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Legal Resources for Georgia Gay and Lesbian Families

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Legal Resources for Georgia Gay and Lesbian Families

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Introduction
This website was designed to provide access to general information regarding the legal implications faced by gay and lesbian families Georgia. While many of the resources contained herein may be useful for residents of any state, this site was created to specifically address the law as it affects Georgia residents. The information contained below may provide a starting point for Georgia gay and lesbian couples, their attorneys, and anyone else hoping to gain a basic understanding of the issues implicated when gay and lesbian couples seek to raise children.

Overview
The law involving same-sex couples is a cutting-edge area of practice and changes sometimes by the day from state to state. Legal protections afforded to gay and lesbian couples are often amorphous, uncertain, and dynamic. This research guide is designed to provide gay and lesbian couples and their families definitive resources in order to understand and maneuver through the current state of the law within, and as it affects, Georgia. The list of resources contained herein is by no means exhaustive, but has been selected as that which may most noticeably affect gays and lesbians residing in Georgia. As always, it is crucial to consult a licensed attorney before making any legal decisions.

About the Author
Ryan Finch is a 2005 candidate for J.D. at Georgia State University College of Law in Atlanta, Georgia. He is an active member of the Lesbian & Gay Law Student Association, the student division of the Stonewall Bar Association, and a staff writer for the GSU College of Law newspaper.

Scope
While much of the information contained herein includes resources generally applicable to many gays and lesbians, family law is largely determinative based on the decisions and actions of each state's lawmakers. This website attempts to address the law as it affects Georgia families, with primary focus afforded to gay and lesbian parenthood, including adoption, foster parenting, and custody issues.

Disclaimer
This research guide is a starting point for a law student or an attorney to research the doctrine of inequitable conduct and its intersection with attorney-client privilege. This is a very active area of federal law, and it is imperative to Shepardize or KeyCite all cases and statutes before relying on them. This guide should not be considered as legal advice or as a legal opinion on any specific facts or circumstances. If you need further assistance in researching this topic or have specific legal questions, please contact a reference librarian in the Georgia State University College of Law library or consult an attorney.

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Primary Sources

Constitutions

i. United States Constitution

The United States Constitution has been used as a shield for gays and lesbians and their families against hostile legislation through three main tools: the Equal Protection Clause, the Full Faith and Credit Clause, and the Privileges and Immunities Clause.

- The Equal Protection Clause of the Fourteenth Amendment guarantees that "no State shall . . . deny to any person within its jurisdiction the equal protection of laws."
- The Full Faith and Credit Clause under Article IV, section I, requires each state to recognize the public acts, records, and judicial proceedings of every other state.
- The Privileges and Immunities Clause of the Fourteenth Amendment provides that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

A free annotated version of the United States Constitution is available through Findlaw.

ii. Georgia Constitution

The Constitution of the State of Georgia provides similar protections extended by the federal Constitution.

- Georgia's Equal Protection Clause, Article I, section I, paragraph II, also promises its citizens that no one may be denied equal protection under the law.
- Article I, section I, paragraph VII instructs that the Georgia General Assembly must enact such laws that will protect the full enjoyment of the rights, privileges and immunities afforded all United States citizens.
- On November 2, 2004, 85% of Georgia voters approved a state constitutional amendment (section IV, paragraph I) that defines marriage as the union between a man and a woman, and that no union of persons between the same sex will be recognized by the State of Georgia as entitled to any of the benefits of marriage.

The Constitution of the State of Georgia can be accessed through the Georgia Secretary of State's webpage.

Statutes

i. Federal

- Marriage: In 1996, Congress passed President Bill Clinton signed the Defense of Marriage Act (DOMA), defining marriage for federal purposes as being between one man and one woman.
- Adoption: There are currently no federal statutes that prohibit gay men and lesbians from serving as adoptive or foster parents, nor are there any federal laws that prohibit custody of children by their gay or lesbian parents.

ii. Georgia

- Marriage.

O.C.G.A. § 19-3-3.1(a) Same-sex marriages prohibited as against public policy.
O.C.G.A. § 19-3-3.1(b) Same-sex marriages or unions granted in foreign states or countries void in Georgia.

- Adoption. There is no statutory ban preventing gay men and lesbians in Georgia from adopting children. However, the literal wording of Georgia's adoption statutes does not allow for step-parent adoption, which effectively prevents adoption by same-sex partners jointly.

O.C.G.A. § 19-8-3 Qualifications needed in order to adopt.
O.C.G.A. § 19-8-12 State's interest and authority to place adoptive children in stable homes.
O.C.G.A. § 19-8-17 Suitability of the home to the child.
O.C.G.A. § 19-8-19 Adoption as termination of all legal relationships except with regard to legal spouse of petitioner; prevents same-sex joint adoption.

- Foster parenting. There is no statutory ban in Georgia that prevents gay men and lesbians from serving as foster parents to children.
## Cases

### i. United States Supreme Court


Invalidated the Colorado legislature's attempt to prevent any state laws from passing that might offer protection to individuals based on their sexual orientation. A law declaring that it shall be more difficult for one group of citizens than for all others to seek aid from the government is a denial of equal protection.


No state legislature may attempt to draft laws that criminalize intimate consensual adult homosexual adult.

### ii. Eleventh Circuit Court of Appeals

**Lofton v. Dept' of Children & Family Services**, 358 F.3d 804 (11th Cir. 2004)

Florida state legislature could have reasonably believed that prohibiting adoption into homosexual environments would further state interest in placing adoptive children in homes that will provide them with optimal developmental conditions.

**Williams v. Attorney General of Alabama**, 378 F.3d 1232 (11th Cir. 2004)

There is no free-standing fundamental right to sexual privacy.

### iii. Georgia Supreme Court


Lower court did not abuse its discretion in awarding child to mother who admitted to a past lesbian relationship and to current friendships with gay and lesbian person.


The plain language of [O.C.G.A. § 19-6-19(b)](http://www.ga.gov) (the "live-in lover" statute) does not permit the modification of alimony when a former spouse is living in a meretricious relationship with a person of the same sex.


Invalidated Georgia's 182-year-old sodomy law as unconstitutional based on the right to privacy guaranteed by the Georgia Constitution.

### iv. Georgia Court of Appeals


The primary consideration in determining custody and visitation issues is not the sexual mores or behavior of the parent, but whether the child will somehow be harmed by the conduct of the parent. Visitation rights must be determined with reference to the needs of the child rather than the sexual preferences of the parent.


Any marriage entered into by persons of the same sex pursuant to a marriage license issued by another state or foreign jurisdiction shall be void in Georgia. The state is not required to give full faith and credit to same-sex marriages or unions of other states by virtue of [28 U.S.C. 1738](http://www.gabar.org).


Lesbian relationship should not be a determining factor of juvenile court's decision on parental custodial rights, unless evidence shows that the children have been or might be harmed by the mother's lifestyle.

### v. Other Georgia Courts

**In re Favre**, 186 B.R. 769 (U.S. Bankruptcy Court for the N. Dist. of Georgia, Atlanta Div. 1995)

In order for two debtors to qualify as a debtor and spouse within the meaning of [11 U.S.C. 302](http://www.uscourts.gov), they must be legally married; restriction of eligibility to file joint bankruptcy petition to parties legally married does not violate homosexual couple's equal protection or due process rights.

### Secondary Sources

**Secondary Sources**

1. Treatises
2. Books
3. Law Review Articles
4. Other Articles
5. Manuals
6. Videotapes
7. American Law Reports (A.L.R.)
8. Legal Encyclopedias
9. Forms & Practice Aids
Books

All books located in the Georgia State University College of Law library unless otherwise noted.


Lee Varon, Adopting On Your Own: The Complete Guide to Adoption for Includes information for lesbian and gay couples concerning how to obtain domestic partner benefits, make medical and financial decisions for each other when needed, leave property to each other, and having and/or raising children through adoption, donor insemination, surrogacy or foster parenting. New edition scheduled for release on April 30, 2005.

Though somewhat dated, contains relevant information and analysis of the law and its implications for gay and lesbian couples and parents.

Includes information and analysis on the the Hawaii marriage decision (Baehr v. Lewin), the St. Patrick's Day Parade case (Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston), and the Colorado ballot initiative case (Romer v. Evans).

Creative estate planning that protects both parties, their children and their future. Includes information on Domestic Partnership Agreements, Shared-Parenting Agreements, and Guardianship.

A bibliography on legal concerns of gay and lesbian couples, including information on same-sex marriage, child custody, foster parenting and adoption, partnership agreements, and immigration.

Comparative study of various legal protections to same-sex couples in the United States and Europe. Includes information on the parental rights of same-sex couples in the United States.

Reports the findings of The Gay and Lesbian Family Study, the largest national assessment of gay and lesbian headed families.

A collection of articles covering legalized marriage and cohabitation, parenting and co-parenting, child custody and adoption, and living in stepfamilies.

Examines concerns and offers positive suggestions and ideas for dealing with the difficulties unique to gay and lesbian parenting.

Resource guide for gay men and lesbians seeking to adopt.

Presents detailed, chapter-by-chapter information on each stage of parenthood and child development. Includes information on legal hoops for non-custodial parents.

Thorough investigation of the issues facing lesbian and gay men who are choosing to be parents.

Addresses many questions and issues associated with lesbian and gay parenting, including details on adoption, gay men having children, co-parenting, and other legal issues.

A collection of 16 articles addressing the issues of lesbians and child custody from a legal, psychosocial, and humanistic perspective.

Deals with contemporary issues concerning parenting by gay men and lesbians.

Compendium of lesbian parenting with diverse contributions.

Offers help on explaining homosexuality to children and explores what lesbian parents can do to help children explain their family situation to their peers.

Personal account of a single gay man's struggle to become a father; looks at the adoption process (domestic and international) from the inside, providing unique insight into costs (fees and expenses), what countries allow men to adopt, alternatives to adoption, life as a new parent, online resources, and a state-by-state review of adoption laws.

Includes sections on the legal rights of gays and lesbians to adopt, and the evolving attitudes of


Prepares gay parents-to-be with everything they need to know and everything they can expect while raising children. Topics include creating a healthy family, coming out for good, finding culturally sensitive childcare and schools, and making decisions about spirituality and family celebrations. Also covered are single parenting, breaking up, and the legal aspects of protecting these special families. Presents a study of 25 children raised in lesbian mother families, and a comparison group raised by single heterosexual mothers; examines the developmental effects of growing up in a same-sex household and confronts a range of myths and stereotypes. Study of gay parenthood using case studies and interviews to examine the factors that contribute to the changes in gay men's lives once they become parents and explores issues such as the initial reactions to bringing a new child home, community responses to gay dads and gender politics. Also provides insight into the emotions common to gay men who choose to become parents.

Manuals


Videotapes


Legal Encyclopedias


Newsletters

Lambda Update. Call Number KF4755. A1S25X Discusses cases that involve lesbian and gay rights.

Looseleaf Services

Adoption Law & Practice. LexisNexis Matthew Bender. Call Number KF545 . A93 Provides information about interstate, state-federal, and international aspects of adoption, and deals with the increased "constitutionalizing" of adoption law and practice. Includes information regarding placement in single parent and gay and lesbian homes.

Law Review Articles


Nicole Sheppe, Georgia's Children On Our Minds . . ., 55 Mercer L. Rev. 1415 (2004). In depth analysis of current Georgia statutory and case law and how it affects the possibility of gay-parent adoption.


Traces the development of various pre-Lawrence arguments offered as rational bases for the judicial decisions and statutes that discriminate against homosexuals, either individually or as couples, in matters of custody, visitation, and adoption; whether protection, grounded in substantive due process, might be afforded to family privacy and child rearing without state interference.

Thorough examination of the approaches U.S. courts currently use in assessing the relevance of sexual identity and sexual conduct in determining parental entitlement to custody and visitation.

Discusses the legal rights of gay and lesbian families, analyzing how the law has developed in response to the growing frequency of these "non-traditional" families.

Explores the legal ramifications of out-of-state adoptions for same-sex parents relocating to another state.

Analyzes the current legal trends pertaining to homosexual adoption and foster parenting in the United States and the avenues available to challenge these laws. Examines various lower court decisions throughout the country on the issues of homosexual and foster parent rights. Discusses the future of this issue in the United States and predicts how the courts will react to the increasing number of homosexuals seeking to become adoptive and foster parents.

Analysis of fundamental rights for foster parents after Lofton and its resulting effect on homosexual foster parents seeking to adopt; addresses the rights of foster parents within a number of federal and state jurisdictions.

Empirical study of child custody cases involving gay or lesbian parents of all such recorded decisions over the past 50 years, focusing on how judges--in interaction with the litigants before them--construct, negotiate, deny, and confirm the sexual and familial identities of the parents and would-be parents involved in these custody contests. Extensive bibliography and case table.

Analyzes how the Lawrence decision and the repeal of sodomy laws affect child custody disputes involving gay and lesbian parents. Focuses entirely on natural parents.

The efforts of gay and lesbian couples to emulate marital family rights by contract are explored, as is the alteration of parent-child relationships by parental agreement.

Focuses on the issues concerning "stranger adoptions" as exemplified by litigation in the state of Florida, which completely prohibits homosexuals from adopting children. Reviews some of the myths and other unsupported assertions raised by the opponents of the adoption of children by gays and lesbians.

Analysis of Alabama's approach to gay and lesbian custody disputes.

Provides an overview of the impact of sexual orientation on the rights of individuals concerning state adoption policies, and different jurisdictional approaches surrounding the controversial topic of homosexual adoption rights.

Addresses some of the common arguments that have been raised against allowing such adoptions, and explains why they are not persuasive.

Discusses the argument for interstate recognition of civil union status made in Burns v. Burns and its potential as a means of obtaining recognition for lesbian and gay families as legally constituted entities within the courts.

Addresses custody, support, and custody support issues that are raised when lesbian couples plan for and create a family together (either through adoption or reproductive technologies) and subsequently separate.

Looks at the rights of gay parents, formerly in a heterosexual relationship, to visit their biological children after losing custody; examines Alabama's laws related to the visitation rights of gay parents.

Compares cases in which courts employ a presumption of detrimental impact on a child caused by the homosexual conduct of a parent, with an approach that places such conduct among factors relevant to the consideration only upon an evidentiary showing of detrimental impact. Probes the issue of adoption by homosexuals, examining the policies which guide legislators and courts.

Discusses the conditions under which children will be removed from their parents, comparing what is required when lesbian or gay parents are involved with what is required when no lesbian or gay parents are involved.

Addresses the implications of Troxel v. Granville for gay and lesbian parents, and specifically, for visitation rights of non-biological lesbian co-parents in the event of a separation.

Examines traditional custody standards and the non-litigious custody options available to lesbian parents to form the families that they desire.


Treatises


See section § 5:18 Gays, Lesbians, and Sexual Orientation

Other Articles


This article can be accessed on the web by clicking here.


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American Law Reports (A.L.R.)

American Law Reports are annotations of relevant case law of particular legal issues. They can be found in bound volumes in nearly any law library or through online legal research services such as Westlaw or LexisNexis.

Robin Cheryl Miller and Jason Binimow, Annotation, Marriage Between Persons of the Same Sex--United States and Canadian Cases, 1 A.L.R. Fed. 2d 1 (2005).
Robin Cheryl Miller, Annotation, Child Custody and Visitation Rights Arising From Same-Sex Relationships, 80 A.L.R. 5th 1 (2005).
Elizabeth Trainor, Annotation, Custodial Parent's Homosexual or Lesbian Relationship With Third Person As Justifying Modification of Child Custody Order, 65 A.L.R. 5th 591 (2004).
Elizabeth Trainor, Annotation, Initial Award or Denial of Child Custody to Homosexual or Lesbian Parent, 62 A.L.R. 5th 591 (2002).

Forms & Practice Aids

The forms and practice aids below can be accessed through Westlaw.


Law Reviews

Also available on Westlaw.

Lesbian-Gay Law Notes. Call Number KF4754.5 .A15 L47.
Provides concise summary of legal news of interest to lesbian and gay lawyers or students of gay rights. Published by the Bar Association for Human Rights of Greater New York.

Focuses on the rights of minorities, including gays and lesbians. Published by St. Mary's Law School.
The National Journal of Sexual Orientation Law.
This publication can be accessed on the web by clicking here.

Computerized Research

Legal Research Websites

a. Legal Research Websites

i. Westlaw

Online legal research subscription service that provides access to an immense collection of statutes, case law materials, public records, and other legal resources, along with current news articles and business information.
Internet Resources

i. Legal

- American Civil Liberties Union of Georgia. Resources to learn and receive help concerning current legal issues facing Georgia gays and lesbians.
- Gay Law Net. Dedicated to providing general information, news and resources concerning the law as it affects the global gay, lesbian, bisexual, transsexual and intersex (GLBTI) community and the simplest access to a gay or lesbian (or gay or lesbian-friendly) lawyer.
- Rainbow Law. Research tools to learn everything about LGBT Relationship and Estate Planning, to create and/or update legal documents, and/or to locate an attorney in Georgia.
- Queer Legal Resources. One of the most extensive collection of materials devoted to queer legal issues on the Internet.
- Gay Civil Unions.com. Offers a state-by-state collection of news articles and clippings tracking the development of civil unions and similar legal protections for same-sex couples.
- Partners Task Force For Gay & Lesbian Couples. Impressive amount of legal information and support for gay and lesbian couples, from marriage to child raising to immigration.

ii. Non-legal

- Southern Voice. The South's most read gay and lesbian newspaper. Focus on issues facing the Atlanta gay and lesbian community, and with relevant information for the state, southeastern, national, and global communities. Available free online.
- GaySavannah.com. Savannah's complete information resource for the gay and lesbian community with a comprehensive business directory of local gay owned and gay friendly businesses including bed & breakfasts, restaurants, bars, clubs, realtors and more.
- Atlanta Gay & Lesbian Center. Community info by voice menu 24 hours, plus routine or crisis counseling by trained volunteers. 159 Ralph McGill Blvd., Suite 600, Atlanta GA 404-876-5372; helpline 404-892-0661.
- Carrollton Gay Community Newsletter. PO Box 2416, Carrollton, GA 30117.
- Adoption Family Center. Dedicated to the needs and support of non-traditional adoptive families.
- 2moms2dads.com. Resources for lesbians and gays who are or who want to become parents. Includes attorney directory. Available online.
- Evan B. Donaldson Adoption Institute. A national not-for-profit organization devoted to improving adoption policy and practice. Contains information regarding current legal issues in adoption, with many links focusing on gay and lesbian parent adoptions.
- Gay Parent Magazine. Provides resources on gay-friendly private schools, day and overnight camps, and gay-friendly family vacation ideas. Resources also include family building such as reproductive technology and adoption and foster care agencies. Book reviews, news, activities, and events pertaining to LGBT parents and their children are features. On this site view sample articles, gay-friendly advertisers, advertising rate information, support groups, or order a subscription. Website features a free link containing a list of regional support groups for each U.S. state.
- Proud Parenting. ProudParenting.com serves as an online portal for gay, lesbian, bisexual and transgender parents and their families worldwide. Contains information for parents and children on family life, issues affecting gay and lesbian families, GLBT youth, reproduction, surrogacy, adoption, foster parenting, and more. Also contains a local page highlighting issues as they affect the American southeast.
iii. Groups

- **Georgia Equality.** A statewide political advocacy group representing the gay, lesbian, bisexual, and transgender community of Georgia.
- **Lambda Legal.** Includes information on current legal issues facing Georgia gays and lesbians. Southern regional office contact information listed.
- **Family Pride of the South.** Atlanta-based organization that strives to build strong families through educational programming, community resources & support, social activities, and public advocacy.
- **The Georgia Center for Adoption and Foster Care Resources and Support.** A state wide project funded by the Georgia Department of Human Resources and presented by Families First and Bethany Christian Services whose purpose is to increase resources and supportive services for adoptive and foster families and reduce the incidence of disruption in Georgia.
- **Families First.** Atlanta agency offering help for people who want to adopt, and offers specialized foster care for children in need and support services for foster parents.
- **Georgia Department of Human Resources, Office of Adoptions.** Develops, promotes, and supports quality adoptive placements and services for Georgia's families and children.
- **GLBT Adoption & Reproductive Options.** A place to learn about your family formation options and find support.
- **Stonewall Bar Association of Georgia.** A professional association of attorneys, judges, law students and other legal workers who support the rights of lesbian, gay, bisexual and transgendered people and who oppose discrimination based upon sexual orientation.
- **Gay Fathers of Atlanta.** Support group for gay fathers or gay men seeking to become fathers. Help in dealing with divorce, child support and/or custody issues. 404-342-6451.
- **Gay & Lesbian Parents Unite.** 770-663-4328.

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