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Quick Facts: Same Sex Parents

This Quick Facts guide provides information about child support and parentage for same sex parents

The Child Support Enforcement Program¹ is a successful federal-state partnership whose mission is to promote economic stability for children whose parents live apart. The millions of families served by the child support program continue to grow in diversity, and increasingly include same sex parent families, and state child support programs are working to identify and address the changing needs of these modern families that best support the financial and emotional needs of children.²

In *Obergefell v. Hodges*, 135 S.Ct. 2584 (2015), the United States Supreme Court held that same sex couples have a fundamental right to marry, and recognized that marriage is part of a spectrum of personal choices concerning family relationships, procreation, and childrearing protected by the Constitution. As a result of *Obergefell*, same sex couples—like different sex couples—have the right to marry, establish a home and bring up children.

In order to meet the needs of unmarried same sex couples, a diverse array of jurisdictions from Alaska to West Virginia now make up the majority of states that recognize parental rights for intended, but not genetically related, *de facto* parents for children born to same sex couples.³ In addition, more states are considering whether the law should recognize only two legal parents for a child, or whether courts should take into account a child's best interest in deciding whether to recognize three legal parents. In 2015, California became the first state to pass legislation that allows for more than two legal parents.

Parentage laws for same sex couples vary and not all states recognize *de facto* parents. In an effort to make parentage laws more uniform, the Uniform Law Commission (ULC) has been working since 2016 to revise the Uniform Parentage Act (UPA), and NCSEA serves an official observer in the drafting process. One goal for the UPA is to implement *Obergefell* and offer states a gender neutral parentage body of law that resolves difficult issues involving children born through assisted reproduction technologies and surrogacy, and children born to married and unmarried same sex couples. The new UPA recognizes *de facto* parents and provides for a marital presumption of parentage for children born to same sex married couples. It also gives states the option to extend the acknowledgment process to same sex

¹ Title IV, Part D of the Social Security Act (42 U.S.C. 651, *et seq.*)

² National Child Support Strategic Plan: 2015-2019, available at <http://www.acf.hhs.gov/css/resource/national-child-support-strategic-plan-2015-2019>

³ *Conover v. Conover*, 141 A.3d 31, 47-48 (Md. 2016).





couples to establish parentage voluntarily and to recognize more than two legal parents if not doing so would be detrimental to the child.

