

GLBT Parents and their Children

GLBT individuals pursue different paths to parenthood. Some have children from heterosexual relationships, while others have children as single people or in the context of a same-sex relationship. Some have biological children, others adopt or become foster parents. Some parents raise their children as couples, while others are single or divorced parents. Some create innovative parenting relationships involving more than one household, such as two couples, a couple and a biological parent, or some other coparenting arrangement. The lives of GLBT parents, like all parents, are full of joys and challenges. But they are significantly complicated by the lack of many of the protections that married heterosexual families are privileged to have.

The regulation of adoption, foster care, custody and visitation in the United States is controlled overwhelmingly by state governments.¹⁸⁴ Unfortunately, often state legislatures and courts discriminate on the basis of sexual orientation or gender identity in their rulings and policies. Among the privileges taken for granted by married heterosexuals but regularly denied to GLBT people and their children are:

- Legal recognition of parent-child bonds of all children born into a union.
- Joint adoption of children, as part of a couple (which is explicitly banned in Mississippi).
- Single-parent adoption (which is explicitly banned for gay men and lesbians in Florida, and regularly denied prospective gay and lesbian parents in jurisdictions across the country).
- Foster parenting, which is banned in Arkansas and effectively banned in Utah.
- Recognition of parental status for the purpose of family and medical leave.
- Access to child support when a parental relationship ends.
- Visitation with and/or custody of children after the dissolution of a relationship.

DATA ON GLBT PARENTING

Although there are no precise figures for the number of children being raised by GLBT parents, some estimates indicate that between 6 and 14 million children have at least one gay or lesbian parent.¹⁸⁵ More conservative estimates find that between 1 and 9 million children ages 19 and under are being raised by a gay or lesbian parent.¹⁸⁶ The 1990 U.S. Census revealed that roughly 1 in 5 female same-sex coupled households (21.7 percent) had children under 18 years of age living in the home, as did 5 percent of male same-sex couples.¹⁸⁷ The 2000 Census data on parenting patterns in same-sex households are not yet available.¹⁸⁸

Similarly, 21 percent of black GLBT people surveyed in the Black Pride Survey 2000 reported being biological parents and 2.2 percent reported being adoptive or foster parents. About 12 percent of respondents reported living with children, while one quarter reported having at least one child. Women in the sample of nearly 2,700 respondents from 9 major cities were significantly more likely to have children than men and transgender people: 39 percent of the black women surveyed versus 15 percent of the men and transgender people. Most of the men and women were gay or lesbian.¹⁸⁹ Another recent study found that one in four black lesbians lived with a child for whom she had child-rearing responsibilities, while only two percent of black gay men reported children in the household. One in three black lesbians reported having at least one child (who did not necessarily live with her at that point), as did nearly 12 percent of the gay black men surveyed.¹⁹⁰

Twenty-one percent of black GLBT people surveyed in the Black Pride Survey 2000 reported being biological parents and 2.2 percent reported being adoptive or foster parents.

What the Research Shows: Gay and Lesbian People Make Good Parents

Welfare bills passed by the U.S. Congress in 1996 and up for reauthorization in 2002 posit single parenthood and unmarried parents as causes of poor child outcomes.¹⁹¹ However, while correlations have been established between single parenthood and a higher prevalence of certain problems among children raised in single parent or unmarried two parent homes, other factors such as poverty may have a greater causal effect. In many European countries, higher nonmarital childbirth rates are not accompanied by a higher prevalence of child poverty.¹⁹² Legislative efforts to promote heterosexual marriage and fatherhood to solve problems like poverty and welfare dependency stigmatize the many single parent-led families with children and GLBT families with children that are thriving. They also fail to consider the more important causal factors.

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Research on Children of Lesbian and Gay Parents

The vast majority of children's advocacy organizations recognize that most lesbian and gay parents are good parents, and that children can and do thrive in gay and lesbian families. Here are statements from several leading professional organizations concerned with child welfare:

- **The American Academy of Pediatrics:** "A growing body of scientific literature demonstrates that children who grow up with 1 or 2 gay and/or lesbian parents fare as well in emotional, cognitive, social and sexual functioning as do children whose parents are heterosexual."¹⁹³

- **The American Psychological Association:** “Not a single study has found children of gay or lesbian parents to be disadvantaged in any significant respect relative to children of heterosexual parents.”¹⁹⁴
- **The National Association of Social Workers, in conjunction with the American Psychological Association:** “[C]hildren who retain regular and unrestricted contact with a gay or lesbian parent are as healthy psychologically or socially as children raised by heterosexual parents and ... the parenting skills of gay fathers and lesbian mothers are comparable to their heterosexual counterparts.”¹⁹⁵
- **The American Psychoanalytic Association:** “Accumulated evidence suggests the best interest of the child requires attachment to committed, nurturing and competent parents. Evaluation of an individual or couple for these parental qualities should be determined without prejudice regarding sexual orientation. Gay and lesbian individuals and couples are capable of meeting the best interest of the child and should be afforded the same rights and should accept the same responsibilities as heterosexual parents.”¹⁹⁶
- **The American Academy of Family Physicians** called for the group to “establish policy and be supportive of legislation which promotes a safe and nurturing environment, including psychological and legal security, for all children, including those of adoptive parents, regardless of the parents’ sexual orientation.”¹⁹⁷

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 —American Academy of Pediatrics

These positions are based on decades of social science research that has discredited the overly simplistic premise that it is always in the best interest of a child to be raised by two heterosexual, married parents. For example, Silverstein and Auerbach contend the following:

[O]ur research with divorced, never-married and remarried fathers has taught us that a wide variety of family structures can support positive child outcomes. We have concluded that children need at least one responsible, caretaking adult who has a positive emotional connection to them and with whom they have a consistent relationship...We share the concern that many men in U.S. society do not have a feeling of emotional connection or a sense of responsibility toward their children. However, we do not believe that the data support the conclusion that fathers are essential to child well-being and that heterosexual marriage is the social context in which responsible fathering is most likely to occur.¹⁹⁸

In a comparison of five different family structures—families with adoptive children, two-parent families with biological children, single mother headed families with biological children, families with a stepfather present, and families with a stepmother present—researchers concluded that there were no major differences in children raised by single mothers compared to the children raised in other household types. Specifically, children from single mother households did not report any differences in well-being or parental relationships as compared to other children.¹⁹⁹

Sociologists debunk the claim that heterosexual parents are more successful in raising children than lesbian or gay couples.²⁰⁰ One 12-year study found that same-sex couples were better at managing disagreements than heterosexual married couples.²⁰¹ A literature review on lesbian and gay families with children concludes that the fears some

have that children from families without fathers—such as lesbian families—will suffer “deficits” in personal development are without empirical support.²⁰² One study of psychosocial development among preschool and school-aged children finds that:

[C]hildren of lesbian mothers’ scores for social competence, internalizing behavior problems and externalizing behavior problems ...did not differ from the scores for a large normative sample of American children. Likewise, children of lesbian mothers reported gender-role preferences within the expected normal range for children of this age.²⁰³

A review of current research on various family structures reveals a clear pattern: neither family structure nor sexual orientation of parents is a strong determinate of a child’s well-being, and lesbian and gay parents can raise children as well as heterosexual parents can.²⁰⁴

Research on Children of Bisexual Parents

These conclusions are likely true of bisexual parents in same-sex relationships as well. Although there is a lack of research focusing specifically on bisexual parents, it is highly probable that bisexuals in same-sex relationships are included in the samples of some of these studies. Since some studies do not ask people to self-identify by sexual orientation, we do not have conclusive findings on bisexual parents. The addition of such a question to all parenting studies, including those focusing on opposite-sex couples, is merited and would greatly enhance our knowledge in this area.

Research on Children of Transgender Parents

There is very little research on the children of transgender parents. The few preliminary studies that exist have found that these children are not negatively affected by their parent’s gender identity. A 1978 study of 16 children from homes with transsexuals (seven raised by male-to-female transsexuals and nine by female-to-male transsexuals) found that the children did not differ appreciably from those raised in more conventional family settings.²⁰⁵ A 1998 study of 18 children found that the vast majority reported no problems with teasing and most understood and accepted their parent’s transgenderism.²⁰⁶ For example one 14 year-old daughter reported:

My [m]other’s not happy in the body she is in. My mom is a lot happier since starting to live as who she wants to be. When I was 13, my mother said, “I want to be a man, do you care?”

I said, “No, as long as you are the same person inside and still love me. I don’t care what you are on the outside”... It’s like a chocolate bar, it’s got a new wrapper but it’s the same chocolate inside.²⁰⁷

In addition, none of the children exhibited strong cross-gender behavior or expressed a desire to change their own sex.²⁰⁸

In a 1999 survey of therapists working with transgender clients, the vast majority of respondents agreed that while a parent’s gender transition was not a neutral event, postponing transitioning and maintaining secrets about one’s gender identity is much more difficult for children to deal with. In addition, “there was an overall consensus that factors within the parental relationship and family constellation had significantly more bearing on the outcome for the children than the transition itself.”²⁰⁹ Children were

more likely to adjust well to the transition when they were able to maintain close relationships with both parents. In addition, having supportive family members and minimal conflict between parents were closely linked to good outcomes for the children. The study showed that in most cases it is unnecessary and inadvisable for a transgender parent to postpone transitioning until the child becomes an adult.²¹⁰

Much more study is warranted into the experiences, needs and concerns of children of transgender parents. However, the existing research does contradict the notion that it is better for children to not continue a relationship with a transgender parent. This research indicates that ending parental contact, limiting custody, or requiring a parent to postpone transitioning can all be much more harmful than helpful to the children concerned.

SINGLE PARENTING IN THE GLBT COMMUNITY

Research on GLBT people with children is limited in that it does not disaggregate the ways in which single parents and their children differ from two-parent families. However, there is reason to believe that such differences do exist. These differences may be due more to economic privileges that come with having two incomes, as opposed to having two parents of the same sex. In addition single women suffer the added hardship associated with the gender gap in work opportunities and salary. According to the 2000 U.S. Census, single-parent households headed by women were nearly twice as likely to have family incomes that fell below the poverty level as compared to similar households headed by men.²¹¹

While in many respects, including caretaking and economics, having two parents may be desirable in many cases, millions of U.S. children are raised in loving, highly functional single parent homes. Some conservatives have posited a causal relationship between single-parent families and poverty. In fact, the policies privileging two parent families are often the culprit. While rates of out-of-wedlock births are higher in several northern European countries, poverty is much lower than it is in the United States. For example, Sweden, Norway, and Denmark have nonmarital birthrates of 47 to 54 percent, much higher than the U.S. rate of 32 percent. Britain's rate of 34 percent and France's rate of 37 percent are also higher than the U.S. rate. But poverty rates in these countries are much lower than poverty rates in the U.S.²¹²

A late 1980s study of poverty differences between single-parent and married couple families with children found that, in several countries with generous social safety nets, the differences were not significant. In Sweden, 5.5 percent of single-parent families were poor, versus 5 percent of married couple families. In the Netherlands the difference was 7.5 percent versus 7.2 percent; in France 15.8 percent versus 10 percent, and in Britain 18 percent versus 16.6 percent. In the U.S., however, the differences were dramatic: 53.3 percent of single-parent families with children were poor, versus 17.9 percent of married couple families with children. This indicates that the poverty gap is not an inevitable state of affairs, but the result of particular public policy choices that vary from country to country.²¹³

There were 12 million single-parent families counted on the 2000 Census; 10 million were headed by single mothers and 2 million were headed by single fathers.²¹⁴ Single par-

ents made up 40 percent of the NGLTF Black Pride Study. Eighty percent of the single parents were the biological parent to a child. Nearly 40 percent of single parents reported the presence of a child in the household. Lesbians made up almost three-quarters of single respondents that had children and reported a child in the household.

Many lesbians and bisexual women are forced through custody battles with former male spouses to forego financial support for them and their children in exchange for being allowed to retain custody of their children. At the same time many are forced by the courts to require their female same-sex partners to move out of the home as a condition for maintaining custody. Both circumstances serve to further impoverish lesbian and bisexual mothers and their children.

GLBT single parents have many of the same needs as other single parents. Welfare reform proposals that prioritize heterosexual marriage as a public policy goal over promoting self-sufficiency for single-parent led families are both misdirected and harmful (see “Welfare Reform and GLBT Families” in “Partner Recognition” chapter). Instead policies need to focus on ensuring that all families can meet their basic needs, including healthcare, food, and shelter. Families leaving the welfare rolls for jobs should continue to receive food stamps and Medicaid if they need them, and decreasing the welfare rolls should not be prioritized over decreasing poverty. The minimum wage should be raised so working families do not have to live in poverty. Single parents should be afforded opportunities to access education and training programs, and they should be allowed to count them towards workfare requirements, so that they may increase their wage-earning capacity. Access to affordable or government-subsidized child care is essential to ensure that single-parents can take advantage of such programs and can work. Policies that encourage employers to provide child-friendly, flexible work hours also make it possible for single parents to work.

In addition, GLBT single parents may be particularly hard-hit by aspects of welfare reform. For example, new TANF (Temporary Assistance for Needy Families) regulations assume that all children are the products of heterosexual family unions. Lesbians who cannot comply with the establishment of paternity required by the regulations will suffer a 25 percent decrease in cash assistance and risk termination of benefits.²¹⁵ In contrast single fathers need not disclose the maternity of their children.

CUSTODY AND VISITATION ISSUES ARISING OUT OF HETEROSEXUAL RELATIONSHIPS

Presuming that I am an unfit parent simply based on who I choose to love... I am not a deviant, nor am I evil... I am the one who helped my children prepare for their first Holy Communions. I am the one the principal of their parochial school asked to serve as the secretary of the PTA.

—Dawn Huber, who lost a 2002 custody appeal in Alabama. Alabama Chief Justice Roy Moore called Huber’s homosexuality an “abhorrent, immoral, detestable” fact that “render[ed]...her an unfit parent.” He also called for the “confinement” and even the “execution” of homosexuals in order to protect children.²¹⁶

Despite unequivocal empirical evidence that gay men and lesbians make good parents, members of our community face recurrent discrimination in their attempts to form families and to secure their relationships with their children.

Some lesbian and gay people discover their sexual orientation in the context of heterosexual marriages. When these marriages end and divorce proceedings begin, they are often confronted with custody challenges. In fact, a recent report suggests that approximately 30 percent of all lesbian and bisexual female parents, regardless of whether they first had children in a relationship with a heterosexual partner or with a partner of their own gender, have been threatened with loss of custody. Fathers, known sperm donors, female co-parents, grandparents and other relatives all have the potential of bringing custody challenges against lesbian mothers.²¹⁷

The “Best Interests of the Child” Standard and Gay and Lesbian Parents

In nearly every state, custody decisions must be determined according to the “best interests of the child.” Even so, application of this general rule varies greatly from state to state, and even from judge to judge.

The majority of states have adopted the so-called “nexus” approach, which requires that the parent seeking custody show a connection between the other parent’s sexual orientation and some harm to the child. Under this approach, in the absence of evidence that the other parent’s sexual orientation is actually causing some harm to the child, the court should not consider sexual orientation in deciding a custody, visitation, or adoption dispute.²¹⁸ The District of Columbia is currently the only jurisdiction in the country that has a statute explicitly guaranteeing that sexual orientation cannot, in and of itself, be a conclusive factor in determining custody or visitation.²¹⁹

In practice, however, sometimes courts say that they are not considering the sexual orientation of a parent per se to be harmful to the child, but, in reality, treat it as though it were.²²⁰ Some states used to have an explicit “per se” rule, under which being lesbian or gay was, in and of itself, a sufficient basis to deny custody to a parent, regardless of the parent’s prior child-rearing experience and relationship with the child. In recent years, however, even very conservative courts have shifted away from this approach.²²¹ In some parts of the country, divorce courts routinely impose non-cohabitation restrictions on divorcing parents. These restrictions typically prevent parents from having unmarried partners live with them or even stay overnight when children are present. While heterosexuals have the option of marrying their partners, and are then exempt from the restriction, gay men and lesbians are unable to do likewise despite being equally committed to their partners. In this sense, non-cohabitation requirements unfairly discriminate against gay and lesbian parents.²²² Gay parents have also been ordered by courts not to attend gay community events with their children.

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Bisexual Parents

Bisexual parents also face discrimination in child custody and visitation cases, where negative stereotypes about bisexual people are sometimes used to justify denying custody or limiting visitation. For example, in a 2001 Mississippi custody case between a heterosexual father and a bisexual mother living with her same-sex partner, the court ruled

that “the morality of the mother’s lifestyle was one important factor” in granting custody to the father.²²³ Although courts seem to be moving away from the presumption that a parent’s bisexuality is a negative factor in their ability to parent, some courts are still reluctant to place a child in the custody a bisexual parent. The Ohio Appellate Court has required “a total lack of any viable alternatives,” and reversed custody previously granted a bisexual father even though the children’s mother had not denied allegations of drug use and extramarital affairs.²²⁴ The Ohio court also ignored advice of an appointed clinical psychologist that the children remain with their father because he provided a more stable home environment: “his sexual preferences presented no immediate danger to the children’s welfare” and the children had developed friendships and social relationships at school and in their father’s community.²²⁵

In a 2001 Mississippi custody case between a heterosexual father and a bisexual mother living with her same-sex partner, the court ruled that “the morality of the mother’s lifestyle was one important factor” in granting custody to the father.

Transgender Parents

Transgender parents coming out of heterosexual marriages can face bitter court battles over custody or visitation rights with their children. In some extreme cases, courts have terminated the parental status of the transgender parent, meaning the parent has no legal right to have any contact with his or her child and is no longer considered the legal parent of the child.²²⁶ More frequently, a court will impose conditions or restrictions on a transgender parent seeking custody or visitation rights. For example, one court granted a transgender father custody of his daughter on the condition that he did not cross-dress in front of her and that he not have any literature relating to transvestism in the home.²²⁷ In some cases, courts have decided that a transgender parent could retain full custody of the children because there was no evidence that having a transgender parent physically or mentally harmed the children.²²⁸

Policy Recommendations

- *Enact legislation forbidding the consideration of sexual orientation or gender identity as a relevant factor when assessing the “best interest of the child” in a custody or visitation proceeding.*

ARCHAIC SEX LAWS, OR SODOMY LAWS, AND THEIR USE AGAINST GLBT PARENTS

The government has a long history of interference with the intimate lives of its citizens—be it in the form of banning interracial marriages, or of limiting access to contraceptive choices. For GLBT individuals, sodomy laws—state laws that criminalize consensual and private same-sex intimacy—remain a threat to our families. They have been used to justify anti-gay interpretations of the law and, in many cases, to separate gay and lesbian parents from their children. As of July 2002, these laws existed in 13 states, with prohibitions against same-sex sodomy alone in four states and against same- and opposite-sex sodomy (usually defined as oral and anal sex) in nine states (see map below).

The U.S. public does not support sodomy laws (see below) and many countries have come to recognize them as antiquated and harmful. Some laws, like that still on the books

in Massachusetts which prescribes a five year jail term for oral sex and 20 years in jail for anal sex, date back to the Puritan period in the 1600s. These laws have been repealed in most other industrialized countries. France and Belgium abolished their laws in the 1790s, Brazil, Spain and the Netherlands abolished theirs in the early 1800s, and Denmark, Sweden and Portugal repealed sodomy laws in the first half of the 20th century. The bulk of the remaining industrialized countries have repealed theirs since 1950.²²⁹

Although convictions under most state sodomy laws are relatively rare, the existence of these laws has other grave consequences. Technically, convicted sodomites can be legally denied the vote in Alabama. By labeling gay, lesbian, bisexual and transgender people “criminals,” state sodomy laws give courts a mechanism by which to discriminate against GLBT individuals and families. For example:

- A Mississippi court used the sodomy law to justify denying custody of a boy to his gay father despite the fact that the court also found that the father would provide better care in part because the boy’s stepfather was physically abusive to his mother.²³⁰
- In Virginia, the court used the sodomy law to justify its decision to deny Sharon Bottoms custody of her child, instead granting custody to Bottoms’ mother.²³¹
- In Texas, a social work supervisor used the possible breaking of state sodomy law to invoke “emergency powers” and remove a foster child from a lesbian household. The ACLU successfully challenged the supervisor’s denial of placements.²³²
- A lesbian mother was denied custody of her child and Justice Roy Moore justified the decision saying, “The law in Alabama says that sodomy is against the law.”²³³ In a separate case, the Alabama sodomy law was used to deny funding to a GLBT student group at a state-funded university.²³⁴
- Denial of employment in Florida, Georgia and Texas has been justified with the sodomy laws.²³⁵ For example, in Texas an openly lesbian applicant to the Dallas Police Department was denied a position because she was presumed to engage in illegal activity.²³⁶

Since the 1970s more than 35 states have repealed these laws. The repeal of the remainder of these laws would provide greater security to GLBT parents and their children.

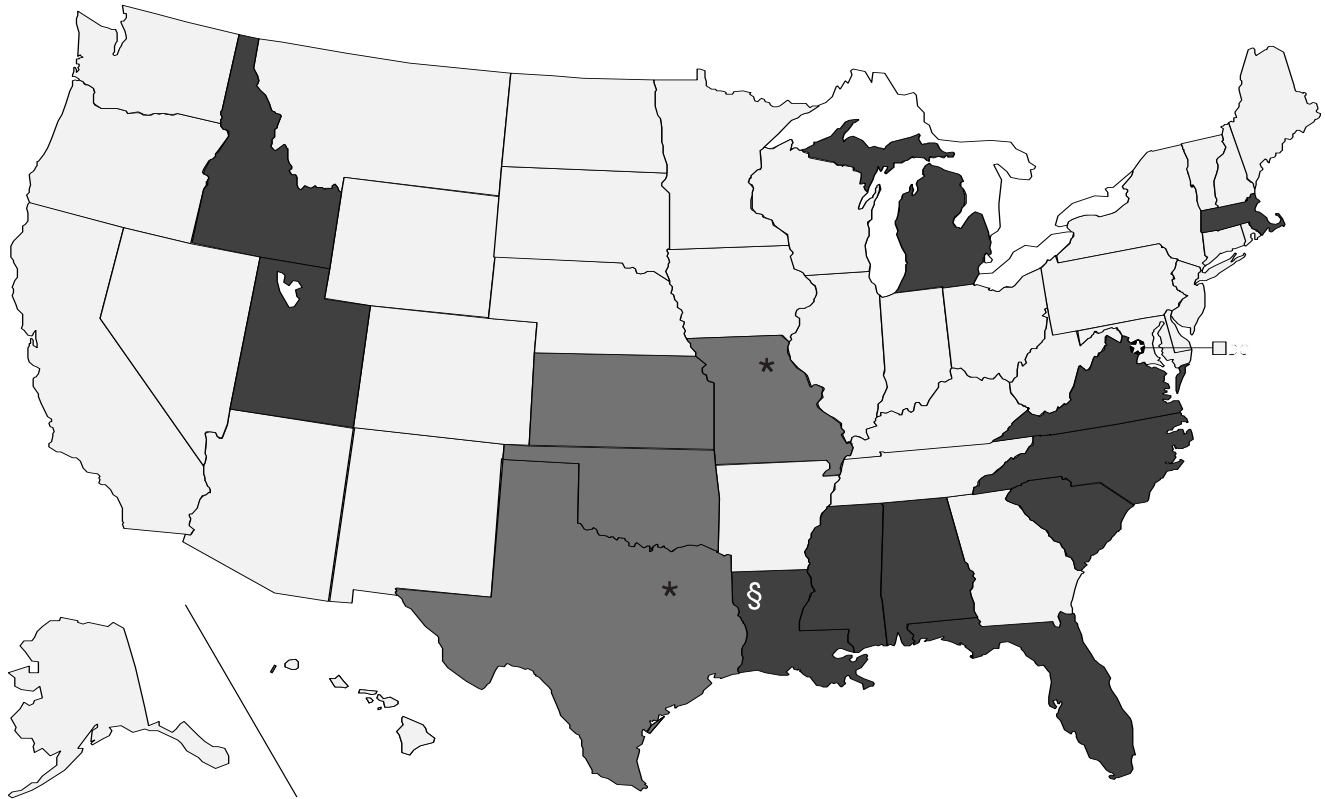
Convicted sodomites can be legally denied the vote in Alabama.

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Public Opinion

Disapproval of same-sex intimate relations has been decreasing steadily since it peaked in the late 1980s, and approval of such relations is at its highest since the early 1970s.²³⁷ More to the point, a Kaiser Family Foundation survey found that 88 percent of the public “believes that society should not put any restrictions on sex between consenting adults in the privacy of their own home.”²³⁸ As far as the public is concerned sodomy laws are a relic of the past. Unfortunately, they continue to threaten GLBT people and the security of our families.

Archaic Sex Laws in the United States



- No sodomy law. (35 states & District of Columbia). Although some of these states continue to have laws on the books, the state's highest court has declared the laws unconstitutional and unenforceable.
 - Same-gender sodomy law only. (4 states) - KS, MO, OK, TX
 - Opposite and same gender sodomy law. (11 states) - AL, ID, FL, LA, MA, MI, MS, NC, SC, UT, VA
 - * In each of these states—MO and TX—a court at some level has declared the sodomy law unconstitutional. However, the highest court in each of these states has not ruled similarly.
 - § In July 2000, a Louisiana Supreme Court decision upheld the state's "crimes against nature" law.
- This map can be downloaded at <http://www.nglrf.org/downloads/sodomymap.pdf>

Policy Recommendation

- *Repeal all archaic sex or sodomy laws that criminalize sexual behavior between consenting adults.*

CUSTODY AND VISITATION ISSUES ARISING OUT OF HOMOSEXUAL RELATIONSHIPS

When same-sex couples jointly raise children, it is not uncommon for one parent to lack a biological or adoptive relationship to the children. As a result, if the couple's relationship ends, one parent is at a clear disadvantage when seeking custody or visitation rights. Even if that parent has been the primary care taker of the child or the primary bread winner, he or she may have to explain and defend his or her relationship to the child. A number of legal cases have arisen and been decided out of these types of situations, with

both heart-wrenching losses and important victories for the non-biological, non-adoptive parents. Supreme Courts in Maryland, Massachusetts, New Jersey, Pennsylvania, Rhode Island and Wisconsin have all found that a coparent who met specified standards had a legal right to seek visitation and/or custody of a child he or she had raised.²³⁹ In the Massachusetts case, the non-biological mother was determined to be a “de facto parent”—which the Court defined as someone who “with the consent and encouragement of the legal parent, performs a share of the care taking functions at least as great as the legal parent”—and so could seek visitation rights with her child.²⁴⁰

Unfortunately, there have also been numerous cases where the coparent’s relationship with the child was not recognized and the coparent has been held to not have the standing to ask for visitation or custody.²⁴¹

These cases, pitting one parent against another, have been very detrimental to the parenting rights of all GLBT people. In the hopes of reversing this trend and promoting greater respect for GLBT families, several GLBT organizations and individuals authored a set of ethical standards for child custody disputes in same-sex relationships.²⁴²

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Policy Recommendations

- *Any individual, who with the encouragement and consent of a child’s legal parent has acted as a parent to the child for a significant period of time, should be deemed a “de facto parent” under law and have standing to pursue appropriate custody of or visitation with that child. The continuation of such a relationship is in the best interest of the child.*

ADOPTION

GLBT adults are among the thousands who adopt children each year. Some adopt children they are raising with a partner (often the biological child of their partner), thereby creating a legal bond where a familial one already exists. Some are selected by family members or close friends to adopt a child upon the death or incapacity of the child’s parent(s). Many adopt through public or private agencies, domestically and internationally.^{242.5} A growing number work with intermediaries to identify women wishing to have their babies adopted and to reach agreements directly with those birth mothers.

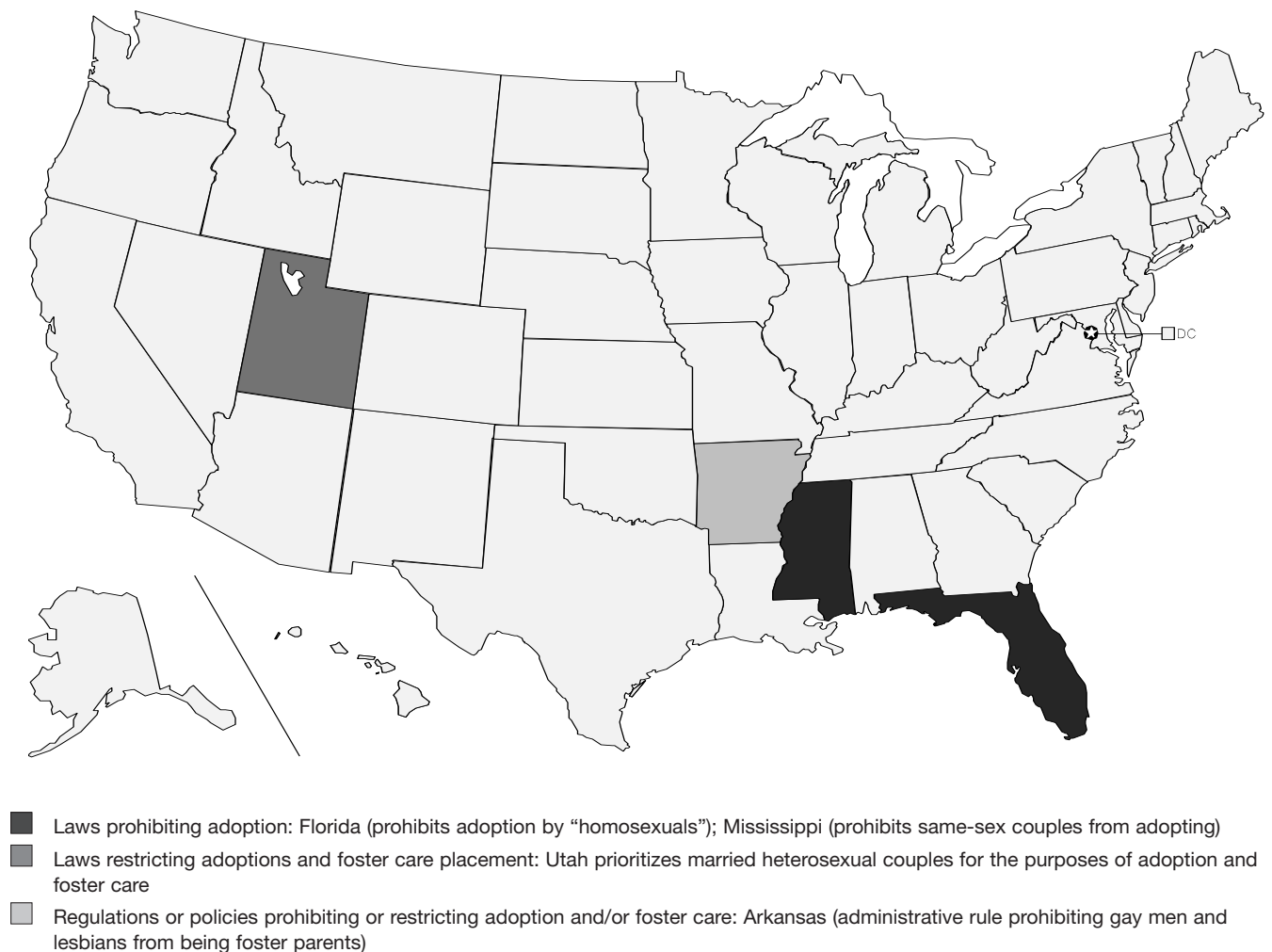
There are different ways for GLBT people to adopt. Most commonly available is individual adoption of a child as a single parent. However, some states explicitly prohibit or regularly deny adoptions by GLBT individuals. Many states deny same-sex couples the ability to jointly adopt a child, or deny one parent from adopting a child that already has a legal bond to the other parent. In contrast, married couples in all parts of the country are free to pursue joint adoption, and stepparent adoption by a spouse tends to be a simple process, with only the most cursory investigation of the adoptive parent. In some situations, same-sex couples must pursue adoptions where a similarly-positioned married couple would not. For instance, when a married woman gives birth to a child, her husband is automatically considered to be a presumptive legal parent, even if he is not the child’s biological parent. This is not true, for example, of a lesbian couple where one partner gives birth.

Single Parent Adoption

Most U.S. states do not prohibit adoptions by single individuals, including GLBT people. Exceptions are Florida, which bans adoptions by “homosexual” individuals and Utah, which prioritizes heterosexual married couples as adoptive and foster parents.²⁴³ While Arkansas does not prohibit gays from adopting, since 1999 its Child Welfare Agency Review Board has banned gays and lesbians from foster parenting. Mississippi bans same-sex couples from adopting.²⁴⁴

Adoptions can be arranged independently, as well as through a state or private agency. Qualifying as an adoptive parent involves passing a rigorous screening process, including home visits as well as interviews. The final stage in the adoption process entails going to court in order for a judge to approve the adoption. In many states, this type of adoption is the only way that a GLBT person can acquire the status of a legal parent for his or her non-biological children. Despite the fact that lesbians and gay men are

Restrictive Adoption and Foster Care Laws in the United States



This map can be downloaded at <http://www.nglftf.org/downloads/adoptionmap.pdf>

technically able to adopt as individuals in many states, the judge can intervene to prevent the placement of a child with a lesbian or gay parent if he or she sees fit. The same applies to bisexual and transgender parents.

Second Parent and Joint Adoptions

Adoptions that allow both parents of a child to have their parental relationship legally recognized are essential to ensuring the rights and security of children of same-sex couple parents. For same-sex couples, joint adoptions and second parent adoptions are the means by which both parents can create this tie. When a child is not biologically related to either parent, a joint adoption allows both parents to simultaneously adopt a child. In such cases, it may also be possible for one person to singly adopt and then for the partner to adopt through a second parent adoption.

A second parent adoption is one in which the legal—biological or adoptive—parent retains his or her parental rights, while consenting to the adoption of the child by his or her partner. Second parent adoptions are similar to step-parent adoptions and are often used to create a legal parental relationship for the partner of the biological parent. For example, a lesbian woman may give birth to a child that both she and her partner intend to raise together as equal parents. Through a second parent adoption her partner becomes one of the child’s legal parents, whereas otherwise she would be seen as a stranger to the child before the law. In jurisdictions where second parent adoptions are not allowed, but joint adoption is, a biological parent would have to terminate his or her parental status in order that both parents may jointly adopt the child. In those places where neither form of adoption is available to unmarried or same-sex couples, then the child can only have a legally recognized relationship to one of his or her parents.

During the 1980s, lower courts in the San Francisco Bay Area began granting same-sex couples the right to adopt children jointly and simultaneously. Since then courts have been increasingly allowing such adoptions. Joint adoption is currently available in the District of Columbia, California, Connecticut, Massachusetts, New Jersey, New York and Vermont, and has been granted at the trial court level in other jurisdictions.²⁴⁵

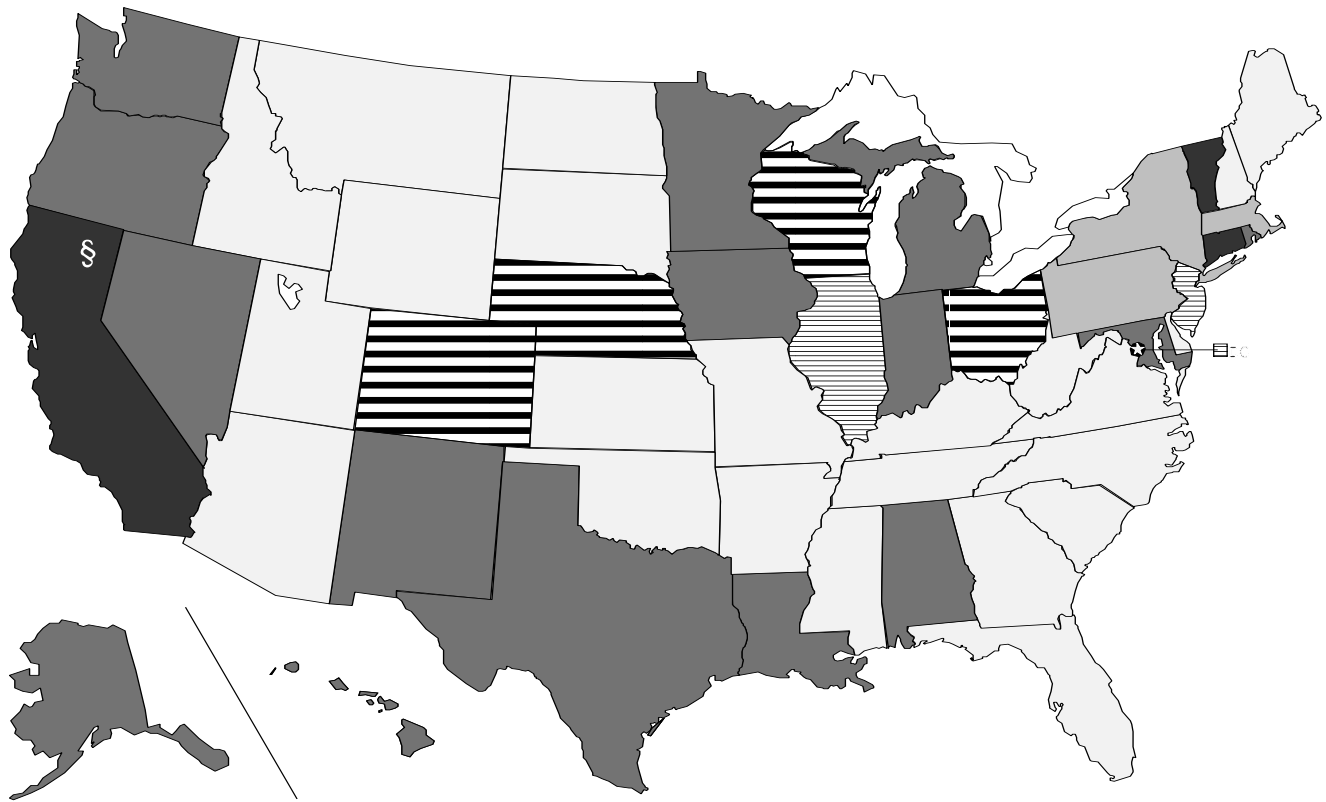
Second parent adoptions have been used since 1985, when Alaska granted what was probably the first gay or lesbian second parent adoption. Trial courts in Oregon, Washington state, and California soon followed with pro-gay rulings, and since the mid-1980s trial courts in 16 other states have approved second parent adoptions involving a same-sex partner. These states include Alabama, Alaska, California, Hawaii, Indiana, Iowa, Louisiana, Maryland, Minnesota, Nevada, New Mexico, Oregon, Rhode Island, Texas, and Washington.²⁴⁶ State supreme courts or appellate courts have approved second parent adoptions in Vermont (1993), Massachusetts (1993), New York (1995), District of Columbia (1995), New Jersey (1995), and Illinois (1995).²⁴⁷ In 2000, the Connecticut legislature created a mechanism for joint and second parent adoptions.²⁴⁸ In August 2002, the Pennsylvania Supreme Court overturned a ban on second parent adoption, calling it “absurd.”²⁴⁹ Courts at some level in nearly two dozen states have approved second parent adoptions, but the vast majority of courts in the United States have not.

In jurisdictions where second parent adoptions are not allowed, but joint adoption is, a biological parent would have to terminate his or her parental status in order that both parents may jointly adopt the child.

Generally, second parent adoptions are only possible so long as another party, such as a biological father, does not already have legal parental rights. Third parent adoption—in which both biological parents as well as a same-sex partner of one of the biological partners shared custody—has been rarely and selectively granted in several cases in Alaska and the San Francisco Bay Area.²⁵⁰

These adoption mechanisms, especially second parent adoption, are critically important to ensure that children have a legally protected relationship with both their par-

Second-Parent and Stepparent Adoption Laws in the United States



- The state adoption law explicitly permits second-parent or stepparent adoption by same-sex couples (3 states): CA (registered domestic partners only), CT, VT
- The state Supreme Court has ruled the state adoption law permits second-parent or stepparent adoptions by same-sex couples (3 states): MA, NY, PA
- ▨ An intermediate appellate (higher level) court has ruled the state adoption law permits second-parent or stepparent adoptions by same-sex couples (2 states and DC): IL, NJ
- A lower court(s) has ruled the state adoption law permits second-parent or stepparent adoptions by same-sex couple (15 states): AL, AK, HI, IN, IA, LA, MD, MI, MN, NV, NM, OR, RI, TX, WA
- ▨ Appellate (higher level) court has ruled the state adoption law does not allow for second-parent or stepparent adoption by same-sex couples (4 states): CO, NE, OH, WI
- § Case is pending in the state Supreme Court as to whether the state's adoption law applies to second parent or stepparent adoptions by same-sex couples. The court will be ruling on adoptions that have not occurred under the state's domestic partner law.

This map can be downloaded at <http://www.nglft.org/downloads/secondparentadoptionmap.pdf>

For more information see www.lambdalegal.org/cgi-bin/iowa/documents/record?record=399.

ents. For the child, not having a legal relationship with one parent means that the child is not entitled to a myriad of economic and health benefits through that parent. These include the right to survivor benefits, such as Social Security survivor benefits, the right to inheritance, and the right to sue for wrongful death if that parent dies. In addition, if the legal parent dies, a child may be removed from the custody of their other parent, unless that parent has been designated the child's guardian in a will. Children living in lesbian and gay families, or bisexual and transgender families with same-sex parents, are often unable to access health benefits through a parent who is not legally recognized.

JOINT ADOPTION BY NORTH DAKOTA DADS

A Profile of Todd Berg, Chad Long and Jensen

Todd Berg and Chad Long, who are believed to be the first men to adopt in North Dakota as a couple, describe their experience in the below piece adapted from an article printed in *Rainbow Families Newsletter*. Chad is an elementary school teacher and recently finished his master's degree in education. Todd advocates for and oversees staff who work with people with developmental disabilities. Rainbow Families is a Minneapolis-based organization working to organize, strengthen and celebrate families whose parents are lesbian, gay, bisexual or transgender. Their website is at www.rainbowfamilies.org.

When the two of us met in September 1996, we knew it was meant to be: we both had four letters in our first names and last names, both our first names ended with d and our last names with g. We were wearing the same belts. And we both wanted to be parents. God stepped in, creating a committed relationship, and five years later we were ready for parenthood (or at least as ready as one can be). But was North Dakota ready for us to be out... and be parents together?

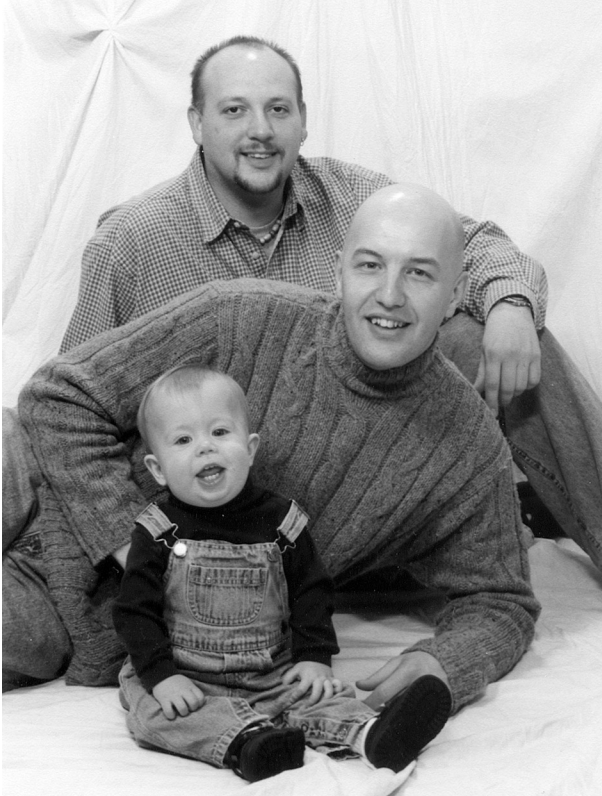
For two years we researched agen-

cies across the country and struggled to find a North Dakota agency that would do our home study. State law dictates that an in-state agency must conduct the home study regardless from where someone is adopting. We found a local agency willing to do the home study and support the Chicago-based agency we chose to use for our adoption.

Our paperwork was sent to the two agencies in late January 2001. The home study process quickly began, with our local agency willing to facilitate an out-of-state adoption. We all assumed this would be our means of adopting, because the North Dakota Department of Human Services had some personnel who would make adoption of anyone in state custody impossible for a same-sex couple, and our social worker thought the wait for a North Dakota birth family to choose a same-sex couple could be lengthy. So we proceeded with the home study that would be sent to the agency in Chicago.

Of course, the standard questionnaires, physicals, parenting surveys, and behavior inventories had to be done. At the conclusion of our home study visit on March 15, 2001, our social

worker shared some incredible news with us. She wanted to show our portfolio to a North Dakota birth mother who was interested in choosing a same-sex family to adopt her two-week-old son, who was in temporary foster care



Todd Berg, Chad Long, and Jensen

(born March 1). On April 6, 2001, we received a phone call from our local agency that the birth mother had made a decision. She wanted us to adopt her son! This wouldn't be an out-of-state adoption as both we and our local agency had expected. We were about to adopt a North Dakota infant! We soon

learned that our son would be coming home on April 20, so we had plenty to do to get ready. After buying all the baby necessities and getting the nursery prepared, we were told by our local agency just a couple of days before his expected arrival that they would no longer be supporting the adoption and that they would have to back out. Apparently, the foster parents had learned of the birth mother's wishes to place her child in a two-dad family and threatened the local agency with media attention. That, linked with pressures from someone in a position of authority with the North Dakota Department of

Human Services, caused the agency to reconsider placing this child in our home. They deemed our home no longer in the best interests of the child. Our hopes were quickly dashed and our spirits crushed.

But we made a decision that evening: we were going to fight for our son. Several phone calls later we located a different agency (locally) that was willing to take over, although a few changes were necessary. The new agency had to update our home study, the adoption had to take place as an identified adoption with full disclosure of all parties (the North Dakota Department of Human Services has no authority in identified adoptions), and the child needed to be removed from the foster family as soon as possible and be placed with us pending termination of parental rights.

Our persistence and determination paid off! On May 3, we had a wonderful visit with the birth mother and birth grandmother and we met our son and brought him home. The finalization hearing on December 14, 2001, less than one full year after sending in our paperwork, made Jensen a legal member of our two-dad family. We still enjoy letters, share photos, and have occasional visits with Jensen's birth family. With one of us able to work from home two to three days each week (Todd) and the other with summers off (Chad), we are able to experience the joys that come with a child firsthand—morning baths, walks with the wagon, swinging in the park, trips to the zoo, and reading stories aloud, to name a few. Just as in the two of us meeting, God once again stepped in, changing our committed relationship of two into a family of three.

If a child becomes sick, their non-legal parent may be unable to authorize medical treatment for them and may even be prevented from visiting them in the hospital. Finally, if the parents' relationship dissolves, the child could be denied access to or economic support from one parent, regardless of the role that parent has played in the child's life. Once the adoption is completed, however, the second parent is a full legal parent, with all of the same rights and responsibilities.

Anti-Gay Adoption Laws

Despite all the evidence indicating that GLBT people make good parents and that their children thrive, some states have exclusionary adoption policies. In 1977, Florida enacted a law to prohibit gays and lesbians from adopting. Its statute reads, "No person eligible to adopt under this statute may adopt if that person is a homosexual."²⁵¹ This ban was upheld by a federal court in 2001.²⁵² A federal court challenge is ongoing.

New Hampshire passed a ban on gay adoption and foster parenting in 1987, a year after Massachusetts's Department of Social Services removed children from the home of a gay foster couple simply because they were gay, and then instituted a policy banning gays and lesbians from foster parenting. Massachusetts abandoned its ban on gay foster parents in 1990, under legal pressure and following years of protests by activists. New Hampshire repealed its anti-gay adoption and foster parenting statute in 1999. In March 2000, Utah passed a law giving married heterosexual couples priority for placement of adoptive and foster children in the home.²⁵³ Two months later, Mississippi passed legislation banning same-sex couples from adopting.²⁵⁴ Other states that have recently introduced exclusionary adoption and/or foster care bills include Arkansas, Indiana, Oklahoma and South Carolina. Fortunately none of these have passed.

Adoption by Bisexual and Transgender People

Though their situations are different, bisexual and transgender people might find themselves affected by anti-gay adoption laws. Bisexuals in same-sex relationships will face the same prejudice and lack of recognition as gays and lesbians. However, those who are single or in opposite-sex relationships might find their situations determined by whether the court has knowledge of past same-sex relationships and how those relationships are framed.

There are no laws explicitly denying transgender people the right to adopt. However, transgender people may face discrimination by an adoption agency. If a transgender person is legally the same sex as his or her partner, then he or she could face the same obstacles that gay and lesbian individuals and same-sex couples do. This also applies to second parent or stepparent adoption, where the state's determination of whether the relationship is same-sex or opposite-sex will establish what laws apply. Furthermore, an unfriendly judge might use the "best interest of the child" standard that is a staple of family law as a way to deny both bisexual and transgender people access to adoption.

Adoption and Race

The issue of adoption is closely interconnected with the issue of race. African American children comprise 42 percent of the children in foster care, though they only represent 17 percent of all children in the United States. They are also less like-

ly to be returned home or to be adopted, and so often stay in foster care until reaching adulthood.²⁵⁵ Latino children in foster care are similarly less likely than other children to be adopted. White non-Hispanic and Asian Pacific Islander children are underrepresented in foster care and are more likely to be adopted.²⁵⁶ Roughly 13 percent of children adopted by two parents in the U.S. are Asian Pacific Islander, though they make up only 4 percent of all the children in the United States.²⁵⁷ Some of these children are adopted from overseas.

African Americans tend to adopt at a higher rate than whites—they are as much as 4.5 times more likely to adopt when controlling for age of parents, family income and family structure.²⁵⁸ This is in part a result of a strong tradition of extended families and informal adoptions within the black community.²⁵⁹ Many GLBT blacks are also adoptive parents. As already mentioned, NGLTF's Black Pride Survey found that 2.3 percent of the 2,700 black gay respondents surveyed (2.5 percent of women and 2.1 percent of men) were adoptive and/or foster parents.²⁶⁰ In contrast, a 1987 National Health Interview Survey found that only 1.5 percent of never-married black women and 1.8 percent of never-married white women adopted children.²⁶¹ Of the states with anti-gay adoption and foster care policies—Florida, Mississippi, Utah and Arkansas—all but Utah have proportions of African Americans somewhat higher than the national average. Mississippi has one of the highest proportions of black residents in the U.S. Black children's chance of being adopted is not helped when the already limited pool of potential parents is limited further by the exclusion of gay and lesbian people or same-sex couples.

A related issue is the contentious debate around transracial adoption, most commonly the adoption of children of color by white parents. Though transracial adoptions decreased dramatically in 1972, after the National Association of Black Social Workers put out a statement opposing it, in 1987, 8 percent of all adoptions by U.S. parents were transracial.²⁶² In 1998, 15 percent of adoptions happening in the context of foster care were transracial or transcultural.²⁶³ Two laws, the 1994 Multiethnic Placement Act and the 1996 Interethnic Adoption Provisions, outlawed delaying placement of a child with adoptive parents solely on the basis of race or national origin.

Nevertheless this issue continues to be debated, with some raising concerns about the expenditure of state resources on adoption rather than attempting to preserve children's birth families.²⁶⁴ Some say that white parents might be unable to pass along the heritage of the child's ethnocultural community, or to understand and effectively address the racism the child will experience. Still others are concerned that, given the intense residential segregation in the U.S., children of color adopted by white parents may grow up in a nearly all-white environment.

Those favoring transracial adoption point to the fact that the number of children available for adoption greatly surpasses the number of parents seeking to adopt, and that forcing children to wait for a racially-matched parent will keep children in agencies when they could be in homes. Attempting to address the concerns of those opposed to transracial adoption, some have advocated outreach to communities of color to

African American children comprise 42 percent of the children in foster care, though they only represent 17 percent of all children in the United States. They are also less likely to be returned home or to be adopted, and so often stay in foster care until reaching adulthood.

increase the pool of potential adoptive parents of color, while allowing transracial adoption by parents who are sensitive to the racial and cultural issues involved. Many gay and lesbian parents have dealt directly with these issues by adopting children of a different race.²⁶⁵ As the number of interracial and same-sex couple-headed families increases, we need to grapple thoughtfully with the complexity of racism and homophobia both within and outside of these intersecting communities.

Public Opinion: A Plurality Now Supports Adoptions by Gay Men and Lesbians

Over the past decade the general public's support of adoption by gay men and lesbians has grown steadily. A 2001 survey found roughly equal numbers supporting and opposing adoptions by gay men and lesbians, while a 2002 survey found a plurality supporting gay adoption—in other words, more respondents supported gay adoption than opposed it, although these supporters did not constitute a majority. This shows a growing trend toward acceptance when compared to 1994, when only 29 percent of the public supported gay and lesbian adoptions and 65 percent opposed the practice.^{265.5}

The 2001 Henry J. Kaiser Foundation poll found 46 percent of the general public supported adoptions by lesbians and gay men, and 47 percent opposed.²⁶⁶ Soon after talk show host Rosie O'Donnell revealed to a television-viewing audience that she was a lesbian adoptive parent, a March 2002 ABC News poll found that for the first time in 10 years of polling on gay and lesbian adoption, supporters of same-sex couple adoptions outnumbered opponents, 47 to 42 percent.²⁶⁷ The level of support increased dramatically from 1994 when it stood at only 28 percent, and from 1998 when it was at 35 percent. There were significant differences across demographic variables in ABC News's random national sample of 1,031 adults. Most women supported gay adoption, while most men opposed it. Most young people (18-34) supported adoption by "gay couples," while most elders (65+) opposed it. A majority of easterners and midwesterners were supportive, while most southerners were opposed; a plurality of westerners was supportive. Majorities of Democrats and Independents supported gay adoption, while most Republicans opposed it.

A FAMILY STORY

A Profile of Akilah Monifa and Ruth Bolden

When Akilah Monifa and Ruth Bolden decided they wanted to have a child, they didn't realize the full extent of hurdles they would face. Living in California, a state with relatively positive GLBT-parenting laws, and specifically in the Bay Area, which is known to have a selection of services for gay and lesbian families, they thought they were well-situated. Initially, they decided to use donor insemination and began researching fertility clinics to

find one that would meet their needs. Calling fertility clinics that primarily served lesbians, they soon discovered that most did not carry sperm from donors of color. The apologetic tone of the responses was no comfort to the two African American women who were frustrated that the clinics were clearly not seeking to serve them.

Akilah and Ruth began calling out-of-state clinics throughout the country. Common responses to their explana-

tion that they were two women seeking to have a child were, “We serve families,” “This is a Christian-based organization,” and “We don’t serve your kind.” They also continued to experience difficulty in finding places that had a range of sperm donors of color. When they asked if a sperm bank



L–R: Isabella Bolden Monifa and her mothers Akila Monifa and Ruth Bolden.

might have sperm from a Jewish person of color (Ruth is Jewish), they were asked, “Why would you want that?!” Akilah describes fertility clinics as, “akin to country clubs,” with various mechanisms for selecting their clientele. After much effort, they eventually found a place that met their needs. Unfortunately, Ruth was unable to carry her pregnancies to full term. Akilah and Ruth then decided to pursue adoption.

The couple enrolled in an adoption class and joined a support group. They decided they would like an open adoption where the family maintains contact with the birth mother and the child has the option of having a rela-

tionship with her. They also wanted a child of African descent. Again they began the process of researching agencies and again they were turned away with statements like, “We have never worked with gays or lesbians, so we are probably not the best agency for you.” Some agencies said that Ruth, who is biracial and light-skinned, should pass as white because it would increase the couple’s likelihood of being chosen. Eventually they found an agency that had both worked with African American couples and with gay and lesbian couples, but it soon became clear that even this was not enough. The agency had not previously worked with African American gay or lesbian couples, which Akilah says “was probably the reason they were not able to make a match.” She believes this was reflected in the way they talked to African American birth mothers and whether they would regularly ask if they would be willing to have a gay or lesbian adoptive couple.

Fortunately, the next agency they worked with in New York took a different approach. When an African American birth mother said she would like her child to be raised by a single woman, it took only one question for the birth mother to say that she would consider a lesbian couple. She looked over and approved Akilah and Ruth’s application. In January 2001, four years after deciding they would like to raise a child, Akilah and Ruth became proud parents of a baby girl, Isabella Bolden Monifa.

Reflecting on the process, Akilah notes the multiple subtle ways in which the assumption of parents’ heterosexuality pervades society. One recurrent problem is that forms ask parents or prospective parents to fill out “mother” and “father.” “It is so easy to change forms to

say ‘parent’ and ‘parent,’ and this would be inclusive of anyone who is acting as a parent, like a grandparent,” Akilah says. They have experienced this problem with fertility clinics, adoption agencies, social service agencies, hospitals, and even California birth certificates. This is despite the fact that California is one of a few states that allows simultaneous joint adoption by gay and lesbian parents. She also marvels at how the fact that Isabella has two mothers seems to make curious people feel free to ask completely inappropriate questions, even in front of Isabella. “Which one of you is the mother?” (“Both of us.”) is often followed by, “Who is the real

mother?” (“Both of us.”) and then even, “Who gave birth to her?” or, “Did you adopt her?”

Akilah knows her daughter will face challenges because of her race and because she has two mothers. But the fact society has changed its attitude toward those who are adopted and those who are gay—both of which were seen as shameful secrets—makes Akilah feel more optimistic about the future. In the meantime, she and Ruth strive to do their best: they love Isabella, talk honestly to her, tell Isabella her adoption story, and teach her that it’s not a big deal to say, “I have two mommies.”

FOSTER CARE

Foster care systems in the United States are overburdened with more children than they can handle and not enough qualified adults coming forward to help. While there are 117,000 children available for adoption in the foster care system, only 46,000 are adopted from public child welfare agencies annually. In a six-month period, the number of kids entering foster care was three times the number of kids adopted out of foster care during that entire year.²⁶⁸ Additionally, GLBT youth are overrepresented in the foster care system and have special needs that the foster care system, in general, is unprepared to meet (see “Youth” chapter below for more on this issue).

On the other side, there is a huge shortage of foster parents in the United States. Although members of the GLBT community make nurturing and committed parents, lesbians and gay men are prevented from becoming foster parents in some states. Arkansas, for instance, specifically prohibits foster parenting by lesbians and gay men. As stated above, Utah prioritizes heterosexual married couples in its placement of foster children, which stigmatizes potential gay foster parents and can in effect prevent GLBT people from foster parenting.²⁶⁹ The Arkansas ban is currently being challenged by four individuals, including a gay couple and a heterosexual man who has a gay son.²⁷⁰

One of the most problematic forms of discrimination occurs when lesbians and gay men are allowed to become foster parents, but prohibited from adopting these same children. In a high profile Florida case, a profoundly regressive adoption ban threatens to remove a foster child from the only family he has ever known—one with two gay dads—for just this reason.

In some states, lesbians and gay men are allowed to become foster parents, but prohibited from adopting these same children. In Florida, a profoundly regressive adoption ban threatens to remove a foster child from the only family he has ever known—one with two gay dads—for just this reason.

POLICY RECOMMENDATIONS

- *End all forms of discrimination against GLBT people in custody, visitation, foster care and adoption laws.*
- *Amend adoption statutes to provide a process by which unmarried partners may adopt children in the same manner as step-parents.*
- *Amend adoption laws to allow unmarried partners the option of jointly adopting children.*
- *Amend adoption laws to allow more than two people to be the legal parents of a child. Amend state laws to create a legal presumption that a child born in the context of a same-sex relationship is the legal child of both partners.*
- *Enact laws allowing a woman who is about to give birth to obtain a pre-adoption court order naming her same-sex partner as the second parent in the event that the biological mother dies before the second parent adoption is completed.*

ACCESSING REPRODUCTIVE TECHNOLOGY

Donor Insemination

Donor insemination is a method that lesbians have used increasingly since the 1980s to conceive children. While some states have laws specifying that a sperm donor is not a legal father, most states have not addressed this issue directly. As a result, lesbians and bisexual women sometimes confront issues related to the paternity of the child born out of a donor insemination agreement. If they have acquired the sperm of an anonymous donor through a sperm bank, they can avoid challenges to their parental relationship and the integrity of their same-sex parent family. If, on the other hand, they have used the sperm of a known donor, they then run the risk of the man concerned ultimately demanding a parental role in their family. This can occur even when a pre-existing arrangement mandates the contrary.

Although reproductive rights are usually understood to include the right to terminate an early-term or health-threatening pregnancy, for lesbians they also involve the right to access the technology that enables non-coital pregnancy. Many, perhaps most, sperm banks, fertility clinics, and doctors still balk at providing services to lesbians and gay men seeking to create a life.²⁷¹ No U.S. state expressly denies access to fertility clinics to lesbians, gay men, and/or unmarried couples, though many individual clinics do. However, most big cities have at least one clinic which serves these prospective parents. But the cost of such services is out of reach of many lesbian individuals and couples. While 14 states mandate medical insurance coverage of reproductive assistance, such coverage is usually limited to cases of infertility, and lesbian couples are often not seen as qualifying because such assistance is not viewed as a medical necessity in the same way as is an infertile heterosexual couple's need for assistance.²⁷² Consequently, donor insemination at a medical facility is often not an option available to low-income lesbians.

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Those supporting equal treatment for lesbian families should keep an eye on the Marriage Movement and the Fatherhood Movement, conservative organizations promoting an anti-gay family agenda. Founded in right-wing think tanks during the 1990s, several Marriage and Fatherhood Movement leaders now hold key policymaking positions within the Bush Administration. David Blankenhorn, cofounder of the Fatherhood Movement along with Bush appointees Wade Horn and Don Eberly, has advocated laws restricting access to fertility clinics to married heterosexual couples only. In his 1995 book *Fatherless America: Confronting Our Most Urgent Social Problem*, Blankenhorn reserved particular vitriol for lesbian couples who choose to have a child with the help of a male friend or an anonymous sperm donor. In a chapter of his book *Fatherless America* titled “The Sperm Father,” Blankenhorn wrote, “The Sperm Father...is also a convenience father, the ideal solution for women who want to create manless families...[He] is also a fantasy father...for women, the fantasy of the little girl left alone to play with her dolls, no boys allowed.”²⁷³ Culturally, “the rise of the Sperm Father constitutes nothing less than father killing...represents the final solution.”²⁷⁴

Reiterating his claim that “every child deserves a father and that unwed childbearing is wrong,” Blankenhorn called for cutting off the use of fertility clinics as an option for prospective lesbian mothers and other unmarried women. New laws should prohibit sperm banks and others from selling sperm to unmarried women, Blankenhorn argued, and limit the use of artificial insemination to cases of married couples experiencing fertility problems. “In a good society, people do not traffic commercially in the production of radically fatherless children,” Blankenhorn wrote.²⁷⁵

Surrogacy

While not nearly as widespread as the use of donor insemination by lesbians, gay men at times utilize surrogacy arrangements in order to create biological children. There are indications that parenting through surrogacy might be an increasingly frequent phenomenon. For example, in Los Angeles a corporation called Growing Generations was created to provide surrogacy services to the gay community. In the surrogacy process, the woman carrying the child may be a genetic parent to the child, or a “gestational surrogate” carrying the fertilized egg of another woman.²⁷⁶ The man involved often provides his own sperm, though not always. Like donor insemination agreements, surrogacy agreements can be formal or informal ones.²⁷⁷ Surrogacy is a matter of controversy, with many states discouraging or limiting the practice.

Twenty-three states have passed laws dealing with surrogacy agreements.²⁷⁸ Arizona and the District of Columbia have statutes that prohibit surrogacy. Michigan, New York, Washington, Florida, Nevada, New Hampshire, Virginia and West Virginia technically prohibit payments to surrogates, but the laws in these states have many loopholes. Florida, Virginia and New Hampshire presume that the coupled individuals who contract with the surrogate are the legal parents, while North Dakota and Utah attribute legal parentage to the surrogate and her husband.²⁷⁹ For gay couples, the issue of legal parentage is a particularly important one. To preserve the integrity of their family they need to be certain that the surrogate will not ultimately sue for custody. Unfortunately, only the biological father is usually considered the legal parent.

Policy Recommendations

- *Prohibit discrimination based on sexual orientation or marital status in public accommodations, including fertility clinics and surrogacy service providers.*
- *Mandate equal treatment of lesbian couples and individuals seeking medical insurance coverage of reproductive assistance.*

CHILDREN OF GLBT PARENTS

The kids [of GLBT parents] are really vulnerable because they have already got the message that their parents and families are not protected like other families.... The negative experiences that we have growing up in these families have nothing to do with who our parents are and everything to do with society's attitudes.... We would all be made safer by a federal law to prevent discrimination based on sexual orientation and perceived orientation and gender identity and perceived gender identity.

—Abigail Garner, child of a gay parent and founder of Families Like Mine, <http://www.familieslikemine.com/>.

Children in GLBT families are negatively affected by all the policies that discriminate against their parents. For instance, a hospitalized child in a state without second parent adoption might be prevented from seeing her non-biological father by the hospital staff. If one of her parents loses his job because he is gay, the child could lose her health benefits and will suffer as a result of her family's decreased income. If her non-biological father dies without a will, she may not be entitled to any of his estate. Reforms to support the well-being of GLBT families are also necessary for the millions of children being raised by GLBT parents.

Estimates of the number of children of lesbian and gay parents range widely, from at least 1 million to as many as 14 million. One fifth of the lesbian or bi female couple households identified on the 1990 Census had a child under 18 living in the household, as did one in 20 gay or bi male couple households.²⁸⁰ Some 40 percent of black lesbians/bi women, and 15 percent of black gay/bi men and black transgender people, reported having children in the Black Pride Survey, which was conducted by NGLTF, five black researchers and nine Black Pride organizations in summer 2000.

The children of GLBT parents have needs that are rarely considered by policymakers. They can experience many of the same problems as GLBT youth. For instance, the pervasiveness of homophobia in the schools from elementary grades through high school means that these children are often vulnerable to teasing and harassment at school (see "GLBT Youth" section for more information on these topics.) The needs of these children are similarly not always well served by support groups for GLBT students. Safe Schools Initiatives that target GLBT and questioning youth have achieved significant advances in improving school climate for all youth and providing specific support for GLBT youth. However, they are generally not geared toward children of gay parents who have their own unique concerns.

Unlike GLBT students, who are often in the coming out process and grappling with issues connected to their own sexual orientation, many children of GLBT parents have grown up "culturally queer," regularly confronting homophobia in all its manifestations and anxious to protect their families from further discrimination.

Unlike GLBT students, who are often in the coming out process and grappling with issues connected to their own sexual orientation, many children of GLBT parents have grown up “culturally queer,” regularly confronting homophobia in all its manifestations and anxious to protect their families from further discrimination. There is a huge experiential gap between these individuals and those GLBT youth who are just coming out themselves. On the other hand, children of newly-out GLBT parents need a space to process the changes in their family and address their own internalized homophobia.

The unique needs of children of GLBT parents are being addressed by organizations such as Children of Lesbians and Gays Everywhere (COLAGE), a national organization with chapters in at least 19 states. Through its local chapters, COLAGE provides support to youth in different communities in the form of developing after-school programming, producing a newsletter, providing social support, and giving them access to other youth from GLBT families, in part through a pen pal program.

Policy Recommendations

- *Fund programs reaching out to children of GLBT parents, such as COLAGE, in the context of public health promotion.*
- *Support Safe Schools Initiatives and encourage them to include children of GLBT parents as a population distinct from GLBT youth.*

GROWING UP WITH A LESBIAN MOM

A Profile of Tina Fakhrid-Deen

Riding a city bus one day when Tina Fakhrid-Deen was 10, her mother turned to her and said, “You love Michael Jackson?” Tina said yes. Her mother followed up, “What if I told you he were gay?” Tina did not know what gay meant but knew it was a bad thing. She responded, “Well, I’d be mad at you because it’s not true and it’s nasty.” Tina’s mother could see this was not going in the right direction, “What if I told you I were gay?” Tina turned her head toward the window and started to cry. They did not talk about it much that weekend and when Tina’s mother brought it up Tina would tune her out.

Tina was living with her father at

that point. She was born to married parents in Chicago. They divorced when Tina was two. She lived with her mother until she was five. After living with her grandmother and subsequently her father, Tina moved back in with her mother at the age of 12. It was some time after Tina’s mother came out to her that Tina began to understand what “gay” meant. Though her mother had girlfriends at various points, she was never publicly affectionate with them. But she also did not try to hide the fact that she is gay, decorating the house and her car with rainbow flags and taking Tina to GLBT Pride events. She was a construction worker and was happy to go without make-up or frills.

Tina, on the other hand, felt that she had to hide her mother's sexual orientation. Classmates who saw Tina's mother in her construction hat would say, "Your mother is a dyke," and Tina would deny it vehemently to all but her best friend. Like many teenagers,



Tina Fakhrid-Deen

Tina tried to separate herself from her mother and create her own identity. She would not bring friends home, would not drive her mother's rainbow-stickered car, and stopped going to Pride events. While she disagreed with the negative portrayals of her mother by her grandmother and father, she also did not want to be associated with the GLBT community.

Going to college changed that for Tina. "I grew out of it," she says, in part because of the distance from home and her increased comfort with her own sexuality. A transformative moment for her was when she was walking down the street with a boyfriend and they saw two men holding hands. He commented that he would like to put them in a hot air balloon and blow it up. Tina became so angry she back-handed him and started yelling, "Are you going to put my mom in that balloon?! Are you going to kill her too?! My mom is gay!" She says, "That was a liberating experience." Ever since, she has been very vocal about responding to anti-GLBT comments or negative statements like, "That's so gay."

In fact, today as an adult Tina is working to provide support to other children of GLBT parents as the head of the Chicago chapter of Children of Lesbians and Gays Everywhere (COLAGE). She says that it is important for GLBT parents to realize that their children need support. "Gay families have the same issues as heterosexual families, but some are different too." Rather than merely presenting a "squeaky-clean image" and "wanting everything to be okay," all parents need to communicate with their children. Mentioning that her COLAGE group is mostly white middle class youth, she says that being African American, she may not have had the same support white children do and that there needs to be more work in both the African American and white GLBT communities to reach out to others like her.

When asked what would have helped her most while growing up, she says, "someone I could have talked to who was not judgmental." She believes schools need to do much more to provide a safe and supportive environment for their students. She adds that even though she had an openly gay teacher that she loved, it was not enough. The atmosphere of the school did not make her comfortable to approach him about the subject. "Teachers and administrators need to be more vocal about opposing abuse of LGBT people," Tina says. "They need to educate themselves about appropriate responses." She adds that "normalizing different families," in part by adding books that discuss GLBT issues to the curriculum, is especially important. The anti-GLBT atmosphere in schools "limits the growth process of all students."

TALKING POINTS ON GAY AND LESBIAN PARENTING

- Q.** Doesn't lesbian and gay parenting harm children?
- A.** No, there is absolutely no empirical evidence for this claim whatsoever. Social science research indicates that lesbian and gay individuals and couples can parent as well as their heterosexual counterparts. Their children are as happy, healthy and emotionally well-adjusted as other children.²⁸¹ Psychologist Charlotte Patterson reports that “not a single study has found children of gay or lesbian parents to be disadvantaged in any significant respect relative to children of heterosexual parents.” Children of gay and lesbian parents have good relationships with their peers, although sometimes they are subject to anti-gay harassment.²⁸² They are less inclined to hold stereotypical understandings of gender roles and more likely to be tolerant of differences in others.
- Q.** But what about adoption—should gays and lesbians be allowed to adopt?
- A.** With half a million children in the U.S. foster care system, many of whom bounce from foster home to foster home until they turn 18, it is not in the interest of child welfare to restrict the pool of potential parents on the basis of prejudice against their sexual orientation. The Child Welfare League of America, the nation's premier child advocacy organization, says that adoption “[a]pplicants should be assessed on the basis of their abilities to successfully parent a child needing family membership and not on their . . . sexual orientation.”²⁸³ The American Academy of Child and Adolescent Psychiatry and the North American Council on Adoptable Children also support evaluating gay and lesbian applicants for adoption on the same basis as heterosexual applicants.²⁸⁴
- Q.** Wouldn't it be best if children were raised by a married man and woman?
- A.** Studies show that the lesbians and gay men make just as good parents as their heterosexual counterparts, and that the presence of a married father and mother is not a prerequisite to having a good childhood. Many single parents and same-sex couples provide loving and nurturing homes to their children. Also, adoptive children usually do not have the choice of a married mother and father. They have no parents. Given the huge waiting list for adoptive homes among children in foster care, restricting adoptive parents to heterosexual married couples effectively cheats children out of the chance to grow up in a loving home. This is especially true for older children, as well as children with special needs. Lesbian and gay families are well equipped to provide these children with the stability and nurturing that they need.
- Q.** What about pedophilia? Isn't there a significant association between homosexuality and child molestation?
- A.** The link between pedophilia and homosexuality is a completely unfounded one. A 1998 article in the *Journal of the American Medical Association* notes that 90 percent of pedophiles are men and that 95 percent of these individuals are heterosexual.²⁸⁵ Michael Stevenson Ph.D., a psychologist at Ball State University, explains this statistic by noting that “gay men desire consensual sexual relations with other adult men. Pedophiles are usually adult men who are sexually attracted to pre-pubescent children. They are rarely sexually attracted to other adults.”²⁸⁶ Stevenson observes that cases of pedophilia by adult lesbians are “almost non-existent.”²⁸⁷ Preventing

gay men and lesbians from becoming adoptive parents or foster parents does not help to protect children from sexual abuse but simply perpetuates anti-gay prejudice.²⁸⁸

CHILD SEXUAL ABUSE AND HOMOSEXUALITY

Periodically, as with the recent Catholic priest sex scandals, homosexuality has been conflated with pedophilia, the sexual attraction to children. In 1977 Anita Bryant named her anti-gay group “Save Our Children,” and warned that “a particularly deviant-minded [gay] teacher could sexually molest our children.” More recently, anti-gay activists have warned that efforts to make schools safe for GLBT youth are nothing more than attempts to “recruit” youth into “the homosexual lifestyle.” GLBT people are often constructed as a threat to youth, and some argue that gay people should not be allowed to teach, parent, or serve as Boy Scout troop leaders. Conservatives have suggested that sexual orientation nondiscrimination laws and increased tolerance of gay people lead to an increase in pedophilic acts, i.e. sexual molestation of children. Most recently, some in the Catholic Church hierarchy have blamed homosexuality for the widespread pattern of sexual abuse of children, teens and young seminarians by priests.

The Problem is Sexual Abuse, Not Sexual Orientation

When a man abuses a young girl, the problem is not heterosexuality. Few would characterize such abuse as a heterosexual act similar to consensual sex between an adult man and woman. Similarly, when a man sexually abuses a boy or underage teen, the problem is not homosexuality. The problem is child abuse.

Similarly, if a male boss sexually harasses a female employee, again, the problem is not heterosexuality, but sexual harassment. When men harass or abuse other men who are legally above the age of consent, as is the case in some instances of harassment of seminarians by priests, the problem is sexual harassment and sexual abuse—not homosexuality.

Q. Are homosexuals more likely to sexually abuse children?

A. No. In fact, gays and lesbians may be less likely than heterosexuals to sexually abuse children. Two studies which examined the sexual orientation of child molesters found that less than 1 percent in one study and zero percent in the other were lesbian or gay.

About four in five cases of child sexual abuse reported to child protection authorities involve a girl who is abused. But because sexual abuse of boys is less likely to be reported, it is estimated that one quarter to one third of all sexually abused children are boys, while two thirds to three quarters are girls.²⁸⁹ Because 90 percent of child molesters are men,²⁹⁰ some have argued that “homosexual” child abuse is widespread and that homosexuals abuse children at a rate higher than their proportion of the population. Such claims are based on the false belief that men who sexually abuse boys are homosexual. In fact, the overwhelming majority of men who sexually abuse children live their lives as heterosexual men.

Very little empirical data exist on child sexual abuse and sexual orientation. Psychologist Michael Stevenson reviewed the existing social science literature on

the relationship between sexuality and child sexual abuse and found that “a gay man is no more likely than a straight man to perpetrate sexual activity with children.”²⁹¹ Further, “cases of perpetration of sexual behavior with a pre-pubescent child by an adult lesbian are virtually nonexistent.”²⁹²

In a review of 352 medical records of children evaluated for sexual abuse during a 12-month period at a Denver children’s hospital, Dr. Carole Jenny found that less than 1 percent of the abused children in her study were abused by a gay man or a lesbian. Of 269 adult perpetrators of child abuse identified among the 352 cases of abuse, only two (or 0.07 percent) were gay or lesbian. Jenny noted that the vast majority of the children in the sample, or 82 percent, “were suspected of being abused by a man or a woman who was, or had been, in a heterosexual relationship with a relative of the child.” Jenny concluded that in this sample, “a child’s risk of being molested by his or her relative’s heterosexual partner is over 100 times greater than by someone who might be identifiable as being homosexual, lesbian, or bisexual.”²⁹³ In an earlier study of convicted male child molesters in Massachusetts, none of the 175 men were found to have an exclusively homosexual adult sexual orientation or to be primarily attracted to other adult men.²⁹⁴

CONCLUSION

At least one million GLBT parents, and probably many more, are raising millions of children in the U.S. Although precise figures are not available due to the dearth of research on GLBT people, among people living in same-sex couples responding to the 1990 Census one in five women and one in 20 men had children under 18 living with them in the home; more still had adult children or children living with a former heterosexual partner or spouse. Population-based studies and Census analysis indicate parenting rates may be higher among black, Hispanic and Native American lesbians and gay men. Several states discriminate against gay and lesbian people in adoption and foster care. While courts in roughly 20 states have allowed second parent adoption, children of same-sex couples in most states still live with the economic and emotional insecurity of not having their relationship with their second mother or father recognized. State legislators and family advocates can change state policies to afford GLBT families with children the protection and security they need and deserve.

CHAPTER NOTES

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227. See *In re V.H.*, 412 N.W.2d 389 (Minn. Ct. App. 1987) (granting custody to cross-dressing father on condition that the father never cross-dress in front of daughter or have any literature relating to transvestism in the home). See also *In re D.F.D. and D.G.D.*, 261 Mont. 186 (1993) (awarding custody to father after expert testimony indicated that father no longer cross-dressed and would not do so in the future).
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