



Child Custody and Consensual Non-Monogamy

Family law varies significantly from state to state. However, most family courts decide on child custody based on “The Best Interests.” Some states explicitly give the judge the right to make decisions based on “moral character.” That is why it is important to be able to explain your relationships using the following research and information.

Definitions

Consensual Non-Monogamy (CNM) is a relationship practice in which participants give their informed consent to simultaneous, multiple sexual and/or romantic relationships. CNM can include polyamory, open relationships, swinging, and relationship anarchy.

Consensual Non-Monogamy communities have sprung up in many locations in the United States (US), Canada, Australia, New Zealand, South Africa, and Europe. In the US, the CNM movement has achieved a high degree of organization with local and regional meet-ups and lifestyle clubs, as well as online communities. Along with NCSF, there are also nonprofit advocacy groups such as [Loving More](#) and the [Canadian Polyamory Advocacy Association](#).

Polyamory may be confused with polygamy (having multiple simultaneous marriages), a relationship structure most commonly practiced by certain conservative religious groups. (Barnett, 2014; Willey, 2006). However, polyamory as an identity and/or relational orientation is not based on specific religious or spiritual teachings.

Prevalence

Using two separate U.S. Census-based quota samples of single adults in the United States, **one in five** participants (21.9% in Study 1; 21.2% in Study 2) report engaging in consensual non-monogamy at some point in their lifetime. This proportion remained constant across age, education level, income, religion, region, political

affiliation, and race but varied with gender and sexual orientation. Specifically, men (compared to women) and people who identify as gay, lesbian, or bisexual (compared to those who identify as heterosexual) were more likely to report previous engagement in CNM.

Hauptert, M., Gesselman, A., Moors, A., Fisher, H., & Garcia, J. (2016). [Prevalence of Experiences with Consensual Nonmonogamous Relationships: Findings from Two Nationally Representative Samples of Single Americans.](#) *Journal of sex & marital therapy*, pages 1-17.

This shift in cultural mores applies to “threesomes” as well. A 2017 prevalence study found that 10% of women and 18% of men in the US have engaged in sexual interactions with more than one person at the same time.

Herbenick, D., Bowling, J., Fu, T. J., Dodge, B., Guerra-Reyes, L., & Sanders, S. (2017). [Sexual diversity in the United States: Results from a nationally representative probability sample of adult women and men.](#) *PloS one*, 12(7), e0181198. doi:10.1371/journal.pone.0181198

Regarding the prevalence of abuse in consensual non-monogamous families, there is a relatively low risk of abuse due to the parents’ intimate relationships. According to the [Fourth National Incidence Study of Child Abuse and Neglect \(NIS–4\) Report to Congress](#) (Table 6–1), only 2.4% of child abuse is committed by a parent’s intimate partner, and 3.2% by in-home step-parents. That was comparatively less than abuse committed by other family members (3.6%), and these statistics are not used to remove custody from foster/adoptive families.

Table 6–1. Categorization of Perpetrators of Child Maltreatment (n=1,256,600)

Perpetrator Category	Percentage of Children with Closest-Related Perpetrator of Most Severe Maltreatment
In-home biological parent	77.5%
Out-of-home biological parent	3.3%

In-home step-parent	3.2%
Other in-home nonbiological parent (foster, adoptive, etc.)	6.7%
Parent's boyfriend or girlfriend	2.4%
Other family members	3.6%
Other unrelated adults	3.0%

Mental Health

The best contemporary scientific evidence finds that consenting adults who practice non-monogamy have no psychological or relationship functioning differences compared to those in monogamous relationships.

Hamilton LD, De Santis C, Thompson AE. (2021). [Introduction to the Special Section on Consensual Non-Monogamy](#). Arch Sex Behav. May;50(4):1217-1223.

A 2014 literature review examined the psychological well-being and relationship quality of CNM individuals. When comparing CNM participants to monogamous participants, the authors found similar levels of psychological well-being and relationship quality.

Rubel, A. N., & Bogaert, A. F. (2014). [Consensual nonmonogamy: Psychological well-being and relationship quality correlates](#). Journal of Sex Research, 4499 (March 2015), 1–22.

Several recent studies found few differences in relationship functioning and no significant differences in relationship quality between CNM and monogamous relationships:

Conley, T., Matsick, J., Moors, A. C., & Ziegler, A. (2017). [Investigation of consensually nonmonogamous relationships: Theories, methods, and new directions.](#) *Perspectives on Psychological Science*, 12(2), 205–232.

Mogilski, J. K., Memering, S. L., Welling, L. L. M., & Shackelford, T. K. (2015). [Monogamy versus consensual non-monogamy: Alternative approaches to pursuing a strategically pluralistic mating strategy.](#) *Archives of Sexual Behavior*.

Morrison, T. G., Beaulieu, D., Brockman, M., & Beaglaich, C. Ó. (2011). A [comparison of polyamorous and monoamorous persons: are there differences in indices of relationship well-being and sociosexuality?](#) *Psychology and Sexuality*, (December 2012), 1–17.

Research on Polyamorous Parents and their Children

“Governing bodies, the judiciary, and educational institutions have remained largely ignorant of polyamorous relationships. Research documents the exclusions of poly families (and individuals) from access to legal provisions and protections and their common discrimination in the courts, namely, in custody cases. It further highlights the discrimination of poly-identified adolescents in school and college settings and the predicament that poly families face when interacting with public institutions (including schools and kindergartens).”

Klesse, C. (2019) [Polyamorous Parenting: Stigma, Social Regulation, and Queer Bonds of Resistance.](#) *Sociological Research Online*. 2019;24(4):625-643.

“Polyamory and other forms of consensual non-monogamies (CNM) are becoming increasingly popular among members of the general public and especially among LGBTQ+ populations. CNM remains under-researched and comparatively little is known. Consequently, family service providers are often ill-informed about CNM and require additional information to adequately serve CNM communities. Seeking to contribute to that discussion, in this chapter we first identify four issues that frame the academic and social conversations about polyfamilies and provide an overview of recent academic research and theoretical development regarding polyparenting.”

Pallotta-Chiarolli, M., Sheff, E., Mountford, R. (2020). [Polyamorous Parenting in Contemporary Research: Developments and Future Directions](#). In: Goldberg, A., Allen, K. (eds) LGBTQ-Parent Families. Springer, Cham.

“Using the psychological theory of resilience, this chapter analyses polyamorous families as an adaptive response to shifting social, economic, and relational circumstances, thus widening the scope of research in family studies. Like the families of other sexual minorities in the US and elsewhere, polyamorous families are often ‘guilty until proven innocent’ when interacting with officials from legal, educational, and child protection services. Given the level of stigma under which sexual and gender minority families labour, it would make sense for readers to interpret my use of resilience theory as a defensive posture taken against imminent attack. In fact, the data and the characteristics of polyamorous families led me to resilience theory, which is primarily a psychological theory and not one with which I had been familiar prior to researching polyamorous families. It was while reading others’ research on stigmatized families that I came across the family resilience model, and was struck by how perfectly the emphases on communication and flexibility matched poly emphases on honesty and negotiation.”

Sheff, E. (2016b). [Resilient polyamorous families](#). In P. Karian (Ed.), *Critical & experiential: Dimensions in gender and sexual diversity* (pp. 257–280). Eastleigh, UK: Resonance Publications.

Legal Protection

Having multiple non-marital partners, even if you are married to one, is legal in most U.S. jurisdictions, albeit with exceptions. In North Carolina, a spouse can sue a third party for causing a "loss of affection" with their spouse. More than twenty states have laws against adultery, although infrequently enforced.

The US became more accepting of open sexuality in the 1960s when the Supreme Court in [Griswold v. Connecticut](#) defined the legal right to sexual privacy, [381 U.S. 479, 85 S.Ct. 1678](#) (1965).

The 1965 ruling paved the way for the Supreme Court to articulate a constitutionally-protected “liberty interest” in sexual freedom in 2003 in [Lawrence v Texas](#), [539 U.S. 558, 123 S.Ct. 2472](#) (2003).

[Brown v. Buhman](#) is a legal case in the United States federal courts challenging the State of Utah's criminal polygamy law. The action was filed in 2011 by United States Court of Appeals for the Tenth Circuit, rev'g 947 F.Supp.2d 1170 (D. Utah) (2016).

[Brooke B. v Elizabeth](#) C.C. in New York in August 2016, in which New York's State Court of Appeals has allowed the non-biological lesbian mother to seek visitation and custody.

[Partanen v. Gallagher](#) in Massachusetts on October 4, 2016, the Supreme Judicial Court (SJC) issued a decision declaring that Karen Partanen, a non-birth mother had the right to visitation and custody.

Somerville, MA was the first town to include three people in their [domestic partnership ordinance in municipal law](#) on June 29, 2020.

Law Review Articles

Myrisha Lewis, [“Biology, Genetics, Nurture and the Law: Expansion of the Legal Definition of Family to include Three or More Parents.”](#) 16 Nevada Law Journal 743, 2016.

[“Three’s Company, Too: The Emergence of Polyamorous Partnership Ordinances.”](#) 135 Harvard Law Review 1441, MAR 10, 2022.

Ann E. Tweedy, [“Polyamory as a Sexual Orientation.”](#) University of Cincinnati Law Review, Vol. 79, p. 1461, 2011.

J. Boone Dryden, [“This Is the Family I Chose: Broadening Domestic Partnership Law to Include Polyamory.”](#) Hamline University School of Law, 36 Hamline J. Pub. L. & Pol’y 162, 2015.

Allies

The [Polyamory Legal Advocacy Coalition](#) (PLAC) is a multi-disciplinary coalition supported by some Harvard academics. Its head, Alexander Chen, who was the first openly trans editor of the Harvard Law Review, told [Harvard Law Today](#) that empirical research supports polyamory. “This research shows that these types of relationships are not unhealthy for families and children and can be healthy and stable,” says Chen.

The [APA Division 44 Committee on Consensual Non-monogamy \(CNM\)](#) generates research, creates empirically informed clinical resources, and promotes awareness of CNM-issues within the mental health industry and the public.

Sexual Freedom Resolution

The Sexual Freedom Resolution is a stand against discrimination by sexuality and sexual health professionals. This Resolution can be submitted to civil, criminal, and family courts by people stigmatized because of their sexual expression to help get a fair trial on the case's merits.

Working within the social justice and human rights frameworks, we support the right of freedom of sexual expression among consenting adults. We affirm that sexual expression is central to the human experience, that this right is central to overall health and well-being, and that this right must be honored. We support the right to be free from discrimination, oppression, exploitation, and violence due to one's sexual expression.

The best contemporary scientific evidence finds that consenting adults who practice BDSM, fetishes, cross-dressing, and non-monogamy can be presumed healthy. We believe that any sexuality education or therapies that treat sexual problems must avoid stigmatizing or pathologizing these forms of sexual expressions between fully informed consenting adults.

As professionals in the field of sexuality and sexual health, we actively seek to destigmatize consensual sexual expression and sexual practices among consenting adults and help create and maintain safe spaces for those who have been traditionally marginalized.

Signatories:

[National Coalition for Sexual Freedom](#)

[AASECT \(American Association for Sexuality Educators, Counselors & Therapists\)](#)

[CARAS \(Community-Academic Consortium for Research on Alternative Sexualities\)](#)
[Center for Positive Sexuality](#)
[Projects Advancing Sexual Diversity \(PASD\)](#)
[Science of BDSM Research Team](#)
[TASHRA \(The Alternative Sexualities Health Research Alliance\)](#)

Additional Signatories: <https://ncsfreedom.org/sexual-freedom-resolution/>

Books

[Polyamory in the 21st Century: Love and Intimacy with Multiple Partners](#)
by Deborah Anapol

[Sex at Dawn: How We Mate, Why We Stray, and What It Means for Modern Relationships](#)
by Christopher Ryan

[The Polyamorists Next Door: Inside Multiple-Partner Relationships and Families](#)
by Dr. Elisabeth Sheff

[Stories From the Polycule: Real Life in Polyamorous Families](#)
by Dr. Elisabeth Sheff

[When Someone you Love is Polyamorous](#)
by Dr. Elisabeth Sheff