

2021-2022

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## Recommended APA Citation

Inger, S. T. (2022). Same-gender pathways to parenthood. *James Madison Undergraduate Research Journal*, 9(1) 24-32. <http://commons.lib.jmu.edu/jmurj/vol9/iss1/3>

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# Same-Gender Pathways to Parenthood

Sydney T. Inger

Photo credit: [“Two Women and a Young Boy Looking at a Smartphone”](#) by Kampus Production, via Pexels

## Abstract

LGBTQ+ individuals and couples who want children negotiate systemic inequalities in the United States of America. This literature review surveys America’s confusing legal map and the gaps in its enduring scholarly theories. The paper then examines the challenges that LGBTQ+ individuals and couples confront in working through the common pathways—same-gender adoption and fostering, in vitro fertilization, and surrogacy—to become parents. Dispersing information on the pathways will be a positive step towards breaking down the inequities for those in the LGBTQ+ community who want to start a family.

Kasey and Lisa, a same-sex couple looking to adopt, shared their experience in a testimonial for the “gay and lesbian friendly” for-profit Lifelong Adoptions agency:

We always wanted to be moms and knew adoption was the right choice for us to start our family. No other path felt right. ... We were quickly connected with an expectant mother, and it was so exciting to communicate with her. While that connection did not pan out, we learned so much about the process and ourselves. We ended up communicating with a few more expectant mothers after that before being connected with Wren’s birthmother (Lifelong Adoptions n.d.-b).

In America, 15% of same-sex couples have children living with them, and 20.9% of those couples have adopted children (Taylor, 2020). While Kasey and Lisa’s story ended well, a vast majority of LGBTQ+ individuals have a hard time becoming parents.

The challenges LGBTQ+ individuals face while trying to become parents are a result of systemic biases. Patterson and Riskind (2010) noted, “legal barriers to adoption, foster care, and surrogacy for gay men and lesbians exist in a number of jurisdictions; these barriers may inhibit individuals who seek to become parents in the context of pre-existing non-heterosexual identities” (p. 332). The statutes allow agencies to discriminate against same-gender couples and contribute to the continuous systemic bias and stigma LGBTQ+ individuals face as a result of their sexual orientation and/or gender identity. It becomes difficult for many LGBTQ+ couples to find agencies or organizations willing to let them foster and adopt. In addition to legal barriers, LGBTQ+ individuals face resource barriers, including a “lack of access to reproductive health care such as assisted reproductive technology” when looking to use in vitro fertilization (IVF; Patterson & Riskind, 2010, p. 335). With revised policies and careful, enforced application, LGBTQ+ individuals will have clearer pathways in starting a family.

This literature review examines peer-reviewed scholarly journals, legal documents, and information from advocacy organizations to understand the current state of same-gender pathways to parenthood in the United States of America. It focuses first on the power of language in both legal statutes and scholarly models to shape perceptions and policies. Language has a powerful impact on policy shaping, and implementing inclusive phrases in legislation reduces the restrictions and barriers against LGBTQ+ fostering and adopting. Similarly, family development and family structure theories point toward the systemic bias that creates a major roadblock in allowing couples to grow their families. These concerns in turn have implications on how to spread information on pathways to parenthood for LGBTQ+ couples. The literature review assesses current resources on the three major pathways to parenthood for LGBTQ+ couples: same-gender fostering and adoption, IVF, and surrogacy. Assembling and reviewing these resources can help make the adoption process more accessible.

## **Statutory Language: Silent, Neutral, Contradictory, and Discriminatory**

Language has an influence on shaping policy, especially pertaining to same-gender couples pursuing adoption. Each state in the United States has statutes on who is allowed to adopt youth. As shown in Figure 1, discrimination on the basis of sexual orientation and gender identity is prohibited in 24 states’ adoption statutes (Movement Advancement Project, 2022). Another four states outlaw discrimination on the basis of sexual orientation and gender identity in their adoption statutes, yet legally permit state-funded agencies to refuse service to LGBTQ+ people (Movement Advancement Project, 2022). Three states prohibit discrimination in adoption based on sexual orientation, while remaining silent regarding gender identity. Fifteen states do not explicitly protect LGBTQ+ couples looking to adopt against discrimination, with three of these states permitting state-funded agencies to refuse service. The remaining four states constitute special cases, with Mississippi standing as

an extreme example for how adoption statutes can serve as a barrier for LGBTQ+ couples. Mississippi is the only state that “specifically prohibits adoption by couples of the same Gender” (Child Welfare Information Gateway, 2020). This confusion is compounded by different interpretations in different sources regarding how state statutes address adoption related to same-sex couples. Overall, the systemic bias that LGBTQ+ couples face while pursuing adoption can be remedied with shifts in the language that shapes policy in addition to training and practices within the adoption agencies.

Importantly, as Laszloffy (2002) notes of the Duvall Family Development Model, the “theory is based on the traditional, nuclear, intact family” (206). Two key stages in this model come early for married couples as they form and nest. Two individuals couple, commit to one another, make a place together, and become three (Poe, 2020). To get to the early stages of the Duvall Model, in other words, LGBTQ+ couples must work to achieve marriage and children while facing systemic challenges not experienced by non-LGBTQ+ families. This puts an extra stressor on LGBTQ+ couples while they continue to develop as a family.

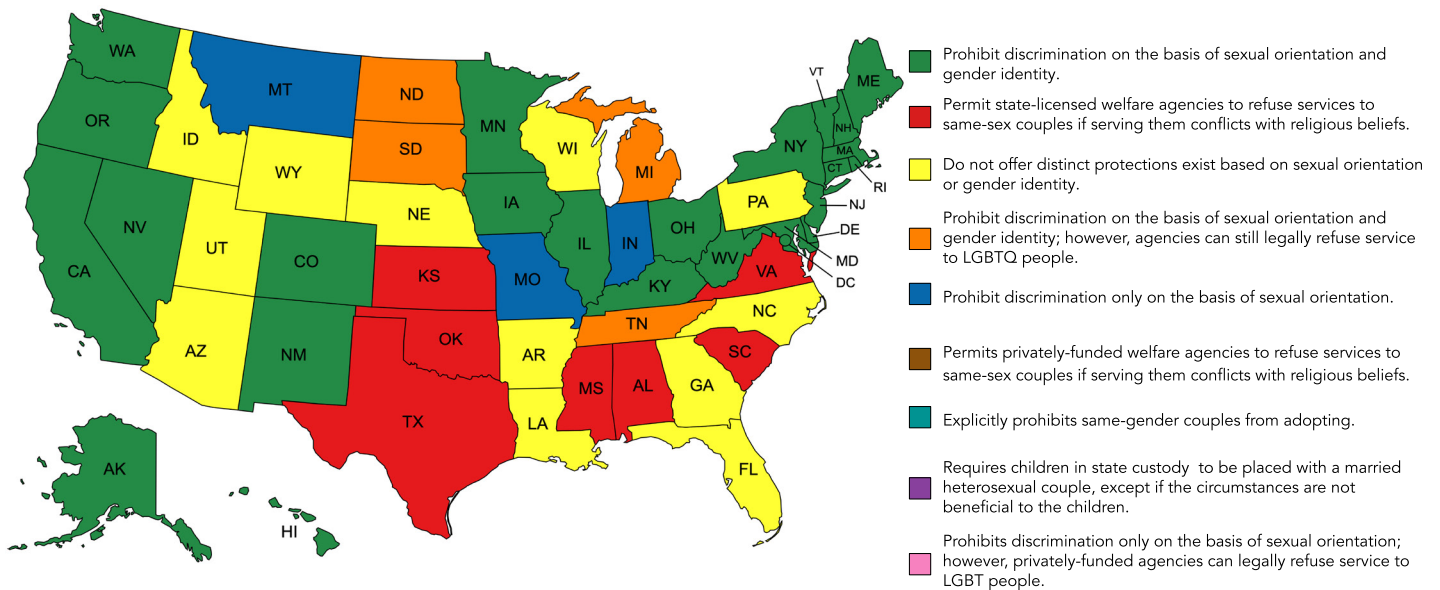
## The Family, In Theory Family Development

There are many family development models, and the “widely cited” 1957 Duvall Family Development Model can serve as an enduring example (Clingempeel & Henggeler, 2010, p. 646). The model identifies eight stages that married couples experience: (1) marriage without children, (2) childbearing families, (3) families with preschool children, (4) families with school children, (5) families with adolescents, (6) families with children leaving the home, (7) middle years, and (8) aging families (Clingempeel & Henggeler, 2010).

## Family Structure

Family structure theories are best described with metaphors, such as the family tree. Family trees can be used to represent the connection between individuals in a bloodline using lines, arrows, circles (females), and squares (males). Family structure theory typically has three major relationship dynamics. First, there is the conjugal dyad composed of adult intimate partners. Then, there is the parental dyad, which refers to the relationship between individual parents and children. Lastly, there is the relationship between siblings (Poe, 2020). Figure 2 illustrates a

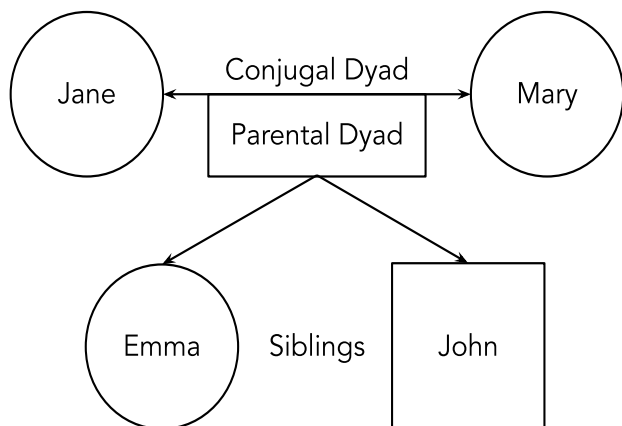
Figure 1. Visual Representation by State of Language Used in Adoption Statutes



Note. Based on *Foster and Adoption Laws*, by Movement Advancement Project, 2022 ([https://www.lgbtmap.org/equality-maps/foster\\_and\\_adoption\\_laws](https://www.lgbtmap.org/equality-maps/foster_and_adoption_laws)) and on *Who May Adopt, Be Adopted, or Place a Child for Adoption?* by Child Welfare Information Gateway, 2020, U.S. Department of Health and Human Services (<https://www.childwelfare.gov/pubPDFs/parties.pdf>).

sample family tree using a same-gender couple, substituting a circle where individuals might traditionally expect a square.

Figure 2. Sample Family Tree for a Same-Gender Couple



Note. Based on “Contribution of Common Genetic Variants to Familial Aggregation of Disease and Implications for Sequencing Studies,” by A. Schläpfl et al., 2019, *PLoS Genetics*, 15(11), (<https://doi.org/10.1371/journal.pgen.1008490>).

## Pathways to Same-Gender Fostering and Adoption

National statistics show that LGBTQ+ individuals and same-sex couples are approximately six times more likely to foster children than their non-LGBTQ+ counterparts (Family Equality Council, 2017). There is a specific process that LGBTQ+ individuals and same-sex couples need to go through before becoming eligible foster parents. It is important to first find an agency or an organization that is approved by the government and supports one’s identity (National Foster Parent Association, 2020). This may present difficulties for the LGBTQ+ community as “discriminatory policies and practices in adoption and foster care may prevent some gay and lesbian adults from becoming parents” (Patterson & Riskind, 2010, p. 335). Therefore, it is crucial for LGBTQ+ individuals to do research before taking the next step and making the call to an agency. The National Foster Parent Association (2020) outlines how couples begin working with an agency. Following initial contact, social workers for the agency provide individuals with information and gather information from them. At the end of the meeting, the individual or couple will need to fill out paperwork. After the paperwork is completed and reviewed, there will

be a home study that assesses family members and the individual’s or couple’s ability to care for a child. The agency will then ask the individual or couple to provide references, consent to a background check, and allow the agency to perform a home safety check (National Foster Parent Association, 2020). If the preceding steps are approved, the individual or couple will be required to attend 10–30 hours of training based on their state of residence. The final step is licensure, in which a social worker files forms on the behalf of the individual or couple stating which children they believe would fit best with the individual or couple (National Foster Parent Association, 2020).

Although the process of fostering is often extensive, it is more difficult for people in the LGBTQ+ community. LGBTQ+ individuals and couples face additional steps in the fostering process, starting with the challenge of finding agencies that accept their identity and family structure. Many private agencies are not required to accept all identities. In 2003, a national study of adoption agencies revealed that 63% of adoption agencies reported accepting applications from gay and lesbian couples, yet 38% reported placing a child with same-sex couples (Brodzinsky, 2003, p. 5). This statistic reflects the systemic bias LGBTQ+ individuals face when working with the foster care system to adopt a child. In a 2009 qualitative study, Downing et al. found that same-sex couples wait longer for a placement than heterosexual couples. Due to systemic bias, LGBTQ+ individuals and couples still struggle to have a child placed with them even after completing the process of licensure. The bias the LGBTQ+ community faces is unfounded, because in many situations, same-sex couples provide more stable homes for adopted children than many other placements do (Barkodar, 2017).

## Adoption

There are four main pathways individuals and couples can take toward adoption: a domestic child welfare agency, international or “inter-country” adoption, private and independent adoption, and second parent adoption (Child Welfare, 2016; Harris, 2012; Brodsky, 2019). The process to adopt a child through a child welfare agency mirrors the process for fostering; however, the children who are fostered are not eligible

to be adopted directly after their placement due to varying state placement requirements (Child Welfare Information Gateway, 2021). The implications for the LGBTQ+ individuals and couples who hope to adopt are similar to the realities that LGBTQ+ individuals and couples who are fostering confront. Specifically, the time requirement for residing with foster parents before adoption can give agencies ample time to pull the youth from the home of LGBTQ+ parents or give the opportunity for a judge to block the adoption.

The international adoption process is similar to other pathways to adoption; however, the couple must contact an accredited service provider that is also a part of the Hague Adoption Convention (United States Department of State, 2020). The Hague Adoption Convention is “an international agreement to safeguard intercountry adoptions” (United States Department of State, 2022a). Beyond its \$20,000 to \$50,000 average cost, international adoption is not a common pathway for LGBTQ+ couples because they will need to conduct sufficient research before pursuing intercountry adoption. In fact, the United States Department of State advises LGBTQ+ couples research “whether the country you are interested in adopting from permits adoption by LGBTI persons or couples” (United States Department of State, 2022b).

Private agency and independent adoption are similar to adopting through a child welfare agency, but they may cost considerably more. The Children’s Bureau, a branch of the US Department of Health and Human Services, reported that adopting domestically through a private agency can cost from \$20,000 to \$45,000, while independent adoption can range from \$15,000 to \$40,000 (Child Welfare, 2016). This can be a barrier, as many couples are limited in their pathway options due to their financial situations.

In the LGBTQ+ community, there is one subsection of adoption that impacts same-gender couples: second parent adoption. Second parent adoption “recognizes the legal status of the new parent without eliminating the parental status of the original parent” (Harris, 2012, p. 471). At a basic level, as Brodsky (2019) notes, second parent adoption occurs when couples bring children from a previous marriage to their new relationship and the legal parent agrees to have

the stepparent adopt the child. In LGBTQ+ relationships, second parent adoption is ideal when one partner is legally and/or biologically related to the child and the ‘second’ parent needs to establish a legal parent-child relationship. Finally, second parent adoption occurs when states do not allow LGBTQ+ couples to adopt a child during the same court procedure (Brodsky, 2019).

There is a distinct process couples need to take in order to complete second parent adoption, beginning with filing documents at the Family and Surrogate’s Court. The court will review the adoption petition as well as the long list of accompanying paperwork. Upon the confirmation of the paperwork, a finalization hearing is scheduled. During this hearing, the legal parent, the prospective adoptive parent, and the child appear in court. If or when the adoption is finalized, a judge will issue an adoption order which allows changes to be made on the child’s birth certificate (Brodsky, 2019). This process varies in time and may be met with systemic bias against the LGBTQ+ community. In short, behind the seemingly innocuous term second parent adoption are state statutes, extra steps, lengthy delays, extra costs, and legal challenges. Some judges, based on their personal beliefs and their interpretation of the law, may state that children should not have two parents of the same gender. As indicated in Averett et al. (2009), the sexual orientation of the adoptive parents has no significant impact on the behaviors of the youth who are adopted. The American Civil Liberties Union (ACLU) demands that same-gender couples be given equal and fair opportunity to pursue adoption through changes in practice and policy (Averett et al., 2009).

## In Vitro Fertilization

In vitro fertilization (IVF) is a common practice for many LGBTQ+ couples that can be financially, emotionally, and physically intensive. The process of IVF costs on average between \$12,000 and \$25,000 per cycle, but additional costs and multiple cycles are common (Klein, 2020). While the cost of IVF is high, the process is also physically taxing. The process begins with the couple picking an egg or sperm donor. Doctors will then perform a mature egg retrieval. After the eggs are collected, sperm is used to fertilize them in a lab. The embryo(s) are then transferred to a

uterus. A cycle of IVF takes three weeks on average (Mayo Clinic Staff, 2019). While IVF is a practice that can be used by all couples, reciprocal IVF allows female-female couples to become biological parents. This type of IVF involves egg donation from one woman, which is then fertilized, and placed in their partner. During this process, one woman is the genetic mother and the other is the gestational mother (Roth, 2017). LGBTQ+ couples need to research their clinic carefully before going through with the process. Researching clinics can help reduce the risk of refusal of service and help decrease the risk of unforeseen challenges. Many clinics do not offer services to members of the LGBTQ+ community (Kaufman, 2020). However, Article 16 of the Universal Declaration of Human Rights explicitly states that “men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family” (United Nations, n.d.). The right to found a family implies that the rights to plan and control one’s reproduction, including IVF. For LGBTQ+ couples specifically, it is extremely important that the legal documents reflect same-gender parentage knowing that the potential for only one partner to be biologically related to the child is a high chance.

## Surrogacy Traditional and Gestational

Traditional and gestational surrogacy are options for same-gender couples who are looking to have biological children. In traditional surrogacy, a surrogate uses their own egg and either the intended parent’s or a donor’s sperm (Surrogate.com, n.d.-b), and in gestational surrogacy, IVF occurs and is implanted in the gestational surrogate (Surrogate.com, n.d.-a). Although surrogacy is a common pathway to parenthood for same-sex couples, it poses unfair legal and systemic burdens. In traditional surrogacy, the surrogate might try to use their parental rights to keep the baby; in that case, the intended parents must use legal measures to attain custody (Surrogate.com, n.d.-b). Heterosexual couples may find success in court, but some jurisdictions “prohibit joint adoptions for same-sex couples,” increasing the barriers for the LGBTQ+ community (Gordon, 2022). To avoid custody complications, many same-sex couples choose gestational surrogacy because the intended parents automatically have legal custody of the

child as they are both biologically related to the newborn (Surrogate.com, n.d.-a). A surrogacy contract may be required for LGBTQ+ couples to ensure their parenthood when using the process of surrogacy. It is essential for the contract to reflect that the couple will have legal rights to the child upon birth (Surrogate.com, n.d.-d). Another route couples can take to achieve legal parenthood after traditional surrogacy is second-parent adoption (Surrogate.com, n.d.-b).

## Financial Burdens

The use of third-party reproduction is necessary if same-sex couples want to biologically build their family, yet affordability to assisted reproductive technologies (ART), especially surrogacy, is systematically limited for the LGBTQ+ community (Gordon, 2022). Throughout the nation, ART coverage and financial support is offered to those who are classified as physically infertile; this creates a burden for the heterosexual community, as some states do not consider the social infertility of same-sex couples as truly infertile (Neyra, 2021). As medical insurance companies continue to adhere to the formal definition of infertility, same-sex couples continue to be denied coverage, causing them to face more legal and financial barriers than the heterosexual community (Neyra, 2021).

## Conclusion

Many LGBTQ+ individuals want to become parents, but statutory language that remains silent about and even licenses discrimination, the omissions reflected and reinforced in widely cited theories of family structures, and the systemic costs extracted with each pathway to parenthood make this a difficult process for same-gender couples. It is important that the information on how to navigate fostering and adoption, in vitro fertilization, and surrogacy is clear and available to LGBTQ+ individuals, as equal access will lessen the obstacles faced by same-gender couples. The goal of the research for this issue is to deconstruct the systemic bias LGBTQ+ couples face when looking to expand their family while providing them with an outlet of information on same-gender pathways to parenthood. Although each pathway has its own legal, financial, emotional, and social barriers, proper access to such same-gender processes can aid in alleviating the negative impacts of systemic bias.



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Sydney T. Inger ('21) graduated *summa cum laude* with an Independent Scholars major and minors in Honors Interdisciplinary Studies, Family Studies, and Pre-Law. She focuses on the inequities the LGBTQ+ community faces in the child welfare system, food and housing insecurity, and family life. She is continuing her interdisciplinary work as a candidate in the Master of Social Work program at the Silberman School of Social Work at Hunter College-CUNY.

Sydney would like to thank the *JMURJ* Editorial Board for their continuous support and time in preparing the literature review for publication. Additionally, thank you to her advisors, family, friends, and professors for being a part of her support system and always being there—academically, professionally, and personally—for her.

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