

SECURING LEGAL TIES FOR CHILDREN LIVING IN LGBT FAMILIES

A State Strategy and Policy Guide

July 2012



Authors



In Partnership With



A Companion Report to *All Children Matter: How Legal and Social Inequalities Hurt LGBT Families*.
Both reports are co-authored by the Movement Advancement Project, the Family Equality Council, and the Center for American Progress.

This report was authored by:

Movement Advancement Project

The Movement Advancement Project (MAP) is an independent think tank that provides rigorous research, insight and analysis that help speed equality for LGBT people. MAP works collaboratively with LGBT organizations, advocates and funders, providing information, analysis and resources that help coordinate and strengthen their efforts for maximum impact. MAP also conducts policy research to inform the public and policymakers about the legal and policy needs of LGBT people and their families. For more information, visit www.lgbtmap.org.

Family Equality Council

Family Equality Council works to ensure equality for LGBT families by building community, changing public opinion, advocating for sound policy and advancing social justice for all families. Family Equality Council provides support and resources to LGBT-headed families, and leverages the power of families by sharing their stories and driving change in communities and states across the nation. Family Equality Council educates members of government, schools, faith-based communities, healthcare institutions and other social systems about how they can promote family equality. Family Equality Council also partners with other LGBT and broader social justice organizations to provide the greatest positive impact and to maximize resources. For more information, visit www.familyequality.org.

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Equality Federation is the national alliance of state-based lesbian, gay, bisexual and transgender (LGBT) advocacy organizations. The Federation works to achieve equality for LGBT people in every state and territory by building strong and sustainable statewide organizations in a state-based movement. For more information, visit www.equalityfederation.org.

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INTRODUCTION

What do children need to thrive? They need close positive relationships with responsible adults who love them. They need homes that foster curiosity, empathy, self-reliance and kindness. They need food, clothing, shelter and medical care. They need a feeling of safety, security and stability. They need to be connected to and protected by their families.

Public discussion about American families often assumes the nation is largely made up of married heterosexual couples raising their biological children. This assumption guides government policies and laws at all levels, yet less than a quarter of all U.S. households fall into this category. Today's children may be raised by grandparents, single parents, stepparents, aunts, uncles or foster parents. Their parents may be married or unmarried; they may be heterosexual or gay. They may be American-born citizens or immigrants, well-off or struggling, white or families of color. Yet despite the growing diversity of American households, public policy has not kept up with this changing reality.

Outdated state laws largely ignore the roughly two million children being raised by lesbian, gay, bisexual and transgender (LGBT) parents, as well as many children in unmarried heterosexual families or families headed by relatives or caregivers who are not biological parents. Even though family law has evolved considerably over the past three decades, elected leaders may still be unaware of the many ways in which unequal treatment can harm the millions of children whose families do not conform to outdated assumptions of what it means to be a family.

Terminology: "LGBT Families"

This report uses "LGBT families" to refer either to families in which an LGBT adult is raising children or to families in which a same-sex couple is raising children. We use this term for simplicity while noting that the term is most likely not reflective of the sexual orientation of the children in such households. Our more restricted use of the term "LGBT families" is not meant in any way to diminish those who live in families without children. We also recognize that many LGBT adults who do not have children form families with life partners, close friends and other loved ones who provide support.

Not long ago, children who were born to unmarried parents were dismissed as "illegitimate" and were penalized by the law. These children were denied the ability to inherit from their parents, denied access to government protections, and were unable secure legal recognition as the children of their parents.¹ In the 1970s, these laws began to change.² But while the changes in the law ushered some families into equal legal treatment, they only applied to children with heterosexual parents. Today, archaic and discriminatory laws, policies and practices still continue to hurt many children whose families do not conform to expected norms, including children with LGBT parents.

As a result:

- Children in foster care, including many children with special needs, are denied permanent homes, even though there are qualified, loving LGBT families waiting to foster and adopt.
- Children being raised in LGBT families are denied legal ties to their parents, putting them at risk. For example, when LGBT parents are prevented by law from creating legal ties to their children, these parents may be unable to pick up their children at day care, may be unable to advocate for their children at school, and can be denied the ability to make critical healthcare decisions for their children.
- The lack of legal ties also creates undue financial burdens for LGBT families, and can place children at economic risk when parents' relationships dissolve, when a parent dies or becomes disabled or when seeking access to government safety net programs during times of economic crisis.

Regardless of whether same-sex parents plan a new family together using donor insemination or surrogacy, become foster or adoptive families, or become stepfamilies later in life, in at least 30 states, it is likely that children in these households will be legal strangers to one of their parents.

Some states have begun to address these disparities by passing comprehensive parental recognition laws that, among other things:

- Help provide loving, permanent homes to children in foster and government care.
- Ensure that children with same-sex parents have the same protections as children with married heterosexual parents, including the security of legal ties to both parents.

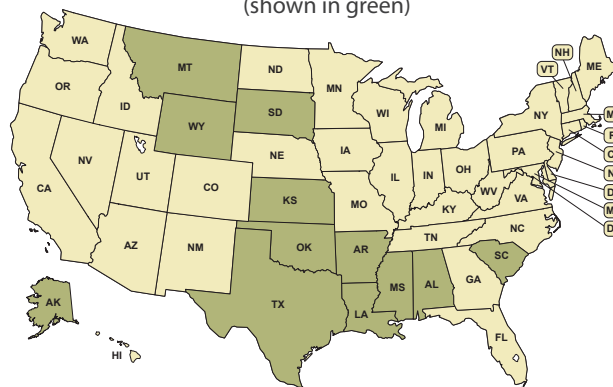
- Hold both LGBT parents financially and legally accountable for providing for their children, and
- Ensure that decisions are always made in the best interests of children when parents' relationships dissolve or when a parent dies.

In October 2011, the Movement Advancement Project, the Family Equality Council, and the Center for American Progress released the report, "All Children Matter: How Legal and Social Inequalities Hurt LGBT Families." The report offers one of the most comprehensive portraits to date of LGBT families in America and details ways in which antiquated laws and stigma make it harder for children with LGBT parents to have their needs met in three areas: stable, loving homes; economic security; and health and well-being.

This report, "Securing Legal Ties for Children Living in LGBT Families," is the third in a companion series to the "All Children Matter" report. Focusing specifically on the impact of state marriage and parenting laws on children living in LGBT families, this companion report provides a framework for state policymakers to draft, pass, and enact new laws that protect children living in contemporary family structures. It also includes recommendations for amending, repealing, or overturning archaic and discriminatory laws that leave children without the security of legal ties to their parents, or without the loving, "forever" homes that all children need and deserve.

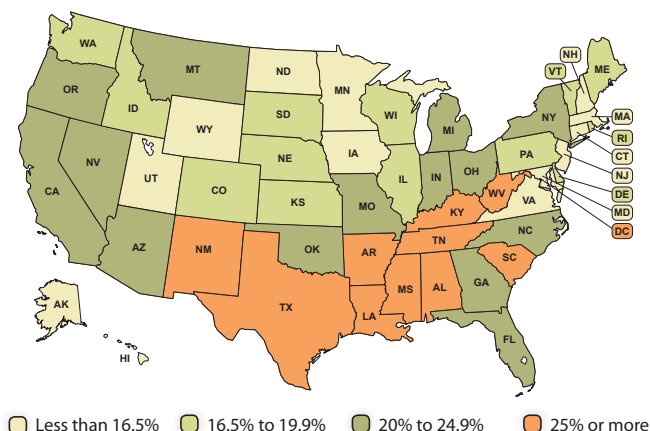
The report is divided into four key areas. In this introduction, we provide an overview of the diversity of LGBT families: who they are, where they live, and the economic realities they face. The next section highlights how the multiple paths to parenthood for LGBT parents intersect with archaic laws and practices that often leave children without legal ties to both parents. The third section focuses on how this lack of legal ties harms children being raised in LGBT families. The report concludes with a series of policy recommendations for designing comprehensive state-level parental recognition laws. The appendices also provide model language that can be used to amend and replace laws that fail to effectively protect children being raised in LGBT families and a state-by-state look at the status of existing legislation. Many of the proposed changes also benefit a number of other modern family structures, including children being raised by unmarried heterosexual parents and children being raised by extended family members.

Figure 1: Top 12 States Where Same-Sex Couples are Raising Children
(shown in green)



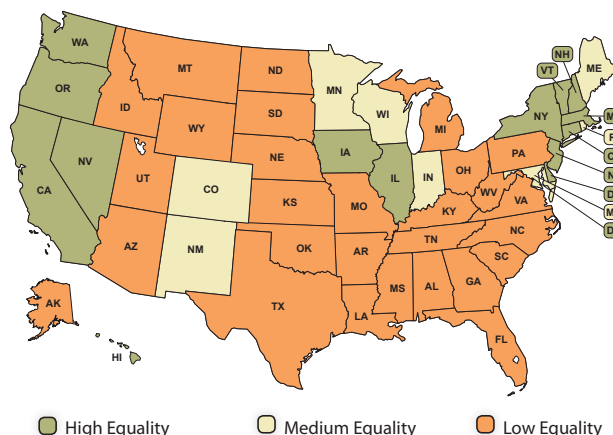
Source: Gary J. Gates and Abigail M. Cooke, Census 2010 Snapshot Series, The Williams Institute, 2011.

Figure 2: Percentage of Children in Poverty in the Past 12 Months by State: 2010



Source: U.S. Census Bureau, 2010 American Community Survey.

Figure 3: LGBT Legal Equality by State



Source: Equality Maps, Movement Advancement Project.

LGBT Families are Part of the American Fabric

America's families are changing. Today, just 69% of children live with married, heterosexual parents, down from 83% in 1970.³ Between 2.0 and 2.8 million children are being raised by LGBT parents, and that number is expected to grow in the coming years.⁴

According to the U.S. Census Bureau, 24% of female same-sex couples are raising children and 11% of male same-sex couples are raising children.⁵ More than one-third of lesbians without children want to have children, and three-quarters of bisexual women without children want to have children.⁶ Of gay men who have not had children, 57% want to have children as do 70% of bisexual men.⁷ Of transgender Americans, a recent survey finds that 38% of those being surveyed identify as parents.⁸

Geographically Diverse

Although you might expect that LGBT families live in major metropolitan areas or in states with policies friendly to LGBT people, LGBT families are geographically dispersed, living in 93% of all U.S. counties.⁹ States like California and New York have high numbers of same-sex couples, yet same-sex couples are most likely to raise children in Mississippi, followed by Wyoming, Alaska, Arkansas, Texas, Louisiana, Oklahoma, Kansas, Alabama, Montana, South Dakota and South Carolina (see *Figure 1* on previous page). It is also important to note that half of these are states where more than one in four children live in poverty (see *Figure 2* on previous page) and that all of these states are also among the very lowest in terms of LGBT legal equality (see *Figure 3* on previous page).¹⁰

Racially and Ethnically Diverse

LGBT families are racially and ethnically diverse. Same-sex couples where at least one partner is a person of color are more likely to be raising children than white same-sex couples.¹¹ Of same-sex couples raising children, 28% have at least one partner who is a person of color, compared to 24% of married heterosexual couples with children.¹² Similarly, 45% of children raised by same-sex couples are children of color compared to 30% of children raised by married heterosexual couples.¹³ Finally, data from the 2010 Census indicates that there are an estimated 28,500 binational same-sex couples in the U.S. (couples where one member is not an American citizen).¹⁴

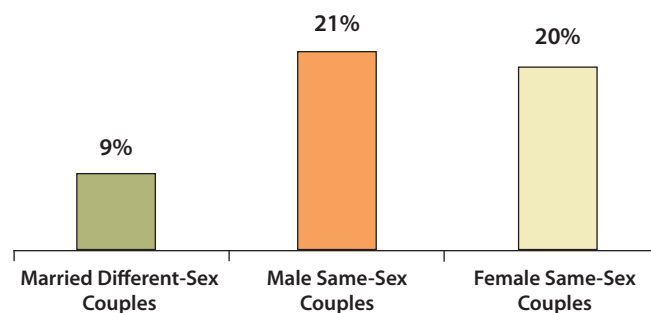
A quarter of binational male same-sex couples and 39% of binational female same-sex couples are raising an estimated 17,000 children.¹⁵

Lower Income, Higher Poverty

In 2010, 22% of all American children lived in poverty, with the same percentage of children living in "food insecure" households (homes in which families worried about having enough food). Contrary to stereotypes, children being raised by same-sex couples are twice as likely to live in poverty as those being raised by married heterosexual parents (see *Figure 4*).

The next section of this report detail the challenges LGBT parents face in establishing legal ties to their children, how these challenges harm children, and the critical importance of ensuring that children have legal ties to their parents, regardless of how their families were formed or are structured. Stories in this report are based on the experiences of real families, although in some instances, names, locations and minor details have been changed to preserve privacy.

Figure 4: Percent of Families Raising Children Who Live in Poverty



Source: Randy Albelda, M.V. Lee Badgett, Alyssa Schneebaum and Gary J. Gates, "Poverty in the Lesbian, Gay and Bisexual Community," *The Williams Institute*, 2009.

SECURING LEGAL TIES FOR CHILDREN IN LGBT FAMILIES

A legal parent is someone who has the right to physical custody over children, who has the right to make decisions on their behalf, and who has financial responsibility for their support. For children, having legal ties with both parents also provides access to healthcare and medical decision-making for children, ensures financial support if a parent dies or becomes disabled, and protects children should their parents' relationships dissolve (see "How Children Benefit From Legal Ties to Both Parents" on the next page).

When a child is born to, or adopted by, a married heterosexual couple, there are several sets of laws that help guarantee that a child is generally recognized by all 50 states as the legal child of both parents (See *Figure 5* on next page). By contrast, a child with LGBT parents faces a climate of uncertainty. A child awaiting adoption might be denied a forever home simply because the caring adults who want to adopt are a same-sex couple. A lesbian couple using donor insemination might find that the non-biological mother is a legal stranger to her child. Or, both mothers might be considered legal parents in one state, yet only one mother might be considered to be a legal parent in another. Finally, the federal government may not recognize both parents as legal parents even when the state in which the family lives does so.

Most families don't think twice about proving legal parentage, yet LGBT families encounter this concern throughout their lives. Not only may they be "legal strangers" to their children under the law, but they may also be asked to prove their parentage more frequently than other families. When they are unable to do so, it can place children's health and wellness in jeopardy by denying them health insurance or prohibiting both parents from making medical decisions for the child. Children can also be denied dependency benefits like Social Security when a parent is disabled or dies, and safety net services if their family faces economic crisis.

Because the lack of legal ties is at the very core of many of the challenges LGBT families face, this section of the report explains how this lack of legal ties occurs, beginning at the very first moment that a child joins the family.

Positive Parenting

The lived experiences of LGBT families vary widely and defy generalization. Indeed, despite the unique pressures LGBT families face, what is perhaps most remarkable about them is how much they are like other families and how much their children are like other children.

Despite misleading claims from those who oppose LGBT parenting, more than 30 years of rigorous social science research shows that children raised by LGBT parents are just as happy, healthy and well-adjusted as children raised by heterosexual parents. Additionally, nearly every major authority on child health and social services, including the American Academy of Pediatrics and the Child Welfare League of America, has determined that a parent's sexual orientation has nothing to do with the ability to be a good, effective parent.¹⁶

Opponents of LGBT parenting sometimes argue that children need both a mother and a father. Research does indicate that, all else being equal, children fare better with two parents than with only one, yet nowhere does this research indicate that the parents must be of different sexes. Indeed, the research cited by anti-LGBT advocates does not examine LGBT parents at all; it only compares children raised by two heterosexual parents with children raised by single parents. Where studies do compare two heterosexual parents to two parents of the same sex, research uniformly suggests that these children are similarly well-adjusted.

"A growing body of scientific evidence demonstrates that children who grow up with one or two parents who are gay or lesbian fare as well in emotional, cognitive, social, and sexual functioning as do children whose parents are heterosexual."

—Child Welfare League of America

Figure 5: Types of State Laws Designed to Provide Legal Ties and Protect Children

Who Laws Protect	Marriage and Relationship Recognition Laws	Foster Care Laws	Joint Adoption Laws	Second-Parent Adoption Laws	Donor Insemination Laws	<i>De Facto</i> Parenting Laws
Foster and Adoptive Families	✓	✓	✓	✓		✓
Families Using Assisted Reproduction	✓			✓	✓	✓
Blended Families	✓			✓		✓
Families Who Are Separating or Divorcing	✓		✓	✓	✓	✓

How Children Benefit from Legal Ties to Both Parents

Children with legal ties to both parents benefit in the following ways:

Health and Wellness

- Children can receive health insurance coverage through either parent's employer, reducing potential reliance on public health programs.
- Both parents can consent to medical treatment for their children, reducing the risk that children won't receive timely care.
- Both parents can visit their children in medical facilities and provide comfort and support during hospitalization.

Dependency Benefits When a Parent is Injured, Becomes Disabled or Dies

- Children can receive Social Security death and disability benefits (OASDI) should either parent die or become disabled, and other programs which provide important family economic stability during crisis.
- Children can inherit from both parents, even if a parent dies intestate (without a will).
- Children can have the ability to sue for the wrongful death of either parent.
- Legal ties with both parents can prevent the child from being placed with distant relatives or in foster care if one parent dies or can no longer provide care.

Protections When Parents' Relationships Dissolve

- Children may be entitled to monetary child support from either parent, depending on the financial circumstances of the family.
- When both parents have legal ties to their children, family courts can award custody and visitation to the most suitable parent (or jointly to both parents) based on the best interests of the child, as opposed to having to exclude one parent from consideration.

Out-of-State Relocation Puts Children's Legal Ties and Benefits at Risk



Nikki and Jody met while attending college in Florida. For the next 13 years, they played the “pronoun game” and finally decided they needed to be open with their families and friends, especially since they were ready to start a family. Even though Florida doesn’t legally recognize the relationships of lesbian couples, they had a church marriage in 2005 and celebrated with more than 150 friends and family members.

The following year, Nikki became pregnant with their daughter, Chloe, and also became very sick. In the rush to the emergency room, the couple accidentally left their “paperwork” – including

durable and medical powers of attorney – in their other car. When the intake nurse asked Nikki about her next of kin, she pointed to Jody. The nurse said, “You won’t have any problems with me, but there is no law protecting you here.” She added, “If you don’t have the necessary paperwork, someone could give you problems.” Now that Nikki and Jody were raising a family, that incident triggered discussions about whether Florida was the best place to raise their family.

In late 2006, New Jersey passed civil union legislation, and the couple decided to move to New Jersey for Chloe’s birth so that they could enter into a civil union and have both mothers listed on her birth certificate. To further protect their family, Jody also completed a second-parent adoption. The judge told the couple, “I’m sorry that you have to go through this additional step. But, I’m happy to congratulate you and tell you that your family is legally protected.”

Although at first Nikki was nervous about joining playgroups or attending classes with her daughter, everyone they met was friendly and welcoming. Chloe’s grandfather relocated to New Jersey to be near them and for the next several years, Nikki and Jody raised Chloe surrounded by friends and family. It wasn’t until the couple started planning for their second child that they had a hostile encounter. The doctor at the local fertility clinic refused to help the couple because the sperm donor they wanted to use was gay. The couple was upset by this and Nikki flew back to Florida to receive help from the same clinic she had used for Chloe.

In 2010, Nikki and Jody welcomed their second daughter, Belle, into the family and, as with Chloe, both mothers were listed on her birth certificate. Yet, before Jody could complete a second-parent adoption, Jody lost her job. The family couldn’t afford the necessary legal fees and faced with unemployment, the couple moved to South Carolina to live near Nikki’s mom.

South Carolina doesn’t allow marriage for same-sex couples or recognize Nikki and Jody’s existing New Jersey civil union. The couple worries about their own lack of relationship recognition and about the lack of a second-parent adoption decree for Belle, even though Jody is listed on her birth certificate. Under South Carolina law, it is likely that Jody is a legal parent to Chloe, but a legal stranger to Belle because she hasn’t yet adopted her. The couple has thought about moving back to New Jersey, but they can’t financially afford to move.

Jody has been fortunate enough to be able to add both Chloe and Belle to her health insurance, but because her employer doesn’t offer domestic partner benefits, Nikki is uninsured. Regardless of where they live, Nikki and Jody have made sure that the girls are happy, healthy and well-adjusted. “All of the work we have done to protect our daughters is well worth it,” according to Nikki. “It’s obvious every time we tuck their smiling faces into bed or I hear Chloe proudly claim her two mommies to her classmates or friends. We will do anything for them or jump through any hurdle to ensure they live happy and fulfilled lives.”

Source: Movement Advancement Project Interview with Family

Table 1: Securing Legal Ties to Children
LGBT Parents May Remain Legal Strangers to Their Children

Path to parenthood	Options for securing legal ties to children	Explanation of option	Will parents' legal ties hold across state lines?	Do both parents have legal ties from birth/outset?	Is option broadly available to same-sex couples?
Child joining an adoptive home	Individual or single adoption ¹⁷	An individual becomes a legal parent of a child who is not biologically related. This only makes one adult the legal parent so it is generally not a good option for couples.	✓	N/A Only establishes legal ties to one parent	✓ Available to both LGBT and heterosexual single adults; some states restrict when unmarried and cohabiting or prioritize married couples.
	Joint adoption by couples	Both members of a couple simultaneously become the legal parents of a child who is not biologically related to either.	✓	✓	✗ Banned in some states and unclear availability in many more
Child living in a blended family	Stepparent adoption	An individual adopts the child of his/her spouse or domestic partner without terminating the rights of the existing parent. This requires the consent of the existing parent. Unlike other forms of adoption, a home study is generally not required.	✓	N/A	✗ Only available in states with comprehensive relationship recognition ¹⁸
Child born from donor insemination	Parental presumption for recognized couples	Both the biological mother and her spouse or partner are presumed or deemed to be the legal parents upon the birth of the child. The presumption is automatic (the couple does not need to fill out forms, pay court fees, etc.)	✗ Not necessarily, especially if the couple travels to a state which does not recognize their relationship	✓	✗ Only available in states with comprehensive relationship recognition
	Consent-to-inseminate provisions	The spouse or partner of a birth mother obtains legal parentage by demonstrating that she consents to the birth mother's insemination and intends to function as a parent to the child. This option does not require the couple to be in a legally recognized relationship. The cost and effort required are lower as well—it only requires signing legal papers or in some cases demonstrating consent through behavior.	✗ Not necessarily, since this mechanism does not normally involve an official parentage judgment in court	✓	✗ Not available in most states
Child born from surrogacy	Surrogacy statute or adoption or parentage judgment for intended parents	A woman who is not the intended mother of a child carries and gives birth to the child on behalf of the intended parents. The woman may use her own egg, a donor egg or the intended mother's egg.	? Surrogacy law is complex and varies by state	? Surrogacy law is complex and varies by state	✗ Not available or secure in many states

Table 1: Securing Legal Ties to Children (continued)
LGBT Parents May Remain Legal Strangers to Their Children

Path to parenthood	Options for securing legal ties to children	Explanation of option	Will parents' legal ties hold across state lines?	Do both parents have legal ties from birth/outset?	Is option broadly available to same-sex couples?
Other paths and options (These stopgap legal remedies can be applied in multiple scenarios)	Second-parent adoption	An individual adopts the child of his/her spouse or partner without terminating the rights of the existing parent. Requires the consent of the existing parent. Unlike a stepparent adoption, a home study is often required.	✔	✘ This process can take several months and cannot take place before the child is born	✘ Not available in many states
	De facto parenting law	An individual who has functioned as a parent of a child gains full or limited parenting rights to that child. Occasionally, this may occur with the consent of the legal parent (allowing the second parent to gain legal parentage without terminating the rights of the existing parent). Alternatively, in cases of relationship dissolution, a court may award <i>de facto</i> parenting rights against the wishes of the existing parent. Results in a court judgment.	✔ Likely, however this has rarely been tested in practice	✘	✘ Not available in many states
	Parentage judgments	A court issues a judgment that an individual is a legal parent of a child. The judgment must be based on statutory or common law, most commonly a parenting presumption, a consent-to-inseminate law, or a <i>de facto</i> doctrine.	✔ Usually, however judgments based on the relationship status of same-sex parents could face challenge in other states	✘ A few states offer pre-birth parentage judgments, but this is an exception rather than a rule	✘ Generally only available in states with laws that recognize same-sex couples or parents

The table above (*Table 1*) and subsequent discussion provides an overview of the various mechanisms through which LGBT parents can attempt to secure legal ties to their children. The table includes a brief explanation of each mechanism, whether it is broadly available, whether it establishes parenting ties from the outset (that is, from the moment the child is born or joins the family) or only after a delay. It also highlights whether the parent's legal ties to his or her children will be secure across state lines.

LGBT Foster Families

An estimated 14,000 foster children, or 3% of all foster children, currently live with lesbian or gay foster parents.¹⁹ Same-sex couples who become foster parents are more likely to be families of color than heterosexual married foster parents.²⁰

An estimated 105,000 gay men and lesbians are adoptive parents to a child under the age of 18.²¹ Research suggests LGBT parents may be more willing than heterosexual parents to adopt children with special needs, who are among the most difficult to place.²²

Yet, as of 2010, there were more than 408,000 children in foster care and 107,000 of these were awaiting adoption.²³ Research clearly shows that children who lack permanent homes have added risk of major difficulties in transitioning to a healthy adulthood. However, despite the importance of permanency, there is a significant shortage of quality homes for children, and children may face years of instability before they are adopted. Of the 107,000 children waiting to be adopted in 2010, 59% had been waiting more than two years while 16% had been waiting more than five years for a permanent home.

States in need of adoptive homes for waiting children consistently report that one of the biggest obstacles is finding interested, qualified families who want to adopt.²⁴ One source of potential adoptive homes is LGBT parents. Research suggests that over one-third of lesbians would like to have children, as would more than half of gay men.²⁵

In some cases, prospective parents face state laws that are ambiguous or that formally restrict fostering by same-sex or unmarried couples (see *Figure 6*). These restrictions mean longer waits or the denial of forever homes for children in the child welfare system. In other cases, hostile, unwelcoming or unknowledgeable agencies and frontline workers may reject LGBT applicants even if state law or policy is silent about, or supportive of, LGBT adoption and fostering. Discrimination against transgender prospective parents can be a particular problem. The result is needless harm to children who may face years of state care, frequent relocation to different foster homes and the absence of stability in their lives.

States that Protect Fostering by LGBT People

Six states have policies protecting foster parents from discrimination on the basis of sexual orientation (the California and Rhode Island laws also protect foster parents on the basis of gender identity).

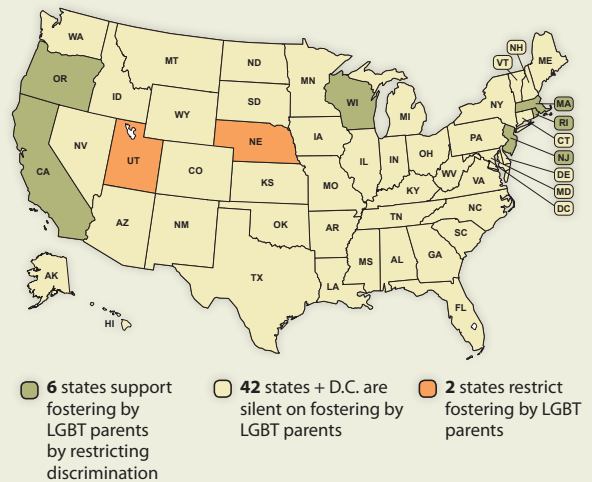
States that Restrict Fostering by LGBT People

Laws and policies in two states restrict or ban fostering by LGBT adults. Nebraska's Department of Social Services issued a directive that those "who identify themselves as homosexuals" will not be granted foster licenses.²⁷ The directive appears to apply both to lesbian and gay individuals and same-sex couples. Utah bans fostering by unmarried cohabiters and gives preference to married couples over single adults.²⁸

States where LGBT Foster Parents Face Uncertainty

Some state laws create uncertainty by explicitly enabling child welfare agencies to reject LGBT foster and adoptive parents. North Dakota law broadly permits agencies to refuse to "perform, assist, counsel, recommend, facilitate, refer, or participate in a placement that violates the agency's written religious or moral convictions or policies."²⁹ Similar "conscience clause" legislation was just signed into law in Virginia.³⁰ In Illinois, which recognizes civil unions, an amendment to existing law has been introduced several times that

Figure 6: Foster Care



How Does the Current Law Create Problems?

- ✘ Restrictions on foster care means children may be denied a family home setting, and those awaiting adoption face a decreased chance of finding a permanent, loving home.

Limitations

- ✘ Legal and policy restrictions, as well as significant bias against LGBT parents, can still obstruct placement.
- ✘ The foster care system disproportionately impacts families of color. Children of color are more likely to be removed from their homes (even when their family circumstances are similar to those of white children); once in foster care, they stay there longer.²⁶

would allow religiously-based child welfare agencies to decline an adoption or foster family application from residents in civil unions if serving them would violate the agency's "sincerely held religious beliefs."³¹

A Child's Best Interests? Judicial Prejudice Uproots a Baby Girl from Loving Parents

Jeff Riedel/Contour by Getty Images



Kathryn Kutil and Cheryl Hess struggled to keep their family together after a court denied them custody because they were lesbians.

When "Baby Girl C" was born to a drug-addicted mother in 2007, the infant tested positive for cocaine and oxycodone and was removed from her mother's custody. At two weeks old, the West Virginia Department of Health and Human Resources placed her in the home of a lesbian couple, Kathryn Kutil and Cheryl Hess, who were approved by the state for both foster care and adoption. But a month later, a temporary legal guardian appointed by the court filed a motion to remove the girl from the only home she'd known because the guardian believed she should not be raised in a "homosexual home" because it would be "detrimental to the child's overall welfare and wellbeing."

Although joint adoption by unmarried couples is not explicitly permitted in West Virginia, one of the women intended to adopt Baby Girl C, and both would have if allowed. The court guardian acknowledged that her current home appeared "to be comfortable and physically safe." Also, according to court records, "all the evidence indicates that they have done very well and have provided very well for" the girl.

Despite this, in late 2008 a Circuit Court ordered that one-year-old Baby Girl C be uprooted from her home and placed in a new, temporary home of a married heterosexual couple who expressed interest in adopting her. The court found that "it is in the best interest of children to be raised by a traditionally defined family, that is, a family consisting of both a mother and a father." The court based its decision, in part, on the fact that a same-sex couple could not jointly adopt, and a child should not be "locked into a single-parent adoption."

Shortly after the child was removed from her home, the married couple decided not to adopt her and returned her to the care of Kathryn and Cheryl, supported by an emergency court suspension of the removal order. Ultimately, the West Virginia Supreme Court of Appeals permanently overturned the removal order from the Kutil-Hess home, but not before the family was put through the harrowing ordeal of a forced separation and over a year of anxious waiting to learn whether they could continue living together as a family.

Adapted from *State ex rel. Kutil v. Blake*, 223 W. Va. 711, 679 S.E. 2d 310 (2009).



Most state regulations however simply do not address fostering by LGBT individuals or same-sex couples. The remaining states and D.C. generally leave it up to each individual agency to approve or deny foster parents based on the agency's evaluation. As a result, the experiences of LGBT individuals and couples vary from state to state and even within a state. An individual or couple approved by one agency might be denied by another in the same state or even the same jurisdiction.

Even where legal protections exist for LGBT foster and adoptive parents, an agency worker or a judge who disapproves of LGBT parents may find unrelated rationales to deny a placement. The story of "Baby Girl C," who was temporarily wrenched from her home in West Virginia because of a judge's decision that she should be raised by a "traditionally defined family," provides an example of the need for legislation to provide clear guidance and eliminate opportunities for individual bias to inflict harm on children (see above).

Individual and Joint Adoption by LGBT Families

An adoption results in a court-issued "adoption judgment," and establishes a legal parent-child tie protected by the U.S. Constitution's "full faith and credit clause." This should mean that other states must respect the judgment, which secure and protects families nationwide, yet this firm legal principle has come under increasing attack. For example, a federal court recently upheld the right of Louisiana to name only one parent on the birth certificate of a Louisiana child adopted jointly by gay parents from New York (see sidebar on the next page).³²

Adoptions are also widely understood by people working in schools, hospitals and other institutions where recognizing parent-child relationships can be crucial, which further strengthens their use as a mechanism for establishing a legal parent-child tie when no blood relationship exists.

Is the Protection of the Full Faith and Credit Clause Disappearing?



In October 2011, the U.S. Supreme Court declined to hear a case challenging Louisiana's policy that prevents unmarried adoptive parents from both being listed on a child's birth certificate. A gay couple, Oren Adar and Mickey Smith, had jointly adopted a child in New York and were seeking an accurate birth certificate for their Louisiana-born son.

Adar and Smith adopted their Louisiana-born son in 2006 in New York and a judge issued an adoption decree. When the couple attempted to get a new birth certificate for their child, in part so Smith could add his son to his health insurance, the registrar's office told him that Louisiana does not recognize adoption by unmarried parents and would not issue it with both adopted parents' names.

With representation from Lambda Legal, the parents filed suit and although they won at the trial court and on their initial appeal, a full panel of the U.S. Court of Appeals for the Fifth Circuit reversed the decision and the U.S. Supreme Court declined to hear the case. Kenneth D. Upton, a supervising senior staff attorney at Lambda Legal, said in a statement, "...The Supreme Court is leaving untouched a dangerous Fifth Circuit Court of Appeals ruling that carves out an exception to the Full Faith and Credit Clause of the U.S. Constitution and to the uniformly recognized respect for judgments that states have come to rely upon."

Source: Lambda Legal



Adoption laws vary by state.³³ All states currently allow single individuals who are living alone to adopt, and no state has an outright ban on adoption by LGBT individuals.³⁴

For same-sex couples wishing to start a family, joint adoption allows a couple to simultaneously adopt a child, creating legal ties to both parents from the outset. While all states allow married heterosexual couples to adopt jointly, same-sex couples (and unmarried heterosexual couples) face uncertainty in many states and jurisdictions and state laws effectively ban same-sex couples from adopting jointly in five states (see *Figure 7* on the next page).³⁵ In addition to one outright ban on adoption by same-sex couples, some states bar individuals from adopting if they are unmarried and living with a partner (sometimes called "cohabitating" or "cohabiting"), and some states give priority to married couples. These policies effectively ban or penalize adoption by same-sex couples, who generally cannot marry in their state. Even where states do not ban adoption by same-sex couples, LGBT parents in many states face discrimination from child welfare agencies and judges, who may block their ability to adopt based on personal views.

In the states that prohibit joint adoption by same-sex couples, one LGBT parent may try to adopt as a single person, but this leaves the child with only one legal parent.

From the very start, this lack of legal ties creates challenges for LGBT families.

States that Support Individual and Joint Adoption by LGBT Parents

Seven U.S. states (California, Maryland, Massachusetts, Nevada, New Jersey, New York and Rhode Island) have laws or policies protecting adoption applicants from discrimination on the basis of sexual orientation. A few of these states (California and Rhode Island) also include gender identity in these laws. The specific protections vary by state.

The Connecticut law explicitly allows consideration of the sexual orientation of prospective adoptive parents. While this means that, theoretically, LGBT people may face discrimination in placement decisions, the legal provision could also allow agencies to take into consideration the unique needs of an LGBT youth in need of an appropriate, loving home.³⁶

Seventeen states plus the District of Columbia (D.C.) have laws ensuring availability of joint adoption by same-sex couples statewide. This includes all 15 states and D.C. that offer the freedom to marry or comprehensive relationship recognition³⁷ and two additional states (Indiana and Maine) that offer joint adoption statewide by statute or court rulings.

Even within states the permit adoption by LGBT families, the lack of training about working with prospective LGBT parents may increase opportunities for bias and discrimination during application and qualification processes. In a recent study by the Evan B. Donaldson Adoption Institute, parents adopting from

the child welfare system, as opposed to other sources, were significantly more likely to mention societal stereotypes (46% vs. 27%) and prejudicial attitudes of adoption workers (43% vs. 24%).³⁸

Transgender parents can face particular difficulties. In most states, laws and policies are silent on the issue of fostering and adoption by transgender individuals, yet those who are visibly gender non-conforming (or who are “discovered” to be transgender during a home study or other background check) may face extreme hostility, even when adopting as individuals. Questions surrounding their gender and health can be particularly intrusive. Documents that flag someone as having changed their gender, for instance, can become weapons used to reduce the applicant’s chances of successful placement.³⁹

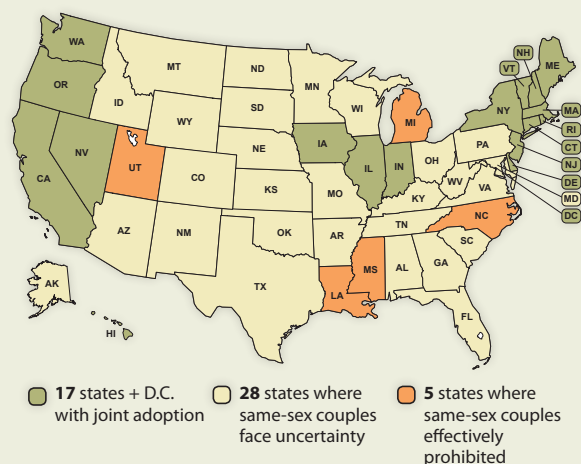
States that Hinder Individual and Joint Adoption by LGBT Parents

While no state bans adoption by LGBT individuals living alone,⁴⁰ some states have statutory or regulatory restrictions or practices that hinder the availability of adoption for LGBT applicants. For instance, Arizona and Utah both give preference to married adoption applicants, penalizing those who apply as individuals.

Five states have laws that prevent joint adoption by same-sex couples.

- **Utah.** In addition to giving preference to married adoption applicants over individuals, Utah bans adoption by anyone cohabiting in an unmarried relationship, whether heterosexual or LGBT. This effectively bans adoption by same-sex couples, who cannot marry in Utah. A similar law, approved by voters in Arkansas, was struck down by the state’s Supreme Court.
- **Mississippi.** This is the only state to explicitly bar only gay and lesbian couples from jointly adopting, with a statutory ban on “adoption by couples of the same gender.”
- **Louisiana and North Carolina.** These two states prohibit both heterosexual and same-sex unmarried couples from adopting, but unlike Utah, these states do not ban an individual living with an unmarried partner from pursuing a single-parent adoption.⁴¹
- **Michigan.** This state has an appellate court case ruling that only married couples can petition to jointly adopt. A 2004 attorney general opinion stated that same-sex couples married in other jurisdictions could not adopt jointly.

Figure 7: Joint Adoption by Couples



How Does the Current Law Create Problems?

- ✗ Restrictions on joint adoption means a child may be denied a forever home—or adopted by one parent but denied legal ties to the second parent.

Creates Secure Parenting Ties?

- ✓ Once granted, adoptions should be recognized by other states and the federal government.

Strengths

- ✓ Where available, joint adoption creates ties to both parents simultaneously.

Limitations

- ✗ Private adoptions can be expensive (\$2,500-\$40,000) and hard to obtain.
- ✗ Cost may render adoptions inaccessible to lower-income families, who are disproportionately families of color.

States where Prospective Same-Sex Adoptive Couples Face Uncertainty

In most states, there are no statutes or court cases addressing adoption by same-sex couples, creating uncertainty about whether these couples may adopt. Almost half of the “uncertain” states use outdated wording in their statutes that authorizes joint adoption by a “husband and wife,”⁴² but there is no definitive view on whether this necessarily excludes same-sex couples.⁴³ There is little or mixed case law in such states.⁴⁴ Adding to the sense of uncertainty, some states give agencies the right to consider sexual orientation and moral or religious concerns in placement decisions

Maryland Families Travel Across the State to Adopt



On any given “adoption day” in Baltimore City Circuit Court, the majority of couples with pending adoption petitions are lesbian or gay. Although Maryland’s adoption statute is silent about joint adoption for same-sex parents, Baltimore is the preferred jurisdiction for same-sex couples because of local procedures that allow all Maryland residents—even if they live hours away in different counties—to file adoption paperwork in the city of Baltimore.

Maryland family law attorneys almost universally tell their LGBT adoption clients to file in the city of Baltimore because it is the only jurisdiction where judges uniformly treat same-sex couples the same way they treat heterosexual couples. Baltimore judges have been doing so since 1996 when a written opinion was first issued. Although several other counties have since granted some LGBT adoptions, these jurisdictions are still considered to be a “roll of the dice” for LGBT parents.

Adapted from: Steve Kilar, “Baltimore Court is a Magnet for Same-Sex Parents,” Baltimore Sun, November 14, 2011.

(see earlier discussion about Virginia’s conscience clause legislation), while others give preference to married couples, which penalizes LGBT applicants.

While the actual experience of same-sex couples seeking to adopt can vary even in states where law and policy are clear, the situation can be even more unpredictable in uncertain states. Sometimes, couples have been rebuffed in court when trying to secure a joint adoption, while other times they may need to choose a supportive agency or jurisdiction because different judges interpret statutes or prior court rulings differently. The upshot is, that across the country, same-sex couples hoping to expand a family through adoption face the risk that if both partners will not be able to become the legal parents of their child.

Stepparent and Second-Parent Adoption

Stepparent adoption is a simplified process that can be used when the legal parent of a child marries or remarries. For LGBT families, restrictions on marriage in the majority of states limit the availability of stepparent

adoption, which is usually based on the legal married relationship of the parents. A few states offer what is called a “second-parent adoption,” which is similar to stepparent adoption but can be used by same-sex and unmarried heterosexual couples. As described below, second-parent adoptions can also be used more broadly than stepparent adoptions.

Stepparent Adoption

A stepparent adoption allows a new spouse to become a full legal parent without terminating the rights of the first parent.⁴⁵ It aims to give permanent legal and financial protections to children who rely emotionally and economically on an adult caregiver who has joined the family. Usually, the procedures for a stepparent adoption are streamlined and simpler than for other types of adoptions and do not require a home study, though laws vary by state. The simplicity of this process for heterosexual couples makes this one of the most common kinds of adoption in the U.S.⁴⁶

LGBT parents who form blended families that include children from earlier partnerships and marriages may likewise need to seek legal ties to protect their children.⁴⁷ However, because stepparent adoption generally requires the parents be married, it is only available to same-sex couples in states where they can marry or enter into a civil union or domestic partnership. In most states, an LGBT adult who acts as a stepparent cannot form legal ties to the children they are parenting. Additionally, such LGBT stepparents⁴⁸ may be denied rights that some states grant to non-adoptive stepparents in certain circumstances, such as the ability to petition for custody or visitation after a breakup, or to sign authorization forms for their children and stepchildren.⁴⁹

Second-Parent Adoption

Similar in many ways to a stepparent adoption, a second-parent adoption allows the partner of a legal parent to adopt that parent’s child while leaving the first parent’s legal rights intact. Unlike a stepparent adoption, a second-parent adoption does not require the parents be married. This makes a second-parent adoption an option even in states without comprehensive relationship recognition for same-sex couples, though in practice, only a handful of states offer this solution statewide.

A second-parent adoption also varies from a stepparent adoption in a number of other important ways. First, although it can be used by blended LGBT

are secure nationwide. Put differently, where available, a second-parent adoption can be a remedy to parenting law's failure to otherwise recognize LGBT parents.

Unfortunately, second-parent adoptions are generally more expensive and intrusive than a stepparent adoption and take both money and time (ranging from several months to over a year, often including a home study). Families may be unable to afford to secure legal ties for the second parent or face delays due to cumbersome procedures and home study requirements. As a result, children can still be left without legal ties to one parent.

States that Support Stepparent or Second-Parent Adoption by Same-Sex Couples

In the 15 states and D.C. that offer the freedom to marry or comprehensive relationship recognition, a same-sex partner can seek a stepparent (or equivalent)⁵⁰ adoption (see *Figure 8* on previous page). Note that the term "stepparent" traditionally applies only to married people; however, same-sex couples in comprehensive domestic partnerships or civil unions may also be able to use stepparent adoption processes to adopt their children.

In addition to the 15 states and D.C., where stepparent adoption can be accessed by LGBT families, Colorado, Indiana, Maine, Montana and Pennsylvania also provide a mechanism for second-parent adoptions.⁵¹ In these states, a statute or binding court judgment has established that petitions for these adoptions are permissible. In some cases, the adoptions are granted based on explicit second-parent adoption law, while in others, they involve the application of stepparent adoption law.

States where Same-Sex Couples Face Restrictions or Uncertainty

In the remaining 30 states, there is no statewide mechanism to ensure that same-sex partners can become legal parents using stepparent or second parent-adoption. And, in six states, law, policy or a court decision also specifically renders second-parent adoption unavailable: Kentucky, Nebraska, North Carolina, Ohio, Utah and Wisconsin.⁵²

Even in the absence of statewide availability, many of these states have granted second-parent adoptions in some jurisdictions. In other states, there is no clear statute or court precedent for second-parent adoptions, making the prospect of getting one unknown.⁵³

Adoption and a Welcoming Community in Texas



Christopher and Richard describe themselves as "just your ordinary family - we live on a cul-de-sac, go to church with Richard's parents, take a yearly trip to visit Christopher's mother, and have our daughter in a Christian preschool." According to Christopher, "When I look at other parents at Sophia's preschool, they are just like us. In many ways, we have more in common with them than with our single gay friends."

When Christopher and Richard relocated to Texas from Illinois because they could more easily afford to buy a home, be closer to family, and raise children, they were still worried about whether it would be difficult to adopt. Not only were their fears unfounded, but Child Protective Services made it surprisingly easy to adopt their daughter, Sophia.

Each county in Texas differed in its willingness to allow same-sex couples to adopt, but the state adoption agency worked closely with them to ensure that they could both establish legal ties to Sophia. Although they weren't able to adopt in the county where they live, they could do so in a nearby county. Worried that they might not be able to adopt jointly, Christopher adopted Sophia first, and then Richard completed a second-parent adoption. While Christopher's company granted him paternity leave to take care of Sophia, who was just four days old, Richard's company didn't offer such leave - to gay or heterosexual men - even though they do offer domestic partner benefits.

Although Christopher believes that their family was the first gay family in their community, within a year of Sophia's enrollment in their church preschool, the school, of their own initiative, changed their forms from "Mother/Father" to "Parent 1/Parent 2." The pediatrician's office has done so as well. According to Christopher, "I didn't push them for the changes. I just crossed out Mother and put Richard's name. I guess over time they realized that their forms needed to be updated."

Christopher and Richard are much like many of their neighbors. Richard now stays home and takes care of Sophia while Christopher's job supports the family. They take trips across the country, have playdates with their daughter's friends, and spend lots of time with their extended Texas family.

Donor Insemination

Each year in the United States, an estimated 30,000 babies are born using donor insemination, where a woman conceives using sperm donated by someone she may or may not know.⁵⁴ When a child is conceived by a married heterosexual couple using donor insemination, the child is automatically considered the legal child of both the mother and her consenting husband, even though the husband is not biologically related to the child. The law's automatic recognition that the husband is a legal parent is known as a "presumption of parentage,"⁵⁵ and generally extends only to couples in legally-recognized relationships such as a marriage or civil union.

Parental Presumption

Unlike with heterosexual couples, when a lesbian couple has a child using donor insemination, the non-biological mother is considered a legal stranger to her child in most states (see *Figure 9*). She is a "presumed parent" only if she lives in one of a minority of states that offer marriage or comprehensive relationship recognition (though in a few states she might be able to establish legal ties after the fact through another legal route such as a second-parent adoption which was described above).⁵⁶

A presumption of parentage requires no court judgment but is instead a legal assumption derived through a state statute. This makes it automatic and free in states that apply the presumption to lesbian mothers. However, lesbian couples face one additional and major obstacle: The Constitution's "full faith and credit" clause only requires states to honor one another's court judgments—such as an adoption judgment or parentage judgment. It does not require that they honor other states' statutes, such as a parental presumption based on statute.⁵⁷ This is particularly risky for LGBT parents who have a presumption of parentage due to their marriage (or equivalent) to a same-sex partner, and who later move to a state that does not recognize same-sex relationships. For example, even if two mothers are recognized as legal parents in New Hampshire, if the family moves to (or even travels to) another state, one mother might lose legal standing. For this reason, attorneys consistently advise same-sex couples to secure their parenting ties with a second-parent adoption (discussed above) or court-based parentage judgment (discussed later).

Figure 9: Donor Insemination Protections for Same-Sex Couples



■ Legal ties for children born to same-sex parents in a legally-recognized relationship. (14 states + D.C.)

★ Legal ties for children born to same-sex parents irrespective of parents' marital status. (3 states + D.C.)

□ 35 states lack clear mechanisms for securing legal ties

How Does the Current Law Create Problems?

- ✗ The lack of legal recognition for the non-biological parent in most states denies children the security of legal ties to a parent who has raised them since birth.

Creates Secure Parenting Ties?

- ❓ Parenting ties based on parentage presumptions and consent-to-inseminate statutes may not hold across state lines.

Strengths

- ✓ When granted, the presumption of parentage is automatic and free, and applies at birth.
- ✓ Inclusive consent-to-inseminate laws also create two legal parents upon the baby's birth, in a manner that is highly accessible (free or low-cost and easy to obtain). These laws do not require the couple to be in a legally-recognized relationship.

Limitations

- ✗ The presumption of parentage requires couples be in a marriage or equivalent relationship.
- ✗ Some states granting legal parentage to both parents under these laws still do not list both parents on the child's birth certificate.

This challenge occurs for same-sex couples because the presumption of parentage is based on the legal relationship of parents to each other, and the majority of states do not recognize the relationship of a same-sex couple. Thus, a same-sex couple may be considered married in New Hampshire but legal strangers in another state. While New Hampshire may honor the parenting presumption that flows from that relationship, another state may not.

Consent-to-Inseminate Provisions

In addition to laws that create the presumption of parentage, many states also have “consent-to-inseminate” provisions in laws that define when and how to grant parentage to the spouse (or in a few instances, to the partner) of a birth mother using donor insemination. Generally, these provisions grant legal parentage when two criteria are met. First, the birth mother must consent to her partner or spouse becoming the child’s parent, generally in writing. Second, the spouse or partner of the birth mother must demonstrate intent to parent the child. Unfortunately, most of these statutes are written in gendered terms and only refer to “men” or “husbands.” In most states, the law is not yet clear about how these statutes apply to same-sex couples.

Consent-to-inseminate provisions can protect children by providing full, legal parenting ties to the non-biological parent. This creates safeguards for the entire family in states that offer such protections. For example, consider a heterosexual couple that has a baby using donor insemination but is now in the throes of divorce. If the state has no law clarifying the husband’s parental status, the mother could attempt to deny him custody or visitation by challenging his parentage (since he is not biologically related to the child) or the husband could attempt to deny responsibility for the child (claiming he never intended to parent a child who was “not his.”) Consent-to-inseminate laws help prevent such complicated scenarios by documenting the parentage intent of the couple and granting parenting rights and responsibilities accordingly.

Children in LGBT families need these protections too, and for lesbian couples such laws can provide a way for the non-biological mother to become a legal parent. Yet, even when a lesbian spouse or partner is recognized as a legal parent under parental presumption or consent-to-inseminate provisions, that legal recognition may not hold across state lines.

States with Parental Presumption or Consent-To-Inseminate Laws that Recognize Same-Sex Spouses or Partners

In 14 of the 15 states and D.C. with marriage or comprehensive relationship recognition (Iowa is the exception),⁵⁹ the law helps secure legal ties to both parents for children of same-sex couples in legally-recognized relationships when they have a child using donor insemination (see *Figure 9* on the previous page). Only three states and D.C. pro-actively extend these provisions, by statute or court ruling, to same-sex couples irrespective of marital status. However, trial courts elsewhere may, on a case-by-case basis, apply a consent-to-inseminate provision to lesbians, as well as issue a parentage judgment based on a finding of consent to parent.

- D.C. passed a law in 2009 that allows the partner of a birth mother to become a legal parent by signing a consent form, whether or not the couple is in a marriage or domestic partnership. The law places the names of both parents on the birth certificate.⁶⁰
- New Mexico passed a law giving parental status to the female partner of a woman who gives birth using donor insemination if both parties indicate consent, without the need for a court judgment. However, the law makes no provision for issuing a birth certificate with the name of the non-biological mother as a legal parent.⁶¹
- Oregon has an appellate court ruling that applied its donor insemination provisions to same-sex couples (even though the statute itself only refers to a consenting “husband”). The court ruling ensures that the same-sex partner of a birth mother can be also deemed a parent with legal ties to her child.⁶²
- The state of Washington revised its parentage act in 2011 to apply to lesbian couples. The law now says: “The parent-child relationship is established by... the person’s having consented to assisted reproduction by his or her spouse or domestic partner” under circumstances prescribed by specific regulations.⁶³

States That Do Not Grant Parental Presumption or Apply Consent-To-Inseminate Laws to Same-Sex Spouses Or Partners

Many of the states that have not applied consent-to-inseminate provisions to same-sex couples still have some laws on donor insemination, yet neither statutory or case law explicitly provides recognition for same-sex couples, leaving same-sex couples and their children facing uncertainty.

The Iowa Anomaly: State Allows Marriage for Same-Sex Couples Yet Refuses to Recognize Them as Parents



In April 2009, Iowa became the fourth state to legalize same-sex marriage, following an Iowa Supreme Court's unanimous decision.⁵⁸ The Court upheld a District Court's ruling that an Iowa statute limiting civil marriage to a man and woman was unconstitutional and that there was no important governmental interest in denying civil marriage licenses based on sexual orientation. Newly empowered lesbian and gay couples in Iowa began to marry, and Heather and Melissa Gartner were among the many couples who took their vows.

While married, Heather Gartner gave birth to Mackenzie, their first daughter in the fall of 2009, who was conceived by insemination from an anonymous donor. When Heather and Melissa received a birth certificate listing only Heather as a parent, they requested an updated certificate listing both spouse's names. The Iowa Department of Public Health denied their request on the grounds that Melissa was not the biological mother, even though state law permits a birth certificate to list the husband of a woman using donor insemination as the second parent (though the husband is not a biological parent). In May of 2010, Lambda Legal filed suit on behalf of Mackenzie Gartner to require the Department of Public Health to list both spouses as parents on the birth certificate. In early January 2012, the District Court ordered the state to provide an amended birth certificate listing both spouses, but the Iowa Department of Health has appealed the ruling.

Like the Gartners, Jessica and Jennifer Buntmeyer were married in Iowa in 2010. They met while serving in Iraq with the Army Reserve, and, immediately after their honeymoon, began the process of in vitro fertilization. Using an anonymous donor, Jennifer's egg was fertilized and embryo was implanted in Jessica's womb, giving both mothers a biological connection to their child. In October, 2011, Jessica felt their baby, Brayden, stop moving and he died in utero at the hospital, his umbilical cord wound around his neck.

On the fetal death certificate form, both parents' names were included, yet when the Buntmeyers received the certificate of fetal death in January 2012, someone had removed Jennifer's name and identifying information. After several attempts with no response to get the certificate corrected, Lambda Legal filed a lawsuit on behalf of the Buntmeyers in February, 2012. Currently, Iowa is the only state offering comprehensive relationship recognition for same-sex couples to fail to respect "parental presumption" in birth and death certificates of children.

Source: Lambda Legal

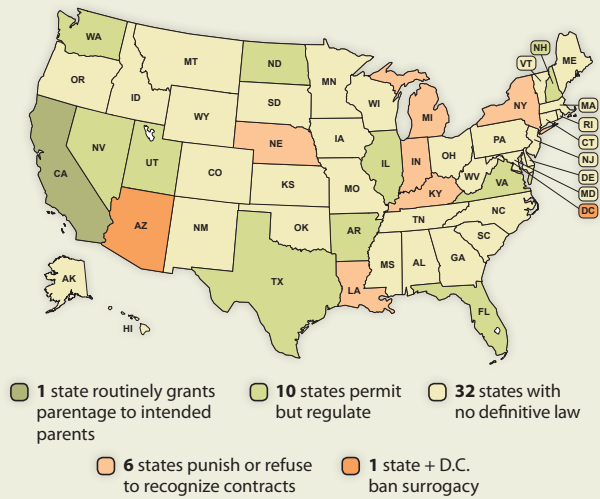
In Iowa and the 35 states that do not recognize the relationships of same-sex couples, the lesbian partner of a mother giving birth using donor insemination is likely not presumed to be a parent. The partner would therefore need to pursue other mechanisms to establish parentage when available, or she will remain a legal stranger to her child.

Surrogacy

Surrogacy is an arrangement in which a woman carries and delivers a child for another couple or person. Generally a woman is impregnated with another woman's fertilized egg and gives birth to a biologically unrelated child who will be raised by others.⁶⁴

Surrogacy law is complicated regardless of whether the intended parents are a heterosexual or same-sex couple (see *Figure 10* on the next page). For children who

come into the world with the help of a surrogate, the current patchwork of state laws creates needless confusion and uncertainty. Determining parentage for couples using a surrogate can be complicated for both married heterosexual and same-sex couples. Some states have laws or court rulings designed to make parental determination clear and to avoid protracted custody battles, but where such laws are not in place, problems can ensue. To avoid contested claims to parentage and harrowing lawsuits, parties involved in surrogacy normally execute contracts spelling out parenting rights for all involved (i.e., who relinquishes those rights and who obtains them). However, many states do not honor such contracts. Other states prohibit the use of contracts or have policies or practices of ignoring what private contracts say. This can make it nearly impossible for a same-sex couple considering surrogacy to plan a family with the certainty that the couple will be able to secure legal parentage of the children.

Figure 10: Surrogacy**How Does the Current Law Create Problems?**

- ✘ The lack of legal clarity can result in protracted custody battles and can deny children ties to one or both intended parents.

Creates Secure Parenting Ties?

- ❓ Surrogacy law is complex and varies by state. Parentage is generally secured through an adoption judgment.

Strengths

- ✔ Surrogacy allows those who would otherwise not be able to have biological children to have a child who is genetically related to one or both parents.

Limitations

- ✘ Surrogacy is very expensive (\$100,000+) and therefore inaccessible to most Americans, particularly for families of color, who are more likely to be lower-income or living in poverty.
- ✘ Intended parents often cannot secure parentage rights until after the child is born.
- ✘ Some surrogacy laws include restrictions that can make them inapplicable to same-sex couples.

Contracting with a surrogate parent can also be extraordinarily expensive. A couple having a baby using a surrogate can easily expect to pay over \$100,000 in legal, medical, surrogate and other fees. The enormous expense involved in using a surrogate not only makes it an inaccessible option for the vast majority of Americans, but also disproportionately inaccessible to families of color.⁶⁵

In most states where surrogacy is allowed, intended parents using surrogacy must wait until the child is born to obtain a court judgment (either of parentage or adoption) deeming them the legal parents of their new child.

De Facto Parenting and Parentage Judgments**De Facto Parenting Law**

In some cases, a child who has received care and support from someone other than a legal parent can become a legally-recognized dependent based on what is known as “*de facto*” parenting law. A “*de facto* parent” is someone other than a legal parent who, for reasons other than financial compensation, formed a child-parent relationship in which he or she shared (usually at least equally) in primary childcare responsibilities. This can be any person who acts as a parent in a child’s life and meets certain criteria, including same-sex parents, grandparents, stepparents, aunts, uncles or other loved ones.

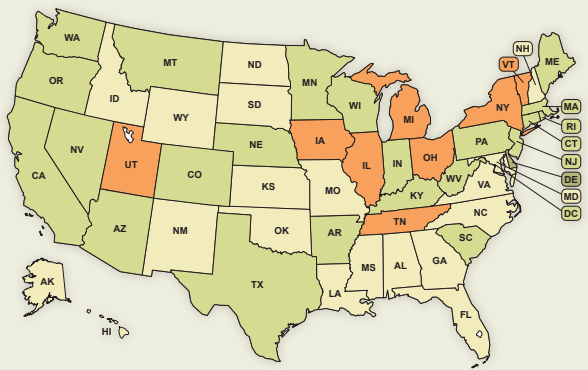
The growing state recognition of *de facto* parenting is one promising avenue for recognizing the contributions—and thus the rights and obligations—of those who have functioned as parents. Twenty-three states plus D.C. allow courts to consider *de facto* parents when determining visitation or custody (see *Figure 11* on the next page). These protections help children in LGBT families and also protect children living in other types of family structures (such as children reared by grandparents, other relatives, or close family friends.). This type of protection can be especially important within families of color, where children are more likely to be raised by someone other than a biological parent.

De facto parenting law is usually based on common law resulting from a judge’s interpretation of a state’s general parentage statute, and it is most frequently invoked in cases of relationship dissolution or a custody dispute. Although many of the states in *Figure 11* have granted *de facto* parents visitation or custody, only Delaware has a statute that, similar to a second-parent adoption, allows same-sex couples to proactively extend full parenting rights to a non-legally recognized parent based on *de facto* status and the legal parent’s consent.

Parentage Judgments

Parentage judgments are court orders in which a judge makes a determination of full legal parentage based on existing parentage statutes or case law. They are issued primarily when a parent wants to secure a

Figure 11: "De Facto" Parenting



How Does the Current Law Create Problems?

✘ Patchwork of laws across states creates deep uncertainty for LGBT families.

Creates Secure Parenting Ties?

? May do so when *de facto* status is recognized by a court and a court judgment is secured.

Strengths

✔ Protects children and families even when the parents are not in a formal relationship.

Limitations

✘ Not available from birth; often the result of a custody or visitation dispute.

✘ Can be costly and time-consuming, requiring the family to appear in court and pay legal fees.

Figure 12: Parentage Judgments



How Does the Current Law Create Problems?

✘ The lack of legal clarity can result in protracted custody battles and deny children ties to one or both intended parents.

Creates Secure Parenting Ties?

? Usually, though judgments based on the relationship status of same-sex parents could face challenge in other states, and some legal experts feel second-parent adoptions offer more security.

Strengths

✔ Helps ensure parents' legal ties to children; should hold across state lines.

Limitations

✘ Parentage judgments require a court appearance and some knowledge of existing parenting law, making obtaining such a judgment intimidating or out of reach for many families.

✘ Not likely to be a remedy for couples living in states with parentage law that is hostile to LGBT parents.

✘ Judgments are often not available from birth.

Summary

Throughout the nation, there is a patchwork of archaic and outdated laws that do not adequately accommodate contemporary family structures. As a result, children living in LGBT families are much more likely to have legal ties to only one parent than children living with heterosexual married parents.

The next section of this report highlights how this lack of legal recognition forms the basis of many social, emotional, and economic consequences for families. These consequences compound over time, leaving LGBT families, and their children, at risk.

court judgment in addition to statutory recognition in order to protect his or her parental status from legal challenges, especially across state lines.

Parentage judgments may be issued either at the request of a couple who is raising, or planning to raise, a child together, or by a court in a dissolution case to assign the parental rights and obligations of custody and child support. Although these judgments usually create secure parenting ties, they are not available from birth, they require court appearances, and may offer less protection than second-parent adoptions (See Figure 12).

HOW LACK OF LEGAL RECOGNITION HARMS CHILDREN

Substantial problems can arise when children lack legal ties to the adults who are raising them—whether they are grandparents, aunts or uncles, LGBT parents, or others.

In the previous section, we detailed how, in many states, existing state laws and policies leave children living in LGBT families and other diverse family configurations unprotected and without legal ties to the adults who raise them. This section of the report highlights the specific harms to children caused by outdated state laws, including:

- Children’s health and wellness can be compromised.
- Children can be wrested from a parent when relationships dissolve.
- Children can be denied protections when a parent dies or becomes disabled.
- Children can be denied access to critical government safety net programs.

Children’s Health and Wellness in Jeopardy

Antiquated parenting laws mean LGBT parents may be unable to obtain health insurance for their children, be barred from making medical decisions for children, and may be denied the ability to visit their children in the hospital.

Restricted Access to Health Insurance

The majority of American workers obtain health insurance as an optional benefit through their employer or the employer of a family member.⁶⁶ If an LGBT parent is not legally recognized as the parent of the children being raised in his or her family, that parent may be unable to obtain benefits for the child under employer-sponsored plans. When LGBT parents cannot enroll children in an employer-sponsored plan, they must obtain private health insurance or go without.⁶⁷

Given the inconsistent extension of health insurance benefits and higher health insurance costs, LGBT adults have much lower rates of health insurance coverage than heterosexual adults. Data show that same-sex couples are two to three times less likely to have health insurance than their heterosexual counterparts, and researchers believe that children raised by LGBT parents are also less likely to have health insurance, particularly within LGBT families of color.

Tackling The Disparity

Two Million Children Denied Basic Protections



Protections	Children with LGBT parents	Children with married heterosexual parents
Loving, stable homes	🏈	🏈
Access to parents' health insurance	X	🏈
Access to quality child care and early education	X	🏈
Access to safety net services for struggling families	X	🏈
Medical decision-making rights for both parents	X	🏈
Legal ties to both parents in cases of divorce	X	🏈
Financial protections following death of a parent	X	🏈

Source: Movement Advancement Project, Family Equality Council and Center for American Progress, "All Children Matter," October 2011.

Limits on Medical Decision-Making and Hospital Visitation

With few exceptions, minors are not considered capable of making major medical decisions on their own and are not allowed to sign legal documents designating decision-makers. As a result, state law generally requires hospitals and medical providers to obtain a legal parent’s consent for medical treatment. A non-legally recognized LGBT parent (or anyone who functions as a “*de facto*” parent, such as a family friend or extended relative raising a child) will often be unable to make routine or emergency medical decisions for a child. Even when such families draw up legal documents, parents may not always have the paperwork on hand when a medical emergency arises. If a child living in an LGBT family is rushed to the hospital, a non-legally recognized parent raising the child could also be denied the ability to visit with and comfort her child until a legal parent arrives to grant permission.⁶⁸

Jenny's Perspective on the Financial Toll of Health Insurance for her Illinois Family



"Dionne and I have been together for 11 years. We went on a journey together to become parents. We have both undergone fertility treatments to ultimately build our family. Dionne had our first child, a son, who is almost 2 years old now. She is now carrying our twin girls, due in February. When we began this journey, we didn't realize how extreme our financial situation would become. Dionne was laid off during her fertility treatments with our first child. I had to add her to my health insurance, which caused a much larger financial burden that we realized. I, like many other LGBT couples, pay taxes for Dionne's health coverage and all of her benefits are paid with post-tax dollars, which, when added to what I pay for the children's health insurance, cuts my net pay to just half of my gross. We are struggling to make ends meet and have had to borrow to stay afloat; we worry that we may not be able to pay the bills next month."

—Jenny R. from Illinois

When Their Worst Fears Became Reality: A Story from North Carolina



From the minute Carrie and Lisa met, they knew that they wanted to expand their family together. Lisa already had two sons from a previous marriage, so it made sense for Carrie to be the one to get pregnant. In the midst of planning for the arrival of their daughter, Zoë, Carrie and Lisa never questioned that they would both be Zoë's parents. But after talking to friends who had also had children, the couple realized that their options were limited in North Carolina.

A lawyer told them that they could try to get a second-parent adoption, which would allow Lisa to establish a legal connection to Zoë, but that it could cost between \$5,000 and \$7,000 and that depending on the state's political climate, it could be negated. The couple decided they didn't want to go through the rigorous process and spend so much money only to have it undone. In December 2010, second-parent adoption was invalidated by a decision of the North Carolina Supreme Court.

Just before Zoë's 2nd birthday, Zoë spent two weeks in the Pediatric Intensive Care Unit with a life-threatening illness. Hospital staff requested copies of Lisa's health care power of attorney to allow her to stay in the ICU with Carrie and Zoë, and the couple's lawyer was able to quickly fax it to the hospital. Carrie wondered how she would have made it through those two agonizing weeks if they had not had legal representation and Lisa had not been allowed to remain by her side. Even more, Carrie worried about the effect that Lisa's absence could have had on Zoë's recovery.

Source: Movement Advancement Project Interview with Family

Children Wrested From Parents When Relationships Dissolve

Family law strives to protect the best interests of children when awarding custody and visitation—and when determining child support. When children cannot rely on the law to honor their ties to their parents, the consequences can be devastating. For example, custody may not be awarded appropriately, a court may sever a child's ties to a sole remaining parent, or a child may not receive needed child support.⁶⁹

When families break up, custody battles can ensue, leaving courts to make decisions about several key aspects of a child's care including physical custody, legal custody,

financial obligations and visitation rights. Under these circumstances, a child without legal ties to both parents is at risk.

There are many circumstances in which a child is raised by someone who is not a legal parent. For example, a child might be raised by a grandparent, uncle or aunt, non-recognized LGBT parent, or other *de facto* parent. However, some state laws only allow legal parents and stepparents to file for custody or visitation rights. The result is that children may be cut off from someone who has raised them since birth, and who may be the most appropriate caregiver. On the flip side, the legal system usually also cannot require a functioning a parent who is not a legal parent to provide child support, putting the child at economic risk.

Ohio Mother Unfairly Denied Custody of Her Daughter

Reprinted with permission from Michele Hobbs.



Michele Hobbs (right) with her daughter, Lucy, and her partner, Amanda Broughton. The Ohio Supreme Court ruled that Michele had no parental connection to Lucy despite the existence of a co-parenting agreement and other legal documents naming Michele as a parent.

“We were known as a family to our church, to our friends and to our neighbors,” Michele said. After the couple split, Kelly denied Michele any contact with their daughter. Michele filed paperwork requesting permanent shared custody. As she told a local news station, “I have no legal rights to see my daughter because I’m not the biological parent. Nonetheless, I am Lucy’s mom and she knows me as mama. The fact is I’m Lucy’s mom and someone has taken that away from her.” The first court granted shared custody, but an appeals court ruled that because the couple had never entered into a written, shared custody order, Michele had no legal ties to the child. In July 2011, the Ohio Supreme Court also ruled that Michele did not have permanent parental rights. As Lambda Legal attorney, Christopher Clark, explained, “The court disregarded the overwhelming evidence that Ms. Mullen agreed to parent Lucy with Ms. Hobbs ‘in every way.’” Regrettably, the decision severs a parent-child relationship between Lucy and the person she knows to be her mother. All Ohio families should be alarmed by this, as a child with a non-biological parent could be taken from their mom or dad in the event of separation.”

Adapted from Lambda Legal, *In the Matter of L.K.M.*, <http://www.lambdalegal.org/in-court/cases/in-the-matter-of-lkm.html>; KYPost.com, “Same-Sex Custody Dispute Could Rewrite Ohio Laws,” February 18, 2010. http://www2.kypost.com/dpp/news/local_news/Same-Sex-Custody-Dispute-Could-Rewrite-Ohio-Laws; Jacob Baynham, “Losing Lucy,” CityBeat.com, March 3, 2010. <http://www.citybeat.com/cincinnati/article-20089-losing-lucy.html>.



Children Denied Protections When A Parent Dies or Becomes Disabled

The death or disablement of a parent can be devastating for a child, and children with a non-legally recognized parent face even greater trauma. As with custody decisions, if the legal parent dies or is no longer able to provide care, the other parent may be denied custody even if he or she has acted as a parent for the children’s entire life. And, if a non-legally recognized parent dies or becomes disabled, children can be denied Social Security benefits, inheritance, and the ability to sue for wrongful death.⁷⁰

One Parent Denied Custody when the Other Parent Dies

State laws on custody in case of death vary, and how a court ultimately rules in a custody decision will depend on state parentage law and the judge’s interpretation of both parenting rights and what is in the best interest of the child. In states with *de facto* parenting laws, courts may recognize

the same-sex partner of a deceased legal parent if that person shows that he or she has functioned as a parent. Not all states have *de facto* parenting laws, however, and some laws limit rights to visitation only. Some states also prioritize child placement with a legal parent, stepparent, grandparent or other relative, which allows little leeway for a judge to grant custody to an unrelated primary caregiver.

Children Denied Disability and Survivors Benefits

Although most people think of Social Security as a benefit program for older Americans, the Old-Age, Survivors and Disability Insurance (OASDI) program, administered by the Social Security Administration (SSA), provides more benefits to children than most other social programs.⁷¹ When a worker who is entitled to Social Security benefits becomes disabled, dies or retires, the worker and his or her spouse and unmarried children under the age of 18 may be eligible for benefits. Of the 4.3 million children receiving OASDI benefits, the majority of children (87%) receive benefits as a result of the disability or death of a parent.

After Fatal Accident Kills Mother of Five-Year-Old Boy, Court Tries to Deny Him Ties to Surviving Mother

Lawrence Pierce/The Charleston Gazette



Tina Burch was initially denied custody of the child she parented with her partner, Christina, after Christina was killed in a car accident.

When Christina Smarr and her life partner, Tina Burch, decided to have a child together, they agreed that Christine would carry the child. On Christmas Day 1999, Christine gave birth to a son, and she and Tina raised him along with Tina’s biological daughter. But in 2005, tragedy struck the family when Christine was killed in an automobile accident. Following Christine’s death, her parents sought custody of Tina and Christine’s boy. The family court, however, stated that Tina was the child’s “psychological parent” and awarded custody to her, with the grandparents getting visitation rights.

On appeal, a circuit court reversed the lower court’s ruling, denying Tina custody and removing the child from the home of his surviving parent. The West Virginia Supreme Court affirmed the original award of custody to Tina. “Simply stated,” the court said, “the child’s best interests would best be served by awarding permanent custody of [the child] to” the surviving mother.

Adapted from ACLU, “ACLU Applauds Child Custody Award For Surviving Lesbian Mom in West Virginia,” June 17, 2005.



Family Left Destitute After Being Denied Social Security Survivor Benefits



In 1998, Nicolaj (Nic) Caracappa was born through donor insemination to New Jersey couple Eva Kadray and Camille Caracappa. Eva gave birth to Nic, who was given Camille’s last name. Eva became a stay-at-home mom while Camille continued working as an oncology nurse. They consulted a lawyer about completing a second-parent adoption of Nic by Camille, but they wanted to wait until they had another child so they could adopt both children at the same time. Sadly, they never had a chance to bring another child home. When Nic was two years old, Camille left for work one day and never came home; she suffered a brain aneurysm and died the same day.

Eva applied for child Social Security survivor benefits for Nic. Those benefits—many thousands of dollars a year—are designed to compensate a child for the economic loss of a parent. The Social Security Administration denied Nic the benefits because Camille had not been Nic’s legal parent. Had New Jersey recognized Camille as Nic’s legal parent upon his birth, the two-year-old would not have been denied those benefits, and Nic’s loss of a parent would not have been compounded by economic catastrophe—the loss of his family’s entire income.

Adapted from Polikoff, “A Mother Should Not Have to Adopt Her Own Child,” pp. 266-7.

OASDI benefits provide important financial lifelines for children, particularly children of color. In 2008, Social Security benefits lifted more than 1 million children out of poverty. Unfortunately, OASDI uses a narrow definition of family, penalizing LGBT families in the following ways:

- Only the legal child of a worker is normally eligible for OASDI benefits. This means that children are denied benefits if a non-recognized parent dies, even if that parent was the primary wage earner in the family.
- Children with LGBT parents may face problems accessing benefits even when a legal parent dies. For example, if the legal parent is not a biological or adoptive parent (such as a parent with a parentage

judgment or parental presumption), current Social Security policy requires that all claims be referred to the Social Security Administration’s regional counsel, which can result in additional delays or denials.

Children Denied Inheritance and Ability to Sue for Wrongful Death

When a person dies, property titled in that person’s name becomes part of his estate. If that person created a legal document like a will or a trust before he died, then that document will generally guide the distribution of that person’s property, including money in bank accounts, and other property like real estate and cars. If that person did not create a legal document, which is common in as many as 65% of all deaths, then states use “intestacy” laws to determine what to do with the property.⁷²

Intestacy laws vary by state, but most use a narrow definition of family that excludes same-sex partners and children who lack legal ties to their parents. Since intestacy laws usually prioritize the surviving spouse of the person who died, and since same-sex couples cannot marry in most states, most same-sex partners cannot inherit money and property via these laws. If children do not have legal ties to the parent who has died, children also cannot usually inherit from them via intestacy laws, even if the parent provided for the children since birth. The net result is that if a non-recognized parent dies, all assets and inheritance can flow to distant relatives rather than the second parent or surviving children, leaving the family destitute.

In most states, the determination of which family members can sue for wrongful death follows the same lines as intestacy law—meaning that only legally-recognized family members have the right to sue for wrongful death when caused by circumstances like car and motorcycle accidents, medical malpractice, workplace accidents, unsafe products, and crimes. In these states, same-sex parents cannot sue for the wrongful death of the other parent, and children who are not the legally-recognized children of the person who died cannot sue either. A few states have broadened the definition of “legal standing” to include any individuals who were financially dependent on the person who died. In these states, same-sex partners and children who lack legal ties to their parents may be able to sue.

Because of insufficient legal protections, same-sex couples and other vulnerable families should execute documents that express the legal parent’s wishes in case of death, such as “an appointment of guardianship” to designate the other parent as the intended guardian in case of death or incapacitation of the legal parent. Yet these are far from perfect: they are expensive (see *Table 2* on the next page) and complicated to produce; many families are unfamiliar with them and their importance; and judges are usually not required to honor them.

Children Left with Nothing When a Loving Parent Dies



After spending twelve years together, Lucy and her partner, Carmen, split up. The couple’s two children, Julia and Jack, continued to live with Lucy, who is the children’s biological mother. Since Carmen couldn’t get a second-parent adoption in Georgia, Carmen had no legal connection to the couple’s children. Without legal recognition of their relationship, Lucy and Carmen were left to figure out the details of their separation on their own. As Lucy remembers, “We had to try to put our children first and have integrity in the process. It was really hard because there were no legal protections for either of us.” Carmen had no legal mechanism to remain connected to the children, and Lucy had no way to ensure she’d receive child support or alimony.

The two parents remained friendly, and Carmen stayed very close with the children, who called her “Cara.” In September 2010, Carmen was diagnosed with lung cancer, and she died in March 2011. Lucy and her two children – children that Carmen loved and helped raise – were excluded from the funeral, and told that the funeral was for “family only.” Not only has the family been emotionally devastated, they’re also facing financial struggles as a result of Carmen’s death. Even though Carmen continued to provide for her children after the break-up and through her illness, Carmen’s will and life insurance were contested by her family and the inheritance was taken away from Julia and Jack and given to Carmen’s parents.

Source: Movement Advancement Project Interview with Family.

A Connecticut Family Worries About Being Torn Apart



Joan and her wife, Lauren, live in Connecticut, where they are raising a 13-year old daughter Jess. Joan and Lauren parent as a team with Jess’s dad (Joan’s ex-husband), but Joan and Lauren have primary custody of Jess. When Joan divorced Jess’s dad, the mediator was unsure if Joan’s sexual orientation would impact the divorce or custody arrangement. He told her “This isn’t going to look good for you” and mentioned other cases where parents had lost custody because of they were gay or lesbian. While that didn’t happen, Joan remembers the fear and uncertainty that she faced during her divorce.

While the custody arrangement works well for Jess, Joan and Lauren, they worry about what would happen if something were to happen to Joan. Would Jess have to live with her dad and lose a connection to Lauren? The two women talk openly with their daughter about their concern—a devastating possibility for a teenager who should be concerned with school, friends, and her cheerleading competitions. But, according to Joan, Jess frequently tells the couple, often with a tone of anger, that she would do everything she could to stay living with Lauren in the home that she’s known for more than half her life. Joan and Lauren have drafted wills, and at the advice of attorney, Lauren would be the trustee of the financial resources Jess would receive if Joan were to die. Still the family worries about being torn apart.

Source: Movement Advancement Project Interview with Family

Judy Shares the Story of Tough Times for Their Wisconsin Family




Trina and I have been together in a committed relationship for 20 years, and I am the biological parent of our two children: Jason who is 14 years old and Sophie who is 8 years old. For our family, Trina (who is the non-biological parent) was always the primary breadwinner until she was diagnosed with Multiple Sclerosis. When Trina became disabled, our family household income dropped to less than 1/3 of our previous income. When she could no longer work, we paid for the cost of her COBRA coverage, but we couldn’t afford to continue to pay for insurance for me and the children. We finally applied for government help but our family was denied assistance. During the application process, a case worker turned us over to the “fraud” department because she didn’t believe our children were conceived via artificial insemination.

I wish I could say that was the only time we’ve been treated unfairly because of our non-traditional status, but both Jason and Sophie continue to face bullying at school. The first time it happened, they did what they were supposed to do and told a teacher, but nothing was done. In Jason’s words, “There is no point in saying anything because they don’t do anything to stop it. It just makes things worse to talk.”

Even with all of our challenges, Jason and Sophie are wonderful children and the joy of our lives. When saying our blessings before meals, our sweet Sophie almost always says, “Thank you for blessing us with our wonderful, loving family.” I think that says it all.

– Judy G. from Wisconsin

Table 2: The Cost of Legal Protections

	Documents	How Much They Can Cost
	Adoption through public channels, including court orders and new birth certificates	\$1,200-\$4,000
	Wills, Living Wills, and Powers of Attorney	\$500-\$3,000
	Domestic Partnership Agreements and Co-Parenting Agreements	\$300-\$350
	Appointment of Guardian	\$325-\$500
<i>De Facto</i> Parenting Judgments	\$2,500-\$10,000	

Children Denied Access to Safety Net Programs

Millions of children are living in poverty in America. Like all struggling families, LGBT families living in poverty often rely on support from local and state governments who administer both their own programs, and federal safety net programs.

Some government programs and laws use a broad definition of “family” or “household” that looks at the actual interconnectedness of people (such as the extent to which individuals share economic resources like food or housing). Most programs, however, use narrow definitions of family that fail to recognize same-sex couples or children not legally related to those seeking assistance. This narrow definition of family can mean that LGBT and other families are unfairly denied benefits and protections. For example, if a two-parent, one-child household is only counted as a two-person household (excluding one LGBT parent), the family may be denied assistance that would be granted a three-person household, or may receive lower levels of assistance. Alternatively, some families face economic penalties should the parents formalize their relationships with each other or their children. Like other families relying on safety net programs, LGBT families may face choices between the legal protections that stem from creating the strongest possible family ties – and losing vital benefits that help families meet basic needs.⁷³

A California Mom Can't Get Help for Her Family of Four



We are a blended family that sometimes worries about how to put food on the table for our kids. We get no assistance because although I support four people on my income, they will only count three, our kids and me, so we do not fit into their mold of who needs help. The kids are not secure legally if something ever happens to me and that scares me. I wish for one day that I didn't have to worry and could know my kids will stay with their other mom when I part this earth.

– Lisa T. in California

Summary

The lack of legal recognition for LGBT families harms children. Children may go without health insurance or a parent may be limited in making healthcare decisions for them. Children may be wrested away from the only parents they know when relationships dissolve or a parent dies or becomes disabled. They may be unable to access financial lifelines and safety net programs designed to support families during family crisis.

In addition to the concrete harms detailed above, when a child is not able to secure legal ties to both parents, that child may face a number of more subtle challenges. The day care may require that a parent be a legal parent to pick up her child. The elementary school may only allow one parent to sign permission forms or make educational decisions at parent/teacher conferences. A parent with legal ties may be the only one that can take a child to routine medical appointments, to the dentist, or to the orthodontist or make any required medical decisions during those visits. Because she may be denied decision-making authority for her child in emergency situations, a parent who does not have a legal relationship may fear traveling with a child, even just to visit a relative in an adjacent state.

This need not be the case. Comprehensive laws that secure legal ties between children and parents can be enacted in every state and provide much-needed protections for all children, including children living in LGBT families and children who are raised in other diverse families.

CONCLUSION AND RECOMMENDATIONS

Today's families are diverse. But regardless of how a family is formed or structured, the needs of children are the same: stable, loving homes; economic security; and health and well-being.

States can implement a variety of legislative solutions to ensure that children living in LGBT families have protections designed to meet these needs. The solutions should first and foremost be focused on the best interests of children. Laws should also create legal ties to both parents, and make sure that the process of securing those ties is affordable and not overly burdensome. Legislation should also provide a mechanism for written documentation of relationships, and whenever possible, also provide a court judgment to ensure that the family legal ties are secure and hold across state lines. Finally, state legislation should eliminate the potential for bias and discrimination by providing clear definitions and guidelines for those interpreting the law.

The table on pages 29-31 provides a list of specific recommendations for state-level policymakers. Appendix 1 provides existing legislative models designed to support lawmakers who are crafting legislation. Appendix 2 provides a state-by-state summary of the status of current laws and suggests areas for improvement. Taken together, these provide a framework for state policymakers to eliminate the majority of state-level family law disparities that pose harm to children being raised in LGBT families. Many of these recommendations would also help other children, including children in foster care, children awaiting adoption, children being raised by unmarried parents, and children being raised by extended family members.

Detailed Recommendations Table

RECOMMENDATIONS
LEGALLY RECOGNIZE LGBT FAMILIES
Legalize marriage for same-sex couples. <ul style="list-style-type: none">• Marriage for same-sex couples would help strengthen legal ties of the entire family, including those between a child's parents and between the child and his or her parents.• Married LGBT parents would be recognized as legal parents upon a child's birth, and would also have access to joint and stepparent adoption.
Legally recognize families by passing comprehensive parental recognition laws at the state level to fully protect children living in LGBT families. <p>State parentage and adoption statutes should allow joint adoption by LGBT parents, recognize LGBT parents using assisted reproduction in the same manner as heterosexual parents, and provide avenues such as second-parent adoption and <i>de facto</i> parenting to allow children to gain full legal ties to their parents. This includes revising parentage and adoption statutes to allow joint and second-parent adoption, parental presumption, and legal recognition of <i>de facto</i> parents and the intended parents of children born using assisted reproduction. As detailed in the specific recommendations below, passing comprehensive parental recognition laws would also:</p> <ul style="list-style-type: none">• Help provide forever homes to children in foster and government care• Ensure that a child with same-sex parents enjoys the security of legal ties to both parents• Hold parents financially and legally accountable for providing for their child• Help prevent awarding of custody that is not in the child's best interests in cases of parental death or relationship dissolution• In the case of death or disablement of a parent, protect children's rights to Social Security Survivor and disability benefits, ensure appropriate awarding of inheritance, and allow children to sue for wrongful death of a parent• Help provide economic security by accurately counting LGBT parents for the purposes of safety net programs• Enhance LGBT family health and well-being by ensuring all parents have full access to hospital visitation, medical decision-making, and health insurance benefit for their children.• Ensure that both parents are recognized for everything from picking up a child from daycare to signing school forms
FOSTERING AND ADOPTION LAWS
Pass or amend state foster and adoption laws and regulations to allow unmarried and same-sex couples to jointly foster and adopt children. <ul style="list-style-type: none">• Laws and policies should specifically affirm the rights of same-sex and unmarried couples to jointly adopt children (which may involve changing laws and policies that currently specify that a "husband and wife" may jointly adopt and updating the language to make it neutral with respect to gender and marital status).• Possible models for legislative/regulatory action include: California's Foster Care Non-Discrimination Act, New York's 2010 statute allowing unmarried partners to adopt jointly, and regulations in Oregon stating that unmarried couples may petition to adopt jointly.
Repeal or overturn discriminatory state law restricting adoption and fostering by same-sex or unmarried couples. <ul style="list-style-type: none">• Nebraska and Utah currently restrict fostering. Louisiana, Mississippi, Nebraska, North Carolina, and Utah prohibit joint adoption. Kentucky, Nebraska, North Carolina, Ohio and Utah deny access to second-parent adoption. Arizona gives preference to married heterosexual couples who are jointly adopting.• States should also strike language from statutes or regulations that explicitly authorizes the consideration of moral or religious beliefs as reason to discriminate in placement decisions (North Dakota and Virginia, for example, allow agencies to deny placement based on religious or moral beliefs).

DONOR INSEMINATION/ASSISTED REPRODUCTION LAWS

Pass or amend donor insemination/assisted reproduction laws to clarify the parenting rights and obligations of all parties.

- Laws should allow same-sex and unmarried couples who intend to parent together to establish legal parentage of their children.
- These laws should include consent-to-inseminate provisions that make clear the rights and obligations of intended parents and of donors.
- Regulatory fixes or official statements should recognize intended parents by ensuring that offices of vital statistics place the names of both parents on birth certificates. For example:
- The New Mexico donor insemination statute currently does not have a birth certificate provision, which could be resolved with a regulatory fix.
- Iowa, where same-sex couples can marry and should therefore receive parental presumption, has no donor insemination statute and the attorney general has refused to place the names of two women on a birth certificate.

PARENTAL PRESUMPTION LAWS

Pass or amend state parental presumption laws to be neutral with respect to sexual orientation and marital status.

- Even where a couple does not or cannot marry or otherwise formalize their partnership, parenting law can determine intent (and thereby distinguish who should be considered a legal parent).
- This can be done through consent and “hold out” provisions that allow a court to adjudicate whether someone has consented to parent or has functioned as a parent.

SURROGACY LAWS

Create or update surrogacy statutes to clarify parentage and avoid needless legal battles.

- Surrogacy law should clarify who is a parent; potential solutions include:
 - Legislation such as a bill introduced in Connecticut to allow intended parents using surrogacy to obtain a parentage finding and to be named on a replacement birth certificate.
 - Laws governing and facilitating the award of pre-birth parentage judgments, which are commonly granted in California and give judges the needed leeway to create parentage for intended parents of children born through surrogacy.

SECOND-PARENT ADOPTION LAWS

Pass or revise state adoption laws to permit second-parent adoption by same-sex or heterosexual partners, irrespective of marital status.

- Statutes should allow someone who intends to parent a child, and who has the permission of the legal parent, to gain parenting rights without terminating the rights of the legal parent.
- These laws should ensure that the same-sex or unmarried partner of a biological or adoptive parent can adopt without undergoing a home study, and in an affordable, streamlined manner (second-parent adoptions should be no more burdensome than stepparent adoptions and could conceivably be granted using the stepparent adoption process).
- States that have laws explicitly allowing second-parent adoptions include Connecticut, Colorado, Montana and Vermont.

DE FACTO PARENTING LAWS

Pass state laws allowing courts to recognize *de facto* parenting as a basis for full legal parentage.

- While an adoption is the most secure and widely recognized way to legalize a non-biological child-parent tie, states may also pass *de facto* parenting statutes which are similar to second-parent adoption statutes but result in a court judgment rather than an adoption judgment.
- These laws should allow those who show they have functioned as parents to seek not only custody and visitation rights but full parentage, so they may enjoy appropriate legal standing in the lives of children with whom they have formed a relationship, whether or not they have a biological or legal relationship to the children
- The 2009 *de facto* parenting law in Delaware provides a model:
 - Allows those who have functioned as (and assumed the role of) parents to become full legal parents (either with the consent of the legal parent or by a court judgment in the case of a custody dispute)
 - Is neutral with respect to sexual orientation and marital status
 - Can also be used for a wide variety of family configurations besides LGBT families, such as when a legal parent's sibling or close friend has functioned as a parent and the child's best interest is served by continuing and formalizing that relationship

PARENTAGE JUDGMENTS

Pass or amend state laws clarifying when courts have the power to issue parentage judgments awarding full parenting rights and obligations.

- Courts may issue a parentage judgment based on a parental presumption, consent-to-inseminate provision, *de facto* parenting doctrine or law, or in other circumstances.
- For example, some courts have issued pre-birth parentage judgments for children born using assisted reproduction.

Appendix 1: Existing Legislative and Regulatory Models

Several states have created legislative solutions designed to protect children and provide families with greater security. Language from those state statutes is provided below and can serve as starting points for states that are revising regulations or legislation in the areas of foster care, joint adoption, second-parent adoption, consent-to-inseminate/assisted reproduction, and *de facto* parenting.⁷⁴

FOSTER CARE

CALIFORNIA

The California Foster Care Non-Discrimination Act, which went into effect in 2004, codified non-discrimination protections for LGBT foster and adoptive parents while also clearly articulating that placement decisions would continue to be based on the child's best interests.

It is the policy of this state that all persons engaged in providing care and services to foster children, including, but not limited to, foster parents, adoptive parents, relative caregivers, and other caregivers contracting with a county welfare department, shall have fair and equal access to all available programs, benefits, services, and licensing processes, and shall not be subjected to discrimination or harassment on the basis of their clients' or their own actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status.

Nothing in this section shall be interpreted to create or modify existing preferences for foster placements or to limit the local placement agency's ability to make placement decisions for a child based on the child's best interests.

Source: CAL. WELFARE & INST. CODE § 16013

RHODE ISLAND

In Rhode Island, state law requires the Department of Children, Youth and Families to implement foster care regulations that are consistent with the broad mandates of the state statute. The department has articulated a clear non-discrimination provision that is inclusive of both sexual orientation, and gender identity or expression (but not marital status). Although in Rhode Island, this statement is part of the implementing regulations for the Department, other states could also choose to include a similar non-discrimination statement directly in state statutory language (as did California, above, with different language).

The Department of Children, Youth and Families does not discriminate against individuals based on race, color, national origin, sex, gender identity or expression, sexual orientation, religious belief, political belief or handicap. The prohibition against discriminatory practices extends to the individuals, agencies, organizations and institutions the Department licenses.

Source: State of Rhode Island, Department of Children, Youth and Families, Foster Care and Adoption Regulations for Licensure, October 2011.

JOINT ADOPTION

NEW YORK

In 2010, New York enacted a broad joint adoption law that codified several state appeals court decisions permitting joint adoption of a child from foster care and clarified its availability for single unmarried adults, adult married couples, and unmarried intimate partners.

An adult unmarried person, an adult married couple together, or any two unmarried adult intimate partners together may adopt another person.

Source: Laws of New York, Domestic Relations, Article 7, Title 1 §110

Allowing joint adoption for unmarried couples (whether heterosexual or LGBT) is an emerging area of the law, both within the United States and internationally.⁷⁵

SECOND-PARENT ADOPTION**VERMONT**

Vermont's second-parent adoption statute is broad and requires only that the second parent be a "partner" of the legal parent and that adoption be in the best interests of the child:

Who may adopt or be adopted:

...If a family unit consists of a parent and the parent's partner, and adoption is in the best interest of the child, the partner of a parent may adopt a child of the parent. Termination of the parent's parental rights is unnecessary in an adoption under this subsection.

Source: VT. STAT. ANN. Title 15 A §1-102(b) (2004)

CONNECTICUT

The Connecticut statute is broader than Vermont's and allows a parent to agree in writing that any other person who shares parental responsibility for a child can adopt, although if the child is 12 years old or older, the child must also consent to the adoption.

The following persons may give a child in adoption:

Subject to the approval of the Court of Probate ... any parent of a minor child may agree in writing with one other person who shares parental responsibility for the child with such parent that the other person shall adopt or join in the adoption of the child, if the parental rights, if any, of any other person other than the parties to such agreement have been terminated.

If a child is 12 years old or older, an application for adoption "shall not be granted ...without the child's consent."

Source: CONN. GEN. STAT. §45a-424(3), §45b (1999)

DONOR INSEMINATION/ASSISTED REPRODUCTION

DISTRICT OF COLUMBIA

In 2009, the District of Columbia passed a law that allows an intended co-parent of a mother who is giving birth via donor insemination to be “conclusively” established as the parent of the child when the birth mother gives written consent. Even without written consent at the time of birth, intent to parent can subsequently be established if the birth mother and the intended co-parent lived together and publicly acted as if the child was their own.

Consent-to-Inseminate Language from District of Columbia Parentage Statute

A person who consents to the artificial insemination of a woman as provided in (1) or (2) (below) with the intent to be the parent of her child, is conclusively established as a parent of the resulting child:

(1) Consent by a woman, and a person who intends to be a parent of a child born to the woman by artificial insemination, shall be in writing signed by the woman and the intended parent.

(2) Failure of a person to sign a consent required by (1) (above), before or after the birth of the child, shall not preclude a finding of intent to be a parent of the child if the woman and the person resided together in the same household with the child and openly held the child out as their own.

Source: DC STAT § 16-909

Unlike the states of Washington, Oregon, and New Mexico (who also have consent-to-inseminate statutes), the District of Columbia also revised its birth certificate law to allow any two parents who have signed a notarized Consent to Parent form to be listed on the birth certificate:

For the purposes of the [birth] certificate, the consent to parent a child born by artificial insemination pursuant to § 16-909(e) shall be on a form prescribed and furnished by the Registrar that:

(A) Acknowledges consent by the mother and the intended parent to the insemination with the intent to be a parent of the child;

(B) Is signed under oath (which may include signature in the presence of a notary);

(C) Includes written notice that legal consequences, rights, and responsibilities as a parent arise from signing the consent; and

(D) Contains the full names, social security numbers, and dates of birth of the parents and child, the addresses of the parents, the birthplace of the child, and a statement indicating that both parents understand the rights, responsibilities, and consequences of signing the affidavit;

(E) If the father is not named on the certificate of birth, no other information about the father shall be entered on the certificate; and

(F) The surname of the child shall be the surname of a parent whose name appears on the child's birth certificate, or both surnames recorded in any order or in hyphenated or unhyphenated form, or any surname to which either parent has a familial connection....

Source: DC STAT § 7-205 (3)-(5).

There is a lack of clarity about whether status records such as birth certificates are protected by the Constitution's Full Faith and Credit clause which would allow them to create legal ties that hold across state lines. As a result, experts still advise couples who do not have an adoption or parentage judgment to obtain one when possible, even if both parents' names are listed on a child's birth certificate.⁷⁶

DE FACTO PARENTING STATUTES

DELAWARE

The Delaware *de facto* parent statute, passed in 2009, is the broadest in the country and allows the Family Court to confer full legal rights and responsibilities to an individual who has (1) had the support and consent of the child's parent or parents to establish a parent-like relationship, (2) exercised parental responsibility, and (3) acted in a parental role for enough time to establish a parent-child bond with a child. The statute can be applied regardless of the marital status of the child's parents, and does not require termination of any existing parental rights.

Establishment of parent-child relationship.

(a) The mother-child relationship is established between a woman and a child by:

- (1) The woman's having given birth to the child;*
- (2) An adjudication of the woman's maternity;*
- (3) Adoption of the child by the woman; or*
- (4) A determination by the court that the woman is a de facto parent of the child.*

(b) The father-child relationship is established between a man and a child by:

- (1) An un rebutted presumption of the man's paternity of the child under [another code section] of this title;*
- (2) An effective acknowledgment of paternity by the man under [another subchapter] of this chapter, unless the acknowledgment has been rescinded or successfully challenged;*
- (3) An adjudication of the man's paternity;*
- (4) Adoption of the child by the man;*
- (5) The man's having consented to assisted reproduction by a woman under subchapter VII of this chapter which resulted in the birth of the child; or*
- (6) A determination by the court that the man is a de facto parent of the child.*

(c) De facto parent status is established if the Family Court determines that the de facto parent:

- (1) Has had the support and consent of the child's parent or parents who fostered the formation and establishment of a parent-like relationship between the child and the de facto parent;*
- (2) Has exercised parental responsibility for the child as that term is defined [elsewhere in these statutes]; and*
- (3) Has acted in a parental role for a length of time sufficient to have established a bonded and dependent relationship with the child that is parental in nature.*

No discrimination based on marital status.

A child born to parents who are not married to each other has the same rights under the law as a child born to parents who are married to each other.

Consequences of establishment of parentage.

Unless parental rights are terminated, a parent-child relationship established under this chapter applies for all purposes, except as otherwise specifically provided by other law of this State.

DISTRICT OF COLUMBIA

The District of Columbia's statute contains a clear definition of *de facto* parents, but rather than granting full parenting rights, it limits *de facto* parents to the rights of legal custodians, including (1) decision-making about the child's health, education and welfare, (2) accessing health and education-related records for the child, and (3) speaking with and obtaining information from those who routinely interact with the child such as counselors and school officials. The statute allows for two differing definitions of "de facto parent" – one based on having acted in that capacity since the child was born or adopted by the child's parent, or someone who has over the past year (prior to seeking custody) acted in that capacity for a significant portion of that year.

"De facto parent" means an individual who either:

Lived with the child in the same household at the time of the child's birth or adoption by the child's parent;

Has taken on full and permanent responsibilities as the child's parent; and

Has held himself or herself out as the child's parent with the agreement of the child's parent or, if there are two parents, both parents;

OR

Who:

Has lived with the child in the same household for at least 10 of the 12 months immediately preceding the filing of the complaint or motion for custody;

Has formed a strong emotional bond with the child with the encouragement and intent of the child's parent that a parent-child relationship form between the child and the third party;

Has taken on full and permanent responsibilities as the child's parent; and

Has held himself or herself out as the child's parent with the agreement of the child's parent, or if there are two parents, both parents.

A de facto parent may file a complaint for custody or intervene in an existing custody dispute.

"Legal custody" is defined as legal responsibility for a child, including the right to:

Make decisions regarding the child's health, education, and general welfare;

Access the child's educational, medical, psychological, dental, or other records; and

Speak with and obtain information regarding the child from school officials, health care providers, counselors, or other persons interacting with the child.

"Physical custody" means a child's living arrangements. The term "physical custody" includes a child's residency or visitation schedule.

A de facto parent may file a complaint for custody of a child or a motion to intervene in any existing action involving custody of the child.

An individual who establishes that he or she is a de facto parent by clear and convincing evidence shall be deemed a parent for the purposes of actions involving [alimony, custody and child support].

Appendix 2: A State-By-State Summary of Existing Parental Recognition Laws

State parenting law is complex. Some states have laws protecting LGBT families and some states have laws which exclude or deliberately discriminate against LGBT families—and some states have a mix of both. More difficult still, in many states, the law is simply unclear. A patchwork of court decisions across different local jurisdictions can enable some LGBT parents within a state to create legal ties to their children, while, because these judicial solutions are frequently unavailable statewide, other families in the same state may be denied these protections. This requires families to attempt to secure ties in a climate of legal uncertainty, with fear of judicial bias, and at great financial cost. Below is a state-by-state list of current laws and actions that could be taken to improve parenting law in the following areas:

Marriage and Comprehensive Relationship Recognition: Laws that strengthen legal ties between two spouses or partners also strengthen legal ties between children and their parents. For example, when a child is born to a married couple or a couple in another equivalent legally-recognized relationship (such as a domestic partnership and civil union), that child is deemed or presumed to be the legal child of both parents upon a child's birth. Marriage and other recognized relationships also provide streamlined and consistent access to foster parenting, joint adoption, and stepparent adoption processes. The process of updating or amending state laws to extend the freedom to marry or comprehensive relationship recognition can be complex. Some states have broad laws and/or constitutional amendments that directly address both marriage and the recognition of other relationships; other states have narrow laws and/or amendments. As a result, we have separated marriage and other forms of comprehensive relationship recognition into two different categories. By doing so, we in no way intend to diminish the importance of extending freedom to marry as a primary objective, yet we also recognize that extending other forms of comprehensive relationship recognition may sometimes be a short-term pragmatic solution.

Foster Care and Joint Adoption: Foster care and adoption laws are designed to create permanency and help children find loving, forever homes. These laws and policies should be focused on the best interests of children and specifically affirm the rights of single and unmarried couples (irrespective of sexual orientation) to foster and/or jointly adopt children in addition to married couples. In some states, foster care and adoption laws are interwoven to create a seamless legal system that promotes foster-to-adoption processes, and in other states, laws for foster care and adoption are codified separately. As a result, we have separated foster care and adoption laws in two different categories.

Second-Parent Adoption: Laws and policies should allow someone who intends to parent a child or who is already parenting a child, and who has the permission of the legal parent, to gain parenting rights without terminating the rights of the legal parent. In states that have extended the freedom to marry or that have comprehensive relationship recognition, same-sex stepparents can usually adopt using simplified or streamlined stepparent adoption processes. In states that do not currently extend freedom to marry or relationship recognition, second-parent adoption processes can allow a second-parent to adopt using similar streamlined processes (though note second-parent adoption is unavailable in most states). Where available, second-parent adoption is a critical option for blended families headed by same-sex couples who live in states without relationship recognition. It is also a process that can be used to secure a child's ties to his or her parent when joint adoption, donor insemination, and surrogacy laws fail to do so effectively.

Donor Insemination: Laws should allow children born to couples using assisted reproduction to establish legal ties to both parents (whether biologically-related or not) beginning at birth. These laws should include consent-to-inseminate provisions that make clear the rights and obligations of intended parents and of donors. The laws should also allow parents to obtain legal proof of parentage, including a birth certificate for the child that includes the names of both parents, irrespective of the gender or marital status of the parents.

De Facto Parenting Laws: While an adoption is the most secure and widely recognized way to legalize a non-biological child-parent tie, states may also pass *de facto* parenting laws which result in a court judgment of parentage rather than an adoption judgment. These laws should allow those who show they have functioned as parents to seek not only custody and visitation rights but full parentage when in a child's best interests.

Note: The state-by-state recommendations that follow are not intended to serve as legal advice, and should not be used as such. The information is intended only to serve as child-centric reference points for advocates and policymakers who seek to amend, modify, or supplement existing laws impacting children and their parents, and by doing so, strengthen the ability of children to secure legal ties to both parents. While every attempt has been made to ensure the thoroughness and accuracy of the information, report co-authors and partners make no warranties or representations regarding its accuracy or completeness, and disclaim any liability for reliance on its use.



Alabama
Parental Recognition Laws
As of July, 2012

Marriage	Repeal Alabama Cont. Art. I, Sec. 36.03 and Code of Ala. § 30-1-19. Extend recognition of out-of-jurisdiction same-sex marriages and extend freedom to marry.
Relationship Recognition	Repeal Alabama Const. Art. I, Sec. 36.03. Pass comprehensive relationship recognition and recognition of out-of-jurisdiction equivalent relationships.
Foster Care	Amend existing laws to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for foster children and prospective and existing foster parents.
Joint Adoption	Amend adoption laws to explicitly allow joint adoption by unmarried couples and to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for prospective adoptive parents. See Ala. Code § 26-10A-5.
Second-Parent Adoption	Pass laws to explicitly permit an adult, with the consent of a legal parent, to adopt the legal parent's child, thus securing legal ties to both parents.
Donor Insemination	Amend existing consent-to-inseminate and parental presumption provisions of donor insemination laws to apply irrespective of gender or marital status of intended parents. See Code of Ala. § 26-17-101 et seq.
De Facto Parenting	Pass laws allowing family courts to recognize <i>de facto</i> parentage as a basis for visitation, custody, and for granting full parenting rights when in a child's best interests.



Alaska
Parental Recognition Laws
As of July, 2012

Marriage

Repeal Alaska Const. Art. I, and Alaska Stat. §§ 25.05.011(a) and 25.05.013. Extend recognition of out-of-jurisdiction same-sex marriages. Extend freedom to marry.

Relationship Recognition

Repeal Alaska Stat. § 25.05.013(b). Pass comprehensive relationship recognition and recognition of out-of-jurisdiction equivalent relationships.

Foster Care

Amend existing laws to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for foster children and prospective and existing foster parents.

Joint Adoption

Amend adoption laws to explicitly allow joint adoption by unmarried couples and to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for prospective adoptive parents. See Alaska Stat. § 25.23.020.

Second-Parent Adoption

Pass laws to explicitly permit an adult, with the consent of a legal parent, to adopt the legal parent's child, thus securing legal ties to both parents.

Donor Insemination

Amend existing consent-to-inseminate and parental presumption provisions of donor insemination laws to apply irrespective of gender or marital status of the intended parents. See Alaska Stat. § 25.20.045.

De Facto Parenting

Pass laws allowing family courts to recognize *de facto* parentage as a basis for visitation, custody, and for granting full parenting rights when in a child's best interests. See *Kinnard v. Kinnard*, 43 P.3d 150 (Alaska 2002). See also *Osterkamp v. Kattaryna Stiles*, 235 P.3d 178 (Alaska 2010).



Arizona
Parental Recognition Laws
As of July, 2012

Marriage	Repeal Ariz. Rev. Stat. Const. Art. XXX, §1 and Ariz. Rev. Stat. §25-1-101. Extend recognition of out-of-jurisdiction same-sex marriages and extend freedom to marry.
Relationship Recognition	Pass comprehensive relationship recognition and recognition of out-of-jurisdiction equivalent relationships.
Foster Care	Amend existing laws to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for foster children and prospective and existing foster parents. See also <i>In re Juvenile Action B-10489</i> , 151 Ariz. 335, 727 P.2d 830 Ariz. (Ct. App. 1986).
Joint Adoption	Amend adoption laws to remove marital preference, to explicitly allow joint adoption by unmarried couples, and to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for prospective adoptive parents. See Ariz. Rev. Stat. § 8-103.
Second-Parent Adoption	Pass laws to explicitly permit an adult, with the consent of a legal parent, to adopt the legal parent's child, thus securing legal ties to both parents.
Donor Insemination	Pass donor insemination laws that include consent-to-inseminate and parental presumption provisions that apply irrespective of gender or marital status of the intended parents. Note: Current law only recognizes consent to insemination as a determinant of responsibility for child support, not broader parenting rights. See Ariz. Rev. Stat. § 25-501.
De Facto Parenting	Amend Ariz. Rev. Stat. § 25-415 on <i>in loco parentis</i> visitation and custody to allow family courts to recognize <i>de facto</i> parents as a basis for joint custody. Expand to allow family courts to recognize <i>de facto</i> parents as a basis for granting full parenting rights when in a child's best interests. See <i>In Re the Matter of Thomas v. Thomas</i> , 203 Ariz. 34 (2002). See also <i>Egan V. Fridlund-Horne</i> , 221 Ariz. 229, 211 P.3d 1213 (Ariz. Ct. App. 2009).



Arkansas
Parental Recognition Laws
As of July, 2012

Marriage	Repeal Ark. Const. Amendment 83, § 1 and Ark. Code Ann. §§ 9-11-107(b), 9-11-109, 9-11-208(a). Extend recognition of out-of-jurisdiction same-sex marriages and extend freedom to marry.
Relationship Recognition	Repeal Ark. Const. Amendment 83, § 2. Pass comprehensive relationship recognition and recognition of out-of-jurisdiction equivalent relationships.
Foster Care	Amend existing laws to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for foster children and prospective and existing foster parents. See also <i>Arkansas Department of Human Services v. Sheila Cole</i> , 2011 Ark. 145 (Ark. 2011).
Joint Adoption	Amend adoption laws to explicitly allow joint adoption by unmarried couples and to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for prospective adoptive parents. See Ark. Code Ann. § 9-9-204 and <i>Arkansas Department of Human Services v. Sheila Cole</i> , 2011 Ark. 145 (Ark. 2011).
Second-Parent Adoption	Pass laws to explicitly permit an adult, with the consent of a legal parent, to adopt the legal parent's child, thus securing legal ties to both parents. Note: Although there is no specific law authorizing second-parent adoption, see Ark. Code Ann. §9-9-104(e)(10) on adoption information collection which references the inclusion of "whether the adoptive parent is a stepparent or second-parent adoptive parent."
Donor Insemination	Amend existing consent-to-inseminate and parental presumption provisions of donor insemination laws to apply irrespective of gender or marital status of the intended parents. Note: Separate provisions already exist for married and unmarried women conceiving via donor insemination however the consent-to-inseminate and parental presumption language is only present in the provision relating to married women and is not gender-neutral. See Ark. Code Ann. § 9-10-201.
De Facto Parenting	Codify existing case law on visitation for <i>de facto</i> parents and expand to allow family courts to recognize <i>de facto</i> parents as a basis for custody or granting full parenting rights when in a child's best interests. See <i>Bethany v. Jones</i> , 2011 Ark. 67 (2011).

	<p style="text-align: center;">California Parental Recognition Laws As of July, 2012</p>
Marriage	Repeal Cal. Const., Art I § 7.5. Repeal Cal. Fam. Code §308.5 and amend §308 to remove sections (b) and (c) to extend freedom to marry. Note: Positive laws already codified for recognition of out-of-jurisdiction same-sex marriages contracted prior to November 5, 2008 (see Cal. Fam. Code § 308(b)).
Relationship Recognition	Positive laws already codified for domestic partnerships and recognition of out-of-jurisdiction equivalent relationships (see Cal. Fam. Code §§ 297 through 299.6). Same-sex marriages contracted in California or other jurisdictions prior to November 5, 2008 are recognized as marriages. Same-sex marriages contracted on or after November 5, 2008 are recognized as domestic partnerships, having the same rights as granted to, and imposed upon spouses, with the sole exception of the designation of "marriage" (see Cal. Fam. Code § 308(c)).
Foster Care	Positive laws already codified explicitly prohibiting discrimination on the basis of sexual orientation and gender identity for foster children and prospective and existing foster parents. See Cal. Wel. & Inst. Code §§ 16001.9, 16003 and 16013.
Joint Adoption	Existing statutes allow married couples and couples in domestic partnerships to petition jointly for adoption. Codify California Department of Social Service policy and amend adoption laws to explicitly allow joint adoption by unmarried couples. Positive laws already codified prohibiting discrimination on the basis of sexual orientation and gender identity for prospective adoptive parents of foster children. Amend adoption laws to explicitly prohibit discrimination by licensed adoption agencies on the basis of sexual orientation or gender identity for prospective adoptive parents alongside existing protections already provided prohibiting discrimination on the basis of race, color or national origin. See Cal. Fam. Code § 8600 et seq., Cal. Wel. & Inst. Code §16013, Cal. Fam. Code § 8708, and All County Letter No. 99-100, Adoption by Unmarried Couples: Limited Consent and Limited Relinquishment Adoption, November 15, 1999.
Second-Parent Adoption	Codify existing case law to explicitly permit an adult, with the consent of a legal parent, to adopt the legal parent's child, thus securing legal ties to both parents. See <i>Sharon S. v. Superior Court</i> , 31 Cal. 4th 417, 73 P.3d 554 (2003). Note: Married California stepparents and domestic partners may adopt as stepparents (see Cal. Fam. Code § 9000).
Donor Insemination	Codify case law and amend existing consent-to-inseminate and parental presumption provisions of donor insemination laws to apply irrespective of gender or marital/domestic partner status of the intended parents. See Cal. Fam. Code §7600 et seq., <i>Elisa B. v. Superior Court</i> (37 Cal. 4th 108 (Cal. 2005)), and <i>Hecht v. Superior Court</i> 16 Cal. App 4th 836 (Cal. App. 2d. Dist., 1993). Note: Existing California laws apply to married heterosexual couples, married same-sex couples, and residents in domestic partnerships despite the fact that some laws may not be gender-neutral or specify broader application to those in recognized relationships outside of marriage.
De Facto Parenting	Positive law already codified allowing <i>de facto</i> parents of children who are dependents of the juvenile court to participate in dependency hearings (see rule 5.502(10) of the California Rules of Court). Codify and expand <i>de facto</i> doctrine to allow family courts to recognize <i>de facto</i> parentage as a basis for visitation, custody, and for granting full parenting rights when in a child's best interests. See also <i>Miller v. California</i> , 355 F.3d 1171 (9th Cir. 2004).

	<p style="text-align: center;">Colorado Parental Recognition Laws As of July, 2012</p>
Marriage	<p>Repeal Colo. Const. Art. II, Section 31. Amend Colo. Rev. Stat. §14-2-104 to remove sections (1)(b) and (2). Extend recognition of out-of-jurisdiction same-sex marriages and extend freedom to marry.</p>
Relationship Recognition	<p>Positive laws already codified for designated beneficiary agreements related to real and personal property transfers, inheritance, healthcare and medical decisions (see Colo. Rev. Stat. §§ 15-22-101 through 15-22-112). Pass comprehensive relationship recognition and recognition of out-of-jurisdiction equivalent relationships.</p>
Foster Care	<p>Positive laws already codified explicitly prohibiting discrimination on the basis of sexual orientation and gender identity for foster children (see Colo. Rev. Stat. § 19-7-101). Amend existing laws to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for prospective and existing foster parents.</p>
Joint Adoption	<p>Amend adoption laws to explicitly allow joint adoption by unmarried couples and to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for prospective adoptive parents. See Colo. Rev. Stat. §19-5-202.</p>
Second-Parent Adoption	<p>Positive law already codified allowing adoption when a child has a sole legal parent who wishes the child to be adopted by a specified second adult. Remove home study requirements for second-parent adoption upon written and verified consent by the legal parent(s) and amend adoption laws to include expedited hearings for second-parent adoptions similar to those that exist for stepparent, custodial and kinship adoptions. See Colo. Rev. Stat. §19-5-203.</p>
Donor Insemination	<p>Amend existing consent-to-inseminate and parental presumption provisions of donor insemination laws to apply irrespective of gender or marital status of intended parents. See Colo. Rev. Stat. §19-4-101 et seq.</p>
De Facto Parenting	<p>Positive law already codified allowing the allocation of parenting time (visitation) and parental responsibilities (custody) between nonparents and parents (see Colo. Rev. Stat § 14-10-123). Expand to allow family courts to recognize <i>de facto</i> parents as a basis for granting full parenting rights when in a child's best interests. See also <i>In the Interest of E.L.M.C.</i>, 100 p.3d 546 (Colo. Ct. App. 2004).</p>



Connecticut
Parental Recognition Laws
As of July, 2012

Marriage	Positive laws already codified for statewide freedom to marry (see Conn. Gen. Stat. §§1-1m, 46b-20) and for recognition of out-of-jurisdiction civil unions, equivalent domestic partnerships and marriages (see Conn. Gen. Stat §§ 46b-28a through 46b-28b). Note: Civil unions from Connecticut that were formed prior to freedom to marry were automatically converted into marriages in Connecticut on October 1, 2010.
Relationship Recognition	See "Marriage." Positive laws already codified for recognition of out-of-jurisdiction civil unions, equivalent domestic partnerships and marriages (see Conn. Gen. Stat §§ 46b-28a through 46b-28b). Note: Civil unions from Connecticut that were formed prior to freedom to marry were automatically converted into marriages in Connecticut on October 1, 2010.
Foster Care	Amend Conn. Gen. Stat. § 45a-726a to remove the consideration of sexual orientation of prospective foster parents (and adoptive parents, see "Joint Adoption") in placement decisions (note: positive law is already codified prohibiting state agencies from discriminating based upon sexual orientation (Conn. Gen. Stat. § 46a-81i) and gender identity or expression (Conn. Gen. Stat. §46a-71) yet §45a-726a allows specific consideration despite the more general protections in §46a-81i for sexual orientation). Expand laws to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for foster children and to explicitly prohibit discrimination on the basis of gender identity for prospective and existing foster parents. See Department of Children and Families Policy Manual 30-9, Nondiscrimination of LGBTQI Individuals, May 14, 2004. See also <i>Monica S. v. Department of Children and Families</i> , 2011 Conn. Super. LEXIS 1434 (2011). Note: Connecticut also has a general statewide law prohibiting discriminatory practices on the basis of gender identity or expression and sexual orientation (see See Conn. Gen. Stat. §46a-58).
Joint Adoption	Existing statutes clearly allow (and require) married couples to petition jointly for adoption. Amend adoption laws to explicitly allow joint adoption by unmarried couples, to remove the consideration of the sexual orientation of prospective adoptive parents in placement decisions, and to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for potential adoptive parents. Positive law is already codified that prohibits state agencies from discrimination based upon sexual orientation; expand to explicitly prohibit discrimination on the basis of gender identity. See Conn. Gen. Stat. §45a-732, §45a-726a, §46a-81i and Department of Children and Families Policy Manual 30-9, Nondiscrimination of LGBTQI Individuals, May 14, 2004. Note: Connecticut also has a general statewide law prohibiting discriminatory practices on the basis of gender identity or expression and sexual orientation (see See Conn. Gen. Stat. §46a-58).
Second-Parent Adoption	Positive law also codified permitting any parent of a minor child to agree in writing and jointly petition for adoption with one other person who shares parental responsibility for the child as long the parental rights, if any, of person other than the joint petitioners have been terminated. See Conn. Gen. Stat. §§ 45a-724 (a) (3) and 45a-731(5)-(7). Note: Married residents of Connecticut may adopt as stepparents (see Conn. Gen. State §45a-724(a)(2)).
Donor Insemination	Amend existing consent-to-inseminate and parental presumption provisions of donor insemination laws to apply irrespective of gender or marital status of intended parents. See Conn. Gen. Stat. § 45a-771, et seq. Note: Connecticut law applies to both married heterosexual couples and married same-sex couples despite the fact that some laws may not be gender-neutral.
De Facto Parenting	Positive law already codified allowing the granting of custody and visitation rights to any person (see Conn. Gen. Stat. §46b-56 and §46b-59). Expand existing law to allow family courts to recognize <i>de facto</i> parents as a basis for full parenting rights when in a child's best interests.



Delaware
Parental Recognition Laws
As of July, 2012

Marriage	Amend 13 Del. Code § 101(a). Extend full recognition of out-of-jurisdiction same-sex marriages and extend freedom to marry, allowing individuals with both in-state and valid out-of-jurisdiction civil unions and equivalent domestic partnerships to obtain a Delaware marriage license with a legal date retroactive to the earlier civil union or domestic partnership effective date. Note: Out-of-jurisdiction same-sex marriages are currently recognized as civil unions (see 13 Del. Code §213).
Relationship Recognition	Positive law already codified for civil unions and for recognition of out-of-jurisdiction equivalent relationships (see 13 Del. Code §§201-217). Note: Out-of-jurisdiction same-sex marriages are also currently recognized as civil unions (see 13 Del. Code §213).
Foster Care	Amend existing laws to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for foster children and prospective and existing foster parents.
Joint Adoption	Existing statutes clearly allow (and require) married couples and couples in civil unions to petition jointly for adoption. Amend adoption laws to explicitly allow joint adoption by unmarried couples and to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for prospective adoptive parents (see 13 Del. Code § 903).
Second-Parent Adoption	Codify existing family court case law and pass laws to explicitly permit an adult, with the consent of a legal parent, to adopt the legal parent's child, thus securing legal ties to both parents. See In the <i>interest of Hart</i> , 806 A.2d 1179 (Del Fam. Ct. 2001). Note: Residents of Connecticut in civil unions may adopt as stepparents (See 13 Del. Code §904 et seq.).
Donor Insemination	Codify existing family court case law and amend existing consent-to-inseminate and parental presumption provisions of donor insemination laws to apply irrespective of gender or marital status of intended parents. See 13 Del. Code § 8-102, et seq. and <i>Chambers v. Chambers</i> , 2005 Del. Fam. Ct. LEXIS 39, (Del. Fam. Ct., 2005). Note: Delaware laws apply to Delaware residents in civil unions despite the fact that some laws may not be gender-neutral or specify broader application to residents in recognized relationships outside of marriage.
De Facto Parenting	Positive law already codified. State fully recognizes <i>de facto</i> parents and may grant them visitation, custody or full parenting rights when in a child's best interests (see 13 Del. Code §§ 8-201 through 8-203). See also <i>Smith v. Guest</i> , 16 A.3d 920 (Del. 2011).



District of Columbia

Parental Recognition Laws

As of July, 2012

Marriage	Positive laws already codified for statewide freedom to marry (D.C. Code. § 46-401), and for recognition of out-of-jurisdiction marriages (see D.C. Code §46-405.01). Allow individuals with both in-state and valid out-of-jurisdiction domestic partnerships and equivalent civil unions to obtain a D.C. marriage license with a legal date retroactive to the earlier domestic partnership or civil union effective date.
Relationship Recognition	See "Marriage." Positive laws already codified for domestic partnerships (see D.C. Code §§ 32-701 through 32-710). Extend recognition of out-of-jurisdiction equivalent relationships.
Foster Care	Amend existing laws to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for foster children and prospective and existing foster parents.
Joint Adoption	Married same-sex couples can petition jointly for adoption under existing statutes. Codify existing case law and amend adoption laws to explicitly allow joint adoption by unmarried couples and to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for prospective adoptive parents. See <i>In re M.M.D. & B.H.M.</i> , 662 A.2d 837 (1995), and D.C. Code § 16-302, § 16-305, and §16-312.
Second-Parent Adoption	Codify existing case law and amend laws to explicitly permit an adult, with the consent of a legal parent, to adopt the legal parent's child, thus securing legal ties to both parents. See D.C. Code § 16-302 and <i>In re M.M.D. & B.H.M.</i> , 662 A.2d 837 (1995). Note: Married residents of the District of Columbia and residents in domestic partnerships may adopt as stepparents (See D.C. Code §16-308).
Donor Insemination	Positive laws already codified that allows a person who consents to the donor insemination of a woman, with the intent to be the parent of her child, to be conclusively established as the parent of the child when the woman being inseminated and intended parent gives written consent. Positive laws also codified allowing the issuance of a birth certificate for the child indicating the legal parentage pursuant to the consent. Positive gender-neutral, marital status-neutral presumption of parentage provision is also codified if the mother and person resided together in the same household with a child and openly held out the child as their own. See D.C. Code § 16-909(e) and §7-205 (3)-(5). Note: District of Columbia law applies to both married heterosexual couples and married same-sex couples despite the fact that some laws may not be gender-neutral.
De Facto Parenting	Positive law already codified. District recognizes <i>de facto</i> parentage as a basis for visitation, physical custody, and legal custody (see D.C. Code § 16-831.01, § 16-831.03). Expand law to allow family courts to recognize <i>de facto</i> parentage as a basis for granting full legal parenting rights when in a child's best interests.



Florida
Parental Recognition Laws
As of July, 2012

Marriage	Repeal Fla. Const. Art. I, § 27. Repeal Fla. Stat. § 741.212. Extend recognition of out-of-jurisdiction same-sex marriages and extend freedom to marry.
Relationship Recognition	Repeal Fla. Const. Art. I, § 27 or amend to remove "or the substantial equivalent thereof". Repeal Fla. Stat. § 741.212 or amend to remove "or relationships between persons of the same sex which are treated as marriage in any jurisdiction". Pass comprehensive relationship recognition and recognition of out-of-jurisdiction equivalent relationships.
Foster Care	Amend existing laws to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for foster children and prospective and existing foster parents.
Joint Adoption	Amend adoption laws to remove unconstitutional language banning adoption by "homosexual" persons. Amend adoption laws, rules and policies, to explicitly allow joint adoption by unmarried couples and to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for prospective adoptive parents. See Fla. Stat. § 63.042(e), <i>Fla. Dept. of Children and Families v. In re: Matter of Adoption of X.X.G and N.R.G.</i> , 45 So.3d 79 (Fla. App. 2010), and Fla. Admin. Code § 65C-16.005 (3)(e).
Second-Parent Adoption	Pass laws to explicitly permit an adult, with the consent of a legal parent, to adopt the legal parent's child, thus securing legal ties to both parents.
Donor Insemination	Amend existing consent-to-inseminate and parental presumption provisions of donor insemination laws to apply irrespective of gender or marital status of intended parents. See Fla. Stat. § 742.11. See also related case involving a birth mother and biological mother, <i>T.M.H v. D.M.T.</i> , 79 So.3d 787 (Fla. App 2011).
De Facto Parenting	Pass laws allowing family courts to recognize <i>de facto</i> parentage as a basis for visitation, custody, and for granting full parenting rights when in a child's best interests. See <i>Kazmierazak v. Query</i> , 736 So. 2d 106 (Fla. Dist. Ct. App. 1999, <i>review denied</i> , 760 So. 2d 947 (Fla. 2000)).

	<p style="text-align: center;">Georgia Parental Recognition Laws As of July, 2012</p>
Marriage	Repeal Ga. Const. Art. I, § IV, Para. I and Ga. Code Ann. § 19-3-3.1. Extend recognition of out-of-jurisdiction same-sex marriages and extend freedom to marry.
Relationship Recognition	Repeal Ga. Const. Art. I, § IV, Para. I (b) and amend Ga. Code Ann. §19-3-3.1(a). Pass comprehensive relationship recognition and recognition of out-of-jurisdiction equivalent relationships.
Foster Care	Amend existing laws to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for foster children and prospective and existing foster parents.
Joint Adoption	Amend adoption laws to explicitly allow joint adoption by unmarried couples and to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for prospective adoptive parents. See Ga. Code. Ann. §19-8-3.
Second-Parent Adoption	Pass laws to explicitly permit an adult, with the consent of a legal parent, to adopt the legal parent's child, thus securing legal ties to both parents.
Donor Insemination	Amend existing consent-to-inseminate and parental presumption provisions of donor insemination laws to apply irrespective of gender or marital status of intended parents. See Ga. Code Ann. § 19-7-21.
De Facto Parenting	Pass laws allowing family courts to recognize <i>de facto</i> parentage as a basis for visitation, custody, and for granting full parenting rights when in a child's best interests. See <i>Clark v. Wade</i> , 544 S.E. 2d 99 (Ga. 2001).

	<p style="text-align: center;">Hawaii Parental Recognition Laws As of July, 2012</p>
Marriage	Repeal Haw. Rev. Stat. § 572-1. Extend full recognition of out-of-jurisdiction same-sex marriages and extend freedom to marry, allowing individuals with both in-state and valid out-of-jurisdiction civil unions and equivalent domestic partnerships to obtain an Hawaii marriage license with a legal date retroactive to the earlier civil union or domestic partnership effective date. Note: Out-of-jurisdiction same-sex marriages are currently recognized as civil unions (see Haw. Rev. Stat. § 572B-10).
Relationship Recognition	Positive laws already codified for civil unions and recognition of out-of-state equivalent relationships (see Haw. Rev. Stat. §§ 572B-1 through 572B-11), and for reciprocal beneficiaries (see Haw. Rev. Stat. §§ 572C-1 through 572C-7). Note: Out-of-jurisdiction same-sex marriages are also currently recognized as civil unions (see Haw. Rev. Stat. § 572B-10).
Foster Care	Amend existing laws to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for foster children and prospective and existing foster parents.
Joint Adoption	Amend adoption laws to explicitly allow joint adoption by unmarried couples and to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for prospective adoptive parents. See Haw. Rev. Stat. § 578-1.
Second-Parent Adoption	Pass laws to explicitly permit an adult, with the consent of a legal parent, to adopt the legal parent's child, thus securing legal ties to both parents. Note: Hawaii residents in civil unions may adopt as stepparents (see Haw. Rev. Stat. § 578-1).
Donor Insemination	Pass donor insemination laws that include consent-to-inseminate and parental presumption provisions that apply irrespective of gender or marital status of intended parents. Positive general laws (not specific to donor insemination) already codified which extend a presumption of parentage for children regardless of marital status of intended parents. See Haw. Rev. Stat. § 584-1 et seq. Note: Hawaii laws apply to Hawaii residents in civil unions despite the fact that some existing laws may not be gender-neutral or specify broader application to those in recognized relationships outside of marriage.
De Facto Parenting	Pass laws allowing family courts to recognize <i>de facto</i> parentage as a basis for visitation, custody, and for granting full parenting rights when in a child's best interests.



Idaho
Parental Recognition Laws
As of July, 2012

Marriage	Repeal Idaho Const. Art. III, §28, amend/repeal Idaho Code § 32-201 through 32-209. Extend recognition of out-of-state same-sex marriages and extend freedom to marry.
Relationship Recognition	Repeal Idaho Const. Art. III, §28 and pass comprehensive relationship recognition and recognition for out-of-jurisdiction equivalent relationships.
Foster Care	Amend existing laws to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for foster children and prospective and existing foster parents.
Joint Adoption	Amend adoption laws to explicitly allow joint adoption by unmarried couples and to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for prospective adoptive parents alongside existing protections prohibiting discrimination on the basis of disability. See Idaho Code Ann. §16-501 et seq. and § 16-2001.
Second-Parent Adoption	Pass laws to explicitly permit an adult, with the consent of a legal parent, to adopt the legal parent's child, thus securing legal ties to both parents.
Donor Insemination	Amend existing consent-to-inseminate provision of donor insemination laws to apply irrespective of gender or marital status of intended parents. Amend laws to also include parental presumption provisions that apply irrespective of gender or marital status of intended parents. See Idaho Code Ann. § 39-5401, et seq.
De Facto Parenting	Pass laws allowing family courts to recognize <i>de facto</i> parentage as a basis for visitation, custody, and for granting full parenting rights when in a child's best interests.



Illinois
Parental Recognition Laws
As of July, 2012

Marriage	Amend/repeal 750 ILCS 5/212(5) and 5/213.1. Extend full recognition of out-of-jurisdiction same-sex marriages and extend freedom to marry, allowing individuals with both in-state and valid out-of-jurisdiction civil unions and equivalent domestic partnerships to obtain an Illinois marriage license with a legal date retroactive to the earlier civil union or domestic partnership effective date. Note: Out-of-jurisdiction same-sex marriages are currently recognized as civil unions (see 750 ILCS 75/60).
Relationship Recognition	Positive laws already codified for civil unions and recognition of out-of-jurisdiction equivalent relationships (see 750 ILCS 75/1 through 75/90). Note: Out-of-jurisdiction same-sex marriages are also currently recognized as civil unions (see 750 ILCS 75/60).
Foster Care	Amend existing laws to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for foster children and prospective and existing foster parents.
Joint Adoption	Codify case law and amend laws to explicitly allow joint adoption by unmarried couples and to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for prospective adoptive parents. See 750 Ill. Comp. Stat. § 50/2, and <i>In re Petition of K.M. and D. M. et al</i> , 274 Ill App. 3d 189, 653 N.E.2d 888 (1995).
Second-Parent Adoption	Codify existing case law and amend laws to explicitly permit an adult, with the consent of a legal parent, to adopt the legal parent's child, thus securing legal ties to both parents. See 750 Ill. Comp. Stat. 50/0.01 et seq. and <i>In re Petition of K.M. and D. M. et al</i> , 274 Ill App. 3d 189, 653 N.E.2d 888 (1995). See also <i>In the Matter of the Petition of C.M.A. et al</i> , 306 Ill. App. 3d 1061, 715 N.E. 2d 674 (1999) which documents judicial bias in second-parent adoption decisions. Note: Illinois residents in civil unions may adopt as stepparents under provisions for a related adoption (see 750 ILCS 50/6.D).
Donor Insemination	Positive law already codified stating that a child born via donor insemination is considered a naturally-conceived legitimate child of a husband and wife who both consent to the insemination. Amend existing consent-to-inseminate provision of donor insemination laws to apply irrespective of gender or marital status of intended parents. 750 ILCS § 40/1 et seq. and 750 ILCS 45/1 et seq. Note: Illinois laws apply to Illinois residents in civil unions despite the fact that some existing laws may not be gender-neutral or specify broader application to those in recognized relationships outside of marriage.
De Facto Parenting	Pass laws allowing family courts to recognize <i>de facto</i> parentage as a basis for visitation, custody, and for granting full parenting rights when in a child's best interests. See <i>In Re Marriage of Simmons</i> , 825 N.E.2d 303 (Ill. 2005) and <i>In re Visitation with C.B.L.</i> , 723 N.E.2d 316 (Ill. App. Ct. 1999).

	<p style="text-align: center;">Indiana Parental Recognition Laws As of July, 2012</p>
Marriage	Repeal Ind. Code Ann. § 31-11-1-1. Extend recognition of out-of-jurisdiction same-sex marriages and extend freedom to marry.
Relationship Recognition	Pass comprehensive relationship recognition and recognition of out-of-jurisdiction equivalent relationships.
Foster Care	Amend existing laws to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for foster children and prospective and existing foster parents.
Joint Adoption	Codify existing case law and amend adoption laws to explicitly allow joint adoption by unmarried couples; amend to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for prospective adoptive parents. See Ind. Code Ann. § 31-19-2-2 and <i>In re Infant Girl W.</i> 845 N.E. 2d 229 (Ind. Ct. App. 2006).
Second-Parent Adoption	Codify existing case law and amend laws to explicitly permit an adult, with the consent of a legal parent, to adopt the legal parent's child, thus securing legal ties to both parents. See Ind. Code Ann. § 31-19-2-2 et seq. and § 31-19-11-1, and <i>In re the Adoption of M.M.G.C. et al</i> , 785 N.E. 2d 267 (Ind. Ct. App. 2003) and <i>In re Adoption of K.S.P.</i> , 804 N.E.2d 1253 (Ind. Ct. App. 2004).
Donor Insemination	Pass donor insemination laws that include consent-to-inseminate and parental presumption provisions that apply irrespective of gender or marital status of intended parents.
De Facto Parenting	Expand Ind. Code Ann. § 31-9-2-35.5 beyond current limitations for "primary caregiver." Clarify existing case law by passing laws allowing family courts to recognize <i>de facto</i> parentage as a basis for visitation, custody, and for granting full parenting rights when in a child's best interests. See <i>In Re Guardianship of B.H.</i> , 770 N.E. 2d 283 (Ind. 2002) and <i>In Re Parentage of A.B.</i> , 837 N.E.2d 965 (2005).



Iowa
Parental Recognition Laws
As of July, 2012

Marriage	Positive laws already codified for statewide freedom to marry (see Iowa Code § 595.2) and for recognition of out-of-jurisdiction marriages (see Iowa Code § 595.20). Allow individuals with valid out-of-jurisdiction equivalent civil unions and equivalent domestic partnerships to obtain an Iowa marriage license with a legal date retroactive to the earlier civil union or domestic partnership effective date.
Relationship Recognition	See "Marriage."
Foster Care	Amend existing laws to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for foster children and prospective and existing foster parents.
Joint Adoption	Amend adoption laws to explicitly allow joint adoption by unmarried couples and to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for prospective adoptive parents. See Iowa Code § 600.4.
Second-Parent Adoption	Pass laws to explicitly permit an adult, with the consent of a legal parent, to adopt the legal parent's child, thus securing legal ties to both parents. Note: Married Iowa residents may adopt as stepparents (See Iowa Code § 600.8).
Donor Insemination	Pass donor insemination laws that include consent-to-inseminate and parental presumption provisions that apply irrespective of gender or marital status of intended parents. Note: Although Iowa has no existing donor insemination laws, there are general legitimacy provisions regarding children born into marriages, including provisions for liability for child support. See Iowa Code §§ 144.13, 252A.3 and 598.31. Note: Iowa laws apply to married heterosexual couples and married same-sex married couples despite the fact that some laws may not be gender-neutral. However, see Lambda Legal's website re: <i>Gartner v. Newton</i> , regarding a pending challenge to unequal application of these laws.
De Facto Parenting	Pass laws allowing family courts to recognize <i>de facto</i> parentage as a basis for visitation, custody, and for granting full parenting rights when in a child's best interests. See <i>In re Petition of Ash</i> , 507 N.W. 2d 400 (Iowa 1993).

	<p style="text-align: center;">Kansas Parental Recognition Laws As of July, 2012</p>
Marriage	Repeal Kan. Const. Art. 15, §16 and amend/repeal Kans. Stat. Ann. § 23-101(a). Extend recognition of out-of-jurisdiction same-sex marriages extend freedom to marry.
Relationship Recognition	Repeal Kan. Const. Art. 15, §16 and pass comprehensive relationship recognition and recognition of out-of-jurisdiction equivalent relationships.
Foster Care	Amend existing laws to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for foster children and prospective and existing foster parents.
Joint Adoption	Amend adoption laws to explicitly allow joint adoption by unmarried couples and to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for prospective adoptive parents. See Kan. Stat. Ann. § 59-2113.
Second-Parent Adoption	Pass laws to explicitly permit an adult, with the consent of a legal parent, to adopt the legal parent's child, thus securing legal ties to both parents.
Donor Insemination	Positive law already codified stating that a child born via donor insemination is considered a naturally-conceived legitimate child of a husband and wife who both consent to the insemination. Amend existing consent-to-inseminate provision of donor insemination laws to apply irrespective of gender or marital status of intended parents. See Kans. Stat. Ann. § 23-2301 et seq.
De Facto Parenting	Pass laws allowing family courts to recognize <i>de facto</i> parentage as a basis for visitation, custody, and for granting full parenting rights when in a child's best interests.



Kentucky
Parental Recognition Laws
As of July, 2012

Marriage

Repeal Ky. Const. §233a, and amend/repeal Ky. Rev. Stat. Ann. §§ 402.005, 402.020, 402.045. Extend recognition of out-of-jurisdiction same-sex marriages and extend freedom to marry.

Relationship Recognition

Repeal Ky. Const. §233a and pass comprehensive relationship recognition and recognition of out-of-jurisdiction equivalent relationships.

Foster Care

Amend existing laws to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for foster children and prospective and existing foster parents.

Joint Adoption

Amend adoption laws to explicitly allow joint adoption by unmarried couples and to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for prospective adoptive parents. See Ky. Rev. Stat. Ann. § 199-470.

Second-Parent Adoption

As recommended in *S.J.L.S. v. T.L.S.*, (265 S.W.3d 804 (Ky. Ct. App. 2008) which barred second-parent adoption in the absence of a statute, amend or pass second-parent adoption laws that "would permit an unmarried person to adopt a non-spouse's child without terminating the non-spouse's parental rights."

Donor Insemination

Pass donor insemination laws that include consent-to-inseminate and parental presumption provisions that apply irrespective of gender or marital status of intended parents.

De Facto Parenting

Positive laws already codified recognizing *de facto* parentage as a basis for physical and legal custody when the person has been the primary caregiver and financial supporter of a child and has resided with the child for the requisite period(s) of time (see Ky. Rev. Stat. Ann. § 403.270). Clarify co-parent *de facto* status (when parents provide equally for a child) for standing for custody and expand to include *de facto* parentage as a basis for visitation and for granting full parenting rights when in a child's best interests. See also *Mullins v. Picklesimer*, 317 S.W.3d 569 (Ky. 2010).



Louisiana
Parental Recognition Laws
As of July, 2012

Marriage	Repeal La. Const. Art XII, §15 and amend/repeal La. C. C. Art. 89 and 3520.B. Extend recognition of out-of-jurisdiction same-sex marriages and extend freedom to marry.
Relationship Recognition	Repeal La. Const. Art XII, §15 and pass comprehensive relationship recognition and out-of-jurisdiction recognition of equivalent relationships.
Foster Care	Amend existing laws to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for foster children and prospective and existing foster parents.
Joint Adoption	Amend adoption laws to explicitly allow joint adoption by unmarried couples and to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for prospective adoptive parents. See La. Ch. C. Art. 1198 and 1221.
Second-Parent Adoption	Pass laws to explicitly permit an adult, with the consent of a legal parent, to adopt the legal parent's child, thus securing legal ties to both parents.
Donor Insemination	Amend existing consent-to-inseminate and parental presumption provisions of donor insemination laws to apply irrespective of gender or marital status of intended parents. See La. C.C. Art. 188.
De Facto Parenting	Pass laws allowing family courts to recognize <i>de facto</i> parentage as a basis for visitation, custody, and for granting full parenting rights when in a child's best interests.



Maine
Parental Recognition Laws
As of July, 2012

Marriage	Amend/repeal 19-A M.R.S § 701. Extend recognition of out-of-jurisdiction same-sex marriages and extend freedom to marry.
Relationship Recognition	Positive laws already codified for domestic partners registry which accords a legal status similar to that of a married person with respect to matters of probate, guardianships, conservatorships, inheritance, protection from abuse, and related matters (see 22 M.R.S. § 2710 and related code provisions). Pass comprehensive relationship recognition and recognition of out-of-jurisdiction equivalent relationships or amend existing definition of "domestic partner" to include comprehensive relationship recognition.
Foster Care	Amend existing laws to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for foster children and prospective and existing foster parents.
Joint Adoption	Codify existing case law and amend adoption laws to explicitly allow joint adoption by unmarried couples; amend existing adoption laws to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for prospective adoptive parents. See 18-A M.R.S. § 9-301. See also <i>In re Adoption of M.A.</i> , 2007 ME 123 (Me. 2007) for a thorough discussion of the ambiguity in the existing statute.
Second-Parent Adoption	Codify existing case law and amend existing laws to explicitly permit an adult, with the consent of a legal parent, to adopt the legal parent's child, thus securing legal ties to both parents. See 18-A M.R.S. § 9-301. Although the judgment is related to a joint adoption, second-parent adoption under the statute is also directly addressed in <i>In re Adoption of M.A.</i> , 2007 ME 123 (Me. 2007).
Donor Insemination	Pass donor insemination laws that include consent-to-inseminate and parental presumption provisions that apply irrespective of gender or marital status of intended parents.
De Facto Parenting	Positive law already codified recognizing 3rd party standing for visitation and 3rd party standing for custody or full parenting rights if placing with either or both parents would place the child in jeopardy (see 19-A M.R.S. § 1653), <i>C.E.W. v. D.E.W.</i> , 845 A. 2nd 1146 (2004)). Amend existing laws to remove requirement that placement with <i>de facto</i> parents necessitates a finding that placement with legal parents would place a child in jeopardy; instead, allow decisions based on child's best interests.



Maryland
Parental Recognition Laws
As of July, 2012

Marriage	Positive laws recently codified for "Civil Marriage Protection Act of 2012" (amended version of Md. Family Law Code Ann. § 2-201 effective January 1, 2013) extending freedom to marry and recognition of out-of-jurisdiction marriages beginning January 1, 2013 although this law's implementation is subject to a voter referendum in November, 2012 . On recognition of out-of-state same-sex marriages prior to extension of freedom to marry, see also <i>Port v. Cowan</i> (Ct. App. Md.) decided May 18, 2012 and Office of the Attorney General of the State of Maryland, "Whether Out-of-State Same-Sex Marriage that is Valid in the State of Celebration May Be Recognized in Maryland, 95 Op. Atty. Gen. Md. 3 (2010). Allow individuals with both valid out-of-jurisdiction equivalent civil unions and equivalent domestic partnerships to obtain a Maryland marriage license with a legal date retroactive to the earlier civil union or domestic partnership effective date.
Relationship Recognition	See "Marriage." Note: Positive laws already codified for limited domestic partnership recognition for hospital visitation (see Md. Health-General Code Ann. §6-202), state inheritance tax exemption (see Md. Tax-General Code Ann. § 7-203), residential property transfers between partners (see Md. Tax-Property Code Ann. §12-108), and county property transfer taxes upon relationship dissolution (Md. Tax-Property Code Ann. §13-403).
Foster Care	Amend existing laws to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for foster children and prospective and existing foster parents.
Joint Adoption	Amend adoption laws to explicitly allow joint adoption by unmarried couples. Positive law already codified explicitly prohibiting discrimination on the basis of sexual orientation for prospective adoptive parents; amend to explicitly prohibit discrimination on the basis of gender identity. Md. Family Law Code Ann. § 5-331, § 5-3A-29, § 5-3B-13, and Md. Regs. Code § 07.05.03.09.
Second-Parent Adoption	Pass laws to explicitly permit an adult, with the consent of a legal parent, to adopt the legal parent's child, thus securing legal ties to both parents.
Donor Insemination	Amend existing consent-to-inseminate and parental presumption sections of donor insemination provisions of child legitimacy laws to apply irrespective of gender or marital status of intended parents. Maryland Estates and Trust Code Ann. §1-206.
De Facto Parenting	Pass laws allowing family courts to recognize <i>de facto</i> parentage as a basis for visitation, custody, and for granting full parenting rights when in a child's best interests. See <i>J.M. v. M.K.</i> , 404 Md. 661, 948 A.2d 73 (Md. Ct. App. 2008).



Massachusetts Parental Recognition Laws

As of July, 2012

Marriage	Positive laws already codified for statewide freedom to marry and recognition of out-of-jurisdiction marriages (see Mass. Gen. Laws Ann. Ch. 207, §1 through § 58). Allow individuals with valid out-of-jurisdiction equivalent civil unions and equivalent domestic partnerships to obtain a Massachusetts marriage license with a legal date retroactive to the earlier civil union or domestic partnership effective date.
Relationship Recognition	See "Marriage."
Foster Care	Positive laws already codified explicitly prohibiting discrimination on the basis of sexual orientation for foster children and both sexual orientation and marital status for prospective and existing foster parents (see 110 CMR §1.09). Amend to explicitly prohibit discrimination on the basis of sexual orientation and gender identity.
Joint Adoption	Codify existing case law and amend adoption laws to explicitly allow joint adoption by unmarried couples. Positive laws already codified explicitly prohibiting discrimination on the basis of marital status and sexual orientation; amend to explicitly prohibit discrimination on the basis of gender identity. Adoption statutes should be clarified both as they relate to unmarried jointly-petitioning partners with no biological or other legal ties and to second-parent adoptions when one parent has a biological or other legal tie. See Mass. Gen. Laws Ann. Ch. 210 §§ 1, 2 and 2A, 110 CMR §1.09 and <i>Adoption of Susan</i> , 416 Mass. 1003, 619 N.E.2d 323 (1993). See also <i>Adoption of Tammy</i> , 416 Mass. 205, 619 N.E. 2d 315 (1993). Note: Although <i>Adoption of Tammy</i> was a case where a biological parent and a partner sought to jointly adopt, the case set precedent for courts to allow second-parent adoption using a joint petition.
Second-Parent Adoption	Codify case law and amend existing laws to explicitly permit an adult, with the consent of a legal parent, to adopt the legal parent's child, thus securing legal ties to both parents. See Mass. Gen. Laws Ann. Ch. 210 §§ 1, 2, 2A and 6. Amend existing laws to specifically permit waiver of home study requirements for second-parent adoption upon joint petitions involving a legal parent. See Ch. 210 § 5A and <i>Adoption of Galen</i> , 425 Mass. 201 (1997). Note: Although <i>Adoption of Tammy</i> , 416 Mass. 205, 619 N.E.2d 215 (1993) was a case where a biological parent and a partner sought to jointly adopt, the case set precedent for courts to allow second-parent adoption using a joint petition. Adoption statutes should be clarified both as they relate to unmarried jointly-petitioning partners with no biological ties and to second-parent adoption when one parent has a biological tie. See also <i>Della Corte v. Ramirez</i> , 81 Mass. App. Ct. 906 (2012) which clarifies that married same-sex spouses need not pursue second-parent adoption for a child born into a marriage, regardless of whether the spouses were married at the time of conception. Note: Married Massachusetts residents may adopt as stepparents under provisions for relative adoptions (see Mass. Gen. Laws Ann. Ch. 201, §2A) .
Donor Insemination	Amend existing consent-to-inseminate and parental presumption provisions of donor insemination laws to apply irrespective of gender or marital status of intended parents. See Mass. Gen. Laws Ann. Ch. 46, § 4B. Note: Massachusetts law applies to both married heterosexual couples and married same-sex couples despite the fact that some laws may not be gender-neutral. See also <i>Della Corte v. Ramirez</i> , 81 Mass. App. Ct. 906 (2012) which clarifies that married same-sex spouses need not pursue second-parent adoption for a child born into a marriage, regardless of whether the spouses were married at the time of conception.
De Facto Parenting	Codify existing case law recognizing <i>de facto</i> parentage as a basis for visitation and expand to allow family courts to recognize <i>de facto</i> parentage as a basis for custody and granting full parenting rights when in a child's best interests. (<i>E.N.O. v. L.M.M.</i> , 711 N.E. 2d 886 (Mass. 1999). See also <i>A.H. v. M.P.</i> , 447 Mass. 828, 857 N.E. 2d 1061 (Mass. 2006).



Michigan
Parental Recognition Laws
As of July, 2012

Marriage	Repeal MCLS Const. Art. I, § 25, MCLS § 551.1 and MCLS § 551.272 and amend/repeal to remove MCLS § 551.271(2). Extend recognition of out-of-jurisdiction same-sex marriages and extend freedom to marry.
Relationship Recognition	Repeal MCLS Const. Art. I, § 25. Pass comprehensive relationship recognition and recognition of out-of-jurisdiction equivalent relationships.
Foster Care	Amend existing laws to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for foster children and prospective and existing foster parents.
Joint Adoption	Amend adoption laws to explicitly allow joint adoption by unmarried couples and to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for prospective adoptive parents. See MCLS § 710.24.
Second-Parent Adoption	Pass laws to explicitly permit an adult, with the consent of a legal parent, to adopt the legal parent's child, thus securing legal ties to both parents.
Donor Insemination	Pass donor insemination laws that include consent-to-inseminate and parental presumption provisions that apply irrespective of gender or marital status of intended parents.
De Facto Parenting	Pass laws allowing family courts to recognize <i>de facto</i> parentage as a basis for visitation, custody, and for granting full parenting rights when in a child's best interests. <i>McGuffin v. Overton</i> , 542 N.W.2d 288 (Mich. Ct. App. 1995, appeal denied, 546 N.W.2d 256 (Mich. 1996)).



Minnesota
Parental Recognition Laws
As of July, 2012

Marriage

Amend/repeal Minn. Stat. § 517.03 (4). Extend recognition of out-of-jurisdiction same-sex marriages and extend freedom to marry.

Relationship Recognition

Pass comprehensive relationship recognition and recognition of out-of-jurisdiction equivalent relationships.

Foster Care

Amend existing laws to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for foster children and prospective and existing foster parents.

Joint Adoption

Amend adoption laws to explicitly allow joint adoption by unmarried couples, and to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for prospective adoptive parents. See Minn. Stat. § 259.22.

Second-Parent Adoption

Pass laws to explicitly permit an adult, with the consent of a legal parent, to adopt the legal parent's child, thus securing legal ties to both parents.

Donor Insemination

Amend existing consent-to-inseminate and parental presumption provisions of donor insemination laws to apply irrespective of gender or marital status of intended parents. See Minn. Stat. §§ 257.55 and 257.66.

De Facto Parenting

Amend Minn. Stat. § 257C.01 et seq. allowing 3rd party petitions for visitation to also allow family courts to recognize *de facto* parentage as a basis for custody and full parenting rights when in a child's best interests (see *Soohoo v. Johnson*, 731 N.W.2d 815 (Minn. 2007)).



Mississippi
Parental Recognition Laws
As of July, 2012

Marriage	Repeal Miss. Const. Ann. Art. 14, § 263A and Miss. Code Ann. §93-1-1(2). Extend recognition of out-of-jurisdiction same-sex marriages and extend freedom to marry.
Relationship Recognition	Pass comprehensive relationship recognition and extend recognition of out-of-jurisdiction equivalent relationships.
Foster Care	Amend existing laws to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for foster children and prospective and existing foster parents.
Joint Adoption	Amend adoption laws to remove prohibition on joint adoption by "couples of the same gender" and to explicitly allow joint adoption by unmarried couples; Amend to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for prospective adoptive parents. See Miss. Code Ann. § 93-17-3.
Second-Parent Adoption	Pass laws to explicitly permit an adult, with the consent of a legal parent, to adopt the legal parent's child, thus securing legal ties to both parents.
Donor Insemination	Pass donor insemination laws that include consent-to-inseminate and parental presumption provisions that apply irrespective of gender or marital status of intended parents.
De Facto Parenting	Pass laws allowing family courts to recognize <i>de facto</i> parentage as a basis for visitation, custody, and for granting full parenting rights when in a child's best interests.



Missouri
Parental Recognition Laws
As of July, 2012

Marriage

Repeal Mo. Const. Art. I, § 33 and Mo. Rev. Stat. § 451.022. Extend recognition of out-of-jurisdiction same-sex marriages and extend freedom to marry.

Relationship Recognition

Pass comprehensive relationship recognition and recognition of out-of-jurisdiction equivalent relationships.

Foster Care

Amend existing laws to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for foster children and prospective and existing foster parents.

Joint Adoption

Amend adoption laws to explicitly allow joint adoption by unmarried couples and to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for prospective adoptive parents. See Mo. Rev. Stat. § 453.010.

Second-Parent Adoption

Pass laws to explicitly permit an adult, with the consent of a legal parent, to adopt the legal parent's child, thus securing legal ties to both parents.

Donor Insemination

Amend existing consent-to-inseminate and parental presumption provisions of donor insemination laws to apply irrespective of gender or marital status of intended parents. See Mo. Rev. Stat. § 210.824.

De Facto Parenting

Pass laws allowing family courts to recognize *de facto* parentage as a basis for visitation, custody, and for granting full parenting rights when in a child's best interests.



Montana
Parental Recognition Laws
As of July, 2012

Marriage	Repeal Mont. Const., Art. XIII § 7 and Mont. Code Ann. § 40-1-401(1)(d). Extend recognition of out-of-jurisdiction same-sex marriages and extend freedom to marry.
Relationship Recognition	Repeal Mont. Code Ann. § 40-1-401(4) and pass comprehensive relationship recognition and recognition of out-of-jurisdiction equivalent relationships.
Foster Care	Amend existing laws to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for foster children and prospective and existing foster parents.
Joint Adoption	Amend adoption laws to explicitly allow joint adoption by unmarried couples and to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for prospective adoptive parents. See Mont. Code Ann. § 42-1-106.
Second-Parent Adoption	Positive law already codified as part of stepparent adoption law stating that, "For good cause shown, a court may allow an individual who is not the stepparent but who has the consent of the custodial parent of a child to file a petition for adoption. The petition must be treated as if the petitioner were a stepparent." See Mont. Code Ann. §42-4-302 (2).
Donor Insemination	Amend existing consent-to-inseminate and parental presumption provisions of donor insemination laws to apply irrespective of gender or marital status of intended parents. See Mont. Code Ann. § 40-6-101 et seq.
De Facto Parenting	Codify existing case law to clarify Mont. Code Ann. § 40-4-211 and § 40-4-228 and amend to allow family courts to recognize <i>de facto</i> parentage as a basis for granting full parenting rights when in a child's best interests. See <i>Kulstad V. Maniaci</i> , 352 Mont. 513 (2009).



Nebraska
Parental Recognition Laws
As of July, 2012

Marriage

Repeal Ne. Const. Art. I, § 29 or amend to remove the first clause relating to marriage. Extend recognition of out-of-jurisdiction same-sex marriages and extend freedom to marry.

Relationship Recognition

Repeal Ne. Const. Art. I, § 29 or amend to remove the second clause of the amendment relating to civil unions and domestic partnerships. Pass comprehensive relationship recognition and extend recognition of out-of-jurisdiction equivalent relationships.

Foster Care

Amend existing laws to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for foster children and prospective and existing foster parents. Reverse Nebraska Department of Social Service policy banning foster care placement in the homes of unrelated cohabiting adults or in the homes of "persons who identify themselves as homosexuals." See Administrative Memorandum - Human Services re: Placement in Foster Care, January 23, 1995.

Joint Adoption

Amend adoption laws to explicitly allow joint adoption by unmarried couples and to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for prospective adoptive parents. See Neb. Rev. Stat. § 43-101.

Second-Parent Adoption

Overturn case law and pass laws to explicitly permit an adult, with the consent of a legal parent, to adopt the legal parent's child, thus securing legal ties to both parents. See *In re Adoption of Luke*, 640 N.W. 2d 374 (Neb. 2002).

Donor Insemination

Amend existing laws to include consent-to-inseminate and parental presumption provisions that apply irrespective of gender or marital status of intended parents. See Neb. Rev. Stat. § 43-1412.01.

De Facto Parenting

Codify existing case law on visitation and custody and expand law to allow family courts to recognize *de facto* parentage as a basis for granting full parentage rights when in a child's best interests. (*Latham v. Schwerdtfeger*, 282 Neb. 121 (2011)).

	<p style="text-align: center;">Nevada Parental Recognition Laws As of July, 2012</p>
Marriage	Repeal Nev. Const. Art. 1, § 21 and amend Nev. Rev. Stat. Ann. § 122.020. Extend recognition of out-of-jurisdiction same-sex marriages and extend freedom to marry, allowing individuals with both in-state and valid out-of-jurisdiction equivalent domestic partnerships and civil unions to obtain a Nevada marriage license with a legal date retroactive to the earlier domestic partnership or civil union effective date. Note: Out-of-jurisdiction same-sex marriages are currently recognized as domestic partnerships, although registration may be required.
Relationship Recognition	Positive laws already codified for domestic partnerships (see Nev. Rev. Stat. Ann. §§ 122A.010 through 122A.510) and recognition of out-of-jurisdiction equivalent domestic partnerships and civil unions, although Nevada registration may be required. Note: Out-of-jurisdiction same-sex marriages are also currently recognized as domestic partnerships, although registration may be required.
Foster Care	Amend existing laws to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for foster children and prospective and existing foster parents.
Joint Adoption	Amend adoption laws to explicitly allow joint adoption by unmarried couples. Positive law already codified explicitly prohibiting discrimination on the basis of sexual orientation for prospective adoptive parents; amend to explicitly prohibit discrimination on the basis of gender identity. See Nev. Rev. Stat. § 127.030 and Nev. Admin. Code § 127.351.
Second-Parent Adoption	Pass laws to explicitly permit an adult, with the consent of a legal parent, to adopt the legal parent's child, thus securing legal ties to both parents. Nevada residents in domestic partnerships may adopt as stepparents (see Nev. Rev. Stat. Ann. §127.160).
Donor Insemination	Amend existing laws to include consent-to-inseminate and parental presumption provisions that apply irrespective of gender or marital status of intended parents. See Nev. Rev. Stat. Ann. § 126.061. Note: Nevada laws apply to Nevada residents in domestic partnerships despite the fact that some existing laws may not be gender-neutral or specify broader application to those in recognized relationships outside of marriage.
De Facto Parenting	Amend Nev. Rev. Stat. §125C.050 regarding visitation to allow family courts to recognize <i>de facto</i> parentage as a basis for granting custody and full parentage rights when in a child's best interests.



New Hampshire
Parental Recognition Laws
As of July, 2012

Marriage	Positive laws already codified for statewide freedom to marry and for recognition of out-of-jurisdiction civil unions and marriages (see RSA 457:1 through 457:46). Note: Couples in civil unions from New Hampshire that were formed prior to January 1, 2010 were given the opportunity to get married, or to have the civil union legally designated and recorded as a marriage between January 1, 2010 and January 1, 2011. Remaining civil unions were automatically converted into marriages in New Hampshire on January 1, 2011. Allow individuals with valid out-of-jurisdiction equivalent domestic partnerships and civil unions to obtain a New Hampshire marriage license with a legal date retroactive to the earlier domestic partnership or civil union effective date.
Relationship Recognition	See "Marriage." Note: Effective January 1, 2010, New Hampshire no longer issues civil union licenses, but it continues to recognize out-of-jurisdiction civil unions and equivalent domestic partnerships and provide those couples with all of the protections and responsibilities of marriage under state law. Couples in civil unions from New Hampshire that were formed prior to January 1, 2010 were given the opportunity to get married, or to have the civil union legally designated and recorded as a marriage between January 1, 2010 and January 1, 2011. Remaining civil unions were automatically converted into marriages in New Hampshire on January 1, 2011.
Foster Care	Amend existing laws to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for foster children and prospective and existing foster parents.
Joint Adoption	Amend adoption laws to explicitly allow joint adoption by unmarried couples and to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for prospective adoptive parents. See RSA § 170-B:4.
Second-Parent Adoption	Pass laws to explicitly permit an adult, with the consent of a legal parent, to adopt the legal parent's child, thus securing legal ties to both parents. Note: Married New Hampshire residents may adopt as stepparents (see RSA 170-B:11).
Donor Insemination	Amend existing laws to include consent-to-inseminate and parental presumption provisions that apply irrespective of gender or marital status of intended parents. See RSA 168-B:2 and RSA 168-B:3. Note: New Hampshire law applies to both married heterosexual couples and married same-sex couples despite the fact that some laws may not be gender-neutral.
De Facto Parenting	Pass laws allowing family courts to recognize <i>de facto</i> parentage as a basis for visitation, custody, and for granting full parenting rights when in a child's best interests. See <i>In re Nelson</i> , 825 A.2d 501 (N.H. 2003)



New Jersey
Parental Recognition Laws
As of July, 2012

Marriage	Extend full recognition of out-of-jurisdiction same-sex marriages and extend freedom to marry, allowing individuals with both in-state and valid out-of-jurisdiction civil unions and equivalent domestic partnerships to obtain a New Jersey marriage license with a legal date retroactive to the earlier civil union or domestic partnership effective date. Note: Out-of-jurisdiction same-sex marriages are currently recognized as civil unions.
Relationship Recognition	Positive laws already codified for civil unions and out-of-jurisdiction relationship recognition for equivalent comprehensive relationships (see N.J. Stat. §§ 37:1-1 through 37:1-36). Note: Out-of-jurisdiction same-sex marriages are also currently recognized as civil unions. Note also: Positive laws already codified for limited domestic partnerships (see see N.J. Stat. §§26:8A-1 through 26:8A-13).
Foster Care	Positive laws already codified explicitly prohibiting discrimination on the basis of sexual orientation, and marital, civil union, and domestic partnership status for foster children and prospective and existing foster parents (see N.J.A.C. §§ 10:122B-1.5 and 10:122C-1.6) Amend existing laws to explicitly prohibit discrimination on the basis of gender identity.
Joint Adoption	Amend N. J. Stat. § 9:3-43 to explicitly allow joint adoption by unmarried couples. Positive laws already codified prohibiting discrimination on the basis of sexual orientation and marital status (see N.J.A.C § 10:121C-4.1). Amend laws to explicitly prohibit discrimination on the basis of gender identity.
Second-Parent Adoption	New Jersey residents in civil unions may adopt as stepparents (see N.J. Stat. § 9:3-48). Codify existing case law and pass laws to explicitly permit an adult, with the consent of a legal parent, to adopt the legal parent's child, thus securing legal ties to both parents. See <i>In re Adoption of Two Children by H.N.R.</i> , 285 N.J. Super. 1, 666 A.2d 535 (App. Div. 1995) and <i>In re Adoption of a Child by J.M.G.</i> , 267 N.J. Super. 622, 633 A.2d 550 (Ch.Div. 1993). See also N.J. Court Rules, R. 5:10-3(c)(3) specifying that "in the case of a second-parent or co-parent adoption, the complaint shall be the same as that of a stepparent adoption."
Donor Insemination	Amend existing consent-to-inseminate and parental presumption provisions of donor insemination laws to apply irrespective of gender or marital status of intended parents. See N.J. Stat. §§ 9:17-43 and 9:17-44. Note: New Jersey laws apply to New Jersey residents in civil unions despite the fact that some existing laws may not be gender-neutral or specify broader application to those in recognized relationships outside of marriage.
De Facto Parenting	Codify case law by clarifying the definition of parent in N.J. Stat. § 9:2-13(f) to include <i>de facto</i> parentage as a basis for visitation, and expand to allow family courts to recognize <i>de facto</i> parentage as a basis for custody and full parenting rights when in a child's best interests. (<i>V.C. v J.M.B.</i> , 163 N.J. 200, 748 A.2d. 539 (N.J. 2000).



New Mexico
Parental Recognition Laws
As of July, 2012

Marriage	Positive law already codified for the recognition of lawful marriages from other countries (see N.M. Stat. Ann. § 40-1-4). Codify New Mexico Attorney General Opinion regarding validity of same-sex marriages performed in other jurisdictions (see Opinion of Gary K. King, Attorney General, No. 11-01, January 4, 2011). Extend freedom to marry.
Relationship Recognition	Pass comprehensive relationship recognition and out-of-jurisdiction recognition for equivalent relationships.
Foster Care	Amend existing laws to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for foster children and prospective and existing foster parents.
Joint Adoption	Amend adoption laws to explicitly allow joint adoption by unmarried couples and to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for prospective adoptive parents. See N.M. Stat. Ann. § 32A-5-11.
Second-Parent Adoption	Pass laws to explicitly permit an adult, with the consent of a legal parent, to adopt the legal parent's child, thus securing legal ties to both parents.
Donor Insemination	Positive law already codified stating that a person who consents to assisted reproduction with the intent to be the parent of a child is a parent of the resulting child, irrespective of gender or marital status of intended parents. Positive laws also already codified for applying parental presumption provisions irrespective of gender or marital status of intended parents. N.M. Stat. Ann. §§ 40-11A-703, 40-11A-704. See also <i>Chatterjee v. King</i> , Docket No. 32,789 (June 1, 2012).
De Facto Parenting	Clarify existing case law and pass laws allowing family courts to recognize <i>de facto</i> parentage as a basis for visitation, custody, and for granting full parenting rights when in a child's best interests. See <i>A.C. v. C.B.</i> , 829 P.2d 660 (1992).



New York
Parental Recognition Laws
As of July, 2012

Marriage	Positive laws already codified for statewide freedom to marry (see NY Dom. Rel. Law §§ 1-25). Codify case law affording the rule of comity to out-of-state marriages (see <i>Martinez v. County of Monroe</i> , 50 AD3d 189, 850 NYS2d 740 (2008) and <i>Van Voorhis V. Brintnall</i> , 86 NY 18 (1881)). Allow individuals with valid out-of-jurisdiction civil unions and equivalent domestic partnerships to obtain a New York marriage license with a legal date retroactive to the earlier civil union or domestic partnership effective date.
Relationship Recognition	See "Marriage."
Foster Care	Amend existing laws to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for foster children and prospective and existing foster parents. NOTE: Regulations proposed in 2011 would have amended sections 180.5(a) and 182-1.5(g)(1) of 9 NYCRR , sections 421.2, 421.16(h), 423.4(f), 423.4(m) and Part 441 of 18 NYCRR to prohibit discrimination on the basis of sexual orientation, and gender identity and expression in detention, runaway and homeless youth programs, foster care, and adoption and preventive services.
Joint Adoption	Positive law already codified permitting "any two unmarried adult intimate partners together" to adopt and specifying that prospective adoptive parents should not be rejected solely on the basis of sexual orientation. Amend adoption laws to explicitly prohibit discrimination on the basis of sexual orientation and gender identity. See N.Y. Dom. Rel. Law §110 and 18 NYCRR §421.16(h)(2)). NOTE: Regulations proposed in 2011 would have amended sections 180.5(a) and 182-1.5(g)(1) of 9 NYCRR , sections 421.2, 421.16(h), 423.4(f), 423.4(m) and Part 441 of 18 NYCRR to prohibit discrimination on the basis of sexual orientation, and gender identity and expression in detention, runaway and homeless youth programs, foster care, and adoption and preventive services.
Second-Parent Adoption	Codify existing case law and amend laws to explicitly permit an adult, with the consent of a legal parent, to adopt the legal parent's child, thus securing legal ties to both parents. See N.Y. Dom. Rel. Law §110 and §117, and <i>In re Jacob, In re Dana</i> , 660 N.E.2d 397 (N.Y. 1995). Note: Married new york residents may adopt as stepparents (See N.Y. Dom. Rel. Law §117(d)).
Donor Insemination	Positive law already codified stating that a child born to a married woman by means of donor insemination, with written consent of both the woman and her husband, shall be the legitimate birth child of both for all purposes. Amend existing consent-to-inseminate and parental presumption language to apply irrespective of gender or marital status of intended parents. See NY CLS Dom Rel § 73. Note: New York law applies to both married heterosexual couples and married same-sex couples despite the fact that some laws may not be gender-neutral.
De Facto Parenting	Pass laws allowing family courts to recognize <i>de facto</i> parentage as a basis for visitation, custody, and for granting full parenting rights when in a child's best interests. See <i>Alison D. v. Virginia M.</i> , 572 N.E. 2d 27 (N.Y. 1991) and <i>Janis C. v. Christine T.</i> , 294 A.D.2d 496 (N.Y.Sup.Ct. 2002), <i>appeal dismissed</i> , 784 N.E.2d 74 (N.Y. 2002)

	<p style="text-align: center;">North Carolina Parental Recognition Laws As of July, 2012</p>
Marriage	Repeal N.C. Const. art. XIV, §6 and N.C. Gen. Stat. § 51-1.2, amend N.C. Gen. Stat § 51-1. Extend recognition of out-of-jurisdiction same-sex marriages. Extend freedom to marry.
Relationship Recognition	Repeal N.C. Const. art. XIV, §6 and pass comprehensive relationship recognition and recognition of out-of-jurisdiction equivalent relationships.
Foster Care	Amend existing laws to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for foster children and prospective and existing foster parents.
Joint Adoption	Amend adoption laws to remove prohibition of joint adoption by unmarried petitioners and to explicitly allow joint adoption by unmarried couples. Amend adoption laws to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for prospective adoptive parents. See N.C. Gen Stat. § 48-2-301, § 48-1-103, and § 48-2-302.
Second-Parent Adoption	Overturn case law and pass laws to explicitly permit an adult, with the consent of a legal parent, to adopt the legal parent's child, thus securing legal ties to both parents. See <i>Boseman v. Jarrell</i> , 704 S.E. 2d 494 (N.C. 2010).
Donor Insemination	Amend existing consent-to-inseminate and parental presumption provisions of donor insemination laws to apply irrespective of gender or marital status of intended parents.
De Facto Parenting	Clarify the definition of standing for N.C. Gen. Stat. §50-13.1 et seq. pursuant to existing case law on custody and pass laws allowing family courts to recognize <i>de facto</i> parentage as a basis for visitation, custody, and for granting full parenting rights when in a child's best interests. See <i>Mason v. Dwinell</i> , 660 S.E.2d 58 (N.C. Ct. App. 2008) and <i>Estroff v. Chaterjee</i> , 660 S.E.2d 73 (N.C. Ct. App. 2008).

	<p style="text-align: center;">North Dakota Parental Recognition Laws As of July, 2012</p>
Marriage	Repeal N.D. Const. Art. XI, §28, and amend/repeal N.D. Cent. Code, § 14-03-01 and amend 14-3-08. Extend recognition of out-of-jurisdiction same-sex marriages and extend freedom to marry.
Relationship Recognition	Repeal N.D. Const. Art. XI, §28 or amend to remove second sentence of the amendment regarding "other domestic unions." Pass comprehensive relationship recognition and recognition of out-of-jurisdiction equivalent relationships.
Foster Care	Amend existing laws to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for foster children and prospective and existing foster parents.
Joint Adoption	Amend adoption laws to explicitly allow joint adoption by unmarried couples and to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for prospective adoptive parents. See N.D. Cent. Code, § 14-15-03.
Second-Parent Adoption	Pass laws to explicitly permit an adult, with the consent of a legal parent, to adopt the legal parent's child, thus securing legal ties to both parents.
Donor Insemination	Amend existing consent-to-inseminate and parental presumption provisions of donor insemination laws to apply irrespective of gender or marital status of intended parents. See N.D. Cent. Code, § 14-20-07, 14-20-59 et seq.
De Facto Parenting	Pass laws allowing family courts to recognize <i>de facto</i> parentage as a basis for visitation, custody, and for granting full parenting rights when in a child's best interests.



Ohio
Parental Recognition Laws
As of July, 2012

Marriage

Repeal Oh. Const. Art. XV, § 11 or amend the first sentence to broaden the definition of marriage. Repeal ORC Ann. § 3101.01 or amend to remove §§ (C)(1) and (C)(2). Extend recognition of out-of-jurisdiction same-sex marriages and extend freedom to marry.

Relationship Recognition

Repeal Oh. Const. Art. XV, § 11 or amend to remove second sentence regarding the legal status for other relationships. Repeal ORC Ann. § 3101.01 or amend to remove §§ (C)(3) and (C)(4). Pass comprehensive relationship recognition and recognition of equivalent relationships.

Foster Care

Amend existing laws to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for foster children and prospective and existing foster parents.

Joint Adoption

Amend adoption laws to explicitly allow joint adoption by unmarried couples and to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for prospective adoptive parents. See ORC Ann. § 3107.03.

Second-Parent Adoption

Overturn case law and pass laws to explicitly permit an adult, with the consent of a legal parent, to adopt the legal parent's child, thus securing legal ties to both parents. See *In re Adoption of Doe*, 719 N.E.2d 1071 (Ohio Ct. App. 1998).

Donor Insemination

Amend existing consent-to-inseminate and parental presumption provisions of donor insemination laws to apply irrespective of gender or marital status of intended parents. See ORC Ann. § 3111.93 and ORC Ann. § 3111.95.

De Facto Parenting

Pass laws allowing family courts to recognize *de facto* parentage as a basis for visitation, custody, and for granting full parenting rights when in a child's best interests. See *In Re Bonfield*, 97 Ohio St. 3d 387, 780 N.E.2d 241 (Ohio, 2002).

	<p style="text-align: center;">Oklahoma Parental Recognition Laws As of July, 2012</p>
Marriage	Repeal Okl. Const. Art. II, § 35 and amend/repeal 43 Okl. St. § 3 (A) and repeal 43 Okl. St. §3.1. Extend recognition of out-of-jurisdiction same-sex marriages and extend freedom to marry.
Relationship Recognition	Repeal Okl. Const. Art. II, § 35 and pass comprehensive relationship recognition and recognition of out-of-jurisdiction equivalent relationships.
Foster Care	Amend existing laws to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for foster children and prospective and existing foster parents.
Joint Adoption	Amend adoption laws to explicitly allow joint adoption by unmarried couples and to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for prospective adoptive parents. See 10 Okl. St. § 7503-1.1. See also adverse case law for joint adoption in <i>Depew v. Depew (In re Adoption of M.C.D.)</i> , 2002 OK CIV APP 27, 42 P. 3d 873 (Okla. Ct. App. 2001).
Second-Parent Adoption	Pass laws to explicitly permit an adult, with the consent of a legal parent, to adopt the legal parent's child, thus securing legal ties to both parents.
Donor Insemination	Amend existing consent-to-inseminate and parental presumption provisions of donor insemination laws to apply irrespective of gender or marital status of intended parents. See 10 Okl. St. § 551 et seq.
De Facto Parenting	Pass laws allowing family courts to recognize <i>de facto</i> parentage as a basis for visitation, custody, and for granting full parenting rights when in a child's best interests.



Oregon
Parental Recognition Laws
As of July, 2012

Marriage	Repeal Ore. Const. Art. XV, § 5a. Extend full recognition of out-of-jurisdiction same-sex marriages and extend freedom to marry, allowing individuals with both in-state and valid out-of-jurisdiction equivalent domestic partnerships and civil unions to obtain an Oregon marriage license with a legal date retroactive to the earlier domestic partnership or civil union effective date.
Relationship Recognition	Positive laws already codified for domestic partnerships (see ORS § 106.300 through 106.340). Pass laws recognizing out-of-jurisdiction equivalent relationships and clarifying recognition of out-of-jurisdiction same-sex marriages as domestic partnerships.
Foster Care	Positive laws already explicitly prohibiting discrimination on the basis of sexual orientation for foster parents (see ORS § 418.648(10)). Expand existing laws to explicitly prohibit discrimination on the basis of gender identity and to extend similar protections for foster children.
Joint Adoption	Positive laws already codified permitting joint adoption by unmarried, cohabiting adults. Amend adoption laws to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for prospective adoptive parents. See OAR §§ 413-200-0314(1)(j)(2) and 413-140-0010(10).
Second-Parent Adoption	Positive administrative rules already exist permitting adoption when one of the petitioners is the biological or adoptive parent and the co-petitioner and the parent are not married, including provisions allowing waiver of home study and placement report requirements. See OARS §§413-140-0035(5)(c) and 413-140-0010 (5)(d) (A) and Oregon Dept. of Human Services Second Parent Adoption Checklist (Rev. 5/2010). Oregon residents in domestic partnerships may adopt as stepparents under relative adoption provisions (See ORS §109.309).
Donor Insemination	Positive law already codified stating that a child born to the husband of a mother who conceives via donor insemination has the same rights as if the child had been naturally and legitimately conceived by the mother and the mother's husband. Codify case law and amend existing consent-to-inseminate and parental presumption provisions of donor insemination laws to apply irrespective of gender or marital status of intended parents. See ORS § 109.243 et seq. and <i>Shineovich v. Kemp</i> (229 Ore. App. 670), 214 P.3d 29, (Ore. App. 2009, <i>cert. denied</i>). Note: Oregon laws apply to Oregon residents in domestic partnerships despite the fact that some laws may not be gender-neutral or specify broader application to those in other recognized relationships outside of marriage. For parental recognition for donor insemination laws, case law (<i>Shineovich</i> , reference above) has extended protections to all same-sex partners in Oregon.
De Facto Parenting	Positive laws already codified for allowing courts to recognize <i>de facto</i> parentage as a basis for visitation and custody (see ORS § 109.119). Expand to allow family courts to recognize <i>de facto</i> parentage for granting full parenting rights when in a child's best interests.



Pennsylvania
Parental Recognition Laws
As of July, 2012

Marriage	Repeal 23 Pa.C.S. § 1704 and extend recognition of out-of-jurisdiction same-sex marriages and extend freedom to marry.
Relationship Recognition	Pass comprehensive relationship recognition and recognition of out-of-jurisdiction equivalent relationships.
Foster Care	Amend existing laws to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for foster children and prospective and existing foster parents.
Joint Adoption	Amend adoption laws to explicitly allow joint adoption by unmarried couples and to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for prospective adoptive parents. See 23 Pa.C.S. § 2312 and prior history of statute which has already been broadened to allow "any individual" (without reference to marital status) to become an adopting parent.
Second-Parent Adoption	Codify existing case law and pass laws to explicitly permit an adult, with the consent of a legal parent, to adopt the legal parent's child, thus securing legal ties to both parents. See <i>In re adoption of R.B.F. and R.C.F.</i> , 569 Pa. 269, 803 A.2d 1195 (2002).
Donor Insemination	Pass donor insemination laws that include consent-to-inseminate and parental presumption provisions that apply irrespective of gender or marital status of intended parents.
De Facto Parenting	Codify case law to include <i>de facto</i> parentage as a basis for visitation and custody, and expand to allow family courts to recognize <i>de facto</i> parentage as a basis for full parenting rights when in a child's best interests. (<i>L.S.K. v. H.A.N.</i> , 813 A.2d 872 Pa. Super. 2002). See also <i>T.B. v. L.R.M.</i> , 567 Pa. 222, 786 A.2d 913 (Pa. 2001).



Rhode Island
Parental Recognition Laws
As of July, 2012

Marriage	Per Attorney General opinion (see Op. R.I. Att'y Gen. (February 20, 2007) and Executive Order (Executive Order R.I. 12-02, May 14, 2012), codify existing case law and policy and fully recognize out-of-jurisdiction same-sex marriages. Extend freedom to marry, allowing individuals with both in-state and valid out-of-jurisdiction civil unions and equivalent domestic partnerships to obtain a Rhode Island marriage license with a legal date retroactive to the earlier civil union or domestic partnership effective date.
Relationship Recognition	Positive laws already codified for civil unions and recognition of out-of-jurisdiction equivalent relationships (see R.I. Gen. Laws §§ 15-3.1-1 through 15-3.1-11). See also, "Marriage" for treatment of out-of-jurisdiction same-sex marriages.
Foster Care	Positive regulations already explicitly prohibit discrimination on the basis of sexual orientation and gender identity for prospective and existing foster parents (see State of Rhode Island Department of Children, Youth and Families, Foster Care and Adoption Regulations for Licensure, October 2011). Amend existing regulations to include protections for foster children.
Joint Adoption	Amend adoption laws to explicitly allow joint adoption by unmarried couples. Positive regulations already explicitly prohibit discrimination on the basis of sexual orientation and gender identity for prospective and existing foster parents. See R.I. Gen. Laws § 15-7-4 and State of Rhode Island Department of Children, Youth and Families, Foster Care and Adoption Regulations for Licensure, October 2011.
Second-Parent Adoption	Pass laws to explicitly permit an adult, with the consent of a legal parent, to adopt the legal parent's child, thus securing legal ties to both parents. Rhode Island residents in civil unions may adopt as stepparents (see R.I. Gen. Laws § 15-7-2.1(h)).
Donor Insemination	Pass donor insemination laws that include consent-to-inseminate and parental presumption provisions that apply irrespective of gender or marital status of intended parents. Amend existing parental presumption provisions of paternity laws to apply irrespective of gender or marital status of parents. See R.I. Gen. Laws § 15-8-3. Note: Rhode Island laws apply to Rhode Island residents in civil unions despite the fact that some laws may not be gender-neutral or specify broader application to those in other recognized relationships outside of marriage.
De Facto Parenting	Codify case law to clarify that R.I. Gen. Laws § 15-8-26 allows standing for <i>de facto</i> parents for visitation and custody (see <i>Rubano v. DiCenzo</i> , 759 A.2d 959 (R.I. 2000)). Expand to allow family courts to recognize <i>de facto</i> parentage as a basis for granting full parenting rights when in a child's best interests.



South Carolina
Parental Recognition Laws
As of July, 2012

Marriage	Repeal S.C. Const. Ann. Art. XVII, § 15 and S.C. Code Ann. § 20-1-15. Extend recognition of out-of-jurisdiction same-sex marriages and extend freedom to marry.
Relationship Recognition	Repeal S.C. Const. Ann. Art. XVII, § 15 and pass comprehensive relationship recognition and recognition of out-of-state equivalent relationships.
Foster Care	Amend existing laws to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for foster children and prospective and existing foster parents.
Joint Adoption	Amend adoption laws to explicitly allow joint adoption by unmarried couples and to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for prospective adoptive parents. See S.C. Code Ann. § 63-9-60.
Second-Parent Adoption	Pass laws to explicitly permit an adult, with the consent of a legal parent, to adopt the legal parent's child, thus securing legal ties to both parents.
Donor Insemination	Pass donor insemination laws that include consent-to-inseminate and parental presumption provisions that apply irrespective of gender or marital status of intended parents.
De Facto Parenting	Positive laws already codified for recognition of <i>de facto</i> custodians for visitation and custody (see S.C. Code Ann. § 63-15-60). Expand to allow family courts to recognize <i>de facto</i> parentage as a basis for granting full parenting rights when in a child's best interests.



South Dakota
Parental Recognition Laws
As of July, 2012

Marriage	Repeal S.D. Const. Ann. Art. XXI, § 9 and amend/repeal S.D. Code Ann. §§ 25-1-1 and 25-1-38. Extend recognition of out-of-jurisdiction same-sex marriages and extend freedom to marry.
Relationship Recognition	Repeal S.D. Const. Ann. Art. XXI, § 9 and pass comprehensive relationship recognition and recognition of out-of-jurisdiction equivalent relationships.
Foster Care	Amend existing laws to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for foster children and prospective and existing foster parents.
Joint Adoption	Amend adoption laws to explicitly allow joint adoption by unmarried couples and to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for prospective adoptive parents. See S.D. Code Ann. §§ 25-6-2 and 25-6-3.
Second-Parent Adoption	Pass laws to explicitly permit an adult, with the consent of a legal parent, to adopt the legal parent's child, thus securing legal ties to both parents.
Donor Insemination	Pass donor insemination laws that include consent-to-inseminate and parental presumption provisions that apply irrespective of gender or marital status of intended parents.
De Facto Parenting	Pass laws allowing family courts to recognize <i>de facto</i> parentage as a basis for visitation, custody, and for granting full parenting rights when in a child's best interests.

	<p style="text-align: center;">Tennessee Parental Recognition Laws As of July, 2012</p>
Marriage	Repeal Tenn. Const. Art. XI, § 18 and Tenn. Code Ann. § 36-3-113. Extend recognition of out-of-jurisdiction same-sex marriages and extend freedom to marry.
Relationship Recognition	Pass comprehensive relationship recognition and recognition of out-of-jurisdiction equivalent relationships.
Foster Care	Amend existing laws to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for foster children and prospective and existing foster parents.
Joint Adoption	Amend adoption laws to explicitly allow joint adoption by unmarried couples and to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for prospective adoptive parents. See Tenn. Code Ann. §§ 36-1-107 and 36-1-115.
Second-Parent Adoption	Pass laws to explicitly permit an adult, with the consent of a legal parent, to adopt the legal parent's child, thus securing legal ties to both parents.
Donor Insemination	Amend existing consent-to-inseminate and parental presumption provisions of donor insemination laws to apply irrespective of gender or marital status of intended parents. See Tenn. Code Ann. § 68-3-306.
De Facto Parenting	Pass laws allowing family courts to recognize <i>de facto</i> parentage as a basis for visitation, custody, and for granting full parenting rights when in a child's best interests. See <i>In re Thompson</i> , 11 S.W.3d 913 (Tenn. Ct. App. 1999, cert. denied, Jan. 2000).



Texas
Parental Recognition Laws
As of July, 2012

Marriage

Repeal Tex. Const. Art. I, § 32 and Tex. Fam. Code §6.204. Extend recognition of out-of-jurisdiction same-sex marriages and extend freedom to marry.

Relationship Recognition

Repeal Tex. Const. Art. I, § 32 and Tex. Fam. Code §6.204. Pass comprehensive relationship recognition and recognize out-of-jurisdiction equivalent relationships.

Foster Care

Amend existing laws to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for foster children and prospective and existing foster parents.

Joint Adoption

Amend adoption laws to explicitly allow joint adoption by unmarried couples and to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for prospective adoptive parents. See Tex. Fam. Code Ann. §§ 162.001 and 102.005.

Second-Parent Adoption

Amend existing laws to explicitly permit an adult, with the consent of a legal parent, to adopt the legal parent's child, thus securing legal ties to both parents. See Tex. Fam. Code Ann. § 162.001 and § 102.005.

Donor Insemination

Amend existing consent-to-inseminate and parental presumption provisions of donor insemination laws to apply irrespective of gender or marital status of intended parents. See Tex. Fam. Code § 160.701 et seq.

De Facto Parenting

Positive laws already codified granting standing for visitation and custody disputes (see Tex. Fam. Code Ann. §102.003 (9)). Expand to allow family courts to recognize *de facto* parentage as a basis for full parenting rights when in a child's best interests. See also *In the Interest of J.M.W.*, 2010 Tex. App. LEXIS 1817 (Tex. App. 2010)

	<p style="text-align: center;">Utah Parental Recognition Laws As of July, 2012</p>
Marriage	Repeal Utah Const. Art. I, § 29 (1) and Utah Code Ann. § 30-1-4.1(1)(a), and amend/repeal § 30-1-2(5). Extend recognition of out-of-jurisdiction same-sex marriages and extend freedom to marry.
Relationship Recognition	Repeal Utah Const. Art. I, § 29 (2) and Utah Code Ann. § 30-1-4.1(1)(b) and pass comprehensive relationship recognition and recognition of out-of-jurisdiction equivalent relationships.
Foster Care	Amend existing laws to remove prohibition on placement with unmarried cohabitating couples and to remove preference for married couples. Amend existing laws to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for foster children and prospective and existing foster parents. See Utah Code Ann. § 62A-4a-602(5)(b) and § 78B-6-117(3) and (4).
Joint Adoption	Amend/repeal adoption laws to remove prohibition on placement with unmarried cohabitating couples, to remove preference for married couples, and to explicitly allow joint adoption by unmarried couples. Amend adoption laws to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for prospective adoptive parents. See Utah Code Ann. § 62A-4a-602(5)(a) and § 78B-6-117(3) and (4).
Second-Parent Adoption	Remove prohibition on adoption for cohabiting unmarried partners and pass laws to explicitly permit an adult, with the consent of a legal parent, to adopt the legal parent's child, thus securing legal ties to both parents. See Utah Code Ann. § 78B-6-117.
Donor Insemination	Amend existing consent-to-inseminate and parental presumption provisions of donor insemination laws to apply irrespective of gender or marital status of intended parents. See Utah Code Ann. See §78B-15-701.
De Facto Parenting	Pass laws allowing family courts to recognize <i>de facto</i> parentage as a basis for visitation, custody, and for granting full parenting rights when in a child's best interests. See <i>Jones V. Barlow</i> , 154 P.3d 808 (Utah 2007).



Vermont Parental Recognition Laws

As of July, 2012

Marriage	Positive laws already codified for statewide freedom to marry (see Vt. Stat. Ann. Tit. 15 §8). Pass laws acknowledging the validity of out-of-state marriages and allow individuals with both in-state and valid out-of-jurisdiction civil unions and equivalent domestic partnerships to obtain a Vermont marriage license with a legal date retroactive to the earlier civil union or domestic partnership effective date.
Relationship Recognition	Positive laws already codified for civil unions (see Vt. Stat. Ann. Tit. 15 §§ 1201 through 1207). Vermont stopped issuing civil union licenses on September 1, 2009 in conjunction with the passage of freedom to marry, although these laws have not been repealed and existing civil unions continue to be recognized. See also, "Marriage."
Foster Care	Amend existing laws to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for foster children and prospective and existing foster parents.
Joint Adoption	Amend adoption laws to explicitly allow joint adoption (laws already allow any "person" to adopt). Amend existing laws to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for prospective adoptive parents. See Vt. Stat. Ann. Tit. 15A, § 1-102.
Second-Parent Adoption	Positive law already codified allowing adoption, without terminating the existing parent's parental rights, when a family unit consists of a parent and the parent's partner, and adoption is in the best interests of the child. See Vt. Stat. Ann. Tit. 15A, § 1-102 (b). Married Vermont residents and Vermont residents in civil unions may adopt as stepparents (see Vt. Stat. Ann. Tit. 15A, §5-105(6)).
Donor Insemination	Although Vermont law does not directly address donor insemination or assisted reproduction, positive law is codified for a gender-neutral, marital status-neutral rebuttable presumption of parentage when the alleged parents have voluntarily acknowledged parentage by filling out and signing a Voluntary Acknowledgement of Parentage form and filing the completed form with the department of health (note that the statute is both gender-neutral and marital status-neutral, but the form from Vermont is only marital-status neutral). Positive law also codified for a rebuttable presumption of parentage when a child is born while a husband and wife are legally married to each other. Pass donor insemination laws that include consent-to-inseminate and parental presumption provisions that apply irrespective of gender or marital status of intended parents. See Vt. Stat. Ann. Tit. 15, §308 and State of Vermont Voluntary Acknowledgement of Parentage (rev. 1/09). Note: Vermont laws apply to married heterosexual couples, married same-sex couples, and residents in civil unions despite the fact that some laws may not be gender-neutral or specify broader application to those in other recognized relationships outside of marriage.
De Facto Parenting	Pass laws allowing family courts to recognize <i>de facto</i> parentage as a basis for visitation, custody, and for granting full parenting rights when in a child's best interests. See <i>Titchenal v. Dexter</i> , 166 Vt. 373, 693 A.2d 682 (Vt. 1997). See also <i>In re J.M.</i> , 750 A.2d 442 (Vt. 2000).

	<p style="text-align: center;">Virginia Parental Recognition Laws As of July, 2012</p>
Marriage	Repeal Va. Const. Art. I, § 15-A or amend the first sentence to broaden the definition of marriage. Repeal Va. Code Ann. § 20-45.2. Extend recognition of out-of-jurisdiction same-sex marriages and extend freedom to marry.
Relationship Recognition	Repeal Va. Const. Art. I, § 15-A or amend to remove the second and third sentences of the amendment regarding other unions, partnerships and legal status. Repeal Va. Code Ann. § 20-45.3. Pass comprehensive relationship recognition and recognition of out-of-jurisdiction equivalent relationships.
Foster Care	Amend existing laws to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for foster children and prospective and existing foster parents.
Joint Adoption	Amend adoption laws to explicitly allow joint adoption by unmarried couples and to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for prospective adoptive parents. See Va. Code Ann. §§ 63.2-1201 and 63.2-1201.1.
Second-Parent Adoption	Pass laws to explicitly permit an adult, with the consent of a legal parent, to adopt the legal parent's child, thus securing legal ties to both parents.
Donor Insemination	Amend existing consent-to-inseminate and parental presumption provisions of donor insemination laws to apply irrespective of gender or marital status of intended parents. See Va. Code Ann. § 20-158.
De Facto Parenting	Pass laws allowing family courts to recognize <i>de facto</i> parentage as a basis for visitation, custody, and for granting full parenting rights when in a child's best interests.



Washington
Parental Recognition Laws
 As of July, 2012

<p>Marriage</p>	<p>Positive laws passed extending freedom to marry and recognition of out-of-jurisdiction marriages (beginning June 7, 2012) and converting existing domestic partnerships to marriages (beginning in 2014)(see Engrossed Substitute Senate Bill 6239). Individuals with both in-state and valid out-of-jurisdiction domestic partnerships (and civil unions) may also obtain a Washington marriage license provided they are otherwise eligible to marry and the parties to the marriage are the same as the parties in the previous partnership or civil union. Note: Resolution of laws and implementation of code changes has been delayed until November 2012 by referendum 74.</p>
<p>Relationship Recognition</p>	<p>Positive laws already codified for domestic partnerships and recognition of out-of-jurisdiction equivalent relationships, including recognition of same-sex marriages as domestic partnerships (see Wash. Rev. Code (ARCW) §§ 26.60.010 through 26.60.901). When marriage legislation is implemented (see "Marriage"), Washington domestic partnerships will be automatically merged into marriages and deemed marriages as of June 30, 2014 and the date of the original state registered domestic partnership will become the legal date of the marriage. Domestic partnerships will only continue to be formed for partners age 62 and older.</p>
<p>Foster Care</p>	<p>Amend existing laws to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for foster children and prospective and existing foster parents.</p>
<p>Joint Adoption</p>	<p>Amend adoption laws to explicitly allow joint adoption by unmarried couples and to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for prospective adoptive parents. Wash. Rev. Code (ARCW) §§ 26.33.140 and 26.33.150.</p>
<p>Second-Parent Adoption</p>	<p>Pass laws to explicitly permit an adult, with the consent of a legal parent, to adopt the legal parent's child, thus securing legal ties to both parents. NOTE: Several lower courts have granted joint petitions for adoption where one of the petitioners is the biological child, but there are no appellate court or higher decisions. Washington residents in domestic partnerships may adopt as stepparents (see Wash. Ct. Rules LSPR § 93.04).</p>
<p>Donor Insemination</p>	<p>Positive gender-neutral, marital status-neutral consent-to-inseminate provision already codified that allows a person who consent in writing to assisted reproduction with another person, with the intent to parent, to be considered the parent of the resulting child. Laws also reference the issuance of a birth certificate for the child indicating the legal parentage pursuant to the consent. Positive gender-neutral, marital status-neutral presumption of parentage provision is also codified if the person resided in the same household with a child and parent and the two adults openly held out the child as their own. See Wash. Rev. Code (ARCW) § 26.26.705 et seq. Note: Washington laws apply to Washington residents in domestic partnerships despite that fact that some laws may not be gender-neutral or specify broader application to those in other recognized relationships outside of marriage.</p>
<p>De Facto Parenting</p>	<p>Codify existing case law and pass laws allowing family courts to recognize <i>de facto</i> parentage as a basis for visitation, custody and for granting full parenting rights when in a child's best interests (see <i>In re Parentage of L.B.</i>, 122 P.3d 161 (Wash. 2005)).</p>



West Virginia
Parental Recognition Laws
As of July, 2012

Marriage	Repeal W.Va. Code § 48-2-603 and extend recognition of out-of-jurisdiction same-sex marriages. Amend/repeal W. Va. Code § 48-2-104(c) and extend freedom to marry.
Relationship Recognition	Pass comprehensive relationship recognition and recognition of out-of-jurisdiction equivalent relationships.
Foster Care	Amend existing laws to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for foster children and prospective and existing foster parents.
Joint Adoption	Amend adoption laws to explicitly allow joint adoption by unmarried couples and to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for prospective adoptive parents. See W. Va. Code § 48-22-201.
Second-Parent Adoption	Pass laws to explicitly permit an adult, with the consent of a legal parent, to adopt the legal parent's child, thus securing legal ties to both parents.
Donor Insemination	Pass donor insemination laws that include consent-to-inseminate and parental presumption provisions that apply irrespective of gender or marital status of intended parents.
De Facto Parenting	Codify existing case law and pass laws allowing family courts to recognize <i>de facto</i> parentage as a basis for visitation, custody, and granting full parenting rights when in the child's best interests. See <i>In re Clifford K.</i> , 619 S.E.2d 138 (W. Va. 2005).



Wisconsin
Parental Recognition Laws
As of July, 2012

Marriage

Amend Wis. Stat. §§ 765.001 through 765.01 and 765.04. Extend recognition of out-of-jurisdiction same-sex marriages. Extend freedom to marry.

Relationship Recognition

Positive laws already codified for limited domestic partnerships providing for specifically enumerated rights related such as intestate inheritance, hospital visitation and family leave, and ability to sue for wrongful death (see Wis.Stat. §§ 770.001 through 770.18). Repeal Wis. Const. Art. XIII, § 13 or amend to remove second sentence of the amendment regarding legal status. Extend comprehensive relationship recognition and recognition for out-of-jurisdiction equivalent relationships.

Foster Care

Positive laws already explicitly prohibiting discrimination on the basis of sexual orientation for prospective and existing foster parents (see Wisc. Admin. Code DCF §56.04). Amend existing laws and/or regulations to include protections for foster children and expand to prohibit discrimination on the basis of gender identity.

Joint Adoption

Amend adoption laws to explicitly allow joint adoption by unmarried couples and to explicitly prohibit discrimination on the basis of sexual orientation and gender identity alongside existing protections for disability, race and ethnicity. See Wisc. Stat. § 48.82.

Second-Parent Adoption

Pass laws or clarify existing laws to explicitly permit an adult, with the consent of a legal parent, to adopt the legal parent's child, thus securing legal ties to both parents. See Wisc. Stat. § 48.81 and § 48.92. and *In the Interest of Angel Lace M.*, 516 N.W. 2d 678 (Wis. 1994).

Donor Insemination

Clarify case law and amend existing consent-to-inseminate and parental presumption provisions of donor insemination laws to apply irrespective of gender or marital status of intended parents. See Wis. Stat. § 891.40.

De Facto Parenting

Codify existing case law and pass laws allowing family courts to recognize *de facto* parentage as a basis for visitation, custody, and granting full parenting rights when in the child's best interests. (*In re the Custody of H.S.H.-K: Holtzman v. Knowtt*, 533 N.W.2d 419 (Wis. 1995), *cert. denied.*, *Knott v. Holtzman*, 516 U.S. 975 (1995)).



Wyoming
Parental Recognition Laws
As of July, 2012

Marriage	Amend Wyo. Stat. §20-1-111 to allow recognition of out-of-jurisdiction state-level marriage contracts (See also <i>Christiansen v. Christiansen</i> , 253 P.3d 153 (Wyo. 2011)). Repeal Wyo. Stat. § 20-1-101 and extend freedom to marry.
Relationship Recognition	Pass comprehensive relationship recognition and recognition of out-of-jurisdiction equivalent relationships.
Foster Care	Amend existing laws to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for foster children and prospective and existing foster parents.
Joint Adoption	Amend to explicitly allow joint adoption by unmarried couples and to explicitly prohibit discrimination on the basis of sexual orientation and gender identity for prospective adoptive parents. See Wyo. Stat. §§ 1-22-103 and 1-22-104.
Second-Parent Adoption	Pass laws to explicitly permit an adult, with the consent of a legal parent, to adopt the legal parent's child, thus securing legal ties to both parents.
Donor Insemination	Amend existing consent-to-inseminate and parental presumption provisions of donor insemination laws to apply irrespective of gender or marital status of intended parents. See Wyo. Stat. § 14-2-904.
De Facto Parenting	Pass laws allowing family courts to recognize <i>de facto</i> parentage as a basis for visitation, custody, and for granting full parenting rights when in a child's best interests.

END NOTES AND REFERENCES

Note: References to the “Full Report” in these endnotes are references to the detailed recommendations that can be found in: Movement Advancement Project, Family Equality Council and Center for American Progress, “All Children Matter: How Legal and Social Inequalities Hurt LGBT Families,” October 2011.

- ¹ Originally, U.S. family law said that a child born to an unwed mother had no father at all. Nancy Polikoff, “A Mother Should Not Have to Adopt Her Own Child: Parentage Laws for Children of Lesbian Couples in the Twenty-First Century,” *Stanford Journal of Civil Rights & Civil Liberties*, 2009, 5:201.
- ² A 1972 Supreme Court decision made it impermissible to deny a father parenting rights because he was not married to the mother and forced states to revise their parenting statutes to ensure that fathering rights were recognized even outside of marriage. Some scholars have called this moment a “legal revolution” in family law.
- ³ Rose M. Kreider and Diana B. Elliott, “The Complex Living Arrangements of Children and Their Unmarried Parents,” Population Association of America, Poster Presentation, May 2, 2009.
- ⁴ See Full Report pp. 118-119.
- ⁵ U.S. Census Bureau, Table 1. Household Characteristics of Opposite-Sex and Same-Sex Couple Households: ACS 2010, <http://www.census.gov/hhes/samesex/files/ssex-tables-2010.xls>.
- ⁶ Gary J. Gates, M.V. Lee Badgett, Jennifer Ehrle Macomber and Kate Chambers, “Adoption and Foster Care by Gay and Lesbian Parents in the United States,” The Williams Institute and Urban Institute, 2007, http://www.urban.org/UploadedPDF/411437_Adoption_Foster_Care.pdf.
- ⁷ Ibid.
- ⁸ Jaime M. Grant, Lisa A. Mottet, Justin Tanis, Jack Harrison, Jody L. Herman and Mara Keisling, “Injustice at Every Turn: A Report of the National Transgender Discrimination Survey,” National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011.
- ⁹ Gary J. Gates, “Can Homophobia Reduce Your Home Equity?” November 9, 2011, http://www.huffingtonpost.com/gary-j-gates/can-homophobia-reduce-you_b_1082729.html.
- ¹⁰ Suzanne Macartney, “Child Poverty in the United States 2009 and 2010: Selected Race Groups and Hispanic Origin,” *American Community Survey Briefs*, November 2011, <http://www.census.gov/prod/2011pubs/acsbr10-05.pdf>.
- ¹¹ Because this relies only on the race/ethnicity of the householder (the person completing the census form), it is likely an underestimation of the diversity among same-sex couples. Householders who identify as white, but who have a spouse or partner who is a person of color, for example, are not included in these statistics. Gary J. Gates, “Same-sex couples in Census 2010: Race and Ethnicity,” The Williams Institute, April 2012. <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Gates-Couples-RaceEthnicity-April-2012.pdf>.
- ¹² Ibid.
- ¹³ R. Bradley Sears, Gary J. Gates and William B. Rubenstein, “Same-Sex Couples and Same-Sex Couples Raising Children in the United States: Data from Census 2000,” The Williams Institute, 2005.
- ¹⁴ Craig J. Konnoth and Gary J. Gates, “Same-sex Couples and Immigration in the United States,” The Williams Institute, November 2011. <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Gates-Konnoth-Binational-Report-Nov-2011.pdf>.
- ¹⁵ Ibid.
- ¹⁶ See Full Report, pp. 11-13 for a full discussion with references and citations.
- ¹⁷ This report uses “individual” to refer to someone who is living alone or with a partner or spouse but who petitions to adopt individually rather than as a couple, whereas a “single” applicant is someone who petitions individually and is both unmarried and living without a partner. Some states bar unmarried people living with partners from fostering or adopting children, and both Arizona and Utah give preference to married couples over individual or single applicants.
- ¹⁸ Some judges in states lacking relationship recognition for same-sex couples allow same-sex couples to use the stepparent adoption procedure.
- ¹⁹ This data is from Census 2000. Updated data is not available because the Census Bureau has decided not to ask about foster children in the 2010 Census. Gates et al., “Adoption and Foster Care”; Evan B. Donaldson Adoption Institute, *Expanding Resources for Waiting Children II: Eliminating Legal and Practice Barriers to Gay and Lesbian Adoption from Foster Care*, 2008, 12, http://www.adoptioninstitute.org/publications/2008_09_Expanding_Resources_Legal.pdf.
- ²⁰ Gates et al., “Adoption and Foster Care.” Calculations revised April 2011.
- ²¹ This estimate is based on findings from the 2008-2010 American Community Survey that 2.7% of same-sex couples are raising an adoptive child. This figure was then applied to the roughly 4 million lesbians and gay men in the U.S. See Footnote 1 in Gary J. Gates, “Children and Families Impacted and Fiscal Impact of Virginia HB 189/SB 349,” The Williams Institute, February 2012. <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Gates-VA-Adoption-Feb-20121.pdf>.
- ²² Gary P. Mallon, “Assessing Lesbian and Gay Prospective Foster and Adoptive Families: A Focus on the Home Study Process,” *Child Welfare* 86, 2007. Gates et al., “Adoption and Foster Care.”
- ²³ U.S. Dept. of Health and Human Services, Administration for Children and Families, “Adoption and Foster Care Analysis and Reporting System (AFCARS) Report,” 2011, http://www.acf.hhs.gov/programs/cb/stats_research/afcars/tar/report18.htm.
- ²⁴ Jennifer Ehrle Macomber, C. Scarcella, E. Zielewski and R. Geen. “Foster Care Adoption in the United States: A State-by-State Analysis of Barriers and Promising Approaches,” Urban Institute, 2004.
- ²⁵ Gates et al., “Adoption and Foster Care.”
- ²⁶ U.S. Dept. of Health and Human Services, Administration for Children and Families, “Adoption and Foster Care Analysis and Reporting System (AFCARS) Report,” 2010; U.S. Census Bureau, “ACS Demographic and Housing Estimates,” 2005-2009 American Community Survey 5-Year Estimates.”
- ²⁷ CWLA/ Lambda Legal, “Combating Misguided Efforts,” 2009. See also Gates et al., “Adoption and Foster Care,” 2007.
- ²⁸ The voter-approved Arkansas law banning cohabiting adults from adopting also banned them from fostering but, as mentioned earlier, was recently struck down by the state’s Supreme Court.

- ²⁹ North Dakota explicitly permits agencies not to place children with foster families if it violates the agency's moral or religious beliefs, though it does not ban such foster families statewide, N. D. Cent. Code §50-12-03, §50-12-07.1.
- ³⁰ Virginia General Assembly 2012 Session, SB 349 and HB 189.
- ³¹ State of Illinois General Assembly 2011-2012 Session, HB 3942.
- ³² *Adar v. Smith*, 591 F. Supp.2d 857 (E.D. La., 2008), *cert. denied* 132 S.Ct. 400 (U.S. 2011).
- ³³ The Adoption and Safe Families Act provides federal funding and incentives to encourage family permanency and sets guidelines to ensure safe, speedy and appropriate adoption placements. Each state has its own detailed laws which must comply with federal requirements if the state seeks access to federal funds. Apart from federal funding eligibility, adoption is regulated by state statute, which can vary widely from state to state.
- ³⁴ In 2010, a Florida Appeals Court struck down a ban on adoption by anyone who is gay, lesbian or bisexual. The decision is binding on all lower courts, and Florida's Dept. of Children and Families ceased enforcing the ban.
- ³⁵ See Full Report, pp. 27-28.
- ³⁶ MAP's list is compiled from three sources as well as examinations of state laws and regulations: ACLU, "Too High A Price: The Case Against Restricting Gay Parenting," 2nd Edition, 2006, 6-11, http://www.aclu.org/files/images/asset_upload_file480_27496.pdf; Family Equality website, http://www.familyequality.org/pdf/foster_with_citations.pdf; Courtney G. Joslin and Shannon P. Minter, *Lesbian, Gay, Bisexual and Transgender Family Law*, 2010, 108-110.
- ³⁷ As of January 1, 2012 the states are: California, Connecticut, Delaware, Hawaii, Illinois, Iowa, Massachusetts, Nevada, New Hampshire, New Jersey, New York, Oregon, Rhode Island, Vermont and Washington, and the District of Columbia. For updates, please see: http://www.lgbtmap.org/equality-maps/marriage_relationship_laws.
- ³⁸ Evan B. Donaldson Adoption Institute, Expanding Resources for Children III: Research-Based Best Practices in Adoption by Gays and Lesbians, October 2011, http://www.adoptioninstitute.org/publications/2011_10_Expanding_Resources_BestPractices.pdf.
- ³⁹ U.S. Dept. of Health and Human Services, Administration for Children and Families, "The Adoption Home Study Process," http://www.childwelfare.gov/pubs/f_homstu.pdf.
- ⁴⁰ Again, a Florida court struck down a ban on adoption by anyone who is gay, lesbian or bisexual.
- ⁴¹ "If the individual who files the petition is unmarried, no other individual may join in the petition, except that a man and a woman who jointly adopted a minor child in a foreign country while married to one another must readopt jointly." North Carolina General Statutes § 48-2-301, <http://law.onecle.com/north-carolina/48-adoption/48-2-301.html>. Louisiana restricts adoption to "single person or married couple jointly," and case law prohibits joint adoption by unmarried couples.
- ⁴² Alabama, Alaska, Arizona, Florida, Kansas, Kentucky, Louisiana, Maryland, Montana, Nebraska, Ohio, Oklahoma and West Virginia.
- ⁴³ Perhaps because of these statutes, state officials and media reports sometimes assert that joint adoption for unmarried and/or same-sex couples is prohibited, when in fact no court has definitively ruled on how to interpret the statute's language.
- ⁴⁴ Some intermediate-level courts have ruled against certain kinds of same-sex couple adoptions, which casts doubt on whether those states would allow same-sex couples to obtain joint adoptions. These include Kentucky, Nebraska, Ohio and Wisconsin.
- ⁴⁵ Normally a stepparent adoption will be granted only if no other parent (such as the biological father) has or wishes to maintain parenting rights (for instance, if the biological father has died or relinquished or agreed to relinquish his parental claims and obligations). However, in some cases a judge may involuntarily terminate the rights of the non-custodial parent, for example, if that parent is not meeting his or her parental obligations and the judge deems the stepparent adoption to be in the best interests of the child.
- ⁴⁶ The Evan B. Donaldson Adoption Institute estimates that 42% of adoptions are stepparent adoptions, "Overview of Adoption in the United States," <http://www.adoptioninstitute.org/FactOverview.html#5>; U.S. Dept. of Health and Human Services, "Stepparent Adoption," http://www.childwelfare.gov/pubs/f_step.cfm.
- ⁴⁷ Gary J. Gates and Adam Romero, "Parenting by Gay Men and Lesbians: Beyond the Current Research," in H. Elizabeth Peters and Claire Kamp Dush, Eds., *Marriage and Family: Perspectives and Complexities*, New York, 1992, 235-6.
- ⁴⁸ We use this term to refer to LGBT adults who function as a stepparent, whether or not they are formally recognized as such under their state's law.
- ⁴⁹ Po Bronson, "Are Stepparents Real Parents?" *Time Magazine*, May 17, 2006.
- ⁵⁰ National Center for Lesbian Rights, "Legal Recognition of LGBT Families," 2011. The states that offer comprehensive relationship recognition in the form of domestic partnerships or civil unions generally allow same-sex partners all the same rights as legal spouses. Thus, partners in such relationships have access to the stepparent adoption process, although some may not refer to this as a "stepparent" adoption because that term historically has referred to someone who is married to a parent. In addition, some states that do not offer marriage or comprehensive relationship recognition nevertheless allow a same-sex partner to use the stepparent adoption process to adopt a partner's child, or to allow a second-parent adoption which, while it is often more cumbersome and expensive, has the same effect as a stepparent adoption.
- ⁵¹ In some of the 15 states and D.C. where stepparent adoption is available, states, couples may be required to be married or have a domestic partnership or civil union.
- ⁵² Based on National Center for Lesbian Rights, "Adoption by LGBT Parents," 2012, http://www.nclrights.org/site/DocServer/2PA_state_list.pdf?docID=3201 plus a 2010 court ruling in North Carolina that appears to ban second-parent adoptions. While Mississippi has a statute prohibiting adoption by same-sex couples, it is unclear whether this would preclude second-parent adoption by an individual with a same-sex partner.
- ⁵³ For example, Michigan appears to have a judge-ordered ban on second-parent adoptions, but the status of that ban is uncertain. HRC, "Michigan Adoption Law," 2009, <http://www.hrc.org/laws-and-legislation/entry/michigan-adoption-law>.
- ⁵⁴ Jennifer Egan, "Wanted: A Few Good Sperm," *New York Times Magazine*, March 19, 2006; Liza Mundy, *Everything Conceivable: How Assisted Reproduction is Changing Our World*, Anchor Books, 2007.
- ⁵⁵ See Full Report, pp. 34-37.
- ⁵⁶ These states include California, Connecticut, Delaware, Illinois, Massachusetts, New Hampshire, New York, Nevada, Oregon, Rhode Island, Vermont, Washington and D.C. Although Iowa allows same-sex marriage, it does not support a parentage presumption. See Full Report, page 36, footnote 120.
- ⁵⁷ Article IV, Section I of the U.S. Constitution states that "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."
- ⁵⁸ In 2008, California allowed gay marriage for a period of six months, but it was banned by voters in November, 2008.
- ⁵⁹ Maryland and New Mexico have pledged to honor marriages of same-sex couples performed elsewhere, and while this means that the presumption of parentage should also be recognized, that interpretation remains untested. As a result, MAP does not include those states as "presumption of parentage" states.

- ⁶⁰ Domestic Partnership Judicial Determination of Parentage Amendment Act of 2009, D.C. Official Code, <http://www.dccouncil.us/images/00001/20090511122621.pdf>. See Appendix 2 of this report for more details about this law.
- ⁶¹ New Mexico Uniform Parentage Act, 2009 N.M. Laws 215, §§ 7-703, 7-704; Polikoff, "A Mother Should Not Have to Adopt Her Own Child," 240.
- ⁶² *Shineovich v. Kemp* (229 Ore. App. 670), 214 P.3d 29, (Ore. App. 2009, cert. denied).
- ⁶³ Clarifying and Expanding the Rights and Obligations of State Registered Domestic Partners and Other Couples Related to Parentage, H.R. 1267, <http://www.washington-votes.org/2011-HB-1267>.
- ⁶⁴ Center for American Progress, "Assisted Reproductive Technologies: A Glossary," http://www.americanprogress.org/issues/2007/12/art_resources.html.
- ⁶⁵ Comprehensive statistics about use of egg donation and surrogacy are unavailable. However, given the extraordinary costs associated with these options, it is unlikely that large percentages of LGBT families undertake these options. One surrogacy agency targeting LGBT couples estimates that its services cost between \$115,000 and \$150,000. Abbie E. Goldberg, *Lesbian and Gay Parents and Their Children: Research on the Family Life Cycle*, American Psychological Association, 2010.
- ⁶⁶ Because most employee benefits are regulated under the federal Employee Retirement Income Security Act (ERISA), which does not recognize same-sex couples because of DOMA, most employers are not required to (although they may opt to) offer health benefits to the partners or non-recognized children of LGBT workers, even if those workers are legally married in their state. Carmen DeNavas-Walt, Bernadette D. Proctor and Jessica C. Smith, "Income, Poverty, and Health Insurance Coverage in the United States: 2010," US Census Bureau, 2011 found that 55% of Americans received health insurance through an employer, their spouse's employer, or their parents' employer. Specifically for "working age" Americans, 63% received health insurance through an employer, and more than half of employees chose coverage that included at least one other family member, such as a spouse or child.
- ⁶⁷ See Full Report, pp. 79-83.
- ⁶⁸ See Full Report, pp. 85-89.
- ⁶⁹ See Full Report, pp. 43-45.
- ⁷⁰ See Full Report, pp. 47-48.
- ⁷¹ See Full Report, pp. 73-76.
- ⁷² See Full Report, pp 76-78.
- ⁷³ See Full Report, pp. 51-66 and Movement Advancement Project, Family Equality Council and Center for American Progress, "Strengthening Economic Security for Children Living in LGBT Families," January 2012.
- ⁷⁴ Because the application of existing surrogacy statutes to LGBT families is an emerging area of the law, we have not provided a legislative or regulatory model in this area. We also have not provided model legislation for parental presumption laws because parentage presumptions do not result in a court judgment and do not hold across state lines.
- ⁷⁵ For instance, British and Dutch law both explicitly permit joint adoption by unmarried partners without restriction with provisions similar to the New York statute above.
- ⁷⁶ See Shawn R. Gebhardt, *Full Faith and Credit for Status Records: A Reconsideration of Gardiner*, 97 CALIF. L. REV. 1419 (2009) and Nancy D. Polikoff, *A Mother Should Not Have To Adopt Her Own Child: Parentage Laws for Children of Lesbian Couples in the 21st Century*, 5 STAN. J. OF C.R. & C.L. 101 (2009).



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