ALL CHILDREN MATTER

How Legal and Social Inequalities Hurt LGBT Families

Condensed Version

October 2011

MAP movement advancement project

FAMILY EQUALITY COUNCIL

Center for American Progress

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

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This report was developed in partnership with:

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COLAGE is a national movement of children, youth and adults with lesbian, gay, bisexual, transgender or queer (LGBTQ) parents. COLAGE builds community and works toward social justice through youth empowerment, coalition building, leadership development, education and advocacy. COLAGE views youth and families as powerful agents of social, political and cultural change, and supports youth leadership development through mentorship between people with LGBTQ parents across economic status, religion and culture. The COLAGE network helps children in LGBTQ families to become strong advocates for themselves and their families and to gain the recognition, rights and respect that every family deserves. For more information, visit www.colage.org.

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Note About this Condensed Version of the Report

A full version of this report, entitled "All Children Matter: How Legal and Social Inequalities Hurt LGBT Families," is available online through www.lgbtmap.org/lgbt-families or through any of the co-author or partner websites.

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This report incorporates information that was current as of October 1, 2011.

For legal updates, please see the Movement Advancement Project's Equality Maps at www.lgbtmap.org/equality-maps.

TABLE OF CONTENTS

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FOREWORD

As the nation's leading membership-based organization for children and families, the Child Welfare League of America (CWLA) has long affirmed that children grow up best in strong families and supportive communities. A diversity of families is needed to help ensure that vulnerable children attain safety, find permanent families, and achieve well-being. As such, lesbian, gay and bisexual parents are essential child welfare partners because they are as well-suited to raise children as their heterosexual counterparts.

CWLA has long held that public policy should serve to further the best interests of children. The lingering bias against gay parents is problematic given that overwhelming social science research confirms that that gay and lesbian people are just as capable of being good parents as heterosexual people, and that their children are just as likely to be healthy and well-adjusted. Not a single reputable study has found that children raised by gay or lesbian parents are harmed because of their parents' sexual orientation.

CWLA is joined by every other major child health and welfare organization in affirming the suitability of gay and lesbian parents, including the American Academy of Pediatrics, the American Psychiatric Association, the American Psychological Association, the National Association of Social Workers, and the North American Council on Adoptable Children. Our member agencies share a value that we would not take such a strong and unequivocal stand on gay and lesbian parenting were it not supported by sound social science research, established practice, and extensive expertise in identifying and serving the needs of children and families.

Misconceptions and stereotypes about gay people are always harmful—and especially so when they hurt children. In recent years, we have witnessed a disturbing trend as lawmakers in various regions of the country have ignored sound child welfare policy by introducing legislation to ban gay and lesbian people from adopting and foster parenting. One does not have to look too closely to realize that this legislation does not serve the best interests of children.

In 2009, 114,556 foster children awaited adoption by permanent families. Many of these children have been shuffled between temporary placements without the emotional stability that a permanent family can offer. Laws and policies that ban lesbians and gay men from adopting and fostering fly in the face of well-developed child health and welfare standards by depriving children of willing and able parents. We need more permanent families for our foster children, not fewer. We simply cannot afford to systematically exclude any group of caring and loving people from an already-limited pool of prospective parents.

However, restrictions on adoption and fostering are not the only ways in which children are hurt by anti-gay laws and policies. Over two million children are being raised by an LGBT parent. Yet current laws often deny such children legal ties to one parent, undermining family stability and permanency—and parents' ability to act as effective guardians of their children. Even when some legal protections exist, discrimination can still wrongly wrest children from their parents when, for example, custody decisions are driven by anti-gay bias against a parent, rather than by the child's best interests. Furthermore, because so many government programs do not recognize LGBT families,

children in these families are more likely to fall through the safety net. In times of crisis and greatest need, this can devastate families, as in the case of a child denied Social Security Survivor's benefits upon the death of a parent—or a sick child who cannot be covered under a parent's health insurance because that parent is not able to secure a legal relationship to the child.

All Children Matter documents how our laws fail to protect children living in LGBT families—and vividly illustrates these policy failures with chilling stories. It also outlines solutions for helping ensure that both public policy and child welfare professionals work to serve all children. These solutions are not always easy, but they are common sense. And the call to prevent and eliminate laws that hurt children is one that we all must answer. *All Children Matter* both shows how far we are from achieving this goal, and offers an indispensible path forward.

LGBT families are part of the American fabric. They live in 96% of US counties and are more ethnically diverse than the general population. Policies which place these families at economic and social disadvantage must be put aside so we can truly begin to act in the best interests of all children.

Linda S. Spears
Vice President, Policy and Public Affairs

CWLA
Together, Making Children and Families a National Priority

EXECUTIVE SUMMARY

All children deserve to grow up in communities that give them the opportunity to thrive. In addition to food, clothing, shelter, and medical care, children need homes that foster curiosity, empathy, self-reliance and kindness. They need a feeling of safety, security and stability. And they need to feel connected to, and embraced by, those around them. All of this is predicated on close positive relationships with responsible adults who love them.

The way we talk about the American family often assumes the nation is largely made up of married heterosexual couples raising their biological children. Yet less than a quarter of all U.S. households fall into this category. Grandparents, single parents, stepparents, aunts, uncles or foster parents are raising today's children. Parents may be married or unmarried; they may be heterosexual or lesbian, gay, bisexual or transgender (LGBT).

Unfortunately, public policy has not kept up with the changing reality of the American family. Outdated laws and discourse not only ignore the roughly two million children being raised by LGBT parents, they also hurt children in other family configurations, including those with unmarried heterosexual parents. The result is that most Americans are unaware of the many ways in which unequal treatment and social stigma harm the millions of children whose families do not fit into a certain mold.

In This Report

LGBT families – like all families – simply want an equal opportunity to provide stable, loving homes to their children, to ensure economic stability, and to raise healthy children who become integral parts of their communities and the broader American community. "All Children Matter: How Legal and Social Inequalities Hurt LGBT Families" examines the wide range of obstacles facing LGBT families in America.

Specifically, the report shows how current laws and social stigma create unique challenges for LGBT families. It also takes a thorough look at three major needs that every child deserves to have met: stable, loving homes; economic security; and health and well-being.

The report concludes with important recommendations for policymakers to help reduce or eliminate inequities, and improve the lives of children with LGBT parents. The recommendations, which directly address the report's key findings, are far reaching. They range from federal legislative solutions to suggestions for expanded outreach and education.

Key Findings

LGBT Families are Numerous and Diverse

- **The number of children with LGBT parents is significant.** Roughly two million children are being raised in LGBT families.
- **LGBT families are more likely to be poor.** Contrary to stereotypes, children being raised by same-sex couples are twice as likely to live in poverty as those in married heterosexual households. Same-sex couples of color raising children are more likely to be poor than white same-sex couples raising children.
- **Same-sex couples raising children are more racially and ethnically diverse.** In all, 59% of same-sex couples with children identify as white compared to 73% of married different-sex couples with children. Same-sex couples of color are more likely to raise children than white same-sex couples.
- **LGBT families are geographically diverse.** LGBT families live in 96% of U.S. counties, and same-sex couples in the South are more likely to be raising children than those in other regions of the country.
- **LGBT families are more likely to be binational.** Nearly half (46%) of binational same-sex couples are rearing children compared to 31% of same-sex couples in which both partners are U.S. citizens.

Children in LGBT Families Fare as Well as Other Children

- **Research uniformly shows positive outcomes for children in LGBT families.** More than 30 years of rigorous social science research shows that children raised by LGBT parents are just as happy, healthy and well-adjusted as children raised by heterosexual parents. This is why every major authority on child health and welfare has determined that sexual orientation has nothing to do with the ability to be a good, effective parent.

Laws and Stigma Create Obstacles to Stable, Loving Homes for Children

State and federal laws and practices create barriers

to achieving loving, stable homes for children in the following ways:

- **Children are denied permanent homes.** Even though roughly 115,000 children are awaiting forever homes, some states and agencies still refuse to place children with same-sex couples—despite research consistently showing that children of LGBT parents fare just as well as other children.
- **Children are denied legal ties to their parents.** A child living with two parents of the same sex can be assured that her relationship to her parents will be recognized by law in fewer than half of the U.S. states. For example, if a child is born using donor insemination, the partner of the birth mother may be a legal stranger to the child, despite acting as a parent from birth.
- **Children lack protection when their parents' relationship dissolves or a parent dies.** An LGBT parent who is not legally recognized as a parent can lose custody or visitation rights, even in instances when that parent is the most suitable caregiver and has acted as a parent for the child's entire life.
- **Children live in fear of a parent's deportation.** Children being raised in same-sex binational families are denied the protections of family unity under federal immigration law. LGBT Americans cannot sponsor a same-sex spouse or partner for permanent residency or citizenship, a right that heterosexual Americans can exercise.

Laws and Stigma Create Obstacles to Economic Security for Children

Government-based economic protections, ranging from safety net programs to tax deductions to inheritance laws, help families meet children's basic needs. Yet different treatment under the law creates barriers to economic security for LGBT families in the following ways:

- **Children fall through the safety net.** Most government safety net programs use a narrow definition of family tied to marital status, which often excludes same-sex partners and non-legally recognized parents and children. The result is that financially struggling families with LGBT or unmarried parents cannot accurately reflect their household size or economic resources and may be denied adequate assistance.
- **LGBT families face a higher tax burden.** A series of tax credits and deductions are designed to help all families ease the financial costs of raising children. However, tax law uses a narrow definition of family which excludes LGBT families and usually results in a significantly higher tax burden for LGBT families.
- **LGBT families are denied financial protections when a parent dies or is disabled.** Social Security benefits and inheritance laws aim to protect families when a parent dies or becomes disabled. However, because the federal government fails to recognize LGBT families, such families may be denied critical Social Security death and disability benefits provided to heterosexual families. In states where their family ties are not legally recognized, LGBT families face further inequities. If a married heterosexual parent dies without a will, the couple's assets transfer tax-free to the surviving spouse (and/or children), and if a parent dies a wrongful death, minor children and legal spouses may be able to sue. Yet in states where their family ties are not legally recognized, LGBT families have no such protections.

Laws and Stigma Create Obstacles to Physical and Mental Health and Well-Being

Government policies aim to help ensure that children are physically and mentally healthy, and that they can access the basic resources they need to thrive, including quality and welcoming child care, education and health care. Yet children with LGBT parents face additional obstacles to achieving optimal health and well-being:

- **LGBT families face health coverage disparities and unequal access to health insurance.** The Defense of Marriage Act (DOMA) prevents the federal government from recognizing the marriages of same-sex couples. This lack of recognition means that employers do not need to extend health insurance benefits to the partners of LGBT employees, or to the children of these partners (assuming the employee is a legal stranger to the children). Even when employers choose to offer extended health insurance benefits, an LGBT family is taxed on the value of the benefit while a married heterosexual family is not.
- **LGBT families face unwelcoming health care environments.** Many professional caregivers—from physicians to counselors to the receptionists at medical facilities—are not accepting of, or

trained to work with, LGBT families. Some medical providers have even refused to treat LGBT people, citing religious or personal reasons.

- **LGBT family members are restricted in providing care to each other.** An LGBT parent without legal recognition may be denied visitation rights as well as the ability to make medical decisions for his or her child. The federal Family and Medical Leave Act (FMLA) does not require employers to grant leave to a worker caring for a same-sex partner or spouse, even while heterosexual workers have this right.
- **LGBT families face social stigma and discrimination.** Many of the challenges LGBT families face stem from a society that assumes that everyone is heterosexual and comes from a family with two married heterosexual parents. The stresses resulting from these expectations are heightened for LGBT families of color, who also have to contend with additional disparities as racial and ethnic minorities. Transgender parents and their children also face added strains.

Recommendations

Legally Recognize LGBT Families

1. **Pass comprehensive parental recognition laws at the state level to fully protect children in LGBT families.** State parentage and adoption statutes should allow joint adoption by LGBT parents, recognize LGBT parents using assisted reproduction, and provide avenues such as second-parent adoption and de facto parenting to allow children to gain full legal ties to their parents.
2. **Legalize and federally recognize marriage for same-sex couples.** Marriage for same-sex couples would help strengthen legal ties of the entire family, including those between a child's parents and between the child and his or her parents. Married LGBT parents would be recognized as legal parents upon a child's birth, and would also have access to joint and stepparent adoption. Federally-recognized marriage would allow accurate representation of LGBT families for the purposes of safety net programs, tax credits and deductions, inheritance and Social Security protections, immigration sponsorship and other benefits; and make it easier for LGBT families to obtain health protections, including health insurance, medical decision-making, visitation and family leave.
3. **Provide pathways to immigration and citizenship for binational LGBT families.** This should include legislation such as the Uniting American Families Act (UAFA), which would add the category "permanent partner" to the list of family members already entitled to sponsor a foreign national for U.S. immigration.

Provide Equal Access to Government-Based Economic Protections

4. **Recognize LGBT families and children across government safety net programs.** Broadening the definition of "family" would allow LGBT families to accurately reflect their households across numerous government programs and protections. Forms and application procedures should also accommodate the reality of LGBT and other 21st century families.
5. **Revise the IRS tax code to provide equitable treatment for LGBT families.** The Internal Revenue Service (IRS) should create a designation of "permanent partner," who would be treated as a spouse for the purposes of the tax code. The IRS should allow not just legal parents but also de facto parents to claim a "qualifying child" on their tax filing.
6. **Provide equitable economic protections when a parent dies or is disabled.** First, broaden Social Security's definition of "family" to allow an LGBT worker's permanent partner and children to access survivor and disability benefits in the same manner as a heterosexual worker's spouse and children. Next, states should change inheritance laws to treat LGBT permanent partners as spouses, and ensure children can inherit from a de facto parent when the parent dies without a will. Last, states should permit the filing of a wrongful death suit by any individual who can show economic dependence on a deceased person.

Provide Equal Access to Health Care

7. **Advance equal access to health insurance and care.** Pass laws ensuring that LGBT families have access to health insurance on equal terms with heterosexual families, including eliminating unfair taxation of these benefits. Encourage private employers to offer domestic partner benefits. Work to ensure the Affordable Care Act defines "family" broadly.

8. **Enable LGBT family members to take care of one another.** Pass or revise state hospital visitation and medical decision-making laws to be inclusive of LGBT families and de facto parents. Work with hospitals and other medical facilities and providers to enact LGBT-friendly policies related to visitation, advanced healthcare directives, and related issues. Revise the FMLA to allow same-sex partners to provide care to one another.

Protect LGBT Families with Anti-Discrimination Laws, Anti-Bullying Laws and Outreach

9. **Pass state anti-bullying laws and bar discrimination in employment, adoption, custody and visitation, health services, housing and credit.** Legislation prohibiting bullying and harassment in schools and universities should explicitly protect students based on their sexual orientation, gender identity and expression, and association with LGBT people. Non-discrimination laws should include similar protections.

10. **Expand education and cultural competency training on LGBT families.** Education and cultural competency training for a wide array of professionals should include outreach to adoption agencies and child welfare departments, judges and law students, government agency workers, service providers, schools and faith communities.

Provide Education and Support Services to Help LGBT Families

11. **Create stronger support services for LGBT families, particularly families of color, low-income families and transgender parents.** Advocates should target LGBT families with focused outreach and services, including opportunities to participate in social and support groups. Advocates should also educate LGBT families about the need to establish parentage ties and other legal protections, and provide assistance in doing so.

Expand Research on LGBT Families

12. **Expand research on LGBT families and parenting, with an emphasis on filling gaps in data on families of color, low-income families and transgender parents.** This should include lobbying for expanded private and government research and data on LGBT families and parenting in areas such as demographics, income, health, and mental health.

Note: Condensed vs. Full Report

The content herein is a "digest" version of the full report, "All Children Matter: How Legal and Social Inequalities Hurt LGBT Families." This condensed version provides a high-level understanding of the full report for those readers who do not have the time to read the full report in its entirety.

The full report paints one of the most complete portraits to date of the wide range of obstacles facing LGBT families in America. It is there that readers can find expanded discussions, detailed tables and figures, full citations, references, attributions and clarifications. As a convenience to those relying on this version as a guide to the full report, a list of additional information with corresponding page numbers appears at the end of each condensed section.

A table at the back of this report also offers a summary of the comprehensive recommendations found in the full report. Page references to the full report are listed in the right-hand column.

INTRODUCTION

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

Unfortunately, how we, as a society, talk and think about families does not adequately serve our children. Many Americans assume that the U.S. population is largely made up of married heterosexual couples raising their biological children together. Yet according to the U.S. Census, only 22% of all households fall into this category. Grandparents, single parents, stepparents, aunts or uncles, or foster parents are raising today's children. Parents may be heterosexual, lesbian, gay, bisexual or transgender. Yet despite the growing visibility of diverse American households, public policy has not kept up with the changing reality of the American family in the 21st century.

Outdated laws and social stigma hurt both children living with an LGBT parent and children in other non-traditional family configurations, such as those with unmarried heterosexual parents. This report shines a light on how far the U.S. still has to go to achieve fair treatment for these children—and offers ways to ensure that every child can thrive.

Who Are LGBT Families?

Children with LGBT parents. America's families are changing. Today, just 69% of children live with married, heterosexual parents, down from 83% in 1970.[1] MAP's analysis of several data sources suggests that between 2.0 and 2.8 million children are being raised by LGBT parents, though for this report, we use a conservative estimate of 2 million. That number is expected to grow in the coming years.[2] More than one-third of lesbians without a child want to have children, and three-quarters of bisexual women without children want to have children. Of gay men who have not had children, 57% want to have children as do 70% of bisexual men.[3] Of transgender Americans, a recent survey finds that 38% of respondents identify as parents.[4]

LGBT adoptive and foster families. Gay and lesbian Americans are raising an estimated 65,000 adopted children, or 4% of the 1.6 million adopted U.S. children.[5] Research also suggests LGBT parents may be more willing than heterosexual parents to adopt children with special needs, who are among the most difficult to place.[6] An estimated 14,000 foster children, or 3% of all foster children, currently live with LGB foster parents.[7] Same-sex couples who become foster parents are more likely to be families of color than heterosexual married foster parents.[8]

Terminology: "LGBT Families"

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

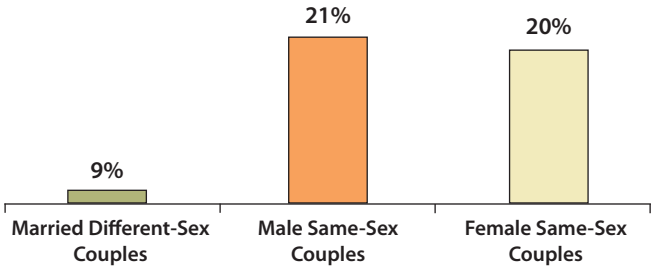
Where do LGBT families live? LGBT families are geographically diverse. There are same-sex couples raising children in 96% of U.S. counties.[9] Although California and New York have high numbers of same-sex couples, same-sex couples are most likely to raise children in Mississippi, followed by Wyoming, Alaska, Arkansas, Texas, Louisiana, Oklahoma, Kansas, Alabama, Montana, South Dakota and South Carolina.[10]

What is the economic status of LGBT families? In 2010, 22% of all American children lived in poverty, with the same percentage of children living in "food insecure" households (homes in which families worried about having enough food). Contrary to stereotypes, children being raised by same-sex couples are twice as likely to live in poverty as those being raised by married heterosexual parents (see *Figure 1*).[11] Also, the average household income for a same-sex couple raising children lags behind that of the average heterosexual couple raising children by more than $15,500, or 20% (see *Figure 2*).[12]

Reflecting trends in the broader population, same-sex couples of color raising children are more likely to be poor than white same-sex couples raising children.[13] For example, of lesbian couples with children, poverty rates are 14% for white households, 16% for Asian Pacific Islander households, 29% for Native American households, and 32% for Latina and African American households.[14] While research about families headed by transgender parents is limited, transgender people in general face severe economic challenges. For example, a large national survey of transgender Americans found 15% reported making $10,000 or less per year—a rate of extreme poverty four times that of the general population.[15]

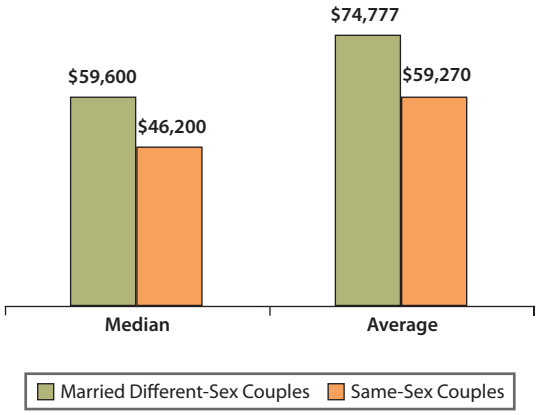
What are the racial and ethnic characteristics of LGBT families? LGBT families are racially and ethnically diverse—more so than married, heterosexual couples raising children. Same-sex couples of color are more likely to be raising children (see *Figure 3*) than white same-sex couples.[16] Only 59% of same-sex couples with children identify as white compared to 73% of married heterosexual couples with children. Similarly, 55% of children raised by same-sex couples are white compared to 70% of children raised by married heterosexual couples.[17] Finally, there are an estimated 36,000 binational same-sex couples in the U.S. (couples where one member is not an American citizen)[18] of which about half (46%) are rearing children.

Figure 1: Percent of Families Raising Children Who Live in Poverty



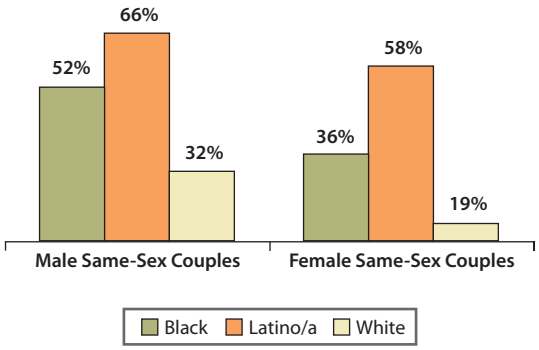
Source: Randy Albelda, M.V. Lee Badgett, Alyssa Schneebaum and Gary J. Gates, "Poverty in the Lesbian, Gay and Bisexual Community," The Williams Institute, 2009.

Figure 2: Household Income of Families Raising Children



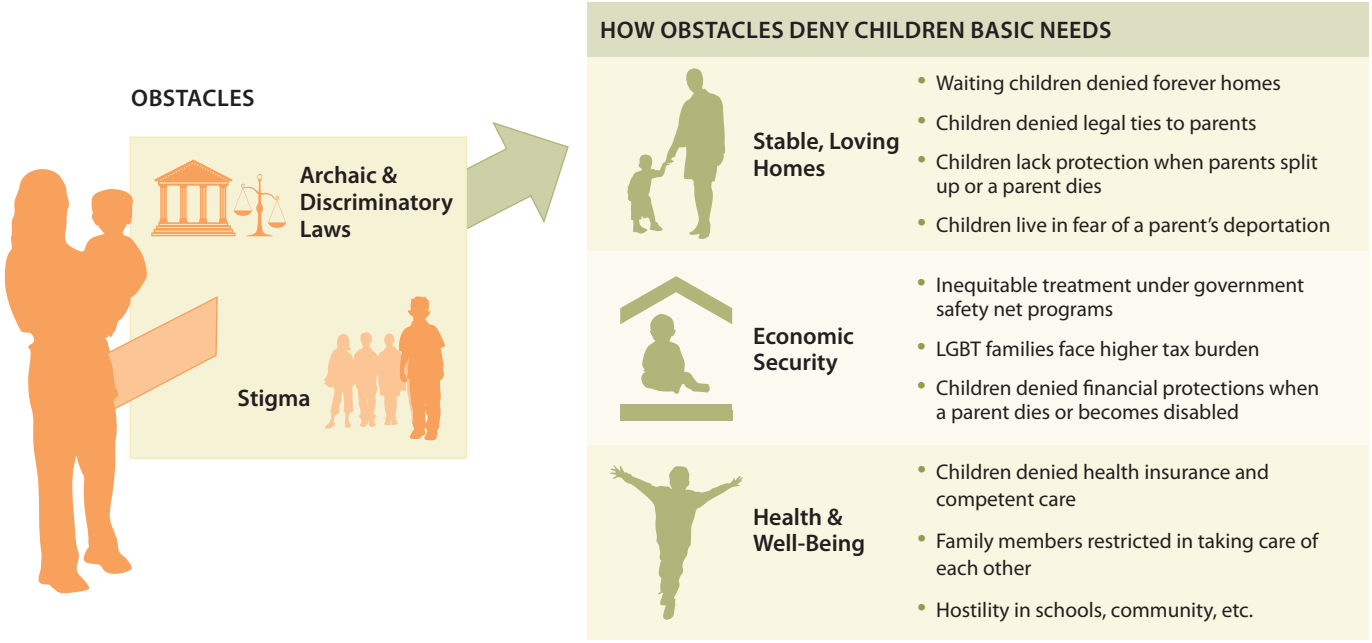
Source: Adam P. Romero, Amanda K. Baumle, M.V. Lee Badgett and Gary J. Gates, "Census Snapshot: United States," The Williams Institute, 2007.

Figure 3: Percent of Same-Sex Couples Raising Children, By Race/Ethnicity



Source: Jason Cianciotto, "Hispanic and Latino Same-Sex Couple Households in the United States: A Report from the 2000 Census," National Gay and Lesbian Task Force Policy Institute and National Latino/a Coalition for Justice, 2005; Alain Dang and Somjen Frazer, "Black Same-Sex Households in the United States: A Report from the 2000 Census," 2nd Edition, National Gay and Lesbian Task Force Policy Institute, 2005.

Figure 4: Bad Laws and Stigma Deny Children Their Basic Needs



The Effects of Unequal Laws and Stigma

Children in LGBT families face two major and unnecessary obstacles: archaic and discriminatory laws; and social and cultural stigma. These obstacles make it more difficult for children to secure stable, loving homes; economic security; and health and well-being (see *Figure 4*).

Archaic and discriminatory laws. All children need certain things in order to thrive, and over time, state and federal governments have created a wide assortment of laws and policies designed to ensure adequate care for children. These laws outline parents' responsibilities and obligations to their children and protect children should a parent die or become disabled—or should their parents' relationship dissolve. And they help ease the burden for struggling families and attempt to ensure that children receive proper nutrition, shelter, education and medical care. Yet, public policy has not kept up with the changing reality of American families, and far too many of these laws still only apply to children with heterosexual parents.

Social stigma. Children living in LGBT families are more likely to face uncomfortable or outright hostile social interactions than their peers. A 2008 study found that 42% of children with LGBT parents were verbally

Research Shows Positive Outcomes for Children of LGBT Parents[19]

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

Opponents of LGBT families claim that research shows children need both a mother and a father. Research does indicate that children fare better with two parents than with only one, yet nowhere does this research indicate that the parents must be of different sexes. Where studies do compare two heterosexual parents to two parents of the same sex, research uniformly suggests that all children are similarly well-adjusted.

harassed at school over the past year because their parents were LGBT.[20] Such bullying has been linked to higher absenteeism, increased risky behavior and an erosion of self-confidence. And depending on where they live, LGBT children and their parents may not be welcome in commonplace environments including local grocery stores, medical facilities, neighborhood sports leagues, or even the homes of other families.

The remainder of this condensed report provides a summary of how archaic and discriminatory laws, combined with social stigma, make it harder for children with LGBT families to meet three basic needs:

- **Stable, loving homes.** Restrictions on adoption and foster care mean that the roughly 115,000 children awaiting forever homes may be denied qualified adoptive parents just because those parents happen to be LGBT. Also, children with LGBT parents may be legal strangers to their non-biological parent, denying such children the stability and permanency of having two legally-recognized parents.
- **Economic security.** Government-based economic protections, ranging from safety net programs to tax deductions to inheritance laws, help families meet children's basic needs, including obtaining food, shelter and clothing. Yet different treatment under the law creates barriers to economic security for children from LGBT families, including lack of access to safety net programs, higher tax burdens, and lack of protections when a parent dies or is disabled.
- **Physical and mental health and well-being.** Government policies aim to help ensure that children are physically and mentally healthy, and that they can access the basic resources they need to thrive, including quality and welcoming child care, education and health care. Yet children from LGBT families face additional obstacles to achieving optimal health and well-being including unequal access to health insurance, unwelcoming health care and social environments and legal restrictions that make it harder for LGBT family members to provide care to each other.

A Story of Two American Families

While LGBT families and families headed by heterosexual married couples may experience the same set of life events, unequal laws and social stigma can have a damaging impact on LGBT families. The example in *Table 1* explores the very different outcomes for two families experiencing the same sequence of events. The only difference is that one family is headed by a heterosexual married couple (Darren and Angela) and the other by a lesbian couple (Jennifer and Katie). Because Angela is heterosexual, she and her children are left with substantial income support, college savings, the family home, and a supportive community following the death of her husband. Because she is a lesbian, when Katie's partner dies, Katie and her children are left homeless and poor, struggling to make ends meet on a part-time income while living in a community that does not support their family.

The remainder of this report explains what creates these disparities—and what can be done to eliminate them so that all children have the same opportunities to thrive.

Additional Introductory Content Found in Full Report

Expanded Discussion, Tables and Figures:

Sidebars:

Table 1: Two American Families, Two Different Outcomes

 **Darren & Angela + Two Children**	 **Jennifer & Katie + Two Children**	**Added Financial Burden for Jennifer & Katie Over 18 years of Raising Children**
Giving birth using donor insemination…		
• Darren and Angela are the legal parents of their two children.	• Only Katie (the biological parent) is legally recognized as a parent. Jennifer is a legal stranger.	
Securing health insurance coverage…		
• Entire family receives health insurance through Darren's employer-sponsored plan.	• Jennifer's employer-sponsored health insurance does not extend to domestic partners or non-legally recognized children. • The family purchases private health insurance for Katie and both children, costing $3,105 more per year.[21]	**$55,890** ($3,105 per year across 18 years)
Applying for their children's Social Security cards…		
• Darren and Angela listed as father and mother; cards arrive without problems.	• Application with both parents is rejected. Only Katie can be listed on the form.	
Entering children into a neighborhood child care program…		
• Program is welcoming and friendly. • Family is eligible for $6,000 child care tax credit, saving (when combined with other credits and deductions for children) $2,215 in taxes each year.	• Family encounters hostile child care providers; only Katie drops off and picks up children. • Family is ineligible for $6,000 child care tax credit and other child-related deductions and credits, and pays $2,215 more in taxes each year.	**$33,340**[22]
Visiting the ER after child breaks arm…		
• Darren takes daughter to the emergency room, consents to medical care and is permitted to stay with her.	• Jennifer takes daughter to the emergency room, but cannot consent to medical care and must wait for Katie to arrive because she is not the legal parent.	
Entering children in elementary school…		
• Teachers and staff are welcoming and supportive; Jennifer serves on the PTA. • The children easily make friends.	• Administration is hostile; teachers are not adequately addressing bullying. • The children report being teased; some classmates kept by parents from playing at the children's home.	
Dealing with the death of the primary breadwinner (Darren and Jennifer)…		
• Angela inherits house and savings despite Darren's lack of a will. • Family receives $27,936 in annual financial support from Social Security which pays for living expenses. • Receives support from community.	• Katie loses home and savings, which go to Jennifer's parents. • Katie and the children are legal strangers to Jennifer and therefore receive no Social Security survivor benefits; family struggles to make ends meet on Katie's part-time salary. • Family gets little support from school and community.	**$130,032** in lost Social Security survivor benefits[23]
TOTAL DIFFERENCE IN FINANCIAL BURDEN		**$219,262**
• **Adequate income** • **Sufficient savings** • **Keep home** • **Have support**	• **No income** • **No savings** • **No home** • **No support**	Extra financial burden in health insurance, lost tax credits and lost Social Security benefits. Excludes loss of house and savings due to inequitable estate tax law.

GOAL 1: SECURING STABLE, LOVING HOMES FOR CHILDREN

Children need the security and emotional support of loving parents or guardians who care for and nurture them—and the stability that comes from knowing that these caregivers will part of their lives for a long time to come.

Parenting law and other policies aim to help children establish this safety and security. Current policy bias for married heterosexual couples with biological children, creates disparities not only for same-sex couples, but also for other types of "non-traditional" families, including unmarried heterosexual couples. Since African American children have the highest rates of living with single or unmarried parents, laws that penalize children with unmarried parents also disproportionately impact African American children.[24]

Challenge: Children are Denied Permanent Homes and Legal Ties to Parents

A legal parent is someone who has the right to physical custody over children; who has the right to make decisions on their behalf; and the financial responsibility for their support.[25] When a child is born to, or adopted by, a married heterosexual couple, that child is generally recognized in all 50 states as the legal child of both parents. By contrast, a child with LGBT parents faces a climate of uncertainty. The following are some of the negative consequences of current laws that penalize LGBT and other kinds of families:

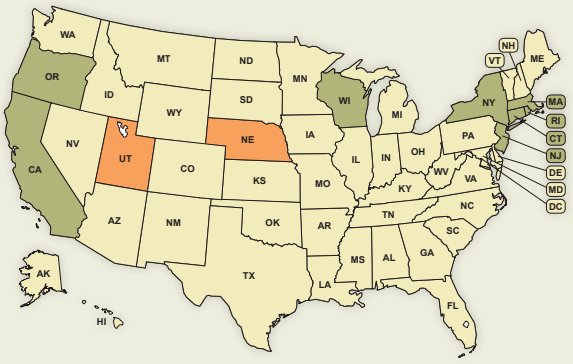
- **Children are denied permanent homes.** Although there are currently about 115,000 children in the child welfare system awaiting adoption, a child may be denied a forever home simply because the caring adults who want to provide it are same-sex or unmarried heterosexual couples.
- **Children are denied the security of legal ties to parents.** Substantial problems can arise when children lack legal ties to the adults who are raising them—whether they are grandparents, aunts or uncles, LGBT parents, or others. For children whose parents are same-sex couples, the majority of states will only recognize one parent as a legal parent, leaving children without the security of legal ties to a parent who loves and cares for them, and may have raised them since birth. Lack of parental recognition also means families may be denied protections such as access to various safety net programs, health insurance coverage, parental decision-making rights, survivors benefits, and more.
- **A patchwork of laws undermines family stability.** Even LGBT parents who are legal parents in their state have no guarantee that their rights as parents will be respected by other states or the federal government. For example, a non-biological mother vacationing across state lines might suddenly have to deal with hospitals or insurance companies that refuse to recognize her as a legal parent, prevent her from making emergency medical decisions, or disallow insurance claims. Should an LGBT family relocate, children could lose their ability to collect certain benefits, inherit money, or claim financial support from their parents. Parents can even lose their custody rights over children they have raised since birth.

These problems arise because parenting law generally presumes children are born to biological, married, and heterosexual parents. Same-sex couples wishing to start a family can face added burdens because both intended parents cannot be the genetic parents of the child—and because most states do not recognize the relationships of same-sex couples. Setting aside traditional conception, we now explore four other paths to parenthood—and how their legal consequences look different for same-sex versus heterosexual couples. For three of these four paths, married heterosexual parents can be assured of securing legal ties to their children, while same-sex and unmarried parents in many states cannot. The last path, surrogacy, is complicated regardless of whether the intended parents are heterosexual or same-sex couples.

Parenting Path 1: Fostering and Adoption

Foster Care. When the government deems existing parents unwilling or unable to provide adequate care, a child may be placed in the home of a certified caregiver called a "foster parent." Only about half of children who go into foster care return to their birth families, and foster parents comprise the largest group of individuals who adopt from foster care. As of 2009, there were more than 423,000 children in foster care, 19% of whom were not in a family home setting. Of these, about 115,000 were waiting to be adopted, with an average child waiting for over three years.[26]

Figure 5: Foster Care



8 states support fostering by LGBT parents by restricting discrimination

40 states + D.C. are silent on fostering by LGBT parents

2 states restrict fostering by LGBT parents

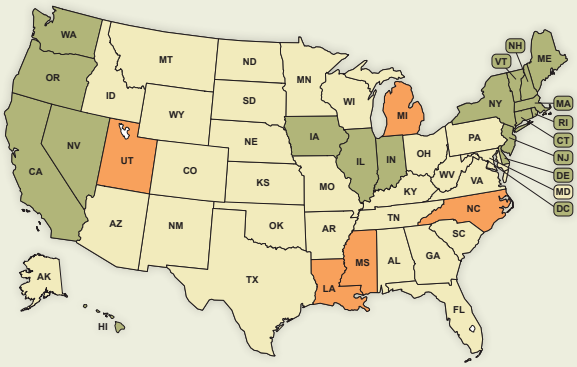
How Does the Current Law Create Problems?

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

Limitations

- Legal and policy restrictions, as well as significant bias against LGBT parents, can still obstruct placement.
- The foster care system disproportionately impacts families of color. Children of color are more likely to be removed from their homes (even when their family circumstances are similar to those of white children); once in foster care, they stay there longer.[30]

Figure 6: Joint Adoption by Couples[32]



17 states + D.C. with joint adoption

28 states where same-sex couples face uncertainty

5 states where same-sex couples effectively prohibited

How Does the Current Law Create Problems?

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

Creates Secure Parenting Ties?

- Once granted, adoptions must be recognized by other states and the federal government.[33]

Strengths

- Where available, creates ties to both parents simultaneously.

Limitations

- Adoptions can be expensive ($2,500-$40,000) and hard to obtain.[34]
- Cost may render adoptions inaccessible to lower-income families, who are disproportionately families of color.

An estimated 14,000 foster children, or 3% of all foster children, currently live with LGB foster parents.[27] Only a handful of states restrict or ban fostering by LGBT individuals or couples[28], but most state laws are silent, creating uncertainties about whether LGBT families will be able to foster. Even where no bans exist, many individuals or couples may be disqualified from fostering due to bias or discrimination by agencies and frontline workers.[29] See *Figure 5* for details.

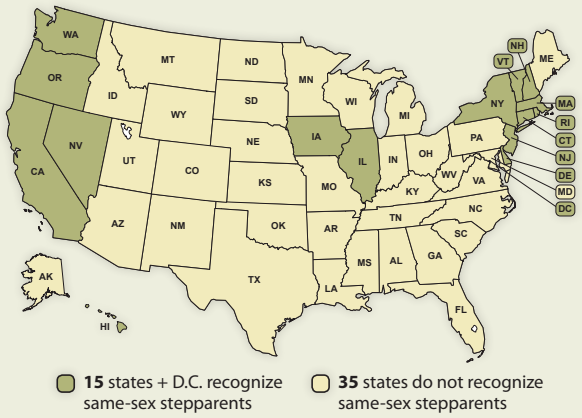
Adoption. All states currently allow single individuals living alone to adopt, meaning single LGBT parents can theoretically adopt throughout the U.S. Yet some states prioritize married couples or bar individuals from adopting if they are unmarried and living with a partner.

For same-sex couples wishing to start a family, joint adoption allows both members of a couple to simultaneously adopt a child, creating legal ties to both parents from the outset. While all states allow married heterosexual couples to adopt jointly, same-sex couples (and unmarried heterosexual couples) face uncertainty in many states and jurisdictions, and are effectively banned from adopting jointly in five states.[31] To circumvent these restrictions, one LGBT parent may adopt as a single person, but this leaves the child with only one legal parent (unless the second parent can later obtain a second-parent adoption or other form of legal recognition). See *Figure 6* for more details.

Parenting Path 2: Blended Families and Stepfamilies

One of the most common kinds of adoption in the U.S. is a "stepparent" adoption.[35] A stepparent adoption allows a heterosexual adult who marries an existing parent to adopt his or her spouse's child or children (without terminating the rights of the existing parent). As with heterosexual adults, many LGBT parents have children from prior relationships. Yet most states do not allow same-sex couples to secure a stepparent or equivalent adoption, leaving the child with only one legal parent. This is because stepparent adoption generally requires that the two parents be married, and most states do not recognize the relationships of same-sex couples.

Figure 7: Stepparent Adoption



15 states + D.C. recognize same-sex stepparents

35 states do not recognize same-sex stepparents

How Does the Current Law Create Problems?

- Restrictions on stepparent adoption means a child may be denied legal ties to an LGBT stepparent who wishes to adopt him or her.

Creates Secure Parenting Ties?

- Once granted, stepparent adoptions must be recognized by other states and the federal government. [37]

Strengths

- Stepparent adoptions are usually more streamlined and lower in cost than other types of adoptions, making them more accessible to a wider range of families, including low-income families who are disproportionately families of color.

Limitations

- Stepparent adoptions require parents to be in a marriage or equivalent relationship, creating barriers for same-sex couples and unmarried heterosexual couples (who are disproportionately couples of color).[38]

Even when heterosexual stepparents do not adopt their stepchildren, many states grant them limited legal rights such as the ability to sign certain authorization forms for their stepchildren, or to petition for custody/visitation after a break-up.[36] Children being raised by stepparents in LGBT families cannot benefit from these rights. See *Figure 7* for more details.

Parenting Path 3: Donor Insemination

When children are conceived by married heterosexual couples using assisted reproduction such as donor insemination, the children are automatically considered the legal children of both the mother and the mother's consenting husband (even though the husband is not the biological father of the child). The law's automatic presumption that the husband is a legal parent is known as a "presumption of parentage."[39]

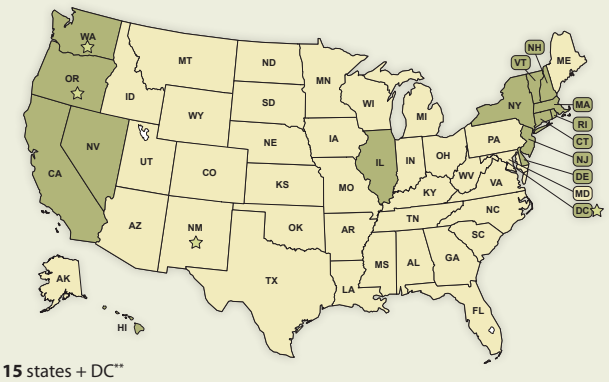
When a lesbian couple has a child using donor insemination, the non-biological mother generally only enjoys a presumption of parentage if she lives in one of the minority of states that offer marriage or comprehensive relationship recognition for same-sex couples—and if the couple is in a legally-recognized relationship. Therefore, in most states, a birth mother's lesbian partner has no way to establish a legal relationship to the child she will raise from birth, leaving the child with only one legal parent.

In addition to the presumption of parentage, many states also have "consent-to-inseminate" laws that define when and how to grant parentage to the partner (or spouse) of a birth mother using donor insemination. These laws grant legal parentage to the partner or spouse of the birth mother when the couple signs paperwork or otherwise demonstrates that the partner or spouse intends to parent the child with the birth mother's consent. Unfortunately, most of these statutes are written in gendered terms and only refer to "men" or "husbands." The law is not yet clear about how these statutes apply to same-sex couples.

Even when a lesbian spouse or partner is recognized as a legal parent under parenting presumption or consent-to-inseminate laws, that legal recognition may not hold across state lines. This is because states are only required to honor one another's court judgments (such as an adoption judgment), not parentage based on another state's statutes. This is a particular risk for LGBT parents who enjoy a presumption of parentage due to their marriage (or equivalent) to a same-sex partner, and who then move to a state that does not recognize same-

sex relationships. For this reason, attorneys consistently advise same-sex couples to secure their parenting ties with a second-parent adoption or court-based parentage judgment (discussed later). See *Figure 8* for more details.

Figure 8: Donor Insemination



15 states + DC**

- **Parental Presumption**, 14 states + DC
- **Consent-to-Inseminate**, 3 states + DC
- **35** states lack same-sex parental recognition at birth

* May require being in legally recognized relationship, such as a marriage, civil union or domestic partnership.

** The 15 states include all states with marriage or comprehensive relationship recognition, except Iowa , plus New Mexico. Two states and DC have both parental presumption and consent to inseminate.

How Does the Current Law Create Problems?

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

Creates Secure Parenting Ties?

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

Strengths

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

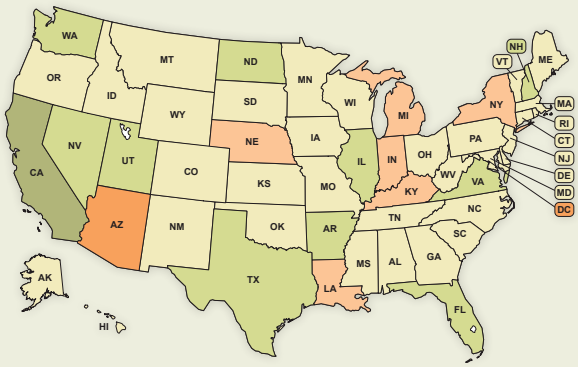
Limitations

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

Parenting Path 4: Surrogacy

Surrogacy is an arrangement in which a woman carries and delivers a child for another couple or person. Generally a woman is impregnated with another woman's fertilized egg and gives birth to a biologically unrelated child who will be raised by others.[40]

Figure 9: Surrogacy



- **1** state routinely grants parentage to intended parents
- **10** states permit but regulate
- **32** states with no definitive law
- **6** states punish or refuse to recognize contracts
- **1** state + D.C. ban surrogacy

How Does the Current Law Create Problems?

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

Creates Secure Parenting Ties?

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

Strengths

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

Limitations

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

For children who come into the world with the help of a surrogate, the current patchwork of state laws creates needless confusion and uncertainty for both heterosexual and same-sex couples. However, same-sex couples can face extra hurdles in establishing legal ties to children born through surrogacy. Only a handful of states with surrogacy-friendly laws also have laws that are LGBT-friendly, creating extra challenges to ensuring both intended parents can become legal parents.[41] See *Figure 9* on the previous page for more details.

Parent Left Off Birth Certificate for Twins Born via Surrogate

Shawn (left) and Anthony Raftopol with their three children, Sebastiaan, Zoe and Lukas, who were born using a surrogate. The state refused to issue birth certificates for the twins with both parents' names.

Anthony and Shawn Raftopol have been together for more than 16 years and were married in Massachusetts in 2008. The couple's daughter, Zoe, was born in Connecticut in 2006 using a surrogate and Anthony's sperm. When Zoe was born, both Anthony and Shawn were listed on her birth certificate. The couple then had twin boys, Sebastiaan and Lukas, also born in Connecticut using the same egg donor and surrogate. Anthony again was the twins' biological father. But the couple was surprised when the state refused, citing a policy change, to put Shawn's name on the twins' birth certificates and said he would need to adopt the twins. The case was brought to the Connecticut Supreme Court, which held that when a couple, regardless of gender, enters into a valid agreement with a surrogate, both individuals are the legal parents. As a result, both Anthony and Shawn were able to be listed as parents on the twins' birth certificates, and Connecticut has updated its laws regarding children born to surrogates so couples can obtain pre-birth parentage orders.

Adapted from Susan Donaldson James, "Surrogacy Law: Conn. Gives Non-Genetic Parents Legal Rights," ABCNews.com, January 20, 2011, http://abcnews.go.com/Health/connecticut-surrogacy-law-genetic-parents-legal-rights/story?id=12662224.

Stopgap Remedies to Inadequate Parenting Law

Parenting law does not provide adequate protections for LGBT families. Three stopgap measures can remedy some of the inadequacy of existing parenting law, although these remedies are often available only in the states that already are likely to protect LGBT families. If existing parenting law adequately addressed the needs of LGBT families, these remedies would not be necessary.

Second-Parent Adoption

Modeled on the stepparent adoption process, a second-parent adoption allows the partner of a legal parent to adopt that parent's child without terminating the parental rights of the first parent. When allowed by law, second-parent adoptions are a common way for a non-legally recognized parent to secure legal ties to his or her child. Unlike joint adoption of a new child, where both parents adopt simultaneously, a second-parent adoption formalizes a relationship with a second parent who is already in a child's life.[42] See *Figure 10* on the next page for more details.

"De Facto" Parenting

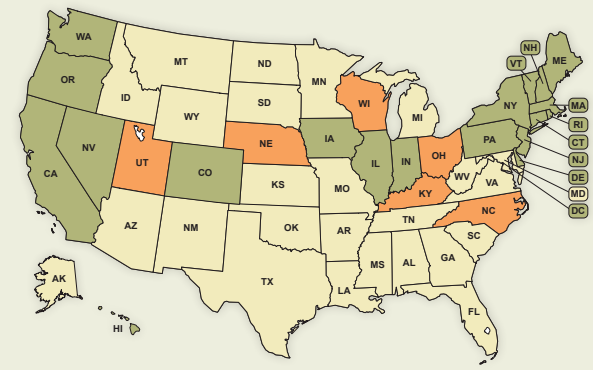
In some cases, a child who has received care and support from someone other than a legal parent can become a legally-recognized dependent based on what is known as "de facto" parenting law.[45]

A "de facto parent" is someone other than a legal parent who, for reasons other than financial compensation, formed a child-parent relationship in which he or she shared (usually at least equally) in primary childcare responsibilities. This can be any person who acts as a parent in a child's life and meets certain criteria, including same-sex parents, grandparents, stepparents, aunts, uncles or other loved ones.

De facto parenting law is usually based on common law resulting from a judge's interpretation of a state's general parentage statute in cases of relationship dissolution or a custody dispute.

Over a dozen states have de facto parenting law that can grant some parenting rights and responsibilities in cases of custody disputes, yet only Delaware and Washington have statutes that, similar to a second-parent

Figure 10: Second-Parent Adoption



19 states + D.C. with laws or court decisions permitting second-parent adoption by same-sex couples

25 states where same-sex couples face uncertainty

6 states effectively ban second-parent adoption

How Does the Current Law Create Problems?

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

Creates Secure Parenting Ties?

- Once granted, second parent adoptions must be recognized by other states and the federal government.[43]

Strengths

- Both of the child's parents are recognized as legal co-parents with identical rights and obligations.

Limitations

- It cannot be done pre-birth, leaving the child without ties to one parent for some period of time.
- It can be lengthy, costly ($1,200-$4,000) and complicated, requiring a home study, attorney's fees and travel expenses. This can make adoptions inaccessible to lower-income families, who are disproportionately families of color.
- Families may not be aware of the need for second-parent adoption, and may not access it, even when available.[44]

adoption, allow same-sex couples to proactively extend full parenting rights to a non-legally recognized parent based on de facto status and the legal parent's consent. See *Figure 11* for more details.

Parentage Judgments

Parentage judgments are court orders in which a judge makes a determination of full legal parentage based on existing parentage statutes or case law. They are issued primarily when a parent wants to secure a court judgment in addition to statutory recognition in order to protect his or her parental status from legal challenges, especially across state lines.

Figure 11: "De Facto" Parenting

How Does the Current Law Create Problems?

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

Creates Secure Parenting Ties?

- Likely, since it results in a court judgment, though this has rarely been tested in practice.

Strengths

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

Limitations

- Not available from birth.
- Can be costly and time-consuming, requiring the family to appear in court and pay legal fees.

Figure 12: Parentage Judgments

How Does the Current Law Create Problems?

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

Creates Secure Parenting Ties?

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

Strengths

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

Limitations

- Parentage judgments require a court appearance and some knowledge of existing parenting law, making obtaining such a judgment intimidating or out of reach for many families.
- Not likely to be a remedy for couples living in states with parentage law that is hostile to LGBT parents.
- Judgments are often not available from birth.

Parentage judgments may be issued either at the request of a couple who is raising, or planning to raise, a child together, or by a court in a dissolution case to assign the parental rights and obligations of custody and child support. See *Figure 12* on the previous page.

Challenge: Children Wrongly Separated from Parents

Outdated family law leaves many children without legal ties to their parents. Likewise, laws meant to promote family unity, or to protect children when adult relationships end or when a parent dies, also fail many children, including those with LGBT parents. The consequences are that children may be wrongly separated from their parents.

Mother Adopts Her Child to Secure Parenting Rights

Photo by Leslie Von Pless. Reprinted with permission from Lambda Legal.

Tevonda Hayes Bradshaw (center, partly obscured) and Erica Bradshaw (left) with their son, Teverico. Erica was forced to undergo fingerprinting so that she could become a legal parent to her son.

Tevonda Hayes Bradshaw and Erica Bradshaw live in New Jersey with their infant son, Teverico Barack Hayes Bradshaw. Tevonda and Erica are in a civil union in New Jersey, but they know that civil unions aren't well understood and aren't always recognized out-of-state. So, even though both Tevonda and Erica are legally presumed to be Teverico's parents, they have spent time, energy and money to ensure that they have multiple legal documents to protect both their relationship and their legal ties to their son. For example, just months after Teverico's birth, Erica had to undergo a court-related examination of her background, including being fingerprinted, so that she could officially adopt Teverico.

Adapted from *Garden State Equality, et al. v. Dow, et al.*, Complaint for Declaratory and Injunctive Relief, New Jersey Superior Court, filed by Lambda Legal (June 29, 2011).

- **Children may be wrested apart from the only parents they have ever known.** Family law strives to protect the best interests of children when awarding custody and visitation—and when determining child support. When children cannot rely on the law to honor their ties to their parents, the consequences can be devastating. For example, custody may not be awarded appropriately, a court may sever a child's ties to a sole remaining parent, or a child may lack needed financial support.
- **Children live in fear of a parent's deportation.** Although immigration law has a stated goal of family unity, Americans cannot sponsor a same-sex partner for immigration purposes, undermining family stability and permanency for these families.

Custody and Visitation Disputes

When families break up, custody battles can ensue. Courts make decisions about several key aspects of a child's care including physical custody, legal custody, financial obligations and visitation rights. LGBT parents are vulnerable to major disadvantages when it comes to these decisions. The first is direct discrimination against an LGBT parent based on sexual orientation or gender identity. The second is a possible refusal of lawmakers to acknowledge an existing parent who lacks legal ties to his or her child. See "Judicial Bias" sidebar on the next page.

Custody Decisions that Discriminate Against LGBT Parents

LGBT parents may be particularly vulnerable to biased decisions that deny custody or visitation. For example, a judge may rule against custody rights for an LGBT parent even when giving custody to that parent would be in the child's best interests. Laws in most states require that decisions to deny custody or visitation show that a parent is causing the child "adverse harm," rather than simply assuming that being an LGBT parent is, in its own right, detrimental to children.[47] Yet many state courts still routinely penalize parents based on their sexual orientation or gender identity and expression. They cite other factors such as the parent's "lifestyle" or marital status; concerns that children could be subjected to teasing and ostracism; and fears that children may be victimized by sexual abuse or could contract HIV.[48] Transgender parents can be at a serious disadvantage in a divorce, particularly if the parent's transition was a factor in the divorce.

Custody Decisions that Ignore a Functioning Parent

There are many circumstances in which a child is raised by someone who is not a legal parent. For example, a child might be raised by a grandparent, uncle or aunt, non-recognized LGBT parent, or other de facto parent. However, some state laws only allow legal parents and stepparents to file for custody or visitation rights.

The result is that children may be cut off from someone who has raised them since birth, and who may be the most appropriate caregiver.[49] On the flip side, the legal system usually also cannot require a functioning a parent who is not a legal parent to provide child support, putting the child at economic risk.

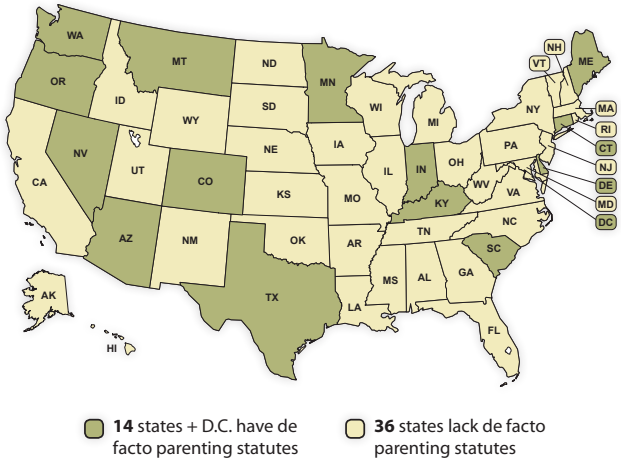
The growing recognition of de facto parenting is one promising avenue for recognizing the contributions—and thus the rights and obligations—of those who have functioned as parents. Some states have explicit statutes that allow courts to consider de facto parents when determining custody or visitation (see *Figure 13*). These protections help children in LGBT families—and are particularly important for African American families, where children are more likely to be raised by someone other than a biological parent.[51]

Custody When a Parent Dies

The death of a parent can be devastating for a child, and children with a non-legally recognized parent face even greater trauma. If the legal parent dies, the surviving parent (a legal stranger) may be denied custody even if he or she has acted as a parent for the children's entire life. And if the non-legally recognized parent dies, children may be deprived of badly needed inheritance funds, Social Security benefits and a host of other protections that should have flowed from their dependency on the deceased parent.

Because of insufficient legal protections, same-sex couples and other vulnerable families often put documents in place that express the legal parent's will in case of death, such as "appointments of guardianship" to designate the non-legally recognized parent as the intended guardian in case of death or incapacitation of the legal parent. Yet these are far from perfect: they are expensive and complicated to produce; many families are unfamiliar with them and their importance; and judges are usually not required to honor them.

Figure 13: De Facto Parenting Statutes[50]



14 states + D.C. have de facto parenting statutes

36 states lack de facto parenting statutes

Judicial Bias Places Children with Abusive Father Over Lesbian Mother

Dave Dieter/*The Huntsville Times*

Former Alabama Supreme Court Chief Justice Roy Moore, who denied custody to a lesbian parent.

In 2002, the Supreme Court of Alabama deprived a lesbian mother of custody of her children even though she presented evidence that her ex-husband was physically abusing their children. The court dismissed the alleged abuse as "occasional excessive disciplinary measures" even though an appeals court had found that "the father's verbal, emotional, and physical abuse can be considered family violence." One of the judges wrote that "homosexual conduct is, and has been, considered abhorrent, immoral, detestable, a crime against nature, and a violation of the laws of nature and of nature's God upon which this Nation and our laws are predicated." In other custody cases, factors presumed to be associated with sexual orientation were used to deny or restrict custody or visitation to LGB parents.[46]

Adapted from *H.H.*, Ex parte, 2002 WL 227956 (Ala. February 15, 2002).

My Journey as a Transgender Parent (Denise Brogan-Kator)

Photo reprinted with permission from Denise E. Brogan-Kator

Denise E. Brogan-Kator and her daughters, Melody and Amanda.

I came out as transgender when my daughters were 7, 9, and 11. Two years later, my wife and I began what would be a five-year process of separation and divorce.

My ex-wife initially asked the court to terminate my parental rights. My children and I were instructed to not see or speak with each other until that motion was ruled upon. My lawyer warned me that my being transgender made losing this motion a very real possibility. Thankfully, my ex-wife eventually withdrew her motion, and my daughters and I were reunited.

Two years later, on the day my eldest turned 17, her mother granted her longstanding wish to come live with me. My middle daughter later came to live with me for her final year of high school. Then, unexpectedly, when my eldest turned 21, she told me that she no longer wanted me in her life. That was 7 years ago, and I've seen her only twice in that time—most recently at my mother's funeral.

At the same time, my relationship with my two younger daughters has grown even stronger. By the time I had surgery, my middle daughter was 21. She flew out to Colorado to help take care of me. My youngest—now 25—is just finishing her Ph.D. and writing her dissertation on the relationships between children and their trans parents.

I think of my eldest daughter every single day. I hope for the day when we will be reunited. I take comfort from my close relationships with my two youngest daughters, and the fact that my daughters are close to each other.

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

Jeff Riedel/Contour by Getty Images

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

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

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

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

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

Adapted from *Kutil-Hess v. Judge Blake* WV Ct. Appeals (June 5, 2009).

Uncertainty for Binational Families

Immigration policy has a special role in keeping families together and protecting children's interests. U.S. policy has long reflected this goal of family unity, which is why the federal government prioritizes the foreign spouses or fiancé(e)s of heterosexual U.S. citizens and permanent residents for entry into this country.[52] Unfortunately, children being raised in same-sex binational families are denied these protections of family unity under immigration law. Even if the law were to recognize same-sex couples, binational couples could continue to face discrimination in obtaining visas, green cards or citizenship, or in obtaining permission to enter or remain in the U.S.[53] There are five primary ways in which immigration law can negatively impact the stability and security of children in same-sex binational families:

1. **Deportation (or fear of deportation) of a parent.** Because LGBT Americans cannot sponsor their same-sex spouses and partners, children of such couples face the threat of losing a parent through deportation or denial of a visa.[54]
2. **Deportation (or fear of deportation) of a child.** If the child of a same-sex binational couple is foreign-born and if his or her American parent cannot become a legal parent, that parent also cannot sponsor the child for immigration purposes. The child may be deported and forced to leave the country.
3. **Prevention of parents from seeking the protections of marriage or relationship recognition.** Binational parents may be discouraged from obtaining the legal protections of marriage or formal partnerships because doing so would undermine their effort to renew a temporary visa (many LGBT immigrants remain in the U.S. by repeatedly renewing temporary visas). Securing a temporary visa normally requires proof that an applicant does not intend to stay in the U.S. indefinitely, yet getting married or formally partnered is taken as evidence of the opposite intention.[55]
4. **Prevention of parents from seeking legal parenting ties.** For similar reasons, if the American partner of a foreign-born parent wants to secure ties to their child through a second-parent adoption, going through that process could put the foreign-born parent at risk if he or she resides in the U.S. on a temporary visa or is undocumented.
5. **Denial of government safety net and other protections.** Families in which one parent cannot become a permanent immigrant or citizen face added restrictions in their access to government safety net protections such as Temporary Assistance for Needy Families, the Supplemental Nutrition Assistance Program and Social Security benefits.

Additional "Goal 1" Content Found in Full Report

Expanded Discussion, Tables and Figures:

- Pathways To Parenthood: Adoption, Foster Care, Blended Families, Assisted Reproduction, and Surrogacy (pp. 19-39)
- Securing Legal Ties to Children (pp. 22-23)

Sidebars:

- Adoption and Foster Care Bans Are Struck Down By Courts (page 29)
- How the Adoption and Fostering Process Works (page 30)
- Barriers in Practice: What Agencies and Individuals do to Restrict Placement of Children with LGBT Adoptive or Foster Parents (page 30)

Stories:

- "Ohio Mother Unfairly Denied Custody of Her Daughter" (page 47)
- "After Fatal Accident Kills Mother of Five-Year-Old Boy, Court Tries to Deny Him Ties to Surviving Mother"(page 48)
- "Inequitable Immigration Law Threatens to Tear Family Apart" (page 50)

GOAL 2: ENSURING ECONOMIC SECURITY FOR CHILDREN

Federal, state and local governments have established programs and policies to help families meet basic physical needs and raise healthy, well-adjusted children. These government-based economic protections include safety net programs, family-based tax benefits, and programs and laws designed to provide economic stability when a parent dies or becomes disabled. Yet government-based economic protections are applied unevenly based on family structure. Rather than tying qualification for benefits to family size or need, governments use inconsistent definitions of family to determine assistance, including whether or not parents are married or whether they have legal ties to their children.

Some government programs and laws use a broad definition of "family" or "household" that looks at the actual interconnectedness of people (such as the extent to which individuals share economic resources like food or housing). Most programs and laws, however, use narrow definitions of family that refuse to recognize same-sex couples or non-legally related children. Additionally, the Defense of Marriage Act[56] (DOMA) prevents the federal government from recognizing the marriages of same-sex couples, even if the couple is legally married under state law. This lack of family recognition can adversely impact LGBT families in three important ways:

1. **Children fall through the safety net when government programs refuse to recognize their families.** A narrow definition of family can mean that LGBT and other families are unfairly denied benefits and protections. Alternatively, some families face economic penalties should the parents formalize their relationship with each other or their children.
2. **LGBT families cannot access tax credits and deductions intended to reduce the cost of raising a family.** LGBT families often cannot avail themselves of substantial tax benefits, credits and deductions, leaving them with a higher tax burden than their heterosexual counterparts.
3. **Laws designed to support families when a parent dies or becomes disabled harm children by excluding some families.** Children in LGBT families are often unprotected by laws and programs that provide economic assistance in the wake of the death or disablement of a parent. Children can also be denied their inheritance, survivor and disability benefits, and the ability to sue for wrongful death.

Challenge: Children Falling Through the Safety Net

Millions of American children are living in poverty today[57]—and despite stereotypes to the contrary, children being raised by same-sex couples are twice as likely to live in poverty as children living in heterosexual married households.[58] Like all struggling families, LGBT families living in poverty often rely on means-tested government safety net programs for economic assistance.

Generally speaking, means-tested programs base eligibility on a family's resources and household size, and set income caps for recipients. These caps (and the federal poverty guidelines) increase with the number of people in a household because larger families have a higher cost of living. Likewise, the value of the safety net benefit generally increases as family size increases, with larger families receiving more in benefits.

Ideally, means-tested safety net programs would provide assistance to families based on need. The reality is that factors such as marital status come into play, preventing LGBT families from accurately reflecting their household size, resources and economic need. The impact of this inaccurate household reflection varies depending on the family's circumstances.

- **Government programs may deny LGBT and unmarried families needed assistance that would be provided to families headed by heterosexual married couples.** An accurate household count would consider a same-sex couple with one child as a three-person household; the combined income of both parents would be considered when calculating the level of assistance. However, since the federal government does not recognize same-sex relationships, most safety net programs only count this family as a two-person household, ignoring the non-recognized spouse or parent when calculating the family's financial needs. Smaller households have lower income limits and benefit amounts, so the family could be denied benefits, or receive reduced benefits.

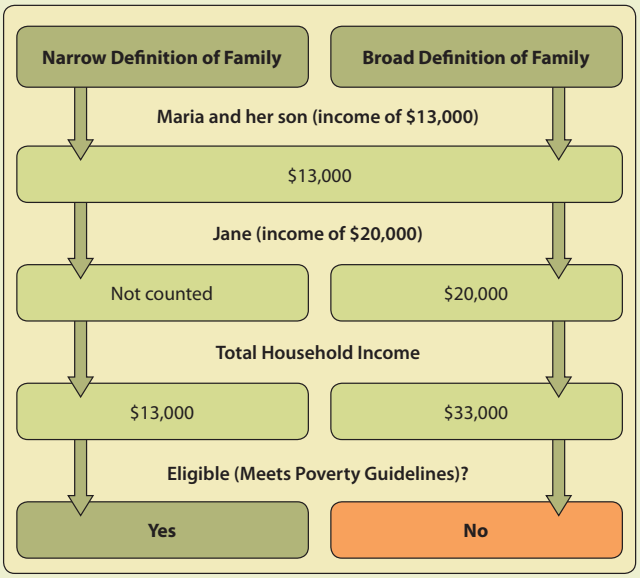
- **Government programs may penalize couples wanting to marry or parents wanting to establish legal ties to their children.** Eligibility guidelines for many means-tested programs can create economic disincentives that discourage couples from marrying, or non-recognized parents from establishing legal ties to their children. Take, for example, a same-sex couple that is raising a child where both parents have very low incomes. Each parent qualifies for assistance when counted as an individual, or as a single parent raising a child. However, if the government recognizes this couple's relationship or, depending on the program, recognizes both parents as legal parents, their combined income is just enough that they no longer qualify for assistance.

Like other families, LGBT families may face choices between the legal protections that stem from creating the strongest possible family ties—and losing vital benefits that help families meet basic needs. *Table 2* on pages 18 and 19 describes the most common means-tested programs, how these programs define family, and how LGBT families may be impacted.

How Definitions of Family Affect Eligibility for Safety Net Programs: Two Family Stories

A Narrow Family Definition Benefits Jane, Maria and Stuart

Maria (who earns $13,000) and Jane (who earns $20,000) are raising their son, Stuart. Maria is Stuart's only legal parent. A government program using a narrow definition of family would exclude Jane and her income in calculating eligibility. Thus, the family would be considered a two-person household (Maria and Stuart) with an income of $13,000. This allows the family to qualify for assistance. However, a government program using a broad definition of family would include Jane and consider theirs a three-person household with a combined income of $33,000, thus disqualifying them for assistance. This particular household would lose benefits should the government recognize the whole family.



A Broad Family Definition Benefits Anthony, Mark and Lukas

Mark (who earns $15,000) and Anthony (who earns $3,000) live with their son, Lukas. Mark is Lukas's only legal parent. A government program using a narrow definition of family would exclude Anthony and his income in the family's application for assistance. As a two-person household earning $15,000, Mark and Lukas would have income too high to qualify for the program. However, a government program using a broad definition of family would recognize Anthony. Their three-person household with a combined income of $18,000 would therefore qualify for assistance. In other words, this particular household would be denied assistance they would otherwise receive because of a narrow definition of family.

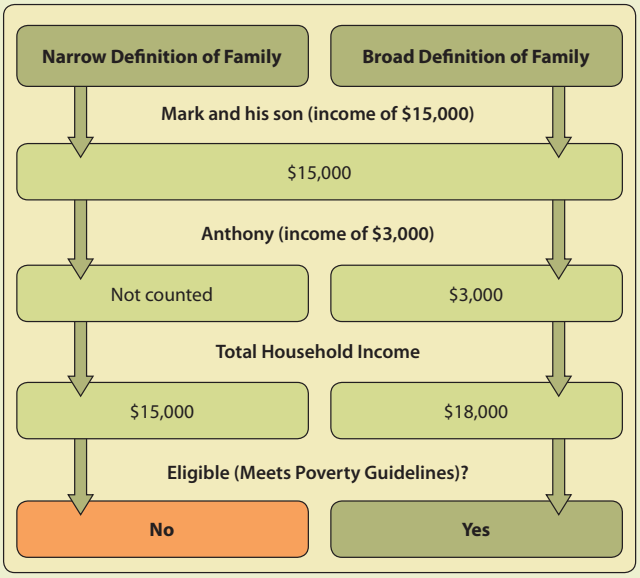


Table 2: How Means-Tested Safety Net Programs Treat LGBT Families Differently[59]

Program & Average Amount of Assistance	About The Program	Definition of Family	How the Program's Definition of Family Impacts LGBT Families
Temporary Assistance for Needy Families (TANF) **$509 - $763 monthly in cash**	• TANF provides cash assistance, childcare, work training programs and other services for low-income families. • The program serves 3.4 million children, who are primarily children of color (68%). *Twice as many low-income lesbian and bisexual women with children are enrolled in TANF compared to one in ten heterosexual low-income women with children.*	Only legal parents of children (regardless of marital status) are considered part of the "assistance unit," the group of people whose resources are counted when determining eligibility. TANF also requires single parent applicants to identify the other legal or biological parent as a means to assist with child support collection.	• Depending on family circumstances, could result in unfair denial of benefits/reduced benefits OR family could receive benefits it would be denied were the entire family recognized. • Assumption that applicants can identify second legal or biological parent creates challenges for LGBT and single parents who adopt, use reproductive assistance, or who cannot otherwise identify a different-sex second parent. • TANF also includes inflexible work requirements that can be particularly difficult for LGBT parents, who often face employment discrimination.
Food & Nutrition Assistance (SNAP, School Lunch & WIC) **$524 monthly in food assistance for family of 3**	• Three federal programs offer millions of low-income "food-insecure" families financial assistance, school lunches and nutrition education: Supplemental Nutrition Assistance Program (SNAP), National School Lunch Program, Special Supplemental Nutrition Program for Women, Infants and Children (WIC). *A recent California survey indicates that low-income LGBT families may be disproportionally food-insecure and poor LGB individuals with children may be almost twice as likely to receive SNAP benefits.*	Eligibility is based on household size and economic resources, defining households as a group of people who live, buy food, and make meals together, irrespective of whether applicants are related legally or by blood.	• Eligibility guidelines for food assistance programs reflect the genuine household configurations of all families, and can serve as models for more narrowly-defined programs. • However, only citizens and permanent residents qualify, creating barriers for binational LGBT families because they cannot sponsor partners or non-legally related children for immigration.
Public Housing & Housing Assistance (Public Housing & Section 8 Vouchers) **$641 monthly in housing vouchers**	• Two federal programs (Public Housing Program and the Section 8 voucher program) help vulnerable people obtain safe and affordable housing through affordable rental housing or subsidized rent.	The definition of family includes two or more persons who live together in a stable relationship and share resources, regardless of legal relationship.	• Definition of family covers many different living situations and accurately counts LGBT families. • However, even when LGBT families qualify for assistance, discrimination and a lack of legal protections can make it difficult to secure stable housing, particularly for LGBT families of color, and families headed by transgender parents.

Table 2: How Means-Tested Safety Net Programs Treat LGBT Families Differently (Continued)

Program & Average Amount of Assistance	About The Program	Definition of Family	How the Program's Definition of Family Impacts LGBT Families
Medicaid & Children's Health Insurance Program (CHIP) **$133 monthly in health benefits**	• Two programs provide free or low-cost health insurance to vulnerable children. Medicaid provides health-care coverage to poor older adults, people with disabilities, pregnant women, children and eligible families. CHIP specifically assists children in low-income families. • Together, Medicaid and CHIP insure one-third of American children (26 million children).	Only legal parents (regardless of marital status) are considered for income and household size calculations.	• Depending on family circumstances, could result in unfair denial of benefits/reduced benefits OR family could receive benefits it would be denied were the entire family recognized. • States have flexibility to expand eligibility to recognize same-sex partners, yet few do so because they will not receive federal matching funds in these instances.
Supplemental Security Income (SSI) **$499 monthly in cash assistance**	• Provides stipends to low-income children and adults and who are blind or disabled (and low-income adults over age 65). • In 2010, 1.2 million children and 6.4 million adults received SSI assistance based on blindness or disability.	For minor applicants, only legal parents (regardless of marital status) are considered for income and household size calculations.	• Depending on family circumstances, could result in unfair denial of benefits/reduced benefits OR family could receive benefits it would be denied were the entire family recognized.
Childcare and Early Child Education Assistance (CCAP, Head Start/Early Head Start) **$583 monthly in child care assistance**	• Several government programs help low-income families obtain child care and early childhood education. CCAP programs help low-income families pay for childcare. Head Start and Early Head Start provide subsidized educational programming and childcare to preschool children. • In 2010, 1.6 million children benefited monthly from CCAP and more than 904,000 children received Head Start services. The majority of children receiving assistance were children of color.	Only considers the economic resources of parents or guardians who are related "by blood, marriage, or adoption." Due to DOMA, even same-sex couples who are married in their state will not be recognized as such for these federal programs.	• Depending on family circumstances, could result in unfair denial of benefits/reduced benefits OR family could receive benefits it would be denied were the entire family recognized.
Post-Secondary Education Assistance **Assistance amount varies, but can be as much as $5,550 per year per student**	• In 2010, the federal government provided more than $134 billion in loans, grants and work-study funds to 14 million students to pursue postsecondary education. • In 2007-2008, 66% of all undergraduate students received some type of financial aid.	The federal financial aid form uses a narrow definition of family, considering only legally-recognized parents and stepparents in determining household size and income and explicitly states that only a "biological or adoptive parent" may be listed.	• Depending on family circumstances, could result in unfair denial of student aid/reduced aid OR student could receive benefits that would be denied were the entire family recognized. • Form is not gender neutral, and asks for information about "father/stepfather" and "mother/stepmother".

Challenge: A Higher Tax Burden for LGBT Families

The government provides important tax credits and deductions designed to help all families, regardless of economic circumstance, ease the financial costs of raising a family. The Tax Foundation estimates that an average-income American family receives approximately $16,781 in such tax relief from the federal government each year.[60]

The federal tax code uses a narrow definition of family, generally recognizing only heterosexual married spouses and legally-recognized children or relatives for tax filings. State tax law varies, but most states use similarly restrictive definitions of family, penalizing LGBT families in two ways: First, LGBT families cannot file a joint federal tax return, (which would normally result in a lower tax payment), because the federal government does not recognize same-sex couples. Second, LGBT parents who cannot establish a legal parent-child relationship are denied child-related tax deductions and credits available to other households since qualification is generally limited to tax filers with a legal child or stepchild, a foster child, minor sibling or stepsibling, or a descendent of any of these, such as a grandchild.[61] This definition excludes those LGBT parents who cannot establish a legal parent-child relationship.[62] *Table 3* summarizes the impact of this inequitable treatment.[63]

Table 3: Summary of Key Tax Credits and Deductions and Impact on LGBT Families

Credit/ Deduction	How It Works	Net Impact on LGBT families
Dependency Exemption	Reduces taxable income by $3,650 for the taxpayer, spouse, and each qualifying child or relative	**Negative.** A legal parent must usually claim the exemption. While married heterosexual couples filing separately can maximize their tax reduction by having the higher-earning parent claim the exemption, same-sex couples with one non-recognized parent cannot exercise this option, often resulting in a higher tax burden.
Child Tax Credit	Reduces taxes due by $1,000 for each qualifying child	**Negative.** A legal parent must usually claim the credit; this means same-sex couples cannot optimize their taxes and often face a higher tax burden (see explanation under "Dependency Exemption").
Earned Income Tax Credit	Reduces taxes due but may also result in a refund for low-income families	**Varies.** EITC is a means-tested tax credit based on income and household size. Only a legal parent can claim the credit and only that parent's income is considered when determining eligibility. Therefore, an LGBT family could be unfairly denied the EITC due to an inaccurate household count, OR could receive a credit that would be denied were the entire family recognized—depending on family circumstances.
Child and Dependent Care Credit	Reduces taxes due by up to $1,050 (for one dependent) or $2,100 (for two or more dependents) for the expenses associated with caring for a child or dependent	**Negative.** A legal parent must usually claim the credit; this means same-sex couples cannot optimize their taxes and often face a higher tax burden (see explanation under "Dependency Exemption").
Education Deductions	Reduces taxable income by up to $4,000 in tuition expenses for children or dependents	**Negative.** A legal parent must usually claim the deduction; this means same-sex couples cannot optimize their taxes and often face a higher tax burden (see explanation under "Dependency Exemption").
Adoption Credit	Reduces taxes due by up to $13,170 for adoption expenses	**Positive.** Married heterosexual couples can only take one adoption credit for the household. By contrast, since the federal government does not recognize the relationships of same-sex couples, both LGBT parents can claim full adoption-related expenses (allowing two claims per household). Note, however, that LGBT families also generally face more adoption expenses since state law often does not recognize both parents as legal parents (see "Securing Stable, Loving Homes for Children")
Gift and Estate Tax Exemption	Allows tax-free asset transfers	**Negative.** Only transfers from legally-recognized spouses are tax-free, so same-sex couples pay a higher tax than other, similarly situated families. Asset transfers between non-recognized parents and their children (e.g., to pay for college) may also be subject to the gift tax.

Family of Five Pays $1,490 More in Taxes

Suzanne and Geraldine Artis, along with their three boys, paid $1,490 more in taxes in 2009 because they could not file a joint tax return.

The Artis Family—Suzanne and Geraldine and their three boys, Geras, Zanagee and Gezani—lives in Clinton, Connecticut. Suzanne and Geraldine have been together for more than 16 years, and in 2009 they were legally married. They are both legal parents of their boys. While they can file a joint return in Connecticut, DOMA prevents them from filing a joint federal tax return. As a result, they have to "carve up" their family on their tax forms, because they can't both claim their children as dependents. In some years, Suzanne claims all three boys, while in others, Geraldine claims all three boys. There have been also been years where Suzanne has claimed one of the boys, while Geraldine has claimed the other two. "I don't like to have to divide them up. They're not property, they're my family," said Suzanne.

Because they can't file joint returns, the couple paid an extra $1,490 to the federal government in 2009—money that they would like to have put toward college funds for the boys. Additionally, the family worries about having a paper trail linking only one of them to their children; Suzanne wonders, "If the papers say that I'm the only parent, or vice versa, I worry that if something happened to one of us, would there be an issue?"

Adapted from GLAD, "They're Not Property, They're My Family," http://www.glad.org/doma/stories/theyre-not-property-theyre-my-family.

Challenge: Children Denied Economic Protections When a Parent Dies or is Disabled

The death or disablement of a parent is a devastating event for a child. Most families, however, can be assured that they will be protected by laws designed to provide economic stability in these circumstances. In states where their family ties are not legally recognized, LGBT families have no such protections. Such LGBT families can be:

- Denied Social Security benefits designed to protect a deceased or disabled worker's family
- Denied or unfairly taxed on inheritance
- Denied the ability to sue for wrongful death

LGBT Families and Social Security Survivors and Disability Insurance Benefits

Although most people think of Social Security as a benefit program for older Americans, the Old-Age, Survivors and Disability Insurance (OASDI) program, administered by the Social Security Administration(SSA), provides more benefits to children than most other social programs.[64] When a worker who is entitled to Social Security benefits becomes disabled, dies or retires, the worker and his or her spouse and unmarried children under the age of 18 may be eligible for benefits. Of the 4.3 million children receiving OASDI benefits, the majority of children (87%) receive benefits as a result of the disability or death of a parent.[65]

OASDI benefits provide important financial lifelines for children, particularly children of color.[66] In 2008, Social Security benefits lifted more than 1 million children out of poverty.[67] Unfortunately, OASDI uses a narrow definition of family, penalizing LGBT families in several ways:

- Only the legal child of a worker is normally eligible for OASDI benefits. This means children are denied benefits if a non-recognized parent dies, even if that parent was the primary wage earner in the family.
- Children with LGBT parents may face problems accessing benefits even when a legal parent dies. For example, if the legal parent is not a biological or adoptive parent (such as a parent with a parentage judgment or parental presumption), current Social Security policy requires that all claims be referred to the Social Security Administration's regional counsel, which can result in additional delays or denials.[68]
- Unlike children of heterosexual married parents, children with legally married same-sex parents cannot receive OASDI benefits through a non-adoptive stepparent. While the government generally relies on a state's determination of a parent-child relationship to establish a child's right to benefits, the SSA has determined that children in LGBT families are not eligible for benefits through a non-adoptive stepparent, even if the parents are legally married in their state.[69]

Family Left Destitute After Being Denied Social Security Survivor Benefits

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

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

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

- The OASDI program provides benefits to surviving heterosexual spouses or ex-spouses to help care for a child. Yet because of DOMA, surviving same-sex spouses are denied these benefits.

LGBT Families and Inheritance

When a person dies, property titled in the deceased's name becomes part of the deceased's estate. These assets are distributed according to either the deceased's will or living trust, or, in the absence of these documents (common in as many as 65% of all deaths), according to state intestacy law.[70]

Intestacy laws vary by state, but most use a narrow definition of family that excludes same-sex partners and children who lack legal ties to their parents. Since intestacy laws prioritize the surviving spouse of the deceased for distribution of assets (and since same-sex partners are not recognized as spouses in most states), most same-sex partners cannot inherit via these laws. Furthermore, children generally cannot inherit from non-legally recognized parents via intestacy laws, even if the deceased acted as a parent and provided for the children since birth.

Government Forms and Defining Family

Government forms are challenging for LGBT families because they require applicants to specify both "mother" and "father" and/or ask for a "mother's maiden name." Government forms can also be especially challenging for transgender parents, who may be unsure whether to list their sex assigned at birth, or the one that matches how they live their lives.

Much of the data collected on these forms is unnecessary. What the government actually needs is information about the identity, consent and/or financial position of parents and households—not gender. Yet, if the names on an application do not align with the gender-based boxes provided, an agency may return the form or simply refuse to process it.

The Family Equality Council provides an example of the difficulties experienced by one of its member families. When Nina, the legal adoptive daughter for Susan and Sara, applied for federal education loans and listed her two mothers on the form, she received an email from the U.S. Department of Education referring to her as an "orphan." When the family followed up, officials asked intrusive questions such as, "Who is the biological mother?"

Some governmental entities have recognized the need for forms that better reflect today's families. For example, several forms required to access public health insurance in Massachusetts allow applicants to select "Mother/Co-Parent" and "Father/Co-Parent".

LGBT Families and Wrongful Death

When a person dies, it may be possible for family members to sue for wrongful death when negligent or intentional actions caused a person's death.

In most states, the determination of which family members can sue for wrongful death follows the same lines as intestacy law—that is, only legally recognized

family members have standing to sue for wrongful death. In these states, same-sex partners cannot sue for the wrongful death of a partner, and children who are not the legally-recognized children of the deceased cannot sue either, although a handful of states have broadened the definition of "legal standing" to include any individuals who were financially dependent on the deceased, allowing same-sex partners and children who lack legal ties to their parents to file suit.

Additional "Goal 2" Content Found in Full Report:

Expanded Discussion, Tables and Figures:

- Safety Net Programs, Tax Credits/Deductions, and Law Designed to Support Families Upon Parent Death or Disability (pp. 51-78)
- Definition of "Low-Income" and "Very Low-Income" for a Family of Four (page 55)
- Uninsured American Children (page 63)
- Unfair Taxation Burdens LGBT Families (page 72)

Sidebars:

- What Does It Mean to Live In Poverty? (page 55)
- Despite Broad Definition of Family, Housing Agencies Discriminate Against LGBT Families (page 62)
- Social Security Form Hinders Application (page 66)
- Government Takes Small Steps to Recognize Diverse Families on Forms (page 66)
- Costs of Legal Planning (page 77)

Stories:

- "Family Plans for the Worst Because Social Security Benefits May Not Be Available" (page 74)

GOAL 3: ENSURING HEALTH AND WELL-BEING FOR CHILDREN

Governments at all levels have policies in place to help ensure that children are physically and mentally healthy—and have access to the basic resources they need to thrive. This includes access to quality health care and supportive educational, religious and community environments.

Unfortunately, inequitable laws and social stigma act against the health and well-being of children in LGBT families. The unique challenges facing these children fall into four major categories:

- **Children experience inequitable access to health insurance.** Children in LGBT families are often denied health insurance extended to children in heterosexual families.
- **Children face unwelcoming health care environments.** Children with LGBT parents can face hostile or culturally incompetent healthcare providers.
- **Laws and policies make it more difficult for LGBT families to take care of one another.** In LGBT families, parents may be denied leave to take care of one another, or non-recognized parents may not be able to visit or make medical decisions for their children.
- **A climate of social stigma creates special challenges for LGBT families.** Because LGBT families are stigmatized and often rendered invisible, children in these families face an array of added barriers in schools, public institutions, places of worship and more.

Challenge: Health Disparities and Unequal Access to Health Insurance

LGBT Families and Health Insurance

Most American workers obtain health insurance as an optional benefit through their employer or the employer of a family member.[71] Because most employee benefits are regulated under the federal Employee Retirement Income Security Act (ERISA), which does not recognize same-sex couples because of DOMA, most employers are not required to (although they may opt to) offer health benefits to the partners or non-recognized children of LGBT workers, even if those workers are legally married in their state.

Nearly all major companies now offer health insurance to workers and their families, yet just 57% of large firms electively offer health insurance to domestic partners of LGB workers.[72] For the overwhelming majority of these firms (88%), the additional cost of extending benefits is less than 2% of total benefit costs.[73] For federal employees, the restrictive federal definition of family excludes coverage of same-sex partners and any children not legally related to the worker. In contrast to restrictive federal guidelines, 22 states and the District of Columbia offer benefits to same-sex partners of state employees.[74]

Even when employers electively offer extended health insurance benefits for same-sex partners and non-related children, families who use these benefits will be taxed on their value.[75] Extra taxation of health benefits costs the average employee with domestic partner benefits $1,069 more per year in taxes.[76] Employers also are required to pay tax on the value of domestic partner benefits.

LGBT families also face unequal treatment in continuing health coverage when losing or changing jobs. COBRA, the federal law that enables employees to keep their existing job-related health insurance coverage after losing a job, does not require that employers, even those who provide domestic partner benefits, give employees the opportunity to enroll same-sex partners.[77] COBRA is currently unclear about whether children who lack a legal relationship to the employee are considered dependent children for the purposes of continuing coverage.

When LGBT workers cannot enroll family members in an employer-sponsored plan, they must obtain their own insurance or go without it.[78] The average cost to purchase health insurance for a family of four on the private market is $7,102 compared to $3,997 for an employee's portion of the premiums of a plan through an employer. In other words, the average LGBT family would pay $3,105 more each year than other families.[79]

Given the inconsistent extension of health insurance benefits and higher health insurance costs, LGBT adults have much lower rates of health insurance coverage than heterosexual adults.[80] Data show that same-sex couples are two to three times less likely to have health insurance than their heterosexual counterparts,[81] and researchers believe that children raised by LGBT parents are also less likely to have health insurance, particularly within LGBT families of color.

Family Spends $5,000 Per Year for Health Insurance Because Federal Government Doesn't Recognize LGBT Families

Reprinted with permission from GLAD.

Jerry Savoy, John Weiss and their three children have higher health insurance costs because John cannot be enrolled in health insurance through Jerry's job.

Jerry Savoy is an attorney at the Office of the Comptroller of the Currency for the federal government. He lives in Danbury, Conn., with his husband, John, who is a stay-at-home dad caring for the couple's three children. Because Jerry is a federal employee, and the federal government doesn't offer domestic partner benefits, Jerry is unable to provide health insurance for his husband. So, while the couple's three children have health insurance through the federal government as part of Jerry's family plan, Jerry had to purchase an individual plan for John that costs $440 per month. "We have three kids that we have to raise," says Jerry. "We live paycheck to paycheck just like everybody else. We are a family just like the person across the street that's entitled to put their spouse on their health insurance. Why can't we do that?"

Adapted from GLAD, "The *Pedersen* Plaintiffs: Damon "Jerry" Savoy & John Weiss," http://www.glad.org/doma/plaintiffs-pedersen/#plaintiff_1206.

Health Disparities for LGBT Individuals and Families

Key disparities between LGBT adults and the general population can be seen in access to care, the incidence of HIV/AIDS, and chronic physical conditions such as diabetes, obesity, and arthritis. Factors that give rise to these health disparities include high rates of stress due to systemic harassment and discrimination.

Challenge: Unwelcoming Health Care Environments

Health care environments are often inhospitable to LGBT families. Many professional caregivers, including physicians, counselors and support staff, are not accepting of, or trained to work with, LGBT families.

These providers may be hostile, discriminatory, or unaware that LGBT families may have unique health needs. Some medical providers have even refused to treat LGBT people, citing religious or personal reasons.

According to one study, the impact of these barriers to quality care meant that 29% of LGB adults delayed or never sought care for themselves, versus only 17% of heterosexual adults;[82] a national study found that the figure for transgender adults was 48%.[83] In another recent survey, 42% of LGBT respondents said that community fear or dislike of LGBT people was a problem for them in accessing health care, and nearly 40% said there were not enough health professionals adequately trained and competent to deliver health care to LGBT people.[84]

While little data exists on the specific experiences of children of LGBT parents, it is likely that children are also affected by the hostility extended to their parents, and, as a result, may suffer inferior health care treatment or outcomes.

Challenge: Family Members Restricted in Taking Care of Each Other

LGBT Families and Hospital Visitation and Medical Decision-Making

Most hospitals have policies that specifically define who may visit or make decisions for an incapacitated patient, generally prioritizing or restricting such rights to "immediate family" members such as legal spouses, siblings, children and parents.[85] These policies must conform to state law, where it exists, and can sometimes be more inclusive than the law requires.

Hospital visitation disparities. Many states (including all states that allow marriage or comprehensive relationship recognition for same-sex couples) give same-sex couples the same or substantially similar hospital visitation rights as heterosexual couples. Additionally, a 2010 Obama administration policy is an important step forward and requires all hospitals that participate in Medicaid and Medicare to honor the wishes of patients regarding approved visitors and to allow visitation on an equal basis with immediate family members.[86] Unfortunately, this is only helpful in cases where the patient is able to make such designations. If an LGBT person is rushed to the hospital and is incapacitated, that person's same-sex partner may not be allowed to visit the patient. And if the patient is a child living with a non-legally recognized parent, that parent may not be allowed to visit the child. Even with policies of equal treatment in place, many LGBT families face discrimination and delay when staff are unsure of, or opposed to, policies that explicitly address LGBT families in a medical crisis.

Excerpt from President Obama's 2010 Hospital Visitation Memo:

Every day, all across America, patients are denied the kindnesses and caring of a loved one at their sides—whether in a sudden medical emergency or a prolonged hospital stay. Often, a widow or widower with no children is denied the support and comfort of a good friend. Members of religious orders are sometimes unable to choose someone other than an immediate family member to visit them and make medical decisions on their behalf. Also uniquely affected are gay and lesbian Americans who are often barred from the bedsides of the partners with whom they may have spent decades of their lives—unable to be there for the person they love, and unable to act as a legal surrogate if their partner is incapacitated.

For all of these Americans, the failure to have their wishes respected concerning who may visit them or make medical decisions on their behalf has real consequences. It means that doctors and nurses do not always have the best information about patients' medications and medical histories and that friends and certain family members are unable to serve as intermediaries to help communicate patients' needs. It means that a stressful and at times terrifying experience for patients is senselessly compounded by indignity and unfairness. And it means that all too often, people are made to suffer or even to pass away alone, denied the comfort of companionship in their final moments while a loved one is left worrying and pacing down the hall.

Source: "Presidential Memorandum—Hospital Visitation," April 15, 2010, www.whitehouse.gov/the-press-office/presidential-memorandum-hospital-visitation.

Medical decision-making for an incapacitated partner. Depending on the state, unless an LGBT patient has specific and often expensive legal documents in place, his or her partner may be excluded from making

medical decisions. See *Figure 14* for a summary of state medical decision-making policies. While the Obama administration's hospital visitation memo requires hospitals to respect valid decision-making designations if patients have them in writing, this policy, again, does not help patients who are incapacitated and did not prepare such forms or have them on their person.

Medical decision-making for a child. With few exceptions, minors are not considered capable of making major medical decisions on their own and are not allowed to sign legal documents designating decision-makers, so state law generally requires hospitals and medical providers to obtain a legal parent's consent for medical treatment. A non-legally recognized LGBT parent (or anyone who functions as a "de facto" parent, such as a family friend or extended relative raising a child) often will be unable to make routine or emergency medical decisions for a child.[87]

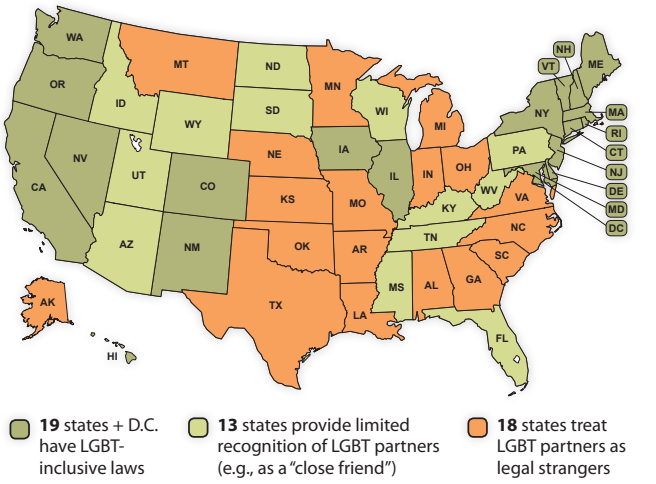
Family Leave

The 1993 federal Family and Medical Leave Act (FMLA) requires public and large private employers to grant up to 12 weeks of unpaid annual leave to allow workers to care for a spouse, child or parent with a serious health condition.[88] FMLA gives these caregivers flexibility, leave and job security.

Unlike many other federal policies and programs, FMLA has a broad definition of family members who can take leave from work to care for a child. In 2010, the Department of Labor issued a clarification indicating that a worker who is acting (or intends to act) as a parent may take leave under FMLA, even if the worker is not recognized as a legal parent under state law.[89] This not only allows non-recognized LGBT parents to take leave to care for their children, but also, for example, an uncle to take leave to care for a child whose single parent is on active military duty.

Unfortunately, FMLA is not similarly broad in allowing workers to take care of a same-sex partner or spouse. Similar restrictions apply to unmarried heterosexual partners or other non-legally recognized family members (for example, in a situation in which two older cousins or close friends share a home together). Employers may, however, electively choose to provide leave to such workers.

Figure 14: Medical Decision-Making Policies



Department of Labor Issues Guidance That Broadly Interprets "Child" Within FMLA

"No one who loves and nurtures a child day in and day out should be unable to care for that child when he or she falls ill. No one who steps in to parent a child when that child's biological parents are absent or incapacitated should be denied leave by an employer because he or she is not the legal guardian. No one who intends to raise a child should be denied the opportunity to be present when that child is born simply because the state or an employer fails to recognize his or her relationship with the biological parent. These are just a few of many possible scenarios. The Labor Department's action today sends a clear message to workers and employers alike: all families, including LGBT families, are protected by FMLA."

Source: Hilda L. Solis, Secretary, U.S. Department of Labor, June 23, 2010.

Challenge: Social Stigma and Discrimination

The lived experiences of LGBT families vary widely. Indeed, despite the unique pressures LGBT families face, what is remarkable about children raised by LGBT parents is how much they are like other children. Still, several themes characterize the everyday challenges of LGBT families.

Unique pressures for LGBT families. Many of the challenges facing LGBT families stem from a society that assumes that everyone is heterosexual and comes from a family with two married, heterosexual parents. As a result, LGBT families cope with inappropriate questions, the politicization of their families, and anxiety about the lack of legal recognition. These stressors are heightened for LGBT families of color who also wrestle with bias and discrimination common to racial and ethnic minorities. Transgender parents may be more identifiable than LGB parents and, consequently, their children may be more likely to face onerous mistreatment.[90]

Laws and stigma constrain LGBT families within their communities. Given the lack of relationship and parental recognition in many communities, many LGBT parents feel constrained when it comes to choosing where to live, vacation, work, and worship. Many LGBT parents carry thick packets of paperwork, including copies of birth certificates, adoption decrees, domestic partnership agreements, and living wills, just to make sure they will be recognized as a legitimate family when they travel or have to relocate for work.

Struggles of children to feel safe and welcome in schools. Many LGBT families express concern about their children's school environment. Although efforts to prevent bullying of LGBT youth in schools have grown, less attention has been paid to the children of LGBT parents. A 2008 survey of LGBT parents and their school-age children found that 40% of students with LGBT parents reported being verbally harassed because of their families[91] and three-quarters reported hearing derogatory terms about LGBT people at school.[92,93] Prejudice and hostility can come from school personnel also. School forms that ask for a "mother" and a "father" may alienate and make children living in LGBT families feel invisible, just as curricula that ask children to talk about "moms and dads."

Added challenges for LGBT families of color. Advocates and researchers increasingly recognize that the LGBT community has not been intentional enough in addressing concerns of LGBT people of color. While media attention to LGBT families frequently focuses on financially comfortable white LGBT couples, this narrative fails to convey the realities faced by most LGBT families, including those who are low-income, families of color, and those who live outside urban communities. LGBT community organizations are often based in primarily LGBT neighborhoods, but many LGBT people of color do not live in these areas.[94] As a result, LGBT families of color may have inadequate access to programming and support offered by LGBT organizations (and many LGBT families of color would prefer to receive LGBT-inclusive programming within their own communities).

Lesbian Parents Worry About Children's Experiences at School

Reprinted with permission from Lambda Legal.

The Lael Family, from New Jersey, worries about how their children will be treated at school by teachers, other parents and other children.

Suyin and Sarah Lael, from New Jersey, are raising their three children: Zenzali, Tenaj and Danica. The couple thinks a lot about how their children are treated at school by their teachers, their peers and by other parents. For example, even though Suyin and Sarah can't get married because they live in New Jersey, they legally changed their last names so that the entire family would have the same name. "We decided to do this before she [Zenzali] entered kindergarten because… we wanted to add another signal for teachers and administrators that they should deal with both of us as parents and treat our daughter's family as a family," Suyin explained. Children at the girls' schools understand what it means to be married and divorced, but that when Suyin and Sarah's children try to explain a civil union their friends are confused. The family also talks openly about the discrimination that their children may face because they are African American.

Adapted from Lambda Legal, "Plaintiffs in the New Jersey Marriage Lawsuit: *Lewis v. Harris*," http://www.lambdalegal.org/publications/factsheets/fs_plaintiffs-in-nj-marriage-lawsuit-lewis-v-harris.html.

Additional "Goal 3" Content Found in Full Report:

Expanded Discussion, Tables and Figures:

- Health Insurance and Health Care Disparities, Unwelcome Health Care Environments, Hospital Visitation and Medical Decision-Making, Family Leave, and Unique Pressures for LGBT Families and Their Children (pp.79-95)
- Health Plan Coverage of State Employees (p. 83)

Stories:

- "University Professor Could Lose Benefits for Her Family" (page 82)
- "Lack of Family Recognition Impacts Children, Family's Health Care" (page 88)
- "Family Loses Health Insurance Because of 'Inadequate Documentation'" (page 91)
- "Family in New Mexico Files Lawsuit Against School" (page 94)
- "Every Trip to the Doctor or School Requires an Explanation for Family in New Jersey" (page 94)

CONCLUSION

Today's American families are increasingly diverse. Yet archaic and discriminatory laws ignore modern realities, with devastating consequences. These laws deny children the protection of having a legal connection to a parent who cares for them. They undermine families' economic strength by denying access to safety net programs, family tax credits, and health insurance and care. Antiquated laws can leave children destitute if a parent dies or becomes disabled. They wrest children away from the most qualified caregiver if a child's parents' relationship dissolves.

LGBT families—like all families—simply want an equal opportunity to provide stable, loving homes to their children, to ensure economic stability, and to raise healthy children who become integral parts of their communities. By bringing national attention to the challenges and solutions outlined here, we hope to help make this a reality for more American families.

RECOMMENDATIONS

LGBT families need not be marginalized or excluded from the vital support networks that exist to ensure that American children can achieve their full potential. The table on pages 29 through 31 provides a condensed list of the detailed and comprehensive legal, policy and cultural solutions proposed in the full report (available at www.lgbtmap.org/lgbt-families or through any of the co-author or partner websites). These key recommendations, if taken together, could virtually eliminate the legal disparities that pose harm to the two million children being raised by LGBT families. Many of these recommendations would also help other children, including those with unmarried parents and those awaiting adoption.

Summary	Supporting Recommendations	Full Report Page References
Legally Recognize LGBT Families		
Recognize LGBT parents as legal parents.	• Pass comprehensive parental recognition laws at the state level to fully protect children in LGBT families. • Pass or amend state adoption laws or regulations to allow unmarried and same-sex couples to jointly adopt and foster children. • Repeal or overturn discriminatory state laws restricting adoption and fostering by same-sex or unmarried couples. • Pass or amend donor insemination laws to clarify the parenting rights and obligations of all parties. • Pass or amend state parental presumption laws that are neutral with respect to sexual orientation and marital status. • Create or update surrogacy statutes to clarify parentage and avoid needless legal battles. • Pass or revise state adoption laws to permit second-parent adoption by same-sex or heterosexual partners, irrespective of marital status. • Pass state laws allowing courts to recognize de facto parenting as a basis for full legal parentage. • Pass or amend state laws clarifying when courts have the power to issue parentage judgments awarding full parenting rights and obligations.	pp. 98-100
Legalize and federally recognize marriage for gay and lesbian couples.	• Repeal the Defense of Marriage Act (DOMA). • Legalize marriage for same-sex couples in all states.	p. 101
Provide pathways to immigration and citizenship for binational LGBT families.	• Pass legislation such as the federal Uniting American Families Act (UAFA) to add "permanent partner" to the list of family members who can sponsor a foreign national for immigration. • Enact comprehensive immigration reform that includes avenues to legal status for undocumented immigrants already living and working in the U.S. • Call on U.S. Citizenship and Immigration Services, the U.S. Department of Homeland Security, the U.S. Attorney General and the U.S. Department of State to take other actions to support LGBT families.	pp. 101-102
Provide Equal Access to Government-Based Economic Protections		
Recognize LGBT families and children across government safety net programs.	• Implement a consistent and broad definition of family across federal government programs. • Revise requirements, definitions and priorities for Temporary Assistance for Needy Families (TANF) to reflect today's families. • Ensure equal access for LGBT families to food and nutrition assistance. • Prioritize the implementation of the federal Department of Housing and Urban Development (HUD) 2011 rule clarifying that HUD's current definition of family includes LGBT families. • Revise Medicaid and Children's Health Insurance Program definitions and procedures to be inclusive of LGBT families. • Broaden the definition of spouse and child to include diverse families in the Supplemental Security Income (SSI) sections of the federal Social Security Act. • Broaden the definition of family for Head Start and other child care assistance programs. • Broaden the definitions in the Free Application for Federal Student Aid (FAFSA) to include options for diverse families. • Revise government forms and application procedures to make them more inclusive of LGBT families.	pp. 102-105
Revise the IRS tax code to provide equitable treatment for LGBT families.	Press for the following changes in the IRS Code: • Create a designation for "permanent partner" who would be treated as a spouse for the purposes of the tax code. • Alter the definition of "qualifying child" to include children of de facto parents. • Allow any person who pays for the child care or dependent care of another person to claim the Child and Dependent Care Credit. • Allow any person who pays the tuition and fees of another person to take the Education Deduction.	p. 105

Summary	Supporting Recommendations	Full Report Page References
Provide equitable economic protections when a parent dies or is disabled.	• Revise Social Security's Old Age, Survivors and Disability Insurance (OASDI) regulations to recognize a child's dependence on a non-legally recognized parent or adult. • Adopt the Uniform Probate Code's 2009 amendment on inheritance for children born through donor insemination. • Amend state intestacy laws to allow domestic partners and children of de facto parents to inherit without a will. • Alter states' wrongful death statutes to take into consideration diverse families.	p. 106
Provide Equal Access to Health Care		
Advance equal access to health insurance.	• Pass federal legislation that provides for equal treatment related to the provision and taxation of health insurance benefits. • Pass federal and state legislation to extend health insurance benefits to government employees' domestic partners and children for whom they stand *in loco parentis*. • Eliminate state taxes on domestic partner benefits. • Require that insurance plans sold through state insurance exchanges offer domestic partner benefits if they offer spousal benefits—and also coverage for children for whom an adult stands *in loco parentis*. • Provide equal access to COBRA benefits. • Encourage private employers to electively offer domestic partner benefits. • Work to ensure that the Affordable Care Act defines family broadly for the purposes of including LGBT families.	pp. 107-108
Enable LGBT family members to provide care to one another.	• Revise and expand state hospital visitation and medical decision-making laws to be inclusive of today's families, including LGBT families and de facto parents. • Work with hospitals and other medical facilities and providers to enact LGBT-friendly policies related to visitation, advanced healthcare directives (AHDs) and related issues. • Revise the Family and Medical Leave Act (FMLA) to broaden the definition of covered caregivers. • Broaden the definition of covered caregivers in state family and medical leave laws.	pp. 108-109
Protect LGBT Families from Discrimination		
Pass employment non-discrimination protections.	• Pass the federal Employment Non-Discrimination Act (ENDA). • Pass state-based employment protections for LGBT people. • Implement federal, state and local executive orders or ordinances requiring contractors to adopt non-discrimination protections.	p. 109
Pass and strengthen adoption and foster care non-discrimination laws.	• Pass legislation that ties federal funding for adoption and foster care services to non-discrimination practices based on sexual orientation and gender identity. • Pass or revise state laws or policies barring discrimination in fostering and adoption placement on the basis of sexual orientation, gender discrimination, or marital or partnership status.	p. 110
Pass custody and visitation non-discrimination laws.	• Pass laws barring discrimination in awarding custody and visitation rights on the basis of sexual orientation, gender identity or marital status.	p. 110
Pass non-discrimination protections in health services.	• Pass state-based, non-discrimination laws that apply to health care providers.	p. 110
Pass stronger anti-bullying laws.	• Pass federal and state legislation that would more strongly address and prohibit bullying and harassment in schools and universities.	p. 111
Pass housing and credit non-discrimination protections.	• Pass the federal Housing Opportunities Made Equal (HOME) Act. • Pass the Freedom from Discrimination in Credit Act.	p. 111

Summary	Supporting Recommendations	Full Report Page References
Strengthen agency and service provider non-discrimination policies.	• Encourage adoption and foster care agencies, government agencies and medical institutions to adopt non-discrimination policies that include family status, sexual orientation and gender identity. • Engage state agencies and departments to issue affirmative practices, statements, and interpretations of adoption and fostering policy.	pp. 111-112
Expand Education and Cultural Competency Training on LGBT Families		
Provide cultural competency training for frontline agency workers.	• Provide cultural competency training for government agency staff. • Provide cultural competency training for adoption agencies and social workers. • Reach out to mainstream service providers to ensure that their services are LGBT-family friendly.	p. 112
Focus expanded education and training on judges and law students.	• Educate and inform adoption and family law judges and law students about LGBT parents and parenting research.	p. 113
Provide cultural competency training for physical and mental health services providers.	• Educate health care providers about LGBT families and their medical issues and needs. • Work with organizations that accredit health service providers to develop standards for serving LGBT families.	p. 113
Provide training and information to school personnel about LGBT students and families.	• Expand efforts to increase supportive learning environments through teacher certification programs, school psychologist and counselor programs, and curriculum reform.	p.114
Expand support for LGBT inclusion in faith communities.	• Work with faith communities to ensure that LGBT families feel welcome in places of worship.	p. 114
Provide Education and Services Support to Help LGBT Families		
Educate LGBT families about current laws and how to protect themselves.	• Educate LGBT families about the need to establish parentage ties and other legal protections where possible, and provide assistance in doing so.	p. 114
Create stronger support services and outreach for LGBT families.	• Target LGBT families for focused outreach and support services. • Create opportunities for LGBT families to participate in social, advocacy and support groups.	p. 115
Create inclusive environments for all LGBT families (particularly transgender parents and families of color).	• Expand public education efforts that are supportive of LGBT families. • Include transgender parents and their families within LGBT community spaces. • Provide greater support for LGBT families of color and multiracial LGBT families within LGBT organizations. • Work with organizations of color to support multiracial LGBT families and LGBT families of color. • Ensure that images of LGBT families reflect the diversity of all families.	pp. 115-116
Expand Research on LGBT Families		
Support expanded research on LGBT families and parenting.	• Lobby for and fund expanded private and government research on LGBT families and parenting. • Expand research and data collection on LGBT family health disparities and needs.	pp. 116-117

END NOTES AND REFERENCES

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

[1] Rose M. Kreider and Diana B. Elliott, "The Complex Living Arrangements of Children and Their Unmarried Parents," Population Association of America, Poster Presentation, May 2, 2009.
[2] As described in the Appendix of the Full Report, we rely on data from multiple sources for these estimates.
[3] Gary J. Gates, M.V. Lee Badgett, Jennifer Ehrle Macomber and Kate Chambers, "Adoption and Foster Care by Gay and Lesbian Parents in the United States," The Williams Institute and Urban Institute, 2007, http://www.urban.org/UploadedPDF/411437_Adoption_Foster_Care.pdf.
[4] Jaime M. Grant, Lisa A. Mottet, Justin Tanis, Jack Harrison, Jody L. Herman and Mara Keisling, "Injustice At Every Turn: A Report of the National Transgender Discrimination Survey," National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011.
[5] Gates et al., "Adoption and Foster Care." See also http://wiwp.law.ucla.edu/wp-content/uploads/Gates-Badgett-Macomber-Chambers-Final-Adoption-Report-Mar-2007.pdf for cautions about how these figures were derived.
[6] Gary P. Mallon, "Assessing Lesbian and Gay Prospective Foster and Adoptive Families: A Focus on the Home Study Process," *Child Welfare 86*, 2007.
[7] Gates et al., "Adoption and Foster Care"; Evan B. Donaldson Adoption Institute, *Expanding Resources for Waiting Children II: Eliminating Legal and Practice Barriers to Gay and Lesbian Adoption from Foster Care*, 2008, 12, www.adoptioninstitute.org/publications/2008_09_Expanding_Resources_Legal.pdf.
[8] Gates et al., "Adoption and Foster Care." Calculations revised April 2011.
[9] R. Bradley Sears, Gary J. Gates and William B. Rubenstein, "Same-Sex Couples and Same-Sex Couples Raising Children in the United States: Data from Census 2000," The Williams Institute, 2005.
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[12] Adam P. Romero, Amanda K. Baumle, M.V. Lee Badgett and Gary J. Gates, "*Census Snapshot: United States*," The Williams Institute, 2007.
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[15] Jaime M. Grant, Lisa A. Mottet, Justin Tanis, Jack Harrison, Jody L. Herman and Mara Keisling, "Injustice at Every Turn: A Report of the National Transgender Discrimination Survey," National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011.
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[17] Sears et al., "Same-Sex Couples Raising Children."
[18] Gary J. Gates, "Binational Same-Sex Unmarried Partners in Census 2000: A Demographic Portrait," The Williams Institute, 2005.
[19] See pp. 11-13 of the Full Report for a detailed discussion.
[20] Survey of LGBT families conducted by Gay, Lesbian and Straight Education Network (GLSEN), COLAGE and the Family Equality Council. Joseph G. Kosciw and Elizabeth M. Diaz, *Involved, Invisible, Ignored: The Experiences of Lesbian, Gay, Bisexual and Transgender Parents and Their Children in Our Nation's K–12 Schools*, GLSEN, 2008.
[21] The average cost to purchase health insurance for a family of four on the private market is $7,102 compared to $3,997 for an employee's portion of the premiums through an employer-sponsored plan. Katie and Jennifer pay $3,105 more each year because they cannot enroll in an employer-sponsored plan. The Kaiser Family Foundation (KFF), "Survey of People Who Purchase Their Own Insurance," 2010; KFF and Health Research and Education Trust, "Employer Health Benefits: 2010 Annual Survey," 2010.
[22] The child care tax credit is only available for the care of children ages 12 and under. After that, Darren and Angela still save $909 in taxes each year when compared to Jennifer and Katie. The overall tax savings for Darren and Angela are a result of the child care tax credit and other tax credits and deductions associated with having children and filing a joint tax return, which Jennifer and Katie cannot access. For a detailed analysis of these families' tax bills, see the second section of the Full Report, "Ensuring Economic Security for Children."
[23] This assumes that Darren had an income of $40,000 when he died and that the children were 13 years old at the time of his death. Both of Darren's children are eligible to receive the children's survivor benefits until age 18, and Angela receives a mother's benefit to help care for the children until they reach 16. For a detailed discussion of these benefits see the second section of this report, "Ensuring Economic Security for Children."
[24] Pew Research Center, "The Decline of Marriage and Rise of New Families," November 18, 2010, http://pewsocialtrends.org/2010/11/18/the-decline-of-marriage-and-rise-of-new-families/2/#ii-overview.
[25] Nolo, "Gay and Lesbian Adoption and Parenting," http://www.nolo.com/legal-encyclopedia/article-29790.html.
[26] U.S. Dept. of Health and Human Services, Administration for Children and Families, "Adoption and Foster Care Analysis and Reporting System (AFCARS) Report," 2010, www.acf.hhs.gov/programs/cb/stats_research/afcars/tar/report17.htm.
[27] See Full Report pp. 21-26 and page 25, footnote 70.
[28] See Full Report, pp. 28-29.
[29] See "Barriers in Practice," Full Report, p.30.
[30] U.S. Dept. of Health and Human Services, Administration for Children and Families, "Adoption and Foster Care Analysis and Reporting System (AFCARS) Report," 2010; U.S. Census Bureau, "ACS Demographic and Housing Estimates," *2005-2009 American Community Survey 5-Year Estimates*."
[31] See Full Report, pp. 27-28.

[32] In some cases, access to joint adoption may require being in a marriage, civil union or domestic partnership.
[33] As a court judgment, adoptions are protected by the U.S. Constitution's "full faith and credit clause," meaning that other states must respect the judgment, making the parental ties secure nationwide.
[34] U.S. Dept. of Health and Human Services, Child Welfare Information "Funding Adoption: Adoption Packet 2," February, 2011, http://www.childwelfare.gov/pubs/adoption_gip_two.pdf.
[35] The Evan B. Donaldson Adoption Institute estimates that 42% of adoptions are stepparent adoptions, "Overview of Adoption in the United States," http://www.adoptioninstitute.org/FactOverview.html#5; U.S. Dept. of Health and Human Services, "Stepparent Adoption," http://www.childwelfare.gov/pubs/f_step.cfm.
[36] Po Bronson, "Are Stepparents Real Parents?" *Time Magazine*, May 17, 2006.
[37] See Note 32, above.
[38] Pew Research Center, "The Decline of Marriage and Rise of New Families."
[39] See Full Report, pp. 34-37.
[40] Center for American Progress, "Assisted Reproductive Technologies: A Glossary," http://www.americanprogress.org/issues/2007/12/art_resources.html.
[41] See Full Report, pp. 38-39.
[42] See Full Report, pp. 40-41.
[43] See Note 32, above.
[44] Sally Steenland and Susan Thistlethwaite, "Working for Equality in the Great Lakes State," Center for American Progress, January 2011, http://www.americanprogress.org/issues/2011/01/pdf/michigan_lgbt.pdf.
[45] Sometimes known as "psychological parenthood," "*in loco parentis*," "equitable parenthood" or "parenthood by estoppel."
[46] Adapted from H.H., Ex parte, 2002 WL 227956 (Ala. February 15, 2002).
[47] See Full Report, pp. 43-44, including footnote 144. See also Courtney G. Joslin and Shannon P. Minter, *Lesbian, Gay, Bisexual and Transgender Family Law, 2010 Edition* (Eagan, MN: West/Thomas Reuters, 2010), 12-13; http://www.nclrights.org/site/DocServer/WI_Custody_FINALpdf.pdf?docID=5561; http://www.nclrights.org/site/DocServer/2009_02_09_FLCustodyPub.NOAPPENDIX.pdf?docID=5343; http://www.divorcelawinfo.com/dc/flc.htm.
[48] Ibid, 3-78, and 8-9, 24, citing Palmore v. Sidoti.
[49] Lambda Legal, "Gay v. Gay Custody Battles," 2009, http://www.lambdalegal.org/news/of-counsel/oc_200909_camilla-feature.html.
[50] National Center for Lesbian Rights, "Legal Recognition of LGBT Families."
[51] http://www.census.gov/population/www/socdemo/hh-fam/cps2010.html.
[52] According to the 1981 report of the U.S. Select Committee on Immigration and Refugee Policy, a commission appointed by Congress to study immigration, "Reunification of families serves the national interest not only through the humaneness of the policy itself, but also through the promotion of the public order and well-being of the nation." See U.S. Select Committee on Immigration and Refugee Policy, "U.S. Immigration Policy and the National Interest" (1981), 112.
[53] According to Immigration Equality, a group that advocates for LGBT immigrants, "foreign consulates have a great deal of discretion in deciding applications for visas, and there is no appeal for a denial."
[54] In August 2011, the Obama administration announced new immigration policy that would allow officials to exercise prosecutorial discretion for the 300,000 undocumented immigrants who were facing deportation. According to Administration officials, people will be categorized as "low priority" if they have strong family relationships and LGBT families will be considered families in this context. This could alleviate some fear for families in the near-term.
[55] See FAQ at http://www.immigrationequality.org/issues/couples-and-families/faqs-for-binational-couples.
[56] Pub.L. 104-199, 110 Stat. 2419, enacted September 21, 1996, 1 U.S.C. § 7 and 28 U.S.C. § 1738C) is a United States federal law signed into law by President Bill Clinton on September 21, 1996 whereby the federal government defines marriage as a legal union between one man and one woman.
[57] Carmen DeNavas-Walt, Bernadette D. Proctor, and Jessica C. Smith, "Income, Poverty, and Health Insurance Coverage in the United States: 2009," U.S. Census Bureau, Current Population Reports, P60-238, 2010.
[58] Albelda et al., "Poverty in the Lesbian, Gay and Bisexual Community."
[59] See Full Report, pp. 51-66 for a detailed fully-referenced discussion of these means-tested programs.
[60] Andrew Chamberlain and Gerald Prante, "Who Pays and Who Receives Government Spending? An Analysis of Federal, State and Local Tax and Spending Distributions, 1991-2004," Tax Foundation, 2007.
[61] Internal Revenue Service, "A 'Qualifying Child'," October 2007, http://www.irs.gov/newsroom/article/0,,id=133298,00.html.
[62] In addition to claiming a qualifying child, taxpayers can sometimes claim exemptions or credits for dependents known as "qualifying relatives." Yet because of various restrictions, LGBT taxpayers usually cannot claim their non-legally recognized children as qualifying relatives.
[63] See Full Report, page 72, Table 7.
[64] In March 2010, 3.3 million children received TANF benefits compared to 4.3 million children receiving OASDI benefits. TANF data available from U.S. Dept. of Health and Human Services, Administration for Children and Families, "TANF: Total Number of Child Recipients, Fiscal and Calendar Year 2010," March 16, 2011, http://www.acf.hhs.gov/programs/ofa/data-reports/caseload/caseload2010.htm; Social Security benefit data available from Social Security Administration (SSA), "Fact Sheet on the Old-Age, Survivors and Disability Insurance Program," accessed July 1, 2010.
[65] SSA (2010).
[66] SSA, "Social Security is Important to African Americans," June 2010; U.S. Census Bureau, "2006-2008 American Community Survey Three-Year Estimates," Table S0901: Children Characteristics," available through http://factfinder.census.gov .
[67] Paul N. Van de Water and Arloc Sherman, "Social Security Keeps 20 Million Americans Out of Poverty: A State-by State Analysis," Center on Budget and Policy Priorities, 2010.
[68] National Center for Lesbian Rights, "Public Benefits Guide," *in press*.
[69] SSA, "SSA's Program Operations Manual System," Section PR 01605.035 New York. https://secure.ssa.gov/apps10/poms.nsf/lnx/1501605035. This link has subsequently been removed, and requests for more information via a Freedom of Information Act request have been denied.
[70] Lawyers.com Wills and Estate Planning Survey conducted by Harris Interactive, December 2009, http://www.lexisnexis.com/media/press-release.aspx?id=1268676534119836.

[71] 58.5% of workers get insurance from their employers; see Elise Gould, "Employer-SponsoredHealth Insurance Erosion," Economic Policy Institute, 2009, http://www.epi.org/publications/entry/health_picture_20090910. Kaiser Family Foundation (KFF) reached a similar conclusion (59% of firms of three or more workers); see "Employer Health Benefits: 2010 Annual Survey," KFF and Health Research & Education Trust, 2010, 48, http://ehbs.kff.org/pdf/2010/8085.pdf. For children specifically, see "Health Coverage of Children: The Role of Medicaid and CHIP," KFF, July 2010, http://www.kff.org/uninsured/upload/7698-04.pdf. KFF found that in 2008, of the nearly 79 million children in the United States, the majority (58%) received health insurance from a parent's employer-sponsored plan or through private sources.

[72] Human Rights Campaign, "Corporate Equality Index 2011,"Page 7, http://www.hrc.org/files/assets/resources/CorporateEqualityIndex_2011.pdf.

[73] Hewitt Associates, "Benefit Programs for Domestic Partners and Same-Sex Spouses," July 2005.

[74] See Full Report, page 83.

[75] When these benefits are offered, the IRS typically requires employers to determine a fair market value of the benefit, report it on the W-2 form, and then tax it. See Full Report, Page 82, footnote 323.

[76] Naomi G. Goldberg, Christopher Ramos and M.V. Lee Badgett, "The Fiscal Impact of Extending Federal Benefits to Same-Sex Domestic Partners," The Williams Institute, September 2008, http://wiwp.law.ucla.edu/wp-content/uploads/Badgett-Goldberg-Ramos-S2521FiscalAnalysis-Sept-2008.pdf.

[77] HRC, "Equal Access to COBRA Act," http://www.hrc.org/laws-and-legislation/federal-legislation/equal-access-to-cobra-act.

[78] See Full Report, page 81, footnotes 318 and 321.

[79] Estimate of average annual premium for family from KFF, "Survey of People Who Purchase Their Own Insurance," 2010 and "Employer Health Benefits: 2010 Annual Survey."

[80] See Full Report, Page 80.

[81] Michael A. Ash and M.V. Lee Badgett, "Separate and Unequal: The Effect of Unequal Access to Employment-Based Health Insurance on Same-Sex and Unmarried Different-Sex Couples," *Contemporary Economic Policy*, 24, 582-599, http://williamsinstitute.law.ucla.edu/research/economic-impact-reports/new-study-on-health-insurance-inequality-and-domestic-partner-benefits.

[82] Center for American Progress analysis of the 2007 California Health Interview Survey.

[83] Grant et al., "Injustice at Every Turn."

[84] Somjen Frazer, "LGBT Health and Human Services Needs In New York State," 2009, http://www.prideagenda.org/Portals/0/pdfs/LGBT%20Health%20and%20Human%20Services%20Needs%20in%20New%20York%20State.pdf.

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[86] "Presidential Memorandum – Hospital Visitation," April 15, 2010, http://www.whitehouse.gov/the-press-office/presidential-memorandum-hospital-visitation. The new rules are part of the Code of Federal Regulations, at 42 CFR 482.13(h) and 42 CFR 485(f).

[87] See Full Report, page 87.

[88] U.S. Dept. of Labor, "Family and Medical Leave Act," http://www.dol.gov/whd/fmla. Workplaces of fewer than 50 employees are not required to grant leave.

[89] U.S. Dept. of Labor, "Administrator's Interpretation No. 2010-3," June 22, 2010, http://www.dol.gov/whd/opinion/adminIntrprtn/FMLA/2010/FMLAAI2010_3.htm.

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[92] Kosciw and Diaz, *Involved, Invisible, Ignored*.

[93] Abigail Garner, *Families Like Mine: Children of Gay Parents Tell It Like It Is*, Harper Collins, 2004.

[94] Unpublished research conducted by Gary J. Gates.

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