NCLR

NATIONAL CENTER FOR LESBIAN RIGHTS

LEGAL RECOGNITION OF LGBT FAMILIES

I. Legal Parent

A legal parent is a person who is legally-recognized as a child's parent and has the legal right to have custody of a child and make decisions about the child's health, education, and well-being. A legal parent is also financially obligated to support the child.

In a number of states, a person who is not a legal parent does not have any legal decision-making authority over a child, even if that person lives with the child and functions as the child's parent. For example, in some states, a person who is not a legal parent may not be able to consent to medical care for the child or even have the authority to approve things like school field trips. In addition, a non-legal parent may have no rights to custody or even visitation with a child should something happen to the legal parent, and may have no ability to claim the child as a dependent for health insurance. In the absence of a will stating otherwise, a child generally has no right to inherit from a person who is not a legal parent or relative.

All legal parents have an equal right to seek custody and make decisions for their children, as well as the responsibility to support their children. A biological parent does not have any more rights than an adoptive parent or other person who is a legal parent. For example, if a lesbian couple has a child together through donor insemination and completes a second parent adoption, both parents are on completely equal legal footing. If the couple were to separate, each would be equally entitled to custody, which a court would determine based on the best interests of the child without giving an automatic advantage to either parent.

When a legally married couple has a child, they are both automatically presumed to be the legal parents of the child. This means that, if they get divorced, they both remain legal parents unless a court terminates one or both of their parental rights. This presumption applies to same-sex parents when children are born to couples who are married or where their state recognizes their civil union or comprehensive domestic partnership at the time the child is born. Most states have not yet addressed this issue directly, but every state that has considered this question in its highest court has held that the marital presumption and assisted reproduction provisions apply equally to same-sex spouses,[1] and a number of states have changed their statutes to be gender neutral.[2] **Regardless of whether you are married or in a civil union or comprehensive domestic partnership, NCLR always encourages non-biological and non-adoptive**

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parents to get an adoption or parentage judgment, even if you are named on your child's birth certificate.

NCLR also always recommends that same-sex parents and transgender parents ensure that other family protection documents are in place, such as medical authorization, guardianship agreements, wills, advanced directives.

II. Second Parent Adoption

A. An Overview

The most common means by which LGBT non-biological parents establish a legal relationship with their children is through what is generally referred to as a "second parent adoption." A second parent adoption is the legal procedure by which a co-parent adopts his or her partner's child without terminating the partner's parental rights, regardless of marital status. As a result of the adoption, the child has two legal parents, and both partners have equal legal status in terms of their relationship to the child.

Additionally, married same-sex couples can use the stepparent adoption procedures that other married couples may use. States that recognize comprehensive domestic partnerships or civil unions also allow couples joined in these legal unions to use the stepparent adoption procedures. These adoptions have the same effect as a second parent adoption, but they may be faster and less expensive than second parent adoptions, depending on where you live.

It is important to recognize, however, that a same-sex partner who plans the birth or adoption of a child with his or her partner is a parent – not a stepparent. Parents should not have to adopt their own children, but it is legally advisable for LGBT parents to get an adoption or parentage judgment to ensure that their parental rights are fully protected in every state.

B. Availability of Second Parent Adoption

As mentioned above, married same-sex couples can use the stepparent adoption procedures available to all married couples. Registered domestic partners or civil union partners can also use similar adoption procedures in states that recognize their relationship status.

In addition, for unmarried couples and couples who are not in a civil union or registered domestic partnership or similar status, a number of states allow them to get a second parent adoption. The following states have a state statute or appellate court decision allowing same-sex couples to get a second parent adoption or co-parent adoption: California[3], Colorado[4], Connecticut[5], District of Columbia[6], Idaho[7], Illinois[8], Indiana[9], Maine[10], Massachusetts[11], Mississippi[12], Montana[13], New Jersey[14], New York[15], Oklahoma[16], Pennsylvania[17], Vermont[18].

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States that have allowed second parent adoptions by unmarried same-sex couples in some counties include Alaska, Delaware, Florida, Georgia, Hawaii, Iowa, Louisiana, Maryland, Minnesota, Oregon, Rhode Island, Texas, Washington, and West Virginia. There undoubtedly are counties in other states that have granted second parent adoptions to unmarried same-sex couples.

Until recently, Florida was the only state to categorically prohibit lesbian, gay, and bisexual individuals from adopting, but that state law was held unconstitutional in September 2010.[19] Arkansas previously prohibited anyone cohabiting with an unmarried partner from adopting or being a foster parent, but the Arkansas Supreme Court struck down this statute as unconstitutional.[20]

Appellate courts in Alabama,[21] Kansas,[22] Kentucky,[23] North Carolina,[24] Nebraska,[25] Ohio,[26] and Wisconsin[27] have said that second parent adoptions are not permissible under the adoption statutes in those states either for same-sex or different-sex couples who are not married. However, married same-sex couples can use stepparent adoption procedures in those states.

Utah prohibits anyone cohabiting with an unmarried partner from adopting.[28] Utah also gives a preference to married couples over any single adult in adoptions or foster care placement.[29] Arizona gives a preference to married couples over a single adult in adoption placement.[30] Mississippi has a statute that prohibits "[a]doption by couples of the same gender," but under the Supreme Court ruling, Mississippi must allow same-sex spouses to adopt on equal terms with other married couples.[31] Mississippi recently passed a law that may allow adoption service providers to refuse to place children with lesbian and gay single parents or couples if it would burden the exercise of their religion.[32] There is currently a case pending challenging Nebraska's policy that excludes lesbian and gay parents from being foster or adoptive placements for children in state care.[33]

C. Recognition of Second Parent Adoptions

Adoptions are court orders, which all states are required by the Full Faith and Credit Clause of the federal Constitution to recognize. For this reason, a final adoption by an LGBT parent must be recognized in every state, even if that state's own laws would not have allowed the adoption to take place. The United States Supreme Court reaffirmed this principle in a case involving Alabama's recognition of a Georgia second parent adoption.[34] The Supreme Court held that "[a] final judgment in one State, if rendered by a court with adjudicatory authority over the subject matter and persons governed by the judgment, qualifies for recognition throughout the land."[35]

Courts have also recognized that, as a general rule, an adoption that has become final cannot be challenged later by one of the parties to the adoption. For example, the Iowa Supreme Court held that a parent who had consented to a second parent adoption years earlier could not later

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change her mind and seek to challenge the legality of the adoption.[36] Courts in a number of states, including appellate courts in Florida, Indiana, Kentucky, Minnesota, Texas, and Wisconsin have issued similar decisions.[37] The Texas court found that, in order to give children and adoptive parents finality and stability, Texas statutes prevented an adoption from being attacked for any reason more than six months after it was issued. In one case, the court noted: "The destruction of a parent-child relationship is a traumatic experience that can lead to emotional devastation for all the parties involved, and all reasonable efforts to prevent this outcome must be invoked when there is no indication that the destruction of the existing parent-child relationship is in the best interest of the child."[38] Only one of the many states that has considered this issue, North Carolina, has invalidated a final adoption.[39]

D. Availability of Adoption Generally

Many LGBT parents adopt children jointly or as single parents. Every state allows a single parent to adopt a child, and no state prohibits adoption by LGBT parents. Every state allows married couples to adopt jointly and a number of states allow unmarried couples to adopt jointly. However, six states currently permit private child placement agencies to discriminate based on their religious beliefs while still operating under a state license, and in some of these states, while receiving state funding. Laws in Michigan[40], North Dakota[41], South Dakota[42], Virginia[43], Alabama[44], and Texas[45] allow private child placement agencies to refuse to provide services based on the agency's religious beliefs. Mississippi previously passed a bill permitting this kind of discrimination, but a federal district court declared the bill unconstitutional.[46]

III. Parentage Judgment

Adoption is currently the most common means used by LGBT non-biological parents to establish a legal parental relationship with their child. In many states, non-biological and non-adoptive parents who are recognized by their state law as legal parents also have the option of obtaining a parentage judgment. This is sometimes called a "parentage action," "maternity action," "paternity action," or action under the state's Uniform Parentage Act, known as a "UPA action." It is extremely important for non-biological parents to get a parentage judgment or adoption as soon as possible to ensure that their parental rights will be fully respected in any state if you move or travel. Having your name on the birth certificate does not guarantee protections if your legal rights are challenged in court – only an adoption or parentage judgment can ensure that parental rights will be respected.

A number of states recognize that a non-biological and non-adoptive parent can be a legal parent in some circumstances, even if they are not married to the birth parent. California, New Mexico, Colorado, Kansas, and New Hampshire have appellate decisions recognizing that a woman who has lived with a child and held herself out as a parent can establish her legal

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parentage under their parentage codes.[47] Delaware recognizes a person who is a *de facto* parent as a legal parent under their parentage statutes.[48] In some states, where a female same-sex couple plans together to conceive and raise a child using a medical procedure to become pregnant, or where a male same-sex couple uses a surrogate to conceive and bear a child, the intended parents can petition the court to declare the non-biological parent to be a legal parent to the child.[49] Appellate courts in Illinois, and a trial court in New Jersey, have held that a woman who consents to her partner's insemination can be a legal parent, even if she is not married to the birth mother,[50] and a few other states have statutes that explicitly provide that either a man or a woman who consents to another woman's insemination is a legal parent, regardless of marital status, including New Mexico, Nevada Washington, and the District of Columbia.[51]

Some states, including Indiana,[52] Maine,[53] Nebraska,[54] Pennsylvania,[55] and Washington,[56] have case law recognizing that a non-biological and non-adoptive parent can have all of the rights and responsibilities of parentage based on the following factors: her acceptance of the responsibilities of parentage, living with the child, the legal parent's fostering a parent-child relationship between the child and the non-biological and non-adoptive parent, and the existence of a bonded parent-child relationship.

Parentage judgments can also be obtained when a child is born to a couple who are married, or are in a state that recognizes their civil union or comprehensive domestic partnership. Transgender parents who are not biological parents can also obtain parentage judgments for children born to them and their spouse or partner if they are legally married or in a civil union or comprehensive domestic partnership.

For information about relationship recognition in your state, see NCLR's publication *Marriage, Domestic Partnerships, and Civil Unions: An Overview of Relationship Recognition for Same-Sex Couples in the United States*, available at www.nclrights.org.

IV. Custody/Visitation

Any legal parent has an equal right to seek custody or visitation, regardless of whether they are a biological parent, adoptive parent, or other legal parent. Between legal parents, there is no preference for biological parents in custody cases.

In addition to the states listed in the previous section that allow non-biological and non-adoptive parents to be recognized as legal parents, many states recognize that, where a same-sex partner participated in the caretaking of the child and maintained a parent-like relationship with the child, he or she has standing (meaning the right to go to court) to ask a court for visitation or custody. Such states have recognized this right to seek visitation or custody under an "equitable parent," "parent by estoppel," "*de facto* parent," "psychological parent," or "*in loco parentis*" theory. State courts that have recognized that a non-biological and non-adoptive

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parent may seek visitation or custody even if they are not a legal parent include: Alaska,[57] Arkansas,[58] Arizona,[59] Colorado,[60] Indiana,[61] Kentucky,[62] Maine,[63] Massachusetts,[64] Minnesota,[65] Missouri,[66] Mississippi,[67] Montana,[68] Nebraska,[69] New Jersey,[70] New Mexico,[71] North Carolina,[72] North Dakota,[73] Ohio,[74] Oklahoma,[75] Pennsylvania,[76] Rhode Island,[77] South Carolina,[78] Washington,[79] West Virginia,[80] and Wisconsin.[81] Only a small number of states have said that a non-legal parent has no ability to seek custody or visitation with the child of his or her former partner, even when he or she has been an equally contributing caretaker of the child.[82]

Many states have enacted statutes giving *de facto* parents or persons who have assumed a true parental role in a child's life a right to seek visitation or custody, including Arizona, Colorado, Connecticut, Delaware, Indiana, Kentucky, Maine, Minnesota, Montana, Nevada, Oregon, South Carolina, Texas, and the District of Columbia.[83] For example, the District of Columbia defines *de facto* parents as someone who has taken on the full responsibilities of a parent, held himself or herself out as the child's parent with the permission of the other parent or parents, and either (1) lived with the child since birth or adoption or (2) lived with the child for 10 months out of the last year and formed a "strong emotional bond" with the child with the encouragement of the other parent.[84]

V. Parenting Agreement

Same-sex couples who were not married when their children were born and who live in a state that does not yet permit second parent adoptions or parentage actions may want to draft a parenting agreement. This agreement will not make you a parent, but a number of courts have recognized that parenting agreements permitting another person to have custody or visitation with a child may enforceable in court.[85] These courts have acknowledged the importance of protecting parent-child bonds that have formed with the agreement of the child's legal parent.

A parenting agreement should specify that, although only one of the parents may be recognized as a legal parent, both parents consider themselves to be the parents of their child, with all of the legal rights and responsibilities that come with being a parent. It should explain that the legal parent waives her exclusive right to custody and control of the child and intends to co-parent equally with the other parent. The agreement should include language that clearly states the couple's intention to continue to co-parent even if their relationship is dissolved.

VI. Voluntary Acknowledgments of Parentage

A voluntary acknowledgment of parentage or a voluntary declaration of parentage (also called a VAP, or VDOP in some states) is a document that establishes a legal relationship between a parent and a child. Most states only allow men who believe they are genetic fathers of their children to sign VAPs, but a small but growing number of states now explicitly allow parents of any gender and non-genetic parents to sign VAPs. VAPs are the same as a court order. This means that parents who sign valid VAPs must be recognized by all U.S. states. It is important to

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recognize, however, that until VAPs are more widely available to parents regardless of gender or genetic connection, they may be vulnerable. NCLR strongly recommends that all non-birth parents get an adoption or judgment from a court recognizing that they are a legal parent, even if they are married, and even if they are listed as a parent on the birth certificate and have signed a VAP.

For more information see NCLR's publication *Voluntary Acknowledgments of Parentage* available at www.nclrights.org.

Last updated: March 2019

Endnotes

[1] *See, e.g.*, *Roe v. Patton*, 2015 WL 4476734, *3 (D. Utah 2015); *McLaughlin v. Jones*, 243 Ariz. 29 (2017) (holding that Arizona's gendered marital presumption had to be applied in a gender neutral manner); *Strickland v. Day*, 239 So.3d 486 (Miss. 2018); *Hunter v. Rose*, 463 Mass. 488 (2012). *But see In the Interest of A.E.*, 2017 WL 1535101, *10 (Tex App. Beaumont 2017), petition for review filed, (July 12, 2017) (stating in dicta that "[t]he substitution of the word 'spouse' for the words 'husband' and 'wife' would amount to legislating from the bench, which is something that we decline to do.").

[2] *See, e.g.*, Me. Rev. Stat. tit. 19-A, § 1881; Wash. Rev. Code Ann. § 26.26A.115 (West).

[3] *Sharon S. v. Superior Court*, 73 P.3d 554 (Cal. 2003).

[4] COLO. REV. STAT. ANN. §§ 19-5-203(1), 19-5-208(5), 19-5-210(1.5), 19-5-211(1.5).

[5] CONN. GEN. STAT. ANN. § 45a-724(a)(3) (providing that "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").

[6] *M.M.D. v. B.H.M*, 662 A.2d 837 (D.C. 1995).

[7] *In re Adoption of Doe*, No. 41463, 2014 WL 527144 (Idaho Feb. 10, 2014).

[8] *In re Petition of K.M. & D.M.*, 653 N.E.2d 888 (Ill. App. Ct. 1995).

[9] *In re Adoption of M.M.G.C.*, 785 N.E.2d 267 (Ind. Ct. App. 2003); *In re Adoption of K.S.P.*, 804 N.E.2d 1253 (Ind. Ct. App. 2004). *See also In re Infant Girl W.* 785 N.E.2d 267 (Ind. App. 2006) (same-sex couple may jointly adopt).

[10] *Adoption of M.A.*, 2007 ME 123 (Me. 2007).

[11] *In re Adoption of Tammy*, 619 N.E.2d 315 (Mass. 1993).

[12] *Matter of Adoption of D.D.H.*, 268 So. 3d 449, 450 (Miss. 2018).

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[13] Mont. Code Ann. § 42-4-302(2) (providing that "[f]or 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.")

[14] *In re the Adoption of Two Children by H.N.R.*, 666 A.2d 535 (N.J. Super. Ct. App. Div. 1995).

[15] *In re Jacob, In re Dana,* 660 N.E.2d 397 (N.Y. 1995).

[16] *Eldredge v. Taylor*, 2014 OK 92 (2014).

[17] *In re Adoption of R.B.F. & R.C.F.*, 803 A.2d 1195 (Pa. 2002).

[18] *In re Adoption of B.L.V.B. & E.L.V.B.*, 628 A.2d 1271 (Vt. 1993); VT. STAT. ANN. tit. 15A, § 1-102(b) (providing that, if family unit consists of parent and parent's partner, partner of parent may adopt child without terminating parent's rights)).

[19] *Fla. Dep't of Children & Families v. X.X.G.*, 45 So.3d 79 (Fla. Ct. App. 2010) (Florida's Third District Court of Appeal held that the ban had no rational basis and violated the equal protection guarantee of the Florida Constitution). This decision is binding on all Florida trial courts. The Florida Department of Children and Families has issued a memorandum instructing its staff to immediately cease questioning prospective adoptive parents about their sexual orientation and not consider sexual orientation as a factor in determining fitness to adopt. The Department's staff are to focus instead on the quality of parenting that adoptive parents would provide, and their commitment to love an adopted child.

[20] *Arkansas Dept. of Human Services v. Cole*, 2011 Ark. 145 (Ark. April 7, 2011) (striking Arkansas Initiative Act 1 (2008) as violating the Arkansas Constitution).

[21] *In re Adoption of K.R.S.*, 109 So.3d 176 (Ala. Ct. App. 2012) (refusing to allow a same-sex couple who had married in another state to use the stepparent adoption procedures). Previously, some attorneys had obtained second-parent adoptions in some counties.

[22] *Adoption of I.M.*, 48 Kan.App.2d 343 (Kan. Ct. App. 2012).

[23] *S.J.L.S. v. T.L.S.*, 265 S.W.3d 804 (Ct. App. Ky. 2008) (holding that the biological mother could not challenge her partner's adoption of the child more than a year after the adoption was finalized, but noting in dicta that an unmarried couple cannot use the stepparent adoption procedures in Kentucky to establish legal parentage for both partners).

[24] *Boseman v. Jarrell*, 704 S.E.2d 494 (N.C. 2010).

[25] *In re Adoption of Luke*, 640 N.W.2d 374 (Neb. 2002).

[26] *In re Adoption of Doe*, 719 N.E.2d 1071 (Ohio Ct. App. 1998).

[27] *In the Interest of Angel Lace M.*, 516 N.W.2d 678 (Wis. 1994).

[28] UTAH CODE ANN. § 78B-6-117(3).

[29] UTAH CODE §§ 78A-6-307(19), 78B-6-117 (4).

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[30] Ariz. Rev. Stat. § 8-103.

[31] MISS. CODE ANN. § 93-17-3(5).

[32] *See* Mississippi Religious Freedom Restoration Act, Miss. S.B. 2681, 2014 Reg. Sess., effective July 1, 2014.

[33] *Stewart and Stewart v. Heineman*, ACLU Case Summary, available at https://www.aclu.org/lgbt-rights/stewart-and-stewart-v-heineman.

[34] *V.L. v. E.L.*, 136 S. Ct. 1017 (2016).

[35] *Id.* at 1020. In an earlier case, the Fifth Circuit Court of Appeals, however, refused to allow same-sex parents to challenge Louisiana's refusal to issue an amended birth certificate for a child adopted by a same-sex couple based on procedural issues, but explained that all states must recognize valid adoptions from other states. *Adar v. Smith*, 639 F.3d 146 (5th Cir. 2011) (en banc) (holding that Louisiana's policy of refusing to amend birth certificates of children adopted by unmarried couples, could not be challenged in federal court and opining in dicta that Louisiana's practice did not violate full faith and credit).

[36] *Schott v. Schott*, 744 N.W.2d 85 (Iowa 2008).

[37] *In re Adoption of D.P.P.*, No. 5D13-1766, 2014 WL 2109130 (Fla. Dist. Ct. App. May 21, 2014); *In re Christian J.W.*, 803 N.W.2d 869, 337 Wis.2d 91 (Wis. Ct. App. 2011) (unpublished decision); In re *Adoption of T.A.M. and E.J.M.*, 791 N.W.2d 573 (Minn. App. 2010); *S.J.L.S. v. T.L.S.*, 265 S.W.3d 804 (Ct. App. Ky. 2008); *Mariga v. Flint*, 822 N.E.2d 620 (Ind. Ct. App. 2005); *Goodson v. Castellanos*, 214 S.W.3d 741 (Tex. App. 2007), *reh'g overruled* (Mar 01, 2007), *rev. denied* (Feb 22, 2008); *Hobbs v. Van Stavern*, 2006 WL 3095439 (Tex. App. 2006), *rev. denied* (Feb 22, 2008).

[38] *Goodson*, 214 S.W.3d at 749.

[39] *Boseman v. Jarrell,* 704 S.E.2d 494 (N.C. 2010) (holding that a final second parent adoption by the same-sex partner of the biological mother was void).

[40] Mich. Comp. Laws Ann. § 722.124e (West 2015) ("To the fullest extent permitted by state and federal law, a child placing agency shall not be required to provide any services if those services conflict with, or provide any services under circumstances that conflict with, the child placing agency's sincerely held religious beliefs contained in a written policy, statement of faith, or other document adhered to by the child placing agency. . . .")

[41] N.D. Cent. Code § 50-12-07.1 (West 2009) ("A child-placing agency is not required to perform, assist, counsel, recommend, facilitate, refer, or participate in a placement that violates the agency's written religious or moral convictions or policies. . . .")

[42] South Dakota SB 149 (2017), 2017 South Dakota Laws Ch. 114, text available at http://www.sdlegislature.gov/docs/legsession/2017/Bills/SB149P.htm (amending chapter 26-6 of the South Dakota Code to include "[n]o child-placement agency may be required to provide any service that conflicts with, or provide any service under circumstances that conflict with any sincerely-held religious

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belief or moral conviction of the child-placement agency that shall be contained in a written policy, statement of faith, or other document adhered to by a child-placement agency.")

[43] VA. Code Ann. § 63.2-1709.3 (West 2012) ("To the extent allowed by federal law, no private child-placing agency shall be required to perform, assist, counsel, recommend, consent to, refer, or participate in any placement of a child for foster care or adoption when the proposed placement would violate the agency's written religious or moral convictions or policies. . . .")

[44] H.B. 24, 2017 Leg. (Ala. 2017) ("The state may not refuse to license or otherwise discriminate or take an adverse action against any child placing agency that is licensed by or required to be licensed by the state for child placing services on the basis that the child placing agency declines to make, provide, facilitate, or refer for a placement in a manner that conflicts with, or under circumstances that conflict with, the sincerely held religious beliefs of the child placing agency provided the agency is otherwise in compliance with the requirements of the Alabama Child Care Act of 1971, Chapter 7, Title 38, Code of Alabama 1975, and the Minimum Standards for Child Placing Agencies.")

[45] H.B. 3859, 2017 Leg. (Tex. 2017) ("A governmental entity or any person that contracts with this state or operates under governmental authority to refer or place children for child welfare services may not discriminate or take any adverse action against a child welfare services provider on the basis, wholly or partly, that the provider . . . has declined or will decline to provide, facilitate, or refer a person for child welfare services that conflict with, or under circumstances that conflict with, the provider's sincerely held religious beliefs.")

[46] H.B. 1523, 2016 Leg. (Miss. 2017); *Barber v. Bryant, Case 3:16-cv-00417-CWR-LRA (S.D. Miss. 2016),* http://www.southernequality.org/cse-litigation-summary/legal-challenge-hb-1523/.

[47] *Elisa B. v. Superior Court*, 117 P.3d 660 (Cal. 2005) (holding that the same-sex partner of a biological parent can be a presumed parent under California Family Code § 7611(d) where she receives the child into her home and holds the child out as her own); *In re S.N.V.*, 2011 WL 6425562 (Colo. App. 2011); *Chatterjee v. King*, 280 P.3d 283 (N.M. 2012); *Frazier v. Goudschaal*, 296 Kan. 730 (2013); *In re Guardianship of Madelyn B.*, No. 2013-593, 2014 WL 2958752 (N.H. July 2, 2014). Other states have also recognized that paternity statutes apply equally to women. *See Rubano v. DiCenzo*, 759 A.2d 959 (R.I. 2000); *In re Roberto d.B.*, 923 A.2d 115 (Md. 2007).

[48] DEL. CODE ANN. tit. 13, § 8-201, 2302 (providing that a legal parent includes a "de facto parent" who has a "parent-like relationship" established with the support and consent of the legal parent, has "exercised parental responsibilities," and 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"). *Smith v. Guest*, No. 252, 2010, 2011 WL 899550 (Del. Mar 14, 2011) (upholding de facto parent statutes and holding that the legislature expressly intended the statutes to apply retroactively).

[49] *See, e.g.*, *Sinnott v. Peck*, 180 A.3d 560, 563 (Vt. 2017); *Partanen v. Gallagher*, 475 Mass. 632 (2016); *Brooke S.B. v. Elizabeth A.C.C.*, 28 N.Y.3d 1 (2016); *St. Mary v. Damon*, 309 P.3d 1027, 1029 (Nev. 2013); *D.M.T. v. T.M.H.*, 129 So.3d 320 (Fla. 2013), rehearing denied; *K.M. v. E.G.*, 117 P.3d 673 (Cal. 2005); *Raftopol v. Ramey*, 12 A.3d 783 (Conn. 2011).

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[50] *In re T.P.S.*, 978 N.E.2d 1070 (Ill. Ct. App. 2012). *See also*, *In re Parentage of Robinson*, 383 N.J. Super. 165 (N.J. Ch. Div. 2005) (woman who consented to her same-sex partner's insemination is presumed to be a parent).

[51] Nev. Rev. Stat. 126.670 and 126.680; N.M. Stat. Ann. § 40-11A-703; Was. Rev. Code Ann. § 26.26.710; D.C. Code § 16-909(e)(1).

[52] *King v. S.B.*, 837 N.E.2d 965, 967 (Ind. 2005). *But see A.C. v. N.J.*, 1 N.E.3d 685 (Ind. Ct. App. 2013)

[53] *C.E.W. v. D.E.W.*, 845 A.2d 1146, 1151 (Me. 2004) (once an individual is found to be a de facto parent, a court may award "parental rights and responsibilities to that individual as a parent"). *See also Pitts v. Moore*, 2014 ME 59, No. Yor–12–440 (Me. April 17, 2014), *decision not yet released for publication*.

[54] *Latham v. Schwerdtfeger*, 282 Neb. 121, 802 N.W.2d 66 (Neb. 2011); *Russell v. Bridgens*, 647 N.W.2d 56 (Neb. 2002).

[55] *L.S.K. v. H.A.N.*, 813 A.2d 872, 876 (Pa. Super. Ct. 2002) ("The rights and liabilities arising out of [*in loco parentis* status] are the same as between parent and child.").

[56] *In re Parentage of L.B.*, 122 P.3d 161, 708 (Wash. 2005) ("a de facto parent stands in legal parity with an otherwise legal parent").

[57] *Kinnard v. Kinnard*, 43 P.3d 150 (Alaska 2002).

[58] *Bethany v. Jones*, No. 10-295, 2011 Ark. 67, 2011 WL 553923 (Ark., Feb 17, 2011).

[59] *Thomas v. Thomas*, 203 Ariz. 34, 49 P.3d 306 (Ariz. App. Div. 1,2002).

[60] *In the Interest of E.L.M.C.*, 100 P.3d 546 (Colo. Ct. App. 2004), cert. denied, 2004 WL 2377164 (Colo. 2004), cert. denied sub nom, *Clark v. McLeod*, 545 U.S. 1111 (2005).

[61] *King v. S.B.*, 837 N.E.2d 965 (Ind. 2005).

[62] *Pickelsimmer v. Mullins*, 317 S.W.3d 569 (Ky. 2010).

[63] *C.E.W. v. D.E.W.*, 845 A.2d 1146 (Me. 2004).

[64] *E.N.O. v. L.M.M.*, 711 N.E.2d 886 (Mass. 1999).

[65] *Soohoo v. Johnson*, 731 N.W.2d 815 (Minn. 2007).

[66] *K.M.M. v. K.E.W.*, 539 S.W.3d 722 (Mo. Ct. App. 2017).

[67] *Logan v. Logan*, 730 So. 2d 1124 (Miss. 1998).

[68] *Kulstad v. Maniaci,* 352 Mont. 513 (Mt. 2009).

[69] *Latham v. Schwerdtfeger*, 282 Neb. 121, 802 N.W.2d 66 (Neb. 2011); *Russell v. Bridgens*, 647 N.W.2d 56 (Neb. 2002).

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[70] *V.C. v. J.M.B.*, 748 A.2d 539 (N.J. 2000).

[71] *A.C. v. C.B.*, 829 P.2d 660 (N.M. Ct. App. 1992).

[72] *Mason v. Dwinnell*, 660 S.E.2d 58 (N.C. Ct. App. 2008) (district court properly awarded joint custody to same-sex co-parents because the legal mother "acted in a manner inconsistent with her constitutionally-protected paramount interest"). *But see Estroff v. Chatterjee*, 660 S.E.2d 73 (N.C. Ct. App. 2008) (trial court properly denied lesbian non-legal mother custody because the facts did not support a finding that the legal mother "acted in a manner inconsistent with . . . her constitutionally-protected status as a parent").

[73] *McAllister v. McAllister*, 779 N.W.2d 652, 658 (N.D. 2010).

[74] *In re Bonfield*, 97 Ohio St. 3d 387, 780 N.E.2d 241 (2002); *In re Mullen*, 129 Ohio St. 3d 417, 953 N.E.2d 302 (2011).

[75] *Eldredge v. Taylor*, 339 P.3d 888 (Okla. 2014).

[76] *T.B. v. L.R.M.*, 786 A.2d 913 (Pa. 2001); *J.A.L. v. E.P.H.*, 682 A.2d 1314 (Pa. Super. Ct. 1996); *L.S.K. v. H.A.N.*, 813 A.2d 872 (Pa. Super. Ct. 2002).

[77] *Rubano v. DiCenzo*, 759 A.2d 959 (R.I. 2000).

[78] *Marquez v. Caudill*, 376 S.C. 229, 656 S.E.2d 737 (2008).

[79] *In re Parentage of L.B.*, 122 P.3d 161 (Wash. 2005).

[80] *In re Clifford K.*, 619 S.E.2d 138 (W. Va. 2005).

[81] *In re the Custody of H.S.H.-K.: Holtzman v. Knott*, 533 N.W.2d 419 (Wis. 1995), *cert. denied*, 516 U.S. 975 (1995).

[82] *See, e.g., Jones v. Barlow*, 154 P.3d 808 (Utah 2007); *White v. White*, 293 S.W.3d 1 (Mo. 2009).

[83] *See, e.g.*, ARIZ. REV. STAT. ANN. §§ 25-402, 25-409 (a person who stands *in loco parentis* to a child to seek custody or visitation under certain circumstances); COLO. REV. STAT. ANN. § 14-10-123(1)(c) (establishing standing to seek custody or visitation "[b]y a person other than a parent who has had the physical care of a child for a period of six months or more, if such action is commenced within six months of the termination of such physical care"); CONN. GEN. STAT. ANN. §§46b-56 & 46b-59 (providing that, in a dissolution proceeding, a court may grant reasonable visitation or custody to a person who is not a parent); DEL. CODE ANN. tit. 13, § 8-201, 2302 (providing that a legal parent includes a "de facto parent" who has a "parent-like relationship" established with the support and consent of the legal parent, has "exercised parental responsibilities," and 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"); D.C. CODE §16-831.01 et seq. (providing that a "de facto parent" has standing to seek custody or visitation); IND. CODE ANN. § 31-9-2-35.5 (establishing standing to seek custody or visitation by a "de facto custodian" who "has been the primary caregiver for, and financial support of, a child" for specified periods depending on age of child); KY. REV. STAT. ANN. 403.270(1) (establishing standing to seek custody or visitation by a

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"de facto custodian" who "has been the primary caregiver for, and financial support of, a child" for specified periods depending on age of child); ME. REV. STAT. ANN. tit. 19-A, § 1653(2) (court may grant reasonable visitation to a third party); MINN. STAT. ANN. § 257C.01 *et seq.* (permitting "de facto custodian" or "interested third party" as defined by statute to seek custody or visitation under specified circumstances); MT. CODE ANN. §§ 40-4-211(4)(b), 40-4-228 (a non-legal parent can seek custody or visitation if it is established by clear and convincing evidence that he or she has a "child-parent" relationship and the legal parent has "engaged in conduct contrary to the child-parent relationship"); NEV. REV. STAT. § 125C.050 (a person who has lived with the child and established a "meaningful relationship" may seek reasonable visitation if a parent has unreasonably restricted visits); OR. REV. STAT. ANN. § 109.119 (establishing standing to seek custody or visitation by a person who, within the previous six months, had physical custody of the child or lived with the child and provided parental care for the child); S.C. CODE ANN. § 63-15-60 (establishing standing to seek custody or visitation to a "de facto custodian" who has been a child's primary caregiver and financial supporter for a specified period of time based on the child's age); TEX. FAM. CODE ANN. § 102.003 (9) (establishing standing to seek custody or visitation by "a person, other than a foster parent, who has had actual care, control, and possession of the child for at least six months ending not more than 90 days preceding the date of the filing of the petition").

[84] D.C. CODE § 16-831.01 states:

> (1) "De facto parent" means an individual:
> (A) Who:
> (i) Lived with the child in the same household at the time of the child's birth or adoption by the child's parent;
> (ii) Has taken on full and permanent responsibilities as the child's parent; and
> (iii) Has held himself or herself out as the child's parent with the agreement of the child's parent or, if there are 2 parents, both parents; or
> (B) Who:
> (i) 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;
> (ii) 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;
> (iii) Has taken on full and permanent responsibilities as the child's parent; and
> (iv) Has held himself or herself out as the child's parent with the agreement of the child's parent, or if there are 2 parents, both parents.

[85] *See, e.g.*, *Eldredge v. Taylor*, 339 P.3d 888 (Okla. 2014); *Frazier v. Goudschaal*, 296 Kan. 730 (2013); *In re Bonfield*, 97 Ohio St. 3d 387, 780 N.E.2d 241 (2002); *Rubano v. DiCenzo*, 759 A.2d 959 (R. I. 2000) (holding that the former same-sex partner of a child's biological mother was entitled to seek a remedy for the biological mother's alleged violation of the parties' visitation agreement); *In re the Custody of H.S.H.-K.: Holtzman v. Knott*, 533 N.W.2d 419 (Wis. 1995) (holding that courts may "grant visitation apart from [custody and visitation statutes] on the basis of a co-parenting agreement between a biological parent and another when visitation is in a child's best interest"); *A.C. v. C.B.*, 829 P.2d 660 (N.M. Ct. App. 1992), *writ of certiorari denied C.B. v. A. C.*, 827 P.2d 837 (N.M. 1992) (holding that the former same-sex partner of a child's biological mother could seek enforcement of an agreement for shared custody or visitation

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and the agreement was enforceable, subject to the court's best interest determination); *Morgan v. Kifus*, 2011 WL 1362691 (Va. Ct. App. 2011) [unpublished].

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