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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 recognized by their state as married or in a civil union or comprehensive domestic partnership at the time the child is born. **Regardless of whether you are married or in a civil union or comprehensive domestic partnership, NCLR always encourages non-biological and non-adoptive parents to get an adoption or parentage judgment, even if you are named on your child's birth certificate.**

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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. For more information on this issue, please see NCLR's Lifelines publication at **www.nclrights.org/lifelines**.

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. 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, states that recognize marriage between same-sex couples, as well as states that provide comprehensive domestic partnerships or civil unions, allow couples joined in these legal unions to use the stepparent adoption procedures that married couples may use. 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 protected.

B. Availability of Second Parent Adoption

The trend across the nation is toward permitting persons who act as parents to a child to adopt, particularly when such a person shares a household and is in a committed relationship with the person who is already a legal parent. The following states have established laws (either through statutes or published appellate court opinions) that explicitly allow same-sex couples to adopt, either through a second parent adoption or through the stepparent adoption procedures: California,[1] Colorado,[2] Connecticut,[3] Delaware,[4] District of Columbia,[5] Hawaii,[6] Idaho,[7] Illinois,[8] Indiana,[9] Iowa,[10] Maine,[11] Maryland,[12] Massachusetts,[13] Minnesota,[14] Nevada,[15] New Hampshire,[16] New Jersey,[17] New Mexico,[18] New York,[19] Oregon,[20] Pennsylvania,[21] Rhode Island,[22] Vermont,[23] and Washington.[24]

Many more states are moving toward permitting adoption by same-sex couples on a county by county basis. States that have allowed second parent adoptions by same-sex couples in some

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counties include Alaska, Georgia, Louisiana, Texas, and West Virginia. There undoubtedly are counties in other states that have granted second parent adoptions.

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.[25] 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.[26]

Utah prohibits anyone cohabiting with an unmarried partner from adopting.[27] Utah also gives a preference to married couples over any single adult in adoptions or foster care placement.[28] Arizona gives a preference to married couples over a single adult in adoption placement.[29] Mississippi prohibits adoption by same-sex couples.[30] 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.[31] 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.[32] Appellate courts in Alabama,[33] Kansas,[34] Kentucky,[35] North Carolina,[36] Nebraska,[37] Ohio,[38] and Wisconsin[39] 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.

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 should be recognized in every state, even if that state's own laws would not have allowed the adoption to take place. Many courts have recognized that adoption decrees are entitled to full faith and credit. For instance, in a 2009 decision, a Florida Court of Appeal held that Florida must recognize a second parent adoption granted to the biological mother's same-sex partner in Washington, and that the adoptive parent is entitled to all the rights and responsibilities of a legal parent under Florida law.[40] Additionally, in 2002, the Nebraska Supreme Court said that Nebraska must recognize a second parent adoption granted in Pennsylvania, even though the adoption would not have been permitted in Nebraska.[41] The federal Tenth Circuit Court of Appeals invalidated an Oklahoma law that refused to recognize adoptions where there were two parents of the same gender, holding that the Full Faith and Credit Clause of the U.S. Constitution required Oklahoma to treat all adoptions in an "even-handed manner."[42] 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.[43]

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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 change her mind and seek to challenge the legality of the adoption.[44] Courts in a number of states, including appellate courts in Florida, Indiana, Kentucky, Minnesota, Texas, and Wisconsin have issued similar decisions.[45] 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."[46] Only one of the many states that has considered this issue, North Carolina, has invalidated a final adoption.[47]

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 respected by the federal government and when they travel to other states. Having your name on the birth certificate does not necessarily make you a legal parent – 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. California, New Mexico, Colorado, and Kansas have appellate decisions recognizing that a woman who has lived with a child and held herself out as a parent can establish her legal parentage under their parentage codes.[48] Delaware recognizes a person who is a *de facto* parent as a legal parent under their parentage statutes.[49] 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.[50] Appellate courts in Oregon and 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,[51] 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.[52]

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Some states, including Indiana,[53] Maine,[54] Nebraska,[55] Pennsylvania,[56] and Washington,[57] 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 is recognized as married or in a civil union or comprehensive domestic partnership in their state. 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.

- Same-sex couples may currently marry in California, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Vermont, Washington, and the District of Columbia. For a brief period of time, same-sex couples were able to marry in Utah, Michigan, and Arkansas before decisions invalidating the marriage bans in these states were stayed pending appeal.
- Wyoming has allowed same-sex married couples to divorce.[58]
- Couples may enter civil unions in Colorado, Hawaii, Illinois, and New Jersey. Several states previously allowed same-sex couples to enter civil unions, including Connecticut, Delaware, New Hampshire, Rhode Island, and Vermont. New York and Massachusetts explicitly recognize civil unions from other states as marriages. Most states with comprehensive domestic partnerships should also recognize civil unions from other states.
- Comprehensive domestic partnerships are available in California, Nevada, Oregon, Washington, and the District of Columbia.

The laws recognizing relationships between same-sex couples are complex and frequently change. 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

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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 parent may seek visitation or custody even if they are not a legal parent include: Alaska,[59] Arkansas,[60] Arizona,[61] Colorado,[62] Connecticut,[63] Indiana,[64] Kentucky,[65] Maine,[66] Massachusetts,[67] Minnesota,[68] Mississippi,[69] Montana,[70] Nebraska,[71] New Jersey,[72] New Mexico,[73] North Carolina,[74] North Dakota,[75] Ohio,[76] Pennsylvania,[77] Rhode Island,[78] South Carolina,[79] Washington,[80] West Virginia,[81] and Wisconsin.[82] 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.[83]

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.[84] 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.[85]

V. Parenting Agreement

Same-sex couples who live in a state that does not yet permit second parent adoptions or parentage actions may want to draft a parenting agreement. A number of courts have recognized that parenting agreements permitting another person to have visitation with a child are enforceable subject to a determination of the best interests of the child.[86] 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.

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Endnotes

[1] Second parent adoption (*Sharon S. v. Superior Court*, 73 P.3d 554 (Cal. 2003)) and domestic partner/stepparent adoption (CAL. FAM. CODE §§ 9000, 297.5, 308(b)-(c)); *Hollingsworth v. Perry*, 133 S. Ct. 2652 (2013)).

[2] Second parent adoption (COLO. REV. STAT. ANN. §§ 19-5-203(1), 19-5-208(5), 19-5-210(1.5), 19-5-211(1.5)) and civil union/stepparent adoption (COLO. REV. STAT. ANN. §§ 14-15-107, 14-15-117, 19-5-202(5)).

[3] Second parent adoption (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")) and stepparent adoption by married couples (CONN. GEN. STAT. ANN. §§ 45a-724(a)(2), 46b-20(4); CONN. GEN. STAT. ANN. § 46b-38aa *et seq.*).

[4] Civil union/stepparent adoption (DEL. CODE tit. 13, §§ 903, 201 *et seq.*, 101; DEL. CODE tit. 13, § 129). Some counties have also allowed second parent adoptions.

[5] Second parent adoption (*M.M.D. v. B.H.M*, 662 A.2d 837 (D.C. 1995)); stepparent/domestic partner adoption (D.C. CODE §§ 16-302, 46-401).

[6] Civil union/stepparent adoption (HAW. REV. STAT. §§ 578-16, 572B-9, 572-1). Some counties have also allowed second parent adoptions.

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

[8] Second parent adoption (*In re Petition of K.M. & D.M.*, 653 N.E.2d 888 (Ill. App. Ct. 1995)) and stepparent/civil union adoption by statute (750 Ill. Comp. Stat. 50/2; 750 Ill. Comp. Stat. 75/20; 750 Ill. Comp. Stat. 80/1 *et seq.* (effective June 1, 2014)).

[9] Second parent adoption (*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] Stepparent adoption by married couples (Iowa Code § 600.4; *Varnum v. Brien*, 763 N.W.2d 862 (Iowa 2009)). Additionally, some counties in Iowa have granted second parent adoptions.

[11] Second parent adoption (*Adoption of M.A.*, 2007 ME 123 (Me. 2007)) and stepparent adoptions (ME. REV. STAT. ANN. tit. 19-A, § 650-A).

[12] Stepparent adoption by married couples (MD. CODE. ANN., FAM. LAW § 2-201). Additionally, some counties in Maryland have granted second parent adoptions.

[13] Second parent adoption (*In re Adoption of Tammy*, 619 N.E.2d 315 (Mass. 1993)) and stepparent adoption (MASS. GEN. LAWS ANN. ch. 210 § 1; *Goodridge v. Dep't of Pub. Health*, 440 Mass. 309 (2003)).

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[14] Stepparent adoption (MINN. LAWS, ch. 259, § 259.59; MINN. LAWS ch. 74, § 2 (to be codified MINN. STAT. § 517.01)). Additionally, some counties in Minnesota have granted second parent adoptions.

[15] Domestic partner/stepparent adoption (NEV. REV. STAT. §§ 127.045, 122A.200).

[16] Stepparent adoption (N.H. REV. STAT. ANN. §§ 170-B:4, 457:1-a).

[17] Second parent adoption (*In re the Adoption of Two Children by H.N.R.*, 666 A.2d 535 (N.J. Super. Ct. App. Div. 1995)) and civil union/stepparent adoption (N.J. STAT. ANN. §§ 9:3-50, 37:1-31; *Garden State Equality v. Dow*, No. L-1729-11 (N.J. Sup. Ct. Sept. 27, 2013) stay denied 2013 WL 5687193 (N.J., Oct. 18, 2013)).

[18] Stepparent adoption (N.M. Stat. Ann. § 32A-5-32; *Griego v. Oliver*, 316 P.3d 865 (N.M. 2013)).

[19] Second parent adoption (*In re Jacob, In re Dana,* 660 N.E.2d 397 (N.Y. 1995)); stepparent adoption (N.Y. Dom. Rel. Law §§ 110, 10-a). New York also recognizes civil unions from other states. *Debra H. v. Janice R.*, 14 N.Y.3d 576, 930 N.E.2d 184 (N.Y. 2010).

[20] Domestic partner/stepparent adoption (OR. REV. STAT. ANN. §§ 109.041(2), 106.340; *Geiger v. Kitzhaber*, No. 6:13-cv-01834-MC (D. Or. May 19, 2014)). Additionally, according to Basic Rights Oregon, courts in all counties have granted second parent adoptions to same-sex couples. *See* www.basicrights.org.

[21] Second parent adoption (*In re Adoption of R.B.F. & R.C.F.*, 803 A.2d 1195 (Pa. 2002)) and stepparent adoption (23 Pa. Cons. Stat. Ann. § 2903; *Whitewood v. Wolf*, No. 1:13-cv-01861-JEJ (M.D. Pa. May 2014)).

[22] Stepparent/civil union adoption (R.I. GEN. LAWS §§ 15-7-4, 15-1-1 *et seq.*). Additionally, some counties in Rhode Island have granted second parent adoptions.

[23] Second parent adoption (*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)); civil union/stepparent adoption (VT. STAT. ANN. tit. 15A, § 4-101; VT. STAT. ANN. tit. 15 §§ 1a *et seq.*, 1204).

[24] Domestic partner/stepparent adoption (WASH. REV. CODE §§ 26.33.100, 26.04.010, 26.60.100). Additionally, some counties in Washington have granted second parent adoptions regardless of marital status.

[25] *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.

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[26] *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).

[27] UTAH CODE ANN. § 78B-6-117(3).

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

[29] Ariz. Rev. Stat. § 8-103.

[30] MISS. CODE ANN. § 93-17-3(5).

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

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

[33] *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.

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

[35] *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).

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

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

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

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

[40] *Embry v. Ryan*, 11 So.3d 408 (Fla. Ct. App. 2009).

[41] *Russell v. Bridgens*, 647 N.W.2d 56 (Neb. 2002).

[42] *Finstuen v. Crutcher*, 496 F.3d 1139 (10th Cir. 2007) (invalidating as unconstitutional 10 OKLA. STAT. § 7502-1.4, which stated: "this state, any of its agencies, or any court of this state shall not recognize an adoption by more than one individual of the same sex from any other state or foreign jurisdiction").

[43] *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).

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

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[45] *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).

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

[47] *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).

[48] *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). 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).

[49] 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).

[50] *See, e.g.*, *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).

[51] *Shineovich v. Kemp*, 214 P.3d 29, 40 (Or. App. 2009); *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).

[52] 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).

[53] *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)

[54] *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*.

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

[56] *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.").

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[57] *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").

[58] *Christiansen v. Christiansen*, 253 P.3d 153 (Wy. 2011) (holding that a same-sex couple who married in Canada could divorce in Wyoming).

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

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

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

[62] *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).

[63] *Laspina-Williams v. Laspina-Williams*, 742 A.2d 840 (Conn. Super. Ct. 1999).

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

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

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

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

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

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

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

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

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

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

[74] *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").

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

[76] *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).

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[77] *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).

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

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

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

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

[82] *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).

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

[84] *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 "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").

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[85] 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.

[86] *See, e.g.*, *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 and the agreement was enforceable, subject to the court's best interest determination); *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"); *In re Bonfield*, 97 Ohio St. 3d 387, 780 N.E.2d 241 (2002); *Frazier v. Goudschaal*, 296 Kan. 730 (2013); *Morgan v. Kifus*, 2011 WL 1362691 (Va. Ct. App. 2011).

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