division;
- get married and choose to take your spouse's name or hyphenate your names;
- get divorced and choose to change your name back to your maiden name.

Probate Division of the Vermont Superior Court

You may formally change your name by filing a name change petition in the Probate Division of the county where you live. In order to do so you must be at least 18 years old and of sound mind.

When you petition the court for a name change, you must provide copies of your birth certificate and if applicable, your marriage certificate and birth certificates of any minor children so that they can be properly changed. You do not need your spouse's permission to change your name.

Marriage

You do not have to take your spouse's last name when you get married. You can keep your last name, change your last name to your spouse's or hyphenate using your and your spouse's last names. Any of these are legal and have to be respected by anyone you do business with, such as credit card companies and government agencies.

Divorce

You do not need to petition the Probate Division for a name change if you decide to change your name as part of a final divorce order. At that time, you can resume using

your maiden name or a former spouse's name. The names of minor children may be an issue to be decided in the divorce, if a request to change them is included in the complaint for divorce.

Children

When a child is born, you may give the child any last name you choose, including your last name, your spouse's last name, a hyphenated name, or even a last name that has no relation to any family member. You do not have to be married to the father of the child in order to give the child his last name.

If you adopt a child and wish to give the child your name you must make that request as part of the adoption decree.

If you are divorcing and wish to change the names of your children, you must include the request in the complaint for divorce.

Minor children may have their names changed by the person acting on the child's behalf in the same way that an adult can file a name change petition in the Probate Division. If the child is over 14 years old, the child's name cannot be changed unless the child consents to the change in court. There are a number of factors that the court might consider before deciding whether to agree to change the name of a minor.

You and any other parent or guardian who has an interest in the child must consent to the name change. Any parent or guardian who has not signed a consent form must be given formal notice of the name change petition. For example, if you are divorced from the father of your child, you may not change the child's name without notifying him. He then has the right to object to the name change.

Gender Marker Changes

Vermont State ID or Driver's License

If you are a Vermont resident, you can apply to **change the gender marker on your Vermont state ID or driver's license. It is not required that you amend your birth certificate prior to doing so.**

The Department of Motor Vehicles (DMV) requires that you submit:

- a written request to change the gender marker on your ID document;
- a corrected license application and appropriate fee (at the time of writing, \$15.00); and
- either a letter from your doctor stating that your gender change is complete and the date of completion; or a statement from a doctor, psychologist, or psychiatrist stating that you are irrevocably committed to the gender change, and that one gender predominates over the other. Either statement from a doctor must indicate the

target gender, be signed, and must contain the doctor's name, address, jurisdiction where they are licensed and their medical license number.

U.S. Passport

The U.S. Department of State has created a policy to allow people to **change the gender marker on their U.S. Passports. It is not required that you amend your birth certificate prior to doing so.** They require that a DS-11 form be completed and submitted with the normal documentation listed on that form. Additionally, you must provide:

- a photo ID that resembles your current appearance;
- a passport photo that resembles your current appearance; and
- a physician statement that validates that you have either completed or are in the process of treatment for gender transition. That statement must include: the physician's full name; medical license number; issuing jurisdiction of the medical license; address and telephone of the physician; language stating that the physician is your attending physician and that they have a relationship with you; and language stating that you have completed or are in process of appropriate clinical treatment for gender transition to the new gender. Descriptions of specific treatments is not required.

Surgical treatment is not required to change the gender marker. As these policies are changing, you can verify the official policy from the U.S. Department of State website, which also provides a template for the Physician's Statement. If you would like to change the name on your passport, this can be done at the same time by submitting the proof of legal name change along with your application.

Social Security Administration Record

The U.S. Office of Social Security Administration (SSA) has a process to change your gender marker. **While your Social Security card does not contain a gender marker, your record does. Your gender does not affect your social security retirement benefits, but might affect Medicare and SSI programs, which can deny coverage of services that are inconsistent with gender indicated in the individual's Social Security Record.** These types of denials can usually be resolved.

The SSA also administers several programs to verify a person's identity for employment, public benefits, or other purposes. Some of these systems include gender, and others do not. Some of these programs have begun to eliminate gender from the data that is matched, but some systems still match gender against SSA records. If a person's reported gender does not match SSA records, SSA might report this back to the submitting agency.

To change the gender marker on your Social Security record, the SSA requires that you provide:

- an application to change your gender marker;
- a photo ID proving your identity; and
- one of the following documents: a full-validity, 10-year U.S. passport showing the new gender; a state-issued amended birth certificate showing the new gender; a court order directing legal recognition of change of gender; *or* a medical certification of appropriate clinical treatment for gender transition in the form of an original letter from a licensed physician.

Vermont Birth Certificate

If you were born in Vermont and have completed a sexual reassignment, you are eligible to apply for a new “clean” birth certificate that shows only your new name and gender. Whether you change your name by application or by physician’s affidavit, the state registrar will “seal” all your documents, which means that they will not be public records. However, you will be able to access them or give permission for others to do so.

By Physician’s Affidavit

A Vermont law passed in 2011 does not require you to have had full surgery or hormonal changes in order to be considered fully transitioned. A licensed physician who has treated or evaluated you must sign a notarized statement (affidavit) that you have undergone surgical, hormonal or other treatment appropriate for you for the purpose of gender transition. The statement must include the signature and medical license number of the physician.

Upon receipt of the physician’s affidavit, the Probate Division of the Vermont Superior Court will issue an order that your sexual reassignment has been completed. The state registrar will then issue you a new birth certificate.

By Application

You may also apply to the state registrar to have your name changed if your birth

certificate is marked “Court Amended” or otherwise clearly shows it has been amended. **If you were not born in Vermont**, you may still submit a physician’s affidavit to the Probate Division of the Vermont Superior Court for a court order stating that your sexual reassignment has been completed. You will then have to take the court order to the state in which you were born to request a new birth certificate. **It is not known at this time whether another state will honor a Vermont court order for a new birth certificate that is not marked “amended.”** Note: Probate records typically are not sealed. You need to check with the clerk in the probate division if you have concerns about confidentiality of either the name change or the birth certificate correction.

Relevant Laws

Vermont:

Change of Name Law, 15 V.S.A. § 811 et seq.

Sexual Reassignment, 18 V.S.A. § 5112

Vermont Rules of Probate Procedure, Rule 80.6

Updated 10/8/15 -LT

This chapter includes information about:

Public Accommodations – Defined

Sex Discrimination

Breastfeeding

Sexual Orientation Discrimination

Marital Status Discrimination

Disability Discrimination

Addressing Discrimination

Many women are unaware of their legal right to not be discriminated against in places of public accommodation, such as restaurants, stores, hotels, hospitals, professional offices and schools.

This chapter will explain those rights, as well as those for women in other “protected categories,” and will explain what is meant by a “place of public accommodation.”

Public Accommodations – Defined

While the phrase “public accommodation” is not very familiar to people, it actually covers many places that you might frequently visit. You have the right not to be discriminated against in any place of public accommodation.

While the public accommodations provisions of Vermont’s Fair Housing and Public Accommodations Act define a “place of public accommodation” as **“any school, restaurant, store, establishment or other facility at which services, facilities, goods, privileges, advantages, benefits or accommodations are offered to the general public.”** This also includes most **hospitals, professional offices** (such as doctors, dentists, lawyers and accountants), **retail stores, inns, hotels and schools.**

In addition to privately owned places of public accommodation, **a governmental entity**, like a municipality or the State of Vermont, is considered a “public accommodation” **if it owns, leases or operates a place that offers any goods, services, benefits, etc. to the general public, including jails and prisons.** See the Education chapter in *The Legal Rights of Women in Vermont* for a more complete discussion of discrimination in schools.

Any item or service that is offered by a place of public accommodation cannot be refused, denied or withheld from you on the basis of your sex, race, color, creed, religion, national origin, marital status, sexual orientation, gender identity, physical or mental disability or because you are a nursing mother. These are considered **“protected categories.”**

No place of public accommodation can refuse to provide its goods or services to you, or treat you differently, just because you are a woman, a lesbian, a person of color, or a member of any of the other categories listed above. This also means that if you are harassed in a place of public accommodation and you think it is related to being a member of one of the protected categories, you can file a complaint under Vermont's law regarding public accommodations.

The only exception included in the public accommodations provisions of Vermont's Fair Housing and Public Accommodations Act, is that an **inn, hotel, motel or other place of temporary lodging can discriminate on the basis of sex or marital status if it has five or fewer rooms for rent or hire.**

Sex Discrimination

Some private, **male-exclusive clubs** have been challenged under the public accommodations laws and have been determined to be more "public" than "private." Some of the factors that distinguish a private club from a place of public accommodation include the numbers of members as well as the selectivity used by the organization in admitting new members. For example, if the establishment has a bar or restaurant that is open to the general public, and not just restricted to the club's members, or if the purpose of the club is less social and more likely to be a place where business is transacted, it might no longer be considered a "private club." Since these challenges, a number of previously male-only clubs and associations have become open to women.

Breastfeeding

A mother may breastfeed her child in any place of public accommodation where she and her child otherwise have a legal right to be. For example, if you are dining in a restaurant and breastfeed your child, restaurant staff **may not tell you to stop breastfeeding or to leave.** If they do, that is discrimination, and you can file a complaint under Vermont's law regarding public accommodations (see below for "addressing discrimination.")

Vermont Labor law requires an employer to allow a woman to express breast milk at work for up to three years after the birth of the child and to provide a private space to do so that is not a bathroom stall. The employer does not have to pay the employee for time spent expressing milk but can do so. See the Employment Rights chapter in *The Legal Rights of Women in Vermont* for more information.

You cannot be arrested for indecent exposure for breastfeeding in public. In a Vermont court case, a woman was ejected from an airplane on the ground because she was breastfeeding her baby. The Human Rights Commission found that an airplane on the ground in Vermont was a place of public accommodation and subject to the public accommodation laws of Vermont.

Sexual Orientation Discrimination

Places of public accommodation in Vermont **cannot offer goods or services to married opposite-sex couples at a different rate than for same-sex couples.** If a place provides a discount for a married opposite-sex couple but does not extend the same discount to a married same-sex couple or an unmarried same-sex or opposite-sex couple, discrimination may be occurring. Examples could include discounts for combined house/auto insurance policies, “family” ski-lift tickets, etc.

Marital Status Discrimination

It is against the public accommodations law in Vermont to discriminate against anyone on the basis of their marital status. This means that you have the right not to be discriminated against because you are single, married, joined in a civil union, divorced, etc.

However, religious organizations do not have to provide services related to a same-sex marriage ceremony. This means that a church can deny the use of facilities for a same-sex marriage, or a clergy member can refuse to perform a ceremony.

Disability Discrimination

Special provisions of the **Vermont Fair Housing and Public Accommodations Act** and the federal **Americans with Disabilities Act (ADA)** govern the rights of people with disabilities in places of public accommodation.

The federal ADA also requires all newly built places of public accommodation and commercial facilities which were first occupied after January 26, 1993 (and whose permit process was completed after January 26, 1992) to be accessible to individuals with disabilities. **Any alterations that are made to existing places of public accommodation and commercial facilities must be accessible to the maximum extent feasible.** The requirements for accessible construction are set forth in the Americans with Disabilities Act Accessibility Guidelines (ADAAG). These same guidelines are referred to in Vermont’s Accessibility Standards for Public Buildings and Parking Act. A violation of the guidelines and accessibility standards is a violation of the public accommodations law.

Vermont, the definition of **a person with a disability is someone who has an impairment that limits one or more major life activities, who has a history or record of such impairment, or is regarded as having an impairment.** This includes both physical and mental impairments. The following are only some examples of these rights for people with disabilities:

- a person who uses a service animal cannot be prevented from entering any place of public accommodation that might otherwise have a “no animals” policy (for example, establishments that offer food or lodging);
- existing establishments that have architectural or communications barriers for

people with disabilities are required to remove the barrier, if it can be done without much difficulty or expense;

- if it is necessary for a person with a disability to have some reasonable accommodation made to the policies, practices or procedures of a place of public accommodation in order to be able to use it, those accommodations must be made unless they would fundamentally alter the nature of the place and cause an undue financial burden;
- places of public accommodation also have to provide auxiliary services such as sign language interpreters, notetakers, assistive listening devices, telephone amplifiers, Braille and large-print materials and audio recordings (to name a few) if they are needed unless providing them would either fundamentally alter the nature of the place or would result in an “undue hardship,” i.e., would be unduly difficult or expensive to provide;
- any examinations or courses related to applications, licensing, certification or credentialing for professional or trade purposes or for secondary or post-secondary education by a place of public accommodation must be offered in a place and manner that is accessible to people with disabilities and licensing entities must provide reasonable modifications to their policies or procedures such as giving additional time, allowing computer use, etc.;
- a place of public accommodation may not discriminate based on alcoholism, so long as the current alcohol use does not pose a threat of harm or create a disruption. A place of public accommodation may not discriminate against a person based on that person’s past use of illegal drugs or alcohol;
- places of public accommodation that provide parking for employees or customers must provide one handicap space for every 25 spaces and may need to provide an accessible spot even in smaller parking lots if to do so is “readily achievable.”

There are some exceptions to these general rules:

- a service dog can be excluded from a place of public accommodation if it is out of control and reasonable steps are not taken to control it, or if it is not housebroken;
- places are not required to provide personal devices such as wheelchairs, hearing aids, or personal services related to feeding, toileting or dressing;
- a public accommodation may exclude someone with a disability who based on an individualized assessment, that is based on reasonable judgment that relies on current medical knowledge and objective evidence, presents a direct threat to the health or safety of others.

Addressing Discrimination

If you believe you have been discriminated against in a place of public accommodation you can:

- File a complaint with the Vermont Human Rights Commission;
- File a complaint with the Vermont Department of Public Safety, Division of Fire Safety (for accessibility violations);

- File a complaint with the Office on the Americans with Disabilities Act, U.S. Department of Justice (for accessibility violations);
- Consult with a private attorney;
- Contact an advocacy group or program related to specific disabilities; or an advocacy group related to the subject of discrimination.

Relevant Laws

Vermont:

Fair Housing and Public Accommodations Act, 9 V.S.A. §4500, et seq. Accessibility Standards for Public Buildings and Parking, 9 V.S.A Chapter 174. Nursing Mothers in the Workplace, 21 V.S.A. §305

Federal:

Title II of the Civil Rights Act of 1964, 42 U.S.C.A. §2000a

Title II & III of the Americans with Disabilities Act of 1990, 42 U.S.C.A. §12181

Americans with Disabilities Act Accessibility Guidelines (ADAAG), 28 C.F.R. §§35, 36

Updated 12/7/15 LT

This chapter includes information about:

- Social Security
- Supplementary Security Income (SSI)
- Veterans Benefits
- Reach Up Program
- 3SquaresVT (Formerly Food Stamps)
- Women, Infants and Children (WIC)
- Child Care Financial Assistance
- Essential Person
- General Assistance (GA)/Emergency Assistance (EA)
- Emergency Housing
- Fuel Assistance
- Weatherization Assistance
- Vermont Health Connect
- Disability and Long-Term Care
- Free and Low-Cost Medical/Dental Care
- Medicare
- HIV Insurance Assistance
- Lifeline Telecommunications Service Credit Program
- Micro Business Development Program (MBDP)
- Individual Development Account (IDA)
- Denials, Reductions or Terminations of Governmental Benefits

In Vermont, you may be eligible for a variety of federal and state-sponsored governmental benefits. Many of the benefits have complicated eligibility requirements that may vary depending on your age, marital status, family or household size, family and/or household income, or disability status (mental or physical). In addition, the dollar amount of the benefit may change depending on changes in state or federal laws, rules, regulations, or grants.

You can explore many of these programs at the Vermont Agency of Human Services' Department for Children and Families website. Also see VCW's Resource Directory—Women's Health section and the Public Assistance section for more resources.

Social Security

As you plan for your retirement, you should be aware that the amount of the monthly retirement benefit you may receive from Social Security depends not only on your work contributions but also upon the age that you choose to start receiving benefits.

“Full retirement age,” also called “normal retirement age” is the age at which a person first becomes entitled to full, or unreduced, benefits. For people born before 1938, the full retirement age is 65. For people born between 1938-1960, the retirement age is between 65 and 67. You can use the on-line Social Security Retirement Age

Calculator to determine your full retirement age.

If you choose to begin receiving benefits before your normal or “full retirement age,” you will receive a reduced benefit for the rest of your life. You can choose to start receiving social security benefits as early as age 62 but doing so may result in a reduction of as much as 25-30% of what you would have received if you had waited until full retirement age, regardless of whether you are claiming benefits based on your own record or that of your spouse or ex-spouse (if you were married at least ten years).

If you decide to delay your benefits until after age 65, you should still apply for Medicare benefits within three months of your 65th birthday. If you wait longer, your Medicare medical insurance (Part B) and prescription drug coverage (Part D) may cost you more money.

If you delay starting to receive benefits until sometime **after full retirement age** you can increase your monthly benefit by up to 8% annually up to age 70 over the benefit you would have received at full retirement age.

Note: Your benefits may be temporarily reduced if you continue to work and earn over a certain amount until you reach full retirement age. If you're younger than full retirement age, and earn more than certain amounts, your retirement (and/or survivor) benefits will be reduced. The amount that your benefits are reduced, however, isn't truly lost. Your benefit will be increased at your full retirement age to account for benefits withheld due to earlier earnings. (Spouses and survivors, who receive benefits because they have minor or disabled children in their care, don't receive increased benefits at full retirement age if benefits were withheld because of work).

Benefits Based on a Spouse's or Ex-Spouse's Income

Even if he or she has never worked under Social Security, your spouse may be able to get benefits if he or she is at least 62 years of age and you are receiving or eligible for retirement or disability benefits. He or she can also qualify for Medicare at age 65.

If your spouse qualifies on his or her own record, Social Security will pay that amount first. But if he or she also qualifies for a higher amount as a spouse, they'll get a combination of benefits that equals that higher amount.

If you have reached your full retirement age, and are eligible for a spouse's or ex-spouse's benefit and your own retirement benefit, you may choose to get only spouse's benefits. Then, you can continue accruing delayed retirement credits on your own Social Security record. You then may file for benefits later and receive a higher monthly benefit based on the effect of delayed retirement credits.

NOTE: Your current spouse can't get spouse's benefits until you file for retirement benefits. If you're full retirement age, however, you can apply for retirement benefits and then request to have payments suspended. That way, your spouse can receive a spouse's benefit and you can earn delayed retirement credits until age 70. For a married couple, only one person can apply for “spouse's only” benefits.

Your divorced spouse can get benefits on your Social Security record if the marriage lasted at least 10 years. Your divorced spouse must be 62 or older and unmarried. The benefits he or she gets doesn't affect the amount you or your current spouse can get. Also, if you and your ex-spouse have been divorced for at least two years, and you're both at least 62, your former spouse can get benefits even if you're not retired.

Other types of Social Security benefits may be available if you are disabled and cannot be gainfully employed, or are dependents of the major wage-earner in the family, if that person becomes disabled, blind or has died. These are referred to as **Social Security Disability Insurance (SSDI)** and **Social Security Survivors' Insurance**.

Apply for Social Security through the Social Security Administration. (See VCW's Resource Directory—Aging and Elder Issues section.)

Supplementary Security Income (SSI)

SSI, or Supplemental Security Income, is a federal program that provides monthly cash payments to people in need. SSI is for people who are 65 or older, as well as for people that are blind or disabled of any age, including children. If you are found eligible for SSI, you are usually automatically eligible for Medicaid. Visit socialsecurity.gov for more information, or call 800-772-1213 (for the deaf or hard of hearing, call the TTY number, 1-800-325-0778). (See VCW's Resource Directory – Aging and Elder Issues section.)

Veteran Benefits

Veteran Benefits are available to disabled, blind, or older veterans and their children, wives or husbands, widows or widowers. Benefits may be available even if the disability is partial or is not connected to time in the service. Veteran benefits can include training and education, cash benefits, loan assistance, health care coverage, and more. Get more information and apply for benefits at the Veteran's Administration Center. (See VCW's Resource Directory – Disability and Accessibility Issues section.)

Reach Up Program

Reach Up helps families with children and pregnant women by providing cash assistance for basic needs and services that will support work and lead to self-sufficiency.

Eligibility depends on your income, ability to work, resources, living expenses, family members in your household and other factors. Your family may be eligible if you are a single parent, if one parent is disabled or if the total income and assets of your family is very low. If you are found eligible for Reach Up, you and your family will most likely be eligible for Medicaid.

Applications for Reach Up are made through the local Economic Services Division of the Department for Children and Families. See VCW's Resource Directory—Public Assistance section.

If you are found eligible for Reach Up you will be assigned a case manager who will assess your readiness to work by looking at your skills and abilities, job interests, and

training or education. The case manager will also look at challenges that make it difficult for you to work (e.g. childcare, transportation, health needs or personal issues).

You and your case manager will create a “**family development plan**” that maps out your goals and the steps you will take to achieve them: e.g. looking for a job; getting your GED or high school diploma; attending job training; pursuing higher education; and getting on the job training/work experience.

To keep your maximum Reach Up benefits, you need to spend a certain number of hours each week either working or participating in approved “**work activities**” that will lead to a job. **The number of hours you will be required to work, or participate in approved “work activities” will depend on your children’s ages and your family situation.** However, you may not have to work or engage in work activities right away if you have a health problem, you are caring for a very young child or childcare is not available.

While Reach Up provides you with benefits and services, you are expected to follow your family development plan. **If you do not follow your plan, your financial assistance may be greatly reduced.**

If you have dependent children ages 16 or 17 who are not attending school full time, they are also required to receive appropriate support services. Reach Up cash assistance is deposited monthly directly in your bank account or you will receive your cash assistance on an EBT (electronic benefits) card called ***Vermont Express***.

Even if your family doesn’t qualify for Reach Up benefits, you or members of your family may be eligible for Food Stamps, Medicaid, Dr. Dynasaur or other programs. (See later sections in this chapter.)

Reach First

This program provides short-term financial assistance and support services to eligible families in emergencies. Families may receive either a lump sum payment or up to four months of assistance depending on need. If after four months the family still needs financial assistance they may be transferred to the Reach Up program. Apply for this program through the local Economic Services District Office.

Reach Ahead

Reach Ahead is a job support, childcare subsidy, and food assistance program designed to help families transition from welfare to self-sufficiency. This program also provides support services. Apply for this program through the local Economic Services District Office. The lifetime limit for Reach Ahead benefits is 24 months.

Benefits for Minor Parents

If you are a minor who is pregnant or has given birth, you may only be eligible to receive the full Reach Up financial assistance grant if you are an emancipated minor or if you can show that you live in supervised settings. Some exceptions to this may apply.

Approved supervised settings could include your parents (whose income is not included in determining Reach Up eligibility), a responsible older relative or friend, the father of your child, or another home. Another home is any home in which there is a designated caretaker. You are also required to attend school or an appropriate alternative education or training program. Apply for Reach Up benefits through the local Economic Services District Office. (See VCW's Resource Directory—Public Assistance section.)

Postsecondary Education Program (PSE Program)

This program enables parents in low-income families who meet particular financial and other eligibility criteria to receive financial assistance, case management, and support services while they pursue a 2 or 4-year undergraduate degree in a field directly related to employment. The general rule is that the participating parent is allowed to work up to 20 hours per week when school is in session but exceptions can be made. If you have a spouse who is able to work, the spouse must work to his or her full capacity.

Only one participant per family may be in the program at a time and not everyone who is eligible will be accepted into the program since the funding is limited. Apply for the PSE Program through the Economic Services Division District office.

3SquaresVT (Formerly Food Stamps)

3SquaresVT helps Vermonters stretch their food budgets and put three square meals a day on their tables.

If you qualify for 3SquaresVT, benefits include:

- **Monthly Nutrition Benefits:** If you qualify for this program you will receive a plastic card that works like a debit card. The monthly benefit is added to the card at the beginning of each month. The card can be used at most stores that sell food and at some farmer's markets. If you are 65 or older, or are receiving Supplemental Security Income, the money can be deposited directly into your bank account.
- **Free school meals:** Under the 3Squares program your child can have school lunches paid for if the school participates in the federal meals program. **You will have to fill out the school application form or show them your 3SquaresVT award letter.**
- **Lifeline Phone Assistance:** Eligibility for 3Squares automatically qualifies you for this discount of at least \$9.25 of credit toward your monthly phone bill.

You may be eligible for 3SquaresVT if:

- your gross household income is equal to or less than 185% of the federal poverty level, based on household size — regardless of the resources you own. Current income guidelines can be found on the 3SquaresVT website.
- your gross household income is over 185% of the federal poverty level, but your household includes someone age 60+ or someone with a disability. Some financial

assets and resources will be considered (vehicles, bank accounts) and some will not (your home and certain retirement accounts).

- you have children and get the Vermont Earned Income Tax Credit you are automatically income eligible for 3SquaresVT food benefits and may also be eligible for free school meals.

There are special rules that make getting 3SquaresVT benefits easier for seniors and people with disabilities. These rules apply to you if you are 60 or older or get disability benefits, such as Supplemental Security Income, Veteran's Disability, Social Security disability or blindness payments, or Railroad Retirement disability payments. For help with filing an application or determining eligibility visit your local Agency on Aging.

People who are eligible to receive food stamps, who are 18 to 50 years old, do not have a disability, and who do not have minor children can receive food stamps for only 3 months in any 3-year time period, unless they are working or doing “work-related activities.” If a person participates in Vermont’s “work for benefits” program 3 days a month, that person could remain eligible for food stamps. For more information on the work requirements for able-bodied adults without dependents (ABAWD) see ABAWD What You Need to Know.

Apply for 3SquaresVT at your local Vermont Economic Services Division District Office. (See VCW’s Resource Directory—Public Assistance section.)

Women, Infants and Children (WIC)

WIC is a special supplemental food program for women, infants and children up to age five. WIC provides healthy food through use of a WIC card, which works like a debit card, as well as nutrition education, breastfeeding support, and referrals to health care and other community programs. If you are a woman who is a Vermont resident, is pregnant or breastfeeding, has had a baby in the last 6 months, or has a child under 5 years old, you may be eligible for WIC benefits. Although income guidelines apply, you can work and still be eligible for WIC. Apply for WIC through the Vermont Department of Health. (See VCW’s Resource Directory—Public Assistance section.)

Child Care Financial Assistance

Depending on your income level and your family size you may be eligible for a financial assistance program to help you pay for child care for children from 6 weeks to age 13. This child care subsidy is paid directly to a qualified child care provider. **While financial assistance helps with the cost of child care, it typically does not cover the full cost. You are responsible for paying for the difference between the subsidy amount and the fee that the child care program charges.**

In order to qualify for child care assistance, you must be the primary care giver and have a job, be self-employed, be actively looking for work, attend school or a training program, participate in Reach Up, or have special health care needs and be unable to provide care for your child. You may also qualify if your child has significant health or

developmental needs, or your family is experiencing significant stress in areas such as housing, safety, substance abuse, children's behavior, or parenting issues.

You can use the prescreening tool on the Agency of Human Services, Division for Children and Family website to see if you might qualify. Apply for these benefits and subsidies through your local community child care support agency or online at the Bright Futures Information System (See VCW's Resource Directory – Early Care and Education section for links to both resources.) If you need child care to participate in Reach Up activities, you can apply through your Reach Up case manager.

Essential Person

This Vermont program aims to keep low-income people in their homes, who are 65 or older, blind, or disabled. The program provides funding for someone to live with and provide care for the individual. The person receiving the benefit must meet the income requirements and have an essential person.

The “essential person” has to: live in the household; not be eligible for SSI or Reach Up on their own; not receive payments from the Department of Disabilities, Aging and Independent Living (DAIL) for providing personal services to the applicant.

The “essential person” can be any of the following: the spouse of the applicant and be 55 years of age or older; the spouse of the applicant and is under the age of 55 (other additional criteria will have to then be met); not a spouse but providing at least one personal care service or homemaker service as defined by the Economic Services Division of Department for Children and Families.

You should be aware that this program is also available to help your family when your spouse is waiting to receive Social Security or SSI benefits. Apply for “essential person” benefits through your local Economic Services District Office. (See VCW's Resource Directory—Public Assistance section.)

General Assistance (GA)/Emergency Assistance (EA)

This state program may provide families a minimal amount towards basic emergency needs such as housing, utilities, food, and burials. Unless there is a crisis (such as death of a spouse or a child, fire, flood, hurricane, eviction, or emergency medical need) a person cannot receive assistance unless that person has a minor dependent included in their application. A person may be eligible for GA while waiting for a first Reach Up or SSI check. In addition, Vermont is now engaged in several pilot programs designed to meet the specific needs of applicants and to maximize flexibility depending on need and individual circumstances. Apply for benefits through your local Economic Services Division District Office or in some situations, your local Community Action Agency. (See VCW's Resource Directory—Public Assistance section.)

Emergency Housing

The emergency housing program provides 28 days of temporary housing in any consecutive 12-month period for low-income families with children who have exhausted all other housing options, including shelters, if the lack of housing is not considered to

have been your fault. Being evicted for nonpayment of rent is NOT considered to be your fault if you simply did not have the money. Families in catastrophic situations where housing was lost due to natural disasters, fires, etc.; or families with victims of domestic violence may qualify for up to at least 84 days of temporary housing. Apply for help through your local Economic Services District Office. (See VCW's Resource Directory—Public Assistance section.)

Fuel Assistance

Seasonal Fuel Assistance provides benefits to low-income Vermonters for the purchase of home heating fuel (oil, propane, wood, electricity, etc.).

You might be eligible for fuel assistance whether you: own your home or rent; pay for your heat directly or it's included in your rent; rent a room in someone else's home; or live in public, subsidized, or Section 8 housing and your rent includes the cost of heat.

The benefits are paid directly to the fuel supplier except in the case of wood or wood pellets where the money is given to you.

You must reapply every year. You must apply before November 30th for a full winter's benefit, or before the last day of February for partial benefits. Applications are available at local Economic Services District Offices, Community Action agencies, Area Agencies on Aging, or by phoning the Office of Home Heating Fuel Assistance. (See VCW's Resource Directory—Public Assistance section.)

Crisis Fuel Assistance for home heating emergencies is available from the last Monday in November through the last Friday in April. Assistance may include minimum delivery of fuel, partial payment of a utility bill to prevent service disconnection, furnace repairs or replacements. Apply for assistance through Community Action agencies. ***Please call the agency first, so they can tell you what documents and information you will need to bring. Do not wait until you have run out of fuel to apply*** as fuel dealers often charge a special trip fee for emergency deliveries. We cannot help you if the fuel has already been delivered or the furnace work has been completed. If you need assistance after hours, on weekend and holidays, there is a statewide emergency hotline 1-800-479-6151.

If you are granted assistance after-hours, you will need to follow up by completing an application for Crisis Fuel Assistance at your local Community Action Agency. If you do not complete the application, you risk not getting any assistance in the future. (See VCW's Resource Directory—Public Assistance section.)

Contact your fuel distributor to find out about any assistance programs that they may have.

Weatherization Assistance

This program helps low-income residents save money on their energy bills by improving home energy efficiency. Weatherization services may include assessments of energy problems, building diagnostics, and home upgrades. A household automatically

qualifies if a member receives SSI or Fuel Assistance. Otherwise, the home must meet income requirements. To apply for the program, contact your local Community Action Agency. (See VCW's Resource Directory—Housing and Homeless section for contact information.)

Vermont Health Connect

When the federal health care law known as the Affordable Care Act (ACA) was passed in 2010, each state was given the choice of building its own health insurance marketplace, or letting the federal government build one for it. Vermont opted to build its own: Vermont Health Connect (VHC). VHC is administered by the Department of Vermont Health Access, part of the State of Vermont's Agency of Human Services.

Through VHC, Vermonters can compare health insurance options, enroll in a health plan, and if they qualify, secure financial help to pay for care. Both public health care programs (Medicaid for adults and Dr. Dynasaur for pregnant women and Vermonters under 19) and private insurance plans are available. VHC offers cost and coverage comparisons allowing participants to choose plans based on medical needs and financial resources. Private insurance plans are categorized into four “metal” levels based on cost structure: bronze, silver, gold, and platinum. The levels vary in the amount of monthly premium versus out-of-pocket costs.

VHC serves Vermonters eligible for Medicaid and Dr. Dynasaur and those who have had “qualifying events” such as:

- Loss of coverage – employer sponsored or public plan
- Aging out of parental coverage or foster care
- Release from incarceration
- Marriage/divorce/annulment
- Household member becomes pregnant
- Birth/adoption/placement for adoption
- Court-ordered coverage
- Change in legal status (citizenship, immigration eligible, lawfully present)
- Moves permanently into the state
- Unaffordable or inadequate employer-sponsored insurance
- Change in income resulting in change in cost sharing eligibility
- Native Americans (status allows enrollment any time)

Under the ACA's Individual Mandate provision, almost everyone is required to either have health coverage or pay a fee on their following year's taxes. In 2016, the federal fee was either 2.5% of yearly household income or \$695 per adult, whichever is higher. The fee for an uninsured child is \$347.50. The maximum per person fee in 2016 was \$2,085. The fee will increase for inflation in future years. (See the Insurance chapter of *The Legal Rights of Women in Vermont* for more information.)

Disability and Long-Term Care

Vermonters who need long-term care services either in their home or a nursing facility

may qualify for financial assistance through the Department of Disabilities, Aging and Independent Living (DAIL).

Choices for Care is a Medicaid-funded, long-term care program to pay for care and support for older Vermonters and people with physical disabilities. The program assists people with everyday activities at home, in an approved residential care setting, or in an approved nursing facility. To be eligible for Choices for Care, you must: be a Vermont resident; be 65 years of age or older or 18 years of age with a physical disability; meet specific clinical criteria; and meet financial criteria for Vermont Long-Term Care Medicaid.

Support includes hands-on assistance with eating, bathing, toilet use, dressing, and transferring from bed to chair; assistance with tasks such as meal preparation, household chores, medication management and increasing or maintaining independence.

A second program is for **Moderate Needs individuals who need minimal assistance to remain at home.** This program offers limited case management, adult day services, and/or homemaker service. Separate eligibility criteria exists for Moderate Needs individuals.

Information regarding program eligibility and service availability can be obtained directly from the Adult Day Centers or Home Health Agencies in your area. (See VCW's Resource Directory – Aging and Elder Issues section.)

Free and Low Cost Medical/Dental Care

If you do not have health insurance, or have high deductibles or co-pays, you may be eligible to receive medical and/or dental care services from one of the federally qualified health care centers (FQHC's) located throughout Vermont. These centers provide health care services regardless of your ability to pay. If you do not have insurance, they provide services for free or on a sliding fee scale depending on your family income. (See VCW's Resource Directory—Women's Health section for a list of these clinics.)

Vermont also has a number of free primary care clinics and dental clinics located throughout the state. Your household income must be below 200% of poverty to receive free services. See VCW's Resource Directory—Women's Health section for a list of clinics that belong to the Vermont Coalition of Clinics for the Uninsured.

Medicare

A federal health insurance program that covers health care for people age 65 and older and younger people with certain disabilities. People on Medicare do not have to buy insurance through Vermont Health Connect. Supplemental Medicare policies often called "medigap" plans and managed care plans called Medicare Advantage or Part C plans are also available from private insurance companies to help pay for medical expenses not covered by Medicare. Visit Medicare.gov to learn more, or see the Insurance chapter of *The Legal Rights of Women in Vermont* for a full description of the federal Medicare Program.

HIV Insurance Assistance

Vermont has an extensive network of AIDS services organizations (ASOs) and HIV-specific clinics for medical care around the state. The Vermont Department of Health also provides several programs that may be extremely helpful.

Early Intervention program: If you just learned you are HIV+, this program can help by paying for your initial doctor's visits and for medical tests that will give you a baseline of information about your current health. Any physician throughout Vermont can charge the program for costs related to these tests, so you will not be faced with large medical bills while also deciding what actions to take in making treatment choices.

Tests include screenings for viral load to help you determine what your best treatment options are. You can also be tested for Hepatitis and TB and be immunized to prevent the flu and pneumonia at the same time. If you are a woman, you may also request a Pap Test and a pregnancy test during your doctor visit.

HIV Insurance Continuation Assistance Program (ICAP): This program is designed to pay the insurance premiums for eligible individuals who, because of HIV/AIDS-related illness, are unable to continue working or who have had to reduce their hours of employment and are at risk of losing their existing health insurance coverage.

Vermont Medication Assistance Program (VMAP): The Vermont Medication Assistance Program provides financial assistance for the purchase of prescription medications to Vermonters living with HIV disease who meet certain income guidelines. If you are eligible, this program will help pay for your treatment drugs whether or not you have private insurance.

HIV Dental Care Assistance Program (DCAP): This program provides free dental assessments and offers additional preventative care, including cleanings and basic restorative treatments such as fillings. As with the Early Intervention Program, any licensed practitioner in Vermont can access this fund on your behalf.

(See VCW's Resource Directory—Women's Health section for a complete list of phone numbers and websites that provide HIV/AIDS information and supportive services.)

Lifeline Telecommunications Service Credit Program

This is a federal program that subsidizes telecommunication services for low-income Americans. This program entitles low-income Vermonters up to a \$9.25 reduction in their monthly telephone bill. If you are eligible for other government benefits, you may automatically qualify for this program. Eligibility is also based on income criteria that may change from year to year. For those that qualify and are Burlington Telecom customers, high-speed internet is also available.

Contact the Economic Services Department or visit the Public Service Department's website for more information and an application.

Micro Business Development Program (MBDP)

The MBDP helps low to moderate-income Vermonters start and grow micro businesses. These are businesses that employ less than five people and generate less than \$25,000 in annual revenue. Participants in MBDP have opportunities to: Network with other business owners; Use MBDP technology resource centers; Take classes and workshops on topics such as writing a business plan, building your credit score, record keeping, tax planning, and setting the right price for your product or service; and, Meet one-on-one with an experienced business counselor. To find out if MBDP is right for you, contact your local Community Action Agency. See VCW's Resource Directory—Business and Entrepreneurship section for more information.

Individual Development Account (IDA)

IDA is a matched-savings program that can help you save money for a specific goal. This can include: buying your first home; pursuing college or training after graduating from high school; or, starting or expanding a micro business. To find out if an IDA is right for you, contact your local contact your local Community Action Agency. See VCW's Resource Directory—Business and Entrepreneurship section for more information.

Denials, Reductions or Terminations of Governmental Benefits

If you are denied governmental benefits, or have been notified that your benefits are going to be reduced or terminated, you have the right to appeal that decision. Make sure you ask the agency administering the particular program about your appeal rights, and how much time you have to appeal.

If it is a state-administered program, you will probably have your case heard at a fair hearing by a Hearing Officer from the Human Services Board. Appeals from fair hearings go to the Human Services Board and then to the Vermont Supreme Court. If it is a federally-administered program, you may have the case heard at an administrative hearing in front of an Administrative Law Judge (ALJ). Appeals from a decision by an ALJ are taken to federal court.

File appeals from Social Security decisions through your local Social Security office. (See VCW's Resource Directory—Public Assistance section for the Social Security office nearest you.)

Relevant Laws

Vermont

Emancipated Minor, 12 V.S.A. § 7151
Employer-Sponsored Insurance, 33 V.S.A. § 1974
Emergency Housing, 33 V.S.A. § 2114
Home Heating Assistance, 33 V.S.A. § 2603
Home Weatherization Assistance, 33 V.S.A. § 2502
General Assistance/ Emergency Assistance, 33 V.S.A. 2103
Postsecondary Education, 33 V.S.A. § 1122
Reach Ahead, 33 V.S.A. § 1203

Reach First, 33 V.S.A. § 1003
Reach Up, 33 V.S.A. § 1103
Reproductive Health Equity in Health Insurance Coverage 8 V.S.A. § 4099c
Vermont-Rx, 33 V.S.A. § 2074
Vermont Health Benefit Exchange, 33 V.S.A. § 1803

Last modified 8/11/17 - LT

This chapter includes information about:

- Birth Control
- Abortion
- Midwives
- STDs

Women's control over the timing and spacing of their families is directly linked to improved health, educational and professional attainment, and to economic security. All women in Vermont, regardless of their age or marital status, should understand their rights around birth control, abortion and other issues related to reproductive health so that they can make informed choices for themselves.

Birth Control

You do not need permission from a parent, guardian or husband to get birth control. The choice to use birth control is up to you. If the method needs to be prescribed by a medical professional, you can be seen regardless of age. Information gathered at a medical facility is private and cannot be released to anyone without your permission. **However, if you use a family health insurance card to pay for your visit, an explanation of what services were provided to you at the visit may be sent to the person who holds the insurance policy.** Therefore, if you do not want family members to know of your visit, and you do not have an income of your own, you should discuss with the provider whether they have a sliding fee scale or offer free services to teens. Most community family planning health centers have sliding fee scales or offer free services to teens.

Insurance Coverage for Contraception

A Vermont law passed in 2016 requires health insurance plans to provide coverage with no deductible, co-payment, or other cost-sharing for contraceptive methods approved by the U.S. Food and Drug Administration (FDA) and prescribed by a health care provider. This no cost-sharing benefit also covers vasectomies. Health insurance plans that don't provide coverage of prescription drugs are not required to provide coverage of prescription contraceptives and prescription contraceptive devices. These provisions went into effect for Vermonters enrolled in Medicaid on October of 2016. Health insurance plans must comply by October 1, 2017.

In addition to no cost-sharing for FDA-approved contraceptive methods, provisions in this law established other benefits. This law allows women to pick up a year's supply of birth control in one visit. The law's improved reimbursements to health care providers make it easier for medical offices to stock and provide Long-Acting Reversible Contraceptives (LARCs), such as injections, intrauterine devices (IUDs), and subdermal implants to patients the same day as their office visit. This law also requires health

insurance plans offered through the Vermont Health Benefit Exchange (Vermont Health Connect) allow a pregnant woman and her family to enroll at any time during her pregnancy.

Emergency Contraception

Emergency contraception is Food and Drug Administration (FDA) approved and is often referred to as “EC”, “the morning after pill”, or “Plan B”. It is effective if taken within five days of unprotected sex, although it is more effective the sooner it is taken.

Recently, the FDA approved a new emergency contraception pill called Ella. Ella must also be taken within five days of unprotected sex, and is even more effective at preventing pregnancy. All women are required to get a prescription from a doctor before obtaining Ella.

Another option for emergency contraceptive is the insertion of a copper IUD, commonly called ParaGard. If used within five days of unprotected sex, ParaGard is extremely effective at preventing pregnancy. A doctor must insert ParaGard. It may be difficult to make a doctor's appointment for this procedure within the five-day window of time. Once ParaGard is inserted, a woman can choose to keep it in her body and use it a method of birth control for up to ten years.

In Vermont, a woman 18 or older can get most emergency contraception from a pharmacist without a prescription. Women 17 or younger must have a prescription from a doctor to get emergency contraception. Pharmacists have the authority to dispense emergency contraception without a prescription if they have entered into an agreement with a physician. If your local pharmacist does not have this authority, you can still get emergency contraception with a prescription or by simply finding a pharmacist that can provide it to you without a prescription. **If your pharmacist does not provide emergency contraception, they are required to refer you to another pharmacy that does, or to a family planning health center.** Pharmacists are required to provide you with information before dispensing emergency contraception. You must sign a form indicating this information has been given to you. Any exchange between you and the pharmacist is private and cannot be released to any other person without your consent.

Abortion

In Vermont, you have an unrestricted legal right to get an abortion regardless of your age or marital status. You do not need to notify or get permission from a parent, guardian, or spouse.

An abortion is easiest and safest when performed during the first trimester (up to 14 weeks). In Vermont, it is unlikely you will find a clinic that offers abortions after the nineteenth week. Early in the pregnancy, there is also the option of a medical abortion (the abortion pill) instead of a surgical abortion. Abortions that either present a danger

to the mother's health or where there is a severe fetal deformity are performed in a hospital.

A minor's rights in Vermont are the same regardless of whether the choice is to have an abortion or carry the child to term.

- A minor has the right to decide to abort her pregnancy or carry it to term.
- In Vermont, a minor 14 years old or older can petition the court for a guardian if she is having a dispute with her parents over her pregnancy.
- Parents cannot legally force a minor child to give her baby up for adoption.
- The Vermont Department of Child and Family Services (DCF) may become involved if the minor has been abused or neglected, or is unmanageable.

There are no laws that require a minor in Vermont to obtain her parents' permission in order to get an abortion. **However, since parents have legal authority over most of their children's health care decisions, individual doctors might have practices about sharing the minor's health information with her parents.** If this is a concern for you, be sure to ask whether or not you will be seen confidentially and whether your medical records will be provided to your parents before choosing an abortion or birth control provider.

Crisis Pregnancy Centers

Vermont does not regulate crisis pregnancy centers or ensure they provide accurate information regarding pregnancy and abortion. Crisis Pregnancy Centers do not provide abortion services or referrals for abortion services. They can assist you if you are pregnant, in need of support, and have made the choice to carry your pregnancy to term.

Insurance Coverage for Abortion

While women in Vermont have unrestricted access to abortions, this does not mean that all health insurance policies will pay for the cost. The Federal Budget Act passed in 1996 took away all federal employees' ability to choose a health insurance plan that covers abortion services. This affects all women and their female dependents who work for federal agencies in Vermont. Similar restrictions now also apply to women who serve as Peace Corps volunteers and women in federal prisons, although none exist in Vermont. U.S. military servicewomen and the female dependents of U.S. military servicemen cannot have abortions paid for by Department of Defense funds. If you have an abortion in a military hospital you must pay for it yourself.

Abortions are sometimes covered by individual insurance plans. Women should be aware that the service might not be confidential on the "explanation of benefits" that might be sent to the **insurance policy holder regardless of whether it is a parent or a spouse. If you have health care insurance and are not a federal employee, you should check with your provider to find out if the cost of**

abortion is covered by your policy. Some policies provide coverage while others do not.

Medicaid Coverage of Abortion

The right to obtain an abortion is protected under the U.S. Constitution, according to the 1973 U.S. Supreme Court decision in *Roe v. Wade*. This U.S. Supreme Court decision holds that the constitutional right to privacy extends to your right, in consultation with your physician, to manage your own pregnancy. This includes your right to seek and obtain an abortion. **A state cannot create a law that restricts abortion contrary to this constitutional right.** A state can, however, offer more rights to women. Vermont has done this by covering abortions with Medicaid funding. **In Vermont, if you are eligible to receive Medicaid you are entitled to have the cost of abortion covered under the state Medicaid program.**

Since the U.S. Supreme Court decision in *Roe v. Wade*, there have been a number of other decisions by the Court allowing states to enforce laws that limit and restrict the right to abortion. These restrictions include mandatory waiting periods, particular forms of pre-abortion counseling, parental consent and notification laws, Medicaid funding restrictions for low-income women, bans on insurance coverage for abortion, gestational limits, bans on particular abortion procedures, prohibitions on the use of clinic facilities, prohibitions on certain medical personnel performing procedures, and prohibitions on the use of public facilities or the participation of public employees in providing abortion services. **Vermont has not adopted any of these restrictions on abortion.**

In 2003, Congress passed the “Partial Birth Abortion Ban Act”. The act bans only one form of abortion performed late in pregnancy, a medical procedure that is extremely rare. It does not ban all abortions after the first trimester. Any Constitutional ban trumps state law. However, in Vermont there are no other limitations or restrictions.

Midwives

There are two kinds of midwives licensed in Vermont: **direct-entry certified professional midwives (CPM)** and **certified nurse midwives (CNM)**. (CPMs are often called licensed midwives.)

As part of licensing obligations, every licensed midwife must obtain from each client a signed informed consent form that includes the following information:

- the midwife’s education and credentials;
- whether the midwife has professional liability insurance coverage;
- the procedures and risks of home birth if applicable;
- a copy of the emergency plan developed by the midwife for getting an infant to a newborn nursery or neonatal intensive care nursery, and for getting a woman to an appropriate obstetrical department or patient care area, if needed;
- the address and phone number of the office of professional regulation where complaints may be filed.

Private health insurance plans providing maternity benefits and insurance plans in Vermont Health Benefit Exchange (Vermont Health Connect) including Medicaid will pay for services provided by both kinds of midwives including home births. Medicare and Federal employees' insurance plans will not pay for services provided by a direct-entry certified professional midwife. **It is always best to check with your insurance carrier to make sure that the midwife you choose will be paid by your health plan.**

STD Prevention and Treatment

Sexually transmitted diseases (STDs) are caused by infections passed from one person to another during sexual contact. In addition to allowing for various in-person treatment and prevention methods, current Vermont law allows for the use of Expedited Partner Therapy (EPT). EPT is the clinical practice of treating the sex partners of patients diagnosed with certain STDs. With EPT, medication of the patient can be given to his/her sex partner without a prior health exam.

HPV Vaccines

The FDA approved a human papilloma virus (HPV) vaccine for women and girls between the ages of 9 and 26, as well as boys and men in the same ages. The vaccine prevents certain types of HPV, a virus transmitted through sexual contact that can cause cervical cancer and genital warts. Most insurance plans, including Medicaid, will cover the vaccine. Depending on economic need, some girls and boys may receive the HPV vaccine at no cost through the Vaccines for Children program administered by the Vermont Department of Health. Unlike other states, Vermont does not require this vaccination.

Relevant Laws

Vermont:

Beecham v. Leahy, 130 Vt. 164 (1972)

Doe v. Celani, 1986, No. S81-84CnC (requires Medicaid coverage of abortions in Vermont)

Emergency Contraception; Collaborative Practice, 26 V.S.A. §2077 et. seq.

Home Births, 8 V.S.A. §4099d

Licensed Midwives, 26 V.S.A. Chapter 85

Repealing the Unconstitutional Vermont Statutes Related to the Performance of Abortions (2014), Sec. 1. 13 V.S.A. Chapter 3

Reproductive Health Equity in Health Insurance Coverage, 8 V.S.A. § 4099c

Vermont Department of Health, Agency of Human Services: Standard Protocol and Procedures for Initiating and Dispensing Emergency Contraception by Pharmacists, May 2007

Treatment of Partner of Patient Diagnosed with a Sexually Transmitted Disease, 18 V.S.A. § 1095

Vermont Health Benefit Exchange, 33 V.S.A. § 1803

Vermont-Rx, 33 V.S.A. § 2074

Federal:

Ayotte v. Planned Parenthood of Northern New England, 126 U.S. 961 (2006) (affirmed a state's ability to require parental involvement when a minor seeks to terminate her pregnancy)

Gonzales v. Carhart, 127 U.S. 1610 (2007) (upheld the Constitutionality of 18 U.S.C.A. §1531)

Partial Birth Abortion Ban Act, 18 U.S.C.A. §1531

Planned Parenthood v. Casey, 505 U.S. 833 (1992) (permits states to impose restrictions as long as they do not “unduly burden” a woman’s right to choose)

Roe v. Wade, 410 U.S. 113 (1973) (established a woman’s right to choose an abortion)

Webster v. Reproductive Health Services, 492 U.S. 490 (1989) (allows states to impose greater restrictions on second trimester abortions)

Updated 6-29-17 – LT

This chapter includes information about:

- Domestic Violence
- Sexual Violence
- Stalking Offenses
- Safety for Victims of Domestic and Sexual Violence and Stalking
- Sexting
- Child Abuse
- Sexual Crimes Against Children
- Human Trafficking
- Abuse of Vulnerable Adults
- Kidnapping
- Hate Crimes
- Crime Victims Assistance, Notification and Compensation
- Release of People Accused of a Violent Crime
- Sex Offender Registry
- Violent Career Criminals and Habitual Criminals
- Civil Actions for Crimes Against Women and Children

Women and children are often the victims of particular types of violent crimes such as domestic and sexual violence, human trafficking, child abuse and neglect, elder abuse and neglect, stalking, voyeurism, kidnapping and hate crimes. Vermont law addresses both civil and criminal remedies and recognizes the need for protection for the victims of such crimes. This chapter will describe each of these offenses, current penalties, and the rights of victims.

As a victim of crime, once the police find probable cause of a crime, you may be eligible for crime victims' assistance programs and monetary compensation.

Please note that although this chapter is addressed to women, attributes the described legal rights to women and makes the assumption that the majority of victims of domestic and sexual violence are women, these legal rights apply to women and men equally.

Domestic Violence

Every 15 seconds, a woman somewhere in the United States is beaten. Based on numerous studies, researchers believe that as many as 1 in 4 of all women in the U.S. will be abused by a partner during their lifetime. According to the FBI, domestic violence is the leading cause of injury to women between ages 15 and 44 in the United States -- more than car accidents, muggings, and rapes combined.

Domestic violence is a pattern of abusive behavior used by a person to gain and maintain power or control over a partner. It occurs in many different types of relationships. **Domestic violence is not limited to any particular group or economic class of women.** Wealthy women and poor women, single women and married women, white women and women of color, women who work in the home and outside the home, heterosexual and bisexual women, lesbians, teenagers and elderly women can all experience abuse.

Domestic violence can be addressed in Vermont under both the criminal justice and civil court systems. In addition, domestic assaults can be reported to the police and may be prosecuted by the local State's Attorney's office as a crime of domestic assault. Women can seek help through Vermont's Abuse Prevention Act by applying for a civil Relief From Abuse Order.

Federal Crimes

The Violence Against Women Act provides two federal crimes that provide further protection for victims of domestic violence.

It is a federal crime if:

- a person causes physical injury to a spouse or partner and that **person crossed a state line** with the intention of injuring, harassing or intimidating the partner or spouse and they commit or attempt to commit a violent crime against the person; or
- **a person causes a spouse or partner to cross a state line** and then commits or attempts a violent crime against the spouse or partner.

It is also a federal crime to cross a state line with the intention of violating a protection order and violating the order by threatening, harassing or injuring a spouse or intimate partner, or causing a partner or spouse to cross a state line and then engaging in conduct that violates a protection order.

Congress also enacted a "gun ban" for people who have been convicted of domestic violence or are subject to an active Relief From Abuse Order. This federal law makes it a crime for a person to purchase or possess a firearm if the person is currently subject to an abuse prevention order or if the person has been convicted of numerous crimes.

These laws can be enforced by the U.S. Attorney's office in each state.

Vermont Laws

Vermont's laws against domestic abuse apply if a person:

- is physically injured (either deliberately or recklessly) by a family or household member; or
- has been the victim of an attempt at physical injury by a family or household member (whether or not the attempt is successful); or

- is placed in fear of being seriously physically hurt by a member of her current or past family or household; or
- is sexually assaulted or stalked; or
- is a child who has been abused.

Protection against domestic violence is available to Vermonters who are or have been in a wide range of relationships. **Household members** include people who, **for any period of time:**

are living or have lived together;

- are sharing or have shared a living space such as housemates or roommates;
- are engaged in or have engaged in a dating or sexual relationship.

Some judges have also applied the abuse prevention law to cover relatives who do not live together, such as children, siblings, aunts, uncles, cousins, in-laws, etc.

It is important for every woman to know how the law can help protect her and assist her in taking steps to secure safety for her and her children. (See VCW's Resource Directory – Violence section.)

Getting Help

If you need help or advice in dealing with an abusive situation, you can get help from your local domestic violence program. A **domestic violence program** is a group of individuals who are dedicated to helping victims of domestic violence. There are fourteen domestic violence programs around the state. **Local domestic violence groups can help even if your abuser is not breaking any laws.**

These programs provide free, confidential help 24 hours a day, seven days a week. (See VCW's Resource Directory – Violence section.) You can also call the **Statewide Domestic Violence Hotline at 800-228-7395.**

Domestic violence programs provide a variety of confidential services that may include:

- assistance in creating a safety plan for yourself and your children;
- help in obtaining medical and legal services, help connecting with social programs (child care, food stamps, welfare, etc);
- emergency food and clothing, etc.
- peer counseling and support groups;
- help in obtaining legal assistance, including obtaining a Relief From Abuse Order;
- a confidential temporary place to stay or a hiding place (9 of the programs offer emergency shelter and all of the programs can assist in accessing emergency or transitional housing);

The programs are not usually part of any governmental agency, although they receive some state and federal funds.

If you have been the victim of domestic violence, you have the right to request a Relief From Abuse Order (RFA). **RFA orders can be an important tool, but they are**

absolutely not a guarantee of safety. RFA orders are only one aspect of a survivor's safety plan and do have limitations. An advocate can help a survivor decide if getting a RFA order is the best decision for her. Survivors can talk with an advocate to make a safety plan.

You do not need to hire an attorney to get a RFA order, and you do not have to pay a fee to the court. Of course you can choose to hire a lawyer if you feel you want or need one. Referrals for legal assistance may be available through the domestic violence program. Check with the domestic violence program for details. (See VCW's Resource Directory – Legal or Violence sections.)

If either you or the alleged abuser get a lawyer for any hearing and does not give the other person advance notice that he or she is being represented, the other party has the right to have the hearing postponed in order to be able to hire their own lawyer. You must ask the judge for this postponement at the beginning of the hearing if you need it. If a Temporary Order has been issued, the Order will stay in effect until the hearing takes place.

Victim and Crisis Worker Privilege

Vermont gives legal protection to the relationship between victims of abuse or sexual assault and their crisis workers. If you have confidential communications with a crisis worker at a domestic or sexual violence program, you have the privilege to refuse to disclose, and to prevent the crisis worker from disclosing, any oral or written information you may have told or given to your crisis worker in confidence.

A crisis worker also cannot disclose anything you share in confidence without first getting specific, written permission from you to share that information. There may be some exceptions to this privilege if a crisis worker is concerned that a child's safety may be endangered and they are mandated to report child abuse and neglect. If a crisis worker is a mandatory reporter, they should tell you that up front. You may also ask if a crisis worker is a mandatory reporter so you can decide if you want to speak with someone else or speak anonymously without giving your name.

Domestic Violence Relief From Abuse (RFA) Order (Civil)

Vermont's Abuse Prevention Act is designed to provide immediate protection from domestic abuse through the civil court system. This law allows any individual over the age of 16 to request a RFA Order against their abuser to prevent further abuse of themselves or their children if the abuser is or was a family or household member or if the parties were engaged in a dating or sexual relationship. Applying for the order does not cost any money.

You may seek an **Emergency Temporary RFA Order** by filing a complaint if you believe you or the children are in immediate danger of being further abused. **An Emergency RFA Order is a legal document that you can get from the family court to protect you from your abuser.** The application should be done in the county in which you live or the county to which you have gone to protect yourself, for example, a friend or family member's home or a shelter. If you are enrolled in the Safe At Home address confidentiality program, you may also file the application in

Washington County (where the program is housed) if that feels safer for you. You can apply to the Family Division of the Vermont Superior Court and if the Family Judge is not available, the court clerk should find a judge.

In addition, there is no charge for filing for an Emergency Temporary RFA Order. This emergency order can be applied for and granted without giving advance notice to the abuser. The family courts and many domestic violence programs have copies of the forms that are used in applying for a RFA Order. These forms are also available online on the Vermont Judiciary's website.

There is also a process for getting relief after regular court hours or on weekends or holidays. (See section below on Getting Help.)

Final Hearing. To apply for a Temporary RFA Order, you must write an "Affidavit" (a statement witnessed by a notary or an officer of the court who can administer oaths) describing the details of what happened and explaining why you are afraid for yourself and/or your children.

The judge may order the abuser to stop abusing, contacting, harassing, threatening or stalking you. The judge may also order the abuser to leave the home and may award temporary custody of the children to you. If you are married then you may request living expenses from the abuser for up to three months. The court can also order protection for your pets.

Filling out the papers to request a RFA Order does not begin divorce proceedings, nor do you have to file for a divorce or legal separation in order to get a RFA Order. You also do not have to file a criminal report with the police in order to get one of these orders.

If the Temporary Order Is Denied

It is possible that the judge could deny the request for the emergency order. This may happen for a variety of reasons such as the judge does not feel there is enough information about the abuse in the Affidavit, the judge does not think there is an immediate danger of future abuse, or the abuse described in the affidavit does not meet the statutory requirements. You may be given the opportunity to speak to the judge so you can better describe or explain the situation.

If the judge still denies all or part of what you have requested, the judge is required to provide written reasons for the denial. You are then entitled to ask the court for a hearing. If you do not ask for a hearing, your request for a RFA Order will remain confidential and the court will not notify the defendant of your request, and the contents of your affidavit will not be shared. If you request a hearing, this hearing must be scheduled within 10 business days of the date of your request. The alleged abuser must be properly notified by the authorities about the hearing within the 10-day period, and will be provided with a copy of the request including the affidavit that you filed.

When the Temporary Order Is Granted

The Temporary Order is not considered to be in effect until it has been “served” on the person accused of abuse. This means that the Order must be personally delivered by a sheriff, constable, state or local police officer.

Court clerks will send a copy of the Order to the police agency responsible for serving it. Under the federal Violence Against Women Act, there should be no fee charged for service of this order. Police agencies are required to serve the Order as soon as possible. If you don't hear from the police that the order has been served, you should contact the police agency or the court and ask about the status of the order.

If you get a Temporary Order, you should give copies to the local and State police and sheriff where you live and where you work. You should also carry a copy with you at all times. It is advisable to retain a copy on your person, in your home, and in your vehicle.

As long as the Order is in effect, the protections granted to the victim in the Order are kept on file in a statewide police computer file. This gives police officers who are being asked to enforce the Order the ability to verify the protections that the judge has ordered and to ensure that they are still in effect. If the officer is unable to get to the statewide database, they may rely on your copy of the Order.

The **Temporary Order** remains in effect until the date of the **Final Hearing**. This Final Hearing has to be scheduled within 10 business days of the Order being issued. It is also possible that the Final Hearing could be held earlier than the date scheduled if the abuser has compelling reasons to ask for changes in the Order about child custody or possession of the home.

If the abuser violates any of the provisions in the Order after it has been served, he or she has committed a criminal act. Prompt reporting of the violation to the police is necessary for the order to be enforced.

If you are in fear that the abuser will not honor the terms of the order, it is important to consider taking any other necessary steps to protect yourself.

A domestic violence advocate can assist you in preparing a safety plan that could include the following:

- changing the locks on your doors (and keeping them locked when you are at home);
- discussing your legal options, including reporting to the police; and
- assist you in finding temporary shelter for you and your family.

Defendant's Right to an Early Hearing

It is possible for the person accused of abuse (the “defendant”) to ask the court to move up the hearing date in order to decide if the temporary order should be modified as to possession of the house and child custody. If there is a request for an “early hearing,” you are entitled to get a copy of whatever papers the defendant has filed with the court, which must include the reasons the defendant is asking for an early hearing. The court

will give two days notice to you unless it decides less time is necessary. This gives you some time to hire your own lawyer, if you want to do so. Although the only issues that can be decided at this “early hearing” are child custody and possession of the home, if you and the defendant agree, this early hearing can become the Final Hearing in order to also deal with the issue of the alleged abuse.

Final Relief from Abuse (RFA) Order

A Final RFA Order offers longer and more comprehensive protection than the other orders. Before the hearing, you should look at the kinds of protection a judge can order to see which you or your children need. **If you want a kind of protection that is not listed below, you can ask the judge for it at the hearing.** The judge can order other additional protections you and your children need to be safe.

The **Final RFA Order** can order the abuser to:

- stop abusing you and/or your children;
- stop threatening to abuse you and/or your children;
- not interfere with your and/or your children’s personal liberty;
- not stalk you or your children;
- not contact you and/or your children in person, by phone, by mail, or by third party;
- not come within a specific number of feet of you and/or your children, your home, or other places where you or your children are likely to spend time;
- immediately leave the house or apartment where you live and give sole possession of the house to you;
- give temporary custody of the children to you if applicable;
- be allowed to visit with the children under any conditions needed to protect the children and/or you from abuse; (If the abuser has been convicted of a sexual offense against his/her child, the court can consider that as grounds for denying or limiting visitation.)
- pay your living expenses for up to 3 months if the abuser is married to you;
- pay child support for up to 3 months if he or she has a legal duty to support the children. (Biological fathers, whether married to the mother or not, have a duty to support their children, as do adoptive parents and many stepparents. Since this is a legal decision, it is up to the judge to decide whether to order the abuser to pay child support.)
- give you possession, care and control of any animals that you or your children own.

If you are not told before the final hearing that the defendant is going to be represented by a lawyer but the defendant appears with an attorney at the hearing, you can ask the court to extend the terms of your temporary order and schedule another final hearing date in order to give you reasonable time to hire a lawyer of your own.

Both you and the defendant (if that person attends) will have a chance to tell your side of the story. The person requesting the order will be expected to present their case first, and has the burden of proving that the alleged abuse occurred. The defendant will then be given the opportunity to deny the allegations. After listening to both of you and to any other witnesses, the judge will decide whether to grant a Final RFA Order.

The judge can enter an order even if the defendant does not appear at the hearing as long as he or she has been served with the Temporary Order, including notice of the final hearing date. In this case, the Final Order must be served before it can go into effect.

The judge can decide to keep the original protections from the Temporary Order in effect, change them, add to or deny some or all of them. The judge may not enter “mutual orders” (that is, against both parties) unless you have both filed petitions and affidavits before the final hearing. This Final Order will be in effect for a fixed period of time that the judge decides is necessary.

Just like the Temporary Order, as long as the Final Order is in effect, the protections granted to you are kept in a statewide police computer file so police can verify the protections the judge has ordered and ensure that they are still in effect.

The Final Order generally expires after a year. **A month or two before the Final Order expires, if you feel that you still need the protections, you can go back to court and request an extension of the Order.** You do not have to be abused again while under the protection of the original Order to ask for and receive an extension, but the court can choose to deny the extension. The application to extend the Final Order should be made before the expiration date.

Changing the Order

At any time during which the Final Order is in effect, either person can go back to court and request a change in the Order if there are major changes in the situation or if you both agree about making changes. Only a judge can change or dismiss an order. Even if you both agree about making changes or dismissing an order, you must file a request with the court.

If you believe that the abuser has violated one or more conditions in either the Temporary or Final RFA Order, you should call the police. You should tell the police you have a RFA Order and then describe what is happening or has happened. **Victims of domestic abuse have the right to have the police enforce the Order.** Some examples of the types of conditions that an abuser might violate include threatening, frightening or hurting you again, failing to leave the house or refusing to give you custody of the children.

If the police have reason to believe that the Order has been violated, they can arrest the abuser and charge him or her with a crime.

Violations of a Temporary or Final RFA Order that has been issued in Vermont or in any other state are a crime in Vermont. Be aware that even though the police may arrest the abuser for committing a violation of the Order, this is no guarantee that the abuser will be kept in jail. Unless the court finds that there are reasons to deny the abuser the ability to be released on bail or other conditions, there is no guarantee that the abuser will be kept in jail pending a trial or hearing. (See sections on **Bail** and **Conditions of Release** within this chapter.) You should take every step to keep yourself and your children safe, even after the abuser has been arrested for violating an Order.

Penalty for first time violation of the Order: the abuser can be sentenced for up to one year in prison and/or fined not more than \$5,000 and/or be ordered to attend a “batterer intervention program”. If the abuser can afford it, he or she must pay all or part of the costs of the counseling.

Penalty for second or subsequent violation of any person’s Order: the abuser can be sentenced to up to three years in prison and/or fined not more than \$25,000 and/or be ordered to attend domestic abuse counseling. This penalty also applies if someone violates a protection order for the first time, but they have been previously convicted of domestic assault.

Even if an abuser is criminally charged for violation of a Temporary RFA Order, you should still go forward to get a Final RFA Order. The criminal prosecution is in addition to, and should not be considered a substitute for getting a Final RFA Order. RFA Orders offer different protections than criminal conditions of relief, and are enforceable by police.

Criminal Contempt

It is possible that the State’s Attorney’s office might charge a person who has violated a RFA Order with **criminal contempt**. Criminal contempt is when someone disobeys a judge’s order where the violation is a criminal matter, as is the case with RFA and Stalking and Sexual Assault Orders. This method is not often used, since the penalties are higher if the person is charged with violating a RFA Order under **Vermont’s Abuse Prevention Act**. The penalty for criminal contempt is up to six months in prison and/or a fine up to \$1,000.

Abuse Orders from Other States

If you have received an Order designed to protect you and your children from abuse that was issued in any state in the United States, any federally recognized Native American tribe, territory or possession of the United States, the Commonwealth of Puerto Rico or the District of Columbia, you have the right to be protected by that Order in every state in the United States, **as long as the order was served on the defendant.**

Vermont law calls these orders “**foreign abuse prevention orders**” and recognizes the protections granted. Vermont police are required to enforce them as if they were a Vermont RFA Order. A Vermont police officer can enforce a foreign abuse order if they can see a copy of the Order and if the Order is still in effect. Police may rely on your written and sworn statement that the out-of-state abuse order is still in effect.

If you have a RFA Order from another state and you come to Vermont, you may get your foreign abuse order put on file in Vermont courts and in the statewide police computer file. This can be accomplished by giving the clerk of any Vermont Superior Court a certified copy of the Order. You will have to swear under oath in an affidavit (a statement witnessed by a notary or an officer of the court who can administer oaths) that, to the best of your knowledge, the Order is currently in effect as written. The out-of-state order can still be enforced if it is not on file, but the police must see a copy of it.

By filing the out-of-state abuse order with the court, the police can better protect you since the police can then use the statewide computer file to verify the effective Order in case you call on them to enforce it. One negative aspect of having your Order in the statewide computer file is **if your abuser is a police officer or a court official in another state, that person might be able to trace your whereabouts.**

Any violation of an out-of-state abuse order should be treated the same as a violation of a Vermont RFA Order.

Criminal Domestic Assault

In addition to your ability to address domestic abuse through the RFA process in the Family Division of the Superior Court, **the State's Attorney can charge an alleged abuser with criminal domestic assault, first degree aggravated domestic assault or second degree aggravated domestic assault.**

At the time the police respond to a call regarding domestic violence, the police may begin their investigation to determine whether to charge the alleged abuser with the crime of "domestic assault". The police may arrest the alleged abuser even if they did not witness the assault. These criminal acts are investigated by the police and prosecuted by the local State's Attorney's office.

Domestic assault is committed when any person:

- attempts to cause or willfully or recklessly causes bodily injury to a family or household member; or
- willfully causes a family or household member to fear imminent serious bodily injury.

Domestic assault penalty: up to eighteen months in prison and/or a fine of not more than \$5,000.

Second-degree aggravated domestic assault is committed when a person:

- commits a second or subsequent offense of domestic assault which causes bodily injury, thereby escalating the crime to "second degree", or
- commits the crime of domestic assault, and such conduct violates specific conditions of a criminal court order in effect at the time of the offense (e.g. conditions of release or conditions of probation), or
- commits the crime of domestic assault and such conduct violates a RFA Order, an Order Against Stalking or Sexual Assault, or an Order Against Abuse of a Vulnerable Adult, or
- commits the crime of domestic assault and has been convicted within the past 10 years of violating a protection order.

Second-degree aggravated domestic assault penalty: up to five years in prison and/or a fine of up to \$10,000.

First-degree aggravated domestic assault is committed if the person:

- attempts to cause or willfully or recklessly causes serious bodily injury to a family or household member; or
- uses, attempts to use or is armed with a deadly weapon and threatens to use the deadly weapon on a family or household member; or
- commits the crime of domestic assault and has been convicted of aggravated domestic assault in the past.

First-degree aggravated domestic assault penalty: up to 15 years in prison and/or a fine of not more than \$25,000.

It is important to know that it is still a crime if the person who committed domestic assault was drunk or high. Being drunk or high is not a defense to the charge of domestic assault.

A person charged with second or first-degree aggravated assault can be held without bail if the court determines that there are reasons to do so. (See section on **Bail** in this chapter.)

At the first court appearance, which is called the **arraignment**, the court can release the defendant and order them to abide by **conditions of release**. These conditions may include:

- contact with you and/or the children;
- no harassment of you and/or the children;
- no use of alcohol or drugs;
- no possession of firearms;
- staying a certain number of feet away from you, your home, residence or workplace;
- a curfew.

If the defendant violates any of the conditions imposed by the court, he or she may be charged with the additional crime of **violating the conditions of release**. It is also possible to have his or her bail revoked, although this is much harder to have a judge agree to do.

The case may be settled by a plea agreement or may go to trial. You, as the victim, will usually need to testify at the trial. If it goes to trial, a judge or jury will decide if the defendant is guilty **beyond a reasonable doubt**.

If the defendant is convicted, the sentence can include time in jail, a suspended or deferred sentence on probation, a fine or a combination of these sentences. Conditions of probation can include protections for you and counseling for the abuser (e.g. substance abuse, mental health or domestic abuse education). If the defendant violates the conditions of probation, that person may be ordered to serve the rest of the sentence in jail.

Habitual repeaters of domestic assault can have increasing penalties. A person who is convicted of domestic assault for a second time can be charged with second degree aggravated domestic assault. If that person commits domestic assault after being

convicted of second-degree aggravated domestic assault he or she can be charged with first-degree aggravated domestic assault.

Sexual Violence

Sexual violence is any unwanted sexual attention, contact, or activity. Anyone can be a victim of sexual violence: women and men, gay or straight, children, teenagers, people with disabilities and the elderly. While those who commit sexual violence may occasionally be strangers to the victims, more often the offender is someone the victim knows such as an acquaintance, friend, partner, husband or other family member.

Sexual Assault

In Vermont the age of consent is 16, unless the two parties are between the ages of 15 and 19. This means that people under 15 can't consent to sexual activity under the law, and people between age 15 and 16 can only consent to sexual activity with someone who is under 19.

Sexual assault, more commonly known as rape, is committed when a person engages in a sexual act with another person and the sexual act is compelled either:

- without the consent of the other person; or
- by threatening or coercing the other person; or
- by making the other person fearful she or someone else is about to suffer bodily injury.

If you are the victim of sexual assault, **you do not have to prove you physically resisted to show that you did not consent.** Sexual assault is also committed if the sexual act occurs after the attacker gives you drugs without your knowledge or against your will, and these drugs or intoxicants substantially impair your ability to know or control your conduct.

Sexual assault penalty: up to life in prison, a minimum sentence of three years, and a fine of up to \$25,000. The offender must register and notify the Sex Offender Registry for a lifetime.

Aggravated Sexual Assault

Sexual assault is “aggravated sexual assault” if the sexual assault is committed under any one of the following circumstances:

- at the time of the sexual assault, the attacker causes serious bodily injury to you or to another;
- the attacker is joined or assisted by one or more persons in physically restraining, assaulting or sexually assaulting you;
- the attacker commits the sexual act under circumstances which constitute the crime of kidnapping;
- the attacker has previously been convicted in Vermont of sexual assault (except “statutory rape”) or aggravated sexual assault, or has been convicted in any

jurisdiction in the United States or its territories of an offense which would constitute the same sort of sexual assault or aggravated sexual assault;

- at the time of the sexual assault, the attacker is armed with a deadly weapon and uses or threatens to use the deadly weapon on you or on another;
- at the time of the sexual assault, the attacker threatens to cause imminent serious bodily injury to you or to another and you reasonably believe that the attacker has the present ability to carry out the threat;
- at the time of the sexual assault, the attacker applies deadly force to you; (deadly force means physical force which a person uses with the intent of causing, or which the person knows or should have known would create a substantial risk of causing, death or serious bodily injury);
- you are subjected by the attacker to repeated nonconsensual sexual acts as part of the same occurrence or you are subjected to repeated nonconsensual sexual acts as part of the attacker's common scheme and plan;
- the victim is under the age of 13 and the attacker is at least 18 years old.

Aggravated Sexual Assault penalty: up to life imprisonment, a minimum sentence of ten years, and a fine of up to \$50,000. The ten-year term of imprisonment may not be suspended, deferred, or served as a supervised sentence. However, the court may impose a lesser term of incarceration, down to no less than five years, if the court makes written findings that a lesser sentence will serve the interests of justice and public safety. The defendant shall not be eligible for probation, parole, furlough, or any other type of early release until the expiration of the five-year or ten-year term of imprisonment.

Sexual Exploitation of an Inmate

It is a crime for any person who provides services on behalf of the Department of Corrections (DOC) or pursuant to a court order or in accordance with a condition of probation, parole, supervised community sentence or furlough to engage in a sexual act with a person that they know is:

- confined to a correctional facility; or
- being supervised in a community setting as defined above and is assigned to their caseload.

Sexual Exploitation of an Inmate penalty: up to five years in prison, and/or a fine of up to \$10,000.

Lewd or Lascivious Conduct

The crime of "lewd or lascivious conduct" refers to unwanted acts that are committed with the intent to arouse, appeal to or gratify the lust, passions or sexual desires of the alleged offender or of the victim. This could include such things as exposing genitals, nonconsensual sexual touching, etc.

Lewd or Lascivious Conduct penalty: up to 5 years in prison and/or a fine of up to \$300. For a first offense, the offender must register and notify the Sex Offender Registry for 10

years, or a lifetime for a noncompliant high-risk offender. For a second offense, the offender must register for a lifetime.

Voyeurism

Vermont's list of lewd and indecent offenses includes voyeurism. **Voyeurism refers to viewing, photographing or recording another person's intimate areas without that person's knowledge or consent.** To be considered a victim of voyeurism, you must be in a place where you have a reasonable expectation of privacy.

A reasonable expectation of privacy has recently been redefined. Even if you knowingly undress in front of someone else but didn't know that your activity was being recorded, you can be a victim of voyeurism. If someone records you engaging in a sexual act even though no intimate areas are being shown and you were unaware that it was being recorded, that person can be charged with voyeurism.

Voyeurism penalty for first offense: up to two years in prison and/or a fine of up to \$1,000.

Voyeurism penalty for second or subsequent offense: up to three years in prison and/or a fine of \$5,000.

Displaying or disclosing to a third party any images obtained through voyeurism is also a crime and carries a sentence of up to five years and/or a fine of up to \$5,000.

Getting Help

There are a number of domestic violence programs and rape crisis centers around Vermont that can help women who have been sexually assaulted. These services are free, confidential and available 24 hours a day. **Call the statewide sexual violence hotline at 1-800-489-7273.**

You do not have to press charges against the person who assaulted you at the time you seek help from a crisis worker. Your crisis worker cannot disclose anything you say to her in confidence without your permission, except in certain circumstances where the advocate believes a minor may be at risk of sexual or physical abuse and they are a mandated reporter. If an advocate is a mandated reporter, they should tell you this at the start of the conversation, and you have the right to ask to speak to someone else, or to speak anonymously without giving your name. (See VCW's Resource Directory –Violence section.)

Stalking Offenses

Stalking

A person can be charged with stalking if he or she purposefully engages in the following behaviors directed at a specific person:

- Follows;
- Monitors;

- Surveils;
- Threats;
- Makes threats about another person; or
- Interferes with another person's personal property;
- And knows or should know that the behaviors, taken together, would cause a reasonable person to:
 - fear for his or her safety or the safety of a family member; or
 - suffer substantial emotional distress as evidenced by:
 - a fear of unlawful sexual conduct, unlawful restraint, bodily injury, or death; or
 - significant modifications in the person's actions or routines, including: moving from an established residence; changes to established daily routes to and from work that cause a serious disruption in the person's life; changes to the person's employment or work schedule; or the loss of a job or time from work.

The stalking behavior must occur two or more times before it can be charged. No overt physical threat is required to charge an individual with stalking, and electronic communications and surveillance is considered.

Stalking penalty: up to two years in prison and/or a fine of up to \$5,000.

Aggravated Stalking

A person can be charged with the even more serious crime of **aggravated stalking** if the person intentionally stalks another person and:

- this violates a current court order prohibiting the person from stalking; or
- this person has been convicted of stalking or aggravated stalking sometime in the past; or
- this person has been convicted in the past of some other violent crime against the person currently being stalked; or
- the person being stalked is under 16 years old; or
- the person has a deadly weapon in their possession while stalking.

Aggravated Stalking penalty: up to five years in prison and/or a fine of up to \$25,000.

If you think someone is stalking you, in addition to calling the police, you can apply at the court for an Order Against Stalking or Sexual Assault. The court can order the stalker to stay away from you and your children or face penalties, jail time, or both. You must file an affidavit (a statement witnessed by a notary or an officer of the court who can administer oaths) with the court, similar to a RFA Order. (See section on Relief from Abuse Order, Civil within this chapter.)

Safety for Victims of Domestic and Sexual Violence and Stalking

Orders Against Stalking or Sexual Assault

The Vermont legislature created “stay away” orders for victims of stalking and sexual assault (also called SSA orders) when the perpetrator is not a family or household member. A SSA order is a protection order that demands the defendant stay away from you.

What does stalked or sexually assaulted mean?

The law defines sexually assaulting in a slightly different way than the criminal statutes, although the general meaning is the same.

Stalk means to engage purposefully in a course of conduct directed at a specific person that the person engaging in the conduct knows or should know would cause a reasonable person to fear for his or her safety or the safety of another or would cause a reasonable person substantial emotional distress.

Threatening behavior is defined as “acts which would cause a reasonable person to fear unlawful sexual conduct, unlawful restraint, bodily injury, or death, including verbal threats, written, telephonic, or other electronically communicated threats, vandalism, or physical contact without consent.”

Sexually assaulted the plaintiff means that the defendant engaged in conduct that meets elements of lewd and lascivious conduct with a child, sexual assault, or aggravated sexual assault, use of a child in a sexual performance, or consenting to a sexual performance and that the plaintiff was the victim of the offense.

How does an SSA order work?

The process for obtaining an **Order Against Stalking or Sexual Assault (SSA)** is similar to that for obtaining a Relief From Abuse (RFA) order, except that SSA orders are obtained through Civil Division of the Superior Court and are only available during business hours. The court can issue temporary and final orders that demand that the defendant stay away from the plaintiff and her or his children. Orders against stalking or sexual assault are enforceable by law enforcement officers, and violation of an order is a criminal act, punishable by law.

Who qualifies for an Order Against Stalking or Sexual Assault?

In order to qualify for an Order Against Stalking or Sexual Assault, a plaintiff (the person applying for the order) must prove the following:

- That the defendant (the person against whom the plaintiff is seeking the order) is not a “family or household member” as defined in 15 V.S.A. § 1101(2). If the defendant is a family or household member, then the plaintiff needs to apply for a RFA order through Family Division of the Superior Court.
- That the plaintiff and the defendant are not in a sexual or dating relationship
- That the plaintiff must prove to the court by a preponderance of the evidence (which basically translates to “more likely than not”) that the defendant stalked or sexually assaulted them (see definitions below).

How does the plaintiff prove she or he was stalked or sexually assaulted?

The plaintiff, age 16 or older, fills out an affidavit describing the behavior of the defendant to obtain a temporary order, and describes the behavior and events to the judge at a court hearing to obtain a final order. The description must meet all the elements of the definitions above. Additionally, the plaintiff must prove to the judge that it was the defendant who perpetrated the behavior.

If the defendant has been convicted in criminal court of stalking, sexual assault, aggravated sexual assault, or lewd and lascivious conduct with a child, and the plaintiff (or her or his child) is the victim, then the criminal conviction should suffice as proof.

Request for an Order

The plaintiff needs to file an affidavit with the court and receive a date on which a hearing will be held. The defendant must be given notice of the request for an order and an opportunity to be heard. If there is an immediate danger, then the plaintiff can apply for a temporary order (see below).

At the hearing, the plaintiff will have to prove to the judge by a preponderance of the evidence (more likely than not) that she or he was stalked or sexually assaulted by the defendant. The defendant will have the opportunity to respond. However, the rape shield provisions from the sexual assault statute will apply, so the defendant will not be permitted to bring up information about the plaintiff's sexual history unless it is directly relevant.

For orders against sexual assault, there are two different thresholds that the plaintiff must meet, depending on whether or not the defendant has been criminally convicted:

- The court must find by a preponderance of evidence that the defendant **has stalked or has been convicted of sexually assaulting the plaintiff, or**
- The court must find by a preponderance of evidence that the defendant **has sexually assaulted the plaintiff.**

This means that if the defendant has been convicted in criminal court of sexual assault, lewd and lascivious conduct with a child, or aggravated sexual assault, then the plaintiff only has to prove that it happened (which can be done by bringing in some information such as the docket number or other court document). **However, if the defendant wasn't convicted for any reason – even if the crime was never reported – then the plaintiff has to prove that a sexual assault happened and that the defendant did it.**

If the plaintiff has met the burden of proof and the court finds that the defendant stalked or sexually assaulted the plaintiff, then the court shall order that the defendant stay away from the plaintiff, the plaintiff's children, or both, and the court can make any other orders that it deems necessary to protect the plaintiff and her or his children.

Emergency Orders

The plaintiff needs to file an affidavit (a statement witnessed by a notary or an officer of the court who can administer oaths) at the Civil Division of the Superior Court during business hours. A court clerk will contact a judge who will review the circumstances and determine whether or not to grant the plaintiff a temporary Order Against Stalking or Sexual Assault.

A temporary order may be granted ex parte – that is, without notice to the defendant and a full hearing. All temporary orders will contain a date and time at which the defendant can appear to contest the order. At this final hearing, the plaintiff will have to prove to the judge by a preponderance of the evidence that she or he was stalked or sexually assaulted by the defendant. The defendant also has the right to state his or her case at this time.

The court may order the defendant to stay away from the plaintiff or the plaintiff's children, or both, and may make any other such order it deems necessary to protect the plaintiff or the plaintiff's children, or both.

What do these orders do?

Orders Against Stalking or Sexual Assault require the defendant to stay away from the plaintiff, and not contact her or him in any way. They may also contain other provisions that the judge thinks are necessary.

Just like Relief from Abuse (RFA) orders, violation of an order against stalking and sexual assault is a crime. Law enforcement officers are authorized to enforce the conditions of these orders, and can arrest the defendant if they believe that he or she has violated the order. **Violation of an Order Against Stalking or Sexual Assault** is punishable by up to one year in prison and/or a fine of \$5000. For a second or subsequent offense, the penalty is up to three years and/or a fine of \$25,000.

As with RFA orders, **these orders can be an important tool, but they are absolutely not a guarantee of safety.** Survivors can talk with an advocate to make a safety plan. Stalking Orders are only one aspect of a survivor's safety plan and do have limitations. Survivors should carefully evaluate whether such an order will provide them further protection, or whether it will anger the defendant to the point where they become even more dangerous. An advocate can help a survivor decide if getting a Stalking Order is the best decision for her.

What does “stay away” mean?

Stay away means to refrain from knowingly:

- initiating or maintaining a physical presence near the plaintiff;
- engaging in nonphysical contact with the plaintiff directly or indirectly;

- engaging in nonphysical contact with the plaintiff through third parties who may or may not know of the order.

Extensions and Modifications

All Orders Against Stalking and Sexual Assault are issued for a fixed period of time. Before the order is set to expire, the plaintiff may ask the court to extend the order if she or he feels it's necessary. The plaintiff does not have to prove that the defendant stalked or sexually assaulted her or him during the time that she or he had the order in order to qualify for an extension.

While an order is in effect, if the plaintiff or the defendant experiences a “substantial change in circumstance,” either one may ask the court to change the terms of the order.

Address and Public Record Confidentiality—“Safe at Home”

If you have been a victim of actual or threatened domestic or sexual violence-related behavior or stalking-related behavior and you fear for your safety or that of your children, you are eligible for the Safe at Home program. Apply through the Secretary of State's office. **You do not have to report the violent behavior or threats of violent behavior to the police or a domestic or sexual violence program in order to qualify for the program.**

The Safe at Home program can protect you in two ways:

Substitute Address Service—you will be given a Montpelier, Vermont post office box address and all first class mail and legal processes will be forwarded to your real address at no cost to you.

Protected Records Service—You can use this address when you vote (blind ballot absentee voter); when you obtain a driver's license, get married, and register births without fear that those records will put you at risk of being located.

The certification lasts for four years and may be renewed.

Domestic and sexual violence staff and other trained victims' services specialists can not only help you apply for the program, but can help you with other aspects of a safety plan. (See VCW's Resource Directory – Violence section.)

Domestic and Sexual Violence Transitional Employment Benefits

You may be eligible for up to 26 weeks of unemployment payments if you leave your job due to circumstances directly resulting from domestic violence, sexual assault or stalking for one of the following reasons:

- you fear that the violence will continue at, or on the way to or from work;
- you reasonably believe that leaving the job is necessary for your safety;
- you are **physically or emotionally unable to work as a result of experiencing domestic or sexual violence as certified by a medical professional;**

- you intend to move away to protect yourself and/or your family; or
- you are fired from your job because of the violence.

To be eligible you need to try to find reasonable alternatives before quitting, such as asking your employer to transfer you to another (safer) job location.

If you are unable to work because of the effects of the violence, you may provide certification from a medical professional; this certification must be reviewed by the Department of Labor every six weeks.

You also need to provide documentation of the domestic or sexual violence including a sworn statement from you, police records, court records such as a RFA Order, or other documentation of the violence from an attorney, clergy person, or health care provider.

If you are denied unemployment benefits and you feel that you qualify under this program, contact the Department of Labor. See VCW's Resource Directory –Violence section for contact information for this specific program.

Sexting

No minor (person under 18) shall knowingly and voluntarily (and without threat or coercion) use a computer or electronic communication device (computer, cell phone, etc.) to send an indecent picture

As it applies to minors:

Minors who share (forward, post online, or show) indecent images of another minor may be charged with a variety of different crimes including but not limited to: possession of child pornography; lewd and lascivious behavior; voyeurism; prohibited acts and/or disturbing the peace.

If it is the **first offense for a minor sending or receiving indecent visual depictions of themselves or another minor**, it will be considered a delinquent act and the offender will be sent into the family court process where they will may be referred to diversion programs and avoid trial. The offender will not have to sign up for the sex offender registry and the record of the offender will be expunged when they turn 18 years old.

NOTE: if the image was not consensually and voluntarily taken and sent by the person the image is of, then other laws may be applicable that would change the outcome of the above law for the sender who was forced, coerced or threatened into the activity.

Example: A minor who was forced to send a nude image of herself to her also minor boyfriend may not be charged since it was not consensual.

If it is the **second offense for a minor sending or receiving indecent depictions of themselves or another minor**, the offender can be adjudicated delinquent in family courts again or prosecuted in district courts under a variety of different crimes including but not limited to: possession of child pornography; lewd and lascivious behavior; voyeurism; prohibited acts and/or disturbing the peace.

If adjudicated delinquent, the offender's name will not go onto the sex offender registry and the charges will be expunged when the offender turns 18. However, if prosecuted in district court under criminal statutes, the offender's name may be added to the sex offender registry and the charges will not be expunged from their criminal record.

As it applies to persons 18 or over:

A person 18 or over may not show a minor any sexually explicit materials, including images of themselves. **A person 18 years or older who is found in possession of an indecent image of a minor**, that the minor sent voluntarily, who did not take reasonable steps, whether successful or not, to destroy or eliminate the image, may be charged under sexting law but also possibly charged with: possession of child pornography; lewd and lascivious behavior; voyeurism; prohibited acts and/or disturbing the peace.

A person 18 or over who shares (forwards, posts online or shows) an indecent image of a minor may be charged with a variety of different crimes including but not limited to: possession of child pornography; lewd and lascivious behavior; voyeurism; prohibited acts and/or disturbing the peace.

Child Abuse

The term "child abuse" encompasses many different types of offenses against children. It can include sexual abuse, physical battering, emotional abuse, and neglect. It can be committed by people within the child's home and by people outside the home.

Depending upon the nature and type of child abuse, it may involve investigations and action by the Vermont Department of Children and Families (DCF), the police, the local State's Attorney's office, the Attorney General's office, and the courts.

It is also possible to seek protection orders to help protect your child from further abuse. **If your child has been sexually abused or stalked by someone who is not a family or household member, like a neighbor or acquaintance, you can seek an Order Against Stalking and Sexual Assault.** If the abuse has been committed by a current or past family or household member, you can seek a Relief from Abuse (RFA) Order as described in the section above about Domestic Violence.

If Contact your local domestic or sexual violence program for support and information.

Reporting Child Abuse

Vermont law places a legal obligation on certain people to report any reasonable suspicion that a child has been abused or neglected to the Vermont Department for Children and Families (DCF) within 24 hours. These people are known as mandated reporters.

The people who are required to report actual or suspected child abuse or neglect include any person who is a:

- doctor, resident or intern, surgeon, EMT, osteopath, chiropractor, physician's assistant, hospital administrator, nurse, medical examiner, dentist, health care provider;
- school superintendent, teacher, librarian, day care worker, principal, guidance counselor, or any person who is regularly employed by a school district or contracted and paid by the district to provide student services for 5 or more hours a week;
- mental health professional, social worker, psychologist;
- employee, grantee or contractor for the Agency of Human Services who have contact with clients;
- probation officer, police officer;
- member of the clergy (with a few exceptions including acts of contrition);
- camp owner, administrator or counselor.

In addition, any other person who has reasonable grounds to believe that a child has been abused or neglected may also file an oral or written report to the Vermont Department for Children and Families (DCF).

Vermont has the Child Protection Registry, a database of all substantiated reports of child abuse and neglect. A substantiated report is a report based on accurate and reliable information that would lead a reasonable person to believe the child has been abused or neglected. Each registry record includes the name of the substantiated abuser, the date and nature of the finding, at least one personal identifier other than the name, and for individuals placed on the registry after July 1, 2009, a designated child protection level.

The Registry is accessed by the Department for Children and Families when:

- a report is received about child abuse or neglect;
- someone applies to become a foster parent, adoptive parent, child care provider, or employee of a residential facility for children or youth in Vermont; or
- an authorized person to receive the information requests a search. These include an employer researching an employee who will be providing care, custody, treatment, transportation or supervision of children, youth or vulnerable adults. Others authorized are owners or operators of facilities regulated by the Department for Children and Families, the state's attorney or attorney general, designees within the Vermont Agency of Human Services, adult protective services or children protection agencies in other states, or the person substantiated for child abuse

Investigation of Reported Child Abuse or Neglect

Once the DCF receives a report, it will decide whether or not to investigate and whether or not the report has merit. DCF will determine the level of risk of harm to the child.

Many different outcomes could result from a DCF investigation, which sometimes can lead to court hearings and orders by the court. Some possible results include:

- a determination that the report does not have merit;

- provision of family support within the home by DCF or other community organizations;
- removal of an abuser from the home;
- having the mother and child move to a family shelter (in the case of domestic violence);
- having the child live temporarily with a relative/neighbor/friend;
- removing the child from the home (but only if a court orders this to occur);
- terminating parental rights (but only in the most extreme cases and only if a court orders this to occur).

Sexual Crimes Against Children

If the child abuse includes a sexual or other criminal offense, the person alleged to have committed this crime (the “defendant”) may be prosecuted by the local State’s Attorney or the Criminal Division of the Vermont Attorney General’s office. When any case of sexual abuse of a child is reported to DCF, they are required by law to immediately contact law enforcement and conduct a joint investigation.

The criminal charges and penalties for sexual crimes against children vary depending on:

- the age of the child and the age of the offender;
- the relationship between the child and the offender;
- the nature of the contact;
- whether there have been previous offenses.

Sexual activity is not a crime if the person is less than 19 and the child is at least 15 and the sexual act is consensual; or if the child is less than 16, the couple are married, and the act is consensual.

While your child may be a witness in the case, remember that **the prosecutor cannot represent you or your child**. You may wish to consult with your own attorney, as well as receive support from a victim’s advocate (either an advocate from a member program of the Vermont Network Against Domestic and Sexual Violence or from an advocate who is located in the State’s Attorney’s office). Also, if you or another family member is the person being charged with the assault, you should be represented by an attorney.

There are a number of state government and not for profit agencies that can provide help for sexually abused children and their families. (See VCW’s Resource Directory – Children section.)

Luring a Child

The crime of luring a child is to engage in a sexual act or lewd or lascivious conduct with a child. The penalty for a first offense is a maximum of 5 years in prison. The offender must register and notify the Sex Offender Registry for 10 years, or a lifetime for noncompliant high-risk offender.

Lewd or Lascivious Conduct with a Child

The crime of **lewd or lascivious conduct with a child** occurs when a person commits any lewd or lascivious act on a child under the age of 16 years, with the intent of arousing, appealing to or gratifying the lust, passions or sexual desires of him or herself, or of the child. Examples could include sexual touching, exposing genitals, etc. It is not a crime if the conduct is consensual and the two parties are between 15 and 19 years old.

Lewd or Lascivious Conduct with a Child penalty for first offense: up to 15 years in prison, a two-year minimum sentence, and a fine of up to \$5,000. The offender must register and notify the Sex Offender Registry for 10 years, or a lifetime for noncompliant high-risk offender.

Lewd or Lascivious Conduct with a Child penalty for second offense: up to life in prison, a five-year minimum sentence, and a fine of up to \$25,000. The offender must register and notify the Sex Offender Registry for a lifetime.

Lewd or Lascivious Conduct with a Child penalty for third offense: up to life in prison, a ten-year minimum sentence, and a fine of up to \$25,000. The offender must register and notify the Sex Offender Registry for a lifetime.

The court may decrease the five and ten-year minimum sentences if it finds that a lesser sentence will serve the interests of justice and public safety.

Sexual Exploitation of a Minor

A person who engages in sexual acts with a minor 48 months younger is guilty of this crime if they are in a position of power or authority over that minor. This includes not only professionals but volunteers who undertake responsibility for the health or welfare of minors, or for guidance, leadership, instruction or organized recreational activities for minors.

Sexual Exploitation of a Minor penalty: up to one year in prison and/or a fine of up to \$2,000.

If it is proved that the person abused his/her power or authority in order to engage in a sexual act, the penalty is higher: up to five years in prison and/or a fine of up to \$10,000.

Sexual Assault

No person can engage in sexual acts with a child who is under the age of 16 unless they fit one of the two exceptions:

- if the people are married to each other and the sexual act is consensual;
- if the child is at least 15 and the other person is less than 19, and the sexual act is consensual.

Engaging in sexual acts with a child who is under the age of 16 penalty: up to 20 years in prison and a fine of up to \$10,000. The offender must register and notify the Sex Offender Registry for a lifetime.

It is also sexual assault to engage in sexual acts with a child who is under the age of 18, if the child is in the person's care by authority of law or is the person's child, grandchild, foster child, adopted child, or stepchild. The penalty for this section is up to life in prison, a three-year minimum sentence, and a fine of up to \$25,000. The offender must register and notify the Sex Offender Registry for a lifetime.

Aggravated Sexual Assault of a Child

A person is guilty of aggravated sexual assault of a child if they commit sexual assault on a child under the age 16 and they are at least 18 years old and at least one of the following conditions apply:

- at the time of the assault the person caused serious harm to the victim or another;
- the person is joined by one or more persons in restraining, assaulting, or sexually assaulting the victim;
- the sexual act is done during a kidnapping;
- the person had previously been convicted of sexual assault, aggravated sexual assault or aggravated sexual assault of a child;
- at the time of the sexual assault the person is armed with a deadly weapon or threatens to use a deadly weapon on the victim or another;
- the person threatens to cause serious bodily injury to the victim or another;
- at the time of the sexual assault, the person applies deadly force to the victim; or
- the victim is subject to repeated nonconsensual sexual acts as part of the same occurrence or scheme and plan.

Aggravated Sexual Assault of a Child penalty: up to life in prison, a 25-year minimum sentence and a fine of up to \$50,000. This includes requiring the offender to register with the Sex Offender Registry for a lifetime.

The sentence may not be suspended, deferred or served in a community setting, and the defendant is not eligible for probation, parole, furlough or any other form of early release until the 25-year minimum is served.

When a Criminal Prosecution of Childhood Sexual Assault Can Be Brought

Childhood sexual assault can be so devastating that it is often many years before a victim is ready to take action, or even to report the assault. Vermont law addresses this situation by granting longer periods within which a criminal prosecution can be brought.

Aggravated sexual assault charges can always be brought; there is no time limitation. For most other sex crimes against children a case can be brought up to 40 years after the offense happened. For most other sex crimes against an adult, the case must be brought within six years of the initial report.

Check with either your local State's Attorney or the Attorney General's office to determine whether or not your case can still be prosecuted.

Human Trafficking

Human trafficking is a form of modern day slavery. It does not happen only to immigrants or people from other countries coming to work in the United States. It does not have to include smuggling or forced movement or the crossing of state lines or national borders. It does not require physical force, abuse or restraint to be considered human trafficking.

In 2011, Vermont became the 42nd state to pass human trafficking legislation. The Vermont definition of human trafficking is the same as the federal definition of a "severe form of human trafficking" which provides some immigration protection for those who are not U. S. citizens. It is also considered a crime of human trafficking to recruit, entice, harbor, transport or provide individuals for the purpose of forced labor or sexual trafficking.

There are three kinds of human trafficking:

- sex trafficking of a person over the age of 18 that involves fraud, force or coercion;
- sex trafficking of a person under the age of 18 (fraud, force or coercion is not required);
- labor trafficking that involves force, fraud or coercion.

Crime victim's assistance, notification and compensation (described later in this section) also apply to victims of human trafficking. In addition victims of human trafficking may also bring a civil action (also described later in this section).

Sex Trafficking

It is a criminal offense for anyone to compel you through force, fraud or coercion to engage in a commercial sex act. A commercial sex act is defined as any sex act or sexually explicit performance.

It doesn't matter whether you initially consented to perform the sexual act. Coercion is defined in Vermont law as:

- a threat of serious harm including physical or financial harm against any person (including threats to family members or others);
- any scheme, plan or pattern intended to cause a person to believe that failure to perform an act would result in serious bodily or financial harm or physical restraint of any person (including family members or others);
- withholding, destroying or confiscating a passport, immigration document or any other governmental identification;
- providing a drug (including alcohol) to another person with the intent to impair the person's judgment or maintain a state of chemical dependency;
- wrongfully taking, obtaining or withholding any property;

- blackmail;
- asserting control over finances;
- debt bondage;
- withholding or threatening to withhold food or medication.

If you are a victim of sex trafficking, you may not be prosecuted for lewdness, prostitution or obscenity offenses based on conduct committed as a result of trafficking. In addition, you may use an affirmative defense for any non-sex-related crime that arises out of being a sex-trafficking victim where force or coercion is used. An affirmative defense is an explanation that excuses or justifies the alleged criminal behavior. This means that if you are charged with a non-sex-related crime, you can defend yourself in court by proving that your alleged criminal behavior was a result of the sex trafficking you experienced.

Sex Trafficking of Minors

Examples of sexual trafficking of minors include modeling, stripping, escort and massage services, prostitution, pornography and survival sex for food, shelter and love. If you are under the age of 18 or your child is under the age of 18 and you are a victim of sexual trafficking, **it is not necessary to prove force, fraud or coercion was involved.** In addition **minors are immune from prosecution for prostitution in criminal court or as a delinquent in juvenile court.** However, minors may be subject to a Child in Need of Care or Supervision (CHINS) proceeding in the Family Court division of the Superior Court.

Labor Trafficking

It is a criminal offense to subject a person to labor servitude. Labor servitude means labor or services performed or provided by a person which are induced or maintained through force, fraud or coercion. The definition of coercion is the same as that for sex trafficking above.

Examples of labor trafficking include persons working as domestic servants (maids and nannies), sweatshop and fishery workers, meat packing workers, janitors, restaurant and foodservice workers, migrant farm workers and hotel and tourist industry workers. It does not include labor or services performed by a family member of a person engaged in the business of farming unless force, fraud or coercion can be proved.

Criminal Penalties for Human Trafficking

Not only is it a crime to compel a person to engage in a commercial sex act or subject a person to labor servitude, it is also a crime to “recruit”, entice, harbor, transport, provide or obtain such a person. Force fraud or coercion must be proved if the victim is 18 years or older.

Penalty for human trafficking: up to and including life imprisonment and/or a fine up to \$500,000.

Criminal Penalties for Aggravated Human Trafficking

A person commits the crime of aggravated human trafficking if:

- the victim is a child under the age of 18;
- he/she has been previously convicted of human trafficking;
- the victim suffers severe bodily injury or death;
- circumstances also constitute the crime of sexual assault, aggravated sexual assault, aggravated sexual assault of a child.

Penalty for aggravated human trafficking: a minimum sentence of 20 years and a maximum term of life and/or a fine of up to \$100,000.

Patronizing or Facilitating Human Trafficking

It is a crime for an owner or landlord to knowingly allow a place, building or structure to be used for sex or labor trafficking or to agree or permit a person to come into, or remain in, such a place, building or conveyance for the purpose of sex or labor trafficking.

It is also a crime to knowingly solicit a commercial sex act from a victim of human trafficking.

Penalty for either crime: imprisonment up to five years and/or a fine of \$100,000.

Services and Assistance for Victims of Human Trafficking

Once a law enforcement official has determined that there is a probable cause that you or your child is a victim of human trafficking you may be eligible for services such as:

- case management
- emergency temporary housing
- health care
- mental health counseling
- drug addiction screening and treatment
- language interpretation or translation services
- English language instruction
- job training and placement assistance
- post-employment services for job retention
- services to assist the victim of human trafficking and any member of his/her family to establish a permanent residence in Vermont or the United States

Other Rights of Victims of Human Trafficking

Your name, residence and other identifying information will not be made public and your sexual conduct/past cannot be admitted into the court as evidence. Convicted traffickers must pay restitution to you and this is not limited if you return to your home country.

You may also bring a civil action against your offender for damages, injunctive relief, attorney fees and other costs. (See Civil Action section within this chapter.)

Law enforcement officials must tell you about immigration relief if you are not a legal resident of the United States. It is your choice if you wish to apply for these Visas. If you choose to apply for a T-Visa or a U-Visa, they must provide you with the necessary certification forms—USCIS I-914 supplement B and/or USCIS I-918 supplement B. (See the Immigration chapter of *The Legal Rights of Women in Vermont*.)

Abuse of Vulnerable Adults

A vulnerable adult is defined as any person 18 years of age or older who is receiving residential services or has been receiving personal care services for more than a month, or is unable to care for themselves or protect themselves because of brain damage, aging, or a physical, mental or developmental disability.

Abuse, Neglect, and Exploitation

Abuse is defined as:

- any treatment of a vulnerable adult that places his or her life, health or welfare in jeopardy;
- any conduct committed with intent to cause or reckless disregard of unnecessary pain, harm or suffering;
- intentionally subjecting a vulnerable adult to behavior which results in intimidation, fear, humiliation, degradation, agitation, disorientation, or other forms of emotional distress;
- any sexual activity with a vulnerable adult by a caregiver; or
- administration of drug, substance or preparation to a vulnerable adult for a purpose other than a legitimate and lawful medical or the therapeutic treatment.

This definition does not apply to a consensual relationship between a vulnerable adult and a spouse, or to a consensual relationship between a vulnerable adult and a caregiver who is hired, supervised, and directed by the vulnerable adult.

Neglect is defined as:

- failing to provide care or arrange for goods or services necessary to maintain the health or safety of a vulnerable adult;
- not protecting a vulnerable adult from abuse, neglect or exploitation by others;

- failure to carry out a plan of care for a vulnerable adult when such failure results in physical or psychological harm or a substantial risk of death to the vulnerable adult; or
- not reporting significant changes in the health status of a vulnerable adult to a physician, nurse or immediate supervisor, when the caregiver is employed by an organization.

Exploitation means:

- intentionally using, withholding or disposing of funds or property of the vulnerable person without legal authority, for the wrongful profit or advantage of another;
- getting possession, control or an interest in the funds or property of the vulnerable adult through the use of undue influence, harassment, duress or fraud;
- forcing or compelling the vulnerable person, against her/his will, to perform services for the profit or advantage of another;
 - sexual activity with the exploiter/abuser to which the person does not agree, is incapable of resisting or agreeing to, or agrees to out of fear of retaliation or hardship.

Vermont law protects adults who are elderly or have disabilities (defined as “vulnerable adults”) from abuse, neglect and exploitation in two ways. One is by requiring certain people to report any evidence of such violations. The other is by allowing vulnerable adults, or an interested person on their behalf, to get a Relief from Abuse (RFA) Order from the court.

Mandatory Reporting

Mandatory reporters include:

- employees, contractors and grantees of the Vermont Agency of Human Services who are involved in care giving;
- physicians, osteopaths, chiropractors, physician’s assistants;
- nurses, certified nursing assistants, emergency medical services personnel, medical examiners, dentists, psychologists;
- school teachers, librarians, administrators, guidance counselors, aides, bus drivers or other school employees or contractors who work regularly with students;
- mental health professionals, social workers (except those operating under the confidentiality provisions of the Older Americans Act), community mental health center employees or contractors involved in care giving, and employees of adult day care centers;
- law enforcement officers.

Mandatory reporting is also required of a hospital, nursing home, residential care home, home health agency, or any entity providing paid nursing or nursing related services; intermediate care facility for adults with mental retardation; therapeutic community residence, group homes, developmental homes, schools or contractors involved in care

giving, and operators or employees of any of these facilities or agencies. Crisis workers are specifically exempt from this mandate.

Vermont law requires mandatory reporting within 48 hours of suspected cases of abuse, neglect and exploitation of a vulnerable adult to the Vermont Department of Aging and Disabilities (DAIL). Any other concerned person may also file a report of suspected abuse, neglect or exploitation of an elderly or disabled adult with DAIL. Mandatory reporters who reasonably suspects abuse or neglect of a child need to report within 24 hours of the time information regarding the suspected abuse or neglect was first received or observed. Failure to report can result in fines of up to \$5,000. (See VCW's Resource Directory – Aging and Elder Issues section.)

Once the department receives such a report, an investigation must start within 48 hours.

Rape shield provisions in the law also apply to elderly and disabled victims of sexual assault or lewd or lascivious conduct. In addition, if the lawyer for the defendant wants to use any evidence of the prior sexual conduct of the victim, they must file a written notice before trying to introduce such evidence. The court then has to make a determination, out of the sight and hearing of the jury or the public, whether or not to allow the evidence.

Relief from Abuse Orders for Vulnerable Adults

A vulnerable adult, or an “interested person” (e.g. a guardian, or someone from the Vermont Department of Aging and Disabilities) can petition the Family Division of the Superior Court for a Relief from Abuse (RFA) or Exploitation Order in their own county or the county to which they were required to move due to the abuse or exploitation.

The petition can ask for either or both of the following orders:

- that the abuser/exploiter stop abusing or exploiting the victim;
- that the abuser/exploiter immediately move out of the house or apartment.

If the situation is an emergency, the petition can be filed in the Civil, Criminal, or Family Division of the Vermont Superior Court in the person's past or current county. The courts have to set up a way for a person to file a petition for an emergency order at any time, whether during or after regular business hours, on weekends and on holidays.

The victim, or an interested person on behalf of the victim, can seek an **Emergency Temporary Order** without giving advance notice to the alleged abuser/exploiter if the court finds that:

- the person has abused or exploited the vulnerable adult; and
- serious harm which cannot be repaired to the physical health or financial interests of the person will result.

If an interested person is the one filing for the Temporary Order, the court will notify the elderly or disabled adult to find out whether the person is capable of expressing him or herself and if the person wants to get the Order. If a Temporary Order is issued, the alleged abuser will be notified of when and where the case will be set for a Final

Hearing, and the alleged abuser's right to petition the court for any change in the Order. No filing fee is required in either situation.

If there aren't grounds for issuing an Emergency Temporary Order, the court will set a hearing. The alleged abuser has to be given notice of the petition and when the hearing will take place.

A violation of any RFA or Exploitation Order is a criminal act. Police can arrest the abuser for violating the order and they can be prosecuted by the State's Attorney's office. If you believe the Order has been violated you should call the police.

The penalty for violation of Order: up to one year in prison and/or a fine of \$5,000.

It is important to know that a person whose abuser is a family or household member has the option of getting a RFA Order under the same rules and procedure as for domestic abuse. In addition, the police can prosecute certain offenses as criminal domestic assault. (See above sections on Domestic Violence and Criminal Domestic Assault.)

Kidnapping

Kidnapping occurs when a person knowingly restrains another person with the intent to:

- hold the restrained person for ransom or reward; or
- use the restrained person as a shield or hostage; or
- inflict bodily injury upon the restrained person, or place the restrained person or a third person in fear that any person will be subjected to bodily injury; or
- sexually assault the restrained person or place the restrained person or a third person in fear that any person will be sexually assaulted; or
- facilitate the committing of another crime or flight thereafter.

The quality and nature of the restraint are factored in, along with the length of the restraint. Kidnapping may be charged even if the restraint lasts only a couple of minutes.

The crime of kidnapping can also occur if a person knowingly restrains a child under the age of 16, who is not the child's relative, with the intent to keep that child from his or her lawful custodian for a substantial period of time without the permission of the child's guardian.

Kidnapping penalty: up to life imprisonment and/or a fine of up to \$50,000. However, if the defendant voluntarily causes the release of the victim alive, and in a safe place before being arraigned in court, and without having caused serious bodily injury to the victim, the penalty could be reduced to imprisonment for not more than 30 years and/or a fine of not more than \$50,000.

Hate Crimes

A hate crime is any crime which is maliciously motivated by the victim's actual or perceived race, color, religion, national origin, sex, sexual orientation, gender identity, ancestry, age, physical or mental disability or service in the armed forces. The Hate Crime Act can increase jail sentences and fines to anyone convicted of committing or attempting to commit.

If there is evidence that a person committed a particular crime against a woman because he hated women, or hated lesbians, or hated people of color, it is possible that the person could be charged with a hate crime in addition to being charged with whatever the other crime is, e.g. assault, battery, homicide.

Unlawful mischief (damage or destruction of property), telephone harassment, and disorderly conduct (by public yelling of threats and abuse) are the most common hate crimes in Vermont.

Vermont law allows a person who has suffered a hate-motivated personal or property injury or who received threats of violence, to get an injunction against the person who committed a hate crime.

The court can issue an order:

- protecting you and your property;
requiring your attacker not to commit any crime against you;
- restricting your attacker from contacting you;
- prohibiting your attacker from coming within a certain distance from you, your home or any other particular locations where you spend your time;
- requiring your attacker not to commit a hate-motivated crime against you, other people who are in need of protection and members of any of the protected categories.

Hate Crime penalty for violation of an injunction: up to one year in prison and/or a fine up to \$2,000.

Hate Crime penalty for subsequent violations: up to three years in prison and/or a fine up to \$10,000.

Crime Victims Assistance, Notification and Compensation

Under Vermont law, crime victims have the right to receive assistance from the state in dealing with the aftermath of the crime, to be informed and have access to various steps in the criminal justice process, and to receive compensation for the harm.

If you have been a victim, you are entitled to receive certain information from the police, the victims assistance program, the prosecutor's office (usually the local State's Attorney) and the court at various stages in the criminal justice process. You have the right to be kept informed during much of the investigation and prosecution of the case. This could include the investigation, arrest, bail hearing, pre-trial depositions and hearings (including bail), plea agreement or trial, release or sentencing, and probation

or parole. You also may have the right to be present, to testify and to state your opinion at various hearings.

If you and/or your child have been the victim of a sexual crime you have the right to register with the Vermont Sex Offender Registry. The Registry will then notify you in writing if your offender changes his address.

It is important to understand that, although the State's Attorney's office has the power to prosecute an alleged criminal offender, the State's Attorney does not represent you as the victim of the crime. The case is brought by the State against the alleged offender (the defendant). You may be a witness in the case, may receive some compensation and are entitled to the rights outlined in this section. You may also seek compensation for any damages.

After Reporting the Attack or Assault

The police must give the victim written information including:

- an explanation of the victim's rights;
- the availability of assistance, including medical, housing, counseling and emergency services;
- information about the victims compensation program;
- how to contact the Center for Crime Victims Services;
- how to get protection, including protective orders;
- how to get copies of public records in the case.

If you have been the victim of certain violent crimes, you are also entitled to have the police give you the following additional information (for other crimes, the police also might be willing to voluntarily give you the information):

- information about the identity of the person accused of committing the crime, unless police procedure specifies otherwise;
- whether the alleged offender has been taken into custody by the police;
- the name and file number of the case;
- the name, office street address and telephone number of the officer assigned to investigate the case;
- the prosecutor's name, office street address and telephone number;
- an explanation that you are not under any obligation to respond to questions from anyone (including the alleged offender's lawyers or representatives) unless the questions are asked in a deposition or in a courtroom hearing.

Be careful with whom you agree to have informal conversations, especially if you are confused about which people are representing the State's Attorney's office and which people are representing the alleged offender.

You have the right not to talk to anyone (unless you are being deposed or questioned during a courtroom hearing), no matter what criminal act you have suffered. Be careful with whom you agree to have informal conversations, especially if you are confused about which people are representing the State's Attorney's office and which people are

representing the alleged offender. You have no obligation to speak to the offender's lawyer, unless you are in a court hearing.

Assistance from the Victim Advocate

If you are the victim of a violent crime, you will be assigned a **victim advocate** from the **Victims Assistance Program**. The victim advocate is usually based in the local State's Attorney's office and will provide information about the criminal justice system and support through the process. **A State's Attorney's Victim Advocate is not confidential.** They can share information you share with the State's Attorney. (See VCW's Resource Directory – Violence section.)

The Victims Assistance Program is required to provide the following information and services to you:

- information about the level of available protection for you;
- help in getting police protection from harm and threats of harm that may result from your cooperation with the criminal justice system;
- help and support in dealing with police agencies and getting property returned to you;
- short-term counseling and support, as well as appropriate referrals for other services;
- help in getting financial help and other benefits while going through the criminal justice process;
- information about getting payment for being a witness;
- help in getting restitution (i.e. money or services) and insurance for the harm you suffered;
- notification when a court proceeding involving your case is or is not going to take place (unless the alleged offender is under 18 years old, in which case there may be special rules that apply);
- getting rides to various court proceedings;
- being present at depositions if you ask for personal support;
- information about your right to request notification from the appropriate agencies if the alleged offender has been released pending trial, released from prison for any reason or has escaped;
- notification of the conclusion of your case, e.g. plea agreements, trial verdicts; and
- information about appearing at the offender's sentencing.

Notification of Hearings and Sentencing

If you have been the victim of a violent crime you are usually entitled to be notified of the following (although victims of other crimes might want to ask for notification, as well):

- the hearing when the alleged offender is scheduled to be charged in court (the arraignment);
- the conditions of release and issues concerning bail;

- the scheduling or cancellation of any other hearing or court proceeding regarding the case;
- any substantial delay in the prosecution of the case;
- the State's Attorney is also supposed to tell the court if the victim opposes or has any position regarding any motion that might delay the trial;
- the final disposition of the case, including plea agreements, trial verdicts, etc; and the sentencing hearing.

You have the right to be present and to testify at the sentencing hearing, submit a written statement, or tell the State's Attorney your views about the crime, the offender, the need for restitution and sentencing. The court is required to take those views into consideration when deciding what sentence to impose and what restitution to order.

The State's Attorney is required to explain how much time the convicted person could spend in prison, what is meant by minimum and maximum sentences, how sentences might be shortened and how parole operates.

You may request information about any appeal or other motions an offender files after being convicted, the scheduling of any post-trial hearings and any post-trial decisions that are made by the court.

Rights at Depositions

Depositions are scheduled events where you, as a victim, and other witnesses may be questioned by the lawyers for the accused and by the State's Attorney. A person charged with a felony has the right to require depositions of the witnesses.

Vermont law attempts to prevent depositions of victims under the age of 16, especially in cases of sexual crimes against the child. However, the deposition can still be taken if the evidence is not available by any other means. If the judge decides the deposition is necessary, he or she will issue a protective order to protect the child from emotional harm, unnecessary annoyance, embarrassment, oppression, invasion of privacy, undue burden of expense, or waste of time. The judge can also limit the deposition in many ways if the party files for a protective order.

A person who is over the age of 16 and is a victim of a sex crime (lewd and lascivious conduct, lewd and lascivious conduct with a minor, sexual assault, or aggravated sexual assault) is considered a sensitive witness. When the witness is sensitive, the parties must try to come to an agreement on time, place, manner, and scope of the deposition. If an agreement cannot be reached, the judge will decide the manner of the deposition.

If there is any court hearing about your deposition and you are the victim, you have the right to be represented by a lawyer at such a hearing since you are an actual party to the hearing, and not just a potential witness.

Although the whole experience might be intimidating, you do have certain rights. These include:

- the right to bring your own attorney and/or victim advocate to the deposition;
- the right to request that the alleged offender not be in the room;
- if the court decides that the alleged offender must be present, you may have the right to certain protections, such as having a screen set up between you and that person;
- the right not to be harassed or intimidated by the lawyers (this is often open to interpretation and may need to be clarified by a judge).

Rape Shield

Vermont's Rape Shield law generally provides that a person's opinion of or the reputation of a victim's sexual conduct cannot be made part of a trial for sexual assault or lewd or lascivious conduct, or part of a hearing for a protection order. It also holds that evidence of the prior sexual conduct of the victim cannot be admitted into evidence at the trial.

However, if you are the victim, questions about your past sexual conduct can be asked if a court determines:

- that they bear on the credibility of the witness;
- they are very important to one of the facts at the trial; and
- the value of the information is more important than the private nature of the information.

Under these circumstances, evidence can be admitted about:

- your past sexual conduct with the person accused of the sexual assault;
- specific instances of your sexual conduct showing where semen, pregnancy or disease may have come from;
- specific instances where you made false allegations about sexual assault in the past.

Victim's Rights to Certain Confidentiality and Work Protection

Vermont law also provides some confidentiality rights and requirements of job protection. These include the following:

- victims of domestic violence, sexual assault, and stalking can request their address and workplace location be kept confidential. This is done through the office of the Secretary of State;
- a witness who testifies during a case cannot be required to reveal the home or workplace addresses of the victim;
- the employers of people who have been victims of crimes, as well as their families and representatives, cannot fire or discipline them for missing work if a subpoena has required them to be at a court-related hearing or deposition.

(See Safety for Victims of Domestic and Sexual Violence and Stalking sections within this chapter.)

Notification of Probation, Parole Hearings and Release from Prison of an Offender

As a victim, you have the right to request notification by the Vermont Department of Corrections:

- about the offender's general compliance with his or her conditions of probation (but not confidential information the offender has revealed in treatment);
- of a parole board hearing, 30 days before it is scheduled to take place;
- of your right to testify or give a written statement to the parole board, and your right to request that the offender not be present when you testify before the parole board;
- of the parole board's decision and any conditions of release it may have imposed;
- when the offender has been released from prison or has escaped.

Victim Offender Dialogue (VOD)

The Victim Offender Dialogue (VOD) Program is a service provided by the Victim Services Programs to victims of severe and violent crimes, who are interested in meeting with the offender in their case. Domestic violence victims are not eligible for the program. **This is victim-initiated.** The offender's participation is also voluntary. VOD requires intensive assessment and preparation for both victim and offender.

Victims Compensation Program

If you have suffered physical or emotional harm, pregnancy or death as the result of the commission of a crime, you or your dependents may be entitled to receive compensation from the Victims Compensation Board. (See VCW's Resource Directory – Violence section.)

A victim is eligible for Victim Compensation if:

- the crime was committed in Vermont, or against a Vermont resident;
- the crime was reported to law enforcement, who concluded a crime was committed;
- the victim suffered physical or emotional harm because of the crime;
- the crime was committed after July 1, 1987;
- the victim did not commit a crime that contributed to their injuries; and
- completion of the Victim Compensation Program application.

After application, review and approval, the board can award cash payments of up to \$10,000 to compensate for any "unreimbursed pecuniary loss" that was a direct result of the injury or death of the victim. Your application is not available for public inspection and copying.

Unreimbursed pecuniary loss means any monetary amount that:

- isn't covered by insurance (medical, hospital, disability) or worker's compensation; and
- has not been ordered by the court to be paid by the person who committed the crime; or
- the person was ordered by the court to pay and has not paid.

Release of People Accused of a Violent Crime

It is important to know that after a person has been arrested or officially charged with a crime, that person will usually be released on bail and/or placed under certain restrictions which are imposed by the court. These are called “conditions of release.” Only under extreme circumstances, as described in the following section on “Bail”, can a person be kept in jail without bail.

Conditions of Release

Courts impose **conditions of release** on alleged offenders in order to ensure that they will appear in court for future hearings and/or to protect the public. The conditions of release must be reasonably related to the offense. These can include restrictions on where the person can travel, who the person can and cannot be in contact with, and where the person can live, etc. In cases involving violence or harassment, the conditions of release may include an order not to contact, harass (or cause to be harassed) the victim or potential witness. If an alleged offender violates a condition of release, he or she can be charged with an additional crime and it also might lead to a revocation of bail.

Bail

A major area of concern for victims of sexual assault and other violent crimes is **what happens after a person is caught and charged with the crime. The prosecutor (usually the local State’s Attorney) is required to tell the court what the victim or victim’s family’s position is on the question of bail.** A judge can order a person to **be held without bail prior to trial** if the person is accused of any offense which is punishable by a life sentence (such as aggravated sexual assault and kidnapping) and when the evidence of guilt is great.

A person can also be held without bail while waiting for the trial, if the person is accused of a felony involving an act of violence against another person (e.g. sexual assault, aggravated domestic assault, aggravated stalking), and if the court also finds the following, after a hearing:

- that the evidence of guilt is great, and
- that there is clear and convincing evidence that releasing the person would pose a substantial threat of physical violence to any person, and
- that no conditions of release will reasonably prevent the physical violence.

An offender can also be ordered to be held without bail while waiting to be sentenced or during the time the sentence is being appealed, regardless of the type of offense. An offender who is on probation and violates his or her conditions of probation, may also be held without bail if the original crime was violent.

If a judge orders a person held without bail prior to trial, the person can have another hearing on bail decided by a single justice of the Vermont Supreme Court. A decision to deny bail is reviewable by a panel of three justices of the Vermont Supreme Court.

Even if an alleged offender has been released on bail, **bail can be revoked** if a Vermont judge or judicial officer finds that the alleged offender has:

- intimidated or harassed a victim, potential witness, juror or judicial officer in violation of a condition of release; or
- repeatedly violated conditions of release; or
- violated one or more conditions of release that constitute a threat to the integrity of the judicial system; or
- failed to appear at a specified time and place ordered by a judge or court clerk, without a very good excuse; or
- in violation of a condition of release, been charged with a felony or a crime against a person for an offense similar to the underlying charge and probable cause is found.

Bail may not be revoked if the alleged offender only “contacts” the victim. There must be proof that she was harassed or intimidated or that she was afraid to testify as a result of the contact.

Sex Offender Registry

Vermont law requires the Department of Public Safety to maintain a Sex Offender Registry. This registry keeps certain information about sex offenders so that they can be identified and located at any time.

Who Must Register

The crimes for which offenders must register include:

- sexual assault;
- aggravated sexual assault;
- lewd and lascivious conduct;
- sexual abuse of a vulnerable adult;
- second or subsequent convictions for voyeurism;
- kidnapping with intent to commit sexual assault;
- human trafficking;
- aggravated human trafficking;
- many federal sex crimes;
- attempts of any of these crimes.

In addition, the Sex Offender Registry law applies to persons convicted of any of the following offenses against a **victim who is a minor**:

- any offense listed above;
- kidnapping;
- lewd and lascivious conduct with a child
- slave traffic;
- sexual exploitation of children;
- procurement or solicitation for prostitution;
- aggravated sexual assault of a child;
- sex trafficking of children or sex trafficking by force, fraud, or coercion;

- sexual exploitation of a minor;
- attempts of any of these crimes;
- persons convicted of certain federal sex crimes are also required to register.

Conduct which is criminal only because of the age of the victim shall not be considered an offense for purposes of the registry if the perpetrator is under the age of 18 and the victim is at least 12 years old.

A sex offender who has been convicted in a state outside Vermont must provide information to the Sex Offender Registry within 10 days of moving into Vermont.

Sex offenders are required to report any change of address, employment, college enrollment, or name to the Department of Public Safety within three days of the change, and then the Department has to notify the registry within 24 hours. If the offender does not report these changes, a warrant for his or her arrest may be issued. Registrants who knowingly violate the Vermont sex offender registry law for more than 5 consecutive days will face a felony charge.

In addition, the offender must report to the Department of Public Safety on an annual basis within 10 days after their birthday, for up to 10 years or, for certain offenders, for life. These registration requirements are even more stringent for the highest-risk offenders, who must report to the Department of Public Safety in person every 30 days.

Access to Information on the Registry

If you have a concern about a person who may be registered with the Vermont Sex Offender Registry, you may contact your local law enforcement agency or the Vermont Criminal Information Center.

However, the Registry is generally prohibited from releasing lists of offenders in response to general questions regarding the whereabouts of all sex offenders in a particular community. Many Vermont sex offenders are listed on Vermont's Internet Sex Offender Registry, where more information is available.

Certain employers such as schools or state or federal agencies also have access to this information for background checks. Registered sex offenders have access to their records.

Sex Offender Internet Registry

Vermont also maintains a **Sex Offender Registry web site that may be searched by the public.**

The site may be searched by last name of the registered offender or town/city or county. In addition, an entry includes a list of sexual offense convictions by date, a physical description, a picture, town of residence, nature of conviction, whether the offender is considered high risk, compliance with treatment requirements if applicable, outstanding warrants for violations and the contact information for the supervising office.

The crimes for which offenders are listed on the Internet registry include:

- aggravated sexual assault of a child;
- aggravated sexual assault;
- sexual assault;
- kidnapping with intent to commit sexual assault;
- lewd or lascivious conduct with a child;
- second or subsequent conviction for voyeurism;
- slave traffic;
- sex trafficking of children or sex trafficking by force, fraud, or coercion;
- sexual exploitation of a minor;
- any offense regarding the sexual exploitation of children;
- human (sexual) trafficking;
- aggravated human (sexual) trafficking;
- sexual abuse of a vulnerable adult;
- certain federal sex crimes;
- a second or subsequent conviction for sexual offenses (recidivism).

Also included on the Internet registry are:

- individuals with an outstanding warrant for their arrest for a Registry violation;
- individuals who have been designated as sexual predators;
- individuals who have been designated "high risk offenders" by the Department of Corrections;
- individuals who have not complied with or are ineligible for sex offender treatment as recommended by the Department of Corrections.

It should be noted that not all sexual offenders are listed on the website and some information may be inaccurate or missing. If you have a concern about a specific person, you should contact law enforcement authorities or the Vermont Criminal Information Center directly.

Victim and Community Notification

Community notification by local law enforcement agencies is not required by law. Law enforcement agencies, however, may notify members of the public who are likely to encounter a sex offender who poses a danger to their safety. This means, for example, that a law enforcement agency may notify neighbors or perhaps a neighborhood day care center or local school if a pedophile was to move into the area. It might also notify the management at an offender's place of work if the offender had a history of violent sexual crimes against adults.

If you have been a **victim of a sexual crime** you have the right to ask the Department of Public Safety to notify you upon the initial registration of the sex offender and any time the sex offender changes his/her address.

Violent Career Criminals and Habitual Criminals

In 1995, Vermont created the category of **violent career criminals** who can receive a more severe prison sentence of up to and including life imprisonment. Violent career criminals are people who have been convicted of a serious violent crime, if it is a felony, for the third time. If a person is sentenced as a violent career criminal, the court cannot place the person on probation or suspend their sentence. If the person is given a minimum sentence, he or she is not eligible for early release or furlough until the entire minimum sentence has been served.

Another category for repeat offenders is the one for **habitual criminals**. If a person has been convicted for three felonies, he or she may also be sentenced up to life imprisonment if convicted of a fourth felony.

Civil Actions for Crimes Against Women and Children

Women need to be aware that they can hire an attorney to bring a civil lawsuit against their attacker or those responsible for their harm or injury. These cases usually seek money damages and other forms of relief. They can be pursued before, during or after the criminal case against the person has been brought by a state or federal prosecutor. These cases may be subject to differing statutes of limitation (i.e., the period of time during which the case usually has to be brought), depending on the nature of the case.

If a person is entitled to bring a civil case as a result of childhood sexual abuse, the statute of limitations does not run during any time that the person is incapacitated from pursuing the case as a direct result of the damages caused by the sexual abuse.

As part of the Victim's Bill of Rights, the protections of the Rape Shield law extend to the litigation of civil lawsuits coming out of a case of sexual assault or some other form of wrongful sexual activity. In these cases, a court must hear and decide whether to allow questions about a victim's past sexual conduct out of the sight and hearing of the jury.

Relevant Laws

Vermont:

Abuse Prevention Act, 15 V.S.A. §1101, et seq.

Abuse Prevention for Elderly and Disabled Adults, 33 V.S.A. §6931, et seq.

Abuse Prevention Proceedings, Vermont Rules for Family Proceedings, Rules 4(n) & 9

Address Confidentiality, 15 V.S.A. §§1150-1160; 18 V.S.A. §§5083, 5132; 1 V.S.A.

§317(c)(29)

Aggravated Sexual Assault, 13 V.S.A. §3253

Aggravated Sexual Assault of a Child, 13 V.S.A. §3253a

Aggravated Stalking, 13 V.S.A. §1063

Bail, 13 V.S.A. §7551, et seq.

Child Abuse Reporting, 33 V.S.A. §4911, et seq.

Childhood Sexual Abuse (statute of limitations), 12 V.S.A. §560

Confidentiality, 13 V.S.A. §5322

Crime Victims, 13 V.S.A. §5351 et seq.
Definitions; Public Agency; Public Records and Documents, 1 V.S.A. §317
Disturbing Peace by Use of Telephone or Other Electronic Communications, 13 V.S.A. § 1027
Disseminating Indecent Material to a Minor Outside the Presence of the Minor, 13 V.S.A. § 2802a
Domestic and Sexual Violence Survivors' Transitional Employment Program, 21 V.S.A. §1252 et seq.
Domestic Assaults, 13 V.S.A. §1041, et seq.
Emergency Relief, 15 V.S.A. §1104
Enforcement of Foreign Abuse Prevention Orders, 15 V.S.A. §1108
Habitual Criminals, 13 V.S.A. §11
Hate Crimes Act, 13 V.S.A. §1454, et seq.
Hate-Motivated Crime Injunctions, 13 V.S.A. §1458, et seq.
Human Trafficking, 13 V.S.A. §2651, et seq.
Kidnapping, 13 V.S.A. §2404, et seq.
Lewd or Lascivious Conduct, 13 V.S.A. §2601
Lewd or Lascivious Conduct With Child, 13 V.S.A. § 2602
Minor Electronically Disseminating Indecent Material to Another Person, 13 V.S.A. § 2802b
Obscenity, 13 V.S.A. § 2801
Orders Against Stalking or Sexual Assault, 12 V.S.A. §§5131 – 5138
Parole Board Hearing, 28 V.S.A. §507
Possession of Child Pornography, 13 V.S.A. § 2827
Rape Shield, 13 V.S.A. §3255
Reports of Abuse, Neglect and Exploitation of Vulnerable Adults, 33 V.S.A. §6901, et seq.
Requests for Relief, 15 V.S.A. §1103
Restitution, 13 V.S.A. §7043
Sentencing, 13 V.S.A. §7006 (appearance by victim)
Sex Offender Registration, 13 V.S.A. §5401, et seq.
Sexual Assault, 13 V.S.A. §3251, et seq.
Sexual Exploitation of Children, 13 V.S.A. §2821. et seq.
Sexual Exploitation of an Inmate, 13 V.S.A. §3257
Sexual Exploitation of a Minor, 13 V.S.A. §3258
Stalking, 13 V.S.A §1062
Vermont Constitution (Bail), Ch. II, §40
Vermont Rules of Criminal Procedure, Rule 15
Victims, 13 V.S.A. §5301 et seq.
Victim and Crisis Worker Privilege, 12 V.S.A. §1614
Victims Assistance Program, 13 V.S.A. §5301, et seq.
Victims' Compensation, 13 V.S.A. §5351, et seq.
Violations of Protection Orders, 13 V.S.A. §1030
Violent Career Criminals, 13 V.S.A. §11a
Voyeurism, 13 V.S.A. §2605

Federal:

Crime Victims' Rights, 18 U.S.C. §3771

Trafficking Victims Protection Act (PL 106-386)

Victims' Rights, 42 U.S.C. §10606(b)

Violence Against Women Act, 18 U.S.C.A. §2261, et seq.

Updated 7/28/16 - LT

The Legal Rights of Women in Vermont

Wills, Probate Court & Advanced Directives

Chapter 14

This chapter includes information about:

Wills

Not Having a Will

Other Forms of Property Distribution

Probate Division of the Vermont Superior Court

Advance Directives for Health Care

Authority and Obligations of an Advanced Directive Agent

Changing, Suspending or Revoking Your Advance Directive

Too often, people do not consider the important issues of whether to make a will, what happens if there is no will, and how to create an “advance directive” to guide your end of life and other critical healthcare decisions. This chapter will help you understand these issues and the probate process.

Wills

A will is a written document that transfers your property, after your death, to those whom you designate. **If you want to make sure your property will pass to the people you want to receive it, then you should make a will.** If you do not have a will, there are laws that will decide who is entitled to your property after you die. See the “Not Having a Will” section in this chapter.

Under Vermont law, a valid will must meet the following general conditions:

- the “**testator**” or **person making the will** must be at least **18 years of age**;
- the testator must be of **sound mind**;
- the will must be **in writing**;
- the will must be **signed** by the testator or the testator's name is written by another person in the testator's presence and at the testator's express direction;
- the testator's **signature must be witnessed** by two or more credible individuals (“witnesses”) in the presence of the testator and of each other. The witnesses must sign their own names to the will also in the presence of the testator and each other. “Presence” requires that the testator and witnesses can see each other sign.

Wills written in other states may also be recognized as valid wills in Vermont. A valid will does not require you to use an attorney. However, you may wish to consult an attorney to ensure that you create a valid will and that your property will pass according to your desires.

To assure safekeeping, you can deposit your will with the Register of the Probate Division of the Superior Court in the county in which you live for a small fee. Your will is kept by the court in a sealed envelope to guarantee privacy. During your life, you or another person with your valid written orders can retrieve the will from the court.

You may change or cancel your will at any time prior to your death. This may be accomplished by:

- creating another will, a supplement to your will, or another writing that follows the same conditions needed to create a valid will; or
- the testator burning, tearing, canceling, or obliterating the will with the intention to revoking it. It is also acceptable for another person to destroy the will if it is done in the presence of the testator and by his or her express direction.

Keep in mind the importance of **updating your will following marriages, divorces, terminations of relationships, births, adoptions, and deaths**. Important material that may be included in your will includes:

- Naming a person in the will to carry out the directions in the will and to take care of any estate matters. This person is referred to as **“the executor”**.
- Naming a **guardian for your minor children**, if you have any.
- Expressly and properly indicating the **people who you want to receive your property**. These people are known as **“the beneficiaries”**.
- Properly indicating **what property you wish to go to each beneficiary**.

You have the right to give away real property such as land, referred to as **“devising property,”** and personal property such as money or other personal belongings, referred to as **“a bequest,”** to anyone merely by naming that individual in the will itself. It does not matter what, if any, your personal or familial relationship is to that person.

It is important to note that **surviving spouses have certain rights that cannot be taken away by a will**. When a surviving spouse is named as a beneficiary in a will, the spouse can choose to waive the provisions made for the spouse in the will and instead take one-half (50%) of the deceased’s probate property after creditors are paid.

Additionally, a surviving spouse can receive all household furnishings as long as none of the deceased’s children object. If there is an objection, the probate court will decide the amount of furnishings to award to the surviving spouse. A surviving spouse may also receive a homestead allowance of up to \$125,000, if the deceased owned the house that was used as a dwelling. Further, the probate court may give the surviving spouse a support allowance out of the deceased’s estate.

Unlike a surviving spouse, **children are not legally entitled to inherit under Vermont law against your will’s objection**. Hence, a will that directly states your intent to exclude a child from inheriting will prevent that child from inheriting your property. This is known as **“disinheriting.”**

If you fail to disinherit a child in your will and the child is not a named beneficiary, then that child can claim a right to inherit a share of your property as a forgotten (“omitted”) child. Under Vermont law, the omitted child can be born either before or after you make your will. Additionally, all minor children are entitled to an allowance necessary for their support up to the age of 18.

Not Having a Will

Vermont law determines how your property will be distributed if you die **“intestate” (without a will)**. Vermont law considers both your real and personal property as part of your estate, and will distribute them without distinction.

When a person dies without a will, the property will pass as follows:

- Your surviving spouse will receive all (100%) of your estate, if you have either no surviving children, or all the surviving children are also the children of your surviving spouse;
- If you have at least one surviving child that is not the child of your surviving spouse, then your surviving spouse will receive half (50%) of your estate;
- Anything not passing to your surviving spouse will go to your surviving children and your grandchildren;
- If you have no surviving spouse or children, the estate will pass in the following order:
 - (1) to your surviving parents equally;
 - (2) if you have no surviving parents, then to your surviving siblings, and the surviving children of any deceased siblings;
 - (3) if you have no siblings, then to your surviving grandparents;
 - (4) if you have no surviving grandparents, then to your next of kin in equal shares.
- If you leave no living heir or beneficiary your estate will revert back to the state of Vermont.
- For someone to inherit, they must survive the deceased individual by 120 hours, or 5 days.

You should understand that if you do not have a will, your domestic partner has no right to receive any property that is owned exclusively by you at your time of death. This is true regardless of the sexual orientation of the domestic partners in the relationship. Partners in a civil union have the same rights as spouses in regards to intestate death.

Other Forms of Property Distribution

Property can also be transferred after your death by a document or process that does not require a will or to be transferred through probate. This is referred to as property that “passes outside the will.” Some examples of property that might pass outside the will include:

- Property owned together with another person in a “**joint tenancy**” or a “**tenancy by the entirety**” where the deceased’s interest in the property passes directly to the surviving joint owner; (See the Housing and Property Rights chapter of *The Legal Rights of Women in Vermont*.)
- Proceeds from a life insurance policy that is paid directly to the people named as beneficiaries in the policy;
- A joint bank account;
- A Totten trust – a bank account that is “payable on death” to a named individual (“beneficiary”);
- A pension fund or IRA that is paid to named beneficiaries.

Property that passes outside the will is not considered a part of the “probate estate.” However, this property might be included in the estate for tax purposes.

Since the laws of property ownership are complicated, it is recommended that people have a will, even if some or most of their property will be transferred by a document or a process listed in this section. It is important to get good legal advice when drafting a will and an estate plan in order to prevent unnecessary complications.

Probate Division of the Vermont Superior Court

All property that does not pass directly to others (e.g. jointly owned property, life insurance proceeds) is handled through a legal proceeding in the Probate Division of the Vermont Superior Court.

The probate proceeding is always started by a person filing a “petition to open an estate” with the proper Probate Division. The petition must be accompanied by a filing fee, a death certificate or other proof of death, and any wills.

The Probate Division then determines if the deceased (the person who died) left a valid will.

The Probate Division will then determine whether an “**executor**” has been named in the deceased’s will. An executor is an individual or entity such as a bank appointed by the will to administer and distribute the property in the estate according to law.

If a person does not leave a will, or does not name an executor in the will, the Probate Division will appoint someone to take care of the estate. This appointed person has the same duties as an executor but is called **an administrator**. The surviving spouse or next of kin has 30 days to apply to the Probate Division for appointment as an administrator. After 30 days, a suitable and competent person, including a person to whom the deceased owes money, may be appointed by the Probate Division to be the administrator.

The executor or administrator has many duties and responsibilities. These may include having to:

- determine and notify all interested parties of the various stages of the probate process;
- collect and protect the assets of the estate;
- prepare and file with the probate court an “inventory” or list of the estate assets – it may be necessary to hire a qualified and disinterested appraiser to establish an item’s fair market value;
- collect all income and debts, notes, or other claims due the deceased;
- complete any pending lawsuits in which the deceased was involved;
- carry on the business of the deceased;
- pay valid claims of creditors;
- prepare and file all state and federal estate and personal income tax and other taxes;
- sell property, if necessary, and with the probate court’s authorization, to raise money to pay claims of creditors as well as taxes and legal fees;
- prepare an “accounting” to the probate court;
- distribute remaining assets to proper individuals or entities according to the probate court’s final decree;
- file a closing report with the probate court upon the completing the distribution of the remaining assets;
- employ an attorney where advisable to assist with the legal management of the estate.

While any legal issues about the estate are being finalized, the probate court may take money from the estate to support the surviving spouse and minor children.

The vast majority of the work involved in settlement of estates is usually completed in nine months. Complications may delay the final settlement of an estate.

When disputes arise, or if there is a question about the proper meaning of a document or the identity of a person, a hearing may be scheduled by the Probate Court. At the hearing, the Court will hear testimony and, after consideration, issue its decision.

Vermont law allows a simplified probate procedure for smaller estates, called the “small estate procedure.” This procedure involves less court supervision and allows the estate to close more quickly. The procedure may save you time and money, but is limited to estates that meet the following criteria:

- the beneficiaries are limited to a surviving spouse, children of any age, or both; OR the beneficiaries are limited to surviving parent(s) but no spouse or child; and
- the deceased’s estate consists of only personal property (no real estate requiring probate to pass title); and
- the value of the estate does not exceed \$10,000.00.

Additionally, Vermont law allows the title of one or two motor vehicles to pass directly to a surviving spouse without going through probate court when the decedent has not made a specific bequest of the vehicle(s) in the will or the vehicle(s) is (are) titled in the name of one or more persons other than the decedent or the surviving spouse.

Advance Directives for Health Care

Vermont law recognizes the fundamental right of an adult to determine the extent of health care they receive during periods of incapacity and at the end of life. You may create an **“advance directive” to ensure that your end of life and other critical healthcare decisions will be honored.**

An **advance directive** is a written document, signed by you and two witnesses, that outlines your wishes for medical treatment in the future when you lack capacity to or do not wish to make medical decisions. Many people may think of an advance directive as a “living will” or a “durable power of attorney for healthcare.” An advance directive is generally executed if:

- it is dated;
- signed by the person making the advance directive (“the principal”) or by another individual in the principal's presence at the principal's express direction if the principal is physically unable to do so;
- the principal signs in the presence of two or more witnesses at least eighteen (18) years of age; and
- the witnesses sign the advance directive and affirm that the principal appeared to understand the nature of the document and was free from duress or undue influence at the time the advance directive was signed.

It is important to note that the following individuals may NOT act as witness to your advance directive: the agent appointed in your advance directive, your spouse, your parent, your adult sibling, your adult child, your adult grandchild, or any beneficiary.

Special requirements apply to principals who are or will be nursing home residents, or who are or will be patients in a hospital to ensure these principals are willingly and voluntarily executing advance directives. Principals in these circumstances must have a signed statement by an ombudsman, patient representative, a recognized clergy member, a licensed attorney, a Probate Court designee, or an individual designated by the hospital. The statement must affirm the principal understands the nature and effect of the advance directive.

If you are at least eighteen (18) years old and have “capacity” (a basic understanding of the diagnosed condition and what it means to appoint someone to make decisions on your behalf), you may do any of the following in an advance directive:

- appoint one or more agents and an alternative agent who will have authority to make health care decisions for you under the advance directive;
- identify those persons whom you do not want to serve as an agent;
- identify those persons – adults or minors – whom your agent will or will not consult with;

- identify a preferred clinician;
- authorize your agent or health care provider to release medical information to certain people;
- specify the scope of an agent’s authority to make health care decisions for you;
- specify any special circumstance under which the agent will have authority to act or not to act;
- direct the type of health care you desire or do not desire, and any specific treatments you desire or reject when being treated for a particular condition or disability;
- direct which life sustaining treatment may be administered by medical means to you (either when you are or are not pregnant);
- include a provision that allows your agent to authorize or withhold health care over your objection when you lack capacity;
- direct how your remains will be disposed of, including funeral goods and services or appoint an individual to make arrangements for your remains;
- make, limit, or refuse to make an anatomical gift;
- provide any other direction you desire regarding future health care or personal circumstances

Note, there are restrictions on who you can appoint as your agent. **Your health care provider cannot be appointed as your agent.** Additionally, anyone who is involved in a residential care facility, a health care facility, or a correctional facility where you live may not be your agent, unless they are related to you by blood, marriage, civil union, or adoption. Furthermore, anyone serving the interests of a funeral director, crematory operator, cemetery or procurement organization may not exercise authority over the disposition of your remains, anatomical gifts, or funeral goods or services unless related to you by blood, marriage, civil union, or adoption.

When an advance directive becomes effective:

- when a principal’s clinician, after speaking with an interested individual, determines that the principal lacks capacity and has made reasonable efforts to notify the principal and the principal’s agent;
- when the triggering circumstance specified in the advance directive has been met;
or
- when the advance directive is executed, if so specified in the directive

Upon determination by the principal’s clinician, or upon the request of any “interested individual” (including the principal), the principal must be reexamined to determine whether the principal has regained capacity. If the principal has “capacity”, the principal has authority to make their own decisions, even in the event of a disagreement with the agent.

Note: an “interested individual” means the principal’s spouse, adult child or grandchild, parent, adult sibling, reciprocal beneficiary, clergy person or any adult who has exhibited care and concern for the principal and who is personally familiar with the principal’s values.

Authority and Obligations of an Advanced Directive Agent

An agent must make decisions based upon the specific instructions contained in the advance directive, the principal's applicable additional wishes or the agent's knowledge of the principal's values or beliefs. If the agent cannot determine what the principal would have wanted under the circumstances, the agent must make a decision based on the principal's best interests. The agent must not consider his or her own interests, values or beliefs. An agent who is unable or unwilling to make a decision on the principal's behalf must recuse him or herself and notify any interested parties.

Changing, Suspending or Revoking Your Advance Directive

As a **principal**, you may change, suspend, or revoke all or part of your advance directive by:

- executing a new advance directive;
- signing a statement suspending or revoking all or part of an advance directive;
- personally informing your clinician – who must immediately record the revocation in your medical record; or
- burning, tearing, or obliterating the advance directive, or by causing that to be done by another person at your direction and in your presence.

To the extent possible, the principal must communicate any suspension or revocation to the agent or other interested individuals. A clinician, health care provider, health care facility, or residential care facility who becomes aware of a change must make reasonable efforts to confirm, record and flag the change. An agent or guardian who becomes aware of a change must make reasonable efforts to confirm the change, ensure recordation, and provide notice to interested individuals. If the principal's advance directive has previously been submitted to the registry, any amendments should be submitted as well.

Note: An interested party may file a petition for review in Probate Division of the Superior Court to settle a dispute concerning an advance directive.

The Vermont Department of Health provides numerous forms to aid you in creating your advance directive. Additionally, the Department of Health has established a free electronic database called the **Vermont Advance Directive Registry (VADR)** that stores advance directives and makes them accessible to hospitals or other medical service providers. You are not required by law to send an advance directive to the registry. However, registered directives will allow hospitals or other providers to have quick access to these documents in an emergency.

Find the most local and most appropriate agency/organization to help you—go to Vermont Commission on Women's Resource Directory—Legal section.

Relevant Laws

Vermont:

Advance Directives For Health Care and Disposition, 18 V.S.A. §9700, et seq.

Taxation and Finance, 32 V.S.A. §1434 (Probate Court fees and costs)

Wills & Estates, 14 V.S.A. Chapters 1 – 123

Vermont Legislative Session Laws 2009-2010, Act 55 Vermont Department of Health,

Advance Directives For Health Care Rules

Motor Vehicles, 23 V.S.A.2023 (Title to Motor Vehicles)

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