



Updated May 2020

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-tribal partnership that seeks to promote economic stability for children whose parents live apart. It serves one in five children nationwide² and collects \$5.12 for every \$1 in public funds invested. In FY 2018, \$34 billion was collected in 13.9 million cases for 14.7 million children.³

The millions of families served by the child support program continue to grow in diversity, and increasingly include same sex parent families. State child support programs are working to identify and address the changing needs of these modern families in ways that best support the financial and emotional needs of children.⁴

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. Following *Obergefell*, the Supreme Court held that a state may not deny married same sex couples recognition on their children's birth certificates that the state grants to married different sex couples.⁵

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.⁶ 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.

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

² https://www.acf.hhs.gov/sites/default/files/programs/css/2018_infographic_national.pdf

³ <https://www.acf.hhs.gov/css/resource/fy-2018-preliminary-data-report>

⁴ National Child Support Strategic Plan: 2015-2019, available at <http://www.acf.hhs.gov/css/resource/national-child-support-strategic-plan-2015-2019>

⁵ *Pavan v. Smith*, 137 S. Ct. 2075, 2078-79 (2017).

⁶ *Conover v. Conover*, 141 A.3d 31, 47-48 (Md. 2016).





Parentage laws for same sex couples vary widely by state. The Uniform Parentage Act (UPA), which was revised most recently in 2017, provides states with a uniform legal framework for establishing parent-child relationships. One goal of the 2017 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 extends the acknowledgment process to same sex couples to establish parentage voluntarily in the same manner as different sex couples and gives states the option to recognize more than two legal parents if not doing so would be detrimental to the child.

