

Alternative Reproductive Technologies and Lesbian, Gay, Bisexual and Transgender People

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The cases in this outline are examples of those resolving issues raised by use of ART by LGBT people; it is **not** a comprehensive list.

I. Access to Services

A. Discrimination on the basis of sexual orientation and/or marital status

North Coast Women's Care Medical Group v. Superior Court/Benitez, 137 Cal. App. 4th 781; 40 Cal. Rptr. 3d 636 (2006) (not citable, on appeal to California Supreme Court) (lesbian claims violation of state civil rights statute)

Andrea D. Gurmankin et al, *Screening Practices and Beliefs of Assisted Reproductive Technology Programs*, 83 FERTILITY & STERILITY 61 (2005) (20% of programs unlikely to accept woman without partner; 53% unlikely to accept man without partner. 48% unlikely to accept gay couple seeking surrogacy arrangements; 17% unlikely to accept lesbian couples seeking donor insemination)

B. Impact on gay men of illegality of/restrictions on surrogacy

C. Insurance coverage

II. Determining parentage

A. Surrogacy

In re Roberto d.B., 2007 Md. LEXIS 269 (May 16, 2007) (Under state ERA, statute allowing man to disprove paternity must permit gestational surrogate to disprove maternity; birth certificate can be issued with only father's name)

Second-parent adoption

B. Donor insemination: Biological mother's partner

Marital presumption for same-sex couples (Massachusetts and states with analogous legal status: CA, CT, OR, NH, NJ, VT)

In re Parentage of Robinson, 890 A.2d 1036 (N.J. Super. 2005); *Miller-Jenkins v. Miller-Jenkins*, 912 A.2d 951 (Vt. 2006)

Second-parent adoption still recommended to assure Full Faith and Credit and recognition under federal law in light of DOMA

Marital presumption where one spouse is transgender likely to turn on legality of marriage which may turn on state's definition of "man" and "woman"

In re Marriage of Simmons, 825 N.E.2d 303 (Ill. App. 2005)
and *Kantaras v. Kantaras*, 884 So. 2d 155 (Fla. App. 2004)
(marriages not valid because FTM transsexuals still legally female)

When no marital presumption, consider Uniform Parentage Act (including 2002 update) and other sperm donor statutes

No parenthood for birth mother's partner based on agreement alone

State ex rel. D.R.M., 34 P. 3d 887 (Wash. App. 2001),
T.F. v. B.L., 813 N.E.2d 1244 (Mass. 2004)

Agreement plus conduct = parenthood

Elisa B. v. Superior Court, 117 P.3d 660 (Cal. 2005) (applying "holding out" presumption in UPA)
K.M. v. E.G., 117 P.3d 673 (Cal. 2005) (gestational mother and her egg donor partner both mothers)
Kristine H. v. Lisa R., 117 P.3d 690 (Cal. 2005) (partner who obtained pre-birth parentage order estopped from challenging validity of order)

"De facto" parent, psychological parent, and other designations: What do they mean?

In re Parentage of L.B., 122 P.3d 161 (Wash. 2006)
(nonbiological mother is *de facto* parent with "legal parity"),
Clifford K. and Tina B. v. Paul S., 619 S.E.2d 138 (W. Va. 2005) (nonbio mom is not a legal parent but has status to seek custody as psychological parent)

C. Donor Insemination: The status of a known donor

Consider statutes: UPA and others

Jacob v. Shultz-Jacob, 2007 Pa. Super. 118 (known donor and former partner both have child support obligations)
LaChapelle v. Mitten, 607 N.W.2d 151 (Minn. 2000) (known donor and former partner both have visitation)

Thomas S. v. Robin Y., 618 N.Y.S.2d 356 (App. Div. 1994) (donor is a father)
Leckie v. Voorhies, 875 P.2d 521 (Ore. App. 1994) (donor is not a father)