

## SNAPSHOT: LGBTQ+ ADOPTION AND FOSTER CARE PARENTING IN SOUTH DAKOTA

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. Over 25% of transgender adults report being parents.

### South Dakota

#### Adoption Figures:

- In 2021, of the more than 391,000 youth in foster care in the U.S., 1,647 of them resided in South Dakota, 485 of whom were waiting to be adopted at the end of the fiscal year.
- In 2021, 222 children were adopted from the foster care system in South Dakota.
- In South Dakota, 25,000 people identify as LGBTQ+, 3% of the total population. Of the LGBTQ+ adult population, 29% are raising children.

#### Adoption Laws:

- South Dakota law allows any adult to petition to adopt a minor child. S.D. Codified Laws § 25-6-2.
- State law provides that a married man and wife may petition to adopt jointly. S.D. Codified Laws § 25-6-3. Because marriages of same-sex couples are now recognized nationwide, same-sex spouses should be able to adopt jointly.
- State law permits a married person to adopt the child of their spouse via stepparent adoption. S.D. Codified Laws §§ 25-6-2 and 25-6-10. With nationwide recognition of marriage equality, an individual should be permitted to adopt the child of their same-sex spouse via stepparent adoption.
- In 2017, South Dakota passed a law allowing religion to be used as a license to discriminate against LGBTQ individuals. S.B. 149 (S.D. 2017). The law states that no child-placement agency may be required to "provide any service that conflicts with . . . any sincerely held religious belief or moral conviction" of the agency. Thus, this law allows state-funded adoption and foster care agencies to discriminate against LGBTQ youth in their care as well as potential parents based on any assertion of religious belief or moral conviction. S.D. Codified Laws §§ 26-6-36, 26-6-37, 26-6-38, 26-6-39.
- South Dakota does not have a statewide ban on conversion therapy.

### Across the United States

#### More than 33,000 same-sex couples are raising adopted children in the U.S.

- While LGBTQ+ parents are raising children all over the U.S., the highest proportions of LGBTQ+ parents raising children reside in Mountain West, Southern, and Midwestern states – areas with the fewest protections for LGBTQ+ families.
- The states with the highest proportions of LGBTQ+ parents raising children are Idaho (44%), Utah (40%) and Oklahoma (38%).



# FAMILY EQUALITY

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

## EVERY CHILD DESERVES A FAMILY ACT

**Approximately 5,500 same-sex couples are raising foster children in the U.S.** Same-sex couples raising children are seven times more likely than their different-sex counterparts to be raising foster children.

Many states are silent on the issue of LGBTQ+ people fostering and adopting children, which leaves these families vulnerable to the potential bias of individual agencies, child welfare professionals, and family court judges at the local level. Further, although LGBTQ+ youth are disproportionately represented in the child welfare system, many states lack state-level non-discrimination protections or affirming policies for LGBTQ+ youth in care.

- Only half of the states in the U.S. have laws or regulations that explicitly prohibit discrimination on the basis of sexual orientation or gender identity.
- Only ten states ensure that individuals interested in acting as foster parents are not discriminated against based on their sexual orientation; fewer provide protections based on gender identity.
- In contrast, thirteen states – Alabama, Arizona, Kansas, Michigan, Mississippi, North Dakota, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, and Virginia – allow an agency to turn away prospective foster and adoptive parents who do not meet the agency’s religious requirements. In at least nine of those states this is true even where an agency receives taxpayer funding. Advocates successfully defeated attempts in several other states to pass similar discriminatory laws.
- Married same-sex couples should 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.
- Twenty states allow unmarried LGBTQ+ people to petition to adopt their own children through second-parent adoption.
- **Approximately 1 in 3 foster youth over the age of 12 identify as LGBTQ+.**
- **Over half of all states have no laws or regulations specifically prohibiting discrimination for LGBTQ+ youth receiving foster care and adoption services; most states provide no explicit guidance about transgender youth in the child welfare system.**
- **Only three states have passed laws or regulations that require placement of transgender youth in facilities based on their gender identity.**
- **Only six states have laws or regulations in place requiring LGBTQ+-inclusive cultural competency training for child welfare staff and/or foster parents.**

*Fact Sheet Updated May 2023*

To cosponsor in the Senate contact [Anna\\_Song@gillibrand.senate.gov](mailto:Anna_Song@gillibrand.senate.gov) in Sen. Kirsten Gillibrand’s office.

To cosponsor in the House contact [Jill.Hunter-Williams@mail.house.gov](mailto:Jill.Hunter-Williams@mail.house.gov) in Rep. Danny Davis’ office or [Gabriella.Boffelli@mail.house.gov](mailto:Gabriella.Boffelli@mail.house.gov) in Rep. Jenniffer González-Colón’s office.

For more information, email Laura Brennan, Policy Associate, Child Welfare at Family Equality at [Lbrennan@familyequality.org](mailto:Lbrennan@familyequality.org)