### **Table of Contents**

#### CHAPTER 1. POST-DIFFERENT-SEX RELATIONSHIP CUSTODY AND **VISITATION**

#### I. INTRODUCTION

§ 1:17

§ 1:1 Custody and visitation, generally

II. IN	NITIAL CUSTODY DETERMINATIONS
§ 1:2	Initial custody determinations, generally
§ 1:3	Per se test, generally
§ 1:4	The per se test and sodomy statutes
§ 1:5	Constitutionality of the per se test
§ 1:6	The per se test and teasing and ostracism
§ 1:7	LGBTQ status as one of several factors
§ 1:8	Nexus test, generally
§ 1:9	What constitutes cognizable harm to the child for purposes of the nexus test
§ 1:10	Cases holding actual or potential teasing and ostracism is cognizable harm
§ 1:11	Cases holding actual or potential teasing and ostracism is <i>not</i> cognizable harm
§ 1:12	Cases holding that child's anxieties about parent's sexual orientation or gender identity are cognizable harm
§ 1:13	Cases holding child's anxieties about parent's sexual orientation or gender identity are <i>not</i> cognizable harm
§ 1:14	Relevance of a parent's openness about their sexual orientation or gender identity
§ 1:15	Cases penalizing parents for openness about their sexual orientation, gender identity, or same-sex relationship
§ 1:16	Cases holding it is impermissible to penalize a

parent for openness about their LGBTQ status Cases discussing whether religious opposition to

LGBTQ identity is a permissible basis for

denying custody

## III. CUSTODY AND VISITATION RESTRICTIONS

- § 1:18 Custody and visitation restrictions, generally
- § 1:19 Broad restrictions preventing any exposure to LGBTQ people or "lifestyles" upheld
- § 1:20 Broad restrictions preventing any exposure to gay or lesbian people or "lifestyles" struck down
- § 1:21 Restrictions preventing parent from living with nonmarital same-sex partner or prohibiting nonmarital same-sex partner from being present during residential time upheld
- § 1:22 Restrictions preventing nonmarital same-sex partner from being present during custody or visitation struck down

#### IV. MODIFICATIONS

- § 1:23 Modification proceedings, generally
- § 1:24 Cases holding that coming out as an LGBTQ person constitutes sufficient change of circumstances
- $\S~1:25$  Cases holding that coming out as LGBTQ is *not* sufficient change of circumstances
- § 1:26 Cases holding that living in an "open" same-sex relationship constitutes a sufficient change of circumstances
- § 1:27 Cases holding that living with a same-sex partner is *not* sufficient change of circumstance

# CHAPTER 2. ADOPTION AND FOSTER CARE

#### I. INTRODUCTION

§ 2:1 Generally

#### II. ADOPTION AND FOSTER CARE OVERVIEW

- § 2:2 Domestic adoptions
- § 2:3 Agency adoptions
- § 2:4 Independent or direct placement adoptions
- § 2:5 Interstate adoptions
- § 2:6 International adoptions
- § 2:7 Foster care, generally

#### III. DISCRIMINATION AGAINST LGBTQ PROSPECTIVE ADOPTIVE AND FOSTER PARENTS

§ 2:8	LGBTQ families of origin
§ 2:9	Generally
§ 2:10	Statutes and administrative regulations expressly banning or restricting the ability of LGBTQ people from becoming adoptive or foster parents
§ 2:11	Statutes and regulations prohibiting discrimination on the bases of sexual orientation and gender identity in adoption and foster care
§ 2:12	Legal challenges to laws, regulations, policy, or practices that discriminate on the basis of sexual orientation or gender identity with respect to adoption or foster care
§ 2:13	Cases challenging unwritten state or local practices of discrimination on the basis of sexual orientation or gender identity in adoption and foster care
§ 2:14	Challenges to state and federal laws and practices permitting religiously-or morally-based refusals to provide services to LGBTQ people
§ 2:15	Discrimination by private adoption agencies
§ 2:16	Discrimination by private companies or organizations involved in adoption-related services

# CHAPTER 3. ASSISTED REPRODUCTION, EXCLUDING SURROGACY

3:1	Generally
3:2	Legal parentage, generally
3:3	Relevant statutory provisions
3:4	LGBTQ couples in recognized comprehensive
	legal relationships
3:5	LGBTQ couples who are not in comprehensive
	legal relationships
3:6	Failure to comply with applicable statutory
	requirements
3:7	Requirement of written consent
3:8	Failure to comply with written consent
	requirement
3:9	Requirement of physician involvement, generally

§ 3:10	Failure to comply with physician involvement
	requirement
§ 3:11	Reciprocal IVF
§ 3:12	Gamete donors, generally
§ 3:13	Statutory provisions addressing the legal rights and obligations of gamete donors
§ 3:14	Failure to comply with statutory requirements
§ 3:15	Parentage of known gamete donors
§ 3:16	Gamete donor's participation in the child's life
§ 3:17	Constitutional claims of a known gamete donor
§ 3:18	Gamete providers and acknowledgments of
	parentage
§ 3:19	States without gamete donor statutes
§ 3:20	Enforceability of gamete donor agreements
§ 3:21	Gamete donors and in vitro fertilization
§ 3:22	Choice and conflict of laws issues
§ 3:23	Access to assisted reproduction services and insurance coverage
§ 3:24	Conflict of interest issues

#### CHAPTER 4. SURROGACY

#### I. INTRODUCTION

§ 4:1 Surrogacy, generally

#### II. SURROGACY AGREEMENTS

- § 4:2 Statutory provisions regarding the permissibility and enforceability of surrogacy agreements
- § 4:3 Enforceability of surrogacy agreements in states with no comprehensive legislation
- § 4:4 Genetic/traditional surrogacy agreements
- § 4:5 Gestational surrogacy agreements
- § 4:6 Compensated surrogacy agreements

# III. PARENTAGE OF CHILDREN BORN PURSUANT TO A SURROGACY AGREEMENT

#### A. DETERMINING PARENTAGE, GENERALLY

- § 4:7 Introduction
- § 4:8 Intent-based rule

§ 4:24

§ 4:25

Table of	CONTENTS
§ 4:9	Gestation-based rule
§ 4:10	Genetics-based rule
§ 4:11	No clear rule
§ 4:12	Relevance of gamete donor statutes
§ 4:13	Constitutional claims regarding the enforcement or regulation of surrogacy agreements
§ 4:14	Constitutional claims raised by the person acting as a surrogate
§ 4:15	Constitutional claims raised by the intended parents
В.	DETERMINING PARENTAGE IN LGBTQ RELATIONSHIPS
§ 4:16	LGBTQ couples and surrogacy
§ 4:17	LGBTQ couples in comprehensive legal relationships
§ 4:18	LGBTQ couples who are not in recognized comprehensive legal relationships
§ 4:19	Parentage judgments
§ 4:20	Options when at least one of the intended parents is not a legal parent
C.	JURISDICTIONAL AND CHOICE OF LAW ISSUES
§ 4:21	Jurisdictional issues, generally
§ 4:22	Determining which state has jurisdiction
§ 4:23	Establishing jurisdiction in a state in which no party resides

#### D. CIVIL AND CRIMINAL PENALTIES

§ 4:26 Potential civil and criminal penalties § 4:27 Potential penalties and third parties § 4:28 Other potential claims against third parties Ethical considerations § 4:29 § 4:30 Surrogacy and insurance coverage

Recognition of out-of-state judgments

Choice of law issues

#### CHAPTER 5. PARENTAGE DETERMINATIONS, INCLUDING ADOPTIONS

#### I. OVERVIEW

§ 5:1	Generally
§ 5:2	Second parent adoption, generally
§ 5:3	Permissibility of second parent adoptions
§ 5:4	Cases holding second parent adoptions are <i>not</i> permissible
§ 5:5	Cases holding that second parent adoptions <i>are</i> permissible
§ 5:6	Waiver
§ 5:7	Doctrine of avoiding absurd results
§ 5:8	Liberal interpretation
§ 5:9	Within the discretion of the court
§ 5:10	Summary
§ 5:11	Joint adoption
§ 5:12	Third parent adoptions
§ 5:13	Legal consequences of an adoption
§ 5:14	Procedural issues
§ 5:15	Jurisdiction and residency
§ 5:16	Venue
§ 5:17	Consent and notice
§ 5:18	Child's consent
§ 5:19	Home study
§ 5:20	Criminal background check
§ 5:21	Joint representation
§ 5:22	Other means of establishing parentage
§ 5:23	More than two legal parents

#### II. BIRTH CERTIFICATES

- § 5:25 Birth certificates, generally
- § 5:26 Parenting agreements

# CHAPTER 6. CUSTODY DISPUTES BETWEEN LGBTQ LEGAL PARENTS

Importance of obtaining judgments of parentage

§ 6:1 Legal parents stand on equal footing, regardless of the parties' respective genetic connections to the child or lack thereof

#### Table of Contents

Finality and recognition of judgments of parentage § 6:3 In-state collateral attacks on final judgments within the initial decree state § 6:4 Cases rejecting in-state collateral attacks on final adoption judgments Cases permitting in-state collateral attacks on § 6:5 second parent adoption judgments § 6:6 Cases rejecting in-state collateral attacks on other parentage judgments § 6:7 Interstate and intercountry recognition of judgments of parentage § 6:8 Interstate recognition in the absence of a judgment of parentage

#### **CHAPTER**

# 7. DISSOLUTION/SEPARATION ISSUES WHERE ONLY ONE PARENT IS A LEGAL PARENT

# A. CUSTODY AND VISITATION RIGHTS AND CHILD SUPPORT OBLIGATIONS OF DE FACTO PARENTS

Generally
Legal recognition for LGBT parents
Different-sex parents and extended family relationships
Statutory protections for de facto parents
Judicial protections for <i>de facto</i> parents, psychological parents, persons <i>in loco parentis</i> , equitable parents, and parents by estoppel
Terminology used in ALI Principles
De facto parents given full parental rights
De facto parents may seek custody
De facto parents may seek visitation only
Jurisdiction over claims by de facto parents
Standing for de facto parents
Relevance of harm to the child
Relevance of inability or failure to adopt
Number of parents
Constitutional considerations
Child Support Obligations of $De\ Facto\ Parents$

# CHAPTER 8. MARRIAGE AND OTHER RELATIONSHIP PROTECTIONS

#### I. THE ROAD TO MARRIAGE EQUALITY

- § 8:1 Marriage equality nationwide
- § 8:2 History of marriage litigation

### II. RELATIONSHIP RECOGNITION OTHER THAN MARRIAGE

§ 8:3	Civil unions, domestic partnerships, and other
	state relationship statuses, generally
8 0.4	California Domastia martranghina

- § 8:4 California—Domestic partnerships
- § 8:5 Colorado—Civil unions and designated beneficiaries
- § 8:6 Connecticut—Former civil unions converted to marriages
- § 8:7 Delaware—Former civil unions converted to marriages
- § 8:8 District of Columbia—Domestic partnerships
- § 8:9 Hawaii—Civil unions and reciprocal beneficiaries
- § 8:10 Illinois—Civil unions
- § 8:11 Maine—Limited domestic partnerships
- § 8:12 Maryland—Limited domestic partnerships
- § 8:13 Nevada—Domestic partnerships
- § 8:14 New Hampshire—Former civil unions converted to marriage
- § 8:15 New Jersey—Civil unions and domestic partnerships
- § 8:16 New York—Limited domestic partnerships
- § 8:17 Oregon—Domestic partnerships
- § 8:18 Rhode Island—Formerly civil unions
- § 8:19 Vermont—Formerly civil unions
- § 8:20 Washington—Domestic partnerships
- § 8:21 Wisconsin—Formerly limited domestic partnerships
- § 8:22 American Indian tribal nations
- § 8:23 Interstate recognition issues for couples in nonmartial statuses

#### III. FEDERAL MARRIAGE RECOGNITION

§ 8:24 Former federal Defense of Marriage Act and federal recognition of marriages

#### CHAPTER 9. MARRIAGE AND CUSTODY ISSUES FOR TRANSGENDER PEOPLE

### I. LEGAL STATUS OF TRANSGENDER PERSONS

- § 9:1 Introduction
- § 9:2 Birth certificates and court orders

#### II. MARRIAGES OF TRANSGENDER PERSONS

- § 9:3 Validity of marriage when a transgender person marries
- § 9:4 One spouse transitioning after marriage has no impact on the validity of the marriage
- § 9:5 Need for extra legal protections for transgender spouses

#### III. LEGAL ISSUES AFFECTING TRANSGENDER PARENTS

- § 9:6 Transgender status irrelevant to child custody and visitation
- § 9:7 Transgender status as basis for denial or restriction of custody or visitation
- § 9:8 Transgender status as basis for termination of parental rights
- § 9:9 Need for extra legal protections for transgender parents

#### IV. LEGAL ISSUES REGARDING TRANSGENDER CHILDREN

§ 9:10 Custody issues when parents disagree about transgender children

#### APPENDIX

Appendix I. Lesbian and Gay Parents and Their Children: A Summary of Research Findings

Table of Laws and Rules

**Table of Cases** 

#### Index