



NATIONAL CENTER FOR LESBIAN RIGHTS

# LEGAL RECOGNITION OF LGBT FAMILIES

## I. Legal Parent

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

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

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

When a legally married couple has a child, they are both automatically presumed to be the legal parents of the child. This means that, if they get divorced, they both remain legal parents unless a court terminates one or both of their parental rights. This presumption does not apply for most same-sex couples (who are unable to marry in most states), although it does apply to couples in civil unions in Connecticut, New Hampshire, New Jersey, and Vermont, and to couples in domestic partnerships in California and Oregon and to married couples in Massachusetts.

**Regardless of a couple's state of residence, NCLR always encourages non-biological and non-adoptive parents to get an adoption or parentage judgment.**

NCLR also always recommends that same-sex parents and couples ensure that other family protection documents are in place, such as medical authorization, guardianship agreements, wills, advanced directives. For more information on this issue, please see NCLR's Lifelines publication at [www.nclrights.org/lifelines](http://www.nclrights.org/lifelines).

## **II. Second Parent Adoption**

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### **A. An Overview**

The most common means by which lesbian or gay co-parents establish a legal relationship with their children is through what is generally referred to as a "second parent adoption." A second parent adoption is the legal procedure by which a co-parent adopts his or her partner's child without terminating the partner's parental rights. As a result of the adoption, the child has two legal parents, and both partners have equal legal status in terms of their relationship to the child. One of the first second parent adoptions was done in San Francisco County in the early 1980s by lesbian attorneys who were themselves parents and who desired to share equal legal status with their child.<sup>1</sup>

States that recognize marriage between same-sex couples, as well as states that provide comprehensive domestic partnerships or civil unions, allow couples joined in these legal unions to use the stepparent adoption procedures that married couples may use. Domestic partner and civil union adoptions have the same effect as a second parent adoption, but they are generally faster and less expensive than second parent adoptions.

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

### **B. Availability of Second Parent Adoption**

The trend across the nation is toward permitting persons who act as parents to a child to adopt, particularly when such a person shares a household and is in a committed relationship with the person who is already a legal parent. The following states have established laws (either through statutes or published appellate court opinions) that explicitly allow same-sex couples to adopt, either through a second parent adoption, domestic partner adoption or civil union adoption: California,<sup>2</sup> Colorado,<sup>3</sup> Connecticut,<sup>4</sup> District of Columbia,<sup>5</sup> Illinois,<sup>6</sup> Indiana,<sup>7</sup> Maine,<sup>8</sup> Massachusetts,<sup>9</sup> New Hampshire,<sup>10</sup> New Jersey,<sup>11</sup> New York,<sup>12</sup> Oregon,<sup>13</sup> Pennsylvania,<sup>14</sup> and Vermont.<sup>15</sup>

Many more states are moving toward permitting adoption by same-sex couples on a county by county basis. Such states include Alabama, Alaska, Delaware, Hawaii, Iowa, Louisiana, Maryland, Michigan, Minnesota, Nevada, New Mexico, Rhode Island, Texas, Washington, and West Virginia. There undoubtedly are counties in other states that have granted second parent adoptions.

Only one state – Florida – prohibits lesbian and gay individuals from adopting.<sup>16</sup> Mississippi prohibits adoption by same-sex couples.<sup>17</sup> Utah prohibits unmarried, cohabitating couples from petitioning to adopt.<sup>18</sup> Appellate courts in Nebraska,<sup>19</sup> Ohio,<sup>20</sup> and Wisconsin<sup>21</sup> have said that second parent adoptions are not permissible under the adoption statutes in those states either for same-sex or different-sex couples.

### **C. Recognition of Second Parent Adoptions**

Adoptions are court orders, which all states are required by the Full Faith and Credit Clause of the federal Constitution to recognize. For this reason, a final second parent adoption, domestic partner adoption, or civil union adoption should be recognized in every state, even if that state's own laws would not have allowed the adoption to take place. Many courts have recognized that adoption decrees are entitled to full faith and credit. For instance, in 2002, the Nebraska Court of Appeals said that Nebraska must recognize a second parent adoption granted in Pennsylvania, even though the adoption would not have been permitted in Nebraska.<sup>22</sup> Additionally, the Tenth Circuit Federal Court of Appeals invalidated an Oklahoma law that refused to recognize adoptions where there were two parents of the same-gender.<sup>23</sup>

Courts have also recognized that, as a general rule, an adoption that has become final cannot be challenged later by one of the parties to the adoption. For example, the Iowa Supreme Court recently held that a parent who had consented to a second parent adoption years earlier could not later change her mind and seek to challenge the legality of the adoption.<sup>24</sup> Appellate courts in Texas have issued similar decisions.<sup>25</sup> The courts found that, in order to give children and adoptive parents finality and stability, Texas statutes prevented an adoption from being attacked for any reason more than six months after it was issued. In one case, the court noted: "The destruction of a parent-child relationship is a traumatic experience that can lead to emotional devastation for all the parties involved, and all reasonable efforts to prevent this outcome must be invoked when there is no indication that the destruction of the existing parent-child relationship is in the best interest of the child."<sup>26</sup>

## **III. Parentage Judgment**

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Second parent adoptions, domestic partner adoptions, and civil union adoptions are currently the most common means used by lesbian or gay non-biological parents to establish a legal

parental relationship with their child. In a growing number of states, a same-sex couple may use an alternative method to establish their legal relationship with their child. Such a procedure is sometimes called a “parentage action,” “maternity action,” “paternity action,” or action under the state’s Uniform Parentage Act, known as a “UPA action.”

Increasingly, states courts are applying state parentage laws to recognize lesbian and gay parents in certain specific types of cases. For example, in some states, where a lesbian couple plans together to conceive and raise a child using a medical procedure to become pregnant, or where a gay male couple uses a surrogate to conceive and bear a child, the intended parents can petition the court to declare the non-biological parent to be a legal parent to the child.

Parentage statutes can also be used by couples in a marriage in Massachusetts, a civil union in Connecticut, New Hampshire, New Jersey, or Vermont, or a domestic partnership in California or Oregon. When a child is born to or adopted by one partner while she or he is in one of these unions, state law establishes that both are legal parents. Nonetheless, it is important for couples in these states to get a parentage judgment or adoption decree to ensure that their parental rights will be respected by the federal government and when they travel to other states.

Some of the first parentage judgments involving lesbian couples were granted in situations in which one woman donated an ovum to her lesbian partner. Courts addressing this situation have concluded that the birth mother is a legal parent because she gestated and gave birth to the child, and the woman who donated the ovum is a legal parent because she is the child’s genetic parent. These decisions were not based on biology alone. Rather, the courts stressed the importance of the fact that both women intended to have and raise the child together.<sup>27</sup> As explained by a Massachusetts family court: “Where the plaintiffs are both connected to the child by biology and through birth, and where both have intentionally pursued this avenue in order to bring a child into their lives, both should be determined to be the legal parents of the child.”<sup>28</sup>

In California, the Supreme Court of California has said in three groundbreaking cases<sup>29</sup> that the same-sex partner of a biological parent can be a legal parent when the couple deliberately brings a child into the world through the use of assisted reproduction, regardless of the couple’s gender or marital status. The court looks at whether the women intended to create a child together and actually parented the child as their own. The Indiana Supreme Court held in *King v. S.B.*<sup>30</sup> that the trial court had the discretion to determine whether the former same-sex partner of the biological mother was entitled to the “rights and responsibilities of a parent” where the couple had jointly decided to conceive the child through alternative insemination and had held themselves out as parents.

Some states, including Maine,<sup>31</sup> New Jersey,<sup>32</sup> Pennsylvania,<sup>33</sup> and Washington,<sup>34</sup> have found that a non-biological and non-adoptive parent had all of the rights and responsibilities of parentage based on the following factors: her acceptance of the responsibilities of parentage, living with the child, the legal parent’s fostering a parent-child relationship between the child and

not non-biological and non-adoptive parent, and the existence of a bonded parent-child relationship.

Please call the National Center for Lesbian Rights if you would like more information about parentage judgments.

## IV. Custody/Visitation

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Many states recognize that, where a same-sex partner participated in the caretaking of the child and maintained a parent-like relationship with the child, he or she has standing (meaning the right to go to court) to ask a court for visitation or custody. Such states have recognized this right to seek visitation or custody under a “*de facto* parent,” “psychological parent,” or “*in loco parentis*” theory. States that have recognized that a same-sex partner of a legal parent may have standing to seek visitation or custody include: Colorado,<sup>35</sup> Connecticut,<sup>36</sup> Delaware,<sup>37</sup> Indiana,<sup>38</sup> Maine,<sup>39</sup> Maryland,<sup>40</sup> Massachusetts,<sup>41</sup> Minnesota,<sup>42</sup> Missouri,<sup>43</sup> Nebraska,<sup>44</sup> New Jersey,<sup>45</sup> New Mexico,<sup>46</sup> Pennsylvania,<sup>47</sup> Rhode Island,<sup>48</sup> Washington,<sup>49</sup> West Virginia,<sup>50</sup> and Wisconsin.<sup>51</sup> Only a small number of states have said that a non-legal parent has no rights regarding the child of his or her former partner, even when he or she has been an equally contributing caretaker of the child.<sup>52</sup>

Many states have enacted statutes giving *de facto* parents or persons who have acted “*in loco parentis*” a right to seek visitation or custody. For example, the District of Columbia defines *de facto* parents as someone who has taken on the full responsibilities of a parent, held him or herself out as the child’s parent with the permission of the other parent or parents, and either 1) lived with the child since birth or adoption, or 2) lived with the child for 10 months out of the last year and formed a “strong emotional bond” with the child with the encouragement of the other parent.<sup>53</sup>

Some state statutes define *de facto* parents more narrowly and make it more difficult to seek custody than visitation. These states include: Arizona,<sup>54</sup> Colorado,<sup>55</sup> Connecticut,<sup>56</sup> District of Columbia,<sup>57</sup> Indiana,<sup>58</sup> Kentucky,<sup>59</sup> Maine,<sup>60</sup> Minnesota,<sup>61</sup> Montana,<sup>62</sup> Oregon,<sup>63</sup> South Carolina,<sup>64</sup> Texas,<sup>65</sup> and Wisconsin.<sup>66</sup>

Other states have statutes that generally recognize a right of non-legal parents to seek custody or visitation in certain circumstances but do not provide clear guidelines and have not yet been applied to same-sex parents. Some of these states are: Alaska,<sup>67</sup> Hawaii,<sup>68</sup> and Nevada.<sup>69</sup>

## V. Parenting Agreement

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Same-sex couples who live in a state that does not yet permit second parent adoptions or parentage actions may want to draft a parenting agreement. A number of courts have recognized that parenting agreements permitting another person to have visitation with a child are enforceable subject to a determination of the best interests of the child.<sup>70</sup> These courts have acknowledged the importance of protecting parent-child bonds that have formed with the agreement of the child's legal parent.

A parenting agreement should specify that, although only one of the parents is the legal parent, both parents consider themselves to be the parents of their child, with all of the legal rights and responsibilities that come with being a parent. The agreement should include language that clearly states the couple's intention to continue to co-parent even if their relationship is dissolved. Couples may also want their parenting agreement to address child support, custody, and visitation issues.

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## Endnotes

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<sup>1</sup> See Emily Doskow, *The Second Parent Trap: Parenting for Same-Sex Couples in a Brave New World*, 20 J. Juv. L. 1, 5, 7 (1999).

<sup>2</sup> Second parent adoption (*Sharon S. v. Superior Court*, 73 P.3d 554 (Cal. 2003)) and domestic partner adoption (CAL. FAM. CODE § 9000(g) (West 2008) (“stepparent adoption includes adoption by a domestic partner.”)).

<sup>3</sup> Second parent adoption (COLO. REV. STAT. ANN. §§ 19-5-203 (1), 19-5-208 (5), 19-5-210 (1.5), 19-5-211 (1.5) (West 2008)).

<sup>4</sup> Second parent adoption (CONN. GEN. STAT. ANN. § 45a-724(a)(3) (West 2008) (providing that “any parent of a minor child may agree in writing with one other person who shares parental responsibility for the child with such parent that the other person shall adopt or join in the adoption of the child”) and civil union adoption (CONN. GEN. STAT. ANN. § 45A-724(a)(2) (West 2008)).

<sup>5</sup> Second parent adoption (*M.M.D. v. B.H.M.*, 662 A.2d 837 (D.C. 1995)).

<sup>6</sup> Second parent adoption (*In re Petition of K.M. & D.M.*, 653 N.E.2d 888 (Ill. App. Ct. 1995)).

<sup>7</sup> Second parent adoption (*In re Adoption of M.M.G.C.*, 785 N.E.2d 267 (Ind. Ct. App. 2003); *In re Adoption of K.S.P.*, 804 N.E.2d 1253 (Ind. Ct. App. 2004)).

<sup>8</sup> Second parent adoption (*Adoption of M.A.*, 2007 ME 123 (Me. 2007)).

<sup>9</sup> Second parent adoption (*In re Adoption of Tammy*, 619 N.E.2d 315 (Mass. 1993)) and stepparent adoption (MASS. GEN. LAWS ANN. ch. 210 § 1 (2008)).

<sup>10</sup> Civil union adoption (N.H. REV. STAT. ANN. § 170-B:4 (2008)).

<sup>11</sup> Second parent adoption (*In re the Adoption of Two Children by H.N.R.*, 666 A.2d 535 (N.J. Super. Ct. App. Div. 1995)) and civil union adoption (N.J. STAT. ANN. § 9:3-43 (West 2008)).

<sup>12</sup> Second parent adoption (*In re Jacob*, *In re Dana*, 660 N.E.2d 397 (N.Y. 1995)).

<sup>13</sup> Domestic partner adoption (OR. REV. STAT. ANN. § 109.041 (2) (West 2008)). Additionally, according to Basic Rights Oregon, courts in all counties have granted second parent adoptions to same-sex couples. See [www.basicrights.org](http://www.basicrights.org).

<sup>14</sup> Second parent adoption (*In re Adoption of R.B.F. & R.C.F.*, 803 A.2d 1195 (Pa. 2002)).

<sup>15</sup> Second parent adoption (*In re Adoption of B.L.V.B. & E.L.V.B.*, 628 A.2d 1271 (Vt. 1993); VT. STAT. ANN. tit. 15A, § 1-102(b) (2008) (providing that, if family unit consists of parent and parent’s partner, partner of parent may adopt child without terminating parent’s rights)); civil union adoption (VT. STAT. ANN. tit. 15A, § 4-101 (2008)).

<sup>16</sup> FLA. STAT. ANN. § 63.042(3) (West 2008). The Eleventh Circuit has held that Florida’s adoption ban is constitutional. *Lofton v. Sec’y of the Dep’t of Children & Family Servs.*, 358 F.3d 804 (11th Cir. 2004). The

Florida statute applies to adoption only and does not prohibit lesbians and gay men from being foster parents. *See Matthews v. Weinberg*, 645 So.2d 487 (Fla. Dist. Ct. App. 1994) (holding that lesbians and gay men may not be excluded from being foster parents).

<sup>17</sup> MISS. CODE ANN. § 93-17-3(2) (West 2008).

<sup>18</sup> UTAH CODE ANN. § 78-30-1(3)(b) (West 2008).

<sup>19</sup> *In re Adoption of Luke*, 640 N.W.2d 374 (Neb. 2002).

<sup>20</sup> *In re Adoption of Doe*, 719 N.E.2d 1071 (Ohio Ct. App. 1998).

<sup>21</sup> *In the Interest of Angel Lace M.*, 516 N.W.2d 678 (Wis. 1994).

<sup>22</sup> *Russell v. Bridgens*, 647 N.W.2d 56 (Neb. 2002).

<sup>23</sup> *Finstuen v. Crutcher*, 496 F.3d 1139 (10th Cir. 2007) (invalidating as unconstitutional 10 OKLA. STAT. § 7502-1.4, which stated: "this state, any of its agencies, or any court of this state shall not recognize an adoption by more than one individual of the same sex from any other state or foreign jurisdiction").

<sup>24</sup> *Schott v. Schott*, 744 N.W.2d 85 (Iowa 2008).

<sup>25</sup> *Goodson v. Castellanos*, 214 S.W.3d 741 (Tex. App. 2007), *reh'g overruled* (Mar 01, 2007), *rev. denied* (Feb 22, 2008); *Hobbs v. Van Stavern*, 2006 WL 3095439 (Tex. App. 2006), *rev. denied* (Feb 22, 2008).

<sup>26</sup> *Goodson*, 214 S.W.3d at 749.

<sup>27</sup> *See, e.g., In re the Petition of L.M. and L.S.*, San Francisco Superior Court No. FL032006, Decree dated March 1, 1999; *In re the Adoption Petition of C.C.*, San Francisco Superior Court No. 122016, decree dated September 23, 1997, as stated in Emily Doskow, *The Second Parent Trap: Parenting for Same-Sex Couples in a Brave New World*, 20 J. Juv. L. 1, 2-3 (1999).

<sup>28</sup> *M.K. & C.P. v. Medical Center, Inc.*, 00W-1343, Mass. Prob. & Cam. Ct., Suffolk Cty. (Mass. Prob. & Cam. Ct. 2000).

<sup>29</sup> *Kristine H. v. Lisa R.*, 117 P.3d 690 (Cal. 2005); *K.M. v. E.G.*, 117 P.3d 673 (Cal. 2005); *Elisa B. v. Superior Court*, 117 P.3d 660 (Cal. 2005).

<sup>30</sup> 837 N.E.2d 965 (Ind. 2005),

<sup>31</sup> *C.E.W. v. D.E.W.*, 845 A.2d 1146, 1151 (Me. 2004) (once an individual is found to be a de facto parent, a court may award "parental rights and responsibilities to that individual as a parent").

<sup>32</sup> *V.C. v. J.M.B.*, 748 A.2d 539 (N.J. 2000) ("Once a third party has been determined to be a psychological parent to a child, under the previously described standards, he or she stands in parity with the legal parent.").

<sup>33</sup> *L.S.K. v. H.A.N.*, 813 A.2d 872, 876 (Pa. Super. Ct. 2002) ("The rights and liabilities arising out of [*in loco parentis* status] are the same as between parent and child.").

<sup>34</sup> *In re Parentage of L.B.*, 122 P.3d 161, 708 (Wash. 2005) (“a de facto parent stands in legal parity with an otherwise legal parent”).

<sup>35</sup> *In the Interest of E.L.M.C.*, 100 P.3d 546 (Colo. Ct. App. 2004), cert. denied, 2004 WL 2377164 (Colo. 2004), cert. denied sub nom, *Clark v. McLeod*, 545 U.S. 1111 (2005).

<sup>36</sup> *Laspina-Williams v. Laspina-Williams*, 742 A.2d 840 (Conn. Super. Ct. 1999).

<sup>37</sup> *Smith v. Smith*, 893 A.2d 934 (Del. 2006).

<sup>38</sup> *King v. S.B.*, 837 N.E.2d 965 (Ind. 2005).

<sup>39</sup> *C.E.W. v. D.E.W.*, 845 A.2d 1146 (Me. 2004).

<sup>40</sup> *S.F. v. M.D.*, 751 A.2d 9 (Md. Ct. Spec. App. 2000).

<sup>41</sup> *E.N.O. v. L.M.M.*, 711 N.E.2d 886 (Mass. 1999).

<sup>42</sup> *Soofoo v. Johnson*, 731 N.W.2d 815 (Minn. 2007).

<sup>43</sup> *Matter of T.L.*, 1996 WL 393521 (Mo. Cir. Ct. May 7, 1996).

<sup>44</sup> *Russell v. Bridgens*, 647 N.W.2d 56 (Neb. 2002).

<sup>45</sup> *V.C. v. J.M.B.*, 748 A.2d 539 (N.J. 2000).

<sup>46</sup> *A.C. v. C.B.*, 829 P.2d 660 (N.M. Ct. App. 1992).

<sup>47</sup> *T.B. v. L.R.M.*, 786 A.2d 913 (Pa. 2001); *J.A.L. v. E.P.H.*, 682 A.2d 1314 (Pa. Super. Ct. 1996); *L.S.K. v. H.A.N.*, 813 A.2d 872 (Pa. Super. Ct. 2002).

<sup>48</sup> *Rubano v. DiCenzo*, 759 A.2d 959 (R.I. 2000).

<sup>49</sup> *In re Parentage of L.B.*, 122 P.3d 161 (Wash. 2005).

<sup>50</sup> *In re Clifford K.*, 619 S.E.2d 138 (W. Va. 2005).

<sup>51</sup> *In re the Custody of H.S.H.-K.: Holtzman v. Knott*, 533 N.W.2d 419 (Wis. 1995), cert. denied, 516 U.S. 975 (1995).

<sup>52</sup> See, e.g., *Jones v. Barlow*, 154 P.3d 808 (Utah 2007).

<sup>53</sup> D.C. CODE § 16-831.01 (2008) states:

(1) “De facto parent” means an individual:

(A) Who:

- (i) Lived with the child in the same household at the time of the child’s birth or adoption by the child’s parent;
- (ii) Has taken on full and permanent responsibilities as the child’s parent; and
- (iii) Has held himself or herself out as the child’s parent with the agreement of the child’s parent or, if there are 2 parents, both parents; or

(B) Who:

- (i) Has lived with the child in the same household for at least 10 of the 12 months immediately preceding the filing of the complaint or motion for custody;
- (ii) Has formed a strong emotional bond with the child with the encouragement and intent of the child's parent that a parent-child relationship form between the child and the third party;
- (iii) Has taken on full and permanent responsibilities as the child's parent; and
- (iv) Has held himself or herself out as the child's parent with the agreement of the child's parent, or if there are 2 parents, both parents.

<sup>54</sup> ARIZ. REV. STAT. ANN. § 25-415 (2008) (permitting a person who stands *in loco parentis* to a child to seek custody if it would be “significantly detrimental” for the child to be in the legal parent’s custody and permitting a person *in loco parentis* to seek visitation if the legal parents are not married to each other). In *Thomas v. Thomas*, 49 P.3d 306 (Ariz. Ct. App. 2002), an Arizona appellate court held that the former same-sex partner of the legal parent could not have joint custody because that would require a finding that the allowing the legal mother to have custody would be “significantly detrimental to the child. However, the court also noted that the partner could be awarded reasonable visitation.

<sup>55</sup> COLO. REV. STAT. ANN. § 14-10-123(1)(c) (West 2008) (establishing standing to seek custody or visitation “[b]y a person other than a parent who has had the physical care of a child for a period of six months or more, if such action is commenced within six months of the termination of such physical care”).

<sup>56</sup> CONN. GEN. STAT. ANN. § 46b-59 (West 2008) (court may grant reasonable visitation to a person who is not a parent);<sup>56</sup> § 46b-56 (court may grant custody to a person who is not a parent);<sup>56</sup> §§ 46b-56a, 46b-56b (parental presumption of custody may be rebutted by a showing that parental custody would be detrimental). See also *Laspina-Williams v. Laspina-Williams*, 742 A.2d 840 (Conn. Super. Ct. 1999) (applying section 46b-59 to the former same-sex partner of the biological mother). The Connecticut Supreme Court has held that a person seeking visitation under § 46b-59 must demonstrate by clear and convincing evidence the existence of a parent-like relationship and that the child would be harmed if visitation were denied. *Roth v. Weston*, 789 A.2d 431 (Conn. 2002). See also, *Fish v. Fish*, 939 A.2d 1040 (Conn. 2008) (third party custody statutes must be applied only to individuals who have had a “parent-like” relationship with the child).

<sup>57</sup> D.C. CODE § 16-831.01 (2008), *et seq.* (establishing the status of “de facto parent” with standing to seek custody or visitation and an obligation to provide support and granting standing to a person who is not a parent or de facto parent to seek custody in certain circumstances).

<sup>58</sup> IND. CODE ANN. § 31-9-2-35.5 (West 2008) (establishing standing to seek custody or visitation by a “de facto custodian” who “has been the primary caregiver for, and financial support of, a child” for specified periods depending on age of child).

<sup>59</sup> KY. REV. STAT. ANN. § 403.270(1) (West 2008) (establishing standing to seek custody or visitation by a “de facto custodian” who “has been the primary caregiver for, and financial support of, a child” for specified periods depending on age of child); *but see B.F. v. T.D.*, 194 S.W.3d 310 (Ky. 2006) (former same-sex partner of the adoptive mother was not a de facto custodian because she had not been the primary caregiver).

<sup>60</sup> ME. REV. STAT. ANN. tit. 19-A, § 1653(2) (2008) (court may grant reasonable visitation to a third party); *C.E.W. v. D.E.W.*, 845 A.2d 1146 (Me. 2004) (applying section 1653(2) to same-sex parents).

<sup>61</sup> MINN. STAT. ANN. § 257C.01 (West 2008) *et seq.* (permitting “de facto custodian” or “interested third party” as defined by statute to seek custody or visitation under specified circumstances); *Soohee v. Johnson*, 731 N.W.2d 815 (Minn. 2007) (applying chapter 257C to same-sex parents and requiring a

person seeking custody or visitation under these statutes to demonstrate the required factors by clear and convincing evidence).

<sup>62</sup> MT. CODE ANN. §§ 40-4-211(4)(b), 40-4-228 (2008) (a non-legal parent can seek custody if it is established by clear and convincing evidence that the non-legal parent has established a “child-parent” relationship by providing for the child’s physical and psychological needs and the legal parent has “engaged in conduct contrary to the child-parent relationship”).

<sup>63</sup> OR. REV. STAT. ANN. § 109.119 (West 2008) (granting standing to seek custody or visitation to a person who, within the previous six months, had physical custody of the child or lived with the child and fulfilled a parental role).

<sup>64</sup> S.C. CODE ANN. § 20-7-1540 (2008) (granting standing to seek custody or visitation to a “de facto custodian” who has resided with the child as the primary caregiver and financial supporter for a specified period of time based on the child’s age).

<sup>65</sup> TEX. FAM. CODE ANN. § 102.003 (9) (Vernon 2008) (establishing standing to seek custody or visitation by “a person, other than a foster parent, who has had actual care, control, and possession of the child for at least six months ending not more than 90 days preceding the date of the filing of the petition”).

<sup>66</sup> WIS. STAT. § 767.43(1) (establishing that “a person who has maintained a relationship similar to a parent-child relationship with the child” may bring a petition for visitation and may be awarded visitation if the court determines that it is in the best interests of the child).

<sup>67</sup> ALASKA STAT. § 25.20.060(a) (2008) (permitting courts in custody determinations “to provide for visitation by a grandparent or other person if that is in the best interests of the child”).

<sup>68</sup> HAW. REV. STAT. § 571-46 (2008) (custody may be awarded to a non-legal parent when in the best interests of the child, and a person with “de facto custody” of a child in a fit and stable home is prima facie entitled to custody).

<sup>69</sup> NEV. REV. STAT. ANN. § 125C.050 (West 2008) (a person who has lived with the child and established a “meaningful relationship” may seek reasonable visitation if a parent has unreasonably restricted visits); § 125.500 (custody may only be awarded to a non-legal parent if awarding custody to the parent would be detrimental to the child).

<sup>70</sup> See, e.g., *A.C. v. C.B.*, 829 P.2d 660 (N.M. Ct. App. 1992), writ of certiorari denied *C.B. v. A. C.*, 827 P.2d 837 (N.M. 1992) (holding that the former same-sex partner of a child’s biological mother could seek enforcement of an agreement for shared custody or visitation and the agreement was enforceable, subject to the court’s best interest determination); *Rubano v. DiCenzo*, 759 A.2d 959 (R. I. 2000) (holding that the former same-sex partner of a child’s biological mother was entitled to seek a remedy for the biological mother’s alleged violation of the parties’ visitation agreement); *In re the Custody of H.S.H.-K.: Holtzman v. Knott*, 533 N.W.2d 419 (Wis. 1995) (holding that courts may “grant visitation apart from [custody and visitation statutes] on the basis of a co-parenting agreement between a biological parent and another when visitation is in a child’s best interest”).