LGBT POLICY SPOTLIGHT: LGBT EQUALITY IN THE U.S. TERRITORIES

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SPOTLIGHT REPORT

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Figure 1: Mapping the U.S. Territories

American Samoa

Guam

Northern Mariana Islands

Puerto Rico

U.S. Virgin Islands

INTRODUCTION

There are more than 3.5 million people living in the five inhabited U.S. territories:[1,a] American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands.[b] There are an additional 11 U.S. territories that do not have any permanent residents.[c]

While research about the numbers of lesbian, gay, bisexual, and transgender (LGBT) people living in these territories remains sparse, efforts have been made—and continue to be made—to achieve LGBT equality for territory residents. This spotlight report focuses on the five populated U.S. territories and the status of LGBT equality in these areas.[d] Additionally, given a lack of basic understanding about the territories and their relationship to the mainland United States, this spotlight report also provides some helpful background information.

WHAT ARE U.S. "TERRITORIES"?

For much of the United States' history, expansion has occurred through purchase, treaties, war, and conquest and colonization. For example, the Louisiana Purchase in 1803 added more than 800,000 acres to the U.S., more than doubling the size of the United States at that time. These lands, and others like them added through various means, were referred to as U.S. territories. Over time, 31 territories in the contiguous United States (plus Alaska and Hawai`i) became "incorporated" and then became states, with their residents becoming U.S. citizens with the full rights and benefits of U.S. citizenship.

During the second half of the 1800s and continuing into the 1900s, the United States also acquired new territories that did not continue on the path from territory to state. For example, these included Baker Island (1857), the Midway Islands (1867), the Philippines (1898), and the Virgin Islands (1917). Some of these, like the Philippines, ultimately became independent countries. Eleven territories, like Baker Island and the Midway Islands, are unpopulated U.S. territories. Finally, there are the five current populated U.S. territories, including Puerto Rico and the Virgin Islands. These five "unincorporated" territories have fallen into a sort of legal and political limbo with varying degrees of autonomy.

In unincorporated territories, the U.S. Constitution applies only partially. "Fundamental" constitutional rights apply, but other rights may not, and the question of which rights are fundamental and which are not is open to interpretation. Ultimately, the U.S. Congress and U.S. courts decide what benefits and rights residents of these remaining populated territories have.[2]

WHERE ARE THE U.S. TERRITORIES & WHO LIVES THERE?

Figure 1 on the previous page shows the five populated U.S. territories, which span from the far reaches of the Northern Pacific Ocean to the Caribbean Sea. Four of the five territories have populations smaller than any state in the United States, while Puerto Rico has a population similar in size to Utah.

American Samoa is comprised of seven islands in the Pacific Ocean, halfway between Hawai`i and New Zealand, with most of its population residing on Tutuila, Manu'a Islands, Rose Atoll, and Swains Island. Approximately 55,000 people live in American Samoa.[3]

Guam is an island located in the Pacific Ocean near the Northern Mariana Islands and the Philippines, with approximately 159,000 people.[4] There is a joint Air Force and Naval base on the island.

The **Northern Mariana Islands** are comprised of 14 islands in the Pacific Ocean near Guam and the Philippines. Three of these islands—Rora, Saipan, and Tinian—are home to nearly 54,000 people.[5]

Puerto Rico is comprised of the island of Puerto Rico and smaller islands like Culebra and Vieques located in the Caribbean Sea between the Dominican Republic, Haiti, and the U.S. Virgin Islands. It has a population of more than three million. Puerto Rico has both an Army and Navy base.

The **U.S. Virgin Islands** are comprised of three islands: St. Croix, St. John, and St. Thomas. They are located in the Caribbean Sea near Puerto Rico and have a total population of 106,000 people (see *Figure 2* on the next page).[6]

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[a] From 2010 to 2018, the population of Puerto Rico dropped by 14%, from 3.7 million people to 3.2 million, with the population dropping by 4% from 2017 to 2018, likely the result of Hurricane Maria, which struck the island in September 2017.

[b] Hereafter referred to as "Northern Mariana Islands" and "Puerto Rico."

[c] Seven uninhabited territories of the United States: Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Atoll, and Palmyra Atoll. There are four additional uninhabited territories for which the jurisdiction is disputed, but the United States claims: Bajo Nuevo Bank (also known as Petrel Islands), Navassa Island, Serranilla Bank, and Wake Island.

[d] This view of "LGBT equality" is informed by a Western lens and may not reflect indigenous views of gender and/or sexuality among residents of the territories. Additionally, this report's analysis of territorial laws and policies is meant only to facilitate comparison to the U.S. states' laws and policies. This report does not purport to speak to the lived experiences of LGBT people in the territories, which may be influenced by family, native beliefs and practices, the history of Western colonialism including faith and missionary work, and contemporary relationships and connections to the United States.

Figure 2: Quick Facts about the U.S. Territories

U.S. Territory	Population	U.S. Citizens	Non-Voting Delegate in U.S. House of Representatives	Represented in U.S. House of Representatives	Represented in U.S. Senate	Can Vote for U.S. President
American Samoa	**55,519** *(2010 Census)*	✗	✓	✗	✗	✗
Guam	**159,358** *(2010 Census)*	✓	✓	✗	✗	✗
Northern Mariana Islands	**53,833** *(2010 Census)*	✓	✓	✗	✗	✗
Puerto Rico	**3,195,153** *(Dec 2018)*	✓	✓	✗	✗	✗
U.S. Virgin Islands	**106,405** *(2010 Census)*	✓	✓	✗	✗	✗

Figure 3: The U.S. Territories Vary Dramatically From States in Racial and Ethnic Composition

93% of people living in American Samoa are **Native Pacific Islander**, and **4%** are **Asian**

92% of Guam's residents are **Pacific Islander, Chamorro, Asian,** or **Filipino**

98% of residents of the Northern Mariana Islands are **Asian** or **Pacific Islander**

99% of people living in Puerto Rico are **Hispanic** or **Latino**

76% of people living in the U.S. Virgin Islands are **Black**

39% of people living in U.S. states are **people of color**

Source: U.S. Department of the Interior. American Samoa; U.S. Department of the Interior. Commonwealth of the Northern Mariana Islands; U.S. Department of the Interior. Guam; U.S. Census Bureau. QuickFacts: Puerto Rico; U.S. Department of the Interior. U.S. Virgin Islands.

The racial and ethnic characteristics of the residents of the five U.S. territories (as shown in *Figure 3* on the previous page) differ dramatically from the racial and ethnic composition of U.S. states, where approximately two in five residents are racial and/or ethnic minorities.[7]

HOW ARE THE U.S. TERRITORIES GOVERNED?

Four of the five territories (all but American Samoa) are "organized" territories, which means that the U.S. Congress passed an "organic act" authorizing their residents to have a semblance of self-rule and to create organized governments with an executive, legislative, and judicial system for local territorial legal questions, very similar to U.S. states. And with the exception of American Samoa, as noted below, the U.S. territories fall within the U.S. federal court system much the way that U.S. states do with local federal district courts, and appeals are heard by federal circuit courts and, ultimately, the U.S. Supreme Court.

Guam. Officially "organized" in 1950, Guam has a unicameral legislature comprised of 15 members who are elected by residents; a governor elected by the residents (as of 1968); and a system of judges appointed by the governor and re-elected by voters. Guam's judiciary branch is led by the Supreme Court of Guam, which oversees a lower court system and issues arising under local law. However, the U.S. Supreme Court has the authority to review Guam's Supreme Court cases.[8] The U.S. District Court for the District of Guam exercises federal authority over Guam and sits within the Ninth Circuit. Appeals are heard by the U.S. Court of Appeals for the Ninth Circuit and then by the U.S. Supreme Court.

Northern Mariana Islands. Officially "organized" in 1977, the Northern Mariana Islands have an elected bicameral legislature comprised of the House of Representatives with 20 members and the Senate with nine members, an elected governor, and system of judges. The Northern Mariana Islands' judiciary branch mirrors that of states with state courts and the Northern Mariana Supreme Court. The U.S. District Court for the District of the Northern Mariana Islands sits within the Ninth Circuit. Federal appeals are heard by the U.S. Court of Appeals for the Ninth Circuit and then by the U.S. Supreme Court.

Puerto Rico. First "organized" in 1900, Puerto Rico became a mostly self-governing territory in 1952. It has an elected bicameral legislature comprised of the House of Representatives with 51 seats and the Senate with 27 seats; an elected governor; and a system of judges. Puerto Rico's judiciary branch mirrors that of states with a Puerto Rico Supreme Court, courts of appeals, and district and municipal courts. The U.S. District Court for the District of Puerto Rico sits within the First Circuit, and federal appeals are heard by the U.S. Court of Appeals for the First Circuit and then by the U.S. Supreme Court.

U.S. Virgin Islands. "Organized" in 1936 (and revised in 1954), the U.S. Virgin Islands have an elected unicameral legislature comprised of 15 members; an elected governor; and a system of judges appointed by the governor. The Virgin Islands' judiciary branch mirrors that of states with a Virgin Islands Supreme Court and trial courts, though rulings by the Virgin Islands Supreme Court can be appealed to the U.S. Supreme Court. The U.S. District Court for the District of the Virgin Islands sits within Third Circuit, and appeals are heard by the U.S. Court of Appeals for the Third Circuit and then by the U.S. Supreme Court.

Unlike the other territories, **American Samoa** is technically an "unorganized" territory, meaning that the U.S. Congress has not authorized self-government. However, in 1967, the U.S. Department of the Interior authorized residents to draft a constitution, which created an elected legislature, a governor, and a judiciary. As a result, American Samoa has a bicameral legislature called the Fono. Much of society is governed by matai (chiefs) and tribunals that rely on Samoan history, tradition, and custom to address legal issues. The High Court of American Samoa heads local district courts. American Samoa does not have a federal court as do the other territories. Matters of federal law in the past have been adjudicated in the federal District Court for Hawai`i or the federal District Court for the District of Columbia, but technically American Samoa falls outside the jurisdiction of federal courts.[9]

As shown here, each territory has its own unique governance structure. The territories are also governed, at least in part, by the U.S. government, as discussed next.

WHAT IS THE CURRENT RELATIONSHIP BETWEEN THE U.S. GOVERNMENT & THE U.S. TERRITORIES?

As noted above, all five of the territories are "unincorporated," which means that they are controlled by the United States but are not fully a part of the United States. This has important implications for their residents. The relationships between the territories, the U.S. Constitution, the United States government, and the U.S. government's responsibilities to the territories differ substantially compared to U.S. states.

First, **people born in four of five territories are citizens, but those from American Samoa are not**. The people of American Samoa are not U.S. citizens, but are "American nationals." This means they have U.S. passports, can serve in the U.S. military, and can live and work in the United States. And while they can apply to become U.S. citizens, they are not permitted to do things that are limited to U.S. citizens such as vote, work in certain local, state, or federal jobs, or hold elected office in the United States. The residents of the four other territories are U.S. citizens. However, having U.S. citizenship does not mean the full scope of the U.S. Constitution and its protections apply, as explained below.

Second, **the applicability of the U.S. Constitution to fully protect residents of the territories, even residents who are U.S. citizens, has evolved over time**. In 1901, the U.S. Supreme Court ruled in a series of cases entitled the "Insular Cases" that, because the territories "belong" to the United States, but are not fully a part of the United States (as they are "unincorporated"),[10] only "fundamental" constitutional rights apply.[11] Over the past 118 years, what has counted as a "fundamental" constitutional right has been determined by the courts on a case-by-case basis.

For example, in a 1922 case, the U.S. Supreme Court ruled that the application of the Constitution is determined by the "locality" of an individual, rather than the citizenship of the people living in that place.[12] As a result, if a person was born in Florida but moved to Puerto Rico, they would no longer be eligible for full constitutional protections while living in Puerto Rico, whereas if a person born in Puerto Rico moved to Florida, they would receive full constitutional protections but only while living in Florida.

Because the territories are "creations of Congress," so long as they remain unincorporated territories rather than incorporated territories or states, Congress retains power over them.[13] For example, in a 1904 case, the U.S. Supreme Court ruled that residents of the Philippines (at the time a U.S. territory) were not entitled to a jury trial unless Congress explicitly extended that right via statute.[14] In a subsequent 1922 case, still considered relevant and binding today, the U.S. Supreme Court held that the right to a jury trial, guaranteed under the Constitution and the Sixth Amendment, was not guaranteed to residents of Puerto Rico.[15] As part of its rationale, the Court questioned whether Puerto Ricans were incapable of or unable to adopt an "Anglo-Saxon" institution as required of a jury.[16] This highlights the lingering and pernicious influence of colonialism and prejudice shaping the territories still today.

While the majority of cases about the applicability of the full U.S. Constitution to the territories are more than 100 years old, more recent case law speaks to the evolving concept of "fundamental rights." Subsequent and recent cases have tested what autonomy the territories have and to what extent the U.S. Constitution applies, including: a case holding that the federal government provided reduced safety net benefits to citizens in Puerto Rico;[17] a ruling holding that Puerto Rico cannot prosecute an individual if the federal government already has, even though U.S. states can;[18] a case in which the Northern Mariana Islands wanted to restrict voting on Northern Mariana constitutional amendments to people of local descent but were overturned by the Ninth Circuit for violating the Fifteenth Amendment;[19] and a case that determined that individuals born in American Samoa are not entitled to citizenship as guaranteed by the Fourteenth Amendment, because Congress hasn't explicitly granted that right to residents of American Samoa, as it has done for the residents of the other four territories.[20]

As explained in the sidebar on the next page, the applicability of the U.S. Constitution and the U.S. Supreme Court rulings related to LGBT issues is particularly important, as in the example of marriage equality and the 2015 ruling in *Obergefell v. Hodges*. To be sure, though, the constitutional right to due process and to equal protection, as protected by both the Fifth and Fourteenth Amendments to the U.S. Constitution, have, in large measure, already been incorporated into the territories.[21]

A Historical Example of the Unequal Application of the U.S. Constitution to the U.S. Territories: The Case of Marriage Equality in the Territories

In December 2013, a federal judge in Utah ruled that Utah's ban on marriage by same-sex couples violated the U.S. Constitution. This ruling was the first of many federal district court and circuit court rulings, which ultimately brought the issue to the U.S. Supreme Court in June 2015 in the *Obergefell v. Hodges*, in which the Court ruled that marriage was a fundamental right and it was unconstitutional to deny that right to same-sex couples. By November 2014, four federal circuit courts had struck down marriage bans, while one circuit court, the Sixth Circuit, had upheld them.

As noted in this report, four of the U.S. territories are a part of the federal court system, with Guam and the Northern Mariana Islands falling under the Ninth Circuit, Puerto Rico under the First Circuit, and the Virgin Islands under the Third Circuit. As federal courts began striking down state marriage bans, the applicability and impact of these rulings to these U.S. territories was not clear. Put differently, if residents of the territories do not enjoy the U.S. Constitution's full protections, did the fundamental right to marry apply equally within the territories? The implication of the marriage rulings was also unclear for American Samoa, which does not have a federal court at all.

As shown below, despite the relevant federal circuit court rulings, and eventually a U.S. Supreme Court ruling, each territory had its own complicated path to marriage equality, illustrating the complex and often unclear relationships between the U.S. territories, the U.S. federal government, and the U.S. Constitution.

Guam. The Ninth Circuit Court of Appeals struck down bans on marriage for same-sex couples in Idaho and Nevada in October 2014, a ruling that applied to Guam. However, it wasn't until a couple was denied a license in April 2015 that the District of Guam court ruled that the couple should not have been denied a license, given the ruling in the Ninth Circuit. This made Guam the first U.S. territory to permit same-sex couples to marry. In August 2015, the Guam legislature passed marriage equality legislation updating their marriage laws to permit marriage for same-sex couples.

Northern Mariana Islands. The Ninth Circuit Court of Appeals struck down bans on marriage for same-sex couples in Idaho and Nevada in October 2014, a ruling that applied to the Northern Mariana Islands. However, it wasn't until the U.S. Supreme Court ruling in June 2015 that the governor and the attorney general of the Islands announced that the territory would begin marrying same-sex couples.

U.S. Virgin Islands. Following the U.S. Supreme Court ruling in June 2015, a court in the Virgin Islands and the governor both announced that they would comply with the ruling. However, because of the absence of the lieutenant governor and opposition from the senate president, the order implementing the Court's ruling did not go into effect until late July 2015.

Puerto Rico. In June 2014, five same-sex couples sued in federal court challenging Puerto Rico's marriage ban as unconstitutional. The district court upheld the ban in October 2014 and the couples' appeal was held in abeyance as the Supreme Court decided the issue. After the U.S. Supreme Court's ruling in *Obergefell* in June 2015, the Court of Appeals for the First Circuit sent the case back to the district court, agreeing that the ban was unconstitutional. As a result of this judgment, same-sex couples were able to marry starting in July 2015. Notwithstanding the Supreme Court's decision in *Obergefell* and the First Circuit's judgment, the federal district court judge overseeing the Puerto Rico case ruled that the U.S. Supreme Court's ruling did not apply to Puerto Rico because such a right, according to the district court, had not been incorporated to the territories. A few weeks later the First Circuit overturned the district court holding that the rights to due process and equal protection had been incorporated as to Puerto Rico and that consequently *Obergefell* applied to the U.S. territory. Thereafter, another judge in Puerto Rico entered a final judgment striking down the territory's marriage ban.

American Samoa. American Samoan marriage statutes do not state that only different-sex couples can marry, but when stating the required age for marriage, statutes refer to "the male" and "the female."[e] Following the 2015 U.S. Supreme Court ruling, the attorney general in American Samoa stated that the ruling did not apply. Others have argued that because the U.S. Supreme Court ruled that marriage was a "fundamental" right, the ruling applies to unincorporated territories. In 2016, when a new district court judge was approved by the American Samoan Senate, he stated that he would not permit same-sex couples to marry until the American Samoan marriage statute had been explicitly changed.

[e] American Samoa Bar Association. The American Samoa Code Annotated 42.0101.

Third, **because their constitutional rights are limited, residents of the territories are not allowed to participate fully in federal representative democracy**. The territories are not fully represented in the U.S. Congress. Each territory elects one representative to the U.S. House of Representatives, but though their representatives—like the representative from the District of Columbia—can propose legislation and vote in committees, they cannot vote on legislation. Additionally, residents of the four "organized territories" can vote in primary elections for presidential nominees, based on party rules, but cannot vote in presidential elections. Residents of American Samoa cannot vote in primary elections nor vote in presidential elections, as they are not U.S. citizens.

Though residents of the territories cannot fully participate in U.S. democracy, Congress can pass federal legislation that applies to the territories. Most legislation defines "state" to include the territories, but Congress may opt to not include the territories. For example, in the 2009 federal hate crime legislation that enumerated sexual orientation and gender identity, the legislation stated, "whoever in the special maritime or territorial jurisdiction of the United States commits an offense… shall be subject to the same penalties."[22]

Fourth, **residents of the territories pay some but not all federal taxes**. Residents of all five territories use the U.S. dollar. Residents of the territories are generally not required to pay federal income taxes on income earned in the territories, though they do pay Social Security and Medicare taxes.[23]

WHAT DO WE KNOW ABOUT LGBT PEOPLE LIVING IN THE U.S. TERRITORIES?

Very few demographic or public opinion surveys, outside of the U.S. Census, include the U.S. territories. For example, both the Pew Research Center and Gallup's U.S. Poll, which regularly conduct public opinion polls, do not include *any* of the U.S. territories in their surveys.

The lack of inclusion of the territories in many surveys combined with the fact that very few surveys in general ask questions about sexual orientation and/or gender identity mean that data about the number of LGBT people living in the territories, let alone demographics about them or their experiences, remain extremely limited. This is especially true as the Gallup Daily Tracking poll has quickly become one of the most commonly used sources of data for demographics about LGBT people.[24]

And while the decennial census includes the territories, it does not include questions about sexual orientation or gender identity. The 2020 decennial census will allow respondents to identify a married or unmarried same-sex partner, which will allow for the identification of same-sex couples living in the territories and will therefore be an important source of future data analysis, but it does not allow for the identification of individual or uncoupled LGBT people.

The limited available research shows that: a) there are LGBT people living in the U.S. territories and b) they may face similar challenges to those faced by LGBT people living in the United States. For example:

- The 2015 U.S. Transgender Survey (USTS) conducted by the National Center for Transgender Equality had a total of 31 responses from individuals living in American Samoa, Guam, and Puerto Rico. This is not a large enough sample to conduct meaningful analysis of their experiences, but it does show transgender residents in these territories.[25]
- In 2015, the Williams Institute released analysis of 2010 U.S. Census data about same-sex couples living in Puerto Rico. Their analysis reveals that there were more than 6,600 same-sex couples living in Puerto Rico, 70% of whom were female same-sex couples.[26]
- Both Guam and the Northern Mariana Islands participated in the 2015 Youth Risk Behavior Survey (YRBS), which included a sexual orientation question. Guam also participated in the 2014 and 2017 Behavioral Risk Factor Surveillance System (BRFSS), a collaborative federal-state survey, that includes questions about sexual orientation and gender identity.[27]
- A community-based survey of LGBT people was conducted in Guam in 2014, and it found that 37% of LGBT people in the survey had been bullied in the past because of their sexual orientation, and further that LGBT people reported higher rates of alcohol and tobacco use than the general population, a finding mirrored in the broader research about LGBT people in the United States.[28]

It is imperative that more research be conducted to better understand the demographics and experiences of people living in the U.S. territories. In particular, adding questions about sexual orientation and gender identity to the decennial census would dramatically improve our understanding of both LGBT residents of the territories and throughout the United States.

WHAT IS THE STATUS OF LGBT EQUALITY IN THE U.S. TERRITORIES?

For more than 10 years, the Movement Advancement Project (MAP) has tracked state-level LGBT laws and policies across the 50 states and the District of Columbia. With the release of this report, MAP is now actively tracking LGBT-related laws and policies in the five populated U.S. territories.

Overall LGBT Policy Tally

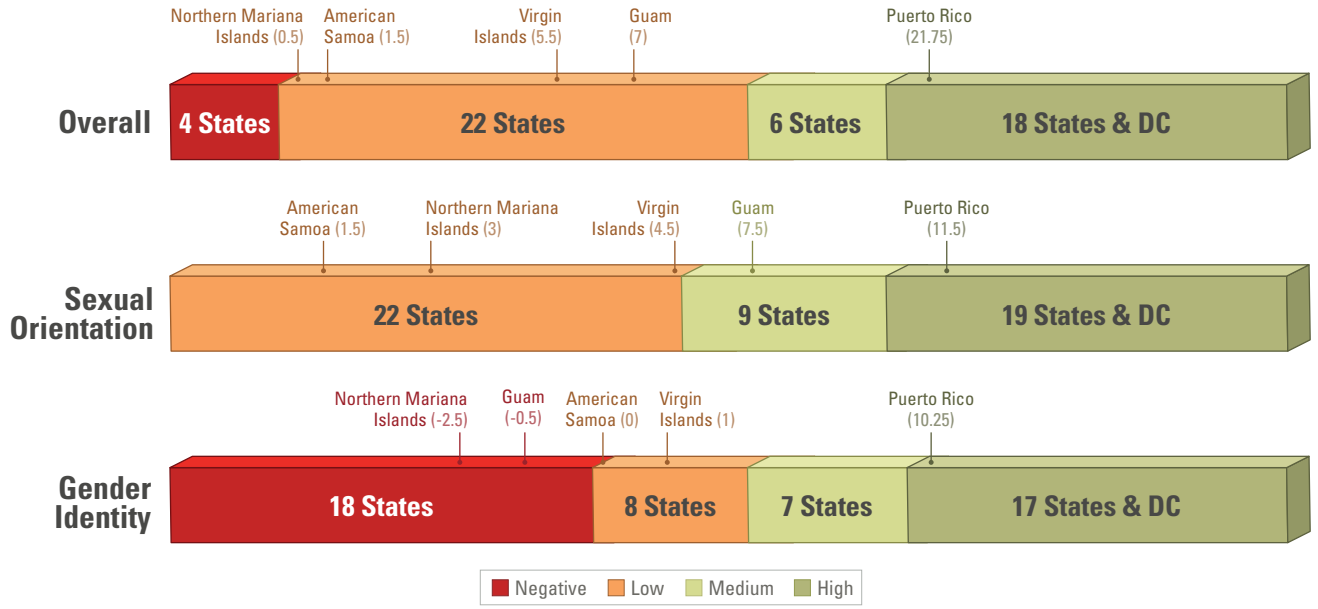
MAP classifies various laws and policies that impact LGBT people into two broad categories: those related to sexual orientation and those related to gender identity. These policies are scored to create a "Sexual Orientation Policy Tally" and a "Gender Identity Policy Tally." Examined together, these policies generate an "Overall Policy Tally," which counts the number of positive LGBT laws and policies, as well as negative laws and the policies, in each territory or state that help drive equality for LGBT people. *Table 1* on the next page shows the Overall Policy Tally for each of the five territories as well as the policy tally for sexual orientation and gender identity separately.

Overall LGBT Policy Tally. Puerto Rico has the highest overall LGBT policy tally among the territories (21.75 out of 40.5), placing it in the "high" category along with 18 states and the District of Columbia, as shown in *Figure 4*. The other four territories have a "low" LGBT policy tally scores, as do 21 U.S. states. American Samoa and the Northern Mariana Islands each have a low LGBT policy tally of 0.5, which is the same as South Carolina.

Sexual Orientation Policy Tally. Looking specifically at laws and policies focused on sexual orientation, as shown in Figure 4, 18 states and the District of Columbia have a "high" sexual orientation policy tally, as does Puerto Rico. Puerto Rico and Guam fall into the "medium" category, where nine states also fall. American Samoa, the Northern Mariana Islands, and the U.S. Virgin Islands all have low sexual orientation policy tallies, as do 23 states. Puerto Rico leads the group with 11.5, compared to 7.5 for Guam, 4.5 for the U.S. Virgin Islands, 3 for the Northern Mariana Islands, and 0.5 for American Samoa. No state or territory has a negative sexual orientation policy tally.

Gender Identity Policy Tally. All the territories have lower policy tallies for gender identity than they do for sexual orientation. Two territories, Guam and the Northern Mariana Islands, have negative policy tallies stemming primarily from challenges updating identity documents. Notably, 19 states also have negative gender identity policy tallies. American Samoa and the U.S. Virgin Islands have "low" gender identity scores, and

Figure 4: Territories' LGBT, Sexual Orientation, and Gender Identity Policy Tallies in Relation to the 50 States & D.C.
Scores Shown in Parentheses



Complete rankings for the 50 states, the District of Columbia, and the five territories are available on the LGBT Equality Maps. Data as of June 3, 2019.

Table 1: U.S. Territories Vary in Overall LGBT, Sexual Orientation, and Gender Identity Policy Tallies

U.S. Territory	Overall Tally (Out of 40.5)	Sexual Orientation Tally (Out of 20)	Gender Identity Tally (Out of 20.5)
American Samoa	Overall Tally: 1.5/40.5 LOW	1.5/20 LOW	0/20.5 LOW
Guam	Overall Tally: 7/40.5 LOW	7.5/20 MEDIUM	-0.5/20.5 NEGATIVE
Northern Mariana Islands	Overall Tally: 0.5/40.5 LOW	3/20 LOW	-2.5/20.5 NEGATIVE
Puerto Rico	Overall Tally: 21.75/40.5	11.5/20	10.25/20.5
U.S. Virgin Islands	Overall Tally: 5.5/40.5	4.5/20	1/20.5

Puerto Rico has the highest gender identity tally (10.25) of the territories, placing it the "high" category along with 17 states and the District of Columbia.

Seven Key Policy Areas

The more than 39 laws and policies that MAP tracks fall into seven broad categories that demonstrate multiple areas of life:

- Relationship and Parental Recognition
- Nondiscrimination Laws
- Religious Exemption Laws
- LGBT Youth Laws and Policies
- Healthcare Policies
- Criminal Justice Policies
- Accurate Identity Documents

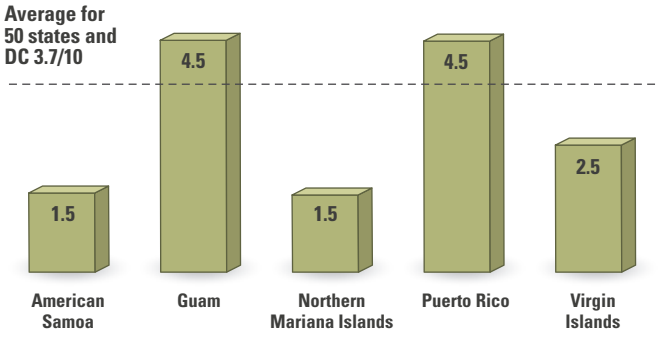
Each broad category is discussed below for each territory with advances noted for each issue area. What emerges is that there are several key areas where several territories have led advances, including in the areas of nondiscrimination and youth policy, but that overall there remains much work to do. Full analyses of every policy area, for each territory, are available on MAP's website.

Relationship & Parental Recognition

Guam has the highest relationship recognition policy tally score of (5.5 out of 10), as shown in *Figure 5*. Notable policies in the territories in this category include:

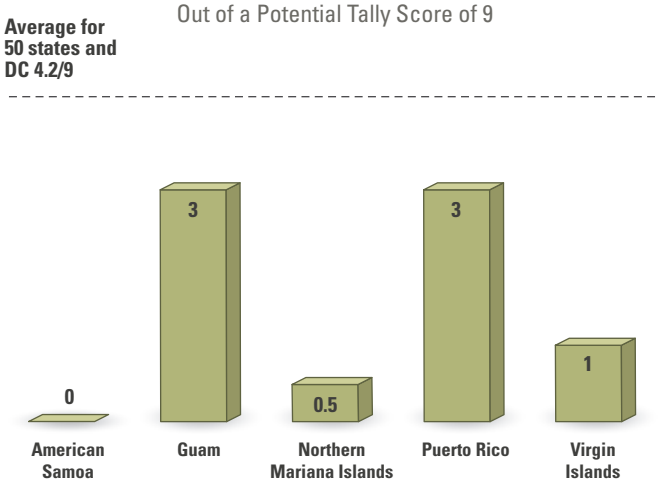
- Guam has a family and medical leave law that permits leave for a child for whom a parent is standing *in loco parentis*.
- Puerto Rico has paid maternity leave for the birth or adoption of a child.
- The result of a 2015 Supreme Court of the Virgin Islands case is that second-parent adoption is permitted for an unmarried partner of an existing legal parent.
- The 2015 U.S. Supreme Court decision in *Obergefell* extended all the rights and obligations of marriage to same-sex couples, including the presumption of parentage for children born to married couples, as discussed on page 5. There is some question as to the "on the ground" implementation of the Court's ruling in American Samoa.

Figure 5: Relationship & Parental Recognition
Out of a Potential Tally Score of 10



Data as of June 3, 2019.

Figure 6: Nondiscrimination Laws
Out of a Potential Tally Score of 9



Data as of June 3, 2019.

Nondiscrimination Laws

Puerto Rico and Guam are tied for the highest nondiscrimination policy tally score (3 out of 9), as shown in *Figure 6* above.

Four of the five territories (all but American Samoa) are a part of the federal circuit courts system. As a result, rulings from the federal courts about the extent to which discrimination based on sexual orientation and/or gender identity are prohibited under federal laws such as Title VII (employment) or Title IX (education) of the Civil Rights Acts are applicable in these territories in addition to explicit protections made available under the laws of each territory. Currently there are positive rulings regarding gender identity from U.S. Courts of Appeals covering Guam, the Northern Mariana Islands, and Puerto Rico, but no positive rulings related to sexual orientation.

Notable policies in the territories in this category include:

- In 2013, Puerto Rico prohibited private and public employment discrimination based on sexual orientation and gender identity.
- In 2013, the Northern Mariana Islands prohibited discrimination by the territorial government and by the visitors' authority based on sexual orientation.
- In 2013, the government of the U.S. Virgin Islands prohibited discrimination based on sexual orientation or gender identity and began accepting complaints from government employees of discrimination on those bases.
- In 2015, Guam passed a law prohibiting discrimination in private and public employment based on both sexual orientation and gender identity.

Religious Exemptions

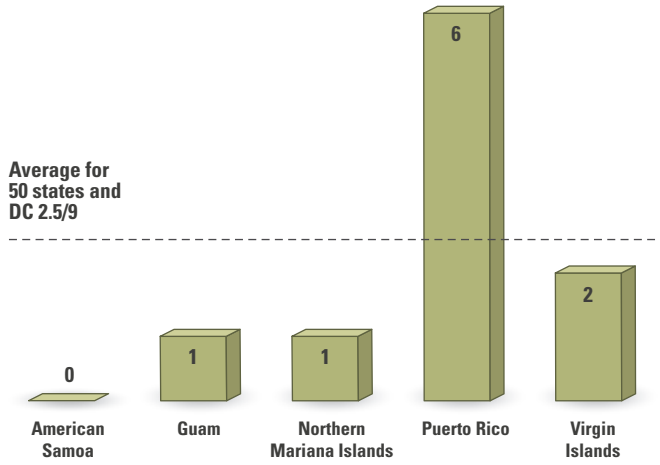
To date, no targeted religious exemptions were identified in the laws of the five U.S. territories. As of May 2019, the legislature in Puerto Rico was still considering a religious exemptions bill that could open the door to taxpayer-funded discrimination.[29]

LGBT Youth Laws & Policies

Puerto Rico has the highest LGBT youth policy tallies (6 out of 7) as shown in *Figure 7*. Notable policies in the territories in this category include:

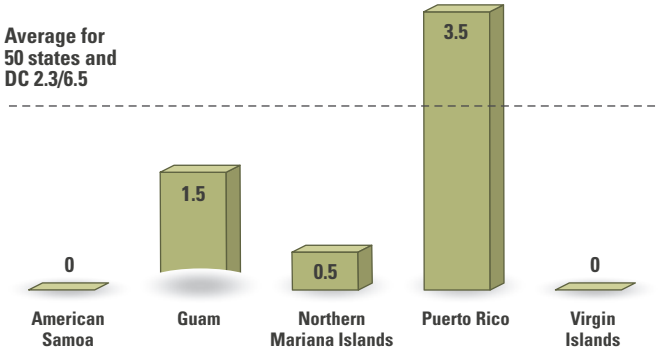
- Guam prohibited bullying based on sexual orientation in 2011.
- The Northern Mariana Islands State Board of Education issued regulations in 2002 prohibiting discrimination and harassment based on sexual orientation, and in 2011 prohibiting bullying based on sexual orientation and gender identity.
- In 2014, the U.S. Virgin Islands passed a bullying prevention statute explicitly enumerating sexual orientation. In 2017, the U.S. Virgin Islands Attorney General provided guidance requested by the territory's education commissioner clarifying that discrimination against transgender students was illegal under federal civil rights laws.
- In 2019, the governor of Puerto Rico issued an executive order requiring institutions seeking medical licensure to certify that they will not offer conversion therapy. As of May 2019, the legislature was considering legislation to ban the practice.[30] Puerto Rico's student bill of rights and accompanying regulations prohibit discrimination and bullying based on sexual orientation and gender identity.

Figure 7: LGBT Youth Laws & Policies
Out of a Potential Tally Score of 7



Data as of June 3, 2019.

Figure 8: Healthcare Laws & Policies
Out of a Potential Tally Score of 6.5



Data as of June 3, 2019.

Healthcare Policies

Puerto Rico has the highest healthcare policy tally (3.5 out of 6.5), as shown in *Figure 8*. Notable policies in the territories in this category include:

- Guam, Puerto Rico, and the Northern Mariana Islands have all taken steps to include measures of sexual orientation (and gender identity in the case of Guam) in federal surveys.

- Puerto Rico has prohibitions on discrimination in healthcare and health insurance based on sexual orientation and gender identity.

Criminal Justice Policies

Puerto Rico has the highest criminal justice policy tally (2.75 out of 4, as shown in *Figure 9*). All five territories are covered by the federal hate crime law, which explicitly enumerates sexual orientation and gender identity. Notable policies in the territories in this category include:

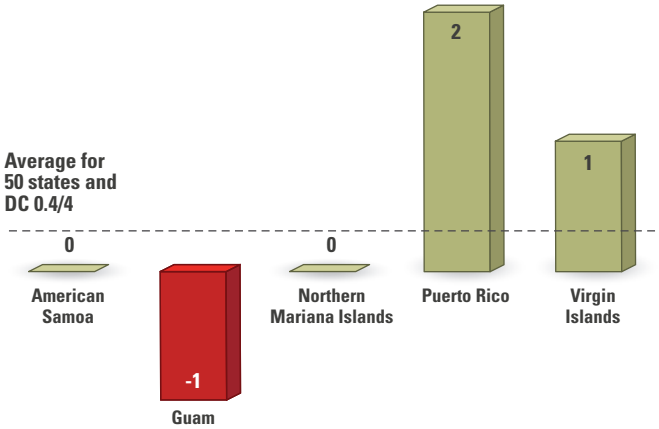
- In 2002, Puerto Rico passed a hate crime law that enumerates sexual orientation and gender identity.
- U.S. Virgin Islands passed a hate crime law in 2014 that enumerates sexual orientation and gender identity.
- Both Guam and the U.S. Virgin Islands have HIV criminalization statutes.

Accurate Identity Documents

Only Puerto Rico has taken proactive steps to update policies and procedures allowing transgender people to update identity documents, and that is reflected in its policy tallies (2.75/4). Puerto Rico recently took several steps, including allowing updates to birth certificates in 2018. Guam, the Northern Mariana Islands, and the U.S. Virgin Islands all have negative policy tallies for this category of laws and policies, as shown in *Figure 10*, meaning these territories impose significant burdens and obstacles on transgender people seeking to update their documents.

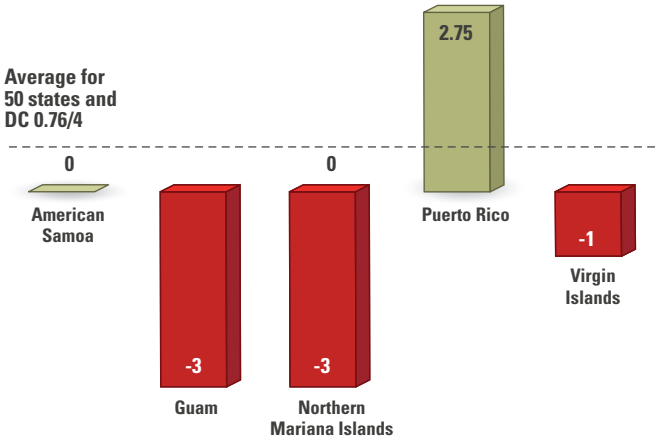
For a comprehensive view of each territory's category and overall scores, see both this report's Appendix and MAP's website.

Figure 9: Criminal Justice Laws & Policies
Out of a Potential Tally Score of 4



Data as of June 3, 2019.

Figure 10: Ability for Transgender People to Obtain Accurate Identity Documents
Out of a Potential Tally Score of 4



Data as of June 3, 2019.

CONCLUSION

For the more than 3.5 million people living in the five populated U.S. territories, the relationships with the United States government, its courts, its legislature, and society are complicated. In the area of LGBT-related laws and policies, federal legislation and federal court rulings are one path toward increasing equality for LGBT residents of the U.S. territories—though as this report outlines, whether or not federal laws and rulings apply to the territories is not always clear-cut. This report examines another route: territory-level laws and policies that impact LGBT people and their families. Examining each of the five territories across the more than 38 laws and policies tracked by MAP offers just one metric of LGBT people's experiences in these territories. This report does not purport to speak to the lived experiences of LGBT people in the territories, which are influenced by family, the role of faith, and the history of colonialism and missionary work, relationships and connections to the United States, as well as indigenous beliefs and practices about sexuality and/or gender. For example, in traditional Samoan culture, there is a recognized gender identity of the *fa'afafine*, which is typically a person who was assigned male at birth but who embodies both masculine and feminine gender traits.[31]

There is clearly much work to be done in the areas of nondiscrimination, health and safety, youth policy, identity documents, and more. That said, advocates working on the ground in the territories have achieved real and meaningful legislative and legal changes. Hopefully this report and the related expansion of the Equality Maps online to include the territories will advance increased understanding, collaboration, and success in providing meaningful changes for LGBT residents of the territories.

U.S. Territories	Relationship and Parental Recognition *Out of 10*	Non-Discrimination Laws *Out of 9*	LGBT Youth Laws and Policies *Out of 7*	Healthcare Laws *Out of 6.5*	Criminal Justice Laws *Out of 4*	Accurate Identity Documents *Out of 4*	Overall Policy Tally *Out of 40.5*
American Samoa	1.5*	0	0	0	0	0	**1.5**
Guam	5.5	3	1	1.5	-1	-3	**7**
Northern Mariana Islands	1.5	0.5	1	0.5	0	-3	**0.5**
Puerto Rico	4.5	3	6	3.5	2	2.75	**21.75**
U.S. Virgin Islands	2.5	1	2	0	1	-1	**5.5**

*The U.S. Supreme Court ruling in *Obergefell* extending marriage to same-sex couples applies to American Samoa. However, there is some question as to the "on the ground" implementation, as discussed on page 5.

ENDNOTES

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15 *Balzac v. Porto Rico*, 258 U.S. 298 (1922)

16 Torruella (2013).

17 *Harris v. Rosario*, 446 U.S. 651 (1980).

18 *Commonwealth v. Valle*, 136 S. Ct. 1864 (2016).

19 *Davis v. Commonwealth Election Comm'n*, 844 F.3d 1087 (9th Cir. 2016)

20 *Tuaua v. United States* 788 F.3d 300, 302 (D.C. Cir. 2015).

21 See, for example, *Examining Bd. Of Eng'rs, Architects & Surveyors v. Flores de Otero*, 426 U.S. 572, 600 (1976) and *In re Conde-Vidal*, No. 16-1313 (1st Cir. 2016).

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ABOUT THIS SPOTLIGHT

This report is part of an ongoing series that will provide in-depth analyses of laws and policies tracked at the Movement Advancement Project's "Equality Maps," found at www.lgbtmap.org/equality-maps. The information in this report is current as of the date of publication; but the online maps are updated in real time as policy changes occur.

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