

RELATIONSHIPS AT RISK:

Why We Need to Update State Parentage Laws to Protect Children and Families

June 2023



movement advancement project ▶

Author



NATIONAL CENTER FOR LESBIAN RIGHTS

Partners

This report was authored by:

Movement Advancement Project

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INTRODUCTION

There are more than 18 million LGBTQ adults living in the United States,¹ and nearly one in three are raising children under the age of 18.² LGBTQ parents and their families are diverse, including in their race and ethnicity, religion, education, and gender, where they live, and how their families formed. Over the past 50 years, the number of children with LGBTQ parents has grown, as has the visibility of LGBTQ families. Children raised by LGBTQ parents are part of many communities across the country and are thriving.³

Central to the wellbeing of all children, regardless of whether their parents are LGBTQ, is forming stable and secure bonds with their caregivers, most often their parents. Secure attachment to parents is critical for the emotional, social, physical, and developmental health of children.⁴ At the core of maintaining the connection between a parent and a child is a legal child-parent relationship, called “parentage.” Parentage—that is, a legally recognized and secure relationship between a child and their parent(s)—is central to ensuring that children have access to numerous protections. From parentage, many rights and responsibilities flow. For example, parentage impacts many mundane but important day-to-day activities like being picked up from daycare or school or attending a routine appointment as well as more urgent needs such as access to emergency medical care, planning for children’s educational future, and custody and inheritance rights in the event of the death of a parent.

Unfortunately, state laws establishing parentage have not always kept pace with the diverse ways families, especially LGBTQ families, form. Many of the hundreds of thousands of children born each year to families who utilize assisted reproduction, for example, are left to navigate complicated, costly, and time-consuming processes to have the law recognize them as the families they already are. In some families, especially LGBTQ families, children may have one or more parents with whom they lack a legal tie. When state laws fail to recognize the diversity of families and lack clear, simple, and financially accessible processes to establish a legal parent-child relationship, children are vulnerable.

Outdated, incomplete, and confusing parentage laws in states should be updated so all children can be legally connected to their parents. It is important that all children, including those in LGBTQ families, are legally connected to the people they know and love as parents. **This report**

examines the various ways in which LGBTQ families form and the efforts underway to ensure that all children, regardless of where they are born or who their parents are, can establish legal parent-child security.

There is no more important moment than now for this work to protect children and families. In June of 2022, the U.S. Supreme Court revoked Americans’ longstanding constitutional right to abortion in the landmark *Dobbs v. Jackson Women’s Health Organization* decision. Overturning well-settled precedent is alarming. Additionally, in his concurrence, Associate Justice Clarence Thomas called into question and invited the Court to revisit its decisions in cases protecting the right to marriage equality, contraception, and intimate sexual relationships. The current patchwork of state parentage laws, along with currently unenforceable laws in place in many states that still prohibit marriage for same-sex couples, leaves some children and families unprotected. This threat has left many LGBTQ families feeling insecure about the future of their family’s legal ties.⁵ At the same time, the political rhetoric of lawmakers and judges is calling into question the legitimacy of LGBTQ families, their ability to be visible in their communities and in schools, and their right to be protected like all other families.

WHAT LGBTQ FAMILIES LOOK LIKE TODAY

Recognizing the myriad ways that children come into our families is critical to advancing state laws that allow for the establishment of secure legal ties between parents and children and essential to promoting the health, wellbeing, and stability of children. People form families in many ways, including through assisted reproduction, adoption, and surrogacy, and this is especially true for LGBTQ families.

The 2019 LGBTQ+ Family Building Survey of LGBTQ adults looking to start or expand their families demonstrated the many potential paths to parenting for this community.⁶ For example, nearly 60% of respondents were considering private adoption; 41% were considering assisted reproductive technology;^a and 37% indicated they were considering conceiving children through intercourse, as shown in *Figure 1* on the next page. The

^a Assisted reproductive technology (ART) refers specifically to fertility treatments in which either eggs or embryos are handled. The most frequent type of ART is in vitro fertilization in which eggs are extracted and fertilized using sperm (either from a donor or an intended parent) in a laboratory, and then the resulting embryo is implanted into the uterus of an intended parent or a person acting as a gestational surrogate who carries the pregnancy to term.

same survey found that 73% of LGBTQ+ people who were already parents reported that their children were conceived through intercourse.⁷ In a 2022 survey of LGBTQI+ people, a similar share of parents (78%) had their children through intercourse, though only 43% of people who aspire to become parents indicated this would be the path to parenting.⁸ In part, this reflects the history of LGBTQ families, in which many children were conceived in the context of a previous different-sex relationship. This also demonstrates the extent to which more than half of LGBTQ people identify as bisexual, and they have created families with a different-sex partner through intercourse.

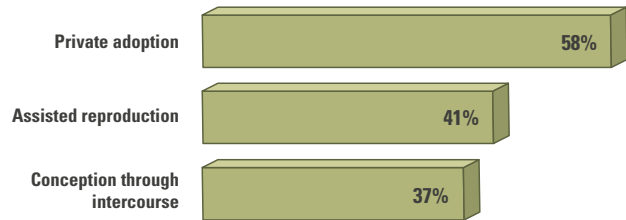
When LGBTQ people seek to grow their family through *assisted reproduction*, that can take many forms. Assisted reproduction means conceiving a child without sexual intercourse and can include assisted reproduction using gametes (egg and sperm) from intended parents or from an egg donor or sperm donor or both. For example, female same-sex couples may utilize donor sperm either from a sperm bank using an “unidentified donor” or from a friend or family member (an “identified donor”). They may also utilize in vitro fertilization (IVF), sometimes through a process called “reciprocal IVF” where one partner’s egg is used to create an embryo that is implanted in another partner who carries the pregnancy to term. Transgender people may similarly utilize assisted reproduction or fertility preservation care prior to receiving prescribed, medically necessary care related to transition.

LGBTQ families may also utilize a specific type of assisted reproduction—surrogacy—to create families. Surrogacy is an arrangement in which an individual carries and delivers a child with the intention that other individuals will be the parents of the child. The person acting as surrogate becomes pregnant through assisted reproduction with an embryo from genetic material of one or both intended parents or donated gametes. This type of surrogacy is sometimes called “gestational surrogacy.” For example, male same-sex couples may rely on an egg donor and another person acting as a gestational surrogate to build their family. In “genetic surrogacy,” the person acting as a surrogate carries the pregnancy and also provides the egg for the pregnancy. Genetic surrogacy can be done through insemination, rather than through IVF.

Many children join LGBTQ families through *adoption*. Research from the Williams Institute shows that same-sex couples are seven times more likely be raising an

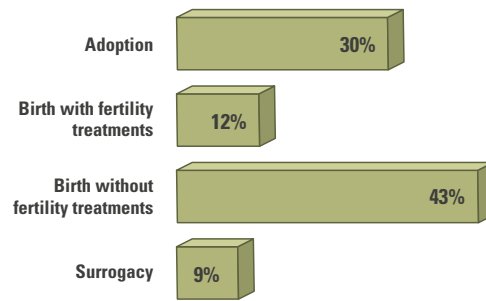
Figure 1: LGBTQ Adults Consider Many Paths to Becoming Parents

Figure 1a: 2019 LGBTQ+ Family Building Survey



Source: Family Equality Council (2019) *LGBTQ Family Building Survey*.

Figure 1b: 2022 LGBTQI+ Economic and Financial Survey



Source: Source: Center for LGBTQ Economic Advancement & Research (CLEAR) and Movement Advancement Project (MAP). March 2023. *The LGBTQI+ Economic and Financial (LEAF) Survey: Understanding the Financial Lives of LGBTQI+ People in the United States*. San Francisco: CLEAR.

adopted or foster child than are different-sex couples.⁹ LGBTQ people and same-sex couples may adopt a child through the child welfare system or may undertake an agency adoption.^b

There are, of course, millions of families in the United States who have come to be families through the blending of parents and their children. While a parent may not have always been a parent to a child, many parents come to be primary caregivers and parents to children through these connections.¹⁰

Regardless of the many ways in which children are welcomed into their families, being able to establish parentage—to have a legally recognized relationship—is vital for the stability and security of children. On pages 5-11, this report outlines the ways in which parents and children can establish that legal connection.

^b It is important to note the ways in which the child welfare system functions as a family regulation system. The regulation of families is disproportionately experienced by families of color, resulting in an overrepresentation of children of color in the child welfare system.

IMPORTANCE OF PARENTAGE FOR CHILDREN

While the term “parentage” may seem technical and like legalese, it is a concept that is vitally important for children.



Emotional, social, and developmental importance of parentage. Legally establishing parentage provides the foundation for stability, security, and permanency for children, all of which are critical for healthy child development. Children do best when they can count on the people they love to care for them. Secure attachment of children to their caregivers is core to physical, neurological, and cognitive development.¹¹ Abrupt separation from a parent—the disruption of a secure attachment—is damaging for a child. Having a secure parent-child relationship buffers a child from stressors on that key nurturing relationship. When children have this strong foundation, it allows them to navigate and cope with the inevitable bumps and challenges of the world.



Legal protections of parentage. When there is a legal parent-child relationship, parents have a right to physical custody, to make medical, educational, and legal decisions, and to visit a child in the hospital to provide comfort and support. Parentage ensures the parent-child relationship can endure even if parents separate or if one parent passes away.



Economic benefits of parentage. Children gain important rights and benefits from having established parentage. For example, children are eligible for tangible benefits such as safety net supports like food and daycare assistance, social security disability and survivor and veteran’s benefits, eligibility for health insurance through a parent, child support, and more. Children can inherit money and assets from, and sue for the wrongful death of, a deceased parent.

PATCHWORK OF LAWS LEAVES FAMILIES AT RISK

Children join families in many ways, but their need for love, security, and stability is the same. Regardless of who their parents are or where they are born, children all need to be able to establish legal parent-child relationships with the people who parent them.

Just as there are many ways that children join families, including LGBTQ families, there are various pathways to establishing parentage for children.

Recognizing the importance of parentage for children, courts and state statutes have long sought to ensure that children are legally connected to the people who parent them. This has happened through individual court cases, high-level court rulings, and legislation passed to provide clarity and consistency for all children in a state. Parentage law largely remains the purview of states. There are several ways that parent-child legal relationships can be established, and each state varies slightly in its legal framework.

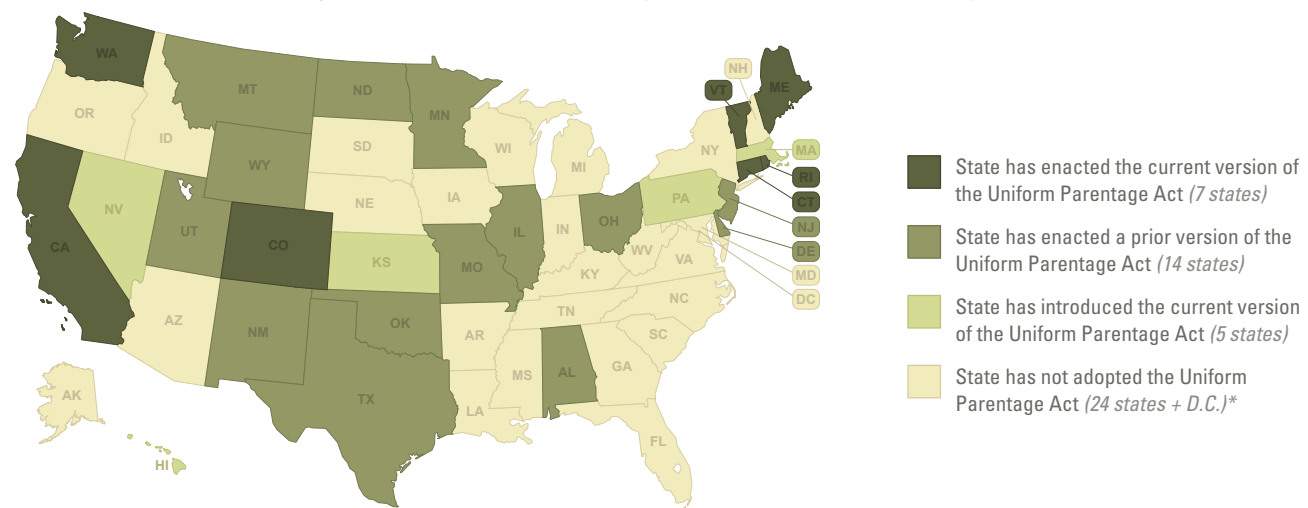
While several states have taken steps to update their family law statutes to ensure that all parent-child relationships are protected, some have not. For example, in some states, even if an adult lives with a child and acts as their parent, they may not be recognized as a legal parent, and therefore will not have access to the rights, responsibilities, and benefits for children and their families that come from parentage. Variation across the country can be challenging and confusing for LGBTQ families and may mean that some children may not be able to establish parentage with their parents. Without clear pathways for establishing parentage, family law courts have been left to wrestle with the questions of parentage. The result for children can be uncertainty, confusion, and protracted disputes, which can take longer to resolve and may result in children being separated from a parent they know, love, and depend on.

Every state should have clear, accessible ways to establish legal ties between children and their parents. Legal ties not only allow families to have the certainty their family will have access to benefits, such as health insurance, but also make certain that if something happened to a parent, such as death, separation, or divorce, the relationship between parents and children will endure.

Pathways to Parentage for Children

So how can states ensure that all children, regardless of who their parents are or the circumstances of their birth, have the protection of parentage? The Uniform Law Commission, a bipartisan group of experts from across the country, has created a model for state parentage statutes called the Uniform Parentage Act (UPA). The UPA underlies parentage laws of the majority of states in the United States. The Uniform Law Commission occasionally issues updated versions of the UPA designed to keep

Figure 2: Seven States Have Adopted the 2017 Uniform Parentage Act



*Of these 24 states, there are states which have passed comprehensive parentage protections that are simply not based on the UPA. The include New York and New Hampshire.

Source: Uniform Law Commission, "Parentage Act 2017 Legislative Bill Tracking," as of April 25, 2023.

up with the needs of families given the importance of parentage to the wellbeing of children. The most recent version, the 2017 UPA, is the most comprehensive model for ensuring all children can have an equitable path to parentage and reflects how families—including LGBTQ families—are formed today.^c

Figure 3, the infographic on the next page, outlines key avenues for establishing parentage, including those outlined in the 2017 UPA. These include:

- **Giving birth to a child** (and not acting as a surrogate)
- **Presumption of Parentage:**
 - Marital Presumption: being married to a person who gives birth to a child.
 - Non-marital Presumption: Holding oneself out as the parent of a child.
- **Voluntary Acknowledgment of Parentage:** Certain people are authorized to establish parentage by signing a legal document along with the birth parent. An acknowledgment is the equivalent of a court decree of parentage.
- **Adjudication of Parentage:** Obtaining a court judgment establishing that one is a parent under the state's parentage laws. Depending on the law in the state, this judgment might be based on many grounds, including having held oneself out as a parent, biology, having been married to a person who gave birth to a child, or functioning as a parent and meeting specific criteria such as outlined in *de facto* parent statutes.

- **Adoption:** This can include adoption of a child whose existing parents' rights have been relinquished or terminated and a new parent-child legal tie is created, or a confirmatory, stepparent, or second-parent (or co-parent) adoption to establish parentage for a child whom someone has been parenting.
- **Assisted Reproduction:** Validly consenting to assisted reproduction with the intent to be a parent of the resulting child.
- **Surrogacy:** Entering into a valid gestational or genetic surrogacy agreement with the intent to be a parent of the resulting child.

Each pathway results in parentage. Even though parentage arises as a matter of law under many of these doctrines, many parents, who are and should be recognized by the law of their home jurisdiction as parents, nonetheless seek to obtain a court order or judgment.¹³ Most do this because of discrimination facing LGBTQ parents and to provide additional security to ensure recognition of their legal relationship in all jurisdictions. A parentage judgment from one state must be given Full Faith and Credit by another state under the U.S. Constitution.^d

^c As shown in Figure 2, seven states have enacted the most recent version of the UPA—the 2017 UPA—or have adopted substantially similar legislation, while another 14 states currently have a previous version of the UPA.¹² Five states have recently introduced legislation to adopt the current version of the UPA.

^d One of the most common ways to obtain a court order or judgement is through adoption. However, this option is not available to all because of local adoption laws, cost, lack of access to courts or lawyers, and other factors. No child should lose a legal parent due to a lack of adoption.

PATHWAYS TO ESTABLISHING PARENTAGE



Below are the key avenues for establishing parentage. Unfortunately, not all these pathways to legal parentage are available to LGBTQ families in all states. The 2017 UPA offers model state parentage statutes for states to ensure that all children have an equitable path to parentage and that state parentage statutes reflect how families, including LGBTQ families, are formed today.



Voluntary Acknowledgment of Parentage

Along with the birth parent, signing a legal document



Adjudication of Parentage

A court order establishing parentage as a result of meeting certain criteria



Adoption



Assisted Reproduction

Consenting to assisted reproduction with the intent to be a parent of the resulting child



Presumption of Parentage

- Being married to a person who gives birth to a child
- Holding oneself out as the parent of a child



Giving Birth to a Child



Surrogacy

Entering into an agreement with the intent to be a parent of a child born via a surrogate



Each pathway to establishing parentage results in parentage. Even though parentage arises as a matter of law under many of these doctrines, many parents who would be recognized by the law of their home jurisdiction as parents nonetheless have their parentage affirmed by a court order or judgment. Most do this to allay concerns about interstate recognition of parentage, given that an adoption or parentage judgment from one state must be given Full Faith and Credit by another state under the U.S. Constitution.

Uncertainty About Family Recognition Takes a Toll on Families

Raising a child is hard work and can be stressful. For families for whom barriers exist to establishing parentage, this unnecessarily adds to the stress of parenting and can take a toll on parents and children.

Many LGBTQ families report worrying about traveling with their children and having copies of paperwork such as birth certificates or adoption decrees to “prove” their legal relationship to their children. Without this paperwork, parents may be questioned about their relationship to their child when boarding a plane or getting emergency medical care.

Families frequently move and may need to move to a different state to be closer to family, for a new job, or to try someplace new. Given the current patchwork of parentage laws, parents may worry that their legal relationship to their child will not be recognized. This is one reason why legal advocates encourage all families to obtain some type of court judgment as additional security if they are able. The U.S. Constitution requires that state courts recognize the judgments from other states. Thus, if a family completes an adoption or gets a judgment of parentage or signs a valid voluntary acknowledgment of parentage and then moves to a different state, that legal parent-child relationship must be recognized.

Current State Patchwork of Parentage Laws Leaves Some Children Unprotected

As noted above, not all states have adopted the 2017 Uniform Parentage Act, which offers a robust legal framework for establishing parentage for all children, regardless of who their parents are or how they were born.^e Rather, states vary greatly in their state parentage laws and related case law, particularly when it comes to the availability of straightforward, more affordable options for establishing parentage for children who are conceived using various types of assisted reproduction. While not a discussion of all paths to parentage, here we summarize a few important pathways and their availability as they relate to LGBTQ families.

Mom’s Marital Presumption Stripped by Trial Court Because of Outdated Parentage Statutes

Kris Williams and her wife Rebekah found a sperm donor on a website, and her wife, Rebekah, got pregnant through assisted reproduction. The couple married before their son was born in August 2019. As so many do, the couple agreed that the sperm donor was not intended to be a parent but would be able to know their child. Born into their marriage, their son’s birth certificate reflected both Kris and Rebekah as parents.

Two years later, the couple split and Rebekah sought to bar Kris from seeing the couple’s son.

An Oklahoma County District Court stated that the marital presumption did not apply, and, because Kris had not adopted her son, she was not his legal parent. The trial court judge concluded that the state’s parentage laws, which hadn’t been explicitly updated post-marriage equality, did not protect same-sex couples so that the marital presumption did not protect this child. The trial court stripped Kris of her marital presumption and allowed the sperm donor’s action to establish parentage to proceed, establishing him as the child’s second legal parent.

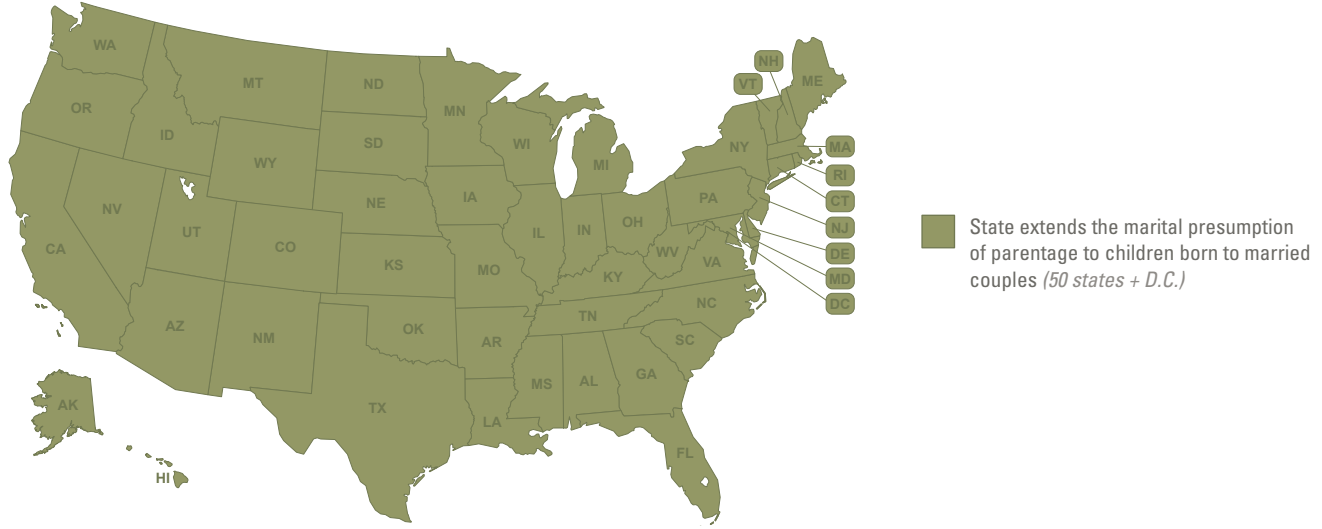
Adapted from: [Oklahoma custody battle could set new precedent for LGBTQ+ marriage rights \(19thnews.org\)](#); [Oklahoma lesbian will appeal after parental rights were transferred to son’s sperm donor \(19thnews.org\)](#).



Marital Presumption of Parentage. All states have a marital presumption of parentage, as shown in *Figure 4* on the following page. That is, when a married person gives birth to a child, the person’s spouse is treated as a parent of the child. In some cases, this presumption may be rebutted. For example, in some states, a spouse may rebut the presumption within a specific time period if another person is discovered to be the child’s biological parent and meets criteria set out in that state’s law for establishing parentage.

^e While not discussed in depth in this report, for families who may utilize intercourse as a form of family creation but where both parties do not intend to be parents, there are potential legal ramifications for the two people who had intercourse as well as for intended parents.

Figure 4: All States Extend the Marital Presumption of Parentage to Children Born to Married Couples, Including Same-Sex Couples



Source: Movement Advancement Project. "Equality Maps: Other Parental Recognition Laws." https://www.lgbtmap.org/equality-maps/other_parenting_laws. Accessed 05/01/2023.

Why it is Important to Seek Protection Beyond a Birth Certificate

Birth certificates are important documents that reflect a child's parentage. Often the first written documentation of a child's parents is the birth certificate, the information for which is completed at the hospital when a child is born. During a child's life—and even beyond—a birth certificate is often requested as proof of a parent's relationship with a child. This can include in situations like registering a child for school or health insurance or applying for a child's passport.

However, being listed on a birth certificate alone does not conclusively establish parentage. It is evidence of a parent-child relationship, but it does not take the place of one of the other pathways to establishing parentage. Given the bias and discrimination LGBTQ families still face, many families obtain a court judgment confirming parentage, which must be given full faith and credit and recognized across state lines.

As the U.S. Supreme Court has confirmed, states must apply the marital presumption of parentage equally to children of same-sex married couples.¹⁴ That is true

even if a state's statutes use gendered terms such as "husband" and "wife," which some states still have. For example, if states extend this marital presumption of parentage to a husband in a different-sex couple in which a wife is inseminated with donor sperm, then it must also recognize the same-sex spouse of a person who gives birth to a child conceived with donor sperm. Notably, the 2017 Uniform Parentage Act removes gendered language in its marital presumption of parentage to clarify that the marital presumption applies to any spouse of a person who gives birth, without regard to gender.

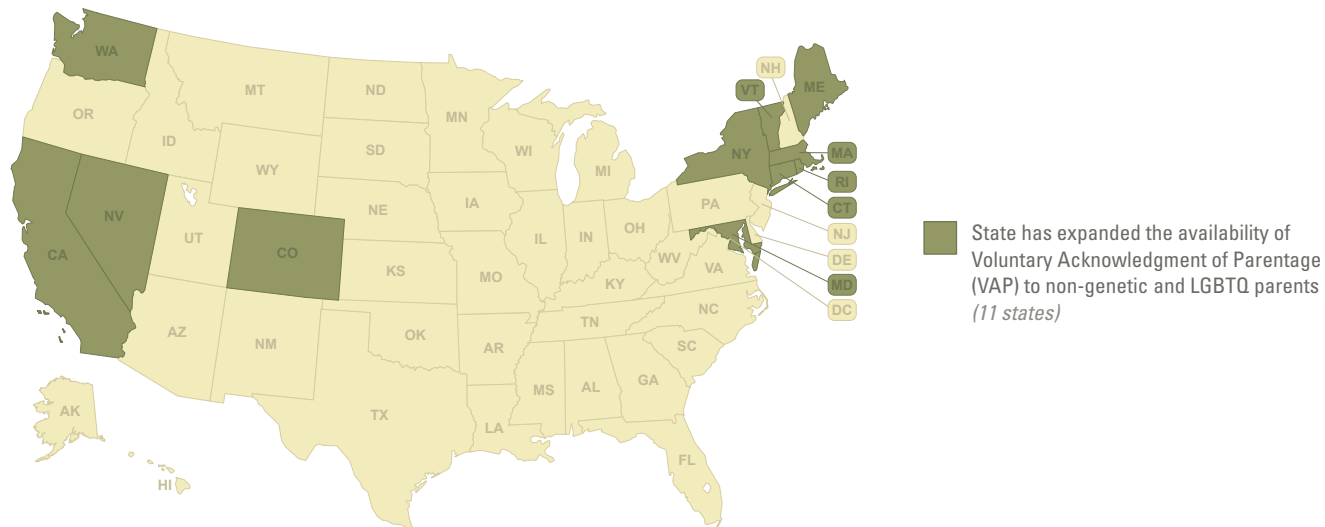


Voluntary Acknowledgment of Parentage. Of children born in 2020, 41% were born to unmarried parents.¹⁵ For most of these children, a mechanism called the "voluntary acknowledgment of parentage" (VAP) is used to establish parentage.

A VAP is most frequently completed at the hospital. There are no fees associated with it when signed at the hospital, and after a set amount of time—typically 60 days following signature—it takes effect and is the legal equivalent of a court decree of parentage and, under federal law, should be respected across state lines and in all jurisdictions. The federal government requires states to have this process because it quickly and easily establishes a legal parent-child relationship.

As shown in *Figure 5* on the next page, some states have expanded access to the VAP to ensure that non-genetic parents and LGBTQ parents, regardless of their

Figure 5: Eleven States Have Expanded the Availability of Voluntary Acknowledgment of Parentage (VAP) to Non-Genetic and LGBTQ Parents



Source: FAQ: Voluntary Acknowledgment of Parentage (VAP) - GLAD

Living Without Legal Protections Puts Family At Risk

Anna and her partner Sara are raising two children. After a 2.5 year long journey to become parents, Sara's eggs were fertilized by sperm from an anonymous donor and the resulting embryo was carried by Anna. When the couple left the hospital, Sara's name couldn't be listed on their first child Eli's birth certificate. As an unmarried couple, the state of Rhode Island didn't have a clear, simple pathway for Anna and Sara to both be legally recognized as Eli's parents.

"I am my son's parent. I have been since conception... I went to every single prenatal appointment. I was present for every minute of his 29-hour labor and delivery [and the time since] snuggling, feeding, changing, burping, and loving on him," Sara shared. Yet, because he was born to an unmarried family in a state lacking legal protections for all children born through assisted reproduction, Sara was a legal stranger to Eli.

The couple had to go through "second-parent" adoption proceedings whereby Sara would be named as Eli's legal parent. The process took eight months, during which Eli lacked a second legal parent and a legal connection to Sara. The process was expensive, exhausting, and humiliating – including a home study and notice to the anonymous sperm donor.

The family was a part of the effort in Rhode Island to modernize the state's parentage laws such that she and Anna could have both been recognized as legal parents immediately upon Eli's birth. "This is about protecting the kids. Families are families. They shouldn't have to be fighting in court to prove they are parents when they are the obvious but not the biological parents," Anna explained after the bill was passed. As a result of the Rhode Island Uniform Parentage Act, Anna and Sara were able to sign a voluntary acknowledgment of parentage (VAP) to protect their second child.

Adapted from: 'Equal parentage' bill is signed into law by governor (providencejournal.com); Sara and Anna - GLAD.

gender, can utilize the VAP to establish parentage as soon after birth as possible. Particularly important for families utilizing assisted reproduction such as donor sperm where one parent is not biologically related, the VAP can be completed upon birth at the hospital and without lengthy and costly court proceedings.



Confirmatory, Stepparent, and Co-parent/Second-Parent Adoptions. As noted above, some children join a family through adoption in which parental rights to families of origin have been terminated. This includes children who are adopted through private adoptions or through the child welfare system.

There are other instances where adoption is a tool not to establish a new relationship but to secure an existing relationship with a child they are parenting or planned for or to obtain a legal decree. These types of adoptions include *confirmatory adoption*, *stepparent adoption*, and *co-parent/second-parent adoption*. In all three instances, a legally recognized parent does not relinquish their parental rights, but another adult is additionally recognized as a legal parent.

In a **confirmatory adoption**, a parent obtains an adoption decree to confirm their legal relationship to a child, not to establish such a legal relationship. They may have established parentage through the marital presumption, the holding out presumption, or as someone who intended to parent a child born through assisted reproduction—but completing the confirmatory adoption results in an adoption decree. In the six states that have statutory provisions for confirmatory adoptions, as shown in *Figure 6* on the next page, the home study or background check requirements associated with other types of adoption are not required.

Stepparent adoption is available in every state to someone who is married to a child's legal parent. As a result of marriage equality, this type of adoption is available to same-sex married couples. Usually, the procedures for a stepparent adoption can be streamlined and simpler than for other types of adoptions and do not generally require a home study, though adoption laws vary by state. A married same-sex couple may use a stepparent adoption, for example, to gain parental rights for the parent who did not give birth to their child even though the parent adopting the child is recognized as a legal parent through the marital presumption.

A **co-parent or second-parent adoption** is available in some, but not all, states to parents regardless of marital status. These types of adoptions can be used to establish a legal relationship between a parent and a child OR to obtain an adoption decree for someone who is already a legal parent through another pathway to parentage, such as the marital presumption. In New Hampshire, for example, the second-parent provisions state that “an unmarried adult with the assent of at least one of the adoptee’s parents and with the intention to share parenting responsibilities with one of the adoptee’s parents” may adopt.¹⁶

Though the process varies by state, a second-parent adoption process typically looks more like the traditional adoption process. This means that the adoptive parent—even if they have been parenting the child since the child was born and may already have established parentage through another pathway—may have to be fingerprinted and undergo a background check, the family may be required to have a home visit, and a judge must evaluate the fitness of the parent to adopt their child. Second-parent adoptions can be costly, depending on the requirements in each state. In some states, the process for obtaining a co-parent or second-parent adoption may be more streamlined, however, this simplified process is not typically codified in statute as it is in the case of a confirmatory adoption. Due to these legal complexities, parents are encouraged to consult an adoption practitioner in their state.

Figure 6: All States Permit a Parent Married to A Child’s Legal Parent to Petition for Stepparent Adoption, But Fewer Have Established Processes for Confirmatory Adoptions and Co-Parent/Second-Parent Adoptions

Figure 6a: Stepparent Adoption: Available in All States + D.C.

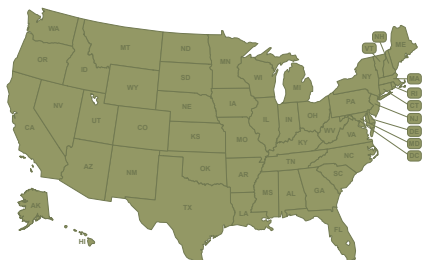


Figure 6b: Confirmatory Adoption: Available in Six States

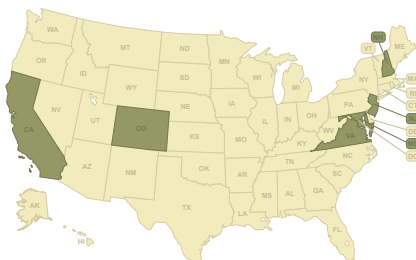
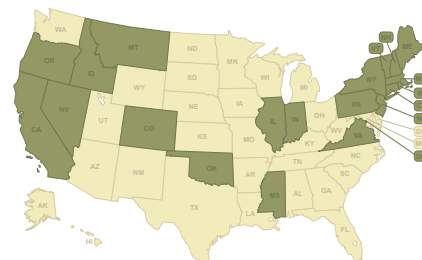


Figure 6c: Co-Parent/Second-Parent Adoption: 20 States + D.C.



Source: Movement Advancement Project. “Equality Maps: Foster and Adoption Laws.” https://www.lgbtmap.org/equality-maps/foster_and_adoption_laws. Accessed 05/01/2023

The Economic Realities for Many LGBTQ Families & The Costs of Establishing Parentage

When some LGBTQ people seek to become parents, they must navigate complicated parentage laws that vary based on where they live. Sometimes families seek legal advice or retain an attorney as they are starting to plan.

Because of the ways in which courts have misinterpreted parentage statutes in the case of LGBTQ parents, and that families sometimes move from one state to another where state laws vary for recognizing and establishing parentage, legal experts recommend parents seek legal judgments such as those available through adoption or a court order. Doing so provides an adoption decree or parentage judgment, which are well understood and are recognized by courts across the country and even when people move. In a 2022 survey of LGBTQ+ parents, four in ten parents reported having out-of-pocket legal costs related to family formation, including 28% of LGBTQ+ parents spending at least \$1,000 and 20% spending \$5,000 or more on legal costs.¹⁷

Unfortunately, adoptions can be expensive. Co-parent/second-parent adoptions are generally less expensive than a domestic or international adoption of a child whose parental rights are terminated entirely. Co-parent adoptions generally cost \$250-\$3,000. In states that have streamlined the adoption process specifically for second parents or stepparent adoptions, the home study requirement, for example, can be waived, saving as much as \$4,500, the cost of a second-parent adoption home study in California. If forms can be filed without an attorney, a family can save an average of \$1,000.¹⁸

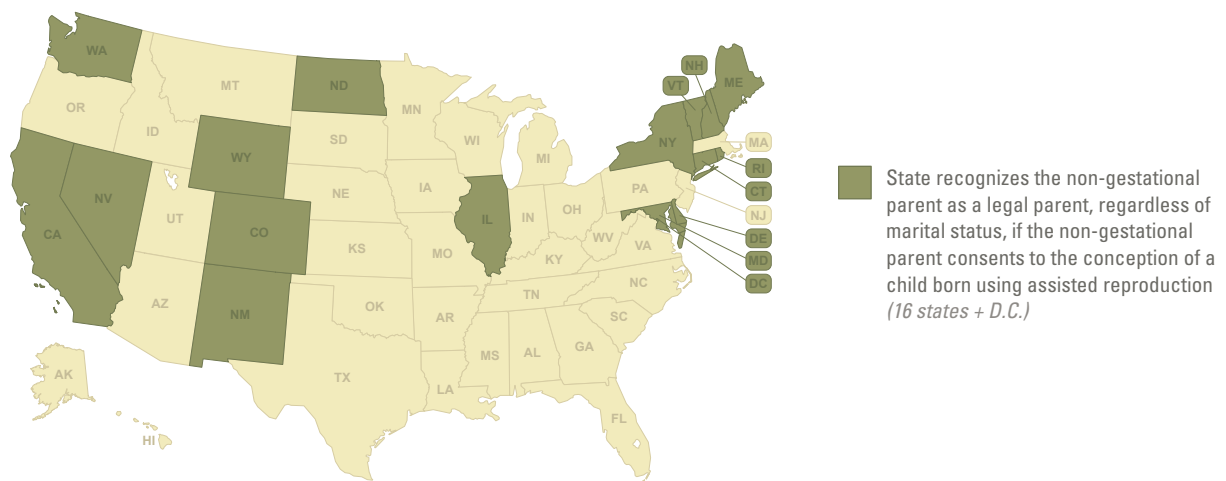
As states update their Voluntary Acknowledgment of Parentage process to be inclusive of children born through assisted reproduction, including to LGBTQ families, this can provide an important and financially accessible vehicle for parentage establishment. As discussed on page 7, the VAP is a no-cost or low-cost option for establishing parentage. Parents can sign a VAP in the hospital when their child is born in order to establish parentage. The fee for signing a VAP is usually under \$30 and is free if completed at the hospital. As discussed on page 7, some states have opened this affordable option to more families.

Creating Pathways to Establish Parentage Immediately Upon or After a Child is Born—An Important Protection for Children Born Through Assisted Reproduction

Some states are looking to put in place options that allow families to establish parentage immediately upon or shortly after the birth of a child.

Consent-to-Assisted Reproduction/Intended Parent Provisions. Most states have statutes specifically governing the parentage of children born through assisted reproduction. In most states, though, these statutes address only children born to married couples. Increasingly, however, states are adopting expanded assisted reproduction statutes that apply regardless of the marital status of the intended parents. One such model is the UPA (2017). The 2017 UPA model language states, “an individual who consents... to assisted reproduction by a woman with the intent to be the parent of a child conceived by the assisted reproduction is a parent of the child.” Under the UPA (2017), the consent can be, but need not be, in writing. Where the consent is in writing, it must be signed by both the birth parent and the other intended parent. Inclusive assisted reproduction provisions protect children by ensuring that the child has a legal parent-child relationship with both of their parents. As shown in *Figure 7*, to date, 16 states and the District of Columbia have processes by which all intended parents, regardless of marital status, can be recognized as legal parents if they consent to the assisted reproduction with the intention of parenting the child. This creates safeguards for the entire family in states that offer such protections.

Figure 7: A Minority of States Have Assisted Reproduction Statutes That Apply Equally, Without Regard to the Marital Status of the Intended Parents



Note: This map reflects states with assisted reproductive statutes that do not necessarily address surrogacy. Some states, like New Jersey, have inclusive surrogacy statutes, but not inclusive assisted reproductive statutes.

Source: Movement Advancement Project. “Equality Maps: Other Parental Recognition Laws.” https://www.lgbtmap.org/equality-maps/other_parenting_laws. Accessed 05/01/2023.

Inclusive Surrogacy Rules. Surrogacy laws vary across the country, ranging from states that provide detailed guidance about the parentage of children born through surrogacy to states that have no statutes governing surrogacy to one state that highly restricts surrogacy.¹⁹ For example, in Louisiana, only married couples may enter into a gestational surrogacy contract, the embryo must be conceived using sperm and egg from the intended (married) parents, and the person acting as the gestational surrogate cannot be compensated.²⁰

In the past few years, a number of states have updated their laws to better protect all of the participants in the process—including the child, intended parents, and people acting as a carrier or surrogate. These statutes allow for the establishment of the parentage of intended parents of children born through surrogacy, regardless of the marital status or genetic connection of those intended parents. These laws also include provisions to ensure that people acting as surrogates are protected, such as requiring that the intended parents pay for pregnancy-related healthcare and ensuring the person carrying the pregnancy gets to make all health and welfare decisions about themselves and the pregnancy.

The 2017 UPA outlines core components of what must be included in a surrogacy agreement, including that a person acting as a surrogate and their spouse or former spouse have no claim to parentage, and, rather, intended parents are the parents of the child upon birth pursuant to a compliant agreement.

Some families may seek the help of a genetic surrogate, in which the same person who carries the pregnancy also provides the egg to conceive a child. The UPA and a few jurisdictions regulate this type of surrogacy, including in ways that treat intended parents as the legal parents and protect the rights of the person acting as a surrogate during the pregnancy. Absent these provisions, families who grow their families through surrogacy may rely on the adoption process after the birth of a child to establish clear parentage of the intended parents.

Leaving Their Home and State to Create a Family

Since he was very young, Rolfe knew he wanted to be a dad. “Virtually every decision I’ve made in my life has been to enable me to be a good parent,” he says – for Rolfe that included becoming a lawyer so he could make a good living, and marrying Edward.

“Eddie had always thought kids wouldn’t be possible for him,” says Rolfe. “Then we met and talked a lot about it, and realized it was possible.”

They are now the happy, proud parents of Genie and Teddy. Genie is a cuddler and a big eater. Teddy is inquisitive and adventurous. They both love the neighbor’s dog. Eddie has become a stay-at-home dad and Rolfe took a less intense, 9-5 job so he can have plenty of family time.

Rolfe and Eddie became parents through surrogacy. They sought the help of a reputable surrogacy agency, because “it was important to us that our surrogate be respected, well-treated, and not compromised in any way.” They were matched with a woman in Utah who carried their children born through egg donation. A year and a half ago, Rolfe and Eddie flew to Utah when she went into labor to be present for the birth of their children.

Why Utah? Because Utah is a state where both men could be recognized as legal parents at birth and have their names on the birth certificate, providing Genie and Teddy with the security of a legal relationship with both of their dads. “We just couldn’t take the chance that our family would ever not be together,” says Rolfe.

In Rhode Island where the couple lives, dads like Rolfe and Eddie faced uncertainty because of a lack of statutory protections for children born through surrogacy.

With Rhode Island’s updating of their parentage laws, now couples in the state don’t need to leave to create their families and they can be legally protected as children and parent from the start.

Adapted from: [Rolfe and Edward - GLAD](#).

Transgender and Nonbinary Families

Families in which one or more parents identify as transgender or nonbinary may face additional challenges when it comes to securing legal ties to their children. Transgender parents may grow their families through adoption and assisted reproduction, or they may have children from other relationships. In these cases, transgender parents use the same costly workarounds as other LGBTQ couples to secure legal ties to their children. Some transgender parents can grow their families through intercourse. For example, a transgender man and transgender woman could have a child together, if the woman is able to contribute sperm and the man able to give birth.

Regardless of how they grow their families, transgender parents face unique challenges to securing and maintaining legal ties to their children. Parentage law is often written in accordance with the gender binary (man/woman), which may result in some transgender parents being misgendered on their children’s legal documents. For transgender people who have fought to be recognized correctly on legal documents such as their own birth certificate or government-issued I.D., being misgendered in parentage law is especially harmful. In states with gendered birth certificates, a transgender man who births a child may be required to be listed in the “mother” field. Similarly, a nonbinary person who contributed sperm to conceive a child may be forced to be listed in the “father” field and referred to as a “man.” The limited language on birth certificates in many states can create unnecessary barriers for transgender parents. Some states have recently adopted language to make their parentage statutes gender neutral, which is an important change for transgender parents.

At the Mercy of Chance

What happened to Moira and Hillary is the nightmare of every pregnant couple whose parental rights are not secured from the moment of birth. The couple had long planned to have a child and got married as soon as it was legally possible in the District of Columbia, near their Maryland home.

Moira got pregnant about a month after their wedding, and the couple went to a lawyer to jump-start a second-parent adoption process for Hillary. Things were going well until Moira hit the 27-week mark in her pregnancy.

“I was diagnosed with severe pre-eclampsia and put on hospital bed rest for two weeks,” she recalls. “It was very intense.” Matters became more frightening when doctors determined that baby June would need to come into the world by emergency C-section at just 29 weeks.

When June was born, she was rushed to the neonatal intensive care unit. “I saw her for one blurry second,” said Moira, who then underwent an emergency hysterectomy and was incapacitated. In the meantime, Hillary had no standing as a parent. Her second-parent adoption would not be complete for three months and her name was not on the birth certificate.

“The staff kindly let Hillary into the NICU with June,” says Moira. “I was out and couldn’t give her permission to make medical decisions for June. “So the NICU team had to go ahead and do what they thought was best, which was to intubate her. To say it was incredibly stressful doesn’t begin to describe it.”

Hillary adds, “Had we been at a different hospital, or had we interacted with different staff, I might have been shut out entirely. Even though things worked out, parents like us should not be at the mercy of chance.”

Adapted from: [Moira and Hillary - GLAD](#).

Supports & Resources for LGBTQ Families and Their Children

As demonstrated throughout this report, many LGBTQ families navigate complicated, costly, and burdensome processes to ensure that children are legally connected to the people who parent them. Thankfully, there are many resources available to educate, support, and connect LGBTQ families and their children across the country, including:

COLAGE offers connection and community to youth and adults with LGBTQ parents. For example, they have affinity groups such as People with Trans Parents, Retro COLAGERS to support people 40 and older with LGBTQ parents, and Adult COLAGERS. Through these groups, as well as Family Week and Family Weekends, COLAGE offers people with LGBTQ+ parents opportunities to connect and to advocate for their families. www.colage.org

Family Equality focuses on advancing equity for LGBTQI+ families through advocacy, community, and education. They offer LGBTQ families opportunities to share their stories, connect through programming like Family Week and virtual events, get involved in advocacy to shape federal and state laws, and navigate building and protecting their families. www.familyequality.org

Both **GLAD** and **NCLR** provide critical legal advocacy and information for LGBTQ families.

GLAD leads impact litigation and legislative advocacy to shape laws to better reflect the needs of LGBTQ people and their families. Through its legal information line, GLAD Answers, GLAD also provides free and confidential legal information, assistance, and referrals to lawyers in the New England states. www.glad.org

NCLR works nationwide to litigate precedent-setting cases, advocates for legislative and policy change, and offers legal assistance through its information helpline, with particular focus on custody and parentage disputes, separation or divorce, transgender youth, and immigration and asylum. www.nclrights.org

OPPORTUNITIES FOR CHANGE

In a growing number of states, parentage laws are being updated to better reflect the realities of today's children and families, including LGBTQ families. This includes families formed using assisted reproduction, adoptive and blended families, and the ways in which people parent outside of marriage.

Recent Developments in the States

Several states have recently modernized their parentage laws, including Rhode Island, Connecticut, and Colorado.



In 2020, Rhode Island passed the Rhode Island Uniform Parentage Act, (RIUPA), which updated the state's 40-year-old parentage statutes to reflect the current Uniform Parentage Act language. The RIUPA comprehensively updated RI parentage law to ensure each child has a clear path to secure their legal parentage. The law allows LGBTQ couples access to establishing parentage through a simple civil Voluntary Acknowledgment of Parentage, ensuring LGBTQ couples are able to establish their parentage immediately at birth of their child. It also creates, for the first time in Rhode Island, an accessible path to parentage for children born through assisted reproduction, as well as protections for children born through surrogacy.



In 2021, Connecticut passed the Connecticut Parentage Act (CPA), which comprehensively updated Connecticut parentage laws to ensure that each child has a clear path to secure their legal parentage. For example, the CPA allows many LGBTQ parents to establish parentage through an Acknowledgment of Parentage, provides important clarity and protections for children born through assisted reproduction, and includes provisions for establishing parentage for children to nonbiological parents.



Colorado lawmakers took a more targeted approach in 2022 when "Marlo's Law" was passed. The law made three key updates to the state's parentage statutes. First, the new law states that courts may not require an in-person hearing, a home study, or fingerprinting or background checks for adoptions involving parents of children born using assisted reproduction. Second, it makes VAPs available to same-sex couples and unmarried couples using assisted reproduction. Third, the law ensures parentage provisions are gender inclusive.

Recommendations

State laws should recognize the diversity of families and have clear and financially accessible ways to establish parentage. If legislators remove outdated definitions and legal provisions about parental relationships and update laws to recognize current medical, legal, and cultural realities of what it means to be a parent, all children, regardless of the circumstances of their birth or the configuration of their families, would have a legal tie to the people who parent them.

What's needed are clear, equitable legal protections for all children and families, regardless of biology or marital status. The UPA offers statutory language that can provide a starting place for states. All revisions should hold the following core values:

- Recognize the diversity of families and ensure recognition of parents in children's lives. Regardless of the circumstances of their birth, children should be able to have secure legal ties to their parents. Specifically, state laws must offer pathways to parentage for children born through assisted reproduction and surrogacy.
- Improve access to protections through different mechanisms that consider cost, timing, and burdens on families. There should be clear ways to establish parentage as close to birth as possible and without engaging an attorney, spending additional money for court fees or home visits.
- Improving consistency from state to state so there isn't as much confusion for parents, potential parents, and attorneys working with families who move.
- Streamline and make less intensive and more affordable the process of adoption to secure children to their parents.
- Voluntary acknowledgments of parentage should be made available to secure more children in all states, so that parentage can be secured soon after birth.

CONCLUSION

In too many states, children still lack equitable ways to establish parentage. This results in uncertainty, confusion, and protracted disputes, which can take longer to resolve and may result in children being separated from a parent they know and love.

It is time for every state to establish clear, accessible ways for children and parents to establish legal ties to one another. All children, regardless of the circumstances of their birth or the gender, sexual orientation, or marital status of their parents, need secure legal ties to their parents.

ADDITIONAL INFORMATION AND FACT SHEETS

- [LGBTQ Paths to Parentage Security](#)
- [Frequently Asked Questions \(FAQ\): Voluntary Acknowledgment of Parentage \(VAP\)](#) from GLAD
- [GLAD Legal Helpline](#)
- [NCLR Legal Helpline](#)
- [Dobbs v. Jackson Women’s Health Organization: What LGBTQ+ Families Need to Know](#) from COLAGE, Family Equality, GLAD, and NCLR

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ENDNOTES

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- ¹³ The Administration for Children and Families. "Essentials for Attorneys in Child Support Enforcement: Chapter Nine – Establishment of Paternity." July 29, 2021.
- ¹⁴ However, even with some remaining gendered statutes, the U.S. Supreme Court has stated that where married couples are offered certain protections under the law, they must be afforded to married same-sex couples as well. Thus, in 2017, following the refusal of the State of Arkansas to issue a birth certificate to a child born to a married same-sex couple listing both parents, the Court ruled that where the state issues birth certificates with both members of a married couple, they must do so for same-sex married couples as well.
- ¹⁵ Centers for Disease Control and Prevention, National Center for Health Statistics. "Unmarried Childbearing." January 31, 2023.
- ¹⁶ New Hampshire Revised Statutes, Title VII: Public Safety and Welfare, Chapter 170-B, Adoption, 170-B:4 Who May Adopt.
- ¹⁷ "The LGBTQ+ Economic and Financial (LEAF) Survey: Understanding the Financial Lives of LGBTQ+ People in the United States." March 2023. Center for LGBTQ Economic Advancement & Research (CLEAR) and Movement Advancement Project (MAP).
- ¹⁸ "Average Adoption Costs in the United States." Family Equality.
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