



NATIONAL CENTER FOR LESBIAN RIGHTS

Adoption by LGBT Parents

A second parent adoption (also called a co-parent adoption) is a legal procedure that allows a same-sex parent to adopt her or his partner's biological or adoptive child without terminating the first parent's legal status as a parent. States that recognize marriage between same-sex couples or that have comprehensive domestic partnerships or civil unions allow couples joined in these legal unions to use the stepparent adoption procedures that married couples may use. 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 LGBT parents to get an adoption or parentage judgment to ensure that their parental rights are protected.

States that allow second parent adoption

Currently, 16 states and the District of Columbia have a state statute or appellate court decision allowing same-sex couples to get a second parent adoption or co-parent adoption. They are:

1. California¹
2. Colorado²
3. Connecticut³
4. Delaware⁴
5. District of Columbia⁵
6. Hawaii⁶
7. Illinois⁷
8. Indiana⁸
9. Iowa⁹
10. Maine¹⁰
11. Massachusetts¹¹
12. Nevada¹²
13. New Hampshire¹³
14. New York¹⁴
15. New Jersey¹⁵
16. Oregon¹⁶
17. Pennsylvania¹⁷
18. Rhode Island¹⁸
19. Vermont¹⁹
20. Washington²⁰

Although there are undoubtedly others, some counties other states have granted second parent adoptions, including:

1. Alabama
2. Alaska
3. Georgia
4. Louisiana
5. Maryland
6. Michigan

7. Minnesota
8. New Mexico
9. Texas
10. West Virginia

State Laws That Limit or Prohibit Adoption by LGBT Individuals or Couples

1. Arizona gives a preference to married couples over a single adult in adoption placement.²¹
2. A Kentucky court has said that Kentucky does not permit unmarried couples to use the stepparent adoption procedures.²²
3. Mississippi prohibits “[a]doption by couples of the same gender.”²³
4. Nebraska does not permit second parent or co-parent adoption.²⁴
5. North Carolina does not allow second parent or co-parent adoption.²⁵
6. Ohio does not permit second parent or co-parent adoption.²⁶
7. Utah prohibits anyone cohabiting in a non-marital sexual relationship from adopting.²⁷ Utah also gives a preference to married couples over any single adult in adoptions or foster care placement.²⁸
8. Wisconsin does not permit second parent or co-parent adoption.²⁹

Note: Until recently, Florida was the only state to categorically prohibit lesbian, gay, and bisexual individuals from adopting, but that state law was held unconstitutional in September 2010.³⁰ Arkansas previously prohibited anyone cohabiting with an unmarried partner from adopting or being a foster parent, but the Arkansas Supreme Court struck down this statute as unconstitutional.³¹

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¹ Second parent adoption (*Sharon S. v. Superior Court*, 73 P.3d 554 (Cal. 2003)) and stepparent/domestic partner adoption by statute (CAL. FAM. CODE § 9000).

² Second parent adoption (COLO. REV. STAT. § 19-5-203(1), 19-5-208(5), 19-5-210(1.5), 19-5-211(1.5)).

³ Second parent adoption (CONN. GEN. STAT. § 45a-724(a)(3)) and stepparent/civil union adoption (CONN. GEN. STAT. § 45a-724(a)(2)).

⁴ Civil union/stepparent adoption (13 Del.C. § 903). Some counties have also allowed second parent adoptions.

⁵ Second parent adoption (*M.M.D. v. B.H.M.*, 662 A.2d 837 (D.C. 1995)), and stepparent/domestic partner adoption (D.C. CODE §§ 16-302, 16-308).

⁶ Civil union/stepparent adoption (HAW. REV. STAT. § 578-16). Some counties have also allowed second parent adoptions.

⁷ Second parent adoption (*In re Petition of K.M. & D.M.*, 653 N.E.2d 888 (Ill. App. Ct. 1995)) and stepparent/civil union adoption by statute (750 Ill. Comp. Stat. 50/2).

⁸ 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)). See also *In re Infant Girl W.* 785 N.E.2d 267 (Ind. App. 2006) (same-sex couple may jointly adopt).

⁹ Stepparent adoption (Iowa Code § 600.4 (West 2009)). Additionally, some counties in Iowa have granted second parent adoptions.

¹⁰ Second parent adoption (*Adoption of M.A.*, 930 A.2d 1088 (Me. 2007)).

¹¹ Second parent adoption (*In re Adoption of Tammy*, 619 N.E.2d 315 (Mass. 1993); *In re Adoption of Susan*, 619 N.E.2d 323 (Mass. 1993)) and stepparent adoption (MASS. GEN. LAWS ch. 210 § 1).

¹² Stepparent/domestic partner adoption (NEV. REV. STAT. § 127.045).

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- ¹³ Stepparent/civil union adoption (N.H. REV. STAT. § 170-B:4).
- ¹⁴ Second parent adoption (*In re Jacob*, *In re Dana*, 660 N.E.2d 397 (N.Y. 1995)); stepparent adoption (N.Y. Dom. Rel. Law § 110 (McKinney)). New York will allow same-sex couples to marry beginning July 25, 2011. New York already recognizes marriages between same-sex couples that were validly entered into in other jurisdictions. *See, e.g., Beth R. v. Donna M.*, 19 Misc.3d 724, 853 N.Y.S.2d 501, 2008 N.Y. Slip Op. 28091 (Sup. Ct. 2008). New York also recognizes civil unions from other states. *Debra H. v. Janice R.*, 14 N.Y.3d 576, 930 N.E.2d 184 (N.Y. 2010).
- ¹⁵ Second parent adoption (*In re the Adoption of Two Children by H.N.R.*, 666 A.2d 535 (N.J. Super. 1995)) and stepparent/civil union adoption (N.J. STAT. § 9:3-50).
- ¹⁶ Stepparent/domestic partner adoption (OR. REV. STAT. § 109.041(2)).
- ¹⁷ Second parent adoption (*In re Adoption of R.B.F. & R.C.F.*, 803 A.2d 1195 (Pa. 2002)).
- ¹⁸ Stepparent/civil union adoption (R.I. Gen. Laws § 15-7-4).
- ¹⁹ Second parent adoption (*In re Adoption of B.L.V.B. & E.L.V.B.*, 628 A.2d 1271 (Vt. 1993); 15A VT. STAT. § 1-102(b)) and stepparent/civil union adoption (15A VT. STAT. § 4-101).
- ²⁰ Stepparent/domestic partner adoption (WASH. REV. CODE § 26.33.100). Additionally, some counties in Washington have granted second parent adoptions.
- ²¹ Ariz. Rev. Stat. § 8-103.
- ²² *S.J.L.S. v. T.L.S.*, 265 S.W.3d 804 (Ct. App. Ky. 2008) (holding that the biological mother could not challenge her partner's adoption of the child more than a year after the adoption was finalized, but noting in dicta that an unmarried couple cannot use the stepparent adoption procedures in Kentucky to establish legal parentage for both partners).
- ²³ MISS. STAT. § 93-17-3(2).
- ²⁴ *In re Adoption of Luke*, 640 N.W.2d 374 (Neb. 2002).
- ²⁵ *Boseman v. Jarrell*, 704 S.E.2d 494 (N.C. 2010).
- ²⁶ *In re Adoption of Doe*, 719 N.E.2d 1071 (Ohio Ct. App. 1998).
- ²⁷ UTAH CODE 78B-6-117(3)(b).
- ²⁸ UTAH CODE §§ 78A-6-307(19), 78B-6-117 (4).
- ²⁹ *In the Interest of Angel Lace M.*, 516 N.W.2d 678 (Wis. 1994).
- ³⁰ *Fla. Dep't of Children & Families v. X.X.G.*, 45 So.3d 79 (Fla. Ct. App. 2010) (Florida's Third District Court of Appeal held that the ban had no rational basis and violated the equal protection guarantee of the Florida Constitution). This decision is binding on all Florida trial courts. The Florida Department of Children and Families has issued a memorandum instructing its staff to immediately cease questioning prospective adoptive parents about their sexual orientation and not consider sexual orientation as a factor in determining fitness to adopt. The Department's staff are to focus instead on the quality of parenting that adoptive parents would provide, and their commitment to love an adopted child.
- ³¹ *Arkansas Dept. of Human Services v. Cole*, 2011 Ark. 145 (Ark. April 7, 2011) (striking Arkansas Initiative Act 1 (2008) as violating the Arkansas Constitution).