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Expanding Third-Party Standing in Custody Actions: How the Opioid Crisis Has Impacted LGBTQ Parental Rights in Pennsylvania

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Comments

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ABSTRACT

Declared a public health emergency by the federal government, the opioid crisis often places children in foster care when parents fatally succumb to their addictions. To unburden the foster care system and to accommodate family members who want to care for these children, Pennsylvania enacted Act No. 21 on July 3, 2018, to expand custody standing to include certain third parties. However, because the legislature has not expanded the legal definition of "parent," Act No. 21 poses a threat to the legal rights of nonbiological LGBTQ parents.

This Comment begins by explaining how the opioid crisis motivated the Pennsylvania legislature to amend the statute.

* J.D. Candidate, The Dickinson School of Law of the Pennsylvania State University, 2020. I have spent much of my life teaching and writing about concepts of "family." Accordingly, I dedicate this Comment to Bill, Emily, Tom, Susan, and my mother, Judy. I also thank those at Dickinson Law School—my fellow clinic members, my International Human Rights classmates, and my Room 120 community—with whom I have collaborated and thought about how best to use the law to empower others.

This Comment then explores the negative ramifications of expanded standing on LGBTQ families. After examining the current rights of LGBTQ parents in Pennsylvania, this Comment demonstrates how the amendment impacts these rights. Legal scholars have analyzed how LGBTQ familial structures can become increasingly vulnerable when the localized nature of family law allows community morality to inform custody decisions. This Comment adds to this line of scholarship by placing the law within the larger scholarly discussion about LGBTQ parental rights. This Comment finally concludes with two suggestions to help protect LGBTQ parental rights: statutory recognition of "de facto parenthood" and offering proactive legal assistance to low-income LGBTQ parents so they can memorialize their parental intentions.

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I. INTRODUCTION

Opioid addiction currently stands as an overwhelming problem within the United States.[1] Officially declared a national epidemic by the Centers for Disease Control and Prevention in 2011 and a public health emergency by the Trump Administration in 2017, the opioid crisis often affects those with the greatest social and economic disadvantage.[2] The Institute for Research on Poverty suggests that individuals from lower socioeconomic categories face a greater risk of becoming addicted because "less-educated individuals face poor job prospects, flat or declining earnings and income, and greater risk of workplace injuries, disability, and chronic health conditions (which often lead to opioid prescriptions) . . . ."[3] Overdose deaths from these prescribed opioids account for 40 percent of the 91 overdose deaths per day in 2016.[4] Those who no longer have access to prescription opioids but still remain addicted often seek out street drugs which often contain fentanyl, a synthetic opioid that is 50 times more potent than heroin; deaths from fentanyl overdoses increased 540 percent between 2014 and 2016.[5]

When parents face addiction and then either pursue treatment or fatally succumb to the addiction, there are "substantial increases in foster care placements, which have considerable cost implications for states and the federal government."[6] To better provide healing and stability for foster children, states must devote money to train foster parents and to care for those children.[7]

The tragedy of and problems inherent to this opioid crisis have hit Pennsylvania at one of the highest rates in the country.[8] Pennsylvania amended its custody standing law in 2018 to allow certain third-parties to file for custody, both to alleviate burdens on the

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1. INST. FOR RESEARCH ON POVERTY, UNIVERSITY OF WISCONSIN-MADISON, THE OPIOID EPIDEMIC AND SOCIOECONOMIC DISADVANTAGE (March 2018), https://bit.ly/2TJvTxB [https://perma.cc/3T83-YQ7E].

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. Katie Wedell, *Foster Care System Struggles to Keep Pace with Opioid Epidemic*, DAYTON DAILY NEWS (Feb. 17, 2019), https://bit.ly/2tnUlci [https://perma.cc/VEZ7-WQJB] (describing the foster care situation as a "double whammy—not only are there more children entering foster care, but those children have more costly needs").

8. Dino Hazell, *Bloomberg Announces $10 Million to Fight Opioid Epidemic in Pennsylvania*, THE MORNING CALL (Nov. 30, 2018, 2:10 PM), https://bit.ly/2GV3zov [https://perma.cc/KKJ3-43ZH] (stating "Pennsylvania had the highest number of drug overdose deaths in 2017 among all states . . .").

foster care system and to accommodate those family members who want to care for children of addicted parents.[9]

This new standing provision creates certain vulnerabilities for LGBTQ[10] parents.[11] Because the opioid crisis hits lower-income populations at a higher rate,[12] because lower-income populations are more likely to remain unmarried,[13] and because one parent within a LGBTQ family is always and necessarily *not* a biological parent to the child,[14] the new statute threatens LGBTQ families.[15] As the definition of "parent" stands under current Pennsylvania law, the 2018 amendment to the custody standing provisions of Title 23, Section 5324 of the Pennsylvania Consolidated Statutes[16] threatens the parental rights of nonbiological LGBTQ parents in nonmarital relationships.[17]

Attention to how the new legislation affects this segment of the population is fundamentally necessary. The U.S. Supreme Court has interpreted the Fourteenth Amendment to include the fundamental right to parent.[18] Courtney G. Joslin emphasizes the need to think about the impact of new laws upon gay familial structures, particularly nonmarital ones.[19] Joslin states that the need for such consideration is "true, even if the law was not designed or intended to harm the group in question."[20] Because the Pennsylvania Supreme Court has interpreted the legal definition of "parent" in such a way that some LGBTQ nonbiological parents fall outside its protection, the new expanded child custody law may infringe on those nonbiological parents' constitutional rights.[21]

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9. Act of May 4, 2018, No. 21, 2018 Pa. Laws 112 (amending 23 PA. CONS. STAT. § 5324 (2018)).

10. The author has chosen to use the term "LGBTQ" because it is the term of choice for the Human Rights Commission. HRC Staff, *HRC Officially Adopts Use of "LGBTQ" to Reflect Diversity of Own Community*, HUMAN RIGHTS CAMPAIGN (June 3, 2016), https://bit.ly/2Kply9o [https://perma.cc/RCR2-7AEQ].

11. *Infra* Part III.

12. *Supra* notes 1–5 and accompanying text.

13. *Infra* Part III.B.2.

14. *Infra* Part III.A.1.

15. *Infra* Part III.A and Part III.B.

16. 23 PA. CONS. STAT. § 5324 (2018).

17. *Infra* Part III.A and Part III.B.

18. *See* Troxel v. Granville, 530 U.S. 57, 65 (2000) (discussing the right to raise children); Eisenstadt v. Baird, 405 U.S. 438, 453 (1972) (discussing the right to have children).

19. Courtney G. Joslin, *The Gay Rights Canon and the Right to Nonmarriage*, 97 B.U. L. REV. 425, 472 (2017).

20. *Id.* (citing Laurence H. Tribe, *Equal Dignity: Speaking Its Name*, 129 HARV. L. REV. F. 16, 19 (2015)).

21. *Infra* Part III.

Part II discusses the background of Act No. 21 ("Act 21"),[22] an Act conceived to meet a particular need—responding to the large number of biological relatives who act as custodians over children whose parents struggle with opioid addiction.[23] Part III will analyze the possible ramifications of Act 21 for LGBTQ parents who share no biological connection with their children.[24] It will first examine the current legal rights of nonbiological parents within Pennsylvania.[25] In order to better understand the evolution of these rights, Part III will also examine key rulings pertaining to same-sex parents in both marital and nonmarital relationships.[26]

This examination will demonstrate that the most secure legal category for nonbiological parents is that of *in loco parentis*—absent an agreement both the biological and nonbiological parents execute.[27] The analysis will then examine the particular threat of Act 21 to nonbiological parents, given the nature of "family law localism" and the "domestic relations exception," the latter being the idea that family law belongs to the state.[28] Legal scholars have pointed to family law as a site where community morality often informs custody decisions.[29] Joslin warns that this "greater tendency to rely on explicit morals-based justifications in the family law context is something that deserves greater consideration and analysis."[30] This Comment will add to this line of scholarship by analyzing the potential legislative intersection of two "moral" issues—sexuality and drug use—as they present themselves in Act 21.[31]

Finally, this Comment will conclude with two suggestions to protect low-income parents. First, the Pennsylvania legislature should adopt provisions of the 2017 version of the Uniform Parentage Act,[32] especially its definition of a "de facto parent."[33] Second,

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22. Act of May 4, 2018, No. 21, 2018 Pa. Laws 112 (amending 23 PA. CONS. STAT. § 5324 (2018).

23. *Infra* Part II.

24. *Infra* Part III.A.

25. *Infra* Part III.A.1.

26. *Infra* Part III.A.2–4.

27. *Infra* Part III.A.3 and Part III.A.4.

28. *Infra* Part III.B.1.

29. Courtney G. Joslin, *The Perils of Family Law Localism*, 48 U.C. DAVIS L. REV. 623, 645 (2014). For further discussion, see *infra* Part III.B.

30. *Joslin, supra* note 29, at 645.

31. *Infra* Part III.B.1 and Part III.B.2.

32. UNIF. PARENTAGE ACT § 609 (UNIF. LAW COMM'N 2017).

33. *Infra* Part III.C.1.

legal services should redirect some legal aid to proactively protect parental rights of low-income couples.[34]

II. BACKGROUND

Act 21 amends Pennsylvania's statutory requirements for third-party standing in a custody action, granting standing in full legal or physical custody cases where "[n]either parent has any form of care and control of the child."[35] Act 21 specifies that the following additional requirements must be met: "(i) The individual has assumed or is willing to assume responsibility for the child [and] (ii) [t]he individual has a sustained, substantial[,] and sincere interest in the welfare of the child."[36] Act 21 states that factors the court "may consider" when evaluating the interest of the party in the child include "the nature, quality, extent and length of the involvement by the individual in the child's life."[37]

While Section 5324 of the Pennsylvania Consolidated Statutes does not mention grandparents, its legislative history points to grandparents as intended beneficiaries of the enacted statute.[38] In a memorandum introducing the legislation, Senator Donald White, one of the Act's co-sponsors, explained that amending Chapter 54 of the custody provisions within Title 23 would help "individuals/relatives that are increasingly assuming the role of primary caregivers due to the opioid and heroin epidemic in the Commonwealth."[39] White wanted to assist relatives when "both parents are absent (deceased or missing)" by providing a legal route for those relatives to pursue custody.[40]

That legislators drafted the law to provide grandparents with the right to assert standing becomes evident in White's explanation. White writes in his memorandum that legislation was necessary because, "although the grandparents had been involved throughout the child's life, they do not meet the current conditions under the law to have the right to pursue custody."[41] Instead, "[i]ronically, a

34. *Infra* Part III.C.2.

35. Act of May 4, 2018, No. 21, 2018 Pa. Laws 112 (amending 23 PA. CONS. STAT. § 5324 (2018).

36. 23 PA. CONS. STAT. § 5324(4)(i)–(ii) (2018).

37. *Id.* § 5324(4)(ii). Act 21 indicates two instances in which the right to assert third-party standing will not apply: one, if dependency proceedings have commenced; and, two, if an order of permanent legal custody relating to disposition of a dependent child already exists. 23 PA. CONS. STAT. § 5324 (2018).

38. Co-Sponsorship Memorandum from Pennsylvania Senator Donald C. White (July 26, 2017), https://bit.ly/2Dyq535 [https://perma.cc/DT2Q-GBDG].

39. *Id.*

40. *Id.*

41. *Id.*

third party (i.e. a boyfriend or girlfriend of a deceased parent) who resided with the child and was acting in 'loco parentis' (performing parental duties) would have the right to file for custody."[42]

III. ANALYSIS

A. LGBTQ Nonbiological Parenting Rights Recognized by Commonwealth Courts

Act 21 expanded standing to consider third-party intervention by "an individual" inside or outside the household when "[n]either parent has any form of care and control of the child."[43] The legislators passed this amendment to respond to the devastating toll of the opioid crisis.[44] Permitting individuals who demonstrate "a sustained, substantial[,] and sincere interest"[45] to assume custody of children whose parents have succumbed to opioid addiction constitutes both a morally and economically sound decision.[46]

However, Chapter 53 nowhere provides a legal definition of "parent," and courts have neither consistently recognized LGBTQ nonbiological parents as parents nor consistently granted them standing to pursue custody as third parties.[47] Because at least one parent in an LGBTQ household cannot be biologically related to her child, the consequences of opening up third-party custody to theoretically any party inside or outside the household, should the legally-recognized parent no longer have any "care or control" of the child, stands to wreak havoc on the stability within LGBTQ households.[48] To understand these ramifications, one must examine how Pennsylvania courts have traditionally viewed LGBTQ parenting rights.

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42. *Id.* Literally, "in the place of the parent." *In loco parentis*, BLACK'S LAW DICTIONARY (7th Ed. 2000). For further discussion of *in loco parentis*, see *infra* Part III.A.2 and Part III.A.3.

43. 23 PA. CONS. STAT. § 5324(4)(iii) (2018). Someone who is not recognized as a "parent" of the child is considered a "third party" in custody litigation. *Infra* Part III.A.4 and accompanying text.

44. *Supra* Part II.

45. 23 PA. CONS. STAT. § 5324(4)(ii).

46. *Supra* notes 2–7 and accompanying text.

47. C.G. v. J.H., 193 A.3d 891, 898–900 (Pa. 2018) (explaining that, because the statutory scheme provides no definition, the word must be understood in its "popular and plain everyday sense").

48. *Infra* Part III.A and III.B.

1. Bases for Legal Parenthood: Biology, Adoption, or Contract

The Pennsylvania Supreme Court recently discussed the various ways in which Pennsylvania legally defines a "parent."[49] In *C.G. v. J.H.*,[50] a female ex-partner of a biological mother petitioned for standing to seek custody of a child born to the couple through intrauterine insemination using an anonymous sperm donor.[51] The court cited Pennsylvania precedent establishing that the term parent "plainly encompasses a biological mother and a biological father and persons who attain custody through adoption."[52] Further, the decision recognized that courts recognize nonbiological males as parents through the doctrine of marital presumption.[53] Additionally, the court acknowledged "the reality of the evolving concept of what comprises a family"[54] but applied this concept only when the parental status was memorialized in an agreement between the parties.[55] The court acknowledged that there exists a "growing acceptance of alternative reproductive arrangements in the Commonwealth"[56] and that, if and when parental statuses become memorialized in contracts, the courts should honor those agreements.[57]

Accordingly, in *C.G.*, which involved a biological mother who used assistive reproductive technology ("ART") but did not provide any rights to her partner, the court held that the nonbiological mother "was not a party to a contract in connection with [the c]hild's birth."[58] In short, the court found that, where couples em-

49. *C.G.*, 193 A.3d at 898–900.

50. *Id.* at 891.

51. *Id.* at 898–900.

52. *Id.* at 900 (citing J.F. v. D.B., 897 A.2d 1261, 1273 (Pa. Super. Ct. 2006)).

53. *Id.* at 906. The marital presumption states that a husband is the father of any child born during the marriage and "embodies the fiction that regardless of biology, the married people to whom the child was born are the parents . . . ." K.E.M. v. P.C.S., 38 A.3d 798, 800 (Pa. 2012). In *C.G.*, the court referenced this presumption when it stated that a "similarly-situated male based on cohabitation in the absence of marriage" would not be accorded parental rights, either. *C.G.*, 193 A.3d. at 906. *See also infra* Part III.B.2.

54. *C.G.*, 193 A.3d at 900 (citations omitted).

55. *Id.* at 896.

56. *Id.* at 903 ("[T]he contract remains binding and enforceable.") (citing Ferguson v. McKiernan, 940 A.2d 1236, 1238 (Pa. 2007)).

57. *Id.* ("[I]t seems obvious that contracts regarding the parental status of the biological contributors—whether one is an anonymous contributor or known to the intended parent to the child be honored in order to prohibit restricting a person's reproductive options.") (citing *Ferguson*, 940 A.2d at 1247–48).

58. *Id.* at 901. The court described assistive reproductive technology as those births that involve "contracts involving surrogacy and/or the donation of sperm or ova recognizing a separate mechanism by which legal parentage may be obtained (or relinquished)." *Id.* at 905.

ploy ART, there exists a "narrow judicial recognition of legal parentage by contract" wherein legal parent rights and responsibilities have been "relinquished or assumed."[59] C.G.'s status as neither a party to a contract nor an intended parent at the time of insemination was undisputed by the parties.[60]

The partner asserting parental rights argued that the court should use an intent-based approach to determine parentage when couples employ ART and that Vermont and Massachusetts should use such an approach.[61] However, the court stated that Pennsylvania has a much "narrower framework for establishing parentage in the absence of adoption, biology, or a presumption attendant to marriage, and the facts of C.G.'s case do not fit into such a paradigm."[62] Instead, in Pennsylvania, the "mere intention[ ] of two people to be viewed as parents" is not grounds upon which one may claim parental status.[63] A concurring opinion stated that the court might "expand the definition of parent" given a future case with more persuasive facts about intent.[64]

2. *Another Basis for Custodial Standing:* In Loco Parentis

In *C.G.*, the Pennsylvania Supreme Court denied the request of the biological mother's ex-partner for standing sought under the *in loco parentis* provision of Pennsylvania's custody statute.[65] Though it does not provide recognition of legal parenthood, it does provide standing for a nonbiological LGBTQ parent.[66]

In *T.B. v. L.R.M.*,[67] the Pennsylvania Supreme Court described *in loco parentis* as a legal status given to one "who puts oneself in the situation of a lawful parent by assuming the obligations incident to the parental relationship without going through the formality of a legal adoption."[68] Obtaining standing to bring a custody action in this manner began in common law and was later codified in Chapter 53.[69] How one obtains *in loco parentis* status is not defined in

59. *Id.* at 904–05.
60. *Id.* at 904.
61. *Id.* at 905.
62. *Id.* at 906.
63. *Id.* at 904 n.11.
64. *C.G.*, 193 A.3d at 913 (Dougherty, J., concurring).
65. *Id.* at 910–11 (majority opinion). For the statute, see 23 PA. CONS. STAT. § 5324 (2018).
66. *C.G.*, 193 A.3d at 910–11 (citing Jones v. Jones, 884 A.2d 915, 919 (Pa. Super. Ct. 2005)).
67. T.B. v. L.R.M., 786 A.2d 913 (Pa. 2001).
68. *Id.* at 916.
69. *Id.* at 918 (referencing common law). For the statute, see 23 PA. CONS. STAT. § 5324 (2018).

that chapter; rather, the court conducts a fact-based analysis.[70] The person seeking such status must demonstrate that she discharged parental duties and was granted parental "status,"[71] both of which conditions must have occurred with the consent of the biological parent.[72]

Determining *in loco parentis* status provides a nonbiological parent with standing,[73] preventing a partner from erasing a parent-child relationship "simply because after the parties' separation[, one parent] regret[s]" creating the relationship.[74] In granting this protection, a court recognizes "that the child's best interest requires that the third party be granted standing so as to have the opportunity to litigate fully the issue of whether that relationship should be maintained even over a natural parent's objection."[75]

LGBTQ nonbiological parents have tried to obtain standing through *in loco parentis* with varied success.[76] A petitioner must demonstrate proof of essential facts to successfully posit such a relationship.[77] Whether a court will find such status depends "upon the particular facts of the case."[78] The fact that the *in loco parentis* analyses "are necessarily fact-intensive and case-specific inquiries" means that appellate courts defer to trial courts on questions of witness credibility absent an abuse of discretion.[79] Credibility often becomes dispositive in custody determinations; if a trial court finds a witness credible, it will highly regard that testimony when deter-

70. *T.B.*, 786 A.2d at 916–17.

71. *Id.* The term "parental status" is used here, and one who gains this status does obtain all the "rights and liabilities" equal to that between a parent and a child. *Id.* However, someone standing *in loco parentis* to a child still maintains a third-party status, an equal footing as a non-parent in all primary physical custody actions. *See* 23 PA. CONS. STAT. § 5327 (2018).

72. *T.B.,* 786 A.2d at 919–20 ("What is relevant . . . is the method by which the third party gained authority to [discharge parental duties].").

73. 23 PA. CONS. STAT. § 5324 (2018).

74. *T.B.*, 786 A.2d at 919 (quoting J.A.L. v. E.P.H., 682 A.2d 1314, 1322 (Pa. Super. Ct. 1996)).

75. C.G. v. J.H., 193 A.3d 891, 909 (Pa. 2018).

76. *Compare id.* (finding *in loco parentis* standing because biological parent's witnesses were judged more credible by the trial court when they stated biological parent did not consent to assumption of parental duties by ex-partner), *with T.B.*, 786 A.2d at 916 (finding *in loco parentis* where partner shared daily child rearing responsibilities with biological parent, co-owned the residence, and maintained exclusive responsibility for child when biological mother was away).

77. *T.B.*, 786 A.2d at 916.

78. *J.A.L.*, 682 A.2d at 1320.

79. *C.G.*, 193 A.3d at 911 ("[W]e decline to foreclose a trial court from reviewing all relevant evidence in making this important determination that so greatly will impact the family unit.").

mining the petitioner's claimed parental relationship to the child, and such determinations receive deferential treatment on appeals.[80]

But even this standing provides little advantage in the actual custody hearing because, as third parties, nonbiological partners must make a greater showing than the biological parent.[81] Specifically, the custody statutory scheme affords to parents a rebuttable presumption that the parent should receive primary physical custody over any third party, a presumption that only clear and convincing evidence can overcome.[82] Consequently, cases that appear factually similar have resulted in quite different outcomes.[83]

In *J.A.L. v. E.P.H.*,[84] the Superior Court found *in loco parentis* status existed for J.A.L., the former domestic partner of the child's biological mother, E.P.H.[85] Eight years into their relationship, E.P.H. conceived a child through artificial insemination; ten months after the child's birth, she left J.A.L. and took the child.[86]

The court upheld the trial court's determination that "documents executed by the parties before the child's birth," as well as "E.P.H.'s conduct in giving the child J.A.L.'s surname as a middle name on the birth certificate," demonstrated that the biological mother of the child intended for J.A.L. to act as a parent.[87] The documents drawn up included a guardianship agreement that nominated J.A.L. as guardian in the event of the death or disability of E.P.H.; a medical consent form for the child that named J.A.L. as an authorized party; and a co-parenting agreement that set forth the couple's intent to raise the child together, to share financial responsibility for the child, and for J.A.L. to become the *de facto* parent of the child.[88] J.A.L. had signed all but the last of these documents.[89]

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80. *See, e.g.*, P.J.P. v. M.M., 185 A.3d 413, 417 (Pa. Super. Ct. 2018) ("We defer to the credibility determinations of the presiding trial judge, 'who viewed and assessed the witnesses first-hand.'"); Johns v. Cioci, 865 A.2d 931, 939–40 (Pa. Super. Ct. 2004) (explaining that "the deference that this [appellate c]ourt must give to the trial court's determinations of credibility and resolutions of conflicting evidence" in determining custody orders and that error can only be found if the trial court exercised an "abuse of discretion"). *See infra* Part III.A.3.

81. C.G. v. J.H., 193 A.3d 891, 898 (Pa. 2018).

82. *See* 23 PA. CONS. STAT. § 5327 (2018).

83. *Supra* note 51 and accompanying text; *see infra* Part III.A.3.

84. J.A.L. v. E.P.H., 682 A.2d 1314 (Pa. Super. Ct. 1996).

85. *Id.* at 1322.

86. *Id.* at 1316–1317.

87. *Id.* at 1321. E.P.H. changed the child's legal middle name after E.P.H.'s relationship with J.A.L. dissolved. *Id.* at 1317.

88. *Id.* at 1317.

89. *Id.* She did not sign the third document because her attorney advised her it would be unenforceable in Pennsylvania. *Id.*

The court reasoned that these documents demonstrated that the parties "took some pains to formalize [the] relationship to the extent legally possible."[90] Further, the court found unpersuasive the biological mother's argument that her partner only lived with the child for the first ten months of its life.[91] The court articulated that standing *in loco parentis* "creates a prima facie right sufficient to grant standing to litigate custody."[92] A parent cannot erase this right when "she voluntarily created and actively fostered" it simply because, after separating, she "regretted having done so."[93]

The Pennsylvania Supreme Court also upheld the parenting rights of an LGBTQ parent through *in loco parentis* in *T.B. v. L.R.M.*[94] T.B. and L.R.M. had an exclusive, intimate relationship, shared finances and expenses, and decided that L.R.M. would become pregnant using a sperm donor.[95] T.B. attended the child's birth in the operating room, and the child referred to T.B. as "Aunt T."[96] The partners did not enter into a formal parenting agreement, but L.R.M. did name T.B. as the child's guardian in her will.[97] Three years later, when T.B. left the household to live with another woman, L.R.M. refused all visitation requests, calls, and gifts for the child from T.B.[98]

On review, the Pennsylvania Supreme Court decided that T.B. had earned standing to pursue custody through the doctrine of *in loco parentis*.[99] The court reasoned that T.B. made the necessary showing that L.R.M. encouraged the relationship; and the court, quoting *J.A.L.*, held it could not remove the status of that relationship simply because the biological mother "regretted having done so."[100] In its decision, the court accepted the lower tribunal's determination of the evidence's credibility.[101]

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90. *Id.* at 1321.

91. *Id.* at 1321–22.

92. *Id.* at 1319.

93. *Id.* at 1322.

94. T.B. v. L.R.M., 786 A.2d 913, 920 (Pa. 2001).

95. *Id.* at 915. The sperm donor's rights were terminated after the child was born. *Id.* at 923.

96. *Id.* at 915.

97. *Id.*

98. *Id.*

99. *Id.* at 919.

100. *Id.*

101. *Id.* at 919.

3. She Said, She Said: The Role of Credibility in the Determination of In Loco Parentis

A nonbiological LGBTQ parent cannot assume that she will receive the protection of *in loco parentis* status; because the higher court usually defers to the credibility determinations of the trial court, a set of facts in one case may not result in the same outcome in another case with a similar set of facts. In the recent case of *C.G. v. J.H.*,[102] the Pennsylvania Supreme Court ruled that a former partner did not stand *in loco parentis* to the child and, thus, did not have standing to pursue custody.[103] The parties differed as to whether the biological mother had allowed C.G. to act as a parent; the trial court ultimately found J.H. more credible, and the state's Supreme Court, sitting *en banc*, deferred to the trial court's assessment of credibility.[104]

Here, the couple lived together when J.H. conceived the child with assistive reproductive technology using an anonymous sperm donor.[105] The birth certificate did not list C.G., a co-parenting agreement did not exist, and the child did not bear C.G.'s name.[106] Approximately five years after the child arrived, C.G. had an affair and separated from J.H.[107]

The trial court found it significant that J.H. did not consult T.C. when choosing a doctor, preschool activities, and making childcare arrangements.[108] According to J.H.'s witnesses, C.G. "occasionally attended activities, appointments, and provided care," a determination that led the trial court to determine that C.G. had discharged no parental duties.[109]

In rebuttal, C.G. offered a note written by J.H. that referenced the latter's hope of "having a child together."[110] Further, C.G. testified that she still had the child listed as a beneficiary on a life insurance policy.[111] To support her argument that she had discharged parental duties, C.G. testified that she carried both J.H. and the child on her medical and dental insurance plans prior to

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102. C.G. v. J. H., 193 A.3d 891 (Pa. 2018).

103. *Id.* at 909.

104. *Id. See also id.* at 918 (Wecht, J., concurring) ("[T]his case hinged upon credibility findings . . . . [W]e are bound on appellate review by the trial court's fact-finding and credibility determinations.").

105. *Id.* at 893 (majority opinion).

106. *Id.* at 896.

107. *Id.* at 894.

108. *Id.* at 896.

109. *Id.*

110. *Id.*

111. *Id.*

separation.[112] Further, C.G.'s parents testified that the child referred to them as "Grandma" and "Grandpa," a fact the trial court dismissed as "titles [that] were created for convenience rather than demonstrating an actual familial bond or connection."[113]

The trial court also did not afford weight to the testimony of C.G.'s college-aged biological daughters, who vacationed with the entire unit when they were together and testified that they considered these to be taken together "as a family."[114] Instead, the court found J.H.'s witnesses more credible, such as J.H.'s friend, who testified that C.G. acted more like a "babysitter," and that of J.H.'s brother, who testified that "it was clear" C.G. had not wanted a baby.[115]

In denying C.G. standing, the lower court reasoned that the bond of third-party standing must not be formed "contrary to the natural parent's wishes."[116] The court distinguished the instant action from *J.A.L.*, where the court found parental intention in the documents the parties executed[117] and from *T.B.*, where the biological mother's will listed the petitioner as the child's guardian.[118] Disregarding C.G.'s argument that the bond she formed with the child should be determinative, the court reasoned that a bond can be formed "contrary to the natural parent's wishes" and that normalizing such a rule would "undermine well-established principles of *in loco parentis* analyses."[119] The purpose of such a fact-intensive inquiry, the court reasoned, is to "protect the child and the family from unnecessary intrusion by third parties."[120]

4. LGBTQ Nonbiological Parents as Third-Party Litigants

To be sure, standing through *in loco parentis* provides a viable option for nonbiological partners to seek custody upon the dissolution of LGBTQ relationships. However, that the biological parent receives primary deference in determining whether that *in loco parentis* relationship exists cannot be overstated.[121] In other words, when the court determines whether standing exists, it defers to

112. *C.G.*, 193 A.3d at 896.
113. *Id.*
114. *Id.* at 895.
115. *Id.*
116. *Id.* at 910.
117. *Id.* at 896 (citing J.A.L. v. E.P.H., 682 A.2d 1314, 1321 (Pa. Super. Ct. 1996)).
118. *Id.* at 908.
119. *Id.* at 910.
120. *Id.* at 909.
121. *Infra* notes 146–175 and accompanying text.

whether the biological parent *consented* to the third party's presence in the child's life; were the court not to defer accordingly, the court would be interfering and intruding unconstitutionally in family life.

Under the new statute, however, third parties receive standing to interfere when neither parent has "any form of care and control of the child."[122] Because the Pennsylvania Supreme Court in *C.G.* restricted legal parenthood to the context of biology, adoption, or where contractual clarity exists in specific ART cases,[123] nonbiological LGBTQ parents remain "third parties" who exist on equal legal footing with any other third party who receives standing.[124] If the biological parent no longer exercises "care or control" of the child, and the nonbiological LGBTQ finds herself in a custody action with other parties, the amended custody standing statute places all third parties with demonstrated interest and relationships with the minor child on an equal footing.[125]

The statutory amendment expanding standing defers to the fundamental right the Supreme Court recognized in *Troxel*; third parties are not allowed to intervene unless no parent has care or control of the child.[126] However, given that Pennsylvania has such a limited definition of "parent,"[127] the potential for discriminatory impact upon LGBTQ nonbiological parent/child relationships exists.

The amendment provides standing to third parties beyond those who may have an *in loco parentis* relationship with the child.[128] The third party who receives standing through *in loco parentis* and any other third party demonstrating "a sustained, substantial[,] and sincere interest in the welfare of the child"[129] stand as equals in the eyes of the court and the state legislature.[130] Unlike the surviving biological parent in *Troxel*, the nonbiological parent lacks comparable advantages.[131] Absent the protection of ob-

122. 23 PA. CONS. STAT. § 5324(4)(iii) (2018).

123. *Supra* Part III.A.3.

124. 23 PA. CONS. STAT. § 5327(c) (2018) ("In any action regarding the custody of the child between a nonparent and another nonparent, there shall be no presumption that custody should be awarded to a particular party.").

125. *Id.*

126. 23 PA. C.S.A. § 5324.

127. *Supra* Part III.A.1.

128. 23 PA. CONS. STAT. § 5324 (2018).

129. *Id*. at § 5324(ii).

130. 23 PA. CONS. STAT. § 5327 (2018).

131. *Compare Troxel v. Granville*, 530 U.S. 57, 65 (2000) (holding a parent's right to raise her child exists as a fundamental right protected by the Fourteenth Amendment), *with* 23 Pa. C.S.A. § 5324 (expanding standing from *in loco parentis*

taining parenthood through adoption or certain ART methods, that nonbiological parent would face a direct threat to exercising her own rights as a parent. As the Supreme Court stated in *Troxel*, this "liberty interest . . . is perhaps the oldest of the fundamental liberty interests recognized by this Court,"[132] an interest the amended statute puts at risk.[133] Ultimately, the discretion of the trial court in establishing credibility and determining whether an LGBTQ nonbiological parent may retain custody of her child carries great weight.[134] It is the particular, localized nature of family law that this Comment now examines.

B. The Localized Nature of Family Law and Its Effect on LGBTQ Nonbiological Parenting Rights

1. The Domestic Exception and the Morals in Family Law Localism

Uncertainty about parenting and custody issues can disrupt a family's sense of security.[135] The discretionary power a judge holds in adjudicating family law issues stems from the domestic-relations exception, a jurisdictional doctrine that prohibits federal courts from hearing family law cases.[136] Consequently, family law adjudication "has been largely determined by the location of the parties" within a state.[137] Because the adjudication of family law issues varies not only based on the county in which a case is heard but also based on which judge in a given county hears the petitioner's case, the uncertainty is compounded.[138] For example, the *Troxel* Court noted that the trial judge awarded the grandparents partial custody in part because he remembered the "enjoyable" summers he spent as a child with his own grandparents.[139]

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to any individual who demonstrates a "sustained, substantial[,] and sincere interest in the welfare of the child").

132. *Troxel*, 530 U.S. at 65.

133. *Infra* Part III.B.

134. *Supra* Part III.A.3.

135. Courtney G. Joslin, *Nurturing Parenthood Through the UPA (2017)*, 127 YALE L. J. F. 589, 592 (2018).

136. *See, e.g.*, Sosna v. Iowa, 419 U.S. 393, 404 (1975) ("[D]omestic relations [is] an area that has long been regarded as a virtually exclusive province of the States.").

137. June Carbone, *Marriage as a State of Mind: Federalism, Contract, and the Expressive Interest in Family Law*, 2011 MICH. ST. L. REV. 49, 52 (2011).

138. Interview with Jan Rumsey, Attorney, North Penn Legal Servs., in Towanda, Pa. (July 6, 2018) (explaining that judges in the same courthouse vary in granting Protection From Abuse Orders—one judge may require a greater showing of fear by the petitioner versus another judge who may see them as simple manipulative attempts by the petitioner to evict the defendant from the home).

139. Troxel v. Granville, 530 U.S. 57, 72 (2000).

As a result of the "belief—either conscious or unconscious—that some interests are permissible in the family law context that would be impermissible, or at least more questionable, in other contexts," many family law opinions rely on "morality or community norms."[140] The family law localism argument posits that courts should take morality into account in rendering decisions because states "are much closer to and more attuned to these local norms that should and do inform the law."[141]

Family law localism is evident in court decisions finding a "nexus" between the morality of the parent and its determined negative effects on the child.[142] Because the domestic-relations exception defers such judgment to local courts, "there is, at times, a belief that state policymakers must be given greater latitude, or, some may say, deference in order to achieve those goals."[143] Therefore, there is a relationship between the morality of the court and the morality of society.[144]

2. Nonmarital Discrimination

Family law does not treat marital and nonmarital couples equally.[145] For example, the marital presumption doctrine, operable in each state,[146] provides a rebuttable presumption that a husband is the father to any child the mother conceives during the length of the marriage.[147] There is no similar protection for nonmarried couples, no matter the length of their cohabitation.[148]

Family law inadvertently creates stigma because law has an "ability to influence social norms in the context of marriage, divorce, [and] parenting . . . ."[149] For example, the creation of no-fault divorce laws has essentially removed the stigma that once

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140. Joslin, *supra* note 29, at 637.

141. *Id.* at 639.

142. *Id.* at 643.

143. *Id.* at 647.

144. Given that voters elect county judges in Pennsylvania, this implicit connection between the morals of a community and the decisions on the bench makes political sense. On the election of Commonwealth judges, see 42 PA. CONS. STAT. § 3131 (2018).

145. Clare Huntington, *Postmarital Family Law: A Legal Structure for Nonmarital Families*, 67 STAN. L. REV. 167, 167 (2015).

146. Pennsylvania does not have a statutory recognition of the marital presumption; it exists in case law. *See* Brinkley v. King, 701 A.2d 176, 178–79 (1997).

147. Douglas NeJaime, *The Nature of Parenthood*, 126 YALE L. J. 2260, app. A (2017).

148. *Id.* at 2344.

149. Solangel Maldonaldo, *Illegitimate Harm: Law, Stigma, and Discrimination Against Nonmarital Children*, 63 FLA. L. REV. 345, 378 (2011).

came with divorce.[150] Custody standing laws stigmatize certain groups, and "the failure to grant standing in certain cases inadvertently stigmatize[s] . . . nonmarital children."[151] Such stigmatization will occur when LGBTQ nonbiological parents find themselves in competition with those seeking custody under the amended standing statute.[152] Because parents in nonmarital relationships are often socioeconomically "non-elite," this stigmatization of nonmarital households becomes classist.[153]

The stigmatization is not helped by the negative, discriminatory, and unwarranted views often associated with nonmarital households.[154] Almost half of Americans believe that an increase in nonmarital births is the result of "[b]ad morals, a [b]reakdown in family structure, [i]rresponsible/[c]areless behavior, or not taking responsibility."[155] Further, society views unmarried mothers as "sexually irresponsible, lazy[,] and unmotivated" and assumes they will "rely on public assistance to support their children . . . ."[156] The legal system reinforces this negativity by depicting marriage as a symbol of a meaningful family relationship.[157] This mismatch destabilizes "nonmarital families, affect[s] . . . the quality of parenting . . . . [It also] increases the stress and friction in a mother's life, in turn affecting the quality of her parenting."[158]

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150. *Id.* at 379.

151. *Id.*

152. Act 21 does not allow a third party to stand on equal footing with someone *in loco parentis* solely in custody cases when opioid addiction has affected the legal parent(s). 23 PA. CONS. STAT. § 5324 (2018). Instead, the presence of "no parent" stands as the only requirement. *Id.*; *see supra* Part II.A. Consequently, the unintended consequences in a LGBTQ setting would occur when the biological parent's family members disagreed with the surviving child being raised with the LGBTQ surviving parent. Homophobic family members could easily take advantage of the expanded third-party standing to disrupt LGBTQ families when a biological parent is no longer present. The persistence of homophobia remains in today's society; for example, in a 2017 survey conducted by Harvard's T.H. Chan School of Public Health, more than 50 percent of those surveyed stated they had experienced discrimination based on their sexual orientation. HARVARD T.H. CHAN SCHOOL OF PUBLIC HEALTH, DISCRIMINATION IN AMERICA, https://bit.ly/2FLhcnf [https://perma.cc/373V-V4XG] (last visited Dec. 29, 2018).

153. June R. Carbone & Naomi R. Cahn, *Jane the Virgin and Other Stories of Unintentional Parenthood*, 7 U.C. IRVINE L. REV. 511, 514 (2017).

154. Maldonaldo, *supra* note 149, at 369.

155. *Id.* at 370.

156. *Id.* at 371.

157. Huntington, *supra* note 145, at 178.

158. *Id.* at 185 (citing the Fragile Families and Child Wellbeing Study, which examined the differences between marital and nonmarital children's lives). For further information on that study, see PRINCETON UNIVERSITY AND COLUMBIA UNIVERSITY, FRAGILE FAMILIES AND CHILD WELLBEING STUDY, https://bit.ly/2TfKLnc [https://perma.cc/5QVY-GK3R] (last visited Dec. 29, 2018).

Lower-income couples are less likely to marry, to plan their pregnancies, and to plan for the future by "memorializing their intentions about parental rights and responsibilities."[159] Solutions exist, however, that the legislature could enact to alleviate any unintended consequences of Act 21 upon LGBTQ parents.

C. Potential Solutions: Increased Legal Resources and Expanding the Definition of "Parent"

1. Expanding the Definition of "Parent" Using the Uniform Parentage Act

To alleviate the discrimination against nonmarital couples in custody matters, some legal scholars recommend expanding the definition of "parent."[160] For example, NeJaime suggests that parenthood should be viewed as a "performative concept"—that parentage recognition should expand beyond birth and genetics to also include social factors, e.g., intent, function, and family formation—regardless of whether that family was institutionalized through marriage.[161]

Extending the marital presumption to children born to same-sex couples would protect married LGBTQ nonbiological parents.[162] While 11 states and the District of Columbia have statutory gender-neutral marital presumptions, Pennsylvania does not.[163] Arizona's highest state court declared the marital presumption unconstitutional because of its effect on same-sex couples, viewing the presumption as "a grave and continuing harm" on these couples by "demeaning them, humiliating and stigmatizing their children and family units, and teaching society that they are inferior in important respects."[164] NeJaime aptly suggests that, until the marital presumption is extended, courts should "view with skepticism a legal

159. Carbone & Cahn, *supra* note 153, at 514.

160. Huntington, *supra* note 145, at 173 (recommending "a new legal designation of 'co-parent' that underscores the enduring nature of parents' connections to each other through parenting").

161. NeJaime, *supra* note 147, at 2338.

162. *Id.* at app. A.

163. *Id.* In fact, Pennsylvania's statutes still define marriage as "a civil contract by which one man and one woman take each other for husband and wife." 23 PA. CONS. STAT. § 1102 (2018). Likewise, the statutes still provide that the Commonwealth will not recognize those same-sex marriages performed outside of its borders. 23 PA. CONS. STAT. § 1704 (2018). To be sure, Pennsylvania recognized same-sex marriage, but the legislature has yet to repeal the laws. Whitewood v. Wolf, 992 F. Supp. 2d 410, 424 (2014).

164. NeJaime, *supra* note 147, at 2600–02 (quoting McLaughlin v. Jones, 401 P.3d 492, 496 (Ariz. 2017), *cert. denied sub nom.* McLaughlin v. McLaughlin, 138 S. Ct. 1165, (2018)).

regime that forces nonbiological mothers, but not nonbiological fathers, to adopt their children."[165]

Another alternative to the current system that would benefit both marital and nonmarital LGBTQ couples is extending the legal concept of "paternity by estoppel" to "parentage by estoppel."[166] Recognized by many states, this theory grants recognition of parentage to one who has held the child out as her own after its birth.[167] Pennsylvania recognizes this concept for heterosexual couples,[168] but it has not had the occasion to do so for same-sex couples.[169] In *C.G.*, a concurring opinion noted the unavailability of this option for same-sex partners.[170]

In its decision in *C.G.*, the Pennsylvania Supreme Court stated that the facts presented did "not provide this Court with a factual basis on which to further expand the definition of the term parent under Section 5324(1)."[171] Additionally, in a concurring opinion, Justice Dougherty expressed concern about "the majority's cramped interpretation of 'parent' . . . the inevitable result of which will be the continued infliction of disproportionate hardship on the growing number of nontraditional families — particularly those of same-sex couples . . . ."[172] The majority, in contrast, postponed expanding the definition of "parent," choosing to wait for "another case with different facts."[173] Given the judiciary's seeming frustration with the current limited definition of parent under Pennsylvania's case law, as well as its acknowledgement that the statute

165. *Id.* at 2356. NeJaime further argues that the marital presumption and its partial application to husbands but not to wives might constitute a "sex-based" classification that would be unconstitutional under United States v. Virginia, 581 U.S. 515 (1996). *Id.* at 2353. Laws affecting marital status receive rational basis review. *See* Peter Nicolas, *Gayffirmative Action: The Constitutionality of Sexual Orientation-Based Affirmative Action Policies*, 92 WASH. U. L. REV. 733, 768–69 (2015).

166. The term "paternity by estoppel" most often applies in child support actions when the court holds a man responsible for paying support if he has previously held the child out as his own. *See* K.E.M. v. P.C.S., 38 A.3d 798, 810 (Pa. 2012) (holding "paternity by estoppel" applies when it is in the best interests of the child). "Parentage by estoppel" would operate so that one parent could not deny that another parent has acted in that capacity. June Carbone and Naomi Cahn, *Nonmarriage*, 76 MD. L. REV. 55, 87–88 (2016).

167. Carbone and Cahn, *supra* note 166, at 88.

168. Freedman v. McCandless, 654 A.2d 529, 532–33 (Pa. 1995); M.L. v. J.G.M., 132 A.3d 1005, 1009 (Pa. Super. Ct. 2016).

169. C.G. v. J. H., 193 A.3d 891, 917 (Pa. 2018) (Wecht, J., concurring).

170. *Id.*

171. *Id.* at 906 (majority opinion).

172. *Id.* at 911 (Dougherty, J., concurring).

173. *Id.* at 904, n.11.

provides no definition of parent, the legislature would do well to revise the definition of "parent" within the Child Custody Act.

Possible legislative solutions include incorporating legislation from the Uniform Parentage Act (UPA).[174] First published in 1973, the UPA aims to provide "well-conceived and well-drafted legislation" to "help states address newly emerging issues."[175] It was amended in 2017 specifically to help address parenting issues related to same-sex couples.[176] For relationships that form after the child is born, the UPA created a "de facto" parenthood status that is granted parity with other legal parents, including genetic parents.[177] Another provision provides that, when multiple petitioners seek recognition as parent, courts must make a fact-based analysis, including the length of time during which each individual assumed the role of parent, the nature of the parent-child relationship, and the harm to the child if that relationship was not recognized.[178] Finally, the UPA provides for a gender-neutral definition of the marital presumption.[179]

2. Legal Help for Nonmarital LGBTQ Parents

Implementing these provisions would be a proactive solution to some of the problems that Act 21 causes LGBTQ parents.[180] June Carbone indicates that parental groups from lower socioeconomic classes exist more commonly in nonmarital relationships and create written documents codifying their intentions about parenting rights and responsibilities less frequently.[181] Additionally, such groups are "less likely to . . . know what the law is . . . . have the means to use it to advance their own purposes even if they are familiar with the law," and less likely to "face judges who will understand and apply the norms of their communities."[182] Accordingly, legal aid or other *pro bono* initiatives can offer free services so that nonmarital couples can act to protect themselves and their families from potential custody battles when the biological parent no longer exercises care or control over the child.

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174. UNIF. PARENTAGE ACT § 609 (UNIF. LAW COMM'N 2017). For its use in legislation, see Joslin, *supra* note 29, at 592.

175. Joslin, *supra* note 29, at 592.

176. *Id.* at 599.

177. UNIF. PARENTAGE ACT § 609 (UNIF. LAW COMM'N 2017).

178. *Id.* § 613.

179. *Id.* § 609.

180. *Supra* Part III.A. and Part III.B.

181. Carbone, *supra* note 137, at 52.

182. Carbone & Cahn, *supra* note 153, at 514.

Offering discounted legal educational and drafting services would help alleviate the stress, uncertainty, and potential court struggles LGBTQ families might face when the biological parent no longer has care or control over the child.[183] Because the courts recognize custody and guardianship agreements,[184] pro se clinics devoted to creating these agreements would help LGBTQ parents memorialize their custodial intentions. To be sure, the legal aid system is underfunded, and providing these services would cost money.[185] However, providing these proactive services would cost far less than providing an attorney in a future custody battle.[186]

Another way that legal aid or *pro bono* services could assist is by offering limited counsel to LGBTQ couples whose relationships dissolve. For example, Clare Huntington suggests alternative dispute resolution structures should exist at discounted rates for unmarried parents to ease the transition into co-parenting after relationships dissolve.[187]

IV. CONCLUSION

In passing Act 21 of 2018, legislators met a demonstrated need that the opioid epidemic in Pennsylvania caused.[188] Extending third-party custody to individuals outside the immediate family in Pennsylvania enables more children to avoid foster homes and enjoy a more consistent home environment.[189] To be sure, given the rising incidence of multi-generational addiction that has plagued other states, family members cannot always assume custody; to that

183. Legal aid websites offer some limited, generic online assistance to couples; for example, the best legal site offering self-help custody information and forms specific to Pennsylvania is PALawHelp.org. PALAWHELP.ORG, https://bit.ly/2touj8P [https://perma.cc/6JNG-B4ZN] (last visited Feb. 17, 2019). However, there are no sample guardianship or custody agreement forms on this site. *Id.* Further, as helpful as these resources are, they do not provide guidance specific to the needs of LGBTQ couples, nor could couples be certain that the document they would create on their own would be legally sufficient and effective to stand up in court.

184. *See* J.A.L. v. E.P.H., 682 A.2d 1314 (Pa. Super. Ct. 1996).

185. Douglas Grant, *Legal Aid Services Are Being Starved*, THE NATION (Mar. 22, 2018), https://bit.ly/2N27wIP [https://perma.cc/WSL9-RM27].

186. The time and resources an attorney would use to prepare these documents—duties that a paralegal could share, such as meeting with the client, preparing the forms, and executing them—would be much less than the resources used to fight a custody battle, such as pleading preparation, brief writing, and hearing participation time, which the attorney must usually bear alone.

187. Huntington, *supra* note 145, at 174.

188. *Supra* Part I and Part II.

189. *Supra* Part I and Part II.

end, Pennsylvania has created a valuable solution for those children with opioid-addicted parents.[190]

Offering proactive services to help LGBTQ parents costs less than a custody battle, both economically and emotionally.[191] Pennsylvania's governing bodies swiftly amended standing requirements to respond to concern about children who lose their parents in the opioid crisis.[192] Likewise, concern about protecting children in LGBT families left vulnerable by the amendment should drive the implementation of the solutions described in this Comment.

190. On multi-generational addiction's preventing family members from assuming custody in Ohio, see Wedell, *supra* note 7 (stating that placing children with family members has become "more difficult").

191. On the emotional and financial costs of custody battles, see Katie Burford, *Custody Battles Drain Accounts, Emotions*, ALBUQUERQUE J. (June 7, 2004), https://bit.ly/2DNL3Ly [https://perma.cc/RN3M-M45H].

192. *Supra* Part I and Part II.

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