

# ***Analysis and Commentary***

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## **American Psychiatric Association Resource Document on Controversies in Child Custody: Gay and Lesbian Parenting, Transracial Adoptions, Joint Versus Sole Custody, and Custody Gender Issues**

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The purpose of this resource document is to provide information about several controversial issues related to child custody

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determinations. The following summary statements represent current knowledge based on a thorough review of the literature. The backup document contains a more detailed discussion of each issue including a critique of the literature, its limitations, and a current bibliography.

It is important to note that the research in this area is imperfect. There have been no longitudinal studies with controls. This document will need ongoing modification based on the results of further studies. Nevertheless, at this point in time, these statements represent what is supported by the literature and by the judgment of the members of the APA Subcommittee on Child Custody Issues.

## Summary Statements on Controversies in Child Custody

### *Child Custody: Gay and Lesbian Parenting*

1. Sexual orientation should not be used as the sole or primary factor in child custody determinations.

2. Gay and lesbian couples and individuals should be allowed to become parents through adoption, fostering, and new reproductive technologies, subject to the same types of screening used with heterosexual couples and individuals.

3. Second parent adoptions which grant full parental rights to a second, unrelated adult (usually an unmarried partner of a legal parent), are often in the best interest of the child(ren) and should not be prohibited solely because both adults are of the same gender.

4. Custody determinations after dissolution of a gay relationship should be done in a manner similar to other custody determinations.

***Child Custody: Transracial Adoption***  
(These statements, based on a literature review, apply to African-American children or Asian children adopted by white families. There is inadequate literature dealing with other transracial or transethnic situations such as the adoption of Native American children and international adoptions.)

1. The existing literature does not support the conclusion that transracial adoption should be prohibited or discouraged.

2. There does not appear to be any significant differences between transracial adoptees and intraracial adoptees on measures of family integration, self-es-

teem, school performance, or overall adjustment.

3. The existing literature supports that there may be significant issues related to racial identity that need attention by adoptive parents and adoptees (as they get older).

### ***Child Custody: Joint Versus Sole Custody and Custody Gender Issues***

1. There is no single best custody arrangement for all children. Determinations about custody need to be made on a case by case basis.

2. In determining visitation with non-custodial parents, the benefit of having contact with both parents must be weighed against the harms associated with having contact with parents who have ongoing conflict.

3. The literature indicates that frequent visitation with the noncustodial parent is beneficial for children provided that there is a low conflict, post-divorce parental relationship.

4. Gender of the child and parent should not be used as the sole or primary factor in child custody determinations. Determinations about the best custody arrangement in terms of gender of child and parent should be done on a case by case basis related to factors such as the age of the child, the emotional/psychological health of the child, stability of parents, and presence of extended family.

5. The literature provides some evidence that boys tend to do better in father custody families and girls tend to do better in mother custody families, provided all other custody determination factors are equal, e.g., parenting skills.

## Back-Up Document on Controversies in Child Custody

*Gay and Lesbian Parenting\** Custody cases involving gay male or lesbian parents and their children are complex and challenging. This document will summarize the current literature on the development of children of gay and lesbian parents, on custody issues for gay men and lesbians, and on issues of gay men and lesbians who are parents. Early literature focused on children who were born in presumed heterosexual marriages, with one partner coming out either after divorce or precipitating divorce. Only more recently is information available on those families who choose to parent in the context of a gay or lesbian relationship. Numbers that appear in several resources estimate there are between 1 and 5 million lesbian mothers, 1 and 3 million gay fathers, and 6 to 14 million children with at least one gay or lesbian parent (Martin; Steinhorn).

Most of the earliest mental health literature compared divorced lesbian mothers and divorced heterosexual mothers and their children on a variety of measures. No significant differences were found. Women, whether heterosexual or lesbian, once they have children, generally identify their primary role as a mother. There were no differences between the two groups in demographics, maternal instincts, parenting styles, child rearing practices, sex roles, social support, or use of professionals for help. Differences noted in some studies were that single gay or lesbian custodial parents put their re-

lationship with their children above new relationships for themselves (Kirkpatrick, 1996; Falk).

In terms of sexual orientation, no studies have shown a statistically greater incidence of homosexuality in the children of lesbians and gay men as compared to heterosexuals (Hoeffler). Comparatively few children of lesbian mothers and gay men have been followed into adulthood. Some studies confuse sexual orientation, gender identity, and sex role behavior. Kirkpatrick found that those children showing some signs of gender problems were more likely to have a history of serious physical difficulty early in life, regardless of sexual orientation of the mother.

Many studies looked at measures of "psychological health" in the children, most comparing children of divorced lesbian mothers with children of divorced heterosexual mothers. There were no identifiable differences in terms of peer relationships, emotional development, locus of control, intelligence, popularity with peers, self-esteem, or moral maturity. Compared to the children of divorced heterosexual women, the children of lesbian mothers were more likely to have contact with their fathers at least once per week. Heterosexual parents were more likely to view the child's visit with the other parent as problematic (Kirkpatrick, 1981). Findings regarding the psychological health of the parent showed lesbian mothers had more adult friends and included adult male friends and relatives in more activities more often than divorced heterosexual women (Kirkpatrick, 1981). Some studies showed the

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children of gay and lesbian parents to have greater acceptance of their own sexuality, increased tolerance, increased empathy for others, and increased exposure to a variety of viewpoints. Some courts have expressed fear that a child living with a gay father or lesbian mother is more at risk for sexual abuse. There have been no reported cases of pedophilia committed by gay parents or their lovers on their children (Flaks).

### Annotated Bibliography

1. Bozett F: Gay fathers: evolution of the gay-father identity. *Am J Orthopsychiatry* 51: 552–9, 1981. One of the first reports involving gay men. Primarily anecdotal information from 18 gay fathers. Some aspects dated for some situations, but raises good concerns.
2. Falk P: Lesbian mothers: psychosocial assumptions in family law. *Am Psychol* 44: 941–7, 1989. This is focused on actual court cases and on research that counters the assumptions that have been made.
3. Flaks D: Gay and lesbian families: judicial assumptions, scientific realities. *William & Mary Bill of Rights J* 3:345–72, 1994. This review article focuses on actual court cases. “The literature is consistent with appropriate case-by-case evaluations of lesbian and gay families based on the same criteria employed by heterosexual parent families. Moreover, once lesbian and gay families are formed, the available evidence offers no justification for withholding from them the same legal protection and benefits offered to the heterosexual-parent families. Specifically, they provide no basis upon which to deny same-sex parents full parental status, either during the couple’s relationship, or afterward—should it end.”
4. Harris M, Turner P: Gay and lesbian parents. *J Homosex* 12:101–13, 1985/86. This article is descriptive of a small anonymous sample of outlined positives and negatives experienced by this sample.
5. Hoffer B: Children’s acquisition of sex-role behavior in lesbian-mother families. *Am J Orthopsychiatry* 51:536–43, 1981. This is an early article showing many similarities among homosexual and heterosexual mothers.
6. Kirkpatrick M: Clinical implications of lesbian mother studies. *J Homosex* 14:201–11, 1987. This article contains a further evaluation of research that shows no differences between lesbian and heterosexual mothers in terms of lifestyle, parenting style, and social support.
7. Kirkpatrick M: Lesbians as parents, in *Textbook of Homosexuality and Mental Health*. Edited by Cabaj R and Stein T. Washington, DC: American Psychiatric Press, 1996, pp 353–70. This is an excellent review of 15 years of literature. There is an extensive bibliography. In addition to summarizing that the sexual orientation of the mother “was not correlated with any characteristic in the children,” the article outlined areas for future research.
8. Kirkpatrick M, Smith C, Roy R: Lesbian mothers and their children: a comparative survey. *Am J Orthopsychiatry* 51:545–51, 1981. One of the first reports in the psychiatric literature, with some excellent points. They did not address whether there was a second adult present in the lesbian mother families. They did acknowledge that their sampling method attracted children with emotional difficulties. Still, lesbian mothers and heterosexual mothers were more alike than different.
9. Martin A: *The Lesbian and Gay Parenting Handbook*. New York: Harper Perennial, 1993. This book includes resources, sample legal documents, and numerous examples from actual families.
10. Patterson C: Children of lesbian and gay parents. *Child Dev* 63:1025–42, 1992. This review article has a long bibliography and focuses on the children. “Not a single study has found children of gay or lesbian parents to be disadvantaged in any significant respect relative to children of heterosexual parents.”
11. Patterson C, Chan R: Gay fathers and their children, in *Textbook of Homosexuality and Mental Health*. Edited by Cabaj R and Stein T. Washington, DC: American Psychiatric Press, 1996, pp 371–93. This is an excellent review, with the most extensive bibliography available. Summary includes, “No reason exists for concern about the development of children living in the custody of gay fathers. . . . gay fathers are as likely as heterosexual fathers to provide home environments in which children grow and flourish.”
12. Ples C: *Considering Parenthood: A Workbook for Lesbians*. San Francisco: Spinsters/Aunt Lute, 1985. This book helps lesbians through the decision-making steps.
13. Steinhorn A: Lesbian mothers: the invisible

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minority. *Women Ther* 12:101–13, 1982. This report is anecdotal.

***Transracial Adoptions***<sup>†</sup> The operational definition of Transracial Adoption (TRA) is “the adoption of a child of a different race or ethnicity from the adoptive parents.” Practically speaking, the numbers of adoptive parents available for TRAs are overwhelmingly white and the number of children available for adoptions are overwhelmingly of color. Prior to the 1950s, adoptions were exclusively intraracial. By the 1950s, the pool of white babies began to shrink as a result of family planning, abortions, and decreased shame associated with out of wedlock pregnancies. The pool of adoptees remaining tended to be older children, minority children, and special needs children. Agencies began to make good-faith efforts to place black children without restriction based upon the “child’s best interests.” A backlash erupted in 1972; the National Association of Black Social Workers publicly denounced Transracial Adoption as “cultural genocide.” The concerns were that white parents were “settling” for black children, would not go out of their way to foster racial identity, and could not fortify minority children with a strong enough racial identity to cope with a racist society.

Out of home placements stabilized at 250,000 until Kempe identified the Battered Child Syndrome in 1962, and child removals grew to over 500,000. Legislation in 1980 created permanency planning with the intent of reunifying children with birth parents or freeing them for adoption.

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Placements fell to 243,000. Currently, with increasing homelessness, poverty, HIV, and substance abuse, placements have swelled to over 500,000 per year.

In 1989, there were 383,000 children in out of home placements in 32 states; 34.3 percent were African-American per official reporting. In 1990, there were 118,000 adoptions; there was a 50:50 ratio of related adoption (by a non-parent relative or step-parent) versus unrelated adoption. One percent of African-American children ready for adoption were adopted by white families (Griffith); 600,000 children spent all or part of 1995 in foster care; 40,600 children have been in foster care for more than five years; 50,000 children are legally free for adoption; and 40 percent of foster children graduate to welfare. African-American children wait significantly longer than white children to be adopted.

There are some empirical data on parents and children of TRA. Characteristics of TRA parents as compared with same race adoptive parents are: (1) they have a higher SES level; (2) they are characterized by humanitarian or religious motives rather than childlessness; (3) they are geographically or socially isolated from extended family; (4) their childrearing tends to be conscientious and carefully planned; (5) they tend to be active civically and in the community; and (6) they tend to have borne children before adopting (Ladner, 1977). In studies with psychological testing, there have been no significant differences between TRA and intraracial adoptees on measures of family integration, self-esteem, school performance, or overall adjustment (McRoy;

Simon *et al.* 1994). There has been some research that suggests a difference in group identity and racial identity but this has been criticized methodologically, e.g., it is unclear how “white looking” biracial subjects are defined, where biracial subjects fit, or what are accurate measures of racial identity (Ladner).

### Annotated Bibliography

1. Bartholet E: Where do black children belong? The politics of race matching. 139 U Pa L Rev 1163–1256, 1176 (1993). This article presents the argument that adoptions should be race-blind and that race should not be a factor in adoption.
2. Davis M: Transracial adoption, in *The Crisis*, 1992, pp. 20–21. The author discusses how policies covering the adoption of black children are torn between same-race and transracial policies. Also looks at how the National Association of Black Social Workers denounced transracial adoption because it represented a form of racial and cultural genocide and how advocates of transracial adoption claim that there are more adoptive black children than there are adoptive black parents. This article is very interesting reading. It covers issues from both sides of transracial adoption and offers an insight to what people are thinking and dealing with today.
3. Day D: *Adoption of Black Children: Counteracting Institutional Discrimination*. Lexington, MA: Lexington Books, 1979. Provides actual case studies of interracial adoption along with a history and insight on the Black identity, the socialization problems, black views, and various state laws and issues. Looks into all these issues concerning both the black child and the adoption of them by white parents. Great book. It gives a lot of information but is a little out of date. State laws have been changed in some instances, but otherwise an excellent resource.
4. Forde-Mazrui K: Black identity and child placement: the best interests of black and biracial children. 92 Mich L Rev 925–67, 947 (1994). This article discusses how courts and adoption agencies should not use race as a factor in the placement of black and biracial children because the belief that transracial adoption is contrary to the best interests of the child and harmful to black people collectively is not supported by adequate evidence. Looks into the issue that policies of racial matching may actually be contrary to the best interests of the child. This is an interesting article. It looks into the potential benefits of transracial adoption.
5. Glazer S: Adoption: do current policies punish kids awaiting adoption? CQ Researcher 3:1035–51, 1993. This article looks into how the moral and ethical aspects of interracial adoption are growing as the number of white infants available for adoption shrinks and the number of black children seeking foster homes grows. As more single parents, gay couples, and interracial couples seek adoption, agencies are being faced with new challenges. Many people do not approve of such foster home situations, but as the number of black children in agencies grows it is time to take the best interest of the child into consideration instead of propagating racist fears that only hurt the racist society. This is an excellent article, which looks at the issues of the best interests of the child.
6. Griffith EEH: Forensic and policy implications of the transracial adoption debate. Bull Am Acad Psychiatry Law 23:501–7, 1995. This is an excellent article. It summarizes statistics about transracial adoptions and discusses the baby Byron case in Pennsylvania and the D.L. case in Minnesota. It summarizes longitudinal studies of TRA and discusses the role of forensic psychiatrists in the TRA debate.
7. Grow LJ, Shapiro D: *Black Children White Parents: A Study of Transracial Adoption*. New York: Research Center, Child Welfare League of America, 1974. The authors look into areas such as black heritage and black identity. They also look at different aspects of transracial adoption and the National Association of Black Social Workers’ struggle to stop transracial adoption and cultural genocide. This book is a little out of date but very interesting. It provides information from all perspectives with a nonjudgmental view.
8. Hayes P: Are trans-racial adoptions bad for black children? CQ Researcher 3:1049, 1993. This article discusses the debate over transracial adoption and how it is growing as more black children are left in adoption agencies while white couples search for children to adopt. Also discusses how proponents of transracial adoption say that the argument given by many black leaders is equivalent to racism

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and only hurts black children. Meanwhile, thousands of children continue to live in orphanages where their values and sense of identity are destined to become confused. This is an excellent article. It focuses on the children and the issues they have to deal with while waiting for homes.

9. Kallgren CA: Current transracial adoption practices: racial dissonance or racial awareness. *Psychol Rep* 72:551–8, 1993. This article presents a study that evaluated seven agencies in four major metropolitan areas to ascertain whether their transracial adoption programs included placing children at an early age and evaluating and educating parents on issues of racial awareness as has been recommended by previous researchers. This article was very informative on agencies and their obligations and recommendations for program improvements.
10. Ladner JA: *Mixed Families*. New York: Anchor Press Garden City, 1997. The author discusses various aspects of transracial adoption and provides insight on subjects such as identity problem, the National Association of Black Social Workers and their views, various studies conducted, socialization issues, and issues of black autonomy. A great amount of information on the complex issues associated with transracial adoption is provided. Although a little outdated, this book gives information on almost every issue touched by transracial adoption and provides an intriguing look at those issues and their effects.
11. McRoy RG: An organizational dilemma: the case of transracial adoptions. *J Appl Behav Sci* 25:145–60, 1989. This article presents an overview and analysis of the complex organizational, racial, economic, and power issues associated with transracial adoptions. The author discusses the historical and contemporary circumstances surrounding adoption and also discusses adoption policies in the context of Hasenfield's model of human service organizations. The arguments for and against transracial adoption are discussed, with emphasis on the unique cultural needs of black children and the desirability of intraracial adoption. This article is an excellent source of information.
12. Simon RJ, Astein H, Melli MS: *The Case for Transracial Adoption*. Washington, DC: American University Press, 1994. These authors look into the history of transracial adoption and provide information on various groups who have dealt with current and past issues concerning transracial adoption, (e.g., The Child Welfare League of American (CWLA), The National Committee for Adoption (NCFA), and the North American Council on Adoptable Children (NACAC). It also looks into overseas adoptions as well as various state laws.
13. Simon RJ: Should white families be allowed to adopt African-American children? *Health Jul/Aug* 1993, p 22. The author looks into the disagreement as to whether African-American children should be adopted by white families. She focuses on the one point of view that children should not be cut off from their cultural roots, and also another, which is that there aren't enough African-American families to handle all the needed adoptions. This is a good article, although very short. It provides a good summary of the issues.
14. Smolowe J: Adoption in black and white: an odd coalition takes aim at the decades-old prejudice against transracial placements. *Time Magazine*. Aug 14, 1995, pp 50, 51. This article explores the Multiethnic Placement Act, which permits states to take race into consideration when placing babies for adoption. It also looks into the new coalition of liberals and conservatives who want to make race irrelevant.
15. Tisdale S: Adoption across racial lines: is it bad for kids? *Vogue Magazine*. Dec 1991, p 251. The author discusses research that indicates that transracially adopted children adjust to family life as easily as children who are adopted by parents of the same race. She also explores the notion that transracially adopted children are also more accepting of integration. An excellent, but very brief summary of research done and results received through this research.
16. Wheeler DL: Black children, white parents: the difficult issue of transracial adoption. *Chron Higher Educ* 40:A8–A10, 1993. The author explores how the U.S. adoption system's views on race and color are contrary to U.S. laws on racial discrimination. He looks at how black children are remaining in care because of the agency's' reluctance to allow white families to adopt black children. The article points out that Texas was the first state to ban race as a main criterion for the selection of children for adoption, in July of 1993, and how black nationalists oppose transracial adoption as they claim that it erodes the culture of black social life.
17. Wikinson HS: Psychological process and issues in international adoption. *Am J Family Ther* 23:173–83, 1995. The author discusses

international adoption, which is a process that transports and incorporates children cross-racially and cross-culturally into U.S. families. The article examines related psychological issues from the adoptee's perspective and legal aspects from the parents' perspective. The article is excellent in informing the reader on the history, a literature review, and some related psychological and legal processes.

***Joint Versus Sole Custody and Gender Issues***<sup>‡</sup> Forty to fifty percent of children will experience the divorce of their parents (Amato and Keith). Joint custody is awarded in 80 to 90 percent of divorces, and physical custody is awarded to the mother in 80 percent of divorces (Eekalaar and Clive). Therefore, joint legal custody with maternal physical custody is the most common arrangement post-divorce.

The literature has proponents of both joint custody and sole custody, and there are researchers who have found no significant advantage to either. Elkin (1991) provided a summary of the benefits of joint custody reflecting the literature in this area. Based on clinical experience alone, Goldstein *et al.* (1973, 1996) disapprove of joint custody, believing the custodial parent alone should make decisions regarding the noncustodian's visitation. Most recently this has been referred to as "the primary caretaker" doctrine, the parent with the strongest attachment to the child (Bruch, 1992). Johnston *et al.* (1989), Ferriero (1990), and Kline *et al.* (1989) found no difference in child adjustment based on joint versus sole custody arrangements.

These generalizations can be made by support of the majority of relevant re-

search studies about joint versus sole custody: (1) it is better to be in a low conflict divorced family than a high conflict intact family (Ackerman; Heatherington *et al.*); (2) children do best when they have regular contact with the noncustodial parent, provided the parent is reasonably stable and emotionally healthy (Heatherington; Kelly (1988); Wallerstein and Kelly); (3) children's postdivorce adjustment is inversely related to the ongoing level of interparental conflict (Elliott and Bricklin; Johnston (1994)); and (4) frequent visitation is advisable only if interparental conflict is low (Heatherington), but there may be exceptions depending on the individual circumstances of the family or the child's emotional needs and developmental level.

The effects of both the parents' and the child's gender on later adjustment following divorce is an increasingly important area in the field of child custody. Over the past two decades, the number of children growing up without a father in the home has increased by 50 percent, and nearly 40 percent of children now live in homes without their biological father present. In contrast, the number of children being raised by fathers alone has increased by over 200 percent during this same time period.

The literature tends to support the view that boys are more negatively affected by divorce than girls (Zaslow, 1988), although there may be a "sleepier effect" for girls, who later experience problems in interpersonal relationships as young women (Wallerstein, 1991). In a study by Fidler and Saunders (1988), the sex of the custodial parent did not predict 41 chil-

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dren's adjustment (ages 4 to 11) at the time of the custody dispute, but boys and older children appeared to be more vulnerable to the early effects of divorce. A meta-analysis study by Amato and Keith (1991) found that boys may be less well-adjusted in mother custody families than girls, while girls may be less well-adjusted in father custody families than boys. A recent study of 187 children ages 5 to 13 (Clarke-Stewart and Hayward, 1996) was supportive of the findings of this meta-analysis, as the investigators found that these youths, especially boys, did better in father custody. Amato and Keith (1991) also found that, in stepfather families, boys' behavior improved while girls' behavior deteriorated or didn't change. Relatedly, Vulchinich *et al.* (1991), in a study of 26 families with children ages 10 to 14, found that girls had more difficulty interacting with stepfathers than boys did. Zaslow's review (1989) also reported that girls fare less well in father custody or in a family with a stepfather. Other investigators as well have noted this latter outcome in their work.

Children of high-conflict divorce, especially boys, are two to four times more likely to be clinically disturbed than children from the general population (Johnston, 1994). High conflict was defined as verbal and physical aggression, overt hostility, and distrust and was associated with protracted legal disputes.

Some other findings are of interest in this area. Boys especially may have improved adjustment with regular paternal contact, provided the father is reasonably healthy (Wallerstein and Kelly, 1980).

Guidubaldi and Perry (1985) noted that custodial mothers' endorsement of paternal visitation improves children's adjustment, particularly for boys. Court-ordered joint physical custody and frequent visitation in high-conflict divorce leads to poorer child outcomes, especially for girls (Johnston, 1994).

There are many confounding variables in the child custody research literature which make it difficult to compare studies and apply the findings clinically. There is no full consensus among legal, judicial, or mental health communities regarding the child's best interests in custody disputes. Child custody determinations must be made on a case by case basis.

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