



## Stepparent Policy Reforms: *Balancing Rights & Obligations*

*As many as 1 in 3 children spend some childhood years living with a stepparent,<sup>1</sup> and stepparents often play an important role in stepchildren's lives, emotionally as well as economically.<sup>2,3,4,5</sup> However, stepparent-stepchild relationships are largely invisible in the law.<sup>4</sup>*

### Current Law

Legal parental rights consist of considerable power to direct childrearing. A fit parent's authority is closely protected by the Constitution against unjustified government and individual interference.<sup>6</sup>

- *Parental rights doctrine:* Biological or adoptive parents have fundamental rights and duties to direct the care, control, and upbringing of their children.
- *Parenthood as an exclusive status:* Children cannot have more than two legal parents at a time.
- State policies generally treat residential stepparents as if they are legal strangers to stepchildren, with no rights or duties.<sup>4,7</sup> Federal program policies, such as social security and student financial aid, however, often assume stepchildren are stepparents' dependents.<sup>4,8</sup>
- Some states require stepparents to financially support their stepchildren<sup>6,9</sup>—yet only half explicitly specify that the duty exists *only* while the child resides with the stepparent and that legal parents remain primarily responsible for support.<sup>8</sup>
- Stepparents have no legal authority to act on behalf of their stepchildren.<sup>4,6</sup>

### Inadequate Options for Clarifying Stepparents' Rights and Responsibilities:

- **The only reliable way to resolve legal ambiguities of the stepparent role and establish a legal parent-child relationship is through stepchild adoption.**<sup>4,10</sup> However, first the non-custodial parent's legal rights to his/her child must be terminated by court order (if s/he is determined to be an "unfit" parent) or voluntary consent.<sup>7</sup> Children usually experience a substantial loss when parental rights are terminated, even if that parent is considered unfit.<sup>4</sup> While approximately half of U.S. adoptions involve stepchild adoptions, most stepparents do not adopt their stepchildren because of the legal and personal complications involving the non-custodial parent.<sup>7,10</sup> A possible solution for some families is the provision of open adoption statutes with enforceable visitation orders for former parents. Currently, however, these are included in only a few states.<sup>7,9</sup>
- **Another option for establishing a legally recognized parent-child relationship includes negotiating or contracting a stepparent's rights and duties during and post-marriage in case of parental death or divorce.** Written contracts specifying future stepchild financial support responsibilities are enforceable generally, but written agreements even with both legal parents' consent that a stepparent will receive future guardianship are non-binding.<sup>7</sup> While this private approach may clarify a stepparent's role in certain cases, it does not help establish consistent, accepted societal parenting expectations for stepfamilies, and there is no guarantee that a court will follow or enforce any private contract reached by a child's legal parents, relatives, and/or stepparent.
- **Stepparents can sometimes serve as *de facto* parents** when they explicitly or implicitly express intent—through statements or conduct—to voluntarily and willingly take on the role of biological parent in a child's life.<sup>6</sup> *De facto* parents have similar parenting rights and obligations, but stepparents can end such relationships at any time, even if they promised future support.<sup>2</sup>
- **There are currently insufficient options if death or divorce ends marriage.** If a stepparent dies without a will, stepchildren will receive *nothing*. Even if a stepchild is named in a will, other laws may guarantee part of the estate for the surviving spouse and biological or adopted children.<sup>7</sup> While all states have statutes permitting stepparents to seek *limited* visitation rights,<sup>6</sup> stepparents usually have to rely on a biological parent's consent to have access to and continued contact with stepchildren<sup>9</sup> Only *half* of the states have statutes permitting stepparents to seek custody rights. Even then, stepparents receive custody only as a last resort because of extraordinary circumstances—i.e., unfit biological parent and no other relatives seeking custody, regardless of how little previous contact the child had with them.<sup>6</sup>

policy brief

## **Policy Recommendations**

**In order to legalize and support step-relationship ties consistently across the U.S., changes must be made to current laws that:**

### **1. “Step” outside of nuclear family ideology to clarify duties and rights without necessarily terminating biological parental rights.**

- Establish residence orders that permit stepparents to *voluntarily choose* to petition (under specified guidelines) to assume and share “parental responsibility” (i.e., parental rights, authority, and support duties) with biological parents.
- Provide open adoption statutes that include enforceable visitation rights for the “terminated,” nonresidential parent.

### **2. Balance stepparent support duties with concomitant rights and authority. Clarify duties and rights while married and if a marriage is disrupted.**

- Stepparents generally have fewer rights than legal guardians or foster parents. Many children never, or only periodically, have contact with or receive support from their nonresidential parent. Most residential stepparents voluntarily take on support duties. If stepparents have support obligations, it is fair that they also have a recognized parenting role and rights.
- The lack of established role expectations and responsibilities of stepfamily members serves as a barrier against stepparents investing in a relationship with their stepchildren—and vice versa—and exacerbates many stepparenting-related problems.

### **3. Establish independent stepparent legal standing and a fair chance to be granted custody—not just visitation—rights, truly considering children’s best interests, not just their biological ties.**

- Federal and state laws inconsistently, if at all, recognize stepfamily duties and rights. Reliance on available judicial discretion is insufficient and too unpredictable.
- Children need stability and continuity in their (step-) family relationships and can benefit from multiple parents.

#### *References and Notes*

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2. Fine, M. A. (1997). Stepfamilies from a policy perspective: Guidance from the empirical literature. *Marriage and Family Review*, *26*, 249-264.
3. Note: Some factors that influence the nature and quality of step-relationships: Length of acquaintance, age of the child, differing needs of stepchild and stepparent, and differing wishes and desire for a relationship between stepchild and stepparent. (See Edwards, R., Gillies, V., & McCarthy, J.R. (1999). Biological parents and social families: Legal discourses and everyday understandings of the position of step-parents. *International Journal of Law, Policy, and the Family*, *13*, 78-105.)
4. Mason, M. A. (1998). The modern American stepfamily: Problems and possibilities. In M. A. Mason, A. Skolnick, & S. D. Sugarman (Eds.), *All our families* (pp. 95-116). New York: Oxford University Press.
5. Note: Stepparents can often serve as key mediators in stepfamilies. Children can benefit from multiple, stable parental attachments, as long as they are not exposed to on-going detrimental arguments between adults. (See De’Ath, E. (1997). Stepfamily policy from the perspective of a stepfamily organisation. *Marriage and Family Review*, *26*, 265-279; Grotevant, H.D., Ross, N.M., Marchel, M.A., & McRoy, R.G. (1999). Adaptive behavior in adopted children: Predictors from early risk, collaboration in relationships within the adoptive kinship network, and openness arrangements. *Journal of Adolescent Research*, *14*, 231-247.)
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