

SNAPSHOT: LGBTQ ADOPTION AND FOSTER CARE PARENTING IN NEW MEXICO

Across the United States, approximately 3 million lesbian, gay, bisexual, transgender, or queer (LGBTQ) Americans have had a child, and as many as 6 million American children and adults have an LGBTQ parent. Among LGBTQ adults under 50 living alone or with a spouse or partner, 48% of women and 20% of men are raising a child under 18. 19% of transgender adults have had a child.

New Mexico

Foster Care and Adoption Figures:

- According to a 2010 report by the Williams Institute, there are 1,038 same-sex couples raising an estimated 2,076 children in the state of New Mexico.
- In 2017, of the almost 443,000 youth in foster care in the U.S., 2,657 of them resided in New Mexico, 1,424 of whom were waiting to be adopted at the end of the fiscal year.
- In 2017, 311 children were adopted from the foster care system in New Mexico.

Foster Care and Adoption Laws:

- New Mexico law allows any individual approved by the court as a "suitable adoptive parent" to adopt. N.M. Stat. Ann. § 32A-5-11. There are no state laws that explicitly protect LGBTQ individuals who are prospective adoptive parents from discrimination.
- State law generally requires married couples to petition to adopt jointly, N.M. Stat. Ann. § 32A-5-11, and the New Mexico Supreme Court, when striking down the state's ban on marriages of same-sex couples in 2013, stated that "New Mexico law recognizes the right of same-gender couples to raise children." *Griego v. Oliver*, 316 P.3d 865 (N.M. 2013).
- State law permits any married person to adopt the child of their spouse via stepparent adoption. N.M. Stat. Ann. § 32A-5-11(B)(2)(a). With nationwide recognition of marriage equality, an individual should be permitted to adopt the child of their same-sex spouse via stepparent adoption.
- New Mexico has regulations protecting youth and prospective parents in the child welfare system from discrimination based on sexual orientation or gender identity. N.M. Admin. Code 8.10.8.10; N.M. Admin. Code §§ 8.10.8.10, 8.26.2.12, 8.26.2.13, 8.26.2.21, 8.26.5.15.

Financial Analysis

According to a 2007 report by the Williams Institute, if New Mexico were to ban lesbians and gays from serving as foster parents, it would cost the state between \$166,000 - \$250,000 per year.

Across the United States

More than 24,000 same-sex couples are raising adopted children in the U.S.

- While LGBTQ parents are raising adopted children all over the U.S., and while the largest numbers of adoptive families tend to be in New England, the Mid-Atlantic, and in the West Coast States, the highest



proportions of same-sex couples raising children under 18 reside in Southern, Mountain West, and Midwestern states – areas with the fewest protections for LGBT families.

- The states with the highest proportions of same-sex couples raising children are Mississippi (26%), Wyoming (25%), and Alaska (23%).
- Same-sex couples raising children are seven times more likely than their different-sex counterparts to be raising an adopted child.

Approximately 3,300 same-sex couples are raising foster children in the U.S.

Same-sex couples are seven times more likely than their different sex counterparts to be raising foster children.

Most states are silent on the issue of LGBTQ people fostering and adopting children. In many of these states, this silence either results in an outright ban on adoption/foster care by LGBTQ people or it leaves these families vulnerable to the potential bias of individual agencies, child welfare professionals, and family court judges at the local level.

- Only eight states have laws or policies explicitly prohibiting sexual orientation-based discrimination against otherwise qualified potential parents in foster care. CA, NJ, RI, and DC also prohibit discrimination in foster care based on gender identity.
- Only 15 states and the District of Columbia allow unmarried LGBTQ people to petition to adopt their own children through second-parent adoption, while seven states restrict the ability of LGBTQ people to complete second-parent adoptions.
- Generally, married same-sex couples have the same right to foster and adopt as married different-sex couples. Even with nationwide marriage equality, however, LGBTQ people and same-sex couples in some states may still face foster care and adoption laws, policies, or practices that permit agencies to continue to discriminate against them.
- Arizona and Utah require that preference be given to a “married man and woman” in foster and adoptive placements. This policy discriminates against same-sex couples and may prevent youth in care from finding permanent homes.
- Utah has a co-habitation ban, which bars individuals who live with an unmarried partner (same or different-sex) from adopting.
- **Ten states – Virginia, North Dakota, South Dakota, Michigan, Texas, Alabama, Mississippi, Kansas, Oklahoma and South Carolina – have passed laws permitting child welfare agencies to discriminate against children and potential parents based on moral or religious objections.** Kansas, Oklahoma and South Carolina enacted these discriminatory laws in 2018; advocates successfully defeated attempts in several other states to pass similar discriminatory adoption and foster care laws.
- **Nineteen percent of foster youth over the age of 12 identify as LGBTQ.**
- **Thirteen states have no protections against discrimination for LGBTQ youth receiving foster care and adoption services; an additional eleven states do not protect transgender youth receiving these services.**
- **Only three states require placement of transgender youth in facilities based on their gender identity.**
- **Only 9 states require LGBTQ-inclusive cultural competency training for child welfare staff and/or foster parents.**

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