Third Party Stepparent Childcare

by Jeffrey A. Parness*

I. INTRODUCTION

More and more children are raised by a parent and a stepparent.¹ These children are often unaware of the differences between such child caretakers under law. When a parent and a stepparent separate, stepparent childcare often ceases at the direction of the parent, sometimes prompting harm to the child, to the stepparent, and to other one-time and current family members (including stepgrandparents and stepsiblings). As well, stepparent childcare can cease when a parent dies, prompting similar harm.²

Court orders on continuing stepparent childcare, over parental objections, upon parent and stepparent separations or parental deaths are sometimes available.³ Stepparents can be deemed legal parents (as under de facto parentage and equitable adoption doctrines).⁴ Stepparents can also be afforded third party (that is nonparent) standing to seek

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1. See, e.g., ROSE M. KREIDER & DAPHNE A. LOFQUIST, ADOPTED CHILDREN AND STEPCHILDREN: 2010, at 21-22 (2014), available at http://www.census.gov/prod/2014pubs/p20-572.pdf (“To put it another way, 11 percent of children living with one biological or adoptive parent who was cohabiting (but not with the child’s other biological or adoptive parent) lived with their parent’s cohabiting partner who was identified as the child’s stepparent. Of the estimated 4.3 million children who lived with at least one stepparent, 88 percent lived with married parents, 64 percent with their biological mother and stepfather, and 19 percent with their biological father and stepmother. Twelve percent of children who lived with at least one stepparent lived with unmarried parents, 76 percent of whom lived with two unmarried parents.”).

2. Id. at 21.


4. Id. at 479.
childcare orders. Availability of continuing stepparent childcare is limited, however, by the superior parental rights doctrine arising under the federal constitution, which is most notably addressed in Troxel v. Granville. Without federal constitutional constraints, third party stepparent childcare orders are further limited by incomplete, stingy, or absent state legislation. Too often, statutory barriers significantly disserve the best interests of children, particularly by prompting terminations of loving and beneficial stepchild-stepparent (and related familial) relationships without serving meaningful, countervailing interests. Courts commonly refrain from lawmaking in the absence of General Assembly directive.

This Article explores the federal constitutional limits on third party stepparent childcare over current parental objections. The Article then surveys both general and special contemporary American state laws on third party childcare, as well as some recent Illinois General Assembly proposals since they further illustrate available options for American state lawmakers. This Article finds existing legislative initiatives lacking, resulting in inadequate protections of the best interests of children, which is the guiding principle for most all of American state laws on child welfare. The Article concludes by urging broader opportunities for stepparent third party childcare, with expansion

5. Id.
7. Herein, a stepparent usually refers to one in, or formerly in, a state-recognized relationship (for example, marriage, civil union, or domestic partnership) with a parent of a child born or adopted before the relationship began and with whom the stepparent has no genetic ties. It, thus, excludes some present or earlier cohabitants with parents. A stepparent includes one in a state-recognized relationship with a parent at the time a child is born, whose presumed parentage (due to presumed genetic ties) has been disestablished but who continues to live with the parent and child. See, e.g., In re Marriage of Purcell, 825 N.E.2d 724 (Ill. App. Ct. 2005). Present and former stepparents are not always comparably treated under the law. See, e.g., In re Adoption of I.M., 289 P.3d 864, 869 (Kan. Ct. App. 2012) (former stepparent could not adopt child via "second-parent adoption" afforded a current stepparent; court is reluctant to allow adoption where statutory language is "clear and unambiguous"). Stepparent sometimes includes, as in census surveys, those who cohabit with children and their biological or adoptive parents to whom they were never in a state-recognized relationship. See KRIHBER & LAWQUIST, supra note 1.
8. Childcare herein includes child custody, child visitation, parenting time, and comparable child placement directives by courts. The paper explores stepparent childcare for children regardless of whether the child was born of sex or not. In many states, including Illinois, for children born of assisted reproduction, there are both general statutory provisions, 750 ILL. COMP. STAT. ANN. 40/1 to 40/3 (West 2009), and statutory provisions that govern surrogacy agreements specifically, 750 ILL. COMP. STAT. ANN. 47/1 to 47/75 (West 2009). Only for children born of sex has the U.S. Supreme Court recognized
coming preferably via new special stepparent childcare statutes, rather than by general third party childcare laws or by common law precedents.\footnote{10}

II. FEDERAL CONSTITUTIONAL LIMITS ON THIRD PARTY STEPPARENT CHILDCARE

In Troxel v. Granville,\footnote{11} Justice O'Connor, writing for herself and three other United States Supreme Court Justices, noted the "liberty interests" of parents in the "care, custody, and control of their children" (herein childcare interests) generally foreclose states from compelling grandparental visitation over parental objections.\footnote{12} Yet, the four Justices recognized that "special factors" might justify judicial interference as long as a parent's contrary wishes were accorded "at least some special weight."\footnote{13} The plurality, together with concurring Justice Souter, reserved the question of whether any "nonparental" visitation order must "include a showing of harm or potential harm to the child."\footnote{14} Justice Souter did hint, however, that at least some nonparental visitation could be based solely on a preexisting "substantial relationship" between a

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an automatic parental status or childrearing rights for most childbearing mothers and a paternity opportunity interest in most copulating fathers (where adulterous men may, in an American state's discretion, not have such interests should the mothers and their husbands wish to childrear together). See, e.g., Michael H. v. Gerald D., 491 U.S. 110, 130 (1989); Lehr v. Robertson, 463 U.S. 248 (1983). This examination encompasses children born of sex to persons in a marriage or civil union, as well as to cohabiting couples and other single people.

9. The Article does not consider possible federal or state constitutional third party childcare interests, whether those interests are based on rights afforded to stepparents or stepchildren, or otherwise grounded.


11. Id. at 65-66 ("Perhaps the oldest of the fundamental liberty interests recognized by this Court."); see also id. at 68-69 ("If a parent adequately cares for his or her children (i.e., is fit), there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children.") (Justice O'Connor, joined by Chief Justice Rehnquist and Justices Ginsburg and Breyer). These liberty interests had earlier commanded a majority support on the U.S. Supreme Court. See, e.g., Santosky v. Kramer, 455 U.S. 745 (1982).


13. Troxel, 530 U.S. at 73; see also id. at 77 (Souter, J., concurring) ("[T]here is no need to decide whether harm is required.").
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child and a nonparent and on “the State's particular best-interests standard.”

In his dissent, Justice Kennedy, not unlike Justice Souter, observed that a best interests standard might be constitutional where the nonparent acted “in a caregiving role over a significant period of time.” His analysis went beyond visitation by hinting such a nonparent might even be afforded a “de facto” parent status. In a second dissent, Justice Scalia noted the possibility of “gradations” of nonparents in childcare settings. In a third dissent, Justice Stevens observed that nonparents seeking childcare must be distinguished by whether there is a “presence or absence of some embodiment of family.”

So, parental objections to nonparental childcare are not always dispositive. Yet, because the U.S. Supreme Court has said little since Troxel, there is much uncertainty. While some state legislatures extensively refined their grandparent visitation statutes after Troxel,

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14. Id. at 76-78 (Souter, J., concurring).
15. Id. at 98 (Kennedy, J., dissenting).
16. Id. at 100-01 ("[A] fit parent's right vis-a-vis a complete stranger is one thing; her right vis-a-vis another parent or a de facto parent may be another.").
17. Id. at 92-93 (Scalia, J., dissenting).
18. Id. at 88 (Stevens, J., dissenting).
19. One distinguished commentator described Troxel this way:
   Troxel did more to confuse than clarify the law in the area of grandparents’ rights laws. On the one hand, the case can be read broadly as reaffirming that parents have a fundamental right to control the upbringing of their children and as providing a basis for invalidating orders for grandparent visitation over the objection of fit parents. On the other hand, Troxel can be read as a very narrow decision that involved a particularly broad law applied in a situation where the parent was fit and regular grandparent visitation still occurred. The absence of a majority opinion makes it even more difficult to assess the impact of the decision other than the certainty that it will lead to challenges to grandparents’ rights laws throughout the country.


many have not addressed the third party childcare interests of stepparents. 21 Without any, or with stingy or incomplete, statutes, judges are left to resolve the import of “a caregiving role over a significant period of time” by a stepparent, assuming there are no statutory or separation of powers barriers to judicial action. 22

Surely, some state legislatures and courts, since Troxel, have gone beyond third party childcare by recognizing new parental child caretaking interests in nonbiological and nonadoptive caretakers, including grandparents and stepparents. 23 Here, one-time third parties are deemed legal parents sometime after birth through new doctrines such as equitable estoppel, equitable adoption, and de facto parentage. 24 This Article does not explore such parentage, however, because stepparent childcare remains important notwithstanding these new parentage forms, which are typically imprecise because they arise at no particular moment in time. New parentage is usually foreclosed when a child already has two other parents who are recognized by the law. 25 Further, terminations of parental rights are not only difficult to justify and prove, but also can end parental child support obligations in ways sometimes contrary to children’s best interests.

III. SURVEY OF AMERICAN STATE LAWS ON THIRD PARTY STEPPARENT CHILDCARE

A. General Laws

American state laws recognize certain parental acts, not amounting to abuse, neglect, or abandonment, can diminish superior parental rights

great-grandparents).

22. Troxel, 530 U.S. at 98 (Kennedy, J., dissenting).
23. Ginsberg, supra note 29.
24. See, e.g., In re Custody of B.M.H., 316 P.3d at 478 (common law de facto parentage claim was available to the former stepparent where the child had only one existing fit parent since the biological father died during the pregnancy; court noted that a similar claim was made available in an earlier case to a former same-sex female partner of the birth mother).
25. See, e.g., Wyoming ex rel. NDB v. EKB, 35 P.3d 1224, 1228-29 (Wyo. 2001) (when there is a mother and two presumed fathers, courts must choose between the two fathers to establish a second parent). One lower court opined judicial recognition of a third parent is constitutionally foreclosed due to the superior parental rights of the two existing parents. Bancroft v. Jameson, 19 A.3d 730, 741 (Del. Fam. Ct. 2010). But see CAL. FAM. CODE § 7612(c) (West Supp. 2014) (three parents may be designated where “recognizing only two parents would be detrimental to the child”).
by prompting nonparent childcare standing for stepparents and others.\textsuperscript{26} Often, the nonparents are described as taking on parental duties. These laws are frequently comparable to American state laws recognizing de facto parentage for stepparents and other one-time third parties.\textsuperscript{27}

For example, a South Dakota statute allows “any person other than the parent of a child to intervene or petition a court . . . for custody or visitation of any child with whom he or she has served as a primary caretaker, has closely bonded as a parental figure, or has otherwise formed a significant and substantial relationship.”\textsuperscript{28} In South Dakota, a parent’s “presumptive right to custody” is diminished when there is abandonment or persistent neglect; forfeiture or surrender of parental rights to a nonparent; abdication of “parental rights and responsibilities”; or “extraordinary circumstances” where parental custody “would result in serious detriment to the child.”\textsuperscript{29} In Kentucky, a “de facto custodian” of a child can seek custody if they were “the primary caregiver” and “financial supporter,” resided with the child for at least six months, and the child is under three years of age.\textsuperscript{30} In Colorado,

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26. The laws (and a proposed model act) on third party childcare are reviewed exhaustively in Jeff Atkinson, Shifts in the Law Regarding the Rights of Third Parties to Seek Visitation and Custody of Children, 47 Fam. L.Q. 1 (2013).

27. At times, the absence of statutory stepparent third party childcare standing can lead a court to employ a de facto parentage approach to a former stepparent seeking nonparental custody. In re Custody of B.M.H., 315 P.3d at 447 (prerequisites for a nonparental custody action were not met).

28. S.D. Codified Laws § 25-5-29 (Supp. 2003). Thus, not all de facto parents can qualify as de facto custodians with standing to seek childcare orders. See, e.g., Truman v. Lillard, 404 S.W.3d 863 (Ky. Ct. App. 2012) (former same-sex partner of a woman who adopted her niece was not a de facto custodian and failed to show a waiver of superior parental right to custody).

29. S.D. Codified Laws § 25-5-33(4). The statute was applied to permit visitation, favoring a man with no biological or adoptive ties. Clough v. Nez, 759 N.W.2d 297 (S.D. 2008); see also S.D. Codified Laws § 25-5-33 (Supp. 2003) (parent can be ordered to pay child support to a nonparent with “custodial rights”).

30. Ky. Rev. Stat. Ann. § 403.270 (West 2006) (requiring residence with the child for at least one year if the child is older than three years of age). Thus, not all de facto parents can qualify as de facto custodians with standing to seek childcare. See, e.g., Truman, 404 S.W.3d at 869-70 (holding that the former same-sex partner of a woman who adopted her niece was not a de facto custodian and failed to show a waiver of superior parental right to custody); Spreacker v. Vaughn, 397 S.W.3d 419, 420 (Ky. Ct. App. 2012) (affirming the paternal great aunt was a de facto custodian). There are similar laws in Indiana, K.S. v. B.W., 954 N.E.2d 1050, 1051-52 (Ind. Ct. App. 2011) (employing Ind. Code Ann. § 31-9-2-35.5 (West 2007)), and Minnesota, Minn. Stat. Ann. 257C.93(6)(a)(2) (West 2007) ("de facto custodian"). The phrase "de facto custodian," and similar phrases, can also be used in other settings. See, e.g., In re Jesse C., No. C069225, 2012 Cal. App. Unpub. LEXIS 8512, at *2, *7 (Nov. 26, 2012) (stating de facto parent is one who cares for a child
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there is nonparent standing to seek an allocation of parental responsibilities when the nonparent "has had the physical care of a child for a period of six months or more." In New Mexico, when "neither parent is able . . . to provide appropriate care," a child may be "raised by . . . kinship caregivers," who include an adult with a significant bond to the child and who cares for the child "consistent with the duties and responsibilities of a parent." In Wisconsin, a "person who has maintained a relationship similar to a parent-child relationship with the child" may secure "reasonable visitation rights . . . if the court determines that visitation is in the best interest of the child." In Missouri, quite broadly, there is potential "[t]hird-party custody or visitation" when "the welfare of the child requires, and it is in the best interests of the child . . ." At times, general third party childcare laws apply only in certain circumstances. One such circumstance is a parent's death or disability. Thus, a deceased parent's family members will be accorded third party childcare standing so that, with court approval, a parentless child can continue significant and beneficial familial relationships.

Besides statutes, there are case precedents generally recognizing standing for nonparent childcare. For example, in Ohio there can be no "shared parenting" contracts between parents and nonparents. However, "a parent may voluntarily share with a nonparent the care, custody, and control of his or her child through a valid shared-custody agreement." This may create for a nonparent "an agreement for permanent shared legal custody of the parent's child" or an agreement during a dependency proceeding; de facto parent status is lost when dependency is terminated).


32. N.M. S. Bill 185, 2001 N.M. 167.


35. MO. ANN. STAT. § 452.375.5 (West 2009). This statute was recognized as possibly applicable to a former same-sex partner of a child's biological mother whose new husband sought stepparent adoption. In re Adoption of C.T.P., 452 S.W.3d 765, 708-10 (Mo. Ct. App. 2014).


for temporary shared legal custody, as when the agreement is revocable by the parent. In Arkansas, the "in loco parentis" doctrine operates, while in West Virginia, there is a "psychological parent doctrine."

General third party childcare laws in some states are very similar to the de facto parent laws in other states. Thus, while South Dakota recognizes third party childcare standing for one who, inter alia, "has closely bonded as a parental figure"; Delaware recognizes de facto parent status for one who, inter alia, "acted in a parental role" long enough "to have established a bonded and dependent relationship with the child that is parental in nature."

B. Special Laws

In addition to the general laws, there are special childcare laws that are applicable to certain designated third parties, including stepparents or just to stepparents (both present and former). Such specific laws may be accompanied by general third party childcare laws that serve stepparents and other nonparents (like grandparents).

39. In re Mullen, 953 N.E.2d 302, 305, 306 (Ohio 2011). Custody in the nonparent is only allowed under an agreement when the juvenile court deems the nonparent suitable and the shared custody is in the best interests of the child. In re Bonfield, 780 N.E.2d at 249; see also In re LaPiana, Nos. 93691 and 93692, 2010 Ohio App. LEXIS 3071, at *24-25 (Aug. 5, 2010) (former lesbian partner secures visitation with two children born of assisted reproduction where there was a written agreement to jointly raise the first child and other evidence of intent to share custody of both children); In re L.J.R., No. 14C037, 2015 Ohio App. LEXIS 1150, at *31-32 (Mar. 26, 2015) (agreement between birth mother and her former boyfriend who was not the biological father).


41. S.D. CODIFIED LAWS § 25-5-29.


43. Besides special childcare laws, there can also be other special stepparent laws. See, e.g., S.D. CODIFIED LAWS § 25-7-8 (1999) ("A stepparent shall maintain his spouse's children born prior to their marriage and is responsible as a parent for their support and education suitable to his circumstances, but such responsibility shall not absolve the natural or adoptive parents of the children from any obligation of support.").

44. Many people urge the state legislators to write the laws on present and former stepparent childcare. See, e.g., Cynthia Grant Bowman, The Legal Relationship Between Cohabitaents and Their Partners' Children, 13 THEORETICAL INQ. L. 127, 151 (2012) ("Like Professor Bartlett, I do not think we can simply rely on judges to make extralegal decisions to rescue children in deserving cases, nor do I think that would be good for the legitimacy of our system of family law. Instead, any new standards should be established by statute, to prevent, insofar as possible, inconsistent and unpredictable judicial decisions in this area.").
In a Tennessee divorce, "a stepparent to a minor child born to the other party . . . may be granted reasonable visitation rights . . . upon a finding that such visitation rights would be in the best interests of the minor child and that such stepparent is actually providing or contributing towards the support of such child."45 In California, "reasonable visitation to a stepparent" is permitted if it is "in the best interest of the minor child."46 In Wisconsin, a stepparent (as well as a grandparent and others) can petition for "reasonable visitation rights" if a court determines visitation is in the child's best interests and if there is a preexisting "relationship similar to a parent-child relationship with the child."47 In Oregon, during a dissolution proceeding, a stepparent can obtain custody or visitation by proving "a child-parent relationship exists," the presumption that the parent acts in the child's best interest has been "rebutted by a preponderance of the evidence," and the child's "best interest" will be served.48 If a stepparent only proves "an ongoing personal relationship" with the child, then the parental presumption must be rebutted by "clear and convincing evidence."49 In Utah, a former stepparent50 can pursue child custody or visitation in a divorce or "other proceeding"51 through showing "by clear and convincing evidence" that, inter alia, the stepparent "intentionally assumed the role and obligations of a parent"; formed "an emotional bond and created a parent-child type relationship"; and showed the parent is "absent" or has "abused or neglected the child."52 In Virginia, a former stepparent with a "legitimate interest"53 can secure custody of or visitation with a child upon "showing by

45. TENN. CODE ANN. § 36-6-303(a) (2014) (representing a seemingly questionable facial validity under Troxel without requiring any showings on, for example, parental acts or child detriment).
46. CAL. FAM. CODE § 3101(a) (West 2004).
47. WIS. STAT. ANN. § 767.43(1). There are other special guidelines for grandparents who petition for visitation. See, e.g., WIS. STAT. ANN. § 767.43(3) (West Supp. 2006) (requiring no earlier adoption of the child and the child must be a nonmarital child whose parents never married).
50. See UTAH CODE ANN. § 30-5a-109(2)(c) (LexisNexis 2008).
51. UTAH CODE ANN. § 103(4) (LexisNexis 2008).
52. UTAH CODE ANN. § 103(2) (LexisNexis 2008).
clear and convincing evidence that the best interest of the child would be served thereby.\textsuperscript{54}

At times, special stepparent childcare laws apply only upon an existing parent’s death or disability. In Delaware, “upon the death or disability of the custodial or primary placement parent,” a stepparent who resided with the deceased or disabled parent can request custody even if “there is a surviving natural parent.”\textsuperscript{55} If a parent dies in Arizona, a former stepparent can obtain custody of a child if they stood “in loco parentis,”\textsuperscript{56} it would be “significantly detrimental” for the child to be placed in a second parent’s custody,\textsuperscript{57} and there is “clear and convincing evidence that awarding custody” to the second parent is not in the child’s “best interests.”\textsuperscript{58} If a single parent dies in Utah,\textsuperscript{59} a former stepparent\textsuperscript{60} can seek custody or visitation with a former stepchild by showing, inter alia, intentional assumption of “the role and obligations of a parent,” “an emotional bond” and “a parent-child type relationship,” an emotional or financial contribution to the child’s well being, and the child’s best interests.\textsuperscript{61}

IV. CURRENT AND PROPOSED THIRD PARTY STEPPARENT CHILDCARE IN ILLINOIS: WHAT IS MISSING?

Additional state law options on third party stepparent childcare can also be illustrated by a review of a few current and proposed Illinois

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  \item \textsuperscript{54} VA. CODE ANN. \textsuperscript{55} § 124.2(B) (2008); see, e.g., Brown v. Burch, 519 S.E.2d 403, 412 (Va. Ct. App. 1999) (noting that, over the mother’s objection, “clear and convincing evidence of special and unique circumstances” justifies a joint custody order favoring the father and the former stepfather, with the latter “retaining physical custody of the boy”). Special stepparent childcare laws, of course, may be coupled with special stepparent adoption laws. See, e.g., LA. CHILD. CODE ANN. art. 1282(A) (2014) (no need for even limited homestudies in some stepparent adoptions); MONT. CODE ANN. \textsuperscript{56} § 42-4-302(1)(a) (2005) (stepparent has lived with child and a parent, who has legal and physical custody of the child, for the past sixty days).
  \item \textsuperscript{55} DEL. CODE ANN. tit. 13, \textsuperscript{57} § 733 (2015).
  \item \textsuperscript{56} ARIZ. REV. STAT. ANN. \textsuperscript{58} § 25-415(A)(1) (2000). This status is achieved by being “treated as a parent by the child” and forming “a meaningful parental relationship with the child for a substantial period of time.” ARIZ. REV. STAT. ANN. \textsuperscript{59} § 415(G)(1) (2000).
  \item \textsuperscript{57} ARIZ. REV. STAT. ANN. \textsuperscript{60} § 415(A)(2) (2000).
  \item \textsuperscript{58} ARIZ. REV. STAT. ANN. \textsuperscript{61} § 415(B) (2000). If not custody, a stepparent could be awarded “reasonable visitation” on a lesser showing. ARIZ. REV. STAT. ANN. \textsuperscript{62} § 415(C) (2000) (“in loco parentis” and “best interests”).
  \item \textsuperscript{59} UTAH CODE ANN. \textsuperscript{63} § 30-5a-103(2)(g)(i) (a parent’s death would need to have the parent deemed “absent”).
  \item \textsuperscript{60} UTAH CODE ANN. \textsuperscript{64} § 102(2)(d), (e) (LexisNexis 2008) (former stepparent and step-grandparent).
  \item \textsuperscript{61} UTAH CODE ANN. \textsuperscript{62} § 103(2)(a)-(b), (c), (e) (LexisNexis 2008).
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statutes. The Illinois examples demonstrate how stepparents who assist in significant ways are unfairly given fewer childcare opportunities than other nonparents, like grandparents, who have much less—if any—comparable histories of significant childcare. Such distinctions often differentiate between biologically related and biologically unrelated nonparents in ways that disserve children’s best interests.

In Illinois, the “liberty interest[s]” of parents are reflected in the “superior rights doctrine,” which holds that parents have superior rights regarding the care of their children. This doctrine is incorporated into Illinois statutes through court-ordered third party childcare by a nonparent, including a stepparent, over parental objection.

One current Illinois statute authorizes childcare by way of “reasonable visitation,” if the “parent is deceased or is disabled and is unable to care for the child” and the stepparent has continuously lived for at least five years with the parent and child, who is at least twelve years old. This statute also requires the child’s preference and the promotion of “the best interests and welfare of the child.”

Third-party stepparent childcare, by way of “child custody,” is also statutorily authorized in Illinois for a “stepparent” if the child is at least twelve years old; the custodial parent and stepparent were married for at least five years while the child resided with them; “the custodial parent is deceased or is disabled and cannot perform” parental “duties”; “the stepparent provided for the care, control, and welfare to the child prior to the initiation of custody proceedings”; the “child wishes to live with the stepparent”; and, it is in the child’s “best interests and welfare ... to live with the stepparent.” The same statute seemingly allows child custody pursuit by a stepparent who qualifies as a “person other than a parent ... only if [the child] is not in the physical custody of one of [the] parents.”

62. See, e.g., In re Scarlett Z.-D., 21 N.E.3d 776, 796 (Ill. 2015). Before Troxel, parental rights to childcare in Illinois, when challenged by nonparents, seemingly were less superior. See, e.g., Cebrynski v. Cebrynski, 379 N.E.2d 713, 714 (Ill. App. Ct. 1978) (as both stepmother and natural mother were fit parents, after father’s death, joint and mutual custody in both mothers, and actual physical custody to stepmother alone and visitation rights for natural mother).

63. 750 ILL. COMP. STAT. ANN. § 5/507(b)(1.5)(C) (West 2009). Where the stepparent was married to a parent who had custody and died, the stepparent may be able to obtain guardianship of the child’s person and estate over the other parent’s objection. 755 ILL. COMP. STAT. ANN. § 5/11-5(a) (West 2007) (rebuttable presumption of childcare by surviving parent), applied in In re A.W., 994 N.E.2d 726 (Ill. App. Ct. 2013) (sufficient allegations on presumption’s rebuttal so that a hearing was required).

64. 750 ILL. COMP. STAT. ANN. § 5/607(b)(1.5) (West 2009).


When a custodial parent dies, another Illinois statute facilitates more opportunity for grandparent custody than for stepparent custody, at least for the parents of the child’s deceased parent. The previously noted requirements for stepparent custody do not apply to grandparents. Grandparents can seek custody of their grandchildren as long as the “surviving parent” was in state or federal custody or “had been absent from the marital abode for more than one month without the deceased spouse knowing his or her whereabouts.”

So, only stepparents are ineligible for custody of children under twelve and of children for whom they provided childcare for less than five years, regardless of the children’s best interests. Grandchildren sometimes can be placed in grandparent custody to the clear detriment of the child and stepparent. Biology trumps best interests.

Beyond these statutes, Illinois common law precedent supporting third party stepparent childcare is very limited. One case recognizes a former stepparent’s contractual right to childrear, over parental objection, via the equitable estoppel doctrine. The right can be exercised where there is harm to the child; an earlier agreement by the parent to allow a former stepparent an opportunity for child visitation; reasonable reliance by the former stepparent on the agreement; and a detrimental “change” to the former stepparent’s position as a result of the agreement. Another case recognizes that a widowed stepparent can seek a guardianship of a stepchild, the deceased spouse’s natural child, over the other natural parent’s objection, if the stepparent demonstrates by a preponderance of the evidence that the living parent

68. There seems little room for further common law development given the Illinois Supreme Court’s deference to the General Assembly (where there can be a full “policy debate”) on issues of de facto parentage. In re Scarlett Z.-D., 28 N.E.3d at 795.
70. Id. at 806. Equitable estoppel is more readily available when the agreement becomes part of a court order, as in In re Marriage of Schlam, 648 N.E.2d 345, 348 (Ill. App. Ct. 1995). Comparably, where there was an earlier consent decree allowing grandparent visits, continued visits over parental objection can be ordered, though “changed circumstances” can end all visits. See, e.g., In re M.M.D., 820 N.E.2d 392, 395, 401 (Ill. 2004) (consolidated cases involving maternal grandparents seeking guardianship of deceased daughter’s child with unwed biological father wherein parties earlier agreed to consent order awarding permanent custody to father and recognizing for the grandparents “specific and detailed visitation rights, telephone access to the child, information about the child’s education and medical care, and authorization to speak with child's teachers, school personnel, counselors and physicians”.


is unwilling or unable "to make and carry out day-to-day childcare decisions concerning the minor."71

New Illinois statutes should expand opportunities for stepparent childcare. Until then, childcare decisions generally will be left to "natural or adoptive parents,"72 regardless of their earlier accessions to stepparent childcare and regardless of the best interests of their children.72

Recognizing the need for reforms for parental and third party childcare interests, the Illinois General Assembly created a study committee, resulting in the recently proposed Illinois Parentage Acts74 and proposed amendments to the Illinois Marriage and Dissolution of Marriage Acts (MDM Act).75 The Parentage Acts and MDM Act

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73. On the cost of recognizing such parental authority, see, e.g., T.M.H. v. D.M.T., 79 So. 3d 787 (Fla. Dist. Ct. App. 2011), which is a case involving possible future childrearing by a woman who provided her eggs to her lesbian partner so both women could childrear; a concurring opinion declared:

   I write . . . to highlight the unfortunate absence of an important consideration that should inform our decision in cases such as this. Yes, I know, as did the able trial judge, that the best interests of the child is ordinarily not the test to be applied . . . . I think that we need to find a way to redirect our focus in cases of this kind so that best interests becomes part of the decisional matrix. Surely we have to make room for that factor in the crucible. Exploring the parental rights of one litigant or the other should not be the end of our deliberations. In the final analysis, we still ought to come to grips with what is best for the child. Here, having two parents is better than one.

79 So. 3d at 804-05 (Monaco, J., concurring).


75. The Illinois Family Law Study Committee's work led to Ill. H. Bill 6192, 97th Gen. Assemb., Reg. Sess. (2012), which included proposed changes to a variety of Illinois statutes governing family matters, including the Marriage and Dissolution of Marriage Act, the Alienation of Affections Act, and the Domestic Violence Act. The main proposed changes
proposals must be read together because they sometimes cover comparable childcare interests. For example, the marital presumptions establishing nonbiological and nonadoptive parentage are found in the varying proposed 2012 amendments to the Parentage Act, while the 2012 proposed amendments to the MDM Act recognize nonbiological and nonadoptive parentage for certain unwed child caretakers. Unfortunately, the varying proposals, since the study ended, insufficiently address the inadequacies of current third party stepparent childcare. The continuing failures to recognize the interests of stepparent and stepchildren in continuing their strong and beneficial familial relationships in Illinois reflect similar failures across the country.

One set of proposed amendments to the Illinois MDM Act of 2012 would allow many former stepparents to be eligible for “an allocation of parenting time” if the relationships between the parents and stepparents ended. The proposed MDM Act of 2012, however,

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76. See, e.g., Ill. H. Bill 6191 § 204(a)(1) (man presumed a parent of a child if “he and the mother . . . are married to each other or are in a state-recognized civil union and the child is born . . . during the marriage or civil union, except as provided by the Gestational Surrogacy Act or Article 7 of this Act” [Child of Assisted Reproduction]).

77. See, e.g., Ill. H. Bill 6192 (“Equitable parent” includes “a person who, though not a legal parent of a child . . . lived with the child for at least 2 years while believing to be the child’s biological parent”).

78. See Mont. Code Ann. § 40-4-221 (2005) (upon death of “a parent,” a nonparent who had established a child-parent relationship with the child can seek “a parenting plan hearing”); Mont. Code Ann. § 40-4-211(6) (2005); Colo. Rev. Stat. Ann. § 14-10-123(1)(c) (West 2009) (nonparent can seek “allocation of parental responsibilities” if they have “had the physical care of a child for more than six months, as long as action is commenced within six months of termination of such physical care”).


As compared to parenting “responsibilities” or “time” in Ohio, where noncustodial family members, including grandparents and other relatives, may seek “reasonable companionship or visitation rights” when a related custodial parent dies, Ohio Rev. Code Ann. § 3109.11 (LexisNexis 2015), as long as Trexel limits are met. See Oliver v. Feldner, 778 N.E.2d 499,
recognizes limited standing for current and former stepparents, as
equitable parents who provided childcare, to seek an "allocation
of parental responsibilities." 86 The 2012 proposal recognizes both a legal
parent, defined as "a biological or adoptive parent," 87 and an "equitable
parent," defined as one who is not a legal parent, but who is obligated
by court order to pay child support; is a stepparent; lived with the child
for at least two years and reasonably believed they were "the child's
biological parent"; or "lived with the child since the child's birth or for
at least 2 years, and held himself out as the child's parent . . . under an
agreement with the child's legal parent" or legal parents. 88
The same 2012 proposed changes to the MDM Act offered no
amendments to "reasonable visitation" opportunities for stepparents or
grandparents, and as a result, the twelve-year-old child and five year
residence norms went unaddressed. 84
One set of 2015 proposed changes to the MDM Act recognizes
"visitation" opportunities for "step-parents" 86 and other nonpar-
ents. 87 Such opportunities can only be pursued, however, "if there has
been an unreasonable denial of visitation by a parent and the denial has
caused the child undue mental, physical, or emotional harm," 88 with the
burden on the petitioner to show such unreasonableness and harm. 89
Further, such opportunities may only be pursued by nonparents,

509 (Ohio Ct. App. 2002) (Troxel limits not met); see also In re K.P.R., 966 N.E.2d 952, 957-
58 (Ohio Ct. App. 2011) (Troxel limits may have been met where a "relative" of the
deceased mother was a stepfather who had visitation rights, despite the custodial biological
father's objection, because he had waived nonjurisdictional arguments earlier regarding the
visit).
80. 111. H. Bill 6192.
81. Id. (cited at 750 ILL. COMP. STAT. ANN. § 5/601.2(b)(2) (West 2009)).
82. Id. (cited at 750 ILL. COMP. STAT. ANN. § 5/600).
83. Id.
84. Id. (cited at 750 ILL. COMP. STAT. ANN. § 5/600); id. (cited at 750 ILL. COMP.
STAT. ANN. § 5/601.2 (West 2009)).
85. S. Bill 57 (cited at 750 ILL. COMP. STAT. ANN. § 5/602.9(a)(4) (West 2009) (defined
as "in-person time spent" with a child, including "electronic communication," defined in 750
ILL. COMP. STAT. ANN. § 5/602.9(a)(1) (West 2009)).
86. 750 ILL. COMP STAT. ANN. § 5/602.9(a)(3) (West 2009) (defined as "a person married
to a child's parent, including a person married to the child's parent immediately prior to
the parent's death").
87. Id. § 5/602.9(a)(4) (permitting "visitation" between a child and the child's
grandparent, greatgrandparent, sibling, and any other person a deployed military parent
designates "to exercise reasonable substitute visitation . . . in the best interests of the
child," according to § 5/602.7(e) (West 2009)).
88. 750 ILL. COMP. STAT. ANN. § 5/602.9(b)(3) (West 2009).
89. 750 ILL. COMP. STAT. ANN. § 5/602.9(d)(4) (West 2009).
including stepparents, under certain conditions, including when the child's parent is deceased or missing,\textsuperscript{90} a parent is incompetent,\textsuperscript{91} a parent is incarcerated,\textsuperscript{92} the parents are separated or divorced and at least one parent does not object to nonparent visitation;\textsuperscript{93} or the parents are unwed and not living together where their parentage has been legally established.\textsuperscript{94} Thus, strong and beneficial stepparent-stepchild familial relationships are subject to parental veto as long as there is no "undue" harm to the children. This is so even where the children are themselves well-adjusted and capable of weathering storms due to the guidance of their stepparents and even where longstanding relationships were invited and supported by the parents who now act unreasonably in denying visitation and ending loving relationships they long encouraged. Superior parental rights here run amok.

Another set of 2015 proposed amendments to the Illinois MDM Act differentiates between third party childcare opportunities for grandparents and stepparents.\textsuperscript{95} While the amendments continue the very limited recognition of third party stepparent childcare,\textsuperscript{96} they significantly expand "reasonable visitation rights" involving third party grandparent childcare.\textsuperscript{97} In particular, grandparent visitation is sanctioned for a child in a "dual-parent household if there is an unreasonable denial of visitation by a parent and the grandparent has maintained a significant beneficial relationship with the child" for at least twelve months "immediately preceding the severance of that relationship by the parent."\textsuperscript{98} Here again, biology trumps the children's best interests because only the grandparents are usually biologically tied.

V. NEW STATE LAWS ON THIRD PARTY STEPPARENT CHILDCARE

How might American state stepparent childcare laws be improved? One method involves extending opportunities for continuing stepparent-

\textsuperscript{90} 750 ILL. COMP. STAT. ANN. § 5/602.9(c)(1)(A) (West 2009).
\textsuperscript{91} 750 ILL. COMP. STAT. ANN. § 5/602.9(c)(1)(B) (West 2009).
\textsuperscript{92} 750 ILL. COMP. STAT. ANN. § 5/602.9(c)(1)(C) (West 2009).
\textsuperscript{93} 750 ILL. COMP. STAT. ANN. § 5/602.9(c)(1)(D) (West 2009).
\textsuperscript{94} 750 ILL. COMP. STAT. ANN. § 5/602.9(c)(1)(E) (West 2009).
\textsuperscript{96} Ill. H. Bill 1414, 750 ILL. COMP. STAT. ANN. § 5/607(b)(1.5).
\textsuperscript{97} 750 ILL. COMP. STAT. ANN. § 5/607(a-5)(1.5) (West 2009).
\textsuperscript{98} Id. A presumption of "a significant beneficial relationship" arises, inter alia, when the child resided continuously with the grandparent for at least half a year within the past year ("with or without the current custodian present"; when the grandparent was the "primary caretaker" for at least 6 months; or when the grandparent had "frequent or regular contact or visitation with the child throughout the 12-month period").
stepchild relationships postdissolution to serve the best interests of the children.99 Court orders on postdissolution stepparent third party childcare, of course, must respect each adoptive or biological parent’s superior rights. Therefore, such an order should require more than “a thinned-out conception” of a former stepparent as a child caretaker.100 Such an order need not always be accompanied by a finding of detriment to the child if stepparent childcare is ended, at least where each adoptive or biological parent had earlier, strongly supported a parental-like or coparent role for the stepparent. Earlier support can constitute ceding of, or a form of consent to, a later diminishment of superior parental rights.101

99. Grandparent childcare opportunities are also significantly limited in Illinois, though they need not be if Troxel is read not to require a showing of harm. 750 ILL. COMP. STAT. ANN. § 5/507(a-5)(3) (West 2009) (grandparent visitation order only where grandparent shows parent’s objections “are harmful to the child’s mental, physical, or emotional health”), applied in Flynn v. Henkel, 880 N.E.2d 166, 168 (Ill. 2007) and In re Anaya R., 977 N.E.2d 836 (Ill. App. Ct. 2012). Grandparent childcare differs from stepparent childcare in that only the former grants certain grandparents (for example, parents of custodial parent of grandchild) the ability to remain in the child’s family while the later often permits childcaretakers acting like, and recognized in the community and by the children, as parents, or at least quasi-parents, to remain in the child’s family. For Illinois grandparent childcare opportunities, see, e.g., Jeffery A. Parness, Expanded Stepparent and Grandparent Third-Party Childcare in Illinois, 40 S. ILL. L.J. 1 (2015).

100. Robin Fretwell Wilson, Trusting Mothers: A Critique of the American Law Institute’s Treatment of De Facto Parents, 38 HOFFSTRA L. REV. 1103, 1109 (2010) (warning against “a thinned-out conception of parenthood” that is “primarily a function of co-residence” and that “would give former live-in partners access to a child” even when opposed by the legal parent, who is “nearly always a child’s mother”), employed in In re B.M.H., 315 P.3d at 488 (Madsen, C.J., concurring).

101. Thus, a parent’s current wishes need to be accorded less “special weight” when preceded by that parent’s earlier longstanding wishes for strong and loving stepparent–stepchild relations, especially where the parent’s support for such relations continued for at least some time after the relationship between one parent and the stepparent sourced. See, e.g., Middleton v. Johnson, 633 S.E.2d 162, 169 (S.C. Ct. App. 2006) (a single parent “cannot maintain an absolute zone of privacy [around his or her child] if he or she voluntarily invites a third party to function as a parent to the child”). See generally Jeffrey A. Parness, Constitutional Constraints on Second Parent Laws, 40 OHIO N.U. L. REV. 811 (2014) (demonstrating how such adoptive or biological parent support similarly allows, for example, a former stepparent to be designated a second parent). Concealedly, where there are two parents, the parent not personally involved with the stepparent (as by marriage) will have their wishes adjudged a bit differently than the involved parent. Concealedly, there may be two parents and two stepparents simultaneously vying for childcare opportunities for a single child. Any such stepparent-childcare disputes are not that different from disputes in third party settings between two parents and two sets of grandparents except, however, it is more likely that stepparents acted in parental-like roles than grandparents.
Another method regarding whether a former stepparent generally has childcare opportunities in a former stepchild upon dissolution involves childcare opportunities when a single parent, either then married or once married to a stepparent, dies. Here, there would be no parent with superior parental rights. Additionally, a child’s best interests often would be well served by continuing or renewing stepparent childcare. Special third party stepparent childcare standing would be made contingent upon a single parent’s death where the stepparent had a “substantial relationship” with the stepchild and where the child’s best interests would be served. In Illinois, upon a single parent’s death, “a person other than a parent” can seek custody of a child who “is not in the physical custody of one of his parents.” Today, there is no special statute (or presumption) favoring a present or former stepparent, even though a stepparent is far more likely to have developed a

102. See In re A.P.P., 251 P.3d 127 (Mont. 2011).
103. Id. at 129 (parenitial interest recognized in stepfather after child’s mother died where substantial evidence established that the father “engaged in conduct contrary to the child-parent relationship”).
104. Troxel, 530 U.S. at 77-78 (Souter, J., concurring in judgment).
105. Compare, at times when a parent places a child up for adoption with a certain couple, that parent can later seek renewed custody if the adoption fails. Here, the termination of parental rights is contingent. See, e.g., A.D.R. v. J.L.H., 894 So. 2d 177, 183 (Miss. 2008). As well, when a designated adopting person or couple (like the grandparents) die, a parent may not be able to fully resurrect her superior rights at times; however, the parent might be given an opportunity to reclaim custody, as upon a showing by clear and convincing evidence that custody is in the child’s best interests. See, e.g., D.M. v. D.R., 62 So. 3d 920, 927 (Miss. 2011).
106. 750 ILL. COMP. STAT. ANN. § 5/601(b)(3).
107. See, e.g., 755 ILL. COMP. STAT. ANN. § 5/11-3(a) (West 2007); 755 ILL. COMP. STAT. ANN. §§ 5/11-5(a)(1), b)(West 2007) (guardianship qualifications when legal parents are not available include a “best interest” test and no preference for a former stepparent, or “de facto” parent, with perhaps some preference for one who is designated in writing by a parent or parents as a guardian should the parent or parents die). Any special statute need not necessarily grant standing to a former stepparent to seek a childcare order, and it may simply grant a right to be heard, with an opportunity to seek standing later in order to pursue renewed custody or visitation. But see 705 ILL. COMP. STAT. ANN. § 405/1-50 (West 2007) (any “relative caregiver” “has the right to be heard” in a child neglect and shelter proceeding, though not the right to be a party. 705 ILL. COMP. STAT. ANN. § 405/1-50 (West 2007)). For a review of American state laws on parental testamentary appointments of child guardians, see Alyssa A. DiRusso & S. Kristen Peters, Parental Testamentary Appointments Of Guardians For Children, 25 QUINNIPIAC PROB. L.J. 369 (2012) (urging statutory reforms so that parental wishes will more likely to be followed).

Not only is there no special statute on former stepparents, but there are also times when former stepparents seem excluded from possible consideration for undertaking the care of a former stepchild. See, e.g., 20 ILL. COMP. STAT. ANN. § 505/7-1(b) (West 2008) (Department of Children and Family Services may consider a child’s placement with a relative, which includes “the child’s step-father, step-mother, or adult step-brother or step-sister,” but not
parental-like relationship with the child than any other third party
(who, unfortunately, may be significantly motivated by the awards
potentially available in wrongful death and survival actions).108

There is also a statute in Illinois mandating “visitation rights” for the
grandparents, regardless of their earlier childcare, where a single parent
dies or both parents die.109 Visitation ensues “unless it is shown that
such visitation would be detrimental to the best interests and welfare of
the minor.”110 Other relatives, and those “having an interest in the
welfare of the child,” can also seek visitation.111 It makes little sense
to explicitly reference grandparents and not stepparents when the latter
are much more likely to have assumed parental-like roles.

Further, there is an Illinois statute allowing grandparents, great-
grandparents, and siblings (including stepbrothers and stepsisters) to
petition for visitation with a minor child, one year or older, if “there is
an unreasonable denial of visitation by a parent” and “the child’s other
parent is deceased or has been missing for at least 3 months” or the
child was born out of wedlock to parents who are not living together.112
Again, it makes little sense to favor grandparents and stepsiblings—who
likely never acted as parents—over stepparents, who likely acted as
parents.

If a parent placed a child up for adoption a day, a week, or a month
after a divorce, a former stepparent often would not receive any notice
of the potential adoption in Illinois. Yet, notice is required to “any
person who is openly living with the child or the child’s mother at the

108. Fortunately, at times third party visitation issues are resolved by reference to,
inter alia, “the motivation of the adult(s) in either prohibiting or pursuing visitation.”

109. 755 ILL. COMP. STAT. ANN. § 5/11-7.1 (West 2007) (unless the child has been
adopted; yet, grandparent visitation may be ordered where adoption is by “a close
relative”).

110. Id. (unless the child has been adopted; yet nonparent visitation may be ordered
where adoption was by “a close relative”).

111. Id. (statute also recognizes “reasonable visitation rights may be granted to any
other relative of the minor or other person having an interest in the welfare of the child”).

112. 750 ILL. COMP. STAT. ANN. § 5/607(a-3) (West 2009); 750 ILL. COMP. STAT. ANN.
time the proceeding is initiated and who is holding himself out to be the child’s father.” So, if, postdissolution, a parent had a new, cohabiting intimate partner, that partner might have standing but not the fit and loving former stepparent. Here, too, as in death, a special statute should specially protect certain long-established and loving relationships between stepparents and their stepchildren.

A stepparent’s failure to formally adopt a single parent spouse’s child, for whatever reason, causes both the stepparent and the child to lose any chance to pursue a continuing familial relationship upon a single parent’s death or upon placement for adoption, regardless of the child’s best interest. Yet, in many parental rights termination settings, bad acting parents get second chances, as where parent-child reunification obligations are imposed on the state or where there is no termination of parental rights unless a child’s best interest is served. As a result, many marginal parents maintain their superior rights notwithstanding their earlier parenting failures and their children’s contrary interests. Stepparents and their stepchildren can see their loving relationships ended if former stepparents and their ex-spouses no longer get along for whatever reason.

Another method for expanding third party stepparent child care involves General Assembly adoption of the Illinois Uniform Premarital Agreement Act (Uniform Act). The Uniform Act recognizes the need for judicial deference to premarital and midmarriage pacts between parents and stepparents on future stepparent child care if parental death

113. 750 ILL. COMP. STAT. ANN. § 50/7(C)(c) (West 2009) (notice). Where there is, for example, a baptism record, see also 750 ILL. COMP. STAT. ANN. § 7(f) (West 2009) (notice required to one “identified as the child’s father by the mother in a written, sworn statement”). For the need for a former stepfather’s consent to any later adoption by another, consider 750 ILL. COMP. STAT. ANN. § 50/8(b)(vi) (West 2009) (consent to adoption of child over six months old required by the “father” who “openly lived with the child” and “openly held himself out to be the father of the child”) and 750 ILL. COMP. STAT. ANN. § 50/8(a)(2) (West 2009) (consent not required, however, when the father is neither “the biological or adoptive father of the child”). Even if a former stepfather’s consent is deemed required under this provision, the power to veto is undercut because there is no explicit duty to give a former stepfather any notice. See also 750 ILL. COMP. STAT. ANN. § 50/14.5(a) (West 2009) (former parent, where parental rights were terminated due to unfitness, can petition to adopt former child).

114. See, e.g., In re Destiny R., 39 A.3d 727 (Conn. App. Ct. 2012); In re J.G., No. 2-13-0645, 2013 Ill. App. Unpub. LEXIS 2550, at *1, *2 (Nov. 12, 2013) (guardianship of minor born with cocaine in her system immediately after birth, with mother then deemed “unfit or unable” to child care; five years later, after significant attempts to reunite mother and child, mother’s parental rights are terminated); see also 50 ILL. COMP. STAT. ANN. § 50/14.5(a) (former parent, whose parental rights were terminated due to unfitness, can petition to adopt former child).

115. 750 ILL. COMP. STAT. ANN. § 10/1 to 10/11 (West 2009).
or disability, or a marriage dissolution, ensue.\textsuperscript{116} The Uniform Act, enacted in July 2012 by the National Commissioners on Uniform State Laws, expressly recognizes pacts on "custodial responsibility" between parents and either future or current stepparents, with the pacts said to serve as "guidance" for courts that maintain ultimate decisionmaking regarding contested childcare.\textsuperscript{117}

VI. CONCLUSION

Stepparents without any biological or formal adoptive ties who have developed "familial bonds" or parental-like relationships with their stepchildren should have greater statutory third party childcare standing.\textsuperscript{118} As occurs in other family settings, like premarital agreements and open adoption pacts,\textsuperscript{119} certain family related agreements on stepparent childcare also deserve greater recognition.\textsuperscript{120} Expanded

\textsuperscript{116} 750 ILL. COMP. STAT. ANN. § 10/2 (West 2009).


\textsuperscript{118} The desirability of greater certainty and comprehensive coverage, as well as separation of powers concerns, suggest guidelines should normally originate in statutes. See, e.g., Kitchen v. Kitchen, 953 N.E.2d 646, 649 (Ind. Ct. App. 2011) (rejecting visitation standing in maternal aunt and uncle over father's objection where the mother had died; court recognized grandparent visitation standing had come by statute, former stepparent visitation standing had come by precedent, and former foster parent visitation standing had been rejected by precedent).

\textsuperscript{119} One example of private ordering is 23 PA. STAT. & CONS. STAT. ANN. § 2733(a) (2014) ("A prospective adoptive parent of a child may enter into an agreement with a birth relative of the child to permit continuing contact or communication between the child and the birth relative or between the adoptive parent and the birth relative."). Notwithstanding legitimate concerns, private ordering seems to stay here, as demonstrated by the ever-increasing childcare opportunities for nonbiological and nonadoptive parents and for nonparent child caretakers that arise from the parents (biological or adoptive) ceding some—but not all—of their superior rights. See, e.g., Rowell v. Smith No. 12AP-802, 2013 Ohio App. LEXIS 2131, at *14 (May 30, 2013) (agreement purposefully relinquishing "some portion of the parent's right to exclusive custody"); see \textit{generally} Parness, supra note 101, at 840-42. Vulnerable parties (that is, children) can be well-protected by close judicial scrutiny of proposed or actual childcare.

\textsuperscript{120} In the absence of an express Illinois statute, agreements on future childcare opportunities between parents and nonparents (including former stepparents, grandparents, former cohabitants, and others—like aunts and uncles) where the nonparents later seek childcare opportunities over parental objections must seemingly utilize the narrow range of common law precedents on equitable estoppel of the parents. Precedents deem such agreements important, if not dispositive, where there is shown detrimental reliance, earlier judicial recognition of the agreements, children's best interests, and, perhaps, harm to children. See, e.g., Engelkens, 821 N.E.2d at 804-06 (distinguishing \textit{Schlam}, 648 N.E.2d at 349-50). Here, unlike potential childcare opportunities for certain former stepparents without agreements, childcare standing seems best developed through common law
third party stepparent childcare should be especially recognized when a parent facilitated loving stepparent-stepchild relations and when the preservation of the relations furthers the child’s best, or perhaps compelling, interests, notwithstanding current parental objections. To date, many American state lawmakers have failed to consider important stepparent childcare issues.

New American state statutes are needed to better preserve the strong bonds between children and the stepparents who have cared for and loved them. State legislators should recognize a broader array of “established familial or family-like bonds” and expressly authorize judicial action on behalf of former stepparents and stepchildren because courts will often “decline to go where the legislature has not led.” Should the General Assembly fail to act, incremental common law developments should be considered to preserve “substantial” stepparent-stepchild relationships while respecting superior parental rights. Judicial precedents are especially needed where single parents earlier consciously and significantly encouraged loving parent-like relationships between their children and stepparents.

precedes.


122. Troxel, 530 U.S. at 88 (Stevens, J., dissenting).


124. Troxel, 530 U.S. at 76-77 (Souter, J., concurring in judgment).

125. See, e.g., In re Custody of A.F.J., 314 P.3d 373 (Wash. 2013) (where legislature has taken no action in response to common law de facto parent developments, legislative approval of continuing common law rulings is inferred).