AMERICAN
ASSOCIATION FOR
SINGLE PEOPLE

Spectrum Institute, Research and Policy Division
P.O. Box 65756 • Los Angeles, CA 90065 • (323) 258-8955
Fax (323) 258-8099 • www.singlepeople.org • unmarried@earthlink.net

Legislative Considerations:

Some Potential Effects of the

Legalization of Same-Sex Marriage

Special Report to the Vermont Legislature

Presented to the
House Judiciary Committee
January 27, 2000

Special Report No. V-1

Some Potential Effects of the Legalization of Same-Sex Marriage in Vermont

by Thomas F. Coleman
American Association for Single People

Potential Conflict with Federal Government

The Defense of Marriage Act was signed into law by President Clinton on September 21, 1996. It declares that for purposes of federal law "'marriage' means only a legal union between one man and one woman as husband and wife, and the word 'spouse' refers only to a person of the opposite sex who is a husband or a wife."

Some 30 states have passed similar laws in anticipation of the legalization of same-sex marriage in one or more other states. These "mini DOMA" statutes are intended to prevent the legalization of same-sex marriage in one state from having effect within the borders of a state which has passed such restrictive legislation.

The question arises as to what conflict might arise with the federal government or with other states if the Vermont Legislature were to remove the current gender restriction from its marriage laws and thus to legalize same-sex marriage in Vermont.

While no one can accurately predict whether state or federal courts would require the federal government or other states to give legal recognition to such marriages performed in Vermont, it is not hard to imagine the types of federal and interstate conflicts which may arise if the Vermont Legislature were to legalize same-sex marriage.

The federal government gives block grants to states. It also gives grants and loans to private businesses. Some of these federal grants and loans may use the term "marriage" in some of the terms and conditions or program specifications.

In view of DOMA, what will happen with respect to the administration of these grants and loans if Vermont legalizes all marriages regardless of gender? How will the federal government determine if a portion of the loan or grant is being used illegally (per DOMA)? Will the state have to set up two separate auditing and accounting systems? Will the federal government require that the gender of each recipient be determined by getting proof via a birth certificate? Will the state and the federal government become embroiled in litigation over these issues in a myriad of contexts?

Potential Effects on Private Employers

Also, what would the effect be on private employers? The federal government exempts employment benefits to a "spouse" from income tax. An employer may not deduct tax from the employee's paycheck for benefits going to the spouse of an employee. It must deduct tax for benefits to domestic partners of employees (with certain exceptions). If Vermont legalizes same-sex marriage, what will private employers in Vermont do? Will they claim that DOMA is unconstitutional and not deduct and then be sued by the federal government? Will they deduct and then be sued by the employee and by unions? How will they legally determine if the employee and his/her spouse are opposite-sex married couples? Some names can be male or female. Some women look like men and vice versa. You can't always go by looks, and the law is not based on names or looks, but on the legal sex (male or female) of the individual. Will all employers in Vermont have to require all spouses to show proof of gender with their birth certificates just to be sure they are acting within the requirements of federal law?

Potential Conflict with Other States

And what about Interstate Compacts? If Vermont has a written compact with another state for the exchange of prisoners, lets say, will the other state be reluctant to accept married prisoners from Vermont for housing in the other state for fear that they would be sued if they did not give conjugal visits to the prisoner and "spouse" if they find out after the transfer that the marriage is a same-sex marriage (assuming the other state provides for conjugal visits). Also, will other states be reluctant to transfer a prisoner to Vermont for fear that the prisoner may enter into a same-sex marriage while in Vermont and then will claim it is a legal marriage when he returns to the home state? There are other Interstate Compacts which use the term "marriage" in them. How will these compacts be interpreted if the other state has a enacted a "mini-DOMA" statute? Will Vermont wind up in litigation with dozens of states over the implementation of these compacts?

Also, there is the matter of Uniform State Codes. When they were adopted by the states, everyone assumed that the term "marriage" meant a male-female relationship. It was an assumed part of the law. What happens if Vermont broadens the term to include same-sex marriages? The interpretation and implementation of these various codes would no longer be "uniform."

Potential Effect on Teenage Children of Divorced Parents

Vermont law allows persons between the ages of 16 and 18 to marry if only one of the parents consents. This statute was probably intended to be used in situations when a teenage girl was pregnant.

The legalization of same-sex marriage in Vermont would apply this statute to situations not involving pregnancy. A non-custodial parent, possibly living in another state, could legally give consent to a 16 year old to marry a person of the same sex. Such consent would appear to be effective even if the custodial parent were to object.

Potential Effects on Annulment Law

At common law, a party to a marriage could seek an annulment if the spouse failed to or refused to consummate the marriage. Whether a marriage had been consummated was dependent on whether the man and woman had engaged in an act "sexual intercourse."

Vermont has codified this common law principle in 15 V.S.A. § 515 which allows annulment on the ground of "physical incapacity" of a party.

If "sexual intercourse" between a man and a woman is a ground for annulment of a heterosexual marriage, then how will such a court determine if a female-female marriage or a male-male marriage has been consummated?

Potential Effects on the Presumption of Paternity

In Vermont, as in many other states, a child born to a married woman is presumed to be the biological child of her husband. In some states, such as California, the presumption is conclusive. In Vermont, it may only be a rebuttable presumption.

If same-sex marriage is legalized in Vermont, how will this presumption apply to children born to a woman who is married to another woman?

Conclusion

The Legislature and Governor may decide to legalize same-sex marriage and deal with these problems when they arise.

Maybe government officials in Vermont are willing to lead a national fight for same-sex marriage rights, engaging in any and all necessary litigation with the federal government and other states to advance this civil rights cause. Maybe they are willing to let the Vermont courts resolve intra-state problems on a case-by-case basis. Perhaps legalizing same-sex marriage in Vermont will force an answer to many of the questions mentioned above.

The purpose of this memo is to call attention to some of the potential ramifications of legalizing same-sex marriage so that legislators may make an informed decision in response to the Baker decision.

Submitted to the House Judiciary Committee on January 27, 2000

The Defense of Marriage Act

In anticipation of the Hawaii court decision mandating state approval of same-sex marriage, the United States Congress adopted the Defense of Marriage Act, Public Law 104-199 [H.R. 3396], on September 21, 1996. This Act was subsequently signed into law by President Clinton. The Defense of Marriage Act (DOMA) amends 28 U.S.C. s 1738C by adding the following language: "No State . . . shall be required to give effect to any public act, record, or judicial proceeding of any other State . . . respecting a relationship between persons of the same-sex that is treated as a marriage under the laws of such other State . . . , or a right or claim arising from such relationship." DOMA also amends 1 U.S.C. 1 by adding the following definition of "marriage" for purposes of federal law: "marriage" means only a legal union between one man and one woman as husband and wife, and the word "spouse" refers only to a person of the opposite sex who is a husband or a wife."

The Associated Press
Tuesday, Jan. 18, 2000; 2:58 p.m. EST

Calif. To Vote on Same-Sex Unions

SAN FRANCISCO (AP) – Californians will able to vote on March 7 on a proposal that the state refuse to recognize homosexual marriages. Proposition 22 says "only marriage between a man and a woman is valid or recognized in California." No state has legalized gay marriage. Ever since Hawaii's Supreme Court raised the possibility of same-sex unions in 1993, Congress and 30 states have passed pre-emptive laws saying they won't recognize such marriages if they are legalized in any other state. An independent Field Poll last month showed Prop. 22 leading 51 percent to 40 percent.

1 V.S.A. § 783

VERMONT STATUTES ANNOTATED

*** THIS SECTION IS CURRENT THROUGH THE 1999 SESSION ***
*** ANNOTATIONS CURRENT THROUGH 719 A.2d 435 ***

TITLE ONE. GENERAL PROVISIONS
CHAPTER 21. **INTERSTATE** COOPERATION
SUBCHAPTER 1. COMMISSION ON **INTERSTATE** COOPERATION

1 V.S.A. § 783 (1999)

§ 783. Functions of commission

The functions of the commission shall be:

(1) To encourage and assist the legislative, executive, administrative and judicial officials and employees of this state to develop and maintain friendly contact by correspondence, by conference, and otherwise, with officials and employees of the other states, of the federal government, and of local units of government.

(2) To endeavor to advance cooperation between this state and other units of government whenever it seems advisable to do so by formulating proposals for, and by facilitating:

(A) The adoption of **compacts,**

(B) The enactment of uniform or reciprocal statutes,

(C) The adoption of uniform or reciprocal administrative rules and regulations,

(D) The informal cooperation of governmental offices with one another,

(E) The personal cooperation of governmental officials and employees with one another, individually,

(F) The interchange and clearance of research and information,

(G) Any other suitable process.

(3) To do all such acts as will, in the opinion of this commission, enable this state to do its part or more than its part in forming a more perfect union among the various governments in the United

States and in developing the Council of State Governments for that purpose.

(4) The commission shall report to the governor and to the general assembly within fifteen days after the convening of each regular legislative session, and at such other times as it deems appropriate.

HISTORY: 1961, No. 75, § 3.

USER NOTE: For more generally applicable notes, see notes under the first section of this heading: division, article, chapter, part or title.

View: Cite | KWIC | **Full** 1 of 258 NEXT Text Only | Download | Fax | Email
Book Browse | FOCUS™ - Narrow Results | Save As ECLIPSE | More Like This | More Like Selected Text

1 V.S.A. § 783

Source: All Sources : States Legal - U.S. : Vermont : **VT - Vermont Statutes Annotated, Vermont Court Rules Annotated and ALS**
Terms: **interstate and compact** (Edit Search)
View: Full
Date/Time: Tuesday, January 18, 2000 - 6:24 PM EST

Search | Search Advisor | Get a Document | Check a Citation
ECLIPSE(TM) | History | Change Client | Options | Feedback | Sign Off | Help
About LEXIS-NEXIS | Terms and Conditions

15A V.S.A. § 2-106

TITLE FIFTEEN A. ADOPTION ACT
ARTICLE 2. ADOPTION OF MINORS
PART 1. PLACEMENT OF MINORS FOR ADOPTION

15A V.S.A. § 2-106 (1999)

§ 2-106. **Interstate** placement

An adoption in this state of a minor brought into this state from another state by a prospective adoptive parent, or by a person who places the minor for adoption in this state, is governed by the laws of this state, including this title and the **Interstate Compact** on the Placement of Children.

HISTORY: Added 1995, No. 161 (Adj. Sess.), § 1.

NOTES:
HISTORY

REFERENCES IN TEXT. The **Interstate Compact** on the Placement of Children, referred to in this section, is classified to 33 V.S.A. § 5901 et seq.

USER NOTE: For more generally applicable notes, see notes under the first section of this heading: division, article, chapter, part or title.

18 V.S.A. § 7102

TITLE EIGHTEEN. HEALTH
PART 8. MENTAL HEALTH
CHAPTER 171. GENERAL PROVISIONS

18 V.S.A. § 7102 (1999)

§ 7102. Out of state patients

Nothing in this part of this title shall be deemed to alter or impair the application or availability to any patient, while hospitalized in a state outside Vermont pursuant to contractual arrangements under section 7401(6) of this title, of any rights, remedies, or protective safeguards provided by the law of that state or by the **Interstate Compact** on Mental Health where applicable.

HISTORY: Added 1967, No. 305 (Adj. Sess.), § 1, eff. Oct. 1, 1968.

NOTES:
HISTORY

REFERENCES IN TEXT. The **Interstate Compact** on Mental Health, referred to in this section, is classified to § 9001 et seq. of this title.

USER NOTE: For more generally applicable notes, see notes under the first section of this heading: division, article, chapter, part or title.

18 V.S.A. § 7314

VERMONT STATUTES ANNOTATED

*** THIS SECTION IS CURRENT THROUGH THE 1999 SESSION ***
*** ANNOTATIONS CURRENT THROUGH 719 A.2d 435 ***

TITLE EIGHTEEN. HEALTH
PART 8. MENTAL HEALTH
CHAPTER 175. THE BOARD OF MENTAL HEALTH

18 V.S.A. § 7314 (1999)

§ 7314. Reciprocal agreements

The board may enter into reciprocal agreements with corresponding state agencies of other states regarding the **interstate** transportation or transfer of persons with mental illness or retardation and arrange with the proper officials in this state for the acceptance, transfer and support of residents of this state who are temporarily detained or receiving mental care in public institutions of other states in accordance with the terms of such agreements.

HISTORY: Added 1967, No. 305 (Adj. Sess.), § 1, eff. Oct. 1, 1968; amended 1977, No. 257 (Adj. Sess.), § 4.

NOTES:
HISTORY

AMENDMENTS--1977 (ADJ. SESS.). Substituted "retardation" for "defects" following "mental illness or".

CROSS REFERENCES
Interstate Compact on Mental Health, see § 9001 et seq. of this title.
Transfers of patients generally, see § 7901 et seq. of this title.
Uniform Act for Extradition of Persons of Unsound Mind, see § 9101 et seq. of this title.

USER NOTE: For more generally applicable notes, see notes under the first section of this heading: division, article, chapter, part or title.

18 V.S.A. § 9010

VERMONT STATUTES ANNOTATED

*** THIS SECTION IS CURRENT THROUGH THE 1999 SESSION ***
*** ANNOTATIONS CURRENT THROUGH 719 A.2d 435 ***

TITLE EIGHTEEN. HEALTH
PART 8. MENTAL HEALTH
CHAPTER 209. **INTERSTATE COMPACT** ON MENTAL HEALTH
SUBCHAPTER 1. **COMPACT**

18 V.S.A. § 9010 (1999)

§ 9010. **Compact** administrator--Article X

(a) Each party state shall appoint a "**compact** administrator" who, on behalf of his state, shall act as general coordinator of activities under the **compact** in his state and who shall receive copies of all reports, correspondence and other documents relating to any patient processed under the **compact** by his state either in the capacity of sending or receiving state. The **compact** administrator or his duly designated representative shall be the official with whom other party states shall deal in any matter relating to the **compact** or any patient processed thereunder.

(b) The **compact** administrators of the respective party states shall have power to promulgate reasonable rules and regulations to carry out more effectively the terms and provisions of this **compact.**

HISTORY: Added 1967, No. 305 (Adj. Sess.), § 1, eff. Oct. 1, 1968.

USER NOTE: For more generally applicable notes, see notes under the first section of this heading: division, article, chapter, part or title.

View: Cite | KWIC | **Full** PREVIOUS **130** of 258 NEXT Text Only | Download | Fax | Email
Book Browse | FOCUS™ - Narrow Results | Save As ECLIPSE | More Like This | More Like Selected Text
18 V.S.A. § 9010

Source: All Sources : States Legal - U.S. : Vermont : **VT - Vermont Statutes Annotated, Vermont Court Rules Annotated and ALS**
Terms: **interstate and compact** (Edit Search)
View: Full
Date/Time: Tuesday, January 18, 2000 - 6:36 PM EST

18 V.S.A. § 9014

*** THIS SECTION IS CURRENT THROUGH THE 1999 SESSION ***
*** ANNOTATIONS CURRENT THROUGH 719 A.2d 435 ***

TITLE EIGHTEEN. HEALTH
PART 8. MENTAL HEALTH
CHAPTER 209. **INTERSTATE COMPACT** ON MENTAL HEALTH
SUBCHAPTER 1. **COMPACT**

18 V.S.A. § 9014 (1999)

§ 9014. Construction; separability of provisions--Article XIV

This **compact** shall be liberally construed so as to effectuate the purposes thereof. The provisions of this **compact** shall be severable and if any phrase, clause, sentence or provision of this **compact** is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this **compact** and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this **compact** shall be held contrary to the constitution of any state party thereto, the **compact** shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

HISTORY: Added 1967, No. 305 (Adj. Sess.), § 1, eff. Oct. 1, 1968.

USER NOTE: For more generally applicable notes, see notes under the first section of this heading: division, article, chapter, part or title.

20 V.S.A. § 87

VERMONT STATUTES ANNOTATED

*** THIS SECTION IS CURRENT THROUGH THE 1999 SESSION ***
*** ANNOTATIONS CURRENT THROUGH 719 A.2d 435 ***

TITLE TWENTY. INTERNAL SECURITY AND PUBLIC SAFETY
PART 1. CIVIL DEFENSE AND MILITARY AID
CHAPTER 3. **INTERSTATE** CIVIL DEFENSE **COMPACT**

20 V.S.A. § 87 (1999)

§ 87. Payment of compensation for injury or death--Article 7

Each party state shall provide for the payment of compensation and death benefits to injured members of the civil defense forces of that state and the representatives of deceased members of such forces in case such members sustain injuries or are killed while rendering aid pursuant to this **compact,** in the same manner and on the same terms as if the injury or death were sustained within such state.

NOTES:
HISTORY

SOURCE. 1951, No. 243, § 1.

CROSS REFERENCES
Compensation for injury or death of civil defense workers generally, see § 21 of this title.

USER NOTE: For more generally applicable notes, see notes under the first section of this heading: division, article, chapter, part or title.

View: Cite | KWIC | Full Previous 147 of 258 Next Text Only | Download | Fax | Email
Book Browse | FOCUS™ - Narrow Results | Save As ECLIPSE | More Like This | More Like Selected Text
20 V.S.A. § 87
Source: All Sources : States Legal - U.S. : Vermont : VT - Vermont Statutes Annotated, Vermont Court Rules Annotated and ALS
Terms: interstate and compact (Edit Search)
View: Full
Date/Time: Tuesday, January 18, 2000 - 6:40 PM EST

22 V.S.A. § 23

22 V.S.A. § 23

*** THIS SECTION IS CURRENT THROUGH THE 1999 SESSION ***
*** ANNOTATIONS CURRENT THROUGH 719 A.2d 435 ***

TITLE TWENTY-TWO. LIBRARIES AND HISTORY
CHAPTER 2. **INTERSTATE** LIBRARY **COMPACT**
SUBCHAPTER 1. **COMPACT**

22 V.S.A. § 23 (1999)

§ 23. **Interstate** library districts--Article III

(a) Any one or more public library agencies in a party state in cooperation with any public library agency or agencies in one or more other party states may establish and maintain an **interstate** library district. Subject to the provisions of this **compact** and any other laws of the party states which pursuant hereto remain applicable, such district may establish, maintain and operate some or all of the library facilities and services for the area concerned in accordance with the terms of a library agreement therefor. Any private library agency or agencies within an **interstate** library district may cooperate therewith, assume duties, responsibilities and obligations thereto, and receive benefits therefrom as provided in any library agreement to which such agency or agencies become party.

(b) Within an **interstate** library district, and as provided by a library agreement, the performance of library functions may be undertaken on a joint or cooperative basis or may be undertaken by means of one or more arrangements between or among public or private library agencies for the extension of library privileges to the use of facilities or services operated or rendered by one or more of the individual library agencies.

(c) If a library agreement provides for joint establishment, maintenance or operation of library facilities or services by an **interstate** library district, such district shall have power to do any one or more of the following in accordance with such library agreement:

1. Undertake, administer and participate in programs or arrangements for securing, lending or servicing of books and other publications, any other materials suitable to be kept or made available by libraries, library equipment or for the dissemination of information about libraries, the value and significance of particular items therein, and the use thereof.

2. Accept for any of its purposes under this **compact** any and all donations, and grants of money, equipment, supplies, materials, and services, (conditional or otherwise), from any state of the

United States or any subdivision or agency thereof, or **interstate** agency, or from any institution, person, firm or corporation, and receive, utilize and dispose of the same.

3. Operate mobile library units or equipment for the purpose of rendering bookmobile service within the district.

4. Employ professional, technical, clerical and other personnel and fix terms of employment, compensation and other appropriate benefits; and where desirable, provide for the in-service training of such personnel.

5. Sue and be sued in any court of competent jurisdiction.

6. Acquire, hold, and dispose of any real or personal property or any interest or interests therein as may be appropriate to the rendering of library service.

7. Construct, maintain and operate a library, including any appropriate branches thereof.

Do such other things as may be incidental to or appropriate for the carrying out of any of the foregoing powers.

HISTORY: 1963, No. 119, § 2, eff. May 28, 1963.

USER NOTE: For more generally applicable notes, see notes under the first section of this heading: division, article, chapter, part or title.

24 V.S.A. § 4941

24 V.S.A. § 4941

VERMONT STATUTES ANNOTATED

*** THIS SECTION IS CURRENT THROUGH THE 1999 SESSION ***
*** ANNOTATIONS CURRENT THROUGH 719 A.2d 435 ***

TITLE TWENTY-FOUR. MUNICIPAL AND COUNTY GOVERNMENT
PART 2. MUNICIPALITIES
CHAPTER 121. INTERMUNICIPAL COOPERATION AND SERVICES
SUBCHAPTER 6. INTERMUNICIPAL INSURANCE AGREEMENTS

24 V.S.A. § 4941 (1999)

§ 4941. Definitions

As used in this subchapter:

(1) "Association" shall mean an association, **compact** or corporation, any of which shall be organized not for profit, and formed for the purpose of entering into intermunicipal insurance agreements under this subchapter.

(2) "Municipality" shall mean "municipality" as defined in section 4801 of this title, but shall also include the following:

(A) all governmental entities defined in section 126 of Title 1 and in section 1751(1) of this title;

(B) all bodies corporate and politic created and existing under any special act of the general assembly;

(C) all bodies corporate and politic created and existing under an **interstate compact;**

(D) all bodies corporate and politic created under intermunicipal agreements entered into and approved as provided in subchapter 3, chapter 121, of this title;

(E) all supervisory unions created under subchapter 1, chapter 7, of Title 16;

(F) all incorporated school districts;

(G) all entities providing educational services and eligible for state aid under section 3447 of Title 16;

28 V.S.A. § 706

28 V.S.A. § 706

VERMONT STATUTES ANNOTATED

*** THIS SECTION IS CURRENT THROUGH THE 1999 SESSION ***
*** ANNOTATIONS CURRENT THROUGH 719 A.2d 435 ***

TITLE TWENTY-EIGHT. PUBLIC INSTITUTIONS AND CORRECTIONS
CHAPTER 11. SUPERVISION OF ADULT INMATES AT THE CORRECTIONAL FACILITIES
SUBCHAPTER 1. COMMITMENT, TRANSFER AND DISCHARGE

28 V.S.A. § 706 (1999)

§ 706. Transfer to federal correctional facility

(a) The commissioner may enter into and execute a contract or contracts with the United States for the transfer of any inmate from any facility to a federal correctional facility when, in his opinion, the inmate needs particular treatment or special facilities available at the federal correctional facility; or, all in-state treatment and rehabilitative programs available for the inmate have been considered and found unsuitable; or, all in-state security and custody alternatives for the inmate have been considered and found unsuitable; or, the inmate voluntarily requests transfer.

(b) Notwithstanding any other provision of law, an inmate transferred to a federal correctional facility shall, unless otherwise agreed in a contract or contracts, be subject to the same law, rules, regulations, and procedures applicable to inmates committed for violations of laws of the United States, not inconsistent with the sentence imposed. Such laws, rules, regulations, and procedures applicable to Vermont prisoners confined outside Vermont may include but are not limited to matters of discipline, classification, segregation, visiting, mail, clothing or dress, use of telephones, personal property, employment, work release, furlough and transfer.

HISTORY: Added 1971, No. 199 (Adj. Sess.), § 20; amended 1975, No. 21, § 1, eff. March 31, 1975.

NOTES:
HISTORY

AMENDMENTS--1975. Amended section generally.

CROSS REFERENCES
Federal government authorized to contract for custody of state offenders, see 18 U.S.C. § 5003.
Interstate Corrections **Compact,** see § 1601 et seq. of this title.
New England **Interstate** Corrections **Compact,** see § 1401 et seq. of this title.

28 V.S.A. § 707

VERMONT STATUTES ANNOTATED

*** THIS SECTION IS CURRENT THROUGH THE 1999 SESSION ***
*** ANNOTATIONS CURRENT THROUGH 719 A.2d 435 ***

TITLE TWENTY-EIGHT. PUBLIC INSTITUTIONS AND CORRECTIONS
CHAPTER 11. SUPERVISION OF ADULT INMATES AT THE CORRECTIONAL FACILITIES
SUBCHAPTER 1. COMMITMENT, TRANSFER AND DISCHARGE

28 V.S.A. § 707 (1999)

§ 707. Confinement of persons convicted by United States courts

(a) The department shall have the authority, on such terms and conditions as it may prescribe, to receive into custody any person ordered detained or convicted by any court of the United States. Any person against whom such sentence is rendered, while he is confined at any such facility, shall be subject to the same rules and discipline to which other inmates are subjected.

(b) All payments received from the United States for the confinement of such persons referred to in subsection (a) of this section shall be made to the state treasurer.

HISTORY: Added 1971, No. 199 (Adj. Sess.), § 20; amended 1973, No. 205 (Adj. Sess.), § 2.

NOTES:
HISTORY

AMENDMENTS--1973 (ADJ. SESS.). Subsection (a): Inserted "ordered detained or" preceding "convicted" in the first sentence.

PRIOR LAW. 28 V.S.A. §§ 536, 537.

CROSS REFERENCES
Federal prisoners in state institutions, see 18 U.S.C. § 4002.
Interstate Corrections **Compact,** see § 1601 et seq. of this title.
New England **Interstate** Corrections **Compact,** see § 1401 et seq. of this title.

USER NOTE: For more generally applicable notes, see notes under the first section of this heading: division, article, chapter, part or title.

28 V.S.A. § 1301

28 V.S.A. § 1301

*** THIS SECTION IS CURRENT THROUGH THE 1999 SESSION ***
*** ANNOTATIONS CURRENT THROUGH 719 A.2d 435 ***

TITLE TWENTY-EIGHT. PUBLIC INSTITUTIONS AND CORRECTIONS
CHAPTER 21. UNIFORM ACT FOR OUT-OF-STATE PAROLEE SUPERVISION

28 V.S.A. § 1301 (1999)

§ 1301. **Compact,** terms

The governor shall execute a **compact** on behalf of the state of Vermont with any of the United States legally joining therein the form substantially as follows:

A **COMPACT**

Entered into by and among the contracting states, signatories hereto, with the consent of the Congress of the United States of America, granted by an act entitled "An act granting the consent of Congress to any two or more states to enter into agreements or **compacts** for cooperative effort and mutual assistance in the prevention of crime and for other purposes."

The contracting states solemnly agree:

(1) That it will be competent for the duly constituted judicial and administrative authorities of a state, party to this **compact,** (herein called "sending state"), to permit any person convicted of an offense within such state and placed on probation or released on parole to reside in any other state, party to this **compact,** (herein called "receiving state"), while on probation or parole, if:

(a) Such person is in fact a resident of or has his family residing within the receiving state and can obtain employment there;

(b) Though not a resident of the receiving state and not having his family residing there, the receiving state consents to such person being sent there.

Before granting such permission, opportunity shall be granted to the receiving state to investigate the home and prospective employment of such person.

A resident of the receiving state, within the meaning of this section, is one who has been an actual inhabitant of such state continuously for more than one year prior to his coming to the sending state

and has not resided within the sending state more than six continuous months immediately preceding the commission of the offense for which he has been convicted.

(2) That each receiving state will assume the duties of visitation of and supervision over probationers or parolees of any sending state and in the exercise of those duties will be governed by the same standards that prevail for its own probationers and parolees.

(3) That duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any person on probation or parole. For that purpose no formalities will be required other than establishing the authority of the officer and the identity of the person to be retaken. All legal requirements to obtain extradition of fugitives from justice are hereby expressly waived on the part of states party hereto, as to such persons. The decision of the sending state to retake a person on probation or parole shall be conclusive upon and not reviewable within the receiving state: provided however, that if at the time when a state seeks to retake a probationer or parolee there should be pending against him within the receiving state any criminal charge, or he should be suspected of having committed within such state a criminal offense, he shall not be retaken without the consent of the receiving state until discharged from prosecution or from imprisonment for such offense.

(4) That the duly accredited officers of the sending state will be permitted to transport prisoners being retaken through any and all states parties to this **compact,** without interference.

(5) That the governor of each state may designate an officer who, acting jointly with like officers of other contracting states, if and when appointed, shall promulgate such rules and regulations as may be deemed necessary more effectively to carry out the terms of this **compact.**

(6) That this **compact** shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed, it shall have the full force and effect of law within such state, the form of execution to be in accordance with the laws of the executing state.

(7) That this **compact** shall continue in force and remain binding upon each executing state until renounced by it. The duties and obligations hereunder of a renouncing state shall continue as to parolees or probationers residing therein at the time of withdrawal until retaken or finally discharged by the sending state. Renunciation of this **compact** shall be by the same authority which executed it, by sending six months' notice in writing of its intention to withdraw from the **compact** to the other states party hereto.

NOTES:
HISTORY

SOURCE. V.S. 1947, § 8039. 1944, No. 202, § 8202. 1937, No. 218, § 1.

REFERENCES IN TEXT. The act of Congress referred to in the first paragraph of the **compact** is classified to 4 U.S.C. § 112.

SHORT TITLE. V.S. 1947, § 8041, derived from 1937, No. 218, § 2, provided that this chapter may be cited as the Uniform Act for Out-of-State Parolee Supervision.

SEVERABILITY. V.S. 1947, § 8040, derived from 1947, No. 202, § 8203 and 1937, No. 218, § 2, contained a separability provision applicable to this chapter.

PRIOR LAW. 28 V.S.A. § 1101.

ADOPTION OF **COMPACT. The Interstate Compact** for the Supervision of Parolees and Probation was executed by Vermont on Sept. 13, 1937.

28 V.S.A. § 1402

28 V.S.A. § 1402

*** THIS SECTION IS CURRENT THROUGH THE 1999 SESSION ***
*** ANNOTATIONS CURRENT THROUGH 719 A.2d 435 ***

TITLE TWENTY-EIGHT. PUBLIC INSTITUTIONS AND CORRECTIONS
CHAPTER 23. NEW ENGLAND **INTERSTATE** CORRECTIONS **COMPACT**
SUBCHAPTER 1. NEW ENGLAND **INTERSTATE** CORRECTIONS **COMPACT**

28 V.S.A. § 1402 (1999)

§ 1402. Definitions--Article II

As used in this **compact,** unless the context clearly requires otherwise:

(a) "State" means a state of the United States, located in New England, to wit, Maine, New Hampshire, Vermont, Massachusetts, Connecticut and Rhode Island.

(b) "Sending state" means a state party to this **compact** in which conviction or court commitment was had.

(c) "Receiving state" means a state party to this **compact** to which an inmate is sent for confinement other than a state in which conviction or court commitment was had.

(d) "Inmate" means a male or female offender who is committed, under sentence to or confined in a penal or correctional institution.

(e) "Institutions" means any penal or correctional facility (including but not limited to a facility for the mentally ill or mentally defective) in which inmates as defined in (d) above may lawfully be confined.

HISTORY: 1961, No. 213, § 2, eff. July 11, 1961.

NOTES:
HISTORY

PRIOR LAW. 28 V.S.A. § 1202.

USER NOTE: For more generally applicable notes, see notes under the first section of this heading: division, article, chapter, part or title.

28 V.S.A. § 1404

28 V.S.A. § 1404

*** THIS SECTION IS CURRENT THROUGH THE 1999 SESSION ***
*** ANNOTATIONS CURRENT THROUGH 719 A.2d 435 ***

TITLE TWENTY-EIGHT. PUBLIC INSTITUTIONS AND CORRECTIONS
CHAPTER 23. NEW ENGLAND **INTERSTATE** CORRECTIONS **COMPACT**
SUBCHAPTER 1. NEW ENGLAND **INTERSTATE** CORRECTIONS **COMPACT**

28 V.S.A. § 1404 (1999)

§ 1404. Procedures and rights--Article IV

(a) Whenever the duly constituted authorities in a state party to this **compact,** and which has entered into a contract pursuant to article III, shall decide that confinement in, or transfer of an inmate to, an institution within the territory of another party state is necessary or desirable in order to provide adequate quarters and care or an appropriate program of rehabilitation or treatment, said officials may direct that the confinement be within an institution within the territory of said other party state, the receiving state to act in that regard solely as agent for the sending state.

(b) The appropriate officials of any state party to this **compact** shall have access, at all reasonable times, to any institution in which it has a contractual right to confine inmates for the purpose of inspecting the facilities thereof and visiting such of its inmates as may be confined in the institution.

(c) Inmates confined in an institution pursuant to the terms of this **compact** shall at all times be subject to the jurisdiction of the sending state and may at any time be removed therefrom for transfer to a prison or other institution within the sending state, for transfer to another institution in which the sending state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state; provided that the sending state shall continue to be obligated to such payments as may be required pursuant to the terms of any contract entered into under the terms of article III.

(d) Each receiving state shall provide regular reports to each sending state on the inmates of that sending state in institutions pursuant to this **compact** including a conduct record of each inmate and certify said record to the official designated by the sending state, in order that each inmate may have official review of his or her record in determining and altering the disposition of said inmate in accordance with the law which may obtain in the sending state and in order that the same may be a source of information for the sending state.

(e) All inmates who may be confined in an institution pursuant to the provisions of this **compact**

shall be treated in a reasonable and humane manner and shall be treated equally with such similar inmates of the receiving state as may be confined in the same institution. The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which said inmate would have had if confined in an appropriate institution of the sending state.

(f) Any hearing or hearings to which an inmate confined pursuant to this **compact** may be entitled by the laws of the sending state may be had before the appropriate authorities of the sending state, or of the receiving state if authorized by the sending state. The receiving state shall provide adequate facilities for such hearings as may be conducted by the appropriate officials of a sending state. In the event such hearing or hearings are had before officials of the receiving state, the governing law shall be that of the sending state and a record of the hearing or hearings as prescribed by the sending state shall be made. Said record together with any recommendations of the hearing officials shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it had taken place in the sending state. In any and all proceedings had pursuant to the provisions of this subdivision, the officials of the receiving state shall act solely as agents of the sending state and no final determination shall be made in any matter except by the appropriate officials of the sending state.

(g) Any inmate confined pursuant to this **compact** shall be released within the territory of the sending state unless the inmate, and the sending and receiving states, shall agree upon release in some other place. The sending state shall bear the cost of such return to its territory.

(h) Any inmate confined pursuant to the terms of this **compact** shall have any and all rights to participate in and derive any benefits or incur or be relieved of any obligations or have such obligations modified or his status changed on account of any action or proceeding in which he could have participated if confined in any appropriate institution of the sending state located within such state.

(i) The parent, guardian, trustee, or other person or persons entitled under the laws of the sending state to act for, advise, or otherwise function with respect to any inmate shall not be deprived of or restricted in his exercise of any power in respect of any inmate confined pursuant to the terms of this **compact.**

HISTORY: 1961, No. 213, § 2, eff. July 11, 1961.

NOTES:
HISTORY

PRIOR LAW. 28 V.S.A. § 1204.

USER NOTE: For more generally applicable notes, see notes under the first section of this heading: division, article, chapter, part or title.

View: Cite | KWIC | **Full** Previous 201 of 258 Next Text Only | Download | Fax | Email
Book Browse | FOCUS™ - Narrow Results | Save As ECLIPSE | More Like This | More Like Selected Text
28 V.S.A. § 1404

Source: All Sources : States Legal - U.S. : Vermont : **VT - Vermont Statutes Annotated, Vermont Court Rules Annotated and ALS**
Terms: **interstate and compact** (Edit Search)
View: Full
Date/Time: Tuesday, January 18, 2000 - 6:54 PM EST

Source: All Sources : States Legal - U.S. : Vermont : **VT - Vermont Statutes Annotated, Vermont Court Rules Annotated and ALS**
Terms: **interstate and compact** (Edit Search)

28 V.S.A. § 1410

VERMONT STATUTES ANNOTATED

*** THIS SECTION IS CURRENT THROUGH THE 1999 SESSION ***
*** ANNOTATIONS CURRENT THROUGH 719 A.2d 435 ***

TITLE TWENTY-EIGHT. PUBLIC INSTITUTIONS AND CORRECTIONS
CHAPTER 23. NEW ENGLAND **INTERSTATE** CORRECTIONS **COMPACT**
SUBCHAPTER 1. NEW ENGLAND **INTERSTATE** CORRECTIONS **COMPACT**

28 V.S.A. § 1410 (1999)

§ 1410. Construction and severability--Article X

The provisions of this **compact** shall be liberally construed and shall be severable. If any phrase, clause, sentence or provision of this **compact** is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this **compact** and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this **compact** shall be held contrary to the constitution of any state participating therein, the **compact** shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

HISTORY: 1961, No. 213, § 2, eff. July 11, 1961.

NOTES:
HISTORY

PRIOR LAW. 28 V.S.A. § 1210.

USER NOTE: For more generally applicable notes, see notes under the first section of this heading: division, article, chapter, part or title.

View: Cite | KWIC | Full Previous 207 of 258 Next Text Only | Download | Fax | Email
Book Browse | FOCUS™ - Narrow Results | Save As ECLIPSE | More Like This | More Like Selected Text
28 V.S.A. § 1410

33 V.S.A. § 5701

Source: All Sources : States Legal - U.S. : Vermont : **VT - Vermont Statutes Annotated, Vermont Court Rules Annotated and ALS**
Terms: **interstate and compact** (Edit Search)

33 V.S.A. § 5701

VERMONT STATUTES ANNOTATED

*** THIS SECTION IS CURRENT THROUGH THE 1999 SESSION ***
*** ANNOTATIONS CURRENT THROUGH 719 A.2d 435 ***

TITLE THIRTY-THREE. HUMAN SERVICES
PART 4. JUVENILE PROCEEDINGS
CHAPTER 57. **INTERSTATE COMPACT** ON JUVENILES
SUBCHAPTER 1. **COMPACT**

33 V.S.A. § 5701 (1999)

§ 5701. Execution of **compact**

The governor is hereby authorized and directed to execute a **compact** on behalf of this state with any other state or states legally joining therein in the form substantially as follows:

INTERSTATE COMPACT ON JUVENILES

The contracting states solemnly agree:

ARTICLE I--FINDINGS AND PURPOSES

That juveniles who are not under proper supervision and control, or who have absconded, escaped or run away, are likely to endanger their own health, morals and welfare, and the health, morals and welfare of others. The cooperation of the states party to this **compact** is therefore necessary to provide for the welfare and protection of juveniles and of the public with respect to (1) cooperative supervision of delinquent juveniles on probation or parole; (2) the return, from one state to another, of delinquent juveniles who have escaped or absconded; (3) the return, from one state to another, of nondelinquent juveniles who have run away from home; and (4) additional measures for the protection of juveniles and of the public, which any two or more of the party states may find desirable to undertake cooperatively. In carrying out the provisions of this **compact** the party states shall be guided by the noncriminal, reformative and protective policies which guide their laws concerning delinquent, neglected or dependent juveniles generally. It shall be the policy of the

33 V.S.A. § 5902

VERMONT STATUTES ANNOTATED

*** THIS SECTION IS CURRENT THROUGH THE 1999 SESSION ***
*** ANNOTATIONS CURRENT THROUGH 719 A.2d 435 ***

TITLE THIRTY-THREE. HUMAN SERVICES
PART 4. JUVENILE PROCEEDINGS
CHAPTER 59. **INTERSTATE COMPACT** ON THE PLACEMENT OF CHILDREN
SUBCHAPTER 1. **INTERSTATE COMPACT** ON THE PLACEMENT OF CHILDREN

33 V.S.A. § 5902 (1999)

§ 5902. Definitions--Article II

As used in this **compact:**

(1) "Child" means a person who, by reason of minority, is legally subject to parental, guardianship or similar control.

(2) "Sending agency" means a party state, officer or employee thereof; a subdivision of a party state, or officer or employee thereof; a court of a party state; a person, corporation, association, charitable agency or other entity which sends, brings, or causes to be sent or brought any child to another party state.

(3) "Receiving state" means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities or private persons or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons.

(4) "Placement" means the arrangement for the care of a child in a family free or boarding home or in a child-caring agency or institution but does not include any institution caring for the mentally ill, mentally defective or epileptic or any institution primarily educational in character, and any hospital or other medical facility.

HISTORY: Added 1971, No. 219 (Adj. Sess.), §§ 4, 5, eff. April 5, 1972.

NOTES:
HISTORY

REVISION NOTE. Paragraphs "(a)", "(b)", etc. were changed to "(1)", "(2)", etc. to conform to V.S.A. style.

31 V.S.A. § 674

Source: All Sources : States Legal - U.S. : Vermont : **VT - Vermont Statutes Annotated, Vermont Court Rules Annotated and ALS**
Terms: **uniform and code and spouse** (Edit Search)

31 V.S.A. § 674

*** THIS SECTION IS CURRENT THROUGH THE 1999 SESSION ***
*** ANNOTATIONS CURRENT THROUGH 719 A.2d 435 ***

TITLE THIRTY-ONE. RECREATION AND SPORTS
CHAPTER 14. STATE LOTTERY
SUBCHAPTER 2. TRI-STATE LOTTO COMPACT

31 V.S.A. § 674 (1999)

§ 674. Procedures and conditions governing the tri-state lottery--Article II

A. Creation of the Tri-State Lotto Commission. -- The party states, for the purpose of operating Tri-State Lotto, establish the Tri-State Lotto Commission.

B. Nature of the commission. -- The commission shall be an interstate body, both corporate and politic, serving as a common agency of the party states and representing them both collectively and individually in the exercise of its powers and duties.

C. Organization of the commission. -- The commission shall be composed of one member from each of the party states. Each party state lottery or sweepstakes commission shall appoint one of its members to serve on the Tri-State Lotto Commission. Each member shall hold office at the pleasure of the appointing authority. The commission shall elect a chairman from among its members annually.

D. Functioning of the commission.

1. The commission's functions shall be performed and carried out by its members and by advisory committees or panels as the commission may establish, and by officers, independent contractors, agents, employees and consultants as may be appointed by the commission. All officers, independent contractors, agents, consultants and employees shall hold office at the pleasure of the commission, unless the commission otherwise decides, and the commission shall prescribe their powers, duties and qualifications and fix their compensation and other terms of their employment.

2. No action of the commission shall be effective or binding unless there is a unanimous decision by all of the representatives of the various party states.

3. The members of the commission shall receive compensation for their services pursuant to this compact and in accordance with the policies of the respective states, and they shall be entitled to be

8 V.S.A. § 1207

8 V.S.A. § 1207

*** THIS SECTION IS CURRENT THROUGH THE 1999 SESSION ***
*** ANNOTATIONS CURRENT THROUGH 719 A.2d 435 ***

TITLE EIGHT. BANKING AND INSURANCE
PART 2. BANKS AND OTHER FINANCIAL INSTITUTIONS
CHAPTER 57. INVESTMENTS AND LOANS
SUBCHAPTER 3. LOANS
ARTICLE 1. MISCELLANEOUS

8 V.S.A. § 1207 (1999)

§ 1207. Lien priorities; future advances

Any mortgages on real or personal property so written as to secure a present debt and any future advances by the mortgagee or an assignee shall be a lien upon the mortgaged property for the full amount of the debt directly created between the mortgagor and the mortgagee and between the mortgagor and an assignee of the mortgagee after assignment, due to the mortgagee or assignee at any given time provided that if the mortgaged property includes a homestead, the **spouse** of the mortgagor must consent in writing to the creation of any subsequent indebtedness. Any such mortgage may be assigned for the full amount due thereon at the time of the assignment. A subsequent mortgage on the same premises shall be inferior to the first mortgage unless the second mortgagee in writing notifies the first mortgagee of the incidence of his mortgage, in which case indebtedness created by the mortgagor to the first mortgagee subsequent to the notice shall be inferior to the lien of the second mortgage. In any conflict with the provisions of the **Uniform** Commercial **Code,** this section shall control.

HISTORY: Added 1969, No. 64, § 1, eff. Jan. 1, 1970.

NOTES:
CROSS REFERENCES
Applicability of **Uniform** Commercial **Code** generally, see § 5 of this title.
Estates of homestead generally, see § 101 et seq. of Title 27.

ANNOTATIONS

1. LOANS SECURED BY LIENSGENERALLY.
Loan documents creating liens on real or personal property may be written to secure both present debt and future advances. In re Nutting (Bankr. D. Vt. 1984) 44 B.R. 233.

www.hbpp.com CPA'S WEEKLY NEWS UPDATE

TAXATION:

Domestic Partner Benefits Are Taxable

A growing number of companies are opening up their fringe benefit plans to employees' domestic partners. The IRS recently ruled on a company's plan to extend group health and life insurance benefits to employees' domestic partners and the partners' dependents.

TAXABLE BENEFITS: The IRS ruled that the cost of the coverage for domestic partners and their dependents will be taxable income to the employees [Ltr. Rul. 9717018]. The exclusions for group health and life insurance benefits is limited to coverage for an employee and his or her spouse and dependents.

TAX-FREE PAYOUTS: On the other hand, the IRS said that payments made under the group health and life insurance plans will be tax-free since the employees will have paid for the benefits with after-tax dollars.

From the pages of Accountant's Tax Weekly.

Subject: Defense Of Marriage Act administrative policies
Date: Mon, 30 Dec 1996 22:31:01 -0500
From: Michelle Steiner <steiner@best.com>
To: GLB-NEWS@LISTSERV.AOL.COM

A friend of mine who works for the US Court system FAXed me the following document, which is the administrative information for the court system's implimentation of DOMA for its employees.

Please pass this information as you think apropriate.

--Michelle

LEONIDAS RALPH MECHAM
Director

CLARENCE A LEE, JR,
Associate Director

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

WASHINGTON, D.C. 20544

CHARLOTTE G. PEDDICORD
Chief

Human Reources Division

December 17,1996

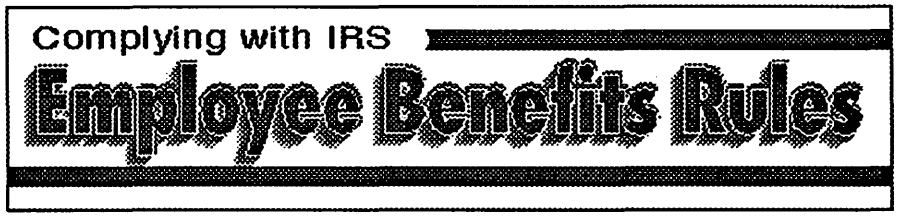
MEMORANDUM TO ALL APPOINTING OFFICERS

SUBJECT: Benefit Changes for 1996

1. Definitions of "Marriage" and "Spouse" for Benefit Purposes

The Office of Personnel Management (OPM) has recently informed us that the Defense of Marriage Act (Public Law 104-199) created a new section 7 to Title I of the U.S. Code. This new section provides that in the interpretation of any law enacted by the Congress, "the word 'marriage' means only a legal union between one man and one woman as husband and wife, and the word 'spouse' refers only to a person of the opposite sex who is a husband or a wife." This definition is to be applied in "any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States." According to OPM, this law clarifies that same-sex marriages cannot be recognized for benefit entitlement purposes under the Federal Employee Retirement System (FERS), the Civil Service Retirement System (CSRS), the Federal Employees Health Benefits Program (FEHBP), the Federal Employees Group Life Insurance (FEGLI), and the Family and Medical Leave Act (FMLA).

However, this law does not effect [sic] the definition of "family member" found in both the Federal Employee Family Friendly Leave Act (Public Law 103-388), which allows federal employees to use sick leave to care for a family member and/or for purposes relating to the death of a family member, and the leave sharing program (Public Law 103-103). The definition of "family member" for these programs includes the following: "any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship."



Defense of Marriage Act Narrows Benefits Options for Domestic Partners

According to a recently released private letter ruling (PLR 9717018), the IRS now must look to the Defense of Marriage Act, rather than state law, when determining whether an employee's domestic partner qualifies for tax-favored benefits under the employee's workplace plan. The letter ruling, which analyzed the tax treatment of employer-provided group term life insurance extended to employees' domestic partners, noted that the definition of marriage set forth in the Defense of Marriage Act — and not the definitions set by individual states — now controls for domestic partner issues.

The Defense of Marriage Act, enacted last September, denies federal recognition of same-sex marriages by defining marriage as "only a legal union between one man and one woman as husband and wife." The act also directs that this definition applies when "determining the meaning of any Act of Congress, or of any ruling, regulation or interpretation of the various administrative bureaus or agencies." Consequently, the IRS, as a federal agency, must follow the act's terms when interpreting the tax code. Before enactment of the law, the IRS, when interpreting statutory provisions that referenced marital status, had deferred to individual state definitions, as outlined in Revenue Ruling 58-66, issued nearly 40 years ago. That revenue ruling still applies for states that recognize common-law marriages as "legal unions," because there is no fundamental conflict between the state and federal definitions. But the ruling would not apply in any state that recognized same-sex marriages.

No state currently accords the same legal status to same-sex marriages as it does to opposite-sex marriages. Consequently, as a practical matter, the tax treatment of domestic partner benefits has not changed since release of the private letter ruling or enactment of the Defense of Marriage Act. But if any state at some point did formally recognize same-sex marriages — a position which Hawaii appears to be adopting incrementally (see below) — then the resulting conflict between state and federal law could become more thorny.

For employers that extend or are considering extending benefits to the domestic partners of their employees, the recent private letter ruling significantly limits their theoretical ability to offer benefits on a tax-free basis. Because the tax code allows employers to exclude benefits provided only to employees, their spouses and dependents, domestic partners now can receive benefits through their employee/partners only if they qualify as the employees' dependents.

Qualifying Is a Catch-22

In order to qualify as a dependent, eligible for tax-favored benefits, a domestic partner must satisfy three conditions under Code Section 152(a):

- receive over half of his or her support from the employee/partner;
- make his or her principal home with the employee/partner; and

- be a member of the employee/partner's household.

Most domestic partners would satisfy the second or "principal home" condition of dependency. But because many domestic partners earn their own incomes, they would not satisfy the first or "support" condition of dependency. And in many cases, domestic partners also would not satisfy the third or "household" condition of dependency — even though they and their employee/partners consider them to be household members.

The tax code uses a legal definition of household that differs significantly from the vernacular definition. Specifically, Code Section 152(b) stipulates that an individual who otherwise meets the dependency qualification requirements of Section 152(a) will not qualify as a member of an employee's household if the "relationship between such individual and the taxpayer is in violation of local law." In several states, there is a presumption that domestic partner relationships violate local law even if the local law does not specifically prohibit them. Thus, even domestic partners who qualify as dependents under Section 152(a) could run into difficulties under Code Section 152(b) when applying for benefits under their employee/partners' plans.

Moreover, to qualify for benefits under their employee/partners' plans, domestic partners often must sign contracts, considered binding under state law, defining the nature of their relationships. These contracts usually include terms similar to those required by the employer addressed in the recent private letter ruling. An employee and domestic partner must be:

- in an exclusive and committed relationship;
- jointly responsible for each other's welfare and financial responsibilities;
- unmarried or not concurrently in another domestic partner relationship;
- unrelated by blood; and
- over the age of 18.

If domestic partners sign such contracts in some states, however, they could be declaring that they are in relationships that violate the local law, either directly or by implication.

Hawaii Mandates Domestic Partner Benefits

It is unclear how the IRS' application of the Defense of Marriage Act when analyzing the tax treatment of domestic partner benefits will play out in Hawaii, where a new state law, enacted July 8, now requires employers to provide benefits to "reciprocal beneficiaries."

A reciprocal beneficiary is an individual who has a "significant personal, emotional, and economic relationship with another individual, but is prohibited by legal restrictions from marrying that person" — in other words, a domestic partner.

Hawaii's new law extends to reciprocal beneficiaries several rights and benefits currently available to married couples, including access to health benefits. The new law also provides that employers "may pay" any additional costs or premiums incurred for those individuals. But the state law does not address the federal tax treatment of those employer-paid costs or premiums. State tax officials in Hawaii are working

with the IRS to resolve the issue.

Hawaii's reciprocal beneficiary law was enacted in the wake of a state supreme court decision that Hawaii's denial of marriage licenses to same-sex couples constituted discrimination on the basis of sex. That decision, however, is being appealed.

(The IRS issues private letter rulings in response to specific questions from individual taxpayers. These rulings interpret the law and apply it to particular situations. Private letter rulings do not serve as legal precedent for anyone other than the taxpayers to whom they are addressed. They do, however, reflect the view of IRS national office officials and can prove helpful in the absence of more concrete guidance on specific issues.)

Employee Benefits Rules | Ordering Information

---

18 V.S.A. § 5142

18 V.S.A. § 5142

*** THIS SECTION IS CURRENT THROUGH THE 1999 SESSION ***
*** ANNOTATIONS CURRENT THROUGH 719 A.2d 435 ***

TITLE EIGHTEEN. HEALTH
PART 6. BIRTHS, **MARRIAGES** AND DEATHS
CHAPTER 105. **MARRIAGE** RECORDS AND **LICENSES**

18 V.S.A. § 5142 (1999)

§ 5142. Restrictions as to minors and incompetent persons

A clerk shall not issue a **marriage license** when either party to the intended **marriage** is:

(1) A person who has not attained his majority without the consent in writing of one of the parents if there is one competent to act; or the guardian of such minor;

(2) Nor with such consent when either party is under sixteen years of **age** unless furnished with a certificate of a probate, district or superior judge, of the district or county in which one of the applicants resides, if either applicant is a resident of the state, otherwise of the district or county in which the **marriage** is sought to be consummated, that the public good requires such **license** to be issued;

(3) Nor when either of the parties to the intended **marriage** is non compos mentis;

(4) Nor to a person under guardianship without the written consent of such guardian;

(5) Nor in any case when either party is under fourteen years of **age.**

HISTORY: Amended 1965, No. 194, § 10, eff. Feb. 1, 1967; 1967, No. 147, § 47, eff. Oct. 1, 1968; 1971, No. 90, § 13; 1973, No. 201 (Adj. Sess.), § 11.

NOTES:
HISTORY

SOURCE. 1957, No. 108, §§ 1, 2. 1951, No. 170, § 249.

PRIOR LAW. V.S. 1947, § 4131.

15 V.S.A. § 515

15 V.S.A. § 515

TITLE FIFTEEN. DOMESTIC RELATIONS
CHAPTER 11. **ANNULMENT** AND DIVORCE
SUBCHAPTER 1. **ANNULMENT**

15 V.S.A. § 515 (1999)

§ 515. --Party physically incapacitated

A suit to annul a **marriage** on the ground of the physical incapacity of one of the parties shall be maintained only by the injured party against the party whose incapacity is alleged and shall be brought within two years from the solemnization of the **marriage.**

NOTES:
HISTORY

SOURCE. V.S. 1947, § 3202. P.L. § 3113. G.L. § 3557. P.S. § 3065. V.S. § 2671. R.L. § 2359. G.S. 70, § 14. R.S. 63, § 14.

ANNOTATIONS
1. Physical incapacity.
2. Condonation.
3. Laches.
4. Evidence.

1. PHYSICAL INCAPACITY.
Chronic and incurable syphilis, which renders the wife incapable of bearing healthy children and which makes it impossible for the husband to have sexual intercourse with her without great danger of infection, is such physical incapacity as will afford a ground for annulling the **marriage.** Ryder v. Ryder (1894) 66 Vt. 158, 28 A. 1029.

2. CONDONATION.
There can be no condonation where chronic and incurable syphilis rendering wife incapable of bearing healthy children and making it impossible for husband to have intercourse without great danger of infection is found to be such physical incapacity as will be grounds for **annulment.** Ryder v. Ryder (1894) 66 Vt. 158, 28 A. 1029.

66 Vt. 158; 28 A. 1029;
*1892 Vt. LEXIS 2, **
WILLIAM J. RYDER v. CORA B. RYDER

NO NUMBER IN ORIGINAL

Supreme Court of Vermont

66 Vt. 158; 28 A. 1029; 1892 Vt. LEXIS 2

February Term, 1892
FEBRUARY TERM, 1892

PRIOR HISTORY: [*1]

Petition for annulling a marriage upon the ground that the consent of the petitioner to the marriage was obtained by fraud and that the petitionee was, at the time of contracting the marriage, physically incapable of entering into the marriage state. Heard at the September term, Windham county, 1891, ROWELL, J., presiding. Upon the facts found the court dismissed the petition and the petitioner excepted. The opinion states the case.

DISPOSITION: *Judgment reversed and judgment annulling the marriage.*

CORE TERMS: marriage, disease, incurable, unreasonable delay, sexual intercourse, petitionee, syphilis, physical incapacity, marriage relation, condonation, malformation, copulation, incapable, chronic, presume, sores, time of contracting, physical condition, fully aware, annulment, impracticable, communicated, contracting, intercourse, procreation, generation, syphilitic, annulling, procured, supposed

HEADNOTES:

Annulment of marriage. Fraud. Physical incapacity. Condonation. Unreasonable delay.

1. If the wife, at the time of contracting the marriage relation, conceals from her husband the fact that she has chronic and incurable syphilis, it will amount to a fraud for which the marriage may be annulled under R. L., s. 2349.

2. Upon a petition for the annulment of a marriage on this ground the county court found that the wife had syphilis at the time of the marriage, but did not find whether she had or had not knowledge of that fact, and refused to annul the marriage. *Held*, that upon exceptions by the petitioner the supreme court would not presume that the wife had knowledge of her condition in order to reverse the judgment.

3. Chronic and incurable syphilis, which renders the wife incapable of bearing healthy children, and which makes it impossible for the husband to have sexual intercourse with her without great danger of contracting the disease himself, is such physical incapacity as will afford a ground for annulling

the marriage under R. L., s. 2349.

4. There can be no condonation of such a cause for dissolving the marriage relation.

5. The husband had no knowledge of the condition of his wife at the time of contracting the marriage relation. Immediately upon discovering her condition he procured the assistance of a physician and supposed that she was substantially cured by his treatment. He did not learn the contrary until one year and four months after their marriage, when a child was born, and from that time he refused to cohabit with her, and immediately brought the petition for the annulment of the marriage. *Held*, that there was no unreasonable delay.

COUNSEL:

Waterman, Martin & Hitt for the petitioner.

JUDGES: BEFORE: ROSS, C. J., TYLER, MUNSON AND THOMPSON, JJ.

OPINIONBY: ROSS

OPINION: This is a petition for annulling a marriage upon the grounds, first, that it was procured by fraud, and, secondly, that the petitionee was physically incapable of entering into the marriage state. R. L., 2349, provides that

"The marriage contract may be annulled when, at the time of the marriage, either party * * * was * * * physically incapable of entering into the marriage state, or when the consent of either party was obtained by force or fraud."

It is found that,

"At the time of this marriage the petitionee had chronic syphilis which was incurable; that [*2] at this time he supposed her to be chaste; that in about two months she communicated the disease to him; that they then both consulted a physician who treated them some time, when she got better; that he believed from that time until the child was born she had got well of the disease and would not be troubled with it again; that he did not know she had disease until she communicated it to him; that he voluntarily cohabited with her both before and after he knew of her disease; that a child was born to them about a year and four months after the marriage; that the child was a mass of syphilitic sores, attributable to the condition of the mother, and soon died; that at the birth of the child and afterwards the mother was in about the condition of child from such sores; that he never had intercourse with her after the birth of the child, and that at no time could he have sexual intercourse with her without great danger of contracting the disease."

Upon these facts the question is whether the trial court was in error in refusing to annul the marriage. A majority of the court think it was. It is not found that the petitionee was fully aware of her condition at the time of the [*3] marriage. This court cannot presume she was, to find error in the judgment of the trial court. It has made no finding on that subject. This court would presume she was not, rather than otherwise, to uphold the judgment of the trial court. If it were found that she was fully aware of her condition, she would have been guilty of a fraudulent concealment in not disclosing it to the petitioner. It would be an essential fact, entirely within her knowledge, not within his, nor open to his observation, nor to his inquiry, upon any reasonable principles which do, or should prevail in conducting the negotiations which lead up to entering into the contract of marriage. It would be both indelicate and offensive to enter upon such inquiries. In such a case, if she did not care to disclose her condition she should have declined his advances. While there was no malformation which rendered complete sexual intercourse impossible, there was a physical condition that rendered her incapable of healthy coition. Every such act, by reason of her physical condition, was attended with great danger of communicating to him incurable disease, a disease endangering his health and life. Under similar statutes, [*4] it has been held that the physical incapacity need not be a total incapacity, nor a malformation; that it may consist of such sensitiveness, from

whatever cause, on the part of the wife, as would make intercourse endanger her health or life. In Brown on Divorce, 184, it is said:

"It is an accepted rule that, if from some incurable physical or psychic defect of one party to the marriage, sexual intercourse with the other party is impossible in a complete and natural manner, or *impracticable*, without the use of violence or *danger to health*,and if the defect existed at the date of the marriage unknown to the complainant, on application and upon strict proof of the facts, the marriage will be declared void *ab initio*, unless there has been insincerity or unreasonable delay."

To the same in legal effect is *Davenbagh* v. *Davenbagh*, 5 Paige 554; 3 L. Ed. 827 and note; S. C. 28 Am. Dec. 448 and note; *Newell* v. *Newell*, 9 Paige 25; 4 L. Ed. 596 and note; 1 Bish. on M. and D. (2d Ed.), ss. 766, 777, 789. It is frequently said, as in Brown on Divorce, 184, that "impotence is such an incurable, sexual incapacity as admits of neither copulation nor procreation." [*5] But this language must be taken with limitations, for it is followed by: "It may arise from malformation or frigidity of constitution, or from any other physical defect in the organs of generation." In the case at bar the petitionee's organs of generation, at the time of marriage, were in an incurably deceased condition, which, while it did not physically render her incapable of copulation or of bringing into life a child, a mass of syphilitic sores, as good as dead when born, yet did render copulation and procreation on the part of the petitioner impracticable, because the act endangered both his health and life. The facts found bring the case within the reason and essence, if not within the exact language of the rule. There could be no condonation of such a cause. It existed continuously. There was no unreasonable *delay*. The petitioner ceased to cohabit or live with her as soon as he was informed of her real condition, and that it was incurable.

*168 Vt. 514, *; 725 A.2d 904, **;*
*1998 Vt. LEXIS 406, ****
Godin v. Godin

No. 97-147

Excerpts

SUPREME COURT OF VERMONT

168 Vt. 514; 725 A.2d 904; 1998 Vt. LEXIS 406

December 24, 1998, Filed

NOTICE: [***1] THIS OPINION IS SUBJECT TO MOTIONS FOR REARGUMENT UNDER V.R.A.P. 40 AS WELL AS FORMAL REVISION BEFORE PUBLICATION IN THE VERMONT REPORTS.

SUBSEQUENT HISTORY: As Revised December 24, 1998.

DISPOSITION: Affirmed.

CORE TERMS: paternity, divorce, marriage, genetic, presumption of paternity, biological father, child support, testing, independent action, parent-child...

OPINION: [...***1] [*515] [**905]

MORSE, J. The question presented is whether, six years after a final divorce decree and adjudication of **paternity,** a father may disavow a child born during the **marriage** and presumed for fourteen years to have been his. We hold that he may not.

The family court denied plaintiff Mark Godin's motion to require genetic testing to determine the **paternity** of Christina, the child born while he was married to his former wife Rita Godin, and dismissed his complaint seeking to set aside a child support order. Plaintiff contends the court erred in concluding that the adjudication of **paternity** implicit in the final divorce decree was res judicata and barred relitigation. We affirm. n1

- - - - - - - - - - - - - - - - - -Footnotes- - - - - - - - - - - - - - - - - -

n1 Plaintiff's motion to strike from the record portions of mother's brief as well as previously unfiled documents is granted ...

... [*515] [**906] [***2] November, and they were married in December 1981. Mother gave birth to Christina on May 18, 1982. Mother filed for divorce in 1989. In her complaint she stated that there was one child, Christina, born of the **marriage**. A final uncontested divorce hearing [*516] was held in April 1990, at which both parties were present. The court adopted the parties' stipulation, and a final order was issued in May 1990. Under the terms of the ...

... [*516] [**906] [***3] referring to him as the father of Christina and requiring him to pay

child support.

A hearing was held in March 1997. Plaintiff testified that until the Fall of 1996, he believed Christina was his biological child and treated her as such. He explained that he questioned his **paternity** only after Christina began asking him if he was her biological father. Mother testified that she was sexually intimate with another man prior to the **marriage** while plaintiff was in South Carolina. She also testified that when she informed plaintiff that she was pregnant, she "never stated who was the father and who wasn't." In addition, she denied ever telling any of plaintiff's relatives that plaintiff was not Christina's biological father. [***4] Finally, she ...

... [*516] [**906] [***4] Christina's feelings about genetic testing. The court declined to hear testimony from the guardian ad litem and held that plaintiff's request for genetic testing was time-barred. The court reasoned that plaintiff had an opportunity to contest **paternity** in the original divorce proceeding or on appeal, and that his failure to do so precluded him from challenging **paternity** at a later date. Accordingly, the court concluded [*517] that plaintiff's motion to modify child support, and his independent action of fraud upon the court, were moot. This appeal followed.

Plaintiff contends that mother perpetrated a fraud ...

... [*517] [**906] [***5] in her complaint that Christina was biologically her husband's and, because of such fraud, the trial court should set aside any obligation to pay child support.

We agree with the trial court that both of plaintiff's claims involve the same underlying issue: the conclusiveness of **paternity** findings and implications in a divorce judgment. We have previously addressed this issue. See Lerman v. Lerman, 148 Vt. 629, 629, 528 A.2d 1121, 1122 (1987) (mem.). In Lerman, we held that a former husband was not entitled to court-ordered genetic testing approximately ten years after his divorce became final. See id. We reasoned that where no issue concerning **paternity** was raised during a divorce proceeding and no appeal was taken from the divorce action contesting **paternity,** the doctrine of res judicata precluded a relitigation of **paternity**. See id. Plaintiff's appeal implicitly requires us to reconsider our holding in Lerman. [**907]

V.R.C.P. 60(b) governs the granting of relief from judgment. Rule 60 is "substantially identical" to its federal counterpart, Fed. R. ...

... [*517] [**907] [***6] b)(2), (3). Plaintiff's claim seems to be premised on two facts: mother's alleged ten-month gestation period, and another sexual partner. This "newly discovered evidence" and mother's failure to disclose it before their **marriage** constitutes the alleged fraud. As expressly stated in the rule, however, a motion for relief from judgment based on either of these grounds must be made within one year after the judgment was entered. Plaintiff filed his ...

... [*519] [**908] [***10] in the light of this standard, mother's conduct in this case cannot reasonably be characterized as a fraud on the court. The primary basis of plaintiff's fraud allegation is mother's attestation in her divorce complaint that Christina was "born of [the] **marriage**." The wording was not mother's, but rather was contained in the preprinted complaint form, and merely signified that the child was born while [***11] the parties were legally married. From this fact, the law presumes that the parties are the child's natural parents. ...

... [*519] [**908] [***11] natural parent if child is born while husband and wife are legally married); see also Cicero v. Cicero, 58 A.D.2d 573, 395 N.Y.S.2d 117, 117 (App. Div. 1977) (**presumption** of legitimacy attached to "issue of the **marriage**"); Orange v. Rose, 31 A.D.2d 715, 295 N.Y.S.2d 782, 783 (App. Div. 1968) ("offspring of the **marriage**" were entitled to **presumption** of legitimacy); Best v. L.J.F. Corp., 20 A.D.2d 743, 246 N.Y.S.2d 791, 792 (App. Div. 1964) (issue "born of this **marriage**" are presumed legitimate). Thus, there was nothing fraudulent about mother's representation that Christina [*520] was born of the **marriage**. The law supplied the **presumption** that plaintiff was the child's natural parent; mother did not make that affirmative

representation.

The real thrust of plaintiff's fraud-on-the-court claim is that mother failed to disclose certain facts during the divorce proceedings, namely, that she had sexual ...

... [*521] [**909] [***14] require us to void the judgment. See N.C. v. W.R.C., 173 W. Va. 434, 317 S.E.2d 793, 796-97 (W. Va. 1984) (father's negligence in not raising **paternity** issue prior to final disposition of divorce precluded independent action challenging **paternity)**.

Even more compelling, in our view, are the fundamental policy concerns that require finality of **paternity** adjudications. [***15] n2 It is noteworthy that Vermont statutory law raises a rebuttable **presumption** of parentage where, as here, "the child is born while the husband and wife are legally married to each other." 15 V.S.A. § 308(4) (Cum. Supp. 1998). The **presumption** of parentage originated in the common law, which established that "'a child born of a married woman was conclusively presumed to be legitimate unless her husband was not within the four seas which bounded the kingdom.'"

- - - - - - - - - - - - - - - - - -Footnotes- - - - - - - - - - - - - - - - - -

n2 There was no question that **paternity** "was necessarily determined in the original divorce proceeding, which granted an award of child support."

Slansky v. Slansky, 150 Vt. 438, 441 n.1, 553 A.2d 152, 153 n.1 (1988) (construing our holding in Lerman). A finding of **paternity** is a necessary predicate to an ex-husband's child support obligation. Moreover, a survey of other jurisdictions reveals that the overwhelming weight of authority holds that a divorce decree is an adjudication of the **paternity** of a child of the **marriage**. See, e.g., Anderson v. Anderson, 407 Mass. 251, 552 N.E.2d 546, 550-51 (Mass. 1990); Hackley v. Hackley, 426 Mich. 582, 395 N.W.2d 906, ...

... [*521] [**909] [***16] 729 (Pa. Super. Ct. 1997) (quoting Commonwealth [*522] ex. rel. Goldman v. Goldman, 199 Pa. Super. 274, 184 A.2d 351, 354 (Pa. Super. Ct. 1960)). The **presumption of paternity** has been described as "'one of the strongest and most persuasive known to the law.'" Richard B. v. Sandra B.B., 209 A.D.2d 139, 625 N.Y.S.2d 127, 129 (App. Div. 1995) (quoting ...

... [*522] [**909] [***16] re Findlay, 253 N.Y. 1, 170 N.E. 471, 472 (N.Y. 1930)); see also A.G. v. S.G., 199 Colo. 403, 609 P.2d 121, 124 (Colo. 1980) (**presumption of paternity** is "one of the strongest **presumptions** known to the law").

Protecting innocent children from the social burdens of illegitimacy, ensuring their financial and emotional security, and ultimately preserving the stability of the family unit all contributed to the origins of the parental **presumption,** and all help to explain its enduring power today. See Michael H. v. Gerald D., 491 U.S. 110, 125, 105 L. Ed. 2d 91, 109 S. Ct. 2333 (1989) (in addition to avoidance of illegitimacy, **presumption of paternity** prevented children from becoming wards of state and preserved stability of families); A.G., 609 P.2d at 124 (public policy underlying [**910] **presumption of paternity** is to prevent unnecessary litigation [***17] and disruption of family relations); Ettore I. v. Angela D., 127 A.D.2d 6, 513 N.Y.S.2d 733, 739 (App. Div. 1987) (**presumption of paternity** preserves child's need for continuity of family relationships); Michael K.T. v. Tina L.T., 182 W. Va. 399, 387 S.E.2d 866, 871-72 (W. Va. 1989) (defeat of parental **presumption** would result in undeniable financial and psychological harm to child). Indeed, the **presumption of paternity** has assumed even greater significance today, as alternative methods of conception unrelated to the "biology" of the presumed parent have become more common. See In re B.L.V.B., 160 Vt. 368, 376, 628 A.2d 1271, 1276 (1993).

Thus, the State retains a strong and direct interest in ensuring that children born of a **marriage** do not suffer financially or psychologically merely because of a parent's belated and self-serving concern over a child's biological origins. These themes underlie the conclusion, reached by

numerous courts, that the public interest in finality of **paternity** determinations is compelling, and that the doctrine of res judicata therefore bars subsequent attempts to disprove **paternity**. See, e.g., Hackley v. Hackley, 426 Mich. 582, 395 N.W.2d 906, 913-14 [***18] (Mich. 1986) (best interests of child in maintaining stability and preventing psychological trauma must prevail over any unfairness to father resulting from denial of challenge to **paternity** nine years after judgment of divorce); Richard B., 625 N.Y.S.2d at 130 ("unequivocal trend . . . has been to zealously safeguard the welfare, stability and best interests of the child by rejecting untimely challenges affecting his or her legitimacy") (quoting Ettore I., 513 N.Y.S.2d at 738); JRW [*523] and KB v. DJB, 814 P.2d 1256, 1265 (Wyo. 1991) ("Because of the potentially damaging effect that relitigation of a **paternity** determination might have on innocent children, the doctrines of res judicata and collateral estoppel are rigorously observed in the **paternity** context.").

As the Supreme Court of Michigan observed in a case factually similar to the case at bar:

Even if we were inclined to adopt the position . . . that res judicata sometimes does not bar relitigation of a factual determination ...

... [*523] [**910] [***18] adopt the exception here. We believe that the best interests of this child, and all children whose rights will be implicated by the Court's decision today, must prevail over any unfairness [***19] that may result to this [former husband] by denying his challenge of **paternity** raised nine years after entry of his judgment of divorce.

Hackley, 395 N.W.2d at 913. Thus, many other jurisdictions have rejected similar attempts to reopen **paternity** judgments based on post-judgment blood tests or other evidence, absent clear and convincing evidence that it serves the best interests of the child. See Tandra S. v. Tyrone W., 336 Md. 303, ...

... [*523] [**910] [***19] relationship and destroy a child's long-held assumptions, solely for his own self-interest. See Ettore I, 513 N.Y.S.2d at 740 (holding father's "self-serving" effort to disavow **paternity** to be [***20] inconsistent with policy of protecting innocent children from irreparable loss of financial security and paternal bonds). Whatever the interests of the presumed father in ascertaining the genetic "truth" of a child's origins, they remain subsidiary to the interests of the ...

... [*523] [**910] [***20] family, and the child in maintaining the continuity, financial support, and psychological security of an established parent-child relationship. Therefore, absent a clear and convincing showing that it would serve the best [*524] interests of the child, a prior adjudication of **paternity** is conclusive. See A.K v. S.K., 264 N.J. Super. 79, 624 A.2d 36, 40-42 (N.J. Super. Ct. App. Div. 1993).

Here, plaintiff lived with Christina, as her father, for the first eight years of her life. Although he had the opportunity, plaintiff [**911] did not raise the issue of **paternity** during the divorce proceedings, and he continued to treat Christina as his child for six years thereafter, lending her parental guidance and support. It is thus readily apparent that a parent-child relationship was formed, and it is that relationship, and not the results of a genetic test, that must control. We perceive no basis in this case to relieve plaintiff [***21] of the prior adjudication of **paternity,** and all of its attendant legal and financial responsibilities. n3

- - - - - - - - - - - - - - - - - -Footnotes- - - - - - - - - - - - - - - - - -

n3 This is not a case where a third party is seeking to establish **paternity** and assume support of the child, or where support is being sought from a third-party putative father. A finding of nonpaternity in this case would essentially leave the child without the benefit of a father-child relationship, and the ...

... [*524] [**911] [***21] 420, 599 A.2d 1297, 1297 (N.J. Super. Ct.

App. Div. 1991).

- - - - - - - - - - - - - - - - -End Footnotes- - - - - - - - - - - - - - - - -

The dissent contends that mother committed a fraud on the court by affirmatively misrepresenting plaintiff's **paternity** in the divorce complaint, in the stipulation incorporated into the divorce decree, and in her testimony under oath. As noted, however, the divorce complaint did not contain a false representation of plaintiff's **paternity,** but only the accurate statement that Christina was born of the **marriage**. The alleged misrepresentation in the parties' [***22] stipulation concerned child custody, not **paternity,** and stated only that mother "is awarded the legal and physical responsibilities of the parties minor child." This was hardly an unequivocal representation of plaintiff's **paternity**. Finally, we are hard pressed to conclude that mother made fraudulent misrepresentations under oath when, as the dissent notes, the transcript of her testimony is not before us.

Citing several sister-state decisions, the dissent also argues that the stringent standards for a finding of fraud on the court should be relaxed in the family-law context because the state is an integral party.

We are not persuaded, however, that the state's interest in the welfare of children requires that post-judgment attacks on **paternity** should be made easier. On the contrary, the state's concern is to ensure that children's lives remain stable and secure, and this militates, if anything, against the liberal reopening of **paternity** determinations.

The dissent also argues that a finding of fraud on the court is compelled by our prior decisions in In re Goodrich, 111 Vt. 156, 11 [*525] A.2d 325 (1940), and Blondin v. ...

... [*525] [**911] [***23] 76 A. at 189 (Constitution "does not debar other states from giving such effect to a decree of that character as they may elect to do").

The dissent argues that the policies favoring finality are archaic and counterproductive, and that barring a relitigation of **paternity** cannot perpetuate a parent-child [***24] relationship against a parent's will. Obviously not. The fact that plaintiff chose for self-serving purposes to jeopardize his relationship with Christina is beyond our control. We need ...

... [*525] [**912] [***24] for financial or other self-serving reasons, to dissolve their parental bonds. See Ettore I., 127 A.D.2d 6, 513 N.Y.S.2d 733 at 740 (were court to sanction father's denial of **paternity,** "innocent victims of belated challenges to **paternity** would be deprived of any protection under the law"). Far [***25] from representing archaic interests, these policy concerns are more significant today than ever before, as family structures become more fluid and the means of conception become [*526] ever more varied. Nor, finally, does our ...

DISSENT:

... [*526] [**912] [***27] alleged by nonprevailing party). Hence the inclusion, at the outset of my opinion, of certain additional circumstances alleged by plaintiff but omitted by the majority. I further note that, although plaintiff has sought a **paternity** test, that step is really unnecessary because defendant has not denied plaintiff's assertion that he is not Christina's father and [*527] has admitted she was sexually active with another man after plaintiff returned to military duty in July 1981. n1

- - - - - - - - - - - - - - - - - ...

... [*527] [**912] [***27] I attribute no significance to the fact that defendant gave birth to Christina over nine months after her last act of intercourse with plaintiff before he returned to military duty. If there were a serious dispute over **paternity,** this fact might support either side.

I do not believe it would be determinative, however, because, as the majority states, it is not uncommon for the human gestation period to exceed nine months.

- - - - - - - - - - - - - - - - -End Footnotes- - - - - - - - - - - - - - - - -

The majority leads off with the ...

... [*527] [**912] [***28] Lerman v. Lerman, 148 Vt. 629, 629, 528 A.2d 1121, 1122 (1987), and that plaintiff is asking us to overrule that memorandum decision. This is an overstatement of Lerman, which holds only that res judicata applies to **paternity** adjudications and prevents relitigation when the matter should have been litigated in the divorce. Id. at 629, 528 A.2d at 1122. In filing his complaint to reopen the judgment based on fraud on the court, plaintiff accepted that res judicata applied, but alleged that grounds for reopening a judgment existed [**913] because of defendant's fraud on the superior court in 1990. Unless **paternity** judgments are somehow immune from reopening based on grounds applicable to any other judgment, plaintiff is actually invoking, not warring with, Lerman.

As the majority recognizes, V.R.C.P. 60(b) establishes two alternative procedures for ...

... [*529] [**914] [***32] consider the welfare of the children, and it is not bound by any agreements of the parties in doing so.

Frink v. Frink, 128 Vt. 531, 534, 266 A.2d 820, 822 (1970). A misrepresentation of **paternity** makes it impossible for the court to discharge properly its "duty and first obligation."

I think it is beyond question that defendant perpetrated a fraud upon the superior court. She signed under [***33] oath a divorce complaint stating that Christina was born of the **marriage** between plaintiff and defendant and requested that defendant be ordered to pay child support for Christina.

Although we do not have her divorce testimony before us, it is very likely that she continued this fraudulent misstatement in her testimony, again under oath. She ...

... [*529] [**914] [***33] Christina was the "parties' minor child," knowing that to be false, in order to induce the court to issue a child support order against plaintiff.

The majority has responded that defendant was technically accurate in the pleading because "born of the **marriage**" actually means "born during the **marriage,**" that defendant's statement in the stipulation was equivocal, and that we do not know what defendant actually said in her divorce hearing. Quite apart from the regrettable inducement to sharp pleading represented by such a reading of plaintiff's divorce complaint -- an invitation that is particularly unfortunate in the context of family court proceedings where the welfare of children is at issue -- the majority confuses the application of a rebuttable evidentiary **presumption,** see discussion infra, with the more straightforward [***34] process of understanding the actual words that appear in the divorce complaint. No credible theory of language interpretation would accommodate the metamorphosis of "born of the [*530] **marriage**" into "born during the **marriage.**" Regardless of the legal **presumption** that children born to a married woman are the offspring of the woman and her husband, I doubt any one reading the words in the divorce complaint would regard them as anything other than a statement that Mark Godin is the father of Christina Godin. Indeed, the majority's constant insistence that the divorce decree is res judicata as to plaintiff's **paternity** is undermined by its holding that defendant never asserted that plaintiff was the biological father of Christina.

I have the same reaction to the claim that defendant did not commit fraud in signing the stipulation. There is nothing equivocal about a ...

... [*530] [**914] [***34] Christina is the "parties' minor child," whatever was the purpose of the stipulation. Of course, plaintiff might have brought out more about the nature of defendant's

representations if his claim had not been dismissed before any factual development.

The majority has also determined that the **paternity** adjudication [***35] inherent in the divorce cannot be reopened because "absent a clear and convincing showing that it would serve the best interests of the child, a prior adjudication of **paternity** is conclusive." I assume this is a throw-away line because plaintiff has never been allowed to make any showing and the majority is not now remanding to allow him to do so. I would only add that a rule requiring exploration of the best ...

... [*530] [**914] [***35] father would be far more desirable than the Court's holding, which makes that interest irrelevant.

Finally, I do not agree that there are compelling policy reasons to impose the result the majority has reached. First, the majority has greatly overstated the effect of the **presumption of paternity**. There are states in which the **presumption of paternity** [**915] would support the decision the majority has reached. See Michael H. v. Gerald D., 491 U.S. 110, 105 L. Ed. 2d 91, 109 S. Ct. 2333 (1989) (upholding California's irrebuttable **presumption** statute); In re J.W.T., 872 S.W.2d 189 (Tex. 1994) (striking down similar Texas statute). Vermont is not one of them. 15 V.S.A. § 308(4) creates a rebuttable **presumption [***36] of paternity**. In this state, rebuttable **presumptions** operate only to assign the burden of production. See V.R.E. 301(a). Once the party against whom the **presumption** operates bursts the bubble by presenting evidence that the fact is not as presumed, the function of the **presumption** is over and the fact-finder must determine the fact, here **paternity,** based on the evidence and not the **presumption.** See id. 301(c)(3); Reporter's Notes, V.R.E. 301. The **presumption** is rebutted by any evidence that the fact is not as presumed. [*531]

My point is that the Vermont **presumption of paternity** never operates to determine **paternity** contrary to the evidence, see id., exactly the effect the majority seeks to assign it here. By adopting a rebuttable **presumption,** the Legislature has refused to make a man a father based on a legal fiction, rather than on his action. In this case, plaintiff rebutted the **presumption of paternity,** and it should not stand in his way to a just result.

We are left then with the majority's assertion that our policy must preserve the stability of family units and require plaintiff to continue his relationship with Christina whether or not he is her biological father.

The policy of [***37] requiring the husband of the mother of a child to accept **paternity,** despite biological evidence to the contrary, is based on two rationales: (1) because of the stigma and legal disability of illegitimacy, the law should avoid placing children in this status; and (2) the law should promote intact families. See Michael ...

... [*532] [**915] [***39] father and the alleged father, both have a legitimate interest in knowing the identity of the natural father. One should not be forced to provide financial support for another man's child. Furthermore, this legal fiction of **paternity** may result in the denial [**916] of the right to visitation and/or custody for either the presumptive or the alleged father. As the United States Supreme Court stated [in Michael H.], in today's society "there is no room for dual parentage."

Comment, Challenging the **Paternity** of Children Born During Wedlock, 100 Dick. L. Rev. 963, 964-65 (1996). The first rationale no longer supports the policies the majority espouses. The second rationale has even less support. It was ...

... [*533] [**916] [***40] Even if I thought that the policy reasons assigned by the majority were strong, I would question whether they outweigh the countervailing policy considerations. Although this Court is barring the door to prevent husbands from reopening divorce decrees to contest **paternity** determinations, the Legislature has provided that a wide range of persons can bring a parentage action against the natural parent to pursue support. See 15 V.S.A. § 302(a). Those include [***41] the child or the ...