

PRIVACY COALITION IS FORMING TO CHALLENGE GOVERNMENT INTRUSION INTO OUR BEDROOMS

Consenting Adults Are Considered Criminals in 26 States

In 1960, heterosexual intercourse between husband and wife was the only type of sexual activity exempt from criminal penalties in every state. Back then, each state had criminal laws against various forms of consenting sex between unmarried adults.

Today, 26 states still criminalize unmarried cohabitation, fornication, and/or consensual sodomy. This seems ironic considering that the Supreme Soviet lifted Russia's criminal ban on private sexual behavior on April 29, 1993.

In the United States, people are sometimes prosecuted for private sexual behavior. Sometimes they are arrested just for asking. More frequently, however, these antiquated sex laws are used as a justification for discrimination against unmarried adults in housing or employment cases, or child custody disputes.

STATE COURTS ARE THE BATTLEGROUND

In 1986, the United States Supreme Court ruled in the landmark case of *Bowers v. Hardwick* that laws criminalizing private sexual behavior do not violate the federal Constitution's right of privacy. This decision has redirected legal battles to state courts where challengers look to state constitutions for protection.

Some progress has been made recently. For example, appellate courts in Kentucky and Texas declared their state sodomy laws unconstitutional in 1993. Also, the state legislature repealed Nevada's sodomy law and the governor signed the bill on June 16, 1993. However, one or more forms of consenting adult sexual behavior remains criminal in a majority of states.

A STRONG COALITION IS NEEDED

These privacy-invading laws continue to exist because a strong coalition has not yet formed to challenge them. Some gay and lesbian rights organizations have taken up the cause, but they lack the resources to tackle the job alone. If the current rate of progress is any indicator, it will be another

20 years before these oppressive laws are removed by state courts or state legislatures. In the meantime, how many people will be unjustly prosecuted? How many people will be denied jobs, housing, or child custody?

The process would be expedited if a coalition involving the A.C.L.U., People for the American Way, N.O.W. Legal Defense and Education Fund, N.A.A.C.P., Lambda Legal Defense and Education Fund, and religious, business and professional associations would work with gay and lesbian rights groups in each of these 26 states.

YOU CAN PARTICIPATE

Volunteer lawyers are needed and so are plaintiffs -- people who are willing to lend their names publicly as challengers to these laws. Unmarried heterosexuals should challenge the fornication laws. Cohabiting seniors who face the loss of pension survivor benefits if they remarry should test the anti-cohabitation statutes. People who have oral sex due to a physical disability should test laws prohibiting oral sex. Gays and lesbians should join this coalition by challenging laws against same-sex lovemaking.

Spectrum Institute invites organizations and individuals to join us in forming the Campaign for Personal Privacy. The Privacy Campaign will help groups in targeted states develop court challenges to these obsolete sex laws. Please write or call us if you would like to participate.

Spectrum Institute is a nonprofit corporation promoting privacy rights for everyone. It also seeks to end marital status discrimination in employment, housing, insurance, credit, and government policies.

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PEOPLE ARE SOMETIMES PROSECUTED FOR CONSENTING ADULT SEX IN PRIVATE

People are prosecuted for engaging in private sexual conduct with a consenting adult, or sometimes just for asking. Through coincidence the police may discover a sexual act in private and arrest the participants. Other times a defendant may be accused of using force, but even though some facts show there was consent, the judge may instruct the jury to convict even if there was consent.

The following cases are a few examples of prosecutions involving private sexual conduct between consenting adults.

New York. Ronald Onofre was convicted of sodomy with a consenting adult in his home. At first, Ronald's sexual partner accused him of using force. However, he later recanted and told the prosecutor that the sex act was consensual. Instead of dropping the case, the prosecutor charged Ronald with consensual sodomy which, in New York, included oral and anal sex between unmarried adults. Ronald appealed after he was convicted. New York's highest court ruled that the consensual sodomy law violated the constitutional rights of Onofre and of several heterosexuals whose cases were consolidated on appeal. The cost to the defendants included unwanted publicity, tarnished reputations, and years of litigation. [*People v. Onofre* (N.Y. 1980) 415 N.E.2d 936]

Georgia. A police officer came to the home of Michael Hardwick to serve a warrant for a misdemeanor offense (drinking in public). A house guest answered the door and let the officer inside. The officer noticed that a bedroom door was slightly ajar and he looked inside. Michael and a friend were arrested when the officer saw them engaging in oral sex. Both men were held in jail overnight. After a preliminary hearing, the prosecutor dropped the case. Michael, however, sued the State of Georgia in federal court, arguing that the sodomy law invaded his right to privacy. The case reached the United States Supreme Court which ruled that homosexuals do not have a privacy right to engage in consenting sex in the home. [*Bowers v. Hardwick* (1986) 478 U.S. 186]

Kentucky. After a 20 minute conversation,

Jeffrey Wasson asked a man to go home. When the man (an undercover officer) asked for details, Jeffrey mentioned oral sex and was arrested for soliciting a crime. The state Supreme Court ruled the arrest was unlawful because the sodomy law violated the right of privacy. Although he won, Jeffrey now has an arrest record and was subjected to years of unwanted publicity. [*Commonwealth v. Wasson* (Ky. 1993) 842 S.W.2d 487]

North Carolina. Jerry Poe was charged with forcible sexual intercourse and sodomy with a woman. At the end of the state's evidence, the court dismissed the rape charge because the evidence showed that the sexual acts were done in private and with the consent of both parties. The judge did not dismiss the sodomy charge however. He refused to instruct the jury to find the defendant not guilty if the act of oral sex was done with consent. The jury, therefore, found the defendant guilty. His conviction was upheld by the state Court of Appeal which ruled that the right of privacy does not protect unmarried adults from this type of prosecution. [*State v. Poe* (N.C. App. 1979) 252 S.E.2d 843]

Rhode Island. Idalio Santos met a woman at a pub in Massachusetts. The two talked and danced until the bar closed. They drove to a secluded area in Rhode Island where they had sex. Later that day, the woman went to the police and accused Idalio of rape. At trial, the judge refused to instruct the jury that consent was a defense to sodomy. The jury found him not guilty of rape but guilty of sodomy. The state Supreme Court upheld the conviction, ruling that the right of privacy does not apply to unmarried adults. [*State v. Santos* (R.I. 1980) 413 A.2d 58]

Michigan. Two women went camping at a state park. They pitched a tent and called it a night. Someone summoned the police after hearing sexual sounds coming from the tent. The police arrived, unzipped the tent, and saw the women having oral sex. The women were prosecuted and sentenced to two years in prison. An appeals court upheld their conviction and their sentence. [*People v. Livermore* (Mich.App. 1967) 155 N.W.2d 711]

LAWS AGAINST CONSENTING SEX IN PRIVATE OFTEN HAVE CIVIL CONSEQUENCES

Criminal laws against unmarried cohabitation, fornication, and sodomy are often used as a basis for discrimination in employment and housing. They are also cited as a reason to transfer custody of a child from a parent whose lifestyle is considered illegal.

The following are some examples of how people are adversely affected by the existence of such criminal laws.

Arizona. Debra Deem and Jim Riley lived together as an unmarried couple in Alaska. They moved to Arizona in 1990 when Jim's company relocated. Debra had worked for the state Department of Justice in Alaska and had excellent references. She applied for a job as a juvenile probation officer in Phoenix. She was denied the job due to her unmarried cohabitation with Jim which is a crime in Arizona. She was required to disclose this fact in a pre-interview questionnaire that had to be filled out under penalty of perjury. She went to the A.C.L.U. of Arizona but they declined to represent her in a suit for invasion of privacy. She and Jim moved to California which does not have an anti-cohabitation statute. Debra now works as a victim/witness coordinator for the U.S. Department of Justice.

Illinois. Jacqueline Jarrett received a divorce in 1976 from her husband Walter for extreme and repeated mental cruelty. She was awarded custody of their three children. Seven months later, Walter petitioned the court for custody of the children, alleging that she was unfit because she was living with an unmarried man. At trial, Jacqueline testified that she did not want to marry because it was too soon after the divorce. She said that a marriage certificate does not make a relationship. She informed her children that some people disapprove of unmarried cohabitation but that it was her belief that love is what counts. The trial court transferred custody to Walter. The Illinois Supreme Court agreed that Jacqueline was an unfit mother because she was cohabiting out of wedlock, citing the state's law against unmarried cohabitation. [*Jarrett v. Jarrett* (Ill. 1980) 400 N.E.2d 421]

Texas. Mica England applied for a position with the Dallas police department in 1989. She was asked about her sexual orientation in an interview and she responded truthfully that she was a lesbian. She was informed that she was not eligible for the job because homosexual conduct is a crime and the police department does not hire criminals. She sued the department challenging its hiring policy and the constitutionality of the sodomy statute. After several years of costly litigation, an appeals court invalidated the sodomy law on privacy grounds and enjoined the department from automatically refusing to hire gays and lesbians. [*City of Dallas v. England*, Court of Appeals, Third District, No. 3-92-243-CV, February 10, 1993.]

Minnesota. Layle French is a landlord. In 1988 he refused to rent a two-bedroom house to Susan Parsons because she planned to live there with her fiance. His decision was based on religious convictions against unmarried cohabitation. Parsons sued French, arguing that she was a victim of marital status discrimination. The Minnesota Supreme Court ruled in favor of the landlord stating that "before the state imposes sanctions on French, it must repeal the fornication statute." The court said it was inconsistent for the state to punish the private conduct of consenting adults on the one hand and protect them from discrimination on the other. [*State v. French* (Minn. 1990) 460 N.W.2d 2] A similar ruling was handed down in a fair housing case in Illinois which also has a criminal law against fornication. [*Mister v. A.R.K. Partnership* (Ill.App. 1990) 553 N.E.2d 1152]

Florida. William Watson owns a trailer park in St. Petersburg. In 1990, he informed Robert Herman, a 65 year-old retiree, to sell his trailer or marry the woman with whom Robert was living. Watson sued the county, arguing that local ordinances against marital status discrimination are illegal because they are in conflict with Florida's law against unmarried cohabitation. The county reacted by amending the ordinance to eliminate "marital status" as a protected class. [*Los Angeles Daily Journal*, July 3, 1990]

HOW THE GOVERNMENT REGULATES THE BEDROOM BEHAVIOR OF CONSENTING ADULTS

ALABAMA

Sodomy. So-called "deviate sexual intercourse" is criminal in Alabama even if it is between consenting adults in private. Under section 13A-6-65(a)(3) of the Code of Alabama, any act of sexual gratification between persons not married to each other involving the sex organs of one person and the mouth or anus of another is punishable by up to one year in jail. In *State v. Woodruff* (Ala.Cr.App. 1984) 460 So.2d 325, the court declined to rule whether this statute violated the right of privacy of consenting adults.

ARIZONA

Cohabitation. Under section 13-1409 of the state Criminal Code, a person who lives in a state of "open and notorious cohabitation" is guilty of a class 3 misdemeanor. This offense was reduced from a felony to a misdemeanor in 1978.

Sodomy. Under section 13-1411, a person who engages in the infamous crime against nature (anal intercourse) with an adult is guilty of a class 3 misdemeanor. In *State v. Quinn* (Ariz.App. 1979) 592 P.2d 778, the appellate court ruled that consent is not a defense.

Lewd and Lascivious Acts. Under section 13-1412, a person who commits a lewd or lascivious act upon another adult, in any unnatural manner, is guilty of a class 3 misdemeanor. In *State v. Pickett* (Ariz. 1978) 589 P.2d 16, the court ruled that oral sex is prohibited by this statute. According to *State v. Mortimer* (Ariz. 1970) 467 P.2d 60, even consensual homosexual masturbation is prohibited by this law.

ARKANSAS

Sodomy. Under section 1813 of the Arkansas Criminal Code, it is a misdemeanor for persons of the same sex to engage in oral and anal sex even if it is consensual. Offenders can be punished by up to one year in jail.

FLORIDA

Cohabitation. Under section 798.02 of the Criminal Code, it is a misdemeanor for a man and a woman who are not married to each other to "lewdly and lasciviously cohabit together." In *Luster v. State* (Fla. 1887) 2 So. 690, the court said that the purpose of the statute is to prohibit the public scandal and disgrace of unmarried cohabitation and to prevent such evil and indecent examples that tend to corrupt public morals.

Unnatural and Lascivious Acts. Section 800.02 of the Criminal Code makes it a misdemeanor for any two persons to engage in any "unnatural and lascivious act." The Florida Supreme Court narrowed the scope of the statute, however, in *Schmitt v. State* (Fla. 1991) 590 So.2d 404, when it ruled that sexual conduct is not prohibited by the statute if it is "harmlessly discreet" and that to be punishable the conduct must "substantially intrude on the rights of others."

GEORGIA

Fornication. Under section 16-6-18 of the Code of Georgia, it is a misdemeanor for an unmarried person to have voluntary sexual intercourse with another person.

Sodomy. Under section 16-6-2, oral and anal sex between consenting adults is punishable from one year to 20 years in prison. The United States Supreme Court upheld the constitutionality of this statute in *Bowers v. Hardwick* (1986) 478 U.S. 186.

IDAHO

Fornication. Under section 18-6603, sexual intercourse between an unmarried man and woman is a crime even if it is consensual.

Cohabitation. Under section 18-6604, it is a crime for an unmarried man and woman to "live and cohabit together" or to "lewdly and notoriously associate together."

Sodomy. Under section 18-6605, consensual oral and anal sex are punishable by not less than 5 years in prison.

ILLINOIS

Fornication. Under section 5/11-8 of the Criminal Code, sexual intercourse between unmarried adults is a misdemeanor if the behavior is "open and notorious." Merely cohabiting out of wedlock is no longer a crime due to a 1990 amendment to the code. In the case of *In re Marriage of Olson* (Ill.App. 1981) 424 N.E.2d 386, the court ruled that a conviction may not be based on mere reputation but may rest on the words or actions of the accused.

KANSAS

Sodomy. Under section 21-3505, homosexual sodomy is a misdemeanor. Sodomy includes oral and anal sex.

LOUISIANA

Sodomy. Under section 89 of Title 14 of the Revised Statutes, oral and anal sex between consenting adults are punishable by up to five years in prison. In *State v. McCoy* (La. 1976) 337 So.2d 192, the state Supreme Court ruled that the statute is not unconstitutional. However, on June 1, 1993, District Judge Calvin Johnson declared that the statute violated the state constitution's right of privacy in *State v. Baxley*. The prosecution has appealed the decision.

MARYLAND

Sodomy. Under section 27-553, anal sex (gay or straight) is punishable by up to 10 years in prison. In *State v. Schochet* (1990) 580 A.2d 176, the state's highest court ruled that section 27-554, which prohibits oral sex, does not apply to consenting heterosexual adults who engage in such conduct in private.

MASSACHUSETTS

Fornication. Under section 18, sexual intercourse in private between an unmarried man and woman is a misdemeanor. In *Petition of R* (D.C. 1944) 56 F.Supp. 969, a couple were found in violation of this law because the man's previous marriage had not been validly dissolved.

Sodomy. Under section 34, anal intercourse is punishable by up to 20 years in

prison. In *Commonwealth v. Balthazar* (Mass. 1974) 318 N.E.2d 478, the state Supreme Court ruled that another statute that prohibited unnatural and lascivious conduct could not be applied to private sexual conduct between consenting adults. However, this was done because the statute was too vague. The court stated that it was not deciding "whether a statute which explicitly prohibits specific sexual conduct, even if consensual and private, would be constitutionally infirm."

MICHIGAN

Cohabitation. Under section 28.567 of the Penal Code, it is a misdemeanor for a man and woman who are not married to each other to "lewdly and lasciviously associate and cohabit together." According to the court in *People v. Smith*, 231 Mich. 221, it is not necessary to prove that the cohabitation was "open and notorious." Offenders can be sent to jail for up to one year.

Sodomy. Under section 750.158, homosexual and heterosexual anal intercourse are punishable by up to 15 years in prison. (See *People v. Schmidt* (Mich. 1936) 267 N.W. 741 and *People v. Askar* (Mich.App. 1967) 153 N.W.2d 888.) The court in *People v. Coulter* (Mich.App. 1980) 288 N.W.2d 448 sidestepped the issue of whether the law violated the constitutional rights of consenting adults who engage in sodomy in the privacy of the home.

Gross Indecency. Michigan prohibits gross indecency between males (§ 750.338), between females (§ 750.338(a)) and between a male and a female (§ 750.338(b)). A violation may be punished by up to 5 years in prison. In *People v. Howell* (Mich. 1976) 238 N.W.2d 148, the state Supreme Court came close to removing private sexual conduct between consenting adults from punishment under the gross indecency statutes. However, only three justices voted to exclude private sexual conduct. Since four votes are necessary to create binding precedent, some subsequent decisions of the Court of Appeals have declined to exempt private conduct between consenting adults from the statute. In 1992, a special panel of 13 appellate judges rejected the conclusion of the 3 judges in *Howell*. (See *People v. Brashier*, Court of Appeal No. 150311.) In *People v. Livermore* (Mich.App. 1967) 155 N.W.2d 711, two women were sent to prison for consenting oral sex in private.

MINNESOTA

Fornication. Under section 609.34, it is a misdemeanor for "any man and a single woman to have sexual intercourse with each other."

Sodomy. Under section 609.293, anyone who voluntarily engages in oral sex or anal sex may be sent to prison for up to one year. In *State v. Gray* (Minn. 1987) 413 N.W.2d 107, the state Supreme Court declined to hold the statute unconstitutional in a case involving sex for compensation, but left open the question as to whether it would violate the privacy rights of consenting adults if no money was involved. The court has indicated however that the privacy provision of the Minnesota Constitution provides more protection to its citizens than the privacy provision of the federal Constitution. (See *Jarvis v. Levine* (Minn. 1988) 418 N.W.2d 139, 147-149; *State v. Davidson* (Minn. 1992) 481 N.W.2d 51, 58.) The recent enactment of a state law prohibiting sexual orientation discrimination would appear to increase the likelihood that a future judicial decision would recognize the privacy rights of consenting adults.

MISSISSIPPI

Cohabitation. Under section 97-29-1, it is a crime for a man and woman to unlawfully cohabit, whether in adultery or fornication. It is not necessary to prove that the parties dwelled together publicly as husband and wife. The offense may be proven by circumstances which show habitual sexual intercourse.

Sodomy. Under section 97-29-59, acts of oral and anal sex, whether homosexual or heterosexual, are punishable by up to 10 years in prison.

MISSOURI

Sodomy. Under section 566.090(3), it is a misdemeanor for persons of the same sex to engage in any sexual act involving the genitals of one person or the mouth, tongue, hand, or anus of the other person. The state Supreme Court upheld the constitutionality of this statute in *State v. Wash* (Mo. 1986) 713 S.W.2d 508.

MONTANA

Sodomy. Under section 45-2-101(20), oral sex, anal sex, or any sexual touching between persons of the same sex is punishable by up to 10 years in prison.

NEW MEXICO

Cohabitation. Under section 30-10-2, it is illegal for an unmarried man and woman to cohabit as man and wife. The most a judge can do on a first conviction is to warn the couple to stop such cohabitation. Under a second or subsequent conviction, the offenders can be jailed for up to six months. In *Estate of Bivians* (N.M.App. 1982) 652 P.2d 744, the state Court of Appeals cited this statute and ruled that unmarried cohabitation is against public policy.

NORTH CAROLINA

Sodomy. Oral and anal sex committed between unmarried persons are punishable by up to 10 years in prison according to section 14-177 of the General Statutes. Consent is not a defense. (See *State v. Adams* (N.C. 1980) 264 S.E.2d 46; *State v. Poe* (N.C.App. 1979) 252 S.E.2d 834.)

Cohabitation. Under section 14-184, it is a misdemeanor for any man and woman not married to each other to lewdly "associate, bed, and cohabit together."

NORTH DAKOTA

Cohabitation. Under section 12.1-20-10, it is a misdemeanor for an unmarried man and woman to live together "openly and notoriously" as a married couple. The law is violated if the couple do not conceal the fact they are having intercourse and it becomes generally known in the community. (See *State v. Hoffman* (N.D. 1938) 282 N.W. 407.)

OKLAHOMA

Sodomy. Under section 21-866, oral and anal sex may be punished by up to 10 years in prison. The scope of the statute was narrowed in *Post v. State* (Okla.App. 1986) 715 P.2d 1105 where the court ruled that the right of privacy would prevent application of the law to the private conduct of consenting

OKLAHOMA (cont.)

adults of the opposite sex. The court said it was not reaching the issue of homosexuality since that was not involved in the case.

RHODE ISLAND

Sodomy. Under section 11-10-1, oral and anal sex are punishable by not less than 7 years nor more than 20 years in prison. In *State v. Santos* (R.I. 1980) 413 A.2d 58, the state Supreme Court ruled that the right of privacy does not apply to "private unnatural copulation between unmarried adults." The court's decision seemed to imply that married couples would be protected by the right of privacy. Rhode Island repealed its law against fornication in 1989.

SOUTH CAROLINA

Fornication. Under section 16-15-60, an unmarried man and woman who have sexual intercourse with each other may be punished by up to one year in jail.

Sodomy. Under section 16-15-120, "buggery" may be punished by a term of 5 years in prison. The term "buggery" is not defined by statute or by any published court decision in that state. Blacks Law Dictionary defines the term to include "carnal copulation against nature; a man or a woman with a brute beast, a man with a man, or a man unnaturally with a woman."

TENNESSEE

Sodomy. Under section 39-13-510, it is a misdemeanor for persons of the same sex to engage in oral or anal sexual conduct.

UTAH

Fornication. Under section 76-7-104, any unmarried person who shall voluntarily engage in sexual intercourse with another is guilty of a misdemeanor.

Sodomy. Under section 76-5-403, oral and anal sex are misdemeanors regardless of the gender of the sexual partners.

VIRGINIA

Fornication. Under section 18.2-344,

sexual intercourse between an unmarried man and woman is a misdemeanor.

Cohabitation. Under section 18.2-345, any persons who are not married to each other who lewdly and lasciviously associate and cohabit together are punishable by up to one year in jail. In *Doe v. Duling* (E.D. Va. 1985) 603 F.Supp. 960, a federal judge ruled that the cohabitation and fornication laws violated the privacy rights consenting adults. The decision was reversed by the U.S. Court of Appeals in *Doe v. Duling* (4th Cir. 1986) 782 F.2d 1202. The appeals court ruled that the male and female plaintiffs lacked standing to challenge the constitutionality of the statute since they did not show even a remote chance that they were threatened with prosecution. The court declined to render an advisory opinion, one way or the other, on the constitutionality of these statutes.

Sodomy. Under section 18.2-361, oral and anal sex are punishable by up to five years. In *Doe v. Commonwealth's Attorney* (E.D. Va. 1975) 403 F.Supp. 1199, the court ruled the statute was constitutional as applied to homosexual conduct. The Supreme Court affirmed that decision, 425 U.S. 901 (1976). However, in *Lovisi v. Slayton* (4th Cir. 1976) 539 F.2d 349, a federal Court of Appeals indicated that private sexual conduct of a married couple could not be punished.

WEST VIRGINIA

Fornication. Under section 61-8-3, fornication is only punishable by a fine of \$20.

Cohabitation. Under section 61-8-4, it is a misdemeanor for unmarried persons to lewdly and lasciviously associate and cohabit.

DISTRICT OF COLUMBIA

Sodomy. Private acts of sodomy between consenting adults was decriminalized by the city council on May 5, 1993. Congress has 60 working days to override this bill. Unless an override occurs, the new law will go into effect by mid-September 1993.

Fornication. Under section 22-1002, intercourse between an unmarried man and woman is a misdemeanor. The district did not repeal this law when it revised the sodomy law on May 5, 1993. As a result, if no override occurs, heterosexual intercourse will remain a crime although homosexual sex will be legal.

26 STATES VIOLATE THE PRIVACY RIGHTS OF CONSENTING ADULTS

STATE	<i>Cohabitation of an Unmarried Man & Woman is Criminal**</i>	<i>Consensual Fornication of an Unmarried Man & Woman is Criminal***</i>	<i>Consensual Sodomy of a Same-Sex Couple is Criminal****</i>	<i>Consensual Sodomy of an Unmarried Man & Woman is Criminal****</i>	<i>Consensual Sodomy of a Married Couple is Criminal****</i>
Alabama	no	no	yes	yes	no
Arizona	yes	no	yes	yes	yes
Arkansas	no	no	yes	no	no
Florida	yes	no	yes	yes	yes
Georgia	no	yes	yes	yes	no [†]
Idaho	yes	yes	yes	yes	yes
Illinois	no	yes	no	no	no
Kansas	no	no	yes	no	no
Louisiana	no	no	yes	yes	yes
Massachusetts	no	yes	yes*	yes*	yes*
Maryland	no	no	yes	yes*	yes*
Michigan	yes	no	yes	yes	yes
Minnesota	no	yes	yes	yes	yes
Mississippi	yes	no	yes	yes	yes
Missouri	no	no	yes	no	no
Montana	no	no	yes	no	no
New Mexico	yes	no	no	no	no
North Carolina	yes	no	yes	yes	no
North Dakota	yes	no	no	no	no
Oklahoma	no	no	yes	no	no
Rhode Island	no	no	yes	yes	no
South Carolina	no	yes	yes	yes	yes
Tennessee	no	no	yes	no	no
Utah	no	yes	yes	yes	yes
Virginia	yes	yes	yes	yes	no
West Virginia	yes	yes	no	no	no
District of Columbia	no	yes	no	no	no

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- † Although the Supreme Court did not rule on the issue, the Attorney General conceded the law would be unconstitutional if it were applied to married couples. (*Bowers v. Hardwick* (1986) 478 U.S. 186, 218, fn. 10 (Stevens, J., dissenting))
- * By decisions of the highest courts in these states, oral sex in private by heterosexuals or by homosexuals is not illegal in Massachusetts, and oral sex by opposite-sex couples is not illegal in Maryland. However, anal sex is illegal in both states.
- ** Cohabitation laws prohibit an unmarried man and woman from openly and notoriously living together in a sexual relationship.
- *** Fornication laws make it a crime for an unmarried man and woman to have consenting sexual intercourse even in private.
- **** Sodomy laws prohibit consenting adults from engaging in oral sex or anal sex or both even in the privacy of their home.