

WHAT IS PARENTAGE?

Parentage is the term for the legal relationship between a child and their parent or parents, through which all rights and responsibilities flow. Being recognized as a legal parent is important for making medical or school decisions for your child, for access to health insurance, social security survivor benefits, and inheritance, and for custody and parenting time determinations if the parents separate.

A secure parent-child relationship is essential for a child's health, well-being, and development.

IS IT IMPORTANT TO GET A COURT JUDGMENT REFLECTING THAT I AM A PARENT?

Yes! LGBTQ parents, like all parents, start their families in many ways. Regardless of your path to parentage, security for children is a key concern. Since the 2015 *Obergefell* decision, which ensured marriage equality throughout the country, LGBTQ parents have greater access to the protections of legal parentage through the marital presumption of parentage (see below) and wider access to adoption. However, all LGBTQ parents, married and unmarried, should understand the parentage rules in your state and ensure your child is protected under those rules.

Many LGBTQ parents are parents to children born through assisted reproduction, with one parent being a non-genetic parent. For these families, because of bias and discrimination, it is important to have the security of a court judgment to protect the child-parent relationship.

A court judgment will be recognized in all states under full faith and credit principles of the U.S. Constitution.

LGBTQ parents can face a lot of hoops to build their families and protect them, and that can feel unfair. Still, a judgment will ensure that the child-parent relationship will be respected and recognized in every state.

WHAT IF I AM ALREADY ON MY CHILD'S BIRTH CERTIFICATE?

Birth certificates are important records, but while they reflect parentage, they do not by themselves legally establish parentage.

Because of outdated laws and discrimination, relying only on a birth certificate can leave the critically important parent-child relationship vulnerable.

An adoption, court judgment, or equivalent of a court judgment is proof of legal parentage that must be recognized in all states.

- While the U.S. Supreme Court decisions in *Obergefell* and *Pavan* make it clear that a child of married parents must have both parents—including the non-genetic or non-gestational parent—placed on their child's birth certificate, the current extremist Court—specifically Justice Thomas—has hinted that the federal right to marriage equality could be vulnerable to future challenges.
- For heterosexual couples, all states presume any children born during a marriage to be children of both spouses. This presumption should extend to same-sex couples after the U.S. Supreme Court decisions in *Obergefell* and *Pavan*, but there have been some concerning recent developments in certain states:

A few state trial courts have ruled that non-genetic or non-gestational parents of children born into marriages are not legal parents and should not be recorded as legal parents on their birth certificates.

Additionally, not all states have laws that clearly set out paths to parentage for families formed via assisted reproduction.

- For unmarried parents, some states recognize non-genetic or non-gestational parents who consent to their partner's assisted reproduction and/or who "hold out" the child to be their own, but their parentage may not be recognized by other states without taking one of the additional steps below.

WHAT OPTIONS DO I HAVE TO GET A COURT JUDGMENT RECOGNIZING MY CHILD-PARENT RELATIONSHIP?

ADOPTION

Confirmatory Adoption

A simple adoption process created by statute in a number of states to confirm, not establish, the parentage of those who are already legal parents under state law and allow them to obtain an adoption decree.

Stepparent Adoption

An adoption process available in every state since marriage equality became recognized across the country, but which requires a couple to be married. While a traditional "stepparent" is someone who marries a parent after the child is born, the process of stepparent adoption is available in every state to married same-sex couples, including couples who planned together to build their family.

Co-parent Adoption

An adoption process available in some states to parents of any marital status. (These are sometimes called second-parent adoptions.)

As with any type of adoption, all the above adoptions are filed after a child is born. The requirements of an adoption vary depending on your state, but co-parent and stepparent adoptions can require a home study, criminal record check, notice to any potential other interested parties, and a waiting period. They may take months to complete, leaving a child without the security of two legal parents in the meantime. Confirmatory adoption processes, however, can happen more quickly.

COURT ORDER OR JUDGMENT OF PARENTAGE

Judgement Of Parentage

Court judgments that may be sought in some states before or after a child's birth to secure a non-genetic or non-gestational parent's legal parentage. A judgment of parentage is often available in the context of a child born through assisted reproduction or surrogacy.

Voluntary Acknowledgment of Parentage (VAP)/ Acknowledgment of Parentage

Simple, free forms to establish parentage that may be completed at the hospital immediately after a child's birth (or later). All states are required by federal law to offer an acknowledgment process, but they have traditionally been used when a woman gives birth and a man to whom she is not married attests (with her permission) to being the parent of the child. As of May 2023, 11 states have expanded access to VAPs to more types of families in a way that protects LGBTQ parents. A VAP is the equivalent of a court decree of parentage and is intended to receive full faith and credit in all states, although VAPs have not yet been tested in courts for LGBTQ parents. (See GLAD's [FAQ: Voluntary Acknowledgment of Parentage](#) for an up-to-date listing of states and links to their specific requirements.)

WHAT IF MY FAMILY IS FORMED THROUGH SURROGACY?

Surrogacy laws vary across the country. Some states provide detailed guidance about the parentage of children born through surrogacy; others have no statutes governing surrogacy, and one highly restricts surrogacy. A number of states have updated their laws recently to better protect all participants in the surrogacy process: the child, intended parents, and the person acting as a surrogate. These statutes allow the intended parents of children born through surrogacy to establish their parentage, regardless of the marital status or genetic connection of those intended parents. They also include provisions to protect the person acting as a surrogate, for example, by requiring that the intended parents pay for pregnancy-related healthcare and independent legal counsel and ensuring the person acting as a surrogate gets to make all health and welfare decisions about themselves and the pregnancy. Surrogacy is an important path to family building for some families, and it's important to consult with an assisted reproduction lawyer in your state for guidance in this process.

DO I NEED A LAWYER?

No matter how your family began, consulting with a lawyer familiar with the establishment of parentage and LGBTQ families in your state can be very helpful to protecting your family. You may be able to do a consultation, or you may want to hire a lawyer to help you throughout the process. Regardless, it is important to consult with a reputable lawyer to understand the local rules so that you can comply with them and protect your child.

WHERE CAN I FIND A LAWYER?

The National LGBTQ+ Bar Association maintains a [Family Law Attorney Directory](#) of experienced LGBTQ family law practitioners.

Additionally, several major LGBTQ legal organizations offer helplines that can address questions, provide attorney referrals, and direct you further:

- [GLAD Legal InfoLine](#)
- [Lambda Legal's Help Desk](#)
- [NCLR Legal Information Hotline](#)
- [The Transgender Law Center](#)

WHERE CAN I FIND MORE INFORMATION?

- Visit the [Movement Advancement Project \(MAP\)](#) for state-by-state maps of parental recognition options: mapresearch.org/equality-maps/recognition/parenting
- Also see "[Relationships at Risk: Why We Need to Update State Parentage Laws to Protect Children and Families](#)," June 2023, from MAP, COLAGE, Family Equality, GLBTQ Legal Advocates and Defenders (GLAD), and the National Center for Lesbian Rights (NCLR). mapresearch.org/2023-parentage-report