



# Can Be a Parent in Nevada?

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**In Nevada, the law recognizes various types of parents, including biological parents, adoptive parents, and legal guardians. The question of who can legally be a parent in Nevada is relevant not only to family law but to probate and trust attorneys, wrongful death lawsuits, and various benefits that rely on a parent-child relationship.**

## Genetic Parents

A person who provides genetic material intending to be a parent for the conception of a child may be recognized as a parent in Nevada, regardless of marital status or gender identity. According to Nevada Revised Statutes (NRS) 126.051(2), a man is conclusively presumed to be the parent of a child if a genetic test shows “a probability of 99 percent or more that

he is the father.” The presumption may be rebutted if the man can show that he had an identical sibling who may be the father. While this statute does not mention it, the presumption can also be rebutted if it is demonstrated that the man was a sperm donor, as discussed in greater detail below, relinquished his rights in a consent for adoption, or if a court has terminated his parental rights. According to NRS 126.231, all statutes that apply to a father-and-child relationship apply to a mother-and-child relationship, meaning a mother can also demonstrate a genetic parentage right so long as her rights have not been relinquished or terminated.

## Presumed Parents

It is presumed that a child’s natural mother is the woman who gave birth to the child, and the child’s father is a man she is married to. Thus, if a child is born to a married couple, the husband is presumed to be the child’s father, or if the child is born “within 285 days after the marriage is terminated by death, annulment, declaration of invalidity [which is a void marriage which is duplicative of an annulment] or divorce, or after a decree of separation is entered by a court.” NRS 126.051(1)(a).

In addition, a person is presumed to be a parent if the person was cohabitating with the child’s natural mother<sup>1</sup> for a least six months before the child was conceived and were cohabitating when they conceived the child, or if they attempted to marry each other but it was invalid or could be invalid.

Presumed paternity can be established with a declaration for voluntary acknowledgment of paternity or parentage (signed at the hospital). However, suppose a second parent is not placed on the birth certificate at the hospital, utilizing either a declaration of voluntary acknowledgment of paternity or parentage. In that case, the person must seek a court order to establish parentage. Once parentage is established, the second parent is entitled to the same rights and responsibilities as a biological parent married to the mother.

## Gestational Parents

Nevada law recognizes gestational parentage, which refers to giving parentage to the person who gives birth to a child, regardless of whether they are biologically related to the child. Thus, a woman who carries a child to term using either an egg donation or embryo donation will be recognized as a legal parent. The exception

is if she intended not to be a parent and followed the surrogacy statutes as defined below.<sup>2</sup>

### **Married Couples**

While this is the same conversation as was had above, changing the discussion title from presumed parents to married couples may assist in categorizing clients and what parental rights they may or may not have. In Nevada, married couples are presumed to be the legal parents of any child born during the marriage. The spouses are both recognized as legal parents of the child, regardless of whether the child is biologically related to each parent. This presumption of parentage can be rebutted through a court proceeding, but absent any evidence to the contrary, the couple will be recognized as legal parents of the child.

### **Unmarried Couples**

Unmarried couples do not enjoy the same presumption of parentage as married couples in Nevada. If an unmarried couple has a child, the second parent must establish parentage to be recognized as the child's legal father. The parents can establish the parentage by signing a voluntary acknowledgment of paternity or parentage or through a court proceeding. Once parentage is established, the parent has the same rights and obligations as a married father.

### **Declaration of Voluntary Acknowledgment of Paternity or Parentage**

The key element of a voluntary acknowledgment of paternity or parentage under NRS 126.053 is that the acknowledgment is "deemed to have the same effect as a judgment or order of a court determining the existence of the relationship of parent and child if the declaration is signed in this or any other state by the parents of the child." NRS 126.053(1). The declaration "is not required to be ratified by a court of this State before the declaration is deemed to have the same effect as a judgment or order of a court determining the existence of the relationship of parent and child." NRS 126.053(1). A declaration can be rescinded within 60 days after it is signed by both parents or before a court proceeding relating to the child that the person is a party to (whichever occurs earlier), meaning the person has 60 days or less to rescind the declaration. The number one problem litigants face in Nevada courts is a demand from the court

to see the declaration. The declaration is not accessible to the parties unless they manage to keep a copy while at the hospital. An attorney or party must ask the court to read between the lines, which means that if a second parent was placed on the birth certificate, that only happened through one of three mechanisms: (1) the parties were married, (2) a declaration was signed, or (3) a court order was issued designating the parentage of the second parent.

### **Same-Gender Couples**

In Nevada, same-sex couples are recognized by the law as legal parents of their children. Same-gender couples have gained greater rights during the past decade with court decisions and modernized statutes that have interpreted Nevada law to allow same-gender couples to establish legal parentage through presumptions, assisted reproductive technology, and adoption.

### **Single Parents**

Single parents can also be recognized as the legal parents of their children in Nevada. The law automatically recognizes a single mother who carries her child as the legal mother of her child at birth. In contrast, a single father and a single mother who does not carry the child become parents through a different mechanism, such as adoption or surrogacy.

### **Assisted Reproduction**

Assisted reproductive technology, such as in vitro fertilization (IVF) or intrauterine insemination, can establish legal parentage in Nevada. In these situations, the intended parents may use sperm, egg, or embryo donations to conceive a child. The woman who carries the child will be a parent based on the giving-birth presumption. The other parent may either be a presumed parent by marriage, a presumed parent by genetics, or a presumed parent by manifesting an intent (that was not withdrawn by the presumed parent before the medical procedure for conception occurs) to be the legal parent of a child resulting from assisted reproduction. NRS 126.590 and NRS 126.700. The parent demonstrates their intent by signing a declaration for voluntary acknowledgment of parents or by a court finding during the first two years of the child's life, if the two parents resided together in the same household with the child and openly held out the child as their own. NRS 126.680. Beyond our statutes, Nevada has a Nevada Supreme Court

decision, *St Mary v. Damon*, 129 Nev. 647 (2013), that recognized and enforced a parenting agreement between two women, demonstrating intent that they shall both be parents after using assisted reproductive technology to have a child.

### **Surrogacy**

Surrogacy is another way for individuals or couples to become legal parents in Nevada. Nevada's surrogacy statutes (Gestational Carrier Agreements in the Statutes) are gender-neutral and marital-status-neutral. In Nevada, same-gender couples, married couples, unmarried couples, and single individuals may become parents using surrogacy in Nevada. Nevada law only allows for gestational surrogacy, which means that the woman acting as the surrogate/carrier is not genetically related to the child. NRS 126.580. If the gestational carrier statutes were complied with, NRS 126.710 through NRS 126.810, the intended parents are recognized as the child's legal parents once the child is born. The significant elements that must be complied with for a valid surrogacy are:

All parties are represented by independent counsel;

1. A contract containing the mandatory requirements in section NRS 127.750 is signed by all parties before "any medical procedures in furtherance of the gestational carrier arrangement" other than the screening/evaluation of the eligibility carrier;
2. The contract is in writing and is notarized; and
3. The carrier is not genetically related to the embryos that will be transferred to her.

### **Adoption**

Adoptive parents are also legal parents in Nevada. According to NRS 127.040, a child can be adopted by an adult or adults at least 10 years older than the child. The adoptive parent(s) assumes all legal rights and responsibilities of a natural parent, including the obligation to provide financial support and to make decisions regarding the child's welfare. Unless it is a stepparent, second-parent, or multi-parent adoption, the legal parents of the child will need to either be terminated by a court order or they will need to sign a consent to adoption, which has the effect of terminating their parental rights upon the adoption by a final court order. The adoptive parents become the

CONTINUED ON PAGE 34

# Who Can Be a Parent in Nevada?

child's legal parents. In Nevada, same-gender couples can adopt using the same process as opposite-gender couples.

## De Facto/Functional Parentage

De facto parenthood refers to recognizing a person as a legal parent based on their established parental role and relationship with a child, even if they are not a biological or adoptive parent. Under NRS 126.051, paternity is presumed if "the man receives the child into his home and openly holds out the child as his natural child." Nevada also has a statute that states that all paternity statutes shall apply to maternity actions, meaning a woman can hold a child out as her own and be declared a parent. There is also holding-out language in the assisted reproduction statutes in Nevada, NRS 126.690. The holding-out presumption is rebuttable under NRS 126.051(3). The assisted reproduction presumption of holding out is rebuttable under the requirements of NRS 126.690. However, the statutes are silent as to what happens to the non-genetic parent who holds the child out as their own when faced with the appearance of a genetic parent wanting to take their place.

Nevada's original parentage statutes were from a prior version of the Uniform Parentage Act, but they have been modified over time and have not been updated by the Nevada Legislature to match the 2017 Uniform Parentage Act. The Nevada Legislature considered the 2017 Uniform Parentage Act during the 2023 legislative session. It passed out of the Assembly and the Senate, but Governor Joe Lombardo vetoed it. The Uniform Parentage Act (UPA) is a model law proposed by the Uniform Law Commission that aims to provide a comprehensive framework for determining parentage in various family structures. Many states, including California, Arizona, and Utah, have adopted the 2017 UPA. The Uniform Parentage Act provides a more inclusive definition of parentage, recognizing various forms of parentage, including genetic, gestational, and functional parenthood.

Under the 2017 Uniform Parentage Act, a functional parent is a person who has assumed significant responsibility for the child's care, nurturing, and development. The UPA provides a non-exhaustive list of factors that may be considered in determining whether a person is a functional parent. A functional parent may be recognized as legal, even if they are not

biologically or legally related to the child. This provision reflects the importance of stable, enduring relationships in a child's life and the value of providing legal recognition and protection to those relationships.

The UPA recognizes the role of a person who has assumed a parental role in the child's life, even if they are not biologically or legally related to the child. Thus, a stepparent or a person who believed they were the genetic parent of a child but later learned that they were not who has assumed parental responsibilities may be recognized as a legal parent if they have a relationship with the child and have demonstrated a commitment to the child's welfare. In Nevada, without the 2017 Uniform Parentage Act, a functional parent, without an adoption or parental rights finding, possibly may be relegated to utilizing the third-party visitation statutes, NRS 125C.050, to obtain any quasi-rights, unless somehow the court can utilize its discretion to give "quasi parental rights." The 2017 Uniform Parentage Act would have answered these legal analysis problems in Nevada, and perhaps the veto will be overcome in the next legislative session with some education.

## Legal Guardians

In addition to biological parents and adoptive parents, Nevada law also recognizes legal guardians as decision-makers who stand in the shoes of legal parents. A legal guardian is a person a court appoints to make decisions regarding a child's care, custody, and upbringing. A legal guardian can be appointed if the child's parents are deceased, incapacitated, or otherwise unable or unwilling to care for the child. A legal guardian has the same rights and responsibilities as a natural parent, including the obligation to provide financial support and to make decisions regarding the child's welfare. However, a legal guardian does not stand in the shoes of the "next of kin" if the child dies without an estate plan.

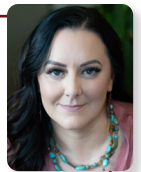
Nevada recognizes various legal relationships between parents and their children. Married couples are presumed to be the legal parents of any child born during the marriage. In contrast, unmarried couples must establish parentage to be recognized as legal parents through a declaration of acknowledgment of paternity or parentage or by court order. Same-sex couples can adopt children and establish legal parentage and single parents can also be recognized as legal parents of their children. Surrogacy

and assisted reproduction can also be used to establish legal parentage. Nevada has come a long way in the parentage world. It still has more to clean up. We can all assist in that process by discontinuing the use of the terms "natural," "bio," or "biological" parent and start utilizing genetic or legal parent instead.

A simple example is that nearly all termination of parental right actions mentions the "bio" parent, whether they are a biologically related parent. However, the parent that the court is terminating may have become a legal parent through assisted reproductive technology, adoption, or a presumption of parentage. Language matters, and understanding all the mechanisms that allow a person to be a parent will assist in the intellectual honesty of our proceedings.

## ENDNOTES:

1. "Natural parent" is used in many of the Nevada statutes but only in statutes that have existed for many years without modernization. They are a "legal parent," or many people also interchange the term with "biological parent."
2. Attorneys should be aware that the Nevada Legislature titled all the assisted reproduction statutes as "gestational agreements." Surrogacy refers to the gestational carrier agreements. The non-surrogacy assisted reproduction statutes are NRS 126.500 through NRS 126.700. NRS 126.710 through 126.810 are exclusive to surrogacy, except for donor compensation language in NRS 126.810.



**KIM SURRATT** began her assisted reproductive technology (ART) law career in 2004 with her first surrogacy case. She is an ART Fellow with the Academy of Adoption and Assisted Reproduction Attorneys and is serving her second term on their board of trustees. Surratt drafted and lobbied for the passage of all the current reproduction family law statutes in Nevada, including an insurance bill, gender neutralization of all Nevada statutes, the first voluntary acknowledgement of parentage statute, and more. She has spoken around the world on reproduction law and has trained a great number of attorneys in surrogacy both in Nevada and around the country.