

# Overview of S3528/A5396: Expanded Adoption Access for LGBTQ Families

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Last updated January 16, 2020.*

The new law streamlines the process for married or civil union couples to obtain a confirmation of the parentage of a non-biological parent in order to have their parentage recognized by all states and countries that might question their parentage. This will also make applying for governmental or legal benefits for their children more easily available. The new law covers married or civil union gay and lesbian couples, as well as married different sex couples (including couples where one spouse is transgender) who have used donor gametes to achieve a pregnancy. The adopting parent must also be listed on the child's birth certificate.

## Background

Danni Newbury and Christy Wilson went through the court process to confirm their parentage of their children in what lawyers call a “second-parent or confirmatory adoption.” Danni and Christy recognized the importance of the confirmatory adoption, yet felt that something should be done so that equally situated couples could obtain similar protection without all of the legal hurdles.

Danni approached Bill Singer, Esq. who agreed to draft the legislation with the assistance of Debra E. Guston, Esq. Once drafted, Danni obtained the sponsorship of Senator Nicholas Scutari to be the main sponsor of the legislation.

## Problem

NJ birth certificates do not establish parentage; they are merely proof of birth. Birth certificates cannot create or terminate parentage.

Currently, in NJ, one is a legal parent only if the person (1) gestates the child, (2) donates genetic material, or (3) obtains a judicial order (such as an adoption decree or parentage order).

However, under the New Jersey parentage laws, a the biological parent's spouse or civil-union partner may be listed on the birth certificate as a parent. Inclusion of a biological parent's spouse or partner on the birth certificate leads to confusion, as most couples believe the birth certificate definitively proves their joint parentage.

In order to protect non-biological parents' legal parentage if they travel or move, it is mandatory that non-biological parents obtain a judicial order confirming their parentage, which is subject to full faith and credit under the U.S. Constitution. The United States Supreme Court has ruled on multiple occasions that an adoption judgment must be recognized by all states.

To obtain a "confirmatory" adoption decree, a non-biological parent must spend time, money, and effort on background checks, attorney fees, and a judicial hearing, which is an unnecessary use of judicial time. While it is not yet clear whether this process will be easily accessible by self-represented couples, the elimination of background checks and court appearances will certainly lower legal fees if the couple decides to hire an attorney. There will be a court filing fee, as with any court matter.

Non-biological parents include any non-genetic spouse in a marriage or civil union, whether same-sex or different-sex, including couples where one spouse is transgender. Examples:

- A same-sex female couple where one parent is the biological and/or gestational mother of the child, and the other parent (female spouse) does not have a biological connection to the child but is listed on the birth certificate as a parent
- An infertile man whose spouse gets pregnant through artificial insemination, especially if the conception took place in a state without a well-established process to terminate the sperm donor's rights at the time of the donation

- A trans person and a spouse who gestates and/or contributes the ova (egg)

## Solution

The new law streamlines the process to obtain a judgment establishing parentage for a two-parent family where the biological parent and non-biological parent are already on the birth certificate. Under this process, the NJ Superior Court, Family Division will issue a signed judgment naming both parties as the legal parents upon receipt of the following proofs:

1. An original marriage certificate, civil union certificate, or proof of comparable marital-type relationship from another jurisdiction
2. An original birth certificate listing both parties as parents
3. Sworn declaration by the parents explaining the circumstances of the child's conception in sufficient detail to identify whether there may be any persons with a claim to parentage of the child who are required to be provided noticed of, or who must consent to, the adoption.

The law exempts qualifying parties from having to obtain a home study, background checks, or an appearance in court for a hearing. The court may order a hearing to ascertain whether there are additional persons who must be provided notice of, or who must consent to, the adoption if it appears from the face of the paperwork and the evidence that proper notice or consent have not been provided. The law is not designed to assist couples who have used a known sperm donor and have not followed the requirements under the laws in the state of conception to assure that the known sperm donor's parental rights were terminated at the time of the donation.

The law will take effect on April 1, 2020.

# Constitutional Questions

The new law provides families with a signed judgment that is entitled to full faith and credit in other jurisdictions because the order will be a final judgment issued by a court with subject matter jurisdiction.

The law is not designed to assist couples who have used a known sperm donor and have not followed the requirements under the laws in the state of conception to assure that the known sperm donor's parental rights were terminated at the time of the donation.