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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 Program¹ is a successful federal-state-tribal partnership that seeks to promote economic stability for children whose parents live apart. The program collects \$4.73 for every \$1 in public funds invested. In FY 2022, \$32 billion was collected in 12.3 million cases for 12.8 million children.²

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.³

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. It further 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*, all couples now have the right to marry, establish a home, and raise children. Following *Obergefell*, the Supreme Court held that a state may not deny married same-sex couple's recognition on their children's birth certificates that the state grants to married different-sex couples.⁴

In 2022, The Respect for Marriage Act (136 Stat. 2305) further provided statutory authority for same-sex and interracial marriages with provisions that require all states, territories, and possessions of the United States to recognize marriages between two people performed elsewhere.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 consider a child's best interest in deciding whether to recognize three legal parents. For example, in 2013, California enacted Family Code Section

¹ Created by Title IV-D of the Social Security Act.

² [Office of Child Support Services \(OCSS\) FY 2022 Preliminary Report](#).

³ National Child Support Strategic Plan: 2015-2019, available at <http://www.acf.hhs.gov/css/resource/national-child-support-strategic-plan-2015-2019>

⁴ *Pavan v. Smith*, 137 S. Ct. 2075, 2078-79 (2017).

⁵ Respect for Marriage Act, H.R.8404, 117th Congress (2021-2022), available at <https://www.congress.gov/bill/117th-congress/house-bill/8404>

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





7612(c) which allows for more than two legal parents. Other states, including Alaska, Delaware, Florida, Louisiana, Maine, New Jersey, New York, North Dakota, Pennsylvania, Oregon, and Washington have also awarded custody and/or parentage to more than two parents.

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.

