

EVAN B. DONALDSON ADOPTION INSTITUTE

**Expanding Resources for Children:  
Is Adoption by Gays and Lesbians Part of the Answer  
for Boys and Girls Who Need Homes?**

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Policy Perspective

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## Executive Summary

**I**t is a mantra of political rhetoric, a guiding principle of professional policy and practice, and an explicit goal of our nation's laws and practices: Every child deserves to live in a permanent, loving home. Yet tens of thousands of boys and girls remain mired in the foster care system, unable to return to their original families and without realistic prospects of being adopted.

At the same time, agencies and attorneys report the number of gay and lesbian adults expressing an interest in adopting these children is growing. This reality raises hopes among many child welfare professionals and policy-makers, who see a new pool of prospective parents for children who need them. But it also generates controversy and criticism among others, who are concerned about the consequences of permitting adoption into families headed by gay or lesbian parents.

In an effort to inform the debate, the Evan B. Donaldson Adoption Institute has conducted an extensive examination of the relevant issues, laws and practices, and available research spanning the last several decades. This effort – which represents one of the broadest, most thorough reviews and analyses to date on gay/lesbian adoption and parenting – is part of a larger, more detailed project that will be completed and released in several months. This paper, meanwhile, is intended as an overview that serves two principal functions: to inform and provide context for the often-fractious debate over gay/lesbian adoption currently taking place in our country; and, most important, to provide information that can be used to shape best practices that focus on providing boys and girls in the child welfare system with safe, committed and enduring families.

### Principal findings

- Against a backdrop of increasing public acceptance, social science research concludes that children reared by gay and lesbian parents fare comparably to those of children raised by heterosexuals on a range of measures of social and psychological adjustment.
- Studies are increasing in number and rigor, but the body of research on gay/lesbian parents is relatively small and has methodological limitations. Still, virtually every valid study reaches the same conclusion: The children of gays and lesbians adjust positively and their families function well. The limited research on gay/lesbian adoption points in the same direction.
- Though few states have laws or policies explicitly barring homosexuals from adopting, some individual agencies and workers outside those states discriminate against gay and lesbian applicants based on their own biases or on mistaken beliefs that such prohibitions exist.
- Laws and policies that preclude adoption by gay or lesbian parents disadvantage the tens of thousands of children mired in the foster care system who need permanent, loving homes.

### Background

Despite federal legislation and state initiatives aimed at getting more children out of foster care and doing so more quickly – and despite a surge in adoptions from the system during the last decade – the number of children in need of permanent families continues to be large. The latest available count, by the U.S. Children's Bureau for 2003, estimated there were 119,000 children awaiting adoption from the child welfare system, only 20,000 of whom were in pre-adoptive homes.

Many prospective parents are interested in adoption, but the significant majority of them are interested in adopting infants or young children without histories of maltreatment and without physical or mental disabilities. In short, the number of waiting children in foster care far exceeds the supply of parents seeking to adopt them. Achieving permanency, safety and well-being for these children requires creative policy and practice to expand the number of families available. In this context – and against the backdrop of changing cultural values – many, if not most, agencies nationwide have become increasingly amenable to gay and lesbian individuals and couples as one such resource.

However, the move to expanding the pool of adoptive parents in this way requires legal, organizational and attitudinal change. If child welfare professionals, children's advocates and policymakers wish to enlarge the pool of parental resources to include these parents, among the steps they should consider are:

### Recommendations

- Move to end legal and de facto restrictions on adoption by gays and lesbians. This includes working to expand co-parent and second parent adoption, as well as revising agency policies and practices that may impede their consideration as an adoptive resource.
- Develop clear statements in support of such adoptions, recognizing a “don't ask, don't tell” approach disadvantages parents and, ultimately, their children. And develop contacts with the gay/lesbian community in order to engage in genuine, informed outreach.
- Help workers, supervisors, and agency leaders examine their attitudes and beliefs about gay and lesbian parenting, while affirming the value of these families by including them in outreach, training materials, and parent panels.
- Conduct research to inform the development of resources, training, and support to improve post-adoption success. And work to include and educate children in the process, recognizing that they may encounter prejudice if adopted by gay parents.

### Conclusion

Based on both the available research and growing experience, adoption by gays and lesbians holds promise as an avenue for achieving permanency for many of the waiting children in foster care.

*Policy Perspectives* are research-based Adoption Institute publications that focus on important and timely issues in the field. This report was researched and written by Professor Jeanne Howard of Illinois State University, who is the Adoption Institute's Policy and Research Director. Special thanks to two of our Senior Fellows, Professor Scott Ryan of Florida State University and Professor David Brodzinsky of Rutgers University, for their valuable contributions. This Policy Perspective was edited by Executive Director Adam Pertman. Send questions and comments to [info@adoptioninstitute.org](mailto:info@adoptioninstitute.org).

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## Expanding Resources for Children: Is Adoption by Gays and Lesbians Part of the Answer For Boys and Girls Who Need Homes?

**D**espite federal legislation and state initiatives aimed at getting more children out of foster care and doing so more quickly – and despite a surge in adoptions from the system in the last decade – the number of children in need of permanent families continues to be large.

The latest available count, by the U.S. Children's Bureau for 2003, estimated 119,000 children were awaiting adoption<sup>1</sup> from the child welfare system, only 20,000 of whom were in pre-adoptive homes. The remainder reflects the disproportionate entry of children of color into the system: 40 percent were African American, compared to 37 percent Euro-American, non-Hispanic children, 14 percent Hispanic, 3 percent of two or more races, and 2 percent Native American. (Race or ethnicity was unknown for 4 percent of these children.) Waiting children are older (averaging 8.6 years) and 64 percent are over age 5. These children have been in care for an extended part of their young lives, averaging nearly four years (44 months) of continuous foster care (U.S. Children's Bureau, 2005).

Older age is the most potent factor predicting that waiting children will never be adopted, and will never achieve permanency. Thousands of such children “age out” of the foster care system annually – and they experience high rates of homelessness, incarceration, early pregnancy, failure to graduate from high school, unemployment and underemployment, and poverty (Courtney & Piliavin, 1998; Goerge, Bilaver, Lee, et al, 2002).

Many prospective parents are interested in adoption, but the significant majority of them are interested in adopting infants or young children without histories of maltreatment and without physical or mental disabilities (Bachrach, London & Maza, 1991; Brooks, James & Barth, 2002). In short, the number of waiting children in foster care far exceeds the supply of parents seeking to adopt them. Achieving permanency, safety, and well-being for these children requires creative policy and practice to expand the number of homes available. In this context – and against the backdrop of changing cultural values – many agencies nationwide have become increasingly amenable to gay and lesbian individuals and couples as one such resource (Brodzinsky, Patterson & Vaziri, 2002).

### **GROWING ACCEPTANCE OF GAY AND LESBIAN PARENTING AND ADOPTION**

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Both the American family and social attitudes about family life have undergone profound changes in the past 20 years. Single parenthood, families formed through divorce and remarriage, and families formed through adoption or surrogacy are becoming increasingly accepted variations of the modern family in the United States. This attitudinal shift is occurring about gay and lesbian parenthood as well. A study of Americans' views about gays and lesbians in 1997 found the majority of respondents not only favored the notion of equality, but found trends in public opinion toward gay and lesbian equality had liberalized on nearly every major issue over time – from equality in employment, to

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<sup>1</sup> “Waiting children” is defined by the U.S. Children's Bureau as those children whose parental rights have been terminated and/or have a goal of adoption. It does not include children 16 or older whose parental rights have been terminated and who have a goal of emancipation.

housing, to [reduced] disapproval of homosexual practices (Yang, 1998). The study found 40 percent of respondents supported adoption rights for gay and lesbian couples in 1997.

More recent studies show even greater support. A March 2002 ABC news poll, for example, found 47 percent of respondents approved of adoption by same-sex couples (an increase from 38 percent in a 1998 *Newsweek* poll and 28 percent in a *Time/CNN* poll in 1994), compared to 42 percent who opposed the practice. In addition, nearly 80 percent said adoption by gays and lesbians should be decided on a case-by-case basis by parents and professionals, not by judges or politicians.

Younger Americans are much more supportive of adoption by gay and lesbian parents than are their elders, foreshadowing even wider support as today's youths become tomorrow's policy-makers. For example, a national 2001 poll of 1,003 high school seniors found that two-thirds approve of gay marriage and the clear majority (68 percent) believe gay couples should be able to adopt children (Hamilton College, 2001).

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#### CHILDREN WITH GAY OR LESBIAN PARENTS MAY NUMBER IN THE MILLIONS

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Data on the numbers of gay and lesbian Americans are limited, and data on children with gay or lesbian parents are even more difficult to come by. Lingering social stigma, including discrimination and acts of violence against gays and lesbians, are among the factors that limit open acknowledgement – and, consequently, undermine the accumulation of reliable statistics.

The 2002 Census identified 600,000 same-sex couple households, with 162,000 having one or more children. One-third of lesbian-headed and one-fifth of gay-headed couples reported they had children under age 18 living with them. Many factors suggest the Census figure is a low estimate of children who have homosexual parents. For instance, these numbers do not capture the children in same-sex headed households who did not identify their relationship, those headed by gay or lesbian single parents, or those whose non-gay parent may have physical custody but whose gay parent is also active in the child's life.

Estimates of children with gay or lesbian parents range as high as 1.6 million to 14 million children (Patterson & Freil, 2000). Stacey and Biblarz (2001), researchers who have carefully critiqued studies on gay/lesbian parenting, make a conservative estimate of 1 percent to 12 percent of the dependent child population, or from 1 million to 9 million children. Using the most conservative definition, it can be safely concluded that at minimum 1 million American children under the age of 18 have at least one gay or lesbian parent.

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#### THE ARGUMENTS FOR AND AGAINST GAY/LESBIAN ADOPTION

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While demographers and child-welfare professionals agree that the number of gay and lesbian parents is significant and that gay/lesbian-headed families are increasingly accepted, placing children for adoption with gay or lesbian parents remains controversial. Arguments of critics center on the view that these parents subject their sons and daughters to disproportionate risks. Supporters point to the success of gay and lesbian parents in raising children and the need of waiting children for homes. Empirical examinations of parenting by gay and lesbian parents have been used by both sides of the issue to support their claims. Even President George W. Bush has weighed in on the matter, stating, "Children can receive love from gay couples [but] studies have shown that the ideal is where a child is raised in a married family by a man and a woman (New York Times, 2005).

Those arguing against adoption by gays/lesbians hold that the best interests of children are not served when they are raised by gay/lesbian parents or are placed with gay/lesbian parents in custody disputes or in foster care or adoption. They extrapolate from what they conclude are negative findings in studies on gay and lesbian adults, families without fathers, and on parenting by gay and lesbian parents to present an argument against adoption by gays and lesbians. In addition, they point to methodological limitations in studies as a way to question findings that find positive adjustment and functioning in families with gay or lesbian parents (Rekers & Kilgus, 2002<sup>2</sup>). In their arguments, the “best interests of the child” are served when boys and girls are protected from the dangers or disadvantages of being reared by gay or lesbian parents.

Those who support gay/lesbian adoption argue that “the best interests of the child” require that a range of nurturing homes should be considered for children and that these parents are valuable resources (CWLA, 2004). Supporters cite 25 years of social science research which concludes that children who are reared by gay and lesbian parents fare well (comparably to children raised by heterosexuals) and that gay/lesbian adoption should therefore be allowed and encouraged.

Studies on gay and lesbian parenting support the position that children are not disadvantaged and, in some cases, receive unique benefit from being reared by gay/lesbian individuals. For example, in terms of psychological well-being, studies have found no significant differences between children of lesbian mothers and heterosexual mothers on a range of measures of social and psychological adjustment – e.g. anxiety, depression and self-esteem; behavior problems, social relationships or emotional difficulty.<sup>3</sup> Children also fare similarly in school performance and cognitive ability.

Studies also have examined the sexual orientation of children with gay/lesbian parents. Because opponents of gay/lesbian parenting generally see being gay or lesbian as negative, they have raised the concern that their children are at greater “risk” to become gay or lesbian. Proponents of gay/lesbian parenting and adoption note most studies show that the sexual orientation of children is not associated with family type.<sup>4</sup> Some studies have shown that the daughters (but not sons) of lesbians were more likely to report same-sex romantic exploration, although later sexual orientation did not differ between children reared in heterosexually and homosexually headed households.

A few studies have found that children of lesbian and gay parents fare better on some measures than their peers, including school involvement (Wainwright et al, 2004) and ability to discuss sexual development with parents (Tasker & Golombok, 1997). Furthermore, studies have found greater involvement and more equality in parenting of both parents in families headed by gays and lesbians (Chan, Brooks, Raboy, & Patterson, 1998).

Most studies on parenting by homosexual parents examine lesbian-mother households. Fewer studies have been conducted on gay fathers, but to date the findings also point to positive adjustment for children and positive family functioning (Andersson, Amilie, and Ytteroy, 2002).

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<sup>2</sup> Arguments challenging findings of studies on gay/lesbian parenting often appear in less than mainstream outlets. This article was published in the law review of Regent University, a university founded by religious conservative Pat Robertson. In the special edition of the law review, *Homosexuality: Truth be Told*, the editor's note states, “The legal community has a right to know... that a link exists between homosexuality and the sexual abuse of children, that the American Psychiatric Association was hijacked by homosexual activists, that homosexuality is being marketed to children, that studies claiming that parenting by homosexuals does not cause harm are questionable, that homosexuality is not immutable, and that homosexual advocates are calling for the legalization of pedophilia.”

<sup>3</sup> See for example, Golombok, Spencer & Rutter, 1983; Huggins, 1989; Patterson, 1994; Flaks, Ficher, Masterpasqua & Joseph, 1995; Tasker & Golombok, 1997; Chan, Raboy & Patterson, 1998; Chan, Brooks, Raboy & Patterson, 1998; Tasker, 2005; Andersson, Amilie, & Ytteroy, (2002); Wainwright, Russell & Patterson, 2004.

<sup>4</sup> See for example, Andersson, Amilie & Ytteroy; 2002; James, 2004; Wainwright, Russell & Patterson, 2004; Tasker, 2005;

Many who oppose gay/lesbian adoption argue it is ill-advised at best and destructive at worst. They hold that parenting by gays/lesbians and by extension, adoption by gays/lesbians, holds substantial risks for children. There are few social scientists whose work purports to demonstrate these risks, however. The primary author writing in opposition to gay parenting and adoption is Paul Cameron, director of the Family Research Institute which, according to its Website,<sup>5</sup> “was founded in 1982 with one overriding mission: to generate empirical research on issues that threaten the traditional family, particularly homosexuality, AIDS, sexual social policy and drug abuse.”

Cameron’s work is often cited in *amicus briefs* in court cases related to gay/lesbian parenting and adoption, and in legislative and policy debates. Cameron has authored some 38 articles in the past 25 years concluding that homosexuality has negative consequences for those who are gay/lesbian, for their children and for society<sup>6</sup>. Cameron has also written in opposition to adoption by gays and lesbians, concluding from data on sexual abuse reports of children in foster care that between one-third and one-half of foster parent sexual abuse was committed by “homosexuals” (Cameron, 2005). Cameron acknowledges that most of the abusers were married and/or identified as heterosexual, but holds that a same-sex act of sexual abuse necessarily defines the perpetrator as homosexual.

Cameron’s work has been widely criticized. He was expelled from the American Psychological Association in 1983 and denounced by the American Sociological Association because he “consistently misinterpreted and misrepresented sociological research on sexuality, homosexuality and lesbianism” (American Sociological Association, 1987, 14; Cameron, 1994<sup>7</sup>). In *Baker v. Wade*, a federal judge attacked Cameron’s statement that gay people pose a greater risk of child sexual abuse as a “total distortion” of scientific data and a misrepresentation to the court. Nevertheless, Cameron’s work has been the basis for the cases made by many others.

For example, Professor Lynn Wardle (1997) of Brigham Young University drew largely on Cameron’s work in a law review article arguing against the rights of gay parents. Wardle concluded that the children of gay parents are at risk for confusion about their sexual identities and more likely to become homosexual; their parents are more promiscuous and more likely to sexually abuse their own children; that these children are at greater risk to lose a parent to suicide, substance abuse or AIDS; that they are at greater risk to suffer emotional problems such as depression; and that they will experience social stigma and difficulty with peers as a result of their parents’ sexual orientation.

The preponderance of research refutes such conclusions. Although authored by a variety of social scientists and appearing in a wide range of professional journals, this research is not without limitations however. Stacey and Bilbarz (2001), in a comprehensive critique of the literature, identified theoretical, conceptual and methodological problems in research on the effects of parental sexual orientation. These include the lack of theory-based explanations for findings, the emphasis on lesbian mothers, a focus on middle- and upper-class families and on Caucasian families, and a lack of longitudinal studies. In addition, since it has not been determined how many gay and lesbian parents there are, representative sampling is impossible. In addition, sample sizes are often small and few studies have examined “intentional” parenthood; most have looked, instead, at families where one parent is the birth parent of a child born into a marriage where the parent later lives as a gay or lesbian person.

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<sup>5</sup> Familyresearchinst.org

<sup>6</sup> The common search tool PsycINFO, finds 34 of Cameron’s articles in the last 25 years appear in a single journal (*Psychological Reports*) which, unlike most scholarly social science publications, requires authors to pay a fee (\$27.50 per page) for articles published.

<sup>7</sup> Cameron disputes the contention that he was expelled from the APA. He acknowledges that he was sent a letter expelling him, but states he had resigned from the organization prior to receiving it. His 1983 letter to the APA Monitor explaining his resignation included the statement “...to require psychologists to *advance* the civilization-destroying ‘gay rights’ movement is simply an abomination.”

Stacey and Bilbarz also challenge the finding of researchers who report there are “no differences” between children raised by gay/lesbian parents and heterosexual parents. They agree that the no differences claim is well supported on a number of dimensions that could cause the most concern, including psychological well-being or cognitive functioning, parenting styles and level of investment in children, and quality of parent/child relationships. They point out, however, that studies have found children in gay/lesbian-headed households may engage in less gender-stereotypical play, while daughters of lesbians aspire to nontraditional gender professions (such as engineer or doctor).

Some studies have also found that the children of lesbians are more likely to report having had same-sex attraction at some point, although they were no more likely to identify themselves as bisexual, lesbian or gay. Stacey and Bilbarz conclude that the generalization that there is “no difference” between children raised in gay/lesbian households and heterosexual households is an overstatement, particularly in the areas related to gender and sexuality, calling such differences “modest but interesting” (p. 176) and urging further study.

Recent research is more rigorous and has addressed some of the concerns of methodological limitations. Thus, over time, positive conclusions about gay/lesbian parenting appear to be headed toward greater support. For example, concerns about participant bias were addressed by a recently published study where subjects were randomly drawn from a large, ongoing national study of American families. This study found the teens raised by lesbian parents were similar on all dimensions to a comparison group of teens raised by heterosexual parents (Wainwright, Russell & Patterson, 2004). The major difference was that the children of lesbians were more likely to be involved at school and in extra-curricular activities.

Overall, adolescents were more likely to demonstrate positive adjustment when they perceived their parents as caring and when parents reported being close to their children. In another study, drawing from a community sample in England, Golombok et al (2003) compared children with lesbian mothers, heterosexual couples, and heterosexual single mothers. They found similar rates of positive mother/child interactions and positive child adjustment regardless of family type.

#### **LIMITED STUDIES, BUT WITH SIMILAR CONCLUSIONS**

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While there is a growing body of social science research on gay/lesbian parenting generally, the body of research on gay/lesbian-headed families who adopt is still quite small. The professional literature tends to be philosophical rather than empirical, or focuses on areas other than child and family functioning. There are several small qualitative studies, but only three larger quantitative studies have been found to date, and only one specifically examined child functioning.

A 2005 study compared family functioning in gay/lesbian, heterosexual and special needs adoptive families. The study found no negative effects for children adopted by gay or lesbian parents compared to the other adoption types. Higher levels of family functioning were associated with families with special needs, younger, and non-disabled child adoptions. Families headed by gay or lesbian parents of older children, non-sibling group adoptions, and children with more pre-adoption foster care placements also experienced higher levels of family functioning. At least two of these aspects – older child and more foster placements – are commonly associated with higher levels of post-adoption difficulty. The authors conclude that gay/lesbian-headed families show promise as resources for children, particularly older ones (Leung, Erich, & Kanenberg, 2005).

Like many of the studies on gay/lesbian parenting, this one on family functioning in adoptive families is limited by its methodology; for example, a non-random and relatively small sample was used, as were self-report questionnaires that pose threats to internal and external validity. Nevertheless, this



first step in examining child functioning in adoptive families headed by gay/lesbian parents continues the small but steady pattern of positive findings.

In sum, while there are limitations in studies to date, many of them have been conducted and the valid ones appear to universally come to the same conclusions: that children raised by gay and lesbian parents adjust positively, and their families function well. Most pointedly, there is no credible social science evidence to support that gay parenting (and, by extension, gay adoptive parenting) negatively affects the well-being of children. Sociologist Judith Stacey (New York Times, 2005), who conducted an often-cited critical review of extant studies of gay and lesbian parenting, notes that even with the limitations in studies to date, “there is not a single legitimate scholar who argues that growing up with gay parents is somehow bad for children.”

#### **POSITIONS OF PROFESSIONAL AND CHILD ADVOCACY ASSOCIATIONS**

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Based on both the evidence of the positive outcomes of parenting by gays and lesbians and recognition of the great need for homes for tens of thousands of waiting children, many professional associations have made clear their support for inclusion of gay and lesbian adults as adopters – and their opposition to exclusion on the basis of sexual orientation. For example, the Child Welfare League of America (CWLA), the pre-eminent U.S. adoption policy and practice standards organization, states in its Standards for Excellence for Adoption Services: “*Applicants should be assessed on the basis of their ability to successfully parent a child needing family membership and not on their race, ethnicity or culture, income, age, marital status, religion, appearance, differing lifestyles or sexual orientation*” (CWLA, 1988: 47, emphasis added).

In addition, the CWLA standards state: “*Sexual preference [sic] should not be the sole criteria on which the suitability of the adoptive applicants is based. Consideration should be given to other personality and maturity factors and on the ability of the applicant to meet the specific needs of the individual child*” (p.50).

The CWLA has filed *amicus* briefs in court cases challenging bans on adoption or foster care by gay and lesbian individuals and couples. A number of other mainstream organizations have also taken stands in support of treating gays and lesbians without prejudice in parenting and adoption decisions. These include the American Bar Association, the American Medical Association, the American Psychiatric Association, the American Psychological Association, the American Association of Psychotherapists, the American Academy of Pediatrics, the National Association of Social Workers, and the North American Council on Adoptable Children.

#### **LAWS AND POLICIES LACK UNIFORMITY**

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Despite the thousands of waiting children in the foster care system, the growing acceptance by the public and by professional associations of gay/lesbian parenting and adoption, and the consistency of research showing that that gays and lesbians are successful parents, such adoption remains controversial. This is reflected in the current array of contradictory statutes, court decisions and administrative policies relating to gay/lesbian parenting. Further, the landscape is constantly changing as states consider and reconsider their laws and policies.

Currently, only one state<sup>8</sup> (Florida) explicitly bars gays and lesbians from adopting by statute. Its law, passed in 1977 and upheld in 2005 by the federal Court of Appeals for the Eleventh Circuit, specifically states, “No person eligible to adopt under this statute may adopt if that person is a homosexual.”<sup>9</sup> Adoption by gay couples is statutorily prohibited in Mississippi, while Utah’s ban on adoption by unmarried couples has the effect of excluding homosexuals.

Eleven states<sup>10</sup> and the District of Columbia, either by statute or findings by their highest courts, specifically permit adoption by gays and lesbians (Blanks, Dockwell, & Wallace, 2005; Cooper & Cates, 2006), while lower courts in many states have also come to the conclusion that such adoptions are allowed (Leonard, 2005). New York State’s law is an example of statutes expressly allowing gay and lesbian adoption. In addition to permitting adoption by any unmarried adult, the law forbids discrimination based on sexual orientation in adoption, stating: “Applicants shall not be rejected solely on the basis of homosexuality.”<sup>11</sup>

When adoption statutes are silent on the issue of sexual orientation of prospective adoptive parents and the state does not otherwise protect against discrimination on the basis of sexual orientation, the picture is less clear. In those circumstances, the approval (or disapproval) of gay or lesbian adoption is left to the discretion of individual judges, and adoption placement decisions about waiting children are made at the discretion of individual workers and placement agencies.

While few states overtly prevent same-sex couples from adopting, the inability of same-sex partners to marry can also limit the ability of both to adopt. The federal Defense of Marriage Act, as well as state statutes and constitutional amendments, allow the prohibition of same-sex marriage. Same-sex couples cannot marry in 49 states; Massachusetts is currently the sole exception. While additional states – such as California, Vermont and Connecticut – have civil union or domestic partnership laws that grant rights to same-sex couples, many states require a couple to be married in order for both partners to adopt the same child. Bans on joint adoption leave gay and lesbian couples and their children legally vulnerable in ways heterosexual couples are not.

Courts in 12 states, including the highest courts in Massachusetts, Vermont, California, Pennsylvania, New York and the District of Columbia, have ruled that adoption statutes can be construed to allow for same-sex second-parent adoption, while courts in Colorado have ruled on both sides of the issue (Leonard, 2005; Cooper & Cates, 2006). Case law in an additional six states has found that adoption laws cannot be construed to allow for same-sex second-parent adoptions; those states are Arizona, Colorado, Nebraska, Ohio, Oklahoma and Wisconsin (Leonard, 2005).

Another means by which gay men and lesbians may be blocked from adoption is through state laws or policies preventing them from becoming foster parents. Prohibition from fostering makes adoption of foster children into gay or lesbian households very unlikely, as the significant majority of such children are adopted by their foster parents. In 2005, the Texas House overwhelmingly passed legislation to reform the state child welfare system. In the 11th hour, a provision was added to ban adults who are gay or lesbian from fostering children, but this provision was stripped from the bill

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<sup>8</sup> New Hampshire once had such a statute, barring homosexuals from adopting any person or from being licensed as foster parents. However, it was repealed after the state added sexual orientation to its civil rights law in 1999.

<sup>9</sup> (Fla.Stat.Ann., ch.63.042(3))

<sup>10</sup> California, Maryland, Massachusetts, Nevada, New Jersey and New York have statutes or state policies that expressly permit gay or lesbian adults to adopt. Connecticut, Illinois, Indiana, Pennsylvania, Vermont and Washington, D.C. have statutes or appellate court decisions prohibiting discrimination in consideration of adoption by the same sex partner of a parent.

<sup>11</sup> N.Y. Code 18 NYCRR & 421.16(h)(2) (2004)

before its passage. The law would have required foster parent applicants to answer a question about their sexual orientation and, if they were gay or lesbian, would have automatically disqualified them.

Currently, no state has statutes prohibiting gays or lesbians from serving as foster parents, but administrative policies can have the same effect. Nebraska has an administrative policy that prohibits gays and lesbians from becoming foster parents. Such a policy in Arkansas was struck down in December 2004 but was recently appealed, and another such policy was recently reversed in Missouri. New Jersey's administrative code, on the other hand, expressly prohibits the Department of Youth and Family Services from discriminating against prospective foster parents on the basis of sexual orientation (Human Rights Campaign, 2004) and state policy in Connecticut has the same effect. California's Foster Care Non-Discrimination Act, which went into effect in 2004, prevents administrative policy that would bar gay or lesbian foster parents. The law provides that all foster children and all adults have a right to fair and equal access to all available services, placement, care, treatment and benefits, and the right not to be subjected to discrimination on the basis of actual or perceived sexual orientation or gender identity.

The United States continues to debate the correctness of adoption and fostering by gays and lesbians. While most efforts to limit adoption have failed to date, as many as 15 -16 states are reported to have bills to prohibit or limit adoption by gay or lesbian persons in process<sup>12</sup> (McCoy, 2006; Stone, 2006). Other countries have moved to permit such adoptions, most nationwide. Denmark, Germany, the Netherlands, Spain, the United Kingdom (England, Scotland and Wales), and Canada permit such adoptions.

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#### **MOST ADOPTION AGENCIES ACCEPT GAY AND LESBIAN APPLICANTS**

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Despite the variations in law and policy, gay and lesbian individuals and couples do adopt. How do they do so and how prepared are adoption agencies to meet the needs of these new families? To date, there is limited research on this topic. Following up on the research by Brodzinsky et al (2002), the Evan B. Donaldson Adoption Institute conducted a national study of adoption agency directors to determine their policies and practices related to serving this population. In the study of 307 agencies, based on practice in 1999-2000, 60 percent reported that they accepted applications from gay and lesbian applicants and some actively reached out to them.

Approximately 40 percent of respondents reported they had placed children with gay or lesbian parents, although most agencies did not keep specific statistics on the sexual orientation of their clients, so the number probably is higher. Indeed, the sexual orientation of applicants was not explored by most (57 percent) agencies. Among those that did try to determine it, most did so with all families as part of the home study (72.5 percent) or on the adoption application (12 percent). In just over 10 percent of cases, agency directors reported sexual orientation was only addressed when the applicant was thought to be gay or lesbian.

The impact of such information varied greatly by agency. In most situations, the information was simply included in the adoption preparation and education process (59 percent) or ignored as the process continued (9.5 percent). For 29 percent, however, the applicants were rejected, referred to another agency, or restricted to special needs adoption only (3.5 percent).

Nearly two-thirds (65 percent) of agencies had policies related to gay/lesbian adoption. Twenty-five percent of agencies rejected applicants on this basis, 19.5 percent for religious objections, 8 percent

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<sup>12</sup> Gaywired.com (2006) reports restrictive acts are in various stages of consideration in Alabama, Alaska, Arizona, Indiana, Georgia, Kansas, Kentucky, Michigan, Missouri, Ohio, Oregon, Pennsylvania, Tennessee, Utah and West Virginia.

because they only placed with married couples, and 5 percent because state law prohibited such placement. Another 38 percent of agencies made decisions based on the preferences of surrendering parents or the regulations of the child's country of origin. Just over one-third of agencies had specific non-discrimination policies that allowed for adoptive placement with gay/lesbian applicants. As noted previously, few states specifically prohibit adoptive placement with lesbian or gay parents. However, more than 15 percent of responding agency directors reported that they were unsure about its legality or that their states disallowed such adoption (when this was not the case).

Although most agencies had reported they would work with gay or lesbian prospective adoptive parents, the vast majority (84 percent) did not engage in active recruitment or outreach. When they did, their attempts were low-key, relying on word of mouth.

The report concluded that there are readily available opportunities for gay men and lesbians to become parents through adoption, opportunities that are greater than the media or public generally understand to be the case. While an increasing number of agencies are willing to work with gay or lesbian applicants, however, many reported that they were unsure about whether or how to reach out to them. A telling finding was that nearly half (48 percent) of respondents indicated an interest in receiving training to work with gay and lesbian prospective parents.

The Donaldson Adoption Institute study surveyed adoption agency directors, and it is important to recognize that the actions of individual workers may or may not reflect agency policy. Studies of worker attitudes and practices reveal that individual beliefs often guide decisions about the placement of children with gays or lesbians. A study of adoption workers from across one state found that a lack of clear policy at the federal or state levels and a lack of protection from discrimination may make it difficult for gay and lesbian prospective parents to adopt (Kenyon, Chong, Enkoff-Sage, et al, 2003). Workers reported an array of beliefs and activities related to placing children with gay or lesbian adopters. Some workers reported that they used "community standards" in making decisions about gay/lesbian adoptions, but it was unclear how such standards were discerned.

The prevailing attitude of these workers was that gay/lesbian adoption was in conflict with such standards. Others carefully avoided any consideration of sexual orientation, feeling that to do so was discriminatory. Some respondents indicated that gays and lesbians might be considered as parents for children who were the most difficult to place. The lack of guidance or clear policy means that social workers assessing prospective adoptive parents have a great degree of discretion as to what information they collect and what they do with that information.

A study of 80 public child welfare workers in eight agencies in the eastern U.S. found that attitudes toward lesbians and gay men as adoptive parents were influenced both by childhood and familial socialization, as well as by professional socialization (Ryan, 2000). Of interest is that some workers wrongly believed that they could not place children with gay or lesbian parents; 14 percent reported they would not place a child with such parents because it would be illegal or would violate agency policy, when neither was true. Study findings support the value of training to counteract negative attitudes. Specialized training was found to be highly effective in the formation of positive attitudes and behaviors related to adoption by gays or lesbians.

Each of these studies points to the need for clear directives on adoptive placement with a diverse range of families. Unstated, informal policies or an attitude of "don't ask, don't tell" may allow some adoptions by gay individuals or couples to occur that might otherwise be blocked in states or agencies that discourage gay or lesbian adoption. But such approaches disadvantage children, agencies and parents by preventing the exploration of some of the unique challenges as well as strengths of adoption when the parents are gay or lesbian.

## RECOMMENDATIONS

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Adoption by gays and lesbians holds promise as one avenue for achieving permanency for many of the waiting children in foster care. However, efforts to expand the pool of adoptive parents in this way necessarily will entail legal, organizational and attitudinal changes. If child welfare professionals, children's advocates and policymakers wish to enlarge the pool of parental resources to include gay and lesbian parents, the steps they should consider include:

- Move to end legal and de facto restrictions on adoption by gays and lesbians. This includes working to expand co-parent and second parent adoption.
- Revise agency policies and practices that may impede consideration of gay and lesbian individuals and couples as an adoptive resource.
- Develop clear statements in support of such adoptions, recognizing that a "don't ask, don't tell" approach disadvantages parents and, ultimately, their children.
- Help workers, supervisors and agency leaders examine their attitudes, recognizing that familial and social attitudes often lead to unrealized homophobia and heterosexism.
- Develop open policies toward and contacts with the gay/lesbian community, engaging in genuine and informed outreach.
- Affirm the value of gay- and lesbian-led families by including them in outreach efforts, training materials, and parent panels.
- Conduct research on these parents – and their children – to ensure sufficient resources, training and support to improve post-adoption success.
- Determine how best to include children in decision-making, recognizing those adopted by gay/lesbian parents may encounter prejudice, as do children adopted across race or ethnicity, and arm these families with information and support to counter such prejudice.

Taking these steps will help increase the number of homes for waiting children and enable the field of child welfare to meet the needs of more children in its care. As one prominent adoption researcher has noted, "... the casualties of ... the status quo are the children who can ill afford to remain in unchanging situations. By not expanding the definition of family, agencies will not be able to meet the demand for homes and thus will continue to bear the costs of maintaining children in foster care and will incur lawsuits for failure to provide permanency for children. However, the most unfortunate effect is that children will languish longer in foster care." (Ryan, 2000: 527).

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