Relationship & Parental Recognition: Foster Care Nondiscrimination

No updates required since May 19, 2022

Some states have laws, regulations, or agency policies that ensure that individuals interested in acting as foster parents are not discriminated against based on their sexual orientation or gender identity. In contrast, other states have laws that allow child-placing agencies who receive state funding to discriminate if such actions are based on religious beliefs.

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Alabama
- State lacks explicit protections against discrimination based on sexual orientation and gender identity for prospective foster parents
- State permits state-licensed child welfare agencies to refuse to place and provide services to children and families, including LGBTQ people and same-sex couples, if doing so conflicts with their religious beliefs. This exemption is only permitted for agencies that do not receive government funding. See HB 24 (2017).

Alaska
- State agency explicitly interprets existing protections against discrimination in public services based on sex to include both sexual orientation and gender identity. See Alaska State Commission for Human Rights (2020), including agency social media posts. See also Alaska DHSS Discrimination Complaint Form, enumerating sexual orientation and gender identity or expression.

Arizona
- State has regulatory-based protection against discrimination in foster care (adults) on the basis of sexual orientation only. See R21-6-201, R21-6-401, and R21-6-402 here (2015).
- State permits state-licensed child welfare agencies to refuse to place and provide services to children and families, including LGBTQ people and same-sex couples, if doing so conflicts with their religious beliefs. See SB 1399 (2022).

Arkansas
- State lacks explicit protections against discrimination based on sexual orientation and gender identity for prospective foster parents

California
- State law prohibits discrimination against prospective foster parents based on sexual orientation and gender identity. See AB 458, the Foster Care Non-Discrimination Act (2003; effective 2004).
- State law further prohibits discrimination based on sexual orientation and gender identity in the provision of state programs and activities; SB 1441 (2006; effective 2007).
Colorado

- State regulation prohibits discrimination against all individuals (adults and youth) based on sexual orientation, defined in statute to include gender identity. See 12 CCR §2509-7.604 (2015) and CRS 24-34-301 for sexual orientation definition.
- State’s nondiscrimination law applies to state (via definition of person), including child welfare agency and government services (via definition of public accommodations, including “any place offering services... to the public”). State’s nondiscrimination law enumerates sexual orientation, defined to include gender identity (2008).

Connecticut

- State agency policy prohibits discrimination against all individuals (adults and youth) based on sexual orientation and gender identity. See DCF’s Nondiscrimination Statement, first issued as Policy 30-9, May 2004.

Delaware

- State agency policy prohibits discrimination against all individuals (adults and youth) based on sexual orientation and gender identity. See DSCYF’s Policy #217 (April 2019, and as early as Nov 2012).
- State’s nondiscrimination law explicitly includes state, local, and tax-funded agencies performing public functions (via definition of public accommodations). State’s nondiscrimination law enumerates sexual orientation (2009) and gender identity (2013).

District of Columbia

- State agency policy prohibits discrimination against all individuals based on sexual orientation and gender identity. See CFSA’s Statement of Nondiscrimination (2011) and Gender Identity and Expression Policy (2017).
- State’s nondiscrimination law explicitly includes/applies to the state, state licenses, benefits, and more (§ 2–1402.67). State’s nondiscrimination law enumerates sexual orientation (1977) and gender identity (2006).

Florida

- State lacks explicit protections against discrimination based on sexual orientation and gender identity for prospective foster parents

Georgia

- State lacks explicit protections against discrimination based on sexual orientation and gender identity for prospective foster parents

Hawai‘i

- State agency policy prohibits discrimination against all DHS applicants and program participants based on sexual orientation and gender identity. See DHS’s Discrimination Complaints Policy (2014).
- State’s public accommodations law enumerates sexual orientation and gender identity (2006), but does not clearly apply to state or child welfare.
Idaho
• State lacks explicit protections against discrimination based on sexual orientation and gender identity for prospective foster parents

Illinois
• State agency policy prohibits discrimination against all DCFS service recipients on the bases of sexual orientation and gender identity. See DCFS’s Affirmative Action Statement (at least as early as Feb 2017).
• State nondiscrimination law applies to public officials (775 ILCS 5-102). State’s nondiscrimination law enumerates sexual orientation, defined to include gender identity (2005, effective 2006)

Indiana
• State agency policy prohibits discrimination against individuals based on sexual orientation. See Indiana Department of Child Services Code of Conduct (2020; SO included as early as May 2010).

Iowa
• State agency policy prohibits discrimination against all DHS clients and applicants on the bases of sexual orientation and gender identity. See Iowa Department of Human Services Non-Discrimination Policy (as early as June 2012).
• State’s nondiscrimination law explicitly includes/applies to state and local government and “tax-supported districts” (VI §216.2, via definition of public accommodations). State’s nondiscrimination law enumerates sexual orientation and gender identity (2007).

Kansas
• State lacks explicit protections against discrimination based on sexual orientation and gender identity for prospective foster parents
• State permits state-licensed child welfare agencies to refuse to place and provide services to children and families, including LGBTQ people and same-sex couples, if doing so conflicts with their religious beliefs. See SB 284 (2018).

Kentucky
• State regulation prohibits discrimination against all individuals (adults and youth) on the bases of sexual orientation and gender identity in all government services. See Executive Order 2020-554 (June 2020).

Louisiana
• State lacks explicit protections against discrimination based on sexual orientation and gender identity for prospective foster parents
Maine

- State agency policy prohibits discrimination in its programs and services on the basis of sexual orientation (defined in state law to include gender identity). See Maine DHHS Nondiscrimination Notice (June 2017) and §4553 (2005).
- State’s nondiscrimination law explicitly includes/applies to state and local governments, agencies, and departments (§ 4553.8, via definition of public accommodations). State’s nondiscrimination law enumerates sexual orientation, defined to include gender identity (2005).

Maryland

- State regulation prohibits discrimination against prospective foster parents based on sexual orientation only. See Code of Maryland Regulations 07.01.03.03.

Massachusetts

- State regulation prohibits discrimination against all applicants/recipient of Department services on the basis of sexual orientation only. See 110 CMR 1.09 (2000).
- Executive Order 526 (Feb 2011) requires that “all programs, activities, and services provided, performed, licensed, chartered, funded, regulated, or contracted for by the state shall be conducted without unlawful discrimination” based on sexual orientation and gender identity.
- State agency policy prohibits discrimination against all individuals on the bases of sexual orientation and gender identity. See DCF’s LGBTQ – A Guide for Working With Youth and Families, pC12, as early as Spring 2015.
- State’s nondiscrimination law applies to the state and state services (via definition of public accommodations). State nondiscrimination law enumerates sexual orientation (1989) and gender identity (2016).
Michigan

- State agency policy prohibits discrimination against all individuals based on sexual orientation, gender identity, and gender expression. See MDHHS Nondiscrimination Statement (2019, and as early as July 2009). See also Dumont settlement (March 2019).
  - However, in Sept 2019, a federal judge issued a preliminary injunction of the Dumont settlement, meaning that a trial will need to be held to determine the status of religious exemptions and nondiscrimination in child welfare services.
- State permits state-licensed child welfare agencies to refuse to place and provide services to children and families, including LGBTQ people and same-sex couples, if doing so conflicts with their religious beliefs. This exemption is only permitted for agencies that do not receive government funding.
  - See HB 4188 (2015), HB 4189 (2015), and HB 4190 (2015) for exemptions that previously allowed agencies, including those receiving taxpayer funding, to refuse to serve people if doing so conflicted with the agency’s religious beliefs.
  - The Dumont settlement (March 2019) restricted these exemptions only to agencies that do not receive taxpayer funding.
  - In Sept 2019, a federal judge issued a preliminary injunction of the Dumont settlement, meaning that a trial will need to be held to determine the status of religious exemptions and nondiscrimination in child welfare services in Michigan.

Minnesota

- State agency policy prohibits discrimination against all individuals based on sexual orientation, defined in state law to include gender identity. See DHS Nondiscrimination Statement (as early as April 2008).

Mississippi

- State lacks explicit protections against discrimination based on sexual orientation and gender identity for prospective foster parents
- State permits state-licensed child welfare agencies to refuse to place and provide services to children and families, including LGBTQ people and same-sex couples, if doing so conflicts with their religious beliefs. See HB 1523 (2016).

Missouri

- State agency policy prohibits discrimination against all individuals based on sexual orientation only. See Missouri DSS Nondiscrimination Policy Statement (as early as June 2006).

Montana

- State agency policy prohibits discrimination against all individuals based on sexual orientation only. See DPHHS Nondiscrimination Policy (effective May 2010).
Nebraska
- State lacks explicit protections against discrimination based on sexual orientation and gender identity for prospective foster parents
- **[Now repealed]** Agency policy restricts placement of foster children in the homes of “persons who identify themselves as homosexuals;” NE DHHS Administrative Memorandum #1-95 (1995).
  - Nebraska’s Supreme Court struck down the state policy banning LGBTQ people from serving as foster parents. In August 2015, the judge ordered the old memo be stricken and that plaintiffs and other qualified applicants be permitted to be licensed as foster parents without any regard for their sexual orientation. The State of Nebraska appealed the case and it was heard by the Nebraska Supreme Court on January 5, 2017. On April 7, 2017, the Nebraska Supreme Court affirmed the lower Court’s decision. ACLU.

Nevada
- State’s nondiscrimination law explicitly includes “adoption agency or other social service establishment” (NRS 651.050, in definition of public accommodations). State’s nondiscrimination law enumerates sexual orientation (2009) and gender identity (2011).

New Hampshire

New Jersey
- State regulations and agency policy prohibit discrimination against all individuals on the bases of sexual orientation and gender identity. See NJAC Title 3A (2019), DCF’s LGBTQI Policy (Aug 2016), DCF’s Policy No. 100 (April 2011), and Manual of Requirements for Resource Family Parents, 10:122C-1.6.
- State’s public accommodations law is broadly construed to providers of “goods or services of any kind,” and state DCF policies refer to definitions of SO and GI from public accommodations nondiscrimination law; taken together this suggests that state public accommodation law applies to government agencies, including child welfare. State’s public accommodations law enumerates sexual orientation (1992) and gender identity (2006).

New Mexico
- State has regulatory-based protection against discrimination against all individuals on the bases of sexual orientation and gender identity. See NMAC 8.26.5.15 (2009).
- State’s nondiscrimination law defines public accommodations as “any establishment that providers or offers its services, facilities, accommodations, or goods to the public.” (NM Stat §28-1-2). State’s nondiscrimination law enumerates sexual orientation and gender identity (2003).
New York

- State regulations and agency policy prohibit discrimination against all individuals on the bases of sexual orientation and gender identity. See NYOCFS Policy and Procedures Manual (2008), as well as regulations in 18 CRR-NY §441.24 (foster), 18 CRR-NY §423.4 (preventive services), and 18 CRR-NY §421.3 (adoption).

North Carolina

- State regulation prohibits discrimination against all individuals (adults and youth) on the bases of sexual orientation and gender identity in all government services. See Executive Order 24 (October 2017).

North Dakota

- State agency explicitly interprets existing protections against discrimination in public services based on sex to include both sexual orientation and gender identity. See North Dakota Department of Labor and Human Rights statement (2020).
- State permits state-licensed child welfare agencies to refuse to place and provide services to children and families, including LGBT people and same-sex couples, if doing so conflicts with their religious beliefs. See ND Century Code §50-12-07.1 (2003)

Ohio

- Previously, state regulation prohibited discrimination against prospective foster parents on the bases of “gender, sexual orientation, or sexual identity” (added 2014). See historical record of OAC 5101:2-48-09 here. Individuals involved with the creation of this language understood this to be a nondiscrimination policy that covered both sexual orientation and gender identity.

Oklahoma

- State lacks explicit protections against discrimination based on sexual orientation and gender identity for prospective foster parents
- State permits state-licensed child welfare agencies to refuse to place and provide services to children and families, including LGBT people and same-sex couples, if doing so conflicts with their religious beliefs. See SB 1140 (2018).

Oregon

- State law prohibits discrimination against prospective foster parents based on sexual orientation, defined in state law to include gender identity. See ORS 418.648 (2007).
- State agency policy prohibits discrimination against all individuals on the basis of sexual orientation, defined in state law to include gender identity. See Oregon Department of Human Services, Children, Adults and Families Policy No. I-A.1, Client Rights – Policy (2007).
Pennsylvania
- State lacks explicit protections against discrimination based on sexual orientation and gender identity for prospective foster parents

Rhode Island
- State law prohibits state agencies from discriminating in the provision of services based on sexual orientation (1995) and gender identity (2001) (§28-5.1-7)
- State regulation prohibits discrimination against all individuals on the bases of sexual orientation and gender identity. See 214-RICR-10-00-1.14(c), and 214-RICR-40-00-4.
- State agency policy prohibited discrimination based on sexual orientation only as early as Sept 2009, and both sexual orientation and gender identity by October 2011.

South Carolina
- State agency policy prohibits discrimination against all individuals on the basis of sexual orientation only. See South Carolina Department of Social Services Human Services Policy and Procedure Manual, Section 710 "Non-Discrimination" (2016).
- State permits state-licensed child welfare agencies to refuse to place and provide services to children and families, including LGBTQ people and same-sex couples, if doing so conflicts with their religious beliefs. See HB 4950, §38.29 (2018). See also Trump administration waiver of federal nondiscrimination requirements (January 2019).

South Dakota
- State agency policy prohibits discrimination against all individuals on the bases of sexual orientation and gender identity. See DSS’s Notice of Nondiscrimination (adopted 2014).
- State permits state-licensed child welfare agencies to refuse to place and provide services to children and families, including LGBTQ people and same-sex couples, if doing so conflicts with their religious beliefs. See SB 149 (2017).

Tennessee
- State permits state-licensed child welfare agencies to refuse to place and provide services to children and families, including LGBTQ people and same-sex couples, if doing so conflicts with their religious beliefs. See HB 836 (2020).

Texas
- State lacks explicit protections against discrimination based on sexual orientation and gender identity for prospective foster parents
- State permits state-licensed child welfare agencies to refuse to place and provide services to children and families, including LGBTQ people and same-sex couples, if doing so conflicts with their religious beliefs. See HB 3859 (2017).
Utah
- State lacks explicit protections against discrimination based on sexual orientation and gender identity for prospective foster parents

Vermont
- State agency policy prohibit discrimination against all individuals on the bases of sexual orientation and gender identity. See State of Vermont AHS, Chapter/Number 1.11, Non-Discrimination regarding receipt of services and benefits (May 2009).

Virginia
- State lacks explicit protections against discrimination based on sexual orientation and gender identity for prospective foster parents
  - State agency policy prohibited discrimination against all individuals on the basis of sexual orientation only as early as 2009, but by late 2012 it was no longer included. It remains not included in 2022.
  - State permits state-licensed child welfare agencies to refuse to place and provide services to children and families, including LGBT people and same-sex couples, if doing so conflicts with their religious beliefs. See Va. Code Ann § 63.2-1709.3 (2012).

Washington
  - State law prohibits discrimination on the basis of sexual orientation, defined to include gender identity; see RCW 49.60.030 (2006). State is subject to its own nondiscrimination law (RCW 49.60.040.19); Human Rights Commission can issue orders against any subdivision of the state or any agency (RCW 49.60.320).

West Virginia
- State agency policy prohibits discrimination against all individuals on the bases of sexual orientation and gender identity. See Bureau of Children and Families Youth Services Policy, Sections 11.1 and 11.2 (October 2017 with only SO, updated May 2019 to add GI).

Wisconsin
- State regulation prohibits discrimination against prospective foster parents based on sexual orientation only. See DCF 56.04 (2002).
  - State’s public accommodations law enumerates SO (1982) only, and does not explicitly apply to state government or agencies.

Wyoming
- State lacks explicit protections against discrimination based on sexual orientation and gender identity for prospective foster parents
U.S. Territories

American Samoa
• Territory lacks explicit protections against discrimination based on sexual orientation and gender identity for prospective foster parents

Guam
• Territory lacks explicit protections against discrimination based on sexual orientation and gender identity for prospective foster parents

Northern Mariana Islands
• Territory lacks explicit protections against discrimination based on sexual orientation and gender identity for prospective foster parents

Puerto Rico
• Territory law prohibits discrimination in adoption and foster care based on sexual orientation only, regardless of marital status. See law passed in 2018.

U.S. Virgin Islands
• Territory lacks explicit protections against discrimination based on sexual orientation and gender identity for prospective foster parents