

PARENTAGE FOR VULNERABLE CHILDREN: A PRIMER FOR THE ADMINISTRATION FOR CHILDREN & FAMILIES



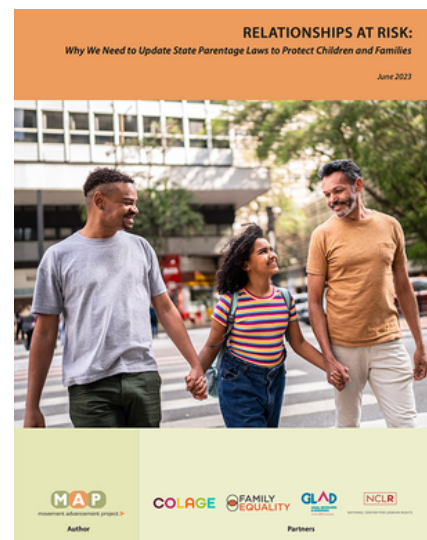
NATIONAL CENTER FOR LESBIAN RIGHTS

Children join families in many ways, but their need for love, security, and stability is the same no matter how their families were formed, where they live, or who their parents are. Every child in the United States deserves to have a secure legal relationship with the people who parent them. Children born through assisted reproduction to unmarried couples are vulnerable to losing the love and support of non-genetic, non-gestational, non-adoptive parents. **Unfortunately, many children and parents have experienced uncertainty, harm, and loss due to the absence of accessible pathways to establishing legal parent-child relationships and the refusal of agencies to acknowledge intended families.** Due to widespread bias against LGBTQ+ people and “nontraditional” families, non-genetic parents in same-sex relationships and their children are acutely endangered by parentage attacks, and often experience relationship nonrecognition and discrimination.

Parentage law largely remains the purview of the states. Via statute and case law, state courts and legislatures have long sought to promote security and stability for children by protecting their legal relationship to their parents. There are several ways that parent-child legal relationships can be established, and each state varies slightly in its legal framework, as detailed in a [June 2023 report](#). While several states have acted to modernize their law to recognize the diverse ways in which parent-child relationships are formed, many have not. In some states, an adult who planned to build their family, was present at birth of their child, and had lived with, provided for and nurtured the child for their whole life may be deemed a “legal stranger” with none of the rights or responsibilities of a parent, depriving the child of their support and guidance. It is not uncommon for children to be separated from these parents when the adult relationship ends or when the child welfare system intervenes. The severing of a secure parent-child attachment is devastating for a child and undermines their healthy development.

The nationwide patchwork of parentage protections is confusing for LGBTQ+ families. Many non-genetic parents are unaware of the importance of establishing parentage—and of those who are aware, many are unable to do so. The absence of clear and accessible pathways to establishing parentage has left family courts in many states to wrestle with parentage issues. As a result, many families nationwide have experienced the fear, uncertainty, and emotional and financial stress of protracted litigation, and too many children have experienced the devastating loss of having their relationship to a parent they always have known, loved, and depended on abruptly and permanently severed.

While the Administration for Children and Families (ACF) cannot update state parentage laws, **ACF can take steps to ensure that parent-child relationships are recognized and respected as part of its work to support vulnerable families and promote family stability.** Unfortunately, there are instances and contexts in which agents of entities under ACF’s purview have refused to recognize or even instigated the severance of children’s relationships with their non-genetic parents.



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Kam Thompson and her partner were going to marry before the son they planned for was born. Parenthood was something “we were super excited” about, she said. Kam was Daniel’s primary parent, caring for his needs in every way. When Daniel was 2, the state’s Department of Children and Families abruptly removed Daniel from their home and placed him in foster care after unfounded claims of domestic violence between the couple, Thompson said.

That is when Thompson ran smack into the state’s parentage laws as the non-birth, LGBTQ+ parent, and she wasn’t able to see her son for two months. “They looked at me like I was a stranger,” she said. “I wasn’t privy to any court dates or independent visits.”

Because Kam was seen as a third party, not a parent, she didn’t receive counsel and she wasn’t allowed to participate in hearings about her child. Thompson’s first visit with Daniel during the ordeal was around his 3rd birthday. She recalls the heart-wrenching moment her little boy entered the room “and he sees me and you can see the confusion. He has kind of forgotten me, but then it’s like ‘I know this person.’ You can see it on his face.”

With the help of an attorney, Thompson was finally recognized as Daniel’s legal parent. But the process would drag on for 18 months. “You have to learn your own kid all over again,” she said. The couple now share time with Daniel, now 7, a happy boy who relishes video games and watching movies, she said.

Carl was floored when the New Hampshire Division of Child Support Services filed an action against him to establish paternity. Years prior, he had served as a known donor for a friend. His friend was a single woman who very much wanted to build her family. They signed and notarized a donor agreement, memorializing that he was a donor with none of the rights and responsibilities of parentage. He never met the resulting child, per their agreement, and had no role in her life. The mother hit difficult times when the child was about three years old. In the process of applying for TANF, the child support services office required her to name a “father” despite clear New Hampshire law that a sperm donor is not a parent. Rather than dismiss the action, Carl had to get pro bono counsel to help him dismiss the case, which he did successfully. ***It is important to the security of intended families using assisted reproduction for the Administration to encourage states to have clear policies for paternity establishment when a child is born through gamete donation.***

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RECOMMENDATIONS

ACF can act to ensure that its programs respect and support children in all types of families by:

- Ensure that ACF programs recognize the diversity of today's families, created through all the paths outlined in the UPA, to promote respect and dignity for all children and families in all programs
- Encourage child support agencies to adopt policies/guidelines that respect intended families and avoid seeking establishment of gamete donors
- Provide guidance to child welfare agencies to recognize and plan with nongenetic parents, regardless of marital status, so children remain in their families of origin