



EVAN B. DONALDSON ADOPTION INSTITUTE

# EXPANDING RESOURCES FOR WAITING CHILDREN II:

Eliminating Legal and Practice Barriers  
to Gay and Lesbian Adoption from Foster Care

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## Policy & Practice Perspective

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## EXECUTIVE SUMMARY

**F**or a growing number of boys and girls in foster care, the path to a safe, loving, permanent family is through adoption. These children – most of whom are older and have special physical, mental health, and/or developmental challenges – face gloomy prospects of succeeding in life without adoptive parents who can provide them with affection, nurture, support, and guidance. Often, their foster parents adopt them; in thousands of other cases each year, however, child welfare agencies must recruit new adoptive families to meet these children's needs. That reality has led to an increasingly urgent, nearly universal professional consensus that the pool of potential adoptive parents must be expanded to keep pace with the growing number of children in foster care who are legally free for adoption. Nevertheless, there remains considerable debate over whether all adults, especially those who are lesbian or gay, should be considered as suitable mothers and fathers.

Adoption by non-heterosexuals has been the subject of considerable interest in a rapidly changing legal and policy environment. During the early 2000s, a number of states enacted or attempted to enact legislation to prohibit gays and lesbians from fostering or adopting children. Recently, legislative efforts have taken a different form, in which legislation attempts to accomplish the same goal through broad language that prohibits unmarried, cohabitating couples from fostering or adopting. At the same time, efforts are underway to amend the existing bans on adoption by gay and lesbian individuals and other unmarried, cohabitating couples. In yet other states, laws have been passed to authorize joint or second-parent adoption for gay and lesbian parents (granting parental rights to the partner in a same-sex couple), and such legislation is pending in additional states.

This report builds on the Evan B. Donaldson Adoption Institute's 2006 Policy & Practice Perspective, *Expanding Resources for Waiting Children: Is Adoption by Gays and Lesbians Part of the Answer?* and, like that initial paper, focuses on meeting the needs of waiting children. It provides an overview of current law and policy, and offers recommendations for expanding the pool of qualified adoptive families for these children by removing legal and practice barriers to gay and lesbian adoption.

### GENERAL FINDINGS

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- **Tens of thousands of children in foster care, who cannot return to their original families, are waiting for permanent homes.**
  - About 129,000 waiting children are in need of adoptive homes (USDHHS, 2008).
  - Research shows that the 25,000 youths who “age out” of foster care each year are at high risk for a host of negative outcomes, including poverty, homelessness, incarceration and early parenthood (Collins, Paris, & Ward, 2008; Courtney, Dworsky, Ruth, Keller, Havlieck, & Bost, 2005; Landsverk, Burns, Stambaugh, & Rolls Reutz, 2006; Wind, Brooks, & Barth, 2005).
  - Adoption of children from foster care yields substantial savings annually, estimated to be between \$3.3 and \$6.3 billion nationally (Barth, Lee, Wildfire, & Guo, 2006).
  
- **Gays and lesbians are important family resources for waiting children**
  - A number of studies have documented that gay and lesbian adults are very willing to adopt children with special needs and, as a demographic group, may be more

willing to do so than heterosexual adults (Brooks & Goldberg, 2001; Alcalay, Tyebjee, Shahnaz, & O'Loughlin, 2001; Brodzinsky, Patterson, & Vaziri, 2002).

- Data show that gay and lesbian adults provide a significant number of families for children who need foster or adoptive homes.

Researchers estimate over 14,000 children live in lesbian- or gay-led foster families today, while at least 4 percent of all adopted children in the U.S. – about 65,000 – are being raised by gay and lesbian parents (Urban Institute/Williams Institute, 2007).

- Research shows that children fare as well with gay and lesbian parents as those raised by heterosexuals.

There is currently little research on the long-term outcomes for children adopted by gays or lesbians. However, studies on children dating back 25 years conclude that children raised by gay and lesbian non-adoptive parents fare as well as those reared by heterosexual parents (Breways, Ponjaert, Van Hall, & Golombok, 1997; Chan, Raboy & Patterson, 1998; Golombok, Perry, Burston, Murray, Mooney-Sommer, Stevens, & Golding, 2003; Wainwright, Russell & Patterson, 2004).

- Mainstream professional organizations across the social service, legal, and medical spectrum support adoption by gays and lesbians.

Thirteen leading professional organizations have issued formal statements of support for adoption by gays and lesbians.<sup>1</sup>

- Excluding gay and lesbian adoptive parents carries significant economic costs.

Researchers conservatively project a national ban on foster care provision by lesbian, gay, or bisexual adults would add \$87 million to \$130 million to expenditures each year. The estimated cost to individual states would range from \$100,000 in those with smaller populations up to \$27 million in states with large numbers of gay and lesbian foster parents (Gates, Badgett, Macomber, & Chambers, 2007).

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#### STATE LAW AND POLICY: FINDINGS AND RECOMMENDATIONS

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- **Most children adopted from foster care are adopted by their foster parents, and banning lesbian and gay adults from fostering will reduce the number of adoptive homes for children.**

No state, as of this writing, expressly bars fostering by gay or lesbian parents by statute, but one state does so through policy. Efforts to prevent fostering by gay and lesbian parents are ongoing, leaving open the possibility that restrictions could be placed in the future.

#### Recommendation

All adults should be evaluated and licensed as foster parents based on their capacity to provide nurturing support for children in foster care, rather than on their sexual

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<sup>1</sup> Please see Appendix B for a list of organizations and a summary of their positions.

orientation. Foster families should be chosen based on their ability to meet individual children's needs. State child welfare policy should explicitly prohibit the exclusion of foster parent applicants solely on the basis of sexual orientation.

- **State laws excluding gay and lesbian prospective adopters can negatively affect the pool of adoptive families for waiting children.<sup>2</sup>**

Adoption by gay or lesbian individuals is legal in 49 states, and adoption by same-sex couples is, in theory, permitted in 47. Florida is the only state to explicitly prohibit adoption by gays and lesbians by statute. Mississippi bans adoption by "couples of the same gender," and Utah forbids adoption by any unmarried couple; legislation recently introduced in Arkansas and Tennessee mirrors the Utah prohibition. If such efforts to restrict the rights of gays or lesbians to foster or adopt children continue, the pool of prospective families for children in foster care could be significantly reduced.

### Recommendations

Laws that prohibit adoption by non-heterosexual individuals and couples should be rescinded to maximize the number of interested, qualified families for waiting children. Child advocacy groups in Arkansas, Florida, Mississippi, and Utah – as well as national organizations – should join together to reverse bans on adoption by adults who, apart from their sexual orientation, meet all necessary requirements.

States should enact laws that specifically disallow excluding applicants solely on the basis of sexual orientation.

- **Children are disadvantaged when state laws do not permit joint and second-parent adoption.**

Most states do not currently recognize both partners in gay and lesbian adoptions as the child's legal parents. California, Connecticut, Colorado, Illinois, Indiana, Maine, Massachusetts, New Jersey, New York, Pennsylvania, and Vermont specifically allow a child to be adopted at the same time or consecutively by both partners. In New Hampshire and Oregon, same-sex couples in civil unions can adopt through one of these means. Through joint and second-parent adoption, children receive a range of rights and benefits associated with having two legal parents.

### Recommendations

The legal recognition of both parents in a family headed by gay or lesbian adopters is in the best interests of children. States should expressly recognize the simultaneous adoption by each of the two parents in a couple, regardless of their sexual orientation.

States should expressly recognize second-parent adoption by a partner in a couple where the other partner has given birth to, fathered, or adopted a child previously and is the sole legal parent of the child.

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<sup>2</sup> "Waiting children" are defined as those children in the foster care system whose parents' parental rights have been terminated and/or who have a permanency goal of adoption.

- **The legal status of both parents should be recognized across state lines.**

Though courts have overturned the policies of two states that refused to acknowledge the legal status of both parents as determined by another state, legislation recently was introduced in Mississippi to prevent state courts from recognizing out-of-state adoptions by unmarried couples. Statutes that conflict with states' responsibility to grant full faith and credit to adoptions legally completed in other states are contrary to the best interests of children.

#### Recommendation

States should give full faith and credit to decrees of adoption issued by other states, without regard to the sexual orientation of adoptive parents.<sup>3</sup>

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### AGENCY POLICY AND PRACTICE: FINDINGS AND RECOMMENDATIONS

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- **Agencies vary in the extent to which they are welcoming and sensitive to all prospective families. To meet the needs of waiting children, they need to actively welcome all types of qualified families.**

#### Recommendations

Agencies should develop and make visible their commitment to non-discrimination and inclusion.

Agencies should systematically assess their efforts to combat homophobia and heterosexism.

Agencies should develop mechanisms for assessing their success in connecting to and recruiting gay- and lesbian-headed adoptive families.

- **Agency policies for assessing traditional families may not appropriately assess gay and lesbian prospective adoptive families.**

#### Recommendations

Agencies should use culturally sensitive practices in engaging gay and lesbian prospective adoptive parents in the assessment process.

Agencies should appropriately address issues of sexual orientation in the assessment process. They should provide gay and lesbian prospective adoptive parents with opportunities to explore the impact of adoption on the degree to which they are presently "out" as gay or lesbian persons.

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<sup>3</sup> Article IV, section 1, of the U.S. Constitution provides that "Full Faith and Credit shall be given in each State to the public Acts, Records and judicial Proceedings of every other State." This constitutional guarantee provides that the rights and protections afforded in one state must be honored in others and will not be lost in another.

- **Traditional agency practices in preparing families may not appropriately prepare gay and lesbian foster and adoptive parents.**

#### Recommendations

Agencies should evaluate PRIDE, MAPP<sup>4</sup> or other common training curricula for foster and adoptive parents to determine if these should be amended to make them welcoming to gay and lesbian foster and adoptive parents. Agency staff should ensure that trainers are sensitive to the needs of gay or lesbian parents and can conduct training groups in ways that acknowledge and promote acceptance of all family types.

Agencies should develop strong relationships with community service providers that can offer supports to gay- and lesbian-headed families.

- **To serve diverse populations, including gays and lesbians, agencies need culturally competent staff.**

#### Recommendations

Agencies should recruit diverse staffs of social workers and supervisors, including those who can bring expertise and personal experience in serving gay and lesbian families in order to effectively recruit and retain a maximum number of qualified adoptive families for waiting children.

Agencies should train and support personnel so that they develop expertise in working with the full range of families, including gay and lesbian prospective parents and gay- and lesbian-headed families.

- **Much more needs to be learned to provide agencies with clear guidance on quality policy and practice in recruiting, assessing, preparing and supporting gay and lesbian foster and adoptive parents.**

#### Recommendation

Research is needed to enrich the understanding of:

- The most effective ways to recruit and retain gay/lesbian foster and adoptive parents.
- Practices that are culturally sensitive and effective in engaging gay and lesbian prospective foster and adoptive parents in the assessment process and in incorporating sexual orientation into that process.
- How training of prospective foster and adoptive parents should be adapted to be welcoming to gays and lesbians.
- How best to prepare agency staff to work effectively with gay and lesbian foster and adoptive applicants and gay- and lesbian-headed families.

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<sup>4</sup> PRIDE (Parent Resources for Information, Development and Education) and MAPP (Model Approaches to Partnerships in Parenting) are two widely used curricula for training foster and adoptive parents.

## CONCLUSION

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Implementing the recommendations advanced in this report will play an important role in increasing the number of permanent, nurturing families for the tens of thousands of children waiting in foster care for families. These recommendations provide assertive, practical, legal and agency policy and practice strategies to ensure that far more children who need homes get them and that fewer “graduate” from foster care without permanent family relationships. Efforts to find families for these boys and girls must expand and intensify – and gay and lesbian adults are part of the solution.