Parental Sexual Orientation, Social Science Research, and Child Custody Decisions

Charlotte J. Patterson
University of Virginia

Author Contact Information:

Charlotte J. Patterson
Department of Psychology
P. O. Box 400400
University of Virginia
Charlottesville VA 22904
434 924 0664, voice
434 982 4766, fax
cjp@virginia.edu, email


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How should parental sexual orientation enter into decisions about child custody, if at all? This question has faced many litigants, attorneys, and judges in the United States. Over the years, different answers have been proposed by various participants in child custody disputes. Many responses to this question have been based on assumptions about facts, such as the idea that development among children who live with openly lesbian or gay parents may be impaired in one or more ways. Because social science methods can be used to evaluate factual assumptions of this kind, the results of social science research can be pertinent to child custody determinations that involve questions about parental sexual orientation.

In this chapter, I consider the role of social science research in the resolution of child custody disputes, focusing specifically on issues related to parental sexual orientation. To illustrate some of the questions that have arisen, I begin with a brief overview of some relevant features of child custody determinations involving parental sexual orientation across the United States. In the next section, I describe the social science research on parental sexual orientation, parenting, and child development. In a third section, I draw out some implications of research findings for legal decision-making in child custody cases. In this way, I hope to sketch the cultural and legal context of scientific inquiry, explain the principal findings of social science research, and clarify the value of such work in disputes about child custody.
In all such disputes, courts in every jurisdiction in the United States are to make custody decisions based upon the “best interests of the child” (Courtney & Joslin, 2008; Wald, 2006). Although this standard is always paramount, its application may vary from one jurisdiction to another. Whether to consider parental sexual orientation as one among other factors affecting a child’s best interests is thus an important decision for courts to make. In all instances, however, the best interests of the child are the undisputed standard.

The largest number of child custody disputes that involve parental sexual orientation occur in the context of heterosexual divorces in which one parent has disclosed a lesbian or gay identity (Richman, 2002). In these cases, courts must decide whether the lesbian or gay parent’s sexual identity is a relevant factor to be considered in determining the child’s best interests. More recently, other kinds of child custody disputes have emerged — e.g., between members of a lesbian couple who have separated after having children (Richman, 2002) — and these will be discussed briefly in the final section of this paper. Most of the discussion will focus, however, on the most common child custody disputes — those between one heterosexual and one lesbian or gay parent.

Overview of Child Custody Determinations Involving Parental Sexual Orientation

There have been many instances in which judicial decision-making has been hostile to lesbian and gay parents in the United States, especially in the context of child custody proceedings (Connolly, 2002; Patterson & Redding, 1996; Rubinstein, 1996). For instance, in a South Dakota child custody case, a judge commented that, as the “mother had chosen to live as a homosexual, she should relinquish all custody of her children. A homosexual parent is a criminal” (Chicoine v. Chicoine, 1992). In a Florida case, custody of a child was given to the
father, even though he had been convicted of murdering another relative. The court’s decision was based on the belief that a lesbian mother’s home could not be a suitable environment for any child (Ward v. Ward, 1995). In a Mississippi case, a gay father was denied custody of his son even though the youngster had seen his mother repeatedly beaten by his stepfather and had been threatened himself by the stepfather. Even in light of these countervailing factors, the court ruled that the gay father’s sexual identity was a bar to his custody of his son (Weigand v. Houghton, 1999). In these and many other cases, courts have expressed negative views about lesbian and gay parents (Connolly, 2002; Rubinstein, 1996).

When courts presume that lesbian or gay adults cannot provide suitable homes for children, they apply what has come to be described as a per se test (Connolly, 2002). The per se test states that non-heterosexual sexual identity is, in and of itself, sufficient grounds for denial of child custody. A clear statement of this position was made by the Virginia Supreme Court in 1985, when it denied custody to a gay father, holding that the “father’s continuous exposure of the child to his immoral and illicit relationship (with a same-sex partner) renders him an unfit and improper custodian as a matter of law” (Roe v. Roe, 1985). According to the per se rule, lesbian or gay identities simply preclude custody of minor children (Joslin & Minter, 2008).

In the past, sodomy laws were often relied upon as support for per se rulings. For instance, in a 1998 decision, the Alabama Supreme Court justified limits on a lesbian mother’s visitation with her children with the statement that “the conduct inherent in lesbianism is illegal in Alabama... (and the mother) is continually engaging in conduct that violates the criminal law of this state. Exposing her children to such a lifestyle, one that is illegal under the laws of this state... could greatly traumatize them” (Ex parte D.W.W., 1998). Since the United States
Supreme Court struck down sodomy laws in *Lawrence v. Texas*, in 2003, such arguments carry markedly less force (Goldberg, 2004).

Over time, *per se* rulings have given way in some jurisdictions to the consideration of sexual orientation as one among many factors. For example, when the Virginia Supreme Court awarded custody of a young boy to his grandmother rather than to his lesbian mother in 1995, the court specifically indicated that it was not applying a *per se* rule, but stated that the mother’s lesbian identity was “another important consideration in determining custody” (*Bottoms v. Bottoms*, 1995). Thus, in some jurisdictions, parental sexual orientation has come to be viewed as one consideration among others, and debate has come to center around how much weight parental sexual orientation should be given.

One standard that has been used to evaluate the significance of parental sexual orientation in child custody disputes is whether parents’ non-heterosexual identities have had any negative impact on the child. This *nexus* test requires that parental sexual orientation is shown to have resulted in harm to the child before parental sexual identities can be relied upon as decisive factors in custody matters. For instance, in *S.NE. v. R.L.B. (1985)*, an Alaska court awarded custody to a lesbian mother, noting that there was “no suggestion that (her sexual orientation) has or is likely to affect the child adversely”. Similar rulings have emerged in other jurisdictions. In fact, at the present time, this is the standard that is most often employed by courts in the United States (Joslin & Minter, 2008).

A question invited by the *nexus* test is, of course, what can be said to constitute harm. In different jurisdictions, courts have come to varied conclusions on this point. In an Ohio case, a child was found to be distressed by the mother’s relationship with another woman, and this was
considered evidence of harm for purposes of the *nexus* test (*Layne v. Layne*, 2001). In *Blew v. Verta* (1992), however, a Pennsylvania court found that a child’s distress and anger about the mother’s lesbian identity did not constitute evidence of harm to the child. Thus, with the *nexus* test, considerable latitude exists for courts to determine what constitutes harm to a child, and whether any harm has occurred. Given that parental divorce is generally considered to be painful for children, questions about distress and its appropriate attribution have been resolved differently by different courts.

Over time, however, the momentum of change has clearly been favorable to the interests of lesbian and gay parents and their children. Particularly since the United States Supreme Court handed down its decision in *Lawrence v. Texas* (2003), many of the legal arguments that have been used against lesbian and gay parents have lost force (Goldberg, 2004). In the District of Columbia, the law now explicitly states that parental sexual orientation cannot be a conclusive consideration in matters related to child custody (Joslin & Minter, 2008). While many if not most jurisdictions use a *nexus* test, it has become increasingly difficult to provide evidence of harm to children stemming from parental sexual orientation. As the results of social science research on lesbian- and gay-parented families become known, many courts seem to be moving toward an appropriate stance in treatment of parental sexual orientation.

**Research on Parental Sexual Orientation, Parenting, and Child Development**

Research on parental sexual orientation, parenting, and child development has addressed many of the concerns that have surfaced in child custody cases that involve a lesbian or gay parent. In this section, I first present the research on lesbian and gay parents themselves. In the next section, I consider the results of studies that focus on children of lesbian and gay parents. In
all the research, the main questions of interest focus on how well parents and children are faring, in terms of their psychological and social adjustment.

### Research on Lesbian and Gay Parents

Three concerns about lesbian and gay parents have historically been associated with judicial decision-making in custody litigation: the idea that lesbians and gay men are mentally ill, the notion that lesbians are less maternal than heterosexual women, and the belief that lesbians’ and gay men’s relationships with sexual partners leave little time for ongoing parent-child interactions (Patterson, 2007; Patterson et al., 2002; Patterson & Redding, 1996). As material presented in this section will show, research has failed to confirm any of these beliefs (Patterson et al., 2002; Patterson, 2007; Perrin & Committee on Psychosocial Aspects of Child and Family Health, 2002).

**Mental Health of Lesbians and Gay Men.** As is well-known, the psychiatric, psychological, and social work professions do not consider homosexual orientation to be a mental disorder. The American Psychiatric Association removed “homosexuality” from its list of mental disorders in 1980, stating that “homosexuality per se implies no impairment in judgment, stability, reliability, or general social or vocational capabilities” (American Psychiatric Association, 1980). The American Psychological Association has taken the same position and urged psychologists to help dispel the stigma that has long been associated with homosexual orientation (American Psychological Association, 1975, 2004). The National Association of Social Workers has a similar policy (National Association of Social Workers, 1994).

The decision to remove homosexual orientation from the list of mental disorders reflected extensive research, conducted over three decades, showing that homosexual orientation is not a
psychological maladjustment (Gonsiorek, 1991). There is no reliable evidence that homosexual orientation *per se* impairs psychological functioning, although the social and other circumstances in which lesbians and gay men live, including exposure to widespread prejudice and discrimination, may often cause distress (Cochran, 2001).

**Lesbians and Gay Men as Parents.** Beliefs that lesbian and gay adults are not fit parents likewise have no empirical foundation (Anderssen, Amlie & Ytteroy, 2002; Brewaeys & van Hall, 1997; Patterson, 2000; Perrin, 2002; Stacey & Biblarz, 2001; Tasker, 1999). Lesbian and heterosexual women have not been found to differ significantly either in their overall mental health or in their approaches to child rearing (e.g., Bos et al., 2004; Patterson, 2001). Similarly, lesbians’ romantic and sexual relationships with other women have not been found to detract from their ability to care for their children (e.g., Bos et al., 2004; Chan et al., 1998b; Pagelow, 1980). Lesbian couples who are parenting together have most often been found to divide household and family labor relatively evenly and to report satisfaction with their couple relationships (e.g., Bos et al., 2004; Chan, et al., 1998a; Ciano-Boyce & Shelley-Sireci, 2002; Johnson & O’Connor, 2002; Patterson, 1995a; Tasker & Golombok, 1998; Vanfraussen, Ponjaert-Kristoffersen & Brewaeyys, 2003). Research on gay fathers likewise suggests that they are likely to divide the work involved in childcare relatively evenly and that they are satisfied with their couple relationships (Johnson & O’Connor, 2002).

Some studies suggest that lesbian mothers’ and gay fathers’ parenting skills may be superior to those of matched heterosexual parents. For instance, Flaks, Fischer, Masterpasqua and Joseph (1995) reported that lesbian couples’ parenting awareness skills were stronger than those of heterosexual couples. This was attributed to greater parenting awareness among lesbian
nonbiological mothers than among heterosexual fathers. In one study, Brewaeys and her colleagues (1997) likewise reported more favorable patterns of parent-child interaction among lesbian as compared to heterosexual parents. In another study, however, they found greater similarities (Vanfraussen, Ponjaert-Kristoffersen & Brewaeys, 2003). A recent study of more than 200 lesbian and gay parent families found that, in contrast to reports of heterosexual parents, very few lesbian and gay parents reported any use of physical punishment (such as hitting or spanking) as a disciplinary technique; instead, they were likely to report use of positive techniques such as reasoning (Johnson & O’Connor, 2002). Certainly, research has found no reasons to believe lesbian mothers or gay fathers to be less adequate than heterosexual parents (Armesto, 2002; Bos et al., 2003, 2004; Patterson, 1997; Patterson & Chan, 1997; Tasker & Golombok, 1997). On the contrary, results of research suggest that lesbian and gay parents are as likely as heterosexual parents to provide supportive home environments for children.

Research on Children of Lesbian and Gay Parents

In addition to judicial concerns about lesbian and gay parents themselves, courts have voiced three major fears about the possible influence of lesbian and gay parents on children. The first of these fears is that development of sexual identity will be impaired among children of lesbian and gay parents. For instance, one such concern is that children brought up by lesbian mothers or gay fathers will show disturbances in gender identity and/or in gender role behavior (Falk, 1989; Patterson et al., 2002; Patterson & Redding, 1996). It has also been suggested that children brought up by lesbian mothers or by gay fathers will themselves become lesbian or gay (Patterson & Redding, 1996; Patterson et al., 2002). For instance, in Jacobson v. Jacobson (1981), the Supreme Court of South Dakota expressed concern that the children of a lesbian
mother might themselves become lesbian or gay adults.

A second category of concerns involves aspects of children’s personal development other than sexual identity (Falk, 1989, 1994; Patterson & Redding, 1996; Patterson et al., 2002). For example, courts have expressed fears that children in the custody of lesbian or gay parents will be more vulnerable to mental breakdown, will exhibit more adjustment difficulties and behavior problems, and will be less psychologically healthy than other children. As the Missouri Court of Appeals indicated in *L. v. D.* (1982), courts may be concerned about “the probably devastating effect of that life-style upon children”.

A third category of specific fears expressed by the courts is that children of lesbian and gay parents may experience difficulty in social relationships (Falk, 1994; Patterson & Redding, 1996; Patterson et al., 2002). For example, judges have expressed concern that children living with lesbian mothers or gay fathers may be stigmatized, teased, or otherwise victimized by peers. For instance, the Virginia Supreme Court gave custody of a minor child to the heterosexual mother with the justification that, had the gay father been awarded custody of his daughter, “social condemnation... will inevitably afflict her relationships with her peers and with the community at large” (*Roe v. Roe*, 1985, p. 694). Another fear that has been voiced is that children living with gay or lesbian parents may be more likely to be sexually abused by the parent or by the parent’s friends or acquaintances. Research can be valuable in evaluating the extent to which any of these concerns are justified.

**Sexual Identity**

Three aspects of sexual identity are considered in the research: *gender identity*, which concerns a person’s self-identification as male or female; *gender-role behavior*, which concerns
the extent to which a person’s activities, occupations, and the like are regarded by the culture as
masculine, feminine, or both; and *sexual orientation*, which refers to a person’s choice of sexual
partners, who may be homosexual, heterosexual, or bisexual (Money & Ehrhardt, 1972; Stein,
1993). Research relevant to each of these three major areas of concern is summarized below.

**Gender Identity.** In studies of children ranging in age from 5 to 14, results of projective
testing and related interview procedures have suggested that development of gender identity
among children of lesbian mothers follows the expected pattern (Green, 1978; Green, Mandel,
techniques to assess gender identity have been used by Golombok, Spencer & Rutter (1983) with
the same result; all children in this study reported that they were happy with their gender, and
that they had no wish to be a member of the opposite sex. There was no evidence in any of the
studies of gender identity of any difficulties among children of non-heterosexual parents.

**Gender-Role Behavior.** A number of studies have reported that gender-role behavior
among children of lesbian mothers falls within typical limits for conventional sex roles
(Brewaeys et al., 1997; Golombok et al., 1983; Gottman, 1990; Green, 1978; Green et al., 1986;
Hoeffer, 1981; Kirkpatrick et al., 1981; Kweskin & Cook, 1982; Patterson, 1994a). For
instance, Kirkpatrick and her colleagues (1981) found no differences between children of lesbian
versus heterosexual mothers in toy preferences, activities, interests, or occupational choices.

Rees (1979) administered the Bem Sex Role Inventory (BSRI) to adolescents, who lived
with divorced lesbian or divorced heterosexual mothers. The BSRI yields scores on masculinity
and femininity as independent factors and an adrogyne score based on the ratio of masculinity to
femininity. Children of lesbian and heterosexual mothers did not differ on masculinity or on
androgyne, but children of lesbian mothers reported greater psychological femininity than did those of heterosexual mothers. This result is the opposite of what one might expect based on stereotypes of lesbians as lacking in femininity, both in their own demeanor and in their likely influences on children.

Gender-role behavior of children was also assessed by Green and his colleagues (1986). In interviews with the children, no differences between children of divorced lesbian and children of divorced heterosexual mothers were found with respect to favorite television programs, favorite television characters, or favorite games or toys. There was some indication in interviews with children themselves that those with lesbian mothers had less sex-typed preferences for activities than did those with heterosexual mothers. Consistent with this result, lesbian mothers were also more likely than heterosexual mothers to report that their daughters often participated in rough-and-tumble play or occasionally played with “masculine” toys such as trucks or guns, but they reported no differences in these areas for sons. Lesbian mothers were no more and no less likely than heterosexual mothers to report that their children often played with “feminine” toys such as dolls. In both family types, however, children’s sex-role behavior was seen as falling within the expected or typical range.

Brewaeys and her colleagues (1997) also assessed gender-role behavior among young children who had been conceived via donor insemination by lesbian couples, and compared it to that of same-aged children who had been conceived via donor insemination by heterosexual couples, and to that of same-aged children who had been naturally conceived by heterosexual couples. They used the Preschool Activities Inventory (Golombok & Rust, 1993), a maternal report questionnaire that was specifically designed to identify ‘masculine’ and ‘feminine’
behavior among boys and girls within unselected samples of schoolchildren. They found no significant differences between children of lesbian and those of heterosexual parents on preferences for gendered toys, games, and activities (Brewaeys et al., 1997).

Overall, the research suggests that children of non-heterosexual parents develop patterns of gender-role behavior that are much like those of other children. Thus, concerns about possible problems in the development of gender identity and gender-role behavior among the offspring of lesbian and gay parents have no basis in empirical research.

Sexual Orientation. A number of investigators have also studied another aspect of sexual identity, sexual orientation (Bailey, Bobrow, Wolfe & Mickach, 1995; Bozett, 1980, 1982, 1987, 1989; Gottman, 1990; Golombok & Tasker, 1996; Green, 1978; Huggins, 1989; Miller, 1979; Paul, 1986; Rees, 1979; Tasker & Golombok, 1997). All of these investigators have found that the great majority of offspring of both lesbian mothers and gay fathers describe themselves as heterosexual. For instance, Huggins (1989) interviewed adolescents, half of whom had lesbian mothers and half of whom had heterosexual mothers. None of the offspring of lesbian mothers identified themselves as lesbian or gay, but one adolescent with a heterosexual mother did; this difference was not statistically significant. In another study, Bailey and his colleagues (1995) studied adult sons of gay fathers and found more than 90% of the young men to be heterosexual.

Golombok and Tasker (1996; Tasker & Golombok, 1997) studied 25 young adults reared by divorced lesbian mothers and 21 young adults reared by divorced heterosexual mothers. They reported that offspring of lesbian mothers were no more likely than those of heterosexual mothers to describe themselves as feeling attracted to same-sex sexual partners. If they were attracted in this way, however, young adults with lesbian mothers were more likely to report that
they would consider entering into a same-sex sexual relationship, and they were more likely to have actually participated in such a relationship. They were not, however, more likely to identify themselves as non-heterosexual (i.e., as lesbian, gay, or bisexual). These results were based on a small sample, and they must be interpreted with caution. At the same time, the study is the first to follow children of divorced lesbian mothers into adulthood, and it offers a detailed and careful examination of important issues.

Thus, the information that is available does not reveal elevated rates of non-heterosexual identities among the offspring of lesbian or gay parents. Even if it did, this would be no cause for alarm, since non-heterosexuality is a normal variation of human sexual identity. At this time, however, the research evidence does not reveal increased likelihood that offspring of lesbian or gay parents would themselves grow up to identify themselves as non-heterosexual.

**Other Aspects of Personal Development**

Studies of other aspects of personal development among children of lesbian and gay parents have assessed a broad array of characteristics. Among these have been separation-individuation (Steckel, 1985, 1987), psychiatric evaluations (Golombok et al., 1983; Kirkpatrick et al., 1981), behavior problems (Brewaeys et al., 1997; Chan et al., 1998b; Flaks, et al., 1995; Gartrell, Deck, Rodas, Peyser & Banks, in press; Golombok et al., 1983, 1997; Patterson, 1994a; Tasker & Golombok, 1995, 1997; Wainright et al., 2004), personality (Gottman, 1990; Tasker & Golombok, 1995, 1997), self-concept (Golombok, Tasker & Murray, 1997; Gottman, 1990, Huggins, 1989; Patterson, 1994a; Puryear, 1983; Wainright et al., 2004), locus of control (Puryear, 1983; Rees, 1979), moral judgment (Rees, 1979), school adjustment (Wainright et al., 2004), and intelligence (Green et al., 1986). Research suggests that concerns about difficulties in
these areas among children of lesbian mothers are unwarranted (Patterson, 1997, 2000; Parks, 1998; Perrin, 1998, 2002; Stacey & Biblarz, 2001; Tasker, 1999). As was the case for sexual identity, studies of these aspects of personal development have revealed no major differences between children of lesbian versus heterosexual mothers. Overall, the belief that children of lesbian and gay parents suffer deficits in personal development is without empirical foundation.

**Social Relationships**

Studies assessing potential differences between children of lesbian and gay parents, on the one hand, and children of heterosexual parents, on the other, have included assessments of children’s social relationships. The most common focus of attention has been on peer relations, but some information about children’s relationships with adults has also been collected. Research findings that address the likelihood of sexual abuse are also summarized in this section.

Research on peer relations among children of lesbian mothers has been reported by Golombok and her colleagues (1983, 1997), by Green and his colleagues (1978, 1986), and by Patterson and her colleagues (Patterson, 1994a; Wainright & Patterson, 2006, 2008). Reports by both parents and children suggest typical patterns of development of peer relationships. For example, as would be expected, most school-aged children reported same-sex best friends and predominantly same-sex peer groups (Golombok et al., 1983; Green, 1978; Patterson, 1994). The quality of children’s peer relations was described, on average, in positive terms by researchers (Golombok et al., 1983) as well as by mothers and their children (Green et al., 1986; Golombok et al., 1997). Although some children and adolescents have described encounters with anti-gay remarks from peers (Gartrell et al., 2005; Goldberg, 2007), adolescent and young adult offspring of divorced lesbian mothers did not recall being the targets of any more childhood
teasing or victimization than did the offspring of divorced heterosexual mothers (Tasker & Golombok, 1995, 1997; Wainright & Patterson, 2006, 2008). The number and quality of adolescents’ and young adults’ romantic relationships has also been found to be unrelated to maternal sexual orientation (Tasker & Golombok, 1997; Wainright et al., 2004).

Studies of the relationships with adults among the children of lesbian and gay parents have also resulted in a generally positive picture (Brewaey et al., 1997; Golombok et al., 1983; Harris & Turner, 1985/86; Kirkpatrick et al., 1981; Wainright et al., 2004). For example, child and adolescent relationships with their parents have been described as equally warm and caring, regardless of whether parents have same- or opposite-sex partners (Patterson, 2001; Wainright et al., 2004). Golombok and her colleagues (1983) found that children of divorced lesbian mothers were more likely to have had recent contact with their fathers than were children of divorced heterosexual mothers. Another study, however, found no differences in this regard (Kirkpatrick et al., 1981). Harris and Turner (1985/86) studied the children of gay fathers as well as those of lesbian mothers, and reported that parent-child relationships were described in positive terms. One significant difference was that young adult offspring of divorced lesbian mothers described themselves as communicating more openly with their mothers and with their mothers’ current partners than did adult children of divorced heterosexual parents (Tasker & Golombok, 1997).

Research has also focused on children’s contacts with members of the extended family, especially grandparents. Because grandparents are generally seen as supportive of their grandchildren, any strains in parents’ relationships with grandparents might have adverse effects on the frequency of children’s contacts with grandparents, and hence also have a negative impact on grandchildren’s development. Patterson and her colleagues have evaluated these possibilities
in two separate studies (Fulcher, Chan, Raboy & Patterson, 2002; Patterson et al., 1998). Their findings revealed that most children of lesbian mothers were described as being in regular contact with grandparents (Patterson et al., 1998). In a recent study, based on a systematic sampling frame and in which lesbian and heterosexual parent families were well-matched on demographic characteristics, there were no differences in the frequency of contact with grandparents as a function of parental sexual orientation (Fulcher, et al., 2002). Gartrell and her colleagues (2000) have also reported that grandparents were very likely to acknowledge the children of lesbian daughters as grandchildren. Thus, the evidence from empirical research suggests that inter-generational relationships in lesbian mother families are satisfactory.

Children’s contacts with adult friends of their lesbian mothers have also been assessed (Fulcher et al., 2002; Golombok et al., 1983; Patterson et al., 1998). All of the children were described as having contact with adult friends of their mothers, and most lesbian mothers reported that their adult friends were a mixture of homosexual and heterosexual individuals. Children of lesbian mothers were no less likely than those of heterosexual mothers to be in contact with adult men who were friends of their mothers (Fulcher et al., 2002).

Concerns that children of lesbian or gay parents are more likely than children of heterosexual parents to be sexually abused have also been addressed. Results of work in this area reveal that the great majority of adults who perpetrate sexual abuse are male; sexual abuse of children by adult women is extremely rare (Finkelhor & Russell, 1984; Jones & McFarlane, 1980; Sarafino, 1979). Moreover, the overwhelming majority of child sexual abuse cases involve an adult male abusing a young female (Jenny, Roesler & Poyer, 1994; Jones & McFarlane, 1980). Available evidence reveals that gay men are no more likely than heterosexual
men to perpetrate child sexual abuse (Groth & Birnbaum, 1978; Jenny et al., 1994; Sarafino, 1979). There are few published reports relevant to the issue of sexual abuse of children living in custody of lesbian or gay parents. A recent study did, however, find that none of the lesbian mothers participating in a longitudinal study had abused their children (Gartrell et al., 2005). Fears that children in custody of lesbian or gay parents might be at heightened risk for sexual abuse are without basis in the research literature.

In summary, results of research to date suggest that children of lesbian and gay parents have positive relationships with peers and that their relationships with adults of both sexes are also satisfactory. The emerging picture of lesbian mothers’ children is one of general engagement in social life with peers, with fathers, with grandparents, and with mothers’ adult friends — both male and female, both heterosexual and homosexual. Fears about children of lesbians and gay men being sexually abused by adults, ostracized by peers, or isolated in single-sex lesbian or gay communities have not been supported by the results of existing research.

Implications of Research for Legal Decision-Making in Child Custody Matters

Overall, there is no evidence to suggest that lesbian women or gay men are unfit to be parents or that psychosocial development among children of lesbian mothers or gay fathers is compromised relative to that among the offspring of heterosexual parents. Not a single study has found children of lesbian or gay parents to be disadvantaged in any significant respect relative to children of heterosexual parents. Indeed, the evidence to date suggests that home environments provided by lesbian and gay parents are as likely as those provided by heterosexual parents to support and enable children’s psychosocial growth.

It should be acknowledged that research on lesbian and gay parents and their children,
though no longer new, is still limited in extent. Although studies of gay fathers and their children have been conducted (Barret & Robinson, 1990; Barrett & Tasker, 2001; Patterson, 2004; Patterson & Chan, 1997), less is known about children of gay fathers than about children of lesbian mothers. Although studies of adolescent and young adult offspring of lesbian and gay parents are available (e.g., Tasker & Golombok, 1997; Wainright et al., 2004; Wainright & Patterson, 2006, 2008), relatively few studies have focused on the offspring of lesbian or gay parents during adolescence or adulthood. Although more diverse samples have been included in recent studies (e.g., Golombok et al., 2003; Wainright et al., 2004; Wainright & Patterson, 2006, 2008), many sources of heterogeneity have yet to be systematically investigated. Although longitudinal studies have been reported (e.g., Gartrell et al., 2000, 2005; Tasker & Golombok, 1997), more studies that follow lesbian and gay parent families over time are still needed. Thus, although a considerable amount of information is available, additional research would further our understanding of lesbian and gay parents and their children. Despite their limitations, however, the results of social science research on lesbian and gay parents and their children are nevertheless extraordinarily clear (Patterson, 2007; Wald, 2006). The results provide no justification whatsoever for restrictions on child custody or visitation by lesbian or gay parents. On the contrary, the findings of empirical research suggest that sexual orientation and parenting are simply unrelated.

Conclusions based on social science research in this area have been recognized and incorporated into the policies of a number of relevant professional organizations. For example, taking into account the results of social science research, the American Psychological Association “opposes any discrimination based on sexual orientation in matters of adoption,
child custody and visitation, foster care, and reproductive health services” (American Psychological Association, 2004). Similarly, the American Bar Association “supports the enactment of legislation and implementation of public policy providing that child custody and visitation shall not be denied or restricted on the basis of sexual orientation” (American Bar Association, 1995). Similar policies have been adopted by the American Psychiatric Association, the American Medical Association, the American Academy of Pediatrics, and by many other professional groups in the United States (Patterson, 2007).

The clear conclusion emerging from social science research relevant to lesbian and gay parents and their children is thus that parental sexual orientation is not as important a factor in parenting or child development as has often been believed. Studies with lesbian, gay, and heterosexual parents and their offspring have repeatedly found that the nature of relationships and interactions within the family are more clearly associated with important outcomes for children and adolescents than is parental sexual orientation (Patterson, 2006). This well-replicated and consistent finding suggests that parental sexual orientation should be considered essentially irrelevant to child custody proceedings. Instead of parental sexual orientation, courts should consider the quality of interactions and relationships between parents and their offspring.

It is important to recognize, however, that the results of empirical research are only one form of information relevant to child custody proceedings (Huston, 2008). Findings of research studies like those described above can inform courts about average outcomes for children or adolescents in groups of different kinds that have been assembled for research, but they cannot hope to foresee specific outcomes for individual children whose custody is disputed. Differences among people and among families will always be multifaceted, and parental sexual identities are only one among many
personal and family characteristics. What the research findings suggest, however, is that, of all the kinds of information that judges should keep in mind when making child custody determinations, parental sexual orientation may actually be one of the least important.

The discussion above has been focused on custody decisions that involve a heterosexual and a non-heterosexual parent, since these have historically made up the largest number of child custody proceedings that involve parental sexual orientation. In recent years, however, increasing numbers of cases have emerged that involve at least two non-heterosexual parents (Richman, 2002; Tolleson, 2006). Some of these involve lesbian and gay couples who had children, subsequently separated, and face disputes about child custody. In some cases, both lesbian mothers or both gay fathers may be legally recognized parents. In other cases — especially in jurisdictions that do not allow legal adoptions by a second parent — only one of the lesbian mothers or gay fathers may be a legally recognized parent. Some cases involve children conceived via donor insemination, others involve children conceived in the context of surrogacy arrangements, and other cases involve adopted children. In short, these newer cases are themselves quite diverse (Joslin & Minter, 2008; Tolleson, 2006).

Most common among the newer child custody cases are those involving the separation of same-sex partners (Richman, 2002). In a typical case, a lesbian couple decided that one of them would conceive via donor insemination and give birth to a child, and that they would rear the child together. After the child’s birth, both members of the couple typically acted as parents to the child for some period of time. Eventually the couple’s relationship soured, and they separated. Unable to agree on child custody and visitation, they ended up in court.

An important issue in these kinds of cases is whether both parents are recognized by the
court as legal parents (Joslin & Minter, 2008). In some jurisdictions, where the family may have completed a second-parent adoption, both parents will have legal standing in custody disputes. In other jurisdictions, however, avenues for legal recognition of a second same-sex parent may not have existed, and the second parent may be seen by the court as a “legal stranger”, having no connection to the child (Logue, 2002; Richman, 2002). In some of these locales, precedents may make it possible for a second parent to be given legal standing as a “psychological” or “de facto” parent (Joslin & Minter, 2008), but this is by no means a certain outcome. In many instances, the child or children may be left vulnerable to outcomes that isolate them from one of their parents and in this way, fail to serve their best interests.

What contributions can social science research make to resolution of these newer cases? Comparisons between heterosexual and non-heterosexual parents are not relevant to these disputes. Lengthy traditions of social science research attest, however, to the importance of children being allowed to maintain warm, consistent, and supportive relationships with both parents in the event of a divorce or separation (e.g., Emery, 1999). When children have formed close emotional ties with caretakers, the maintenance of these ties is conducive to children’s mental health, just as the disruption of them is likely to be detrimental (Golombok, 2000). Thus, from a psychological viewpoint, the best interests of children clearly require that courts seek to foster and maintain close parent-child relationships for children with non-heterosexual parents, just as they do for children with heterosexual parents.

Important questions in this area turn on definitions of parenthood. If an adult has lived with a child, been viewed as a parent, supplied the child’s financial support as well as physical care and guidance throughout a child’s life, should the law regard that person as a parent, for purposes of
child custody proceedings, even if there has been no legal adoption? Courts in different jurisdictions have answered this question in different ways (Joslin & Minter, 2008). From a psychological perspective, however, there is no ambiguity. From a psychological standpoint, children’s best interests require that significant relationships of this kind be protected. For courts to see such a person as a parent will generally if not always serve the child’s best interests.

Legal recognition of second parents in lesbian- and gay-parented families should, as some courts have recognized, cut both ways (Joslin & Minter, 2008). Such recognition requires the protection of parent-child relationships, which has implications for decision-making about custody and visitation. Such recognition also entails responsibilities, however, and has implications for decisions about child support and other financial arrangements. Parents have rights, but they also have responsibilities. Both rights and responsibilities should be respected and enforced by the legal system.

In summary, social science has much to offer when decision-making about child custody involves issues related to parental sexual orientation (Patterson, 2006, 2007; Wald, 2006). After twenty-five years of social science research, there is now strong consensus among responsible professionals that parenting skills and sexual orientation are independent of one another, and that children develop in very similar ways regardless of the sexual orientation. Whether parents are heterosexual, lesbian, or gay, children’s best interests require that important parent-child relationships be protected in the event of parental separation or divorce. Thus, the central conclusion emerging from this area of work is that, for purposes of child custody decision-making, parental sexual orientation should be considered irrelevant.
References


Parental Sexual Orientation


