

## **Married, Same-Sex Parents Now Get the Same Custody Rights as Biological Parents in New York**

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By [Penny Arevalo](#)

Gay parents who break up have the same custody rights to their children in New York as heterosexual couples, now that the state recognizes gay marriages.

But non-biological parents may still want to go the extra step and adopt their child, especially if they ever see themselves moving out of state.

- Steps toward change.
- US Senate may address the issue on a national scale.
- Why a married gay couple should still consider adoption.

### Legal Changes on the Move

Even before [Gov. Andrew Cuomo signed into law](#) a bill that legalized gay marriages in New York on June 24, activists saw signs of hope with a legal decision from the state's highest court, the Court of Appeals.

In that case, a woman who was already pregnant, Janice R., met and married another woman, Debra H., in Vermont. For 2 ♦ years, they lived together in New York with Janice's son, now almost 8, until they separated. Janice slowly and ultimately completely severed the ties between her son and Debra, so Debra sued for joint custody.

The Court of Appeals decided that even though New York law did not afford Debra any rights as a non-biological parent who wasn't with Janice when she conceived, Vermont law did. In a legal concept called [comity](#), it chose to recognize for the first time the gay-marriage laws of another state.

"I'm not sure the court has caught up to community standards, but at least the law has recognized the trends of community standards," says [Gregory A. Franklin of Ashcraft Franklin Young & Peters](#) in Rochester, New York, who clinched upstate New York's first gay adoption in 1994.

According to [Jurist.org](#), gay activists hailed the Debra lawsuit as a step in the right direction. Ironically, because the court refused to change the definition of parent under New York law, those who champion traditional values reacted similarly.

Few states employ comity in trying to determine custody, Franklin said. Indeed, many of them have passed a "Defense of Marriage Act" (or DOMA) that defines marriage as between a man and a woman, requiring gay parents to go the extra step of adopting their children.

### Changes Afoot on the National Level?

That could all change soon. According to the [Wall Street Journal](#), the US Senate is set to discuss repealing federal DOMA. In February, the Obama administration announced that it would not be defending DOMA.

Sen. Dianne Feinstein, D-Calif., penned the [bill](#) the Senate Judiciary Committee will examine next week. It is back by the White House.

## New York Gay Couples Should Still Consider Adoption

Just the same, Franklin advises New York's non-biological parents in a gay couple to adopt their children. While gay couples now enjoy full parental rights in New York, they may not if they end up moving.

"If they move to Michigan or Virginia or some other state that doesn't recognize gay marriage, there is no order that the state has to follow [New York law] in full faith," Franklin says. On the other hand, all states recognize the parent-child relationship in a legal adoption, even if done outside the state, indeed, outside the country.

A co-parent adoption, Franklin adds, should probably cost no more than \$5,000.

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