

Issue Spotting for LGBT Parents in the US

- If the parent has a same-sex or trans partner, has that partner done a second parent adoption or obtained a parentage judgment?
 - Married same sex couples can use stepparent adoption procedures available to all married couples.
 - Unmarried couples may have obtained a second parent adoption. A number of states allow second parent adoptions.
 - If there is an adoption, the adoptive parent is a legal parent and is entitled to all the same rights and benefits as the biological parent.

- Is the parent married?
 - If yes, state parentage presumptions and/or ART statutes may apply to protect the rights of same-sex or trans spouse.
 - Every state has a marital presumption of parentage. A spouse is presumed to be the parent of a child born to the marriage.
 - Although the marital presumption of parentage should apply equally to same-sex spouses, not all states have case law adjudicating that issue.
 - Examples of recent marital presumption case law: *McLaughlin v. Jones*, 243 Ariz. 29 (2017); *Strickland v. Day*, 239 So.3d 486 (Miss. 2018).

- If unmarried, does the state have a holding out provision in the family code?
 - If yes, holding out provision may protect the rights of same-sex or trans partner
 - Holding out provisions generally state that if a person has held a child out as their own (sometimes for a specific period of time) they are presumed to be the parent of that child regardless of biological connection. A handful of states have codified holding out provisions.
 - Examples of case law: *In re Guardianship of Madelyn B.*, 98 A.3d 494 (N.H. 2014); *Chatterjee v. King*, 280 P.3d 283 (N.M. 2012).

- If unmarried, does the state recognize parent-like rights for unmarried same-sex or trans partner?
 - Many states have case law stating that an individual who plays a parent-like role in a child's life should have standing to seek custody or visitation of the child.
 - Sometimes called de facto parent doctrine, equitable parent doctrine, *in loco parentis*, psychological parent doctrine.
 - Examples: *In re Custody of H.S.H.-K.*, 533 N.W.2d 419, 435 (Wis. 1995); *Middleton v. Johnson*, 633 S.E.2d 162, 168 (S.C. 2006); *V.C. v. M.J.B.*, 163 N.J. 200 (2000).
 - If the state recognizes de facto parents, the parent may be able to file a petition for custody or visitation of the child.

- If unmarried, do the parents have a parenting agreement?
 - If yes, some states may recognize this agreement as giving rights to the non-biological parent for custody and/or visitation.
 - Examples: *Eldredge v. Taylor*, 339 P.3d 888 (Okla. 2014); *Frazier v. Goudschaal*, 296 Kan. 730 (2013).
 - If there is an agreement, attorney can file a petition to have the court recognize the agreement and grant standing to seek custody or visitation stemming from the agreement.