

# The Effects of Marriage, Civil Union, and Domestic Partnership Laws on the Health and Well-being of Children

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**I**N 2005, THE American Academy of Pediatrics (AAP) Board of Directors commissioned the Committee on Psychosocial Aspects of Child and Family Health, the Committee on Early Childhood, Adoption, and Dependent Care, the Committee on Adolescence, the Committee on State Government Affairs, the Committee on Federal Government Affairs, and the Section on Adoption and Foster Care to develop an analysis examining the effects of marriage, civil union, and domestic partnership statutes and amendments on the legal, financial, and psychosocial health and well-being of children whose parents are gay or lesbian.

In developing this analysis, the involved committees and section held before them the AAP's core philosophy—that the family is the principal caregiver and the center of strength and support for children. Together with this philosophy, contributors recognized the reality that our gay and lesbian patients grow up to be gay and lesbian adults. Because many pediatricians are fortunate to care for 2 or more generations of a family, we are likely to encounter and remain involved with our patients, regardless of sexual orientation, as they mature and mark the milestones of establishing a committed partnership with another adult, deciding to raise a family, and entrusting the health and well-being of their own children to us.

This analysis explores the unique and complex challenges that same-gender couples and their children face as a result of public policy that excludes them from civil marriage. In compiling this report it became clear to the contributing committees and section that the depth and breadth of these challenges are largely unknown to the general public and perhaps even to many pediatricians. As such, the AAP Board of Directors approved the broad dissemination of this analysis to assist pediatricians with addressing the complex issues related to same-gender couples and their children.

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#### Key Words

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#### Abbreviations

AAP—American Academy of Pediatrics  
DOMA—Defense of Marriage Act  
APA—American Psychological Association

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## DEFINITIONS

It is important to note at the outset the distinction in the types of marriages that exist in the United States and throughout the world, namely civil marriage and religious marriage. In addition, there are significant legal distinctions among civil marriage, civil union, and domestic partnership, although these terms are often incorrectly used interchangeably.

### Civil Marriage and Religious Marriage

Civil marriage is a legal status established through a license issued by a state government. Such status grants legal rights to, and imposes legal obligations on, the 2 married partners.

Depending on the faith, religious marriage is considered to be a liturgical rite, a sacrament, or a solemnization of the uniting of 2 persons and is recognized by the hierarchy and adherents of that religious group. The hierarchy, clergy, and in some cases members of religious organizations, establish their own criteria and rules for who may marry within their assemblies. They are not bound by statutory definitions of marriage. Civil government entities in the United States have no authority over a religious organization's autonomy.

In the United States, couples may choose to marry in a civil ceremony, a religious ceremony, or both. In the United States, state governments grant priests, rabbis, clerics, ministers, and other clergy presiding over a religious marriage the authority of the state to endorse the marriage license and establish a civil marriage. Certain public officials in the United States, such as judges, justices of the peace, and others, also have the authority to establish civil marriage.

By contrast, in many European countries and elsewhere in the world, religious officials have no authority to establish civil marriages. If couples in these countries wish to participate in the marriage ceremony of a faith tradition, religious ceremonies are often held once a civil ceremony has taken place. However, a marriage is considered legal only by means of issuance and endorsement of a marriage license by civil authorities.

Because clergy in the United States are vested with the authority of the government for purposes of civil marriage, many people are not aware of the distinction between civil and religious marriage and assume that the 2 are inextricably linked. However, the following analysis presumes this distinction. It addresses issues related to civil marriage, leaving issues of religious marriage to religious organizations and individuals.

### Civil Union

A civil union is a legal mechanism, sanctioned by civil authority, intended to grant same-gender couples legal status somewhat similar to civil marriage. In the United States, civil unions have been established only in Vermont and Connecticut. In these states, same-gender

couples are granted the same state-level rights, benefits, and protections as those granted to heterosexual married couples. No other states recognize civil unions. As such, same-gender couples considered to be legally united in either of those states are treated as single individuals when they cross into other states.

Unlike the national governments of some foreign countries, the US federal government does not recognize civil unions. As a result, >1000 federal rights, benefits, and protections are not made available to same-gender couples joined by civil union in the United States.

### Domestic Partnership

A domestic partnership is a relationship between 2 individuals, often but not necessarily of the same gender, who live together and mutually support one another as spouses but who are not legally joined in a civil marriage or a civil union. Some same-gender couples enter into domestic partnership agreements to create legally enforceable contracts involving property, finances, inheritance, and/or health care. Domestic partnerships do not reach the same legal threshold as civil unions or civil marriages and, accordingly, do not afford couples the rights, benefits, and protections of civil marriage.

## DEMOGRAPHICS

In 1990, the US Census Bureau began allowing individuals to describe another same-gender household member with whom the respondent has a relationship as an "unmarried partner." By comparing the gender of the household members who identified themselves as unmarried partners, the Census Bureau was able to identify unmarried couples made up of 2 men or 2 women. The 1990 count of same-gender unmarried-partner couples was 145 130.<sup>1</sup>

Census 2000 also collected data on unmarried-partner households of the same and opposite genders. A special report on this topic from the Census Bureau indicated that the number of same-gender unmarried-partner households was 594 691 in 2000.<sup>2</sup> The increase over the 1990 count is likely a result of changes in social climate with regard to gay and lesbian relationships, a willingness on the part of census respondents to identify their sexual orientation, and use of anonymous versus in-person survey methods.

Numerous demographers report that this number, although significant, is still likely to be a considerable undercount of the actual number of same-gender partner households in the United States. Several factors explain this undercount. For confidentiality reasons, some couples may have preferred not to identify the nature of their relationship on a government survey. Some couples may define their relationship as something other than husband/wife or unmarried partner. Other couples may consider themselves married according to a more broad interpretation of the social construct of civil mar-

riage. However, for the purposes of the 2000 census report, after the enactment of the federal Defense of Marriage Act (DOMA) in 1996, the Census Bureau was required to invalidate any responses that designated a same-gender individual as a spouse and assign those responses to the same-gender unmarried-partner category.<sup>3</sup> Research indicates that the Census Bureau missed at least 16% to 19% of all gay or lesbian couples in the 2000 count.<sup>4</sup>

Despite the likelihood of an undercount and the legal restrictions on the Census Bureau resulting from the enactment of DOMA, Census 2000 represents the most comprehensive source of data on same-gender partnered households to date, allowing demographers to analyze data at the national, state, city/town, and community levels.\*

Specific Census 2000 findings include:

- Same-gender couples live in 99.3% of all US counties.
- Same-gender couples are raising children in at least 96% of all US counties.
- Nearly one quarter of all same-gender couples are raising children.
- Nationwide, 34.3% of lesbian couples are raising children, and 22.3% of gay male couples are raising children (compared with 45.6% of married heterosexual and 43.1% of unmarried heterosexual couples raising children).
- Vermont has the largest aggregation of same gender-couples (~1% of all households) followed by California, Washington, Massachusetts, and Oregon.
- Regionally, the South has the highest percentage of same-gender couples who are parents; 36.1% of lesbian couples and 23.9% of gay couples in the South are raising children.
- The second highest percentage is seen in the Midwest, where 34.7% of lesbian couples and 22.9% of gay couples are parenting children.
- In the West, 33.1% of lesbian couples and 21.1% of gay couples are parents.
- In the Northeast, 32.6% of lesbian couples and 21.7% of gay couples are raising children.
- The states with the highest percentages of lesbian couples raising children are Mississippi (43.8%), South Dakota and Utah (42.3% each), and Texas (40.9%).

\* It is important to note that Census 2000 counted only same-gender unmarried partners and should not be interpreted as a count of either the entire gay, lesbian, and bisexual population or the whole same-gender partnered population of the United States because the Census survey did not include questions about sexual orientation, did not count single gay and lesbian people, and did not count gay and lesbian couples who do not cohabitate.

- The states with the highest percentages of gay male couples raising children are Alaska (36%), South Dakota (33%), Mississippi (31%), and Idaho and Utah (30% each).
- Six percent of same-gender couples are raising children who have been adopted compared with 5.1% of heterosexual married couples and 2.6% of unmarried heterosexual couples.†
- Eight percent of same-gender parents are raising children with special health care needs, compared with 8.3% of heterosexual unmarried parents and 5.8% of heterosexual married parents.
- Of same-gender partners raising children, 41.1% have been together for 5 years or longer, whereas 19.9% of heterosexual unmarried couples have stayed together for that duration.

It is difficult to determine exactly how many children are being raised by a gay or lesbian parent or parents because of many of the same factors that impact the determination of the number of same-gender couples. Estimates range between 1 and 10 million.<sup>5,6</sup> The majority of these children were born in the context of a heterosexual relationship. Two thirds of these children live in the 42 states in which second-parent adoption is specifically forbidden or not guaranteed by statute or court ruling.‡

## PUBLIC POLICIES REGARDING CHILDREN WITH GAY OR LESBIAN PARENTS

### Overview

Census 2000 and related demographic research make it clear that parenting by same-gender couples is an established and growing part of the diverse structure of families in the United States. Public policies that aim to promote family stability and security typically are established without consideration for same-gender parents and their children, and they place these families at a disadvantage, as they do heterosexual unmarried parents, single parents, and extended-family caregivers.

Public policy designed to promote the family as the basic building block of society has at its core the protec-

† Although adoption is commonly thought to be the only way that gays and lesbians become parents, there are many paths to parenthood. Some have biological children from past heterosexual marital and nonmarital relationships, and some pursue surrogacy arrangements or undergo in vitro fertilization or alternative insemination with donor sperm. Where allowed by law, some gay and lesbian people become foster parents, whereas others choose to adopt children through domestic and international, public and private arrangements.

‡ Eight states and the District of Columbia have approved second-parent adoption for lesbian and gay parents either by statute or state appellate court rulings, which means that it is granted in all counties statewide. These states include California (as a result of the state's 2001 domestic partner law), Connecticut, Illinois, Massachusetts, New Jersey, New York, Pennsylvania, and Vermont. Some lesbian and gay parents also have been granted second-parent adoptions in 18 other states. In some of these states, adoptions have been granted at the trial-court level, which means that, to date, they have been approved in certain counties only. In other states, there is anecdotal information about these adoptions being granted, although there is a lack of affirmative case law. These 18 states include Alabama, Alaska, Delaware, Hawaii, Indiana, Iowa, Louisiana, Maryland, Michigan, Minnesota, Nevada, New Hampshire, New Mexico, Ohio, Oregon, Rhode Island, Texas, and Washington.

tion of children's health and well-being. Children's well-being relies in large part on a complex blend of their own legal rights and the rights derived, under law, from their parents. Children of same-gender parents often experience economic, legal, and familial insecurity as a result of the absence of legal recognition of their bonds to their nonbiological parents. Current public-policy trends, with notable exceptions, favor limiting or prohibiting the availability of civil marriage and limiting rights and protections to same-gender couples.

Although some states and jurisdictions have recognized civil unions and domestic partnership arrangements, these legal constructs do not carry the same rights, benefits, and protections that are conferred by civil marriage. In 2004, the United States Government Accountability Office (formerly known as the General Accounting Office) identified a total of 1138 federal statutory provisions classified to the United States Code in which marital status is a factor in determining or receiving rights, benefits, and protections.<sup>7</sup> Only Massachusetts currently allows same-gender couples to marry. (See Table 1 for a comparison of civil marriage, civil union, and domestic partner laws.)

With the exception of the states and jurisdiction mentioned in Table 1 and a small number of counties and municipalities, same-gender couples and their children are not afforded legal recognition or protection under the law. In fact, public-policy makers at all levels of government have moved to enact legislation to prohibit any type of legal recognition of same-gender partnerships and parenting. In addition, state constitutional amendments prohibiting same-gender civil marriage, civil union, and domestic partnership have established de facto blanket prohibitions on prospective legislation favorable to same-gender couples and their children, thereby restricting their access to the political process itself.

## State Perspective: Marriage

### *DOMAs*

Since the enactment of the federal DOMA in 1996, 42 states have enacted similar laws. With the exception of the provision regarding public policy, all of the measures replicate the federal DOMA. These laws generally contain at least 1 of the following 4 provisions.<sup>§</sup>

<sup>§</sup> Ala Code §30-1-19; Alaska Stat §25.05.013; Ariz Rev Stat §25-101; Ark Code Ann §9-11-107, 109, 208, and 803; Calif Code §308.5; Colo Rev Stat §14-2-104; Del Code Ann §13-101; Fla Stat Ann §741.212; Ga Code Ann §19-3-3.1; Hawaii Rev Stat §572-3; Idaho Code §§32-202 and 209; Ill Comp Stat §750 5/201 and 5/212; Ind Code §31-11-1-1; Iowa Code §595.2; Kan Stat Ann §23-101; Ky Rev Stat Ann §§402.005, .020, and .045; La Civ Code Article 89 and 3520; Me Rev Stat Ann title 19A §701; Mich Stat Ann §§551.1 and .271; Minn Stat §517.01; Miss Code Ann §93-1-1; Mo Rev Stat §451.022; Mont Code Ann §40-1-401; Neb Const Article I §29; Nev Const Article I §21; NC Gen Stat §51-1.2; ND Cent Code §14-03-01; Okla Stat title 43 §3; Pa Cons Stat Ann 23 §1704; SC Code Ann §20-1-15; SD Codified Laws §§25-1-1 and 25-1-38; Tenn Code Ann §36-3-113; Tex Fam Code Ann §§2.001 and 3.401; Utah Code Ann §§30-1-2 and 30-1-4; Va Code Ann §20-45.2; Wash Rev Code §§26.04.010 and 26.04.020; WV Code §§48-1-7 and 48-1-18A.

1. Definition of marriage as a legal union between a man and a woman.
2. Prohibition of recognition of same-gender marriages that are granted in other states.
3. Declaration of same-gender marriage as a violation of public policy.
4. Definition of spouse as only a person of the opposite gender who is legally married as a wife or husband.
  - Alabama, Arkansas, Georgia, Kentucky, Michigan, Missouri, and Pennsylvania have laws that define marriage as a legal union between a man and woman, prohibit recognition of same-gender marriages granted by other states, and declare same-gender marriage to be a violation of the state's public policy. (Missouri's Supreme Court subsequently overturned the state's 1996 law, leading to a constitutional amendment banning same-gender marriage.)
  - Alaska, Florida, Indiana, Nebraska, South Dakota, and West Virginia define marriage as a legal union between a man and woman and prohibit recognition of same-gender marriages granted by other states.
  - Idaho, Louisiana, Montana, and South Carolina prohibit recognition of same-gender marriages granted by other states and declare same-gender marriages a violation of the state's public policy.
  - Colorado, Kansas, and Tennessee laws define marriage as a legal union between a man and a woman and declare same-gender marriage a violation of the state's public policy.
  - North Dakota law defines marriage as a legal union between a man and a woman, and spouse as only a person of the opposite gender who is legally married as a wife or husband. (Florida, North Dakota, and Texas are the only states that have adopted the federal DOMA definition of spouse as only a person of the opposite gender who is legally married as a wife or husband.)
  - Arizona, Delaware, Illinois, Maine, Mississippi, North Carolina, Oklahoma, Texas, Utah, and Virginia laws prohibit the recognition of same-gender marriages granted by other states.
  - California, Hawaii, Iowa, Minnesota, Nevada, and Washington laws define marriage as a legal union between a man and woman.

### *Additional Measures*

A number of states have taken other measures, not necessarily linked to the federal DOMA movement, to prohibit same-gender civil marriage.

**TABLE 1 Comparison of Civil Marriage, Civil Union, and Domestic Partnership Laws**

Type of Legally Binding Relationship	Portability	Federal Applicability	Availability	Benefits Provided
Civil marriage	Persons married in 1 state are considered married in all other states	Rights, benefits, and protections conferred to married couples	Available in all states to heterosexual couples	1138 federal benefits in the areas of Social Security, employment, health care, taxation, family leave, immigration and naturalization, trade, commerce and intellectual property, and the judicial system Federal benefits are not granted to same-gender couples married in Massachusetts because the federal government does not recognize this state law Numerous state-based benefits that vary by location
Civil union	Currently, Connecticut and Vermont are the only states with civil union laws; because of state DOMAs and other related laws, Connecticut's and Vermont's civil unions have not been recognized by other states	No federal rights, benefits, or protections	Available in Connecticut and Vermont to same-gender couples only	Both the Connecticut and Vermont civil union laws grant same-gender partners the same benefits, protections, and responsibilities under respective state law as are granted to spouses in a marriage
Domestic partnership	Because domestic partnership laws are generally state-, community-, or employer-specific, they are not thought to have portability beyond the partners' state, community, or place of employment	No federal rights, benefits, or protections	California, the District of Columbia, Hawaii, Maine, and New Jersey currently have domestic partnership laws that confer limited protections, such as hospital visitation and inheritance rights, to same-gender couples who register with the state Some states have recognized domestic partners of state employees, but a number of these have ended this recognition after passage of state DOMA laws and/or constitutional marriage amendments	The California domestic partnership law grants to unmarried couples most of the state spousal rights afforded to married couples The District of Columbia allows domestic partner registration, allowing partners to be legally recognized as family for the purposes of visitation in health care facilities; the law also grants a number of benefits to DC government employees and their domestic partners, including family/medical leave and health insurance coverage Hawaii, Maine, and New Jersey laws grant some state spousal rights to unmarried couples

Adapted from: National Gay and Lesbian Task Force. Ways to protect same-sex relationships: a comparison. Available at: [www.thetaskforce.org/downloads/MarriageDifferences.pdf](http://www.thetaskforce.org/downloads/MarriageDifferences.pdf). Accessed June 7, 2005.

- Before passage of the federal DOMA, Maryland, New Hampshire, and Wyoming enacted laws to prohibit same-gender civil marriage.
- An Ohio statute, replicated with a state constitutional amendment, prohibits same-gender civil marriages, civil unions, and domestic partnerships.
- In 1971, the Wisconsin Supreme Court issued a ruling that only heterosexual marriages are legal.
- In 2000, the Vermont High Court allowed the legislature to enact a statute prohibiting same-gender civil marriage, providing it also enact a law allowing civil unions for same-gender couples.

On November 18, 2003, the Massachusetts Supreme Judicial Court ruled that prohibiting same-gender couples from civil marriage violated the state's constitution. After the ruling, the state senate requested from the court an advisory opinion on the constitutionality of a proposed law that would ban same-gender civil marriage but would create civil unions as a parallel institution with all the same state benefits, protections, rights, and responsibilities as civil marriage. On February 4, 2004, the court answered, "segregating same-sex unions from opposite-sex unions cannot possibly be held rationally to advance or preserve" the governmental aim of encouraging "stable adult relationships for the good of the individual and of the community, especially its children." As a result of the ruling, Massachusetts began issuing marriage licenses to same-gender couples on May 20, 2004. It is important to note that the Massachusetts marriage law is not recognized by the federal government and does not entitle same-gender married couples to any federal rights, benefits, or protections.

A small number of states have recently considered legislation to legalize same-gender civil marriages and domestic partnerships.

- In 2005 the California legislature became the first in the country to pass a bill that would legalize same-gender civil marriage. However, Governor Arnold Schwarzenegger vetoed the measure, noting that he preferred that the state supreme court decide the matter rather than legislators.
- Maryland Governor Robert Ehrlich, Jr vetoed a domestic partnership registry approved by the state legislature in 2005.
- Also in 2005, bills allowing for same-gender civil marriage were introduced in Maine and Rhode Island; however, they did not advance.

#### *Constitutional Amendments*

To date, 19 states have amended their constitutions to prohibit civil marriage by persons of the same gender. A number of these states already had enacted DOMA-like laws. Efforts to amend the constitutions of these states

were undertaken in an effort to prohibit judges from overturning these statutory bans on the grounds that they violate state constitutions.

- In Alaska, Hawaii, Mississippi, Missouri, Montana, Nevada, and Oregon, civil marriage for same-gender couples is prohibited by the state constitutions.
- Constitutional amendments banning same-gender civil marriage, civil unions, and domestic partnerships and related benefits have been adopted in Arkansas, Georgia, Kansas, Kentucky, Louisiana, Michigan, Nebraska, North Dakota, Ohio, Oklahoma, Texas, and Utah. Some of these constitutional amendments also ban civil unions and domestic partnerships and related benefits for opposite-gender couples. A federal judge struck down Nebraska's amendment in 2005.

States continue to consider constitutional amendments to prohibit same-gender civil marriage and other legal forms of relationship recognition.

- Amendments to ban same-gender civil marriage in Alabama, South Carolina, South Dakota, and Tennessee await consideration by the voters of those states during the 2006 elections.
- In early 2006, the Virginia legislature approved a measure to amend the state's 230-year-old bill of rights to prohibit same-gender civil marriage, thereby ensuring its position on the November 2006 ballot. Amendment bills await second votes by lawmakers in Washington in 2006 and Indiana in 2007.
- In March 2006, the New Hampshire House of Representatives voted 201 to 125 to defeat a proposal to amend the state's bill of rights with a constitutional ban on same-gender civil marriage.
- Efforts are underway in Arizona, California, and Florida to add amendments banning same-gender civil marriage to their respective ballots.

Legal challenges, interpretation questions, and scope of applicability of the amendments signal a growing trend in the public-policy arena.

On May 12, 2005, a federal judge struck down Nebraska's constitutional ban on same-gender civil marriage. Judge Joseph F. Bataillon ruled that the ban violated the US Constitution because it went "far beyond merely defining marriage as between a man and a woman," noting that the "broad proscriptions could also interfere with or prevent arrangements between potential adoptive or foster parents and children, related persons living together, and people sharing custody of children as well as gay individuals." The ruling also stated that the amendment "imposes significant burdens on both the expressive and intimate associational rights" of gay men and lesbians "and creates a significant barrier to the plaintiff's right to petition or to participate in the

political process.”<sup>8</sup> Judge Bataillon’s ruling has been touted by opponents of same-gender civil marriage as an example of the need for a federal amendment to prohibit civil marriage, civil union, and domestic partnership for gays and lesbians. Plans to appeal the ruling to the 8th Circuit US Court of Appeals are underway.

In April 2005, Michigan’s Attorney General Mike Cox issued a binding opinion instructing local governments, government entities, and public employers (such as school boards and university systems) to cease providing benefits for same-gender partners in future contracts in compliance with the state’s 2004 marriage amendment.<sup>9</sup> A suit filed against the state based on this interpretation resulted in Ingham County Circuit Judge Joyce Dragan-chuk’s September 2005 ruling that the purpose of a 2004 constitutional amendment was to ban gay marriage and civil unions, not to keep public employers from offering benefits to gay employees.<sup>10</sup> The ruling is currently under appeal.

Ohio’s 2004 marriage amendment, regarded as the most restrictive in the nation, reads, “Only a union between one man and one woman may be a marriage valid in or recognized by this state and its political subdivisions. This state and its political subdivisions shall not create or recognize a legal status for relationships of unmarried individuals that intends to approximate the design, qualities, significance or effect of marriage.” As a result, judges around the state have dismissed or reduced charges in domestic violence cases, because Ohio’s domestic violence law recognizes the relationship between an unmarried offender and victim as one “approximating the significance or effect of marriage,” thereby representing a direct conflict with the amendment’s prohibition against such recognition, thus rendering it unenforceable.<sup>11</sup>

In January 2006, Baltimore Circuit Court Judge Brooke Murdock ruled that denying same-gender couples the protections afforded heterosexual married couples is a violation of the Equal Rights Amendment of the Maryland Constitution, which protects against discrimination based on sex. The suit before Judge Murdock was filed against court clerks in several Maryland jurisdictions for the refusal to issue civil marriage licenses to same-gender couples. The ruling stated in part, “When tradition is the guise under which prejudice or animosity hides, it is not a legitimate state interest.” Judge Murdock further noted, “The Court is not unaware of the dramatic impact of its ruling, but it must not shy away from deciding significant legal issues when fairly presented to it for judicial determination. As others assessing the constitutionality of preventing same-sex marriage note, justifying the continued application of a classification through its past application is ‘circular reasoning, not analysis,’ and that it is not persuasive.”<sup>12</sup> The case will likely be appealed to the Court of Special Ap-

peals (the state’s intermediate appellate court) or the Court of Appeals (Maryland’s highest court).

The Maryland ruling resulted in a call from Governor Robert Ehrlich, Jr for state lawmakers to pass a proposed marriage-ban amendment. A bill seeking to send a state constitutional amendment banning same-gender civil marriage to the voters was stopped in the legislature a short time thereafter, with vows from the sponsor to revive the measure before the session adjournment.

The state supreme courts of Alaska<sup>13</sup> and Montana<sup>14</sup> have ruled that the domestic partners of gay and lesbian civil employees must be granted the same benefits as the spouses of married heterosexual employees. The decision in Alaska has prompted a move by Governor Murkowski to seek a constitutional amendment aimed at repealing the decision.

Other legal challenges to laws and policies prohibiting same-gender civil marriage are pending in courts in California, Connecticut, New Jersey, New York, and Washington.

#### **State Perspective: Adoption**

Two terms are used, often interchangeably, although they have different meanings, to describe the legal procedures by which same-gender couples adopt children. Coparent adoption is a legal process that allows both parents to adopt a child at the same time. Second-parent adoption is a process whereby the partner of the biological or primary adoptive parent is allowed to adopt at a later time.

Although gay and lesbian adults in many states have adopted children, county-level judges ultimately make final adoption decisions, and their opinions vary. Some judges have been open to second-parent public adoptions but not to agency-based adoptions.

Gay and lesbian parents have adopted children at least within certain counties of Alaska, California, Colorado, Connecticut, Delaware, District of Columbia, Illinois, Maryland, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New Mexico, New York, Ohio, Oregon, Pennsylvania, Rhode Island, Tennessee, Vermont, Washington, and Wisconsin.

- Coparent adoption is recognized by statute in California, Connecticut, and Vermont. Appellate courts have ruled that state adoption laws permit second-parent adoption in California, District of Columbia, Illinois, Indiana, Massachusetts, New Jersey, New York, and Pennsylvania. The California decision was affirmed by the state supreme court.
- Florida law explicitly prohibits adoption by gay and lesbian individuals and, by extension, same-gender couples.
- Mississippi prohibits same-gender couples from adoption and second-parent adoption.

- Oklahoma law prohibits the state, its agencies, and courts from recognizing an adoption by more than 1 individual of the same gender from any other state or foreign jurisdiction.
- Utah forbids foster parenting and adoption by any unmarried cohabiting couple, thereby excluding all same-gender couples.
- State court rulings in Colorado, Nebraska, Ohio, and Wisconsin have not permitted second-parent adoption by same-gender individuals.
- Foster parenting by gay and lesbian individuals and/or same-gender couples is prohibited in at least 3 states: Arkansas, Nebraska, and Utah. In December 2004, an Arkansas court declared unconstitutional the state's regulation prohibiting gay and lesbian foster parenting. The decision is currently under appeal.
- Although not expressly forbidden by statute or regulation, gay and lesbian individuals have been denied the ability to apply for foster parenting as a result of unwritten administrative policies of some state agencies. In February 2006, such a policy was overturned in Missouri by a state judge, thereby ordering the state to issue a foster parent license to individuals who pass the necessary requirements regardless of sexual orientation.

In early 2006, efforts were underway in at least 16 states (Alabama, Alaska, Arizona, Georgia, Indiana, Kansas, Kentucky, Michigan, Missouri, Ohio, Oregon, Pennsylvania, Tennessee, Utah, Vermont, and West Virginia) to introduce constitutional amendments prohibiting gay and lesbian individuals and couples from fostering or adopting children.

## Federal Perspective

### *Federal DOMA*

In 1996, the US Congress enacted the DOMA. The act prohibits federal recognition of same-gender civil marriage and allows states to do the same. As noted above, since 1996, many states have enacted related measures. States have traditionally recognized marriages granted in other states, even those that may not be in compliance with the marriage laws of that particular state, because of the "full faith and credit" clause<sup>||</sup> of the US Constitution. This clause is primarily intended to provide for the continuity between states and enforcement across state lines of nonfederal laws, civil claims, and court rulings.

### *Constitutional Amendment Proposals*

Civil marriage has traditionally been viewed as a matter of state concern and regulation in the United States. The

<sup>||</sup> Section 1 of Article 4 of the US Constitution reads, "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

Constitution does not mention marriage at any point. However, in 2003, proposals to prohibit same-gender civil marriage by amending the Constitution were introduced into Congress by Representative Marilyn Musgrave (R-CO) and Senator Wayne Allard (R-CO). In 2004, the Senate measure was killed after a procedural vote to move the measure to the Senate floor for final consideration failed, 48 to 50 (12 short of the 60 votes required by Senate rules). Despite the measure's defeat in the Senate, the House of Representatives also scheduled a vote. The vote tally, 227 for and 186 against, fell short of the 290 votes needed for approval.

Legislators and public-policy makers have come to recognize pediatricians as credible and independent sources of expertise on matters of child well-being and family life. During the 2004 hearings on this measure, individual pediatricians provided testimony focusing on the well-being of children of same-gender parents and on the potential benefits of civil marriage for these families.<sup>15,16</sup>

In 2005, 2 Senate joint resolutions<sup>17</sup> and 1 House joint resolution<sup>18</sup> were introduced. All 3 measures would establish a new amendment to the US Constitution, often referred to as the "federal marriage amendment," that defines marriage as the union of 1 man and 1 woman, thereby prohibiting same-gender couples from marrying. President George W. Bush has frequently stated his support for such an amendment.

Hearings on these bills have been held. Two pediatricians were invited to testify before the US Senate Judiciary Committee Subcommittee on the Constitution, Civil Rights, and Property Rights on the matter of same-gender couples, gay and lesbian parents, their children, and the related rights, benefits, and protections of civil marriage.<sup>19,20</sup>

In early 2006, Senate Majority Leader Bill Frist, MD (R-TN), and Senator Rick Santorum (R-PA) announced their intentions to bring the same-gender civil marriage ban amendment to the floor for a vote by the full Senate. The House Republican leadership also signaled the likelihood of a vote on that matter in the lower chamber.

An amendment to the US Constitution requires a two thirds vote of approval by the US House and Senate and ratification by three quarters of the states for passage.

## EFFECTS OF PUBLIC POLICIES ON SAME-GENDER COUPLES AND THEIR CHILDREN

### Legal and Financial Effects

Civil marriage is a legal status through which societal recognition and support are given to couples and families. It provides a context for legal, financial, and psychosocial well-being, an endorsement of interdependent care, and a form of public acknowledgment and respect for personal bonds. Opponents of same-gender civil marriage often suggest that the legal recognition afforded by



civil marriage for same-gender couples is unnecessary, noting that all of the rights and protections that are needed can be obtained by drawing up legal agreements with an attorney. In reality, same-gender partners can secure only a small number of very basic agreements, such as power of attorney, naming the survivor in one's will (at the risk of paying an inheritance tax, which does not apply to heterosexual married couples), and protecting assets in a trust. Even these agreements, however, represent only the "best guesses" of the legal community and may not withstand challenges from extended family members of the couple. Such challenges are not rare given the lack of societal understanding and acceptance of homosexuality and same-gender partnerships. Moreover, legal agreements cannot win for the couple and their children access to the rights, benefits, and protections afforded by the federal and state governments to heterosexual married couples.

As noted earlier, the Government Accountability Office has identified a total of 1138 federal statutory provisions classified to the US Code in which marital status is a factor in determining or receiving rights, benefits, and protections.<sup>7</sup> In addition, there are numerous state-based programs, benefits, rights, and protections that are based on marital status.

For same-gender couples and their children, enactment of marriage amendments halts the possibility of obtaining many legal and financial rights, benefits, and protections such as:

- legal recognition of the couple's commitment to and responsibility for one another;
- legal recognition of joint parenting rights when a child is born or adopted;
- legal recognition of a child's relationship to both parents;
- joint or coparent adoption (in most states);
- second-parent adoption (in most states);
- foster parenting (in some states);
- eligibility for public housing and housing subsidies;
- ability to own a home as "tenants by the entirety" (ie, a special kind of property ownership for married couples through which both spouses have the right to enjoy the entire property, and when one spouse dies, the surviving spouse gets title to the property [in some states]);
- protection of marital home from creditors (in some states);
- automatic financial decision-making authority on behalf of one's partner;
- access to employer-based health insurance and other benefits for nonbiological/not-jointly-adopted children (considered a taxable benefit for same-gender

couples by the Internal Revenue Service, which is not the case for married heterosexual couples);

- access to spouse benefits under Medicare and certain Medicaid benefits (spouses are considered essential to individuals receiving Medicaid benefits and, therefore, are eligible for medical assistance themselves; family coverage programs would deny coverage to same-gender partners and nonbiological/not-jointly-adopted children);
- ability to enroll nonbiological/not-jointly-adopted children in public and medical assistance programs;
- ability of both parents to consent to medical care or authorize emergency medical treatment for nonbiological/not-jointly-adopted children;
- ability to make medical decisions for an incapacitated or ailing partner;
- recognition as next of kin for the purpose of visiting partner or nonbiological/not-jointly-adopted child in hospitals or other facilities;
- ability to take advantage of the federal Family Medical Leave Act to care for a sick partner or nonbiological/not-jointly-adopted children;
- ability to obtain life insurance (because of findings of no insurable interest in one's partner or nonbiological/not-jointly-adopted child);
- ability to obtain joint homeowner and automobile insurance policies and take advantage of family discounts;
- recognition as an authority in educational settings to register a child for school, be involved in a child's education plan, and provide consent on waivers and sign permission forms;
- ability to travel with a child if it will require proof of being a legal parent;
- access to spousal benefits of worker's compensation;
- ability to file joint income tax returns and take advantage of family-related deductions;
- privilege afforded to married heterosexual couples that protects one spouse from testifying against another in court;
- immigration and residency privileges for partners and children from other countries;
- protections and compensation for families of crime victims (state and federal programs);
- access to the courts for a legally structured means of dissolution of the relationship (divorce is not recognized because marriage is not recognized);
- visitation rights and/or custody of children after the dissolution of a partnership;

- children's rights to financial support from and ongoing relationships with both parents should the partnership be dissolved;
- legal standing of one partner if a child is removed from the legal/adoptive parent and home by child protective services;
- domestic violence protections such as restraining orders;
- automatic, tax- and penalty-free inheritance from a deceased partner or parent of shared assets, property, or personal items by the surviving partner and non-biological/not-jointly-adopted children;
- children's right to maintain a relationship with a non-biological/not-jointly-adopting parent in the event of the death of the other parent;
- surviving parent's right to maintain custody of and care for nonbiological/not-jointly-adopted children;
- Social Security survivor benefits for a surviving partner and children after the death of one partner;
- exemptions from property tax increases in the event of the death of a partner (offered in some states to surviving spouses);
- automatic access to pensions and other retirement accounts by surviving partner;
- access to deceased partner's veteran's benefits;
- ability to roll deceased partner's 401(k) funds into an individual retirement account without paying up to 70% of it in taxes and penalties; and
- right to sue for wrongful death of a deceased partner.

The Congressional Budget Office (CBO) determined in 2004 that allowing civil marriage for same-gender couples would have a positive effect on the federal budget.<sup>21</sup> The CBO found that allowing same-gender couples to marry would increase federal income tax revenues by \$400 million annually to the end of 2010, resulting largely from the "marriage penalty tax." Although Social Security payments and spending on insurance coverage for partners of federal workers would rise over time, other expenditures such as Medicaid and Supplemental Security Income would decrease. The net result would be a savings of nearly \$1 billion per year. The Williams Institute, a think tank at the University of California Los Angeles School of Law, had similar findings on the federal budget and for several state budgets.<sup>22</sup>

### Psychosocial Effects

Because of the complex nature of the issues involved in this sociopolitical debate, psychosocial effects can be multifaceted. These effects can be observed at the personal, couple, parental, child, family, and even community levels.

As children, many gay and lesbian persons experience considerable isolation, peer rejection, ridicule, harassment, and/or depression at some time. At least 47% of gay and lesbian teens have seriously considered suicide, and 36% have actually attempted suicide.<sup>23</sup> They may experience rejection by their families, homelessness, maltreatment in school, and violence. As adults, gay and lesbian people continue to experience social marginalization, discrimination, and hate-crime violence.

Nationwide political and religious debate over same-gender marriage has intensified an already unstable climate for gay men and lesbians in our society. The lack of societal tolerance, acceptance, and support that gay and lesbian individuals, couples, and their children experience can and does affect their psychosocial and physical health and safety.

Indeed, the US Department of Justice, in its 1997 publication *A Policymaker's Guide to Hate Crimes*, noted that "[a] host of factors may create a climate in which people, motivated by their biases, take criminal action. Such factors include poor or uncertain economic conditions, racial stereotypes in films and on television, hate-filled discourse on talk shows or in political advertisements, the use of racial code language such as 'welfare mothers' and 'inner city thugs,' and an individual's personal experiences with members of particular minority groups."<sup>24</sup>

Similarly, children whose parents are of the same gender may experience social marginalization and become the objects of ridicule and harassment by other children and adults who do not understand or who disapprove of gay and lesbian parenting. Children experiencing this type of treatment may not know how to seek, or where to find, support. Although same-gender couples are raising children in 96% of all the counties in the United States, support services and trusted individuals are not available in all of these areas. Efforts to prohibit the establishment of student groups known as "gay-straight alliances" in various school districts and states may serve to worsen this situation.

### PSYCHOSOCIAL CHARACTERISTICS OF GAY AND LESBIAN PARENTS AND THEIR CHILDREN

Most children who have 1 or 2 gay or lesbian parents were born in the context of a heterosexual relationship. That relationship may still exist or may have been dissolved; if the latter, either or both partners may have found new partners of the same or different gender. More and more gay and lesbian adults are bringing children into long-term partnerships through adoption, alternative insemination, and surrogacy. Donors and surrogates may be anonymous or involved with the child and family to a greater or lesser degree.

### Parenting Attitudes and Behavior, Personality, and Adjustment of Parents

Discriminatory practices are based on the assumption that lesbian mothers and gay fathers are different from heterosexual parents in ways that are detrimental to their children's well-being. However, few differences have been found in research conducted over the last 3 decades comparing lesbian and heterosexual mothers' self-esteem, psychological adjustment, and attitudes toward child rearing.<sup>25,26</sup> Lesbian mothers fall within the range of normal psychological functioning on interviews and psychological assessments, and report scores on standardized measures of self-esteem, anxiety, depression, and parenting stress indistinguishable from those reported by heterosexual mothers.<sup>27</sup>

Lesbian mothers strongly endorse child-centered attitudes and commitment to their maternal roles<sup>28</sup> and have been shown to be more concerned with providing male role models for their children than are divorced heterosexual mothers.<sup>29</sup> Lesbian and heterosexual mothers describe themselves similarly in marital and maternal interests, current lifestyles, and child-rearing practices.<sup>29</sup> They report similar role conflicts, social support networks, and coping strategies.<sup>30,31</sup>

Empirical evidence reveals that gay fathers have substantial evidence of nurturance and investment in their paternal role and no differences from heterosexual fathers in providing appropriate recreation or encouraging autonomy. Gay fathers have been described to adhere to strict disciplinary guidelines, to place an emphasis on guidance and the development of cognitive skills, and to be involved in their children's activities.<sup>32,33</sup> Overall, there are more similarities than differences in the parenting styles and attitudes of gay and nongay fathers.<sup>34,35</sup>

### Children's Emotional and Social Development

Because most children whose parents are gay or lesbian have experienced the divorce of their biological parents, their subsequent psychological development has to be understood in that context. Whether they are subsequently raised by 1 or 2 separated parents and whether a stepparent has joined either of the biological parents are important factors for children that have rarely been addressed in research assessing psychological outcomes for these children. Similarly missing is an analysis of the role of the divorced "noncustodial" parent in the child's life.

The considerable research literature that has accumulated addressing this issue has generally revealed that children of divorced lesbian mothers grow up in ways that are very similar to children of divorced heterosexual mothers. Several studies comparing children who have a lesbian mother with children who have a heterosexual mother have failed to document any differences between such groups on personality measures, measures of peer-group relationships, self-esteem, behavioral diffi-

culties, academic success, or warmth and quality of family relationships.<sup>26,28,30,36-38</sup> Children's self-esteem has been shown to be higher among adolescents whose mothers (of any sexual orientation) were in a new partnered relationship after divorce, compared with those whose mothers remained single, and among those who found out at a younger age that their parent was homosexual, compared with those who found out when they were older.

Concern has been raised that social stigmatization might lead to teasing and embarrassment for children about their parent's sexual orientation or their family constellation and restrict their ability to form and maintain friendships. Adult children of divorced lesbian mothers have recalled more teasing by peers during childhood than have adult children of divorced heterosexual parents.<sup>39</sup> In general, children whose parents are gay or lesbian have been found to have normal relationships with childhood peers and to maintain social relationships appropriate for their developmental levels.<sup>23,27,36</sup>

Children born to and raised by lesbian couples seem to develop in ways that are indistinguishable from children raised by heterosexual parents. Ratings by their mothers and teachers have demonstrated children's social competence and the prevalence of behavioral difficulties to be comparable with population norms.<sup>25,40</sup> In fact, growing up with parents who are lesbian or gay may confer some advantages to children. They have been described as more tolerant of diversity and more nurturing toward younger children than children whose parents are heterosexual.<sup>41,42</sup>

In one study, children of heterosexual parents saw themselves as being somewhat more aggressive than did children of lesbian parents, and they were seen by parents and teachers as more bossy, negative, and domineering. Children of lesbian parents saw themselves as more lovable and were seen by parents and teachers as more affectionate, responsive, and protective of younger children, compared with children of heterosexual parents.<sup>30</sup> In another investigation, children of lesbian parents reported their self-esteem to be similar to that of children of heterosexual parents and saw themselves as similar in aggressiveness and sociability.<sup>31</sup>

Early studies that attempted to evaluate the well-being of children whose parents are gay or lesbian encountered predictable challenges in sample selection, sample size, investigator bias, and measurement.

Recent investigations have attempted to overcome some of these challenges and clarify some factors that promote optimal well-being of this growing population of children. The adjustment of children who have 2 mothers seems to be related to their parents' satisfaction with their relationship and specifically with the division of responsibility they have worked out with regard to child care and household chores.<sup>43</sup> Children with lesbian

parents who reported greater relationship satisfaction, more egalitarian division of household and paid labor,<sup>44</sup> and more regular contact with grandparents and other relatives<sup>45</sup> were rated by parents and teachers to be better adjusted and to have fewer behavioral problems. These findings are consistent with general knowledge among students of child development, namely that greater stability and nurturance within a family system predicts greater security and fewer behavioral problems among children.

Recent publications from 2 population-based samples lend additional strength to earlier evidence demonstrating that children's well-being is not threatened as a result of growing up with lesbian parents.<sup>46,47</sup> The importance of these studies is that the research was planned and conducted by people who had no particular interest or investment in research regarding same-gender parents. In both cases the investigations regarding lesbian parents and their children were posthoc analyses; thus, neither the sample nor the methods were influenced by a bias in support of gay parents.

The first of these community-based studies was based on data from a cohort study of 14 000 mothers of children born within a particular county in England during 1 year. The study examined the quality of parent-child relationships and socioemotional and gender development in a community sample of 5–7-year-old children with lesbian mothers. Thirty-nine lesbian mother families were compared with 74 two-parent heterosexual families and 60 families headed by single heterosexual mothers.<sup>46</sup> No differences were found in maternal warmth, emotional involvement, enjoyment of motherhood, frequency of conflicts, supervision of the child, abnormal behaviors reported by parents or teachers in the child, children's self-esteem, or psychiatric disorders.

In the same study, parents who raised children alone reported greater stress, increased severity of parent-child conflicts, and less warmth, enjoyment of parenting, and imaginative play than did parents in a couple relationship, whether lesbian or heterosexual. Teachers reported more behavioral problems among children in single-parent families than among children who had 2 parents in the home irrespective of their sexual orientation.<sup>46</sup>

The second study used data from the National Longitudinal Study of Adolescent Health, a randomly selected, nationally representative sample of 12 105 US adolescents in grades 7 through 12. The authors demonstrated that 12- to 18-year-olds living with 2 women in a "marriage-like" family arrangement ( $n = 44$ ) were similar to peers whose parents were heterosexual in measures of self-esteem, depression, anxiety, school "connectedness," and school success. Overall, adolescents reported positive family relationships, including parental warmth, care from others, personal autonomy, and neighborhood integration, and there were no systematic differences

between the same-gender and opposite-gender parent families.<sup>47</sup>

Research exploring the diversity of parental relationships among gay and lesbian partners is just beginning. The legalization of same-gender marriage in Massachusetts in 2004 offers the first true opportunity to study how same-gender marriage affects family life and child development. In addition to the findings discussed above, current research on same-gender couples who have been able to jointly adopt and establish legal ties between children and both parents suggests that legal recognition of same-gender marriage may strengthen ties between partners, their children, and their extended families.<sup>48,49</sup>

### Children's Gender Identity and Sexual Orientation

The gender identity of preadolescent children raised by lesbian mothers has been found consistently to be in line with their biological gender. None of >500 children studied have shown evidence of gender-identity confusion, wished to be the other gender, or consistently engaged in cross-gender behavior. No differences have been found in the toy, game, activity, dress, or friendship preferences of boys or girls who had lesbian mothers, compared with those who had heterosexual mothers.<sup>31,34,50–52</sup>

Compared with young adults who had heterosexual mothers, men and women who had lesbian mothers were slightly more likely to consider the possibility of having a same-gender partner,<sup>36</sup> but in each group similar proportions of adult men and women identified themselves as homosexual. Another study reports no significant differences in gender development for either boys or girls according to the mother's sexual orientation.<sup>34,53</sup> Using data from a national sample of adolescents, no difference was found on the basis of whether the parents were the same or different genders in the proportion of adolescents who reported having had sexual intercourse, nor was a difference found in the number who reported having a "romantic relationship" within the past 18 months. So few adolescents in either group reported same-gender attractions or same-gender romantic relationships that a statistical comparison was not possible.<sup>47</sup> A long-term follow-up of adolescents raised by single lesbian mothers after divorce revealed similarly that their gender-role orientation (level of masculinity or femininity) was similar to those who were raised by a single heterosexual mother after divorce or by a heterosexual couple. Boys from single heterosexual mother and lesbian mother families scored higher on the scale of femininity, but they did not differ on the score of masculinity.<sup>54</sup>

There are scant data about the gender identity of adult children of gay fathers. In the most extensive study available, 9% of sons of gay fathers identified as bisexual or homosexual in orientation.<sup>23,50</sup>

## COMMENTARY

In all its work, the AAP is committed to calling attention to the inextricable link between the health and well-being of all children, the support and encouragement of all parents, and the protection of strong family relationships. This analysis was prepared to bring to light the legal, financial, and psychosocial ramifications of recent and proposed public-policy initiatives affecting same-gender parents and their children.

Civil marriage is a legal status that promotes healthy families by conferring a powerful set of rights, benefits, and protections that cannot be obtained by other means. Civil marriage can help foster financial and legal security, psychosocial stability, and an augmented sense of societal acceptance and support. Legal recognition of a spouse can increase the ability of adult couples to provide and care for one another and fosters a nurturing and secure environment for their children. Children who are raised by civilly married parents benefit from the legal status granted to their parents.

Gay and lesbian people have been raising children for many years and will continue to do so in the future; the issue is whether these children will be raised by parents who have the rights, benefits, and protections of civil marriage. Same-gender couples are denied the right to civil marriage in every state except Massachusetts and the right to civil union except in Connecticut and Vermont. The federal government and other state governments do not recognize those civil marriages and civil unions.

There is ample evidence to show that children raised by same-gender parents fare as well as those raised by heterosexual parents. More than 25 years of research have documented that there is no relationship between parents' sexual orientation and any measure of a child's emotional, psychosocial, and behavioral adjustment. These data have demonstrated no risk to children as a result of growing up in a family with 1 or more gay parents. Conscientious and nurturing adults, whether they are men or women, heterosexual or homosexual, can be excellent parents. The rights, benefits, and protections of civil marriage can further strengthen these families.

## AAP POLICIES AND RESOURCES

The AAP issued its first statement on homosexuality and adolescents in 1983. Since that time, other AAP publications and resources have been developed that enable pediatricians and other professionals, as well as parents and their children, to understand, address, and support the needs of youth of differing sexual orientations.

### Coparent or Second-Parent Adoption by Same-Sex Parents

Policy Statement

Committee on Psychosocial Aspects of Child and Family Health

*Pediatrics*. 2002;109:339–340

Available at: <http://aappolicy.aappublications.org/cgi/content/full/pediatrics%3b109/2/339>

Abstract: Children who are born to or adopted by 1 member of a same-sex couple deserve the security of 2 legally recognized parents. Therefore, the American Academy of Pediatrics supports legislative and legal efforts to provide the possibility of adoption of the child by the second parent or coparent in these families.

### Coparent or Second-Parent Adoption by Same-Sex Parents

Technical Report

Perrin EC; Committee on Psychosocial Aspects of Child and Family Health

*Pediatrics*. 2002;109:341–344

Available at: [www.pediatrics.org/cgi/content/full/109/2/341](http://www.pediatrics.org/cgi/content/full/109/2/341)

Abstract: A growing body of scientific literature demonstrates that children who grow up with 1 or 2 gay and/or lesbian parents fare as well in emotional, cognitive, social, and sexual functioning as do children whose parents are heterosexual. Children's optimal development seems to be influenced more by the nature of the relationships and interactions within the family unit than by the particular structural form it takes.

### Sexual Orientation and Adolescents

Clinical Report

Frankowski BL; Committee on Adolescence

*Pediatrics*. 2004;113:1827–1832

Available at: [www.pediatrics.org/cgi/content/full/113/6/1827](http://www.pediatrics.org/cgi/content/full/113/6/1827)

Abstract: The American Academy of Pediatrics issued its first statement on homosexuality and adolescents in 1983, with a revision in 1993. This report reflects the growing understanding of youth of differing sexual orientations. Young people are recognizing their sexual orientation earlier than in the past, making this a topic of importance to pediatricians. Pediatricians should be aware that some youths in their care may have concerns about their sexual orientation or that of siblings, friends, parents, relatives, or others. Health care professionals should provide factual, current, nonjudgmental information in a confidential manner. All youths, including those who know or wonder whether they are not heterosexual, may seek information from physicians about sexual orientation, sexually transmitted diseases, substance abuse, or various psychosocial difficulties. The pediatrician should be attentive to various potential psychosocial difficulties, offer counseling or refer for counseling when necessary and ensure that every sexually active youth receives a thorough medical history, physical examination, immunizations, appropriate laboratory tests, and counseling about sexually transmitted diseases (including human immunodeficiency virus infection) and appropriate treatment if necessary.

### **Gay, Lesbian, and Bisexual Teens: Facts for Teens and Their Parents**

Patient Education Brochure

Sponsoring Committee: Committee on Adolescence  
2001

Available at: [www.aap.org/bst/showdetl.cfm?&DID=15&Product\\_ID=3823](http://www.aap.org/bst/showdetl.cfm?&DID=15&Product_ID=3823)

### **Gay, Lesbian or Bisexual Parents: Information for Children and Parents**

Patient Education Brochure

Sponsoring Committee: Committee on Practice and Ambulatory Medicine  
2005

Available at: [www.aap.org/bst/showdetl.cfm?&DID=15&Product\\_ID=4133](http://www.aap.org/bst/showdetl.cfm?&DID=15&Product_ID=4133)

### **Available Technical Assistance**

Committee on Adolescence (COA)

Committee on Early Childhood, Adoption, and Dependent Care (COECADC)

Committee on Federal Government Affairs (COFGA)

Committee on Practice and Ambulatory Medicine (COPAM)

Committee on Psychosocial Aspects of Child and Family Health (COPACFH)

Committee on State Government Affairs (COSGA)

Section on Adoption and Foster Care (SOAFC)

Department of Federal Affairs

Division of Developmental Pediatrics and Preventive Services

Division of Health Care Finance and Practice

Division of State Government Affairs

### **RELATED PROFESSIONAL ORGANIZATION STATEMENTS AND POLICIES**

The AAP is not alone in supporting the right of every child and family to the legal, financial, and psychosocial security that results from having legally recognized parents who are committed to each other and to the welfare of their children.

The American Academy of Family Physicians' Congress of Delegates agreed to "establish policy and be supportive of legislation which promotes a safe and nurturing environment, including psychological and legal security, for all children, including those of adoptive parents, regardless of the parents' sexual orientation."<sup>55</sup>

The American Psychological Association (APA) adopted resolutions stating that "the APA believes that it is unfair and discriminatory to deny same-sex couples legal access to civil marriage and to all its attendant benefits, rights, and privileges . . . and shall take a leadership role in opposing all discrimination in legal benefits, rights, and privileges against same-sex couples."<sup>56,57</sup>

"The APA opposes any discrimination based on sexual

orientation in matters of adoption, child custody and visitation, foster care, and reproductive health services; believes that children raised by a same-sex couple benefit from legal ties to each parent; supports the protection of parent-child relationships through the legalization of joint adoptions and second parent adoptions of children being raised by same-sex couples; and shall take a leadership role in opposing all discrimination based on sexual orientation in matters of adoption, child custody and visitation, foster care, and reproductive health services."<sup>56,57</sup>

The American Psychoanalytic Association position states, "Accumulated evidence suggests the best interest of the child requires attachment to committed, nurturing and competent parents. Evaluation of an individual or couple for these parental qualities should be determined without prejudice regarding sexual orientation. Gay and lesbian individuals and couples are capable of meeting the best interest of the child and should be afforded the same rights and should accept the same responsibilities as heterosexual parents."<sup>58</sup>

The National Association of Social Workers (NASW) "encourages the adoption of laws that recognize inheritance, insurance, same-sex marriage, child custody, property, and other relationship rights for lesbians, gay, and bisexual people. NASW supports the adoption of local, state, federal and international policies/legislation that protect the rights and well-being of the children of lesbian, gay, and bisexual people."<sup>59</sup>

Related policy from the American Academy of Child and Adolescent Psychiatry (AACAP) states, "The basis on which all decisions relating to custody and parental rights should rest [is] on the best interest of the child. Lesbian, gay, and bisexual individuals historically have faced more rigorous scrutiny than heterosexuals regarding their rights to be or become parents. There is no evidence to suggest or support that parents with a gay, lesbian, or bisexual orientation are per se different from or deficient in parenting skills, child-centered concerns and parent-child attachments, when compared with parents with a heterosexual orientation. It has long been established that a homosexual orientation is not related to psychopathology, and there is no basis on which to assume that a parental homosexual orientation will increase likelihood of or induce a homosexual orientation in the child. Outcome studies of children raised by parents with a homosexual or bisexual orientation, when compared with heterosexual parents, show no greater degree of instability in the parental relationship or developmental dysfunction in children. The AACAP opposes any discrimination based on sexual orientation against individuals in regard to their rights as custodial or adoptive parents."<sup>60</sup>

In June 2005, the American Medical Association (AMA) House of Delegates overwhelmingly endorsed a policy that calls on the AMA to "support legislation and

other efforts to allow adoption of a child by the same-sex partner or an opposite-sex non-married partner who functions as a second parent or co-parent to that child.”

On the matter of same-gender marriage, in May 2005 the Assembly of the American Psychiatric Association (APA) approved a statement in support of legalizing same-gender marriage. Approval by the organization’s board of directors in July 2005 made psychiatry the first medical specialty to publicly support same-gender civil marriage. Specifically, the APA policy states, “In the interest of maintaining and promoting mental health, the American Psychiatric Association supports the legal recognition of same-sex civil marriage with all rights, benefits, and responsibilities conferred by civil marriage, and opposes restrictions to those same rights, benefits, and responsibilities.”<sup>61</sup>

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