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Relationship & Parental Recognition: Foster Care Nondiscrimination

No updates required since March 6, 2023

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.

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 lacks explicit protections against discrimination based on sexual orientation and gender identity for prospective foster parents
- Formerly, state agency explicitly interpreted existing protections based on sex to include both sexual orientation and gender identity for employment, housing, public accommodations, credit/lending, and government agencies/services (including child welfare services). See archived capture of [Alaska State Commission for Human Rights](#) (announced Dec 2020), agency [social media post](#) (Dec 2020), and [subsequent guidance](#) with further detail (Feb 2021), as well as archived capture of [Alaska DHSS Discrimination Complaint Form](#) (Dec 2020), enumerating sexual orientation and gender identity or expression. However, under pressure from conservative interest groups amid the 2022 election season, in August 2022 the agency rescinded its interpretation for all areas except for employment, which was explicitly covered by the U.S. Supreme Court ruling in [Bostock v. Clayton County, Georgia](#) (2020). See [this coverage](#) for more details about this reversal, and see also the agency's [social media post](#) announcing the change (August 2022). The DHSS complaint form is no longer available online.

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).



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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 §2509-7:7.604](#) (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 ([5 § 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](#).
- State's nondiscrimination law explicitly applies to government units, officers, and employees ([§20-901](#)), including in public accommodations ([§20-304](#)). State's nondiscrimination law enumerates sexual orientation (2001) and gender identity (2014).

Massachusetts

- State regulation prohibits discrimination against all applicants/recipients 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

- State agency policy prohibits discrimination against all individuals (adults and youth) on the bases of sexual orientation and gender identity. See [DCYF Policy Directive 17-50](#) (August 2017).
- State nondiscrimination law applies to the state and its agencies (via definitions of [person](#) and [public accommodations](#)). State’s nondiscrimination law enumerates sexual orientation (1997) and gender identity (2018).

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

- State regulation explicitly prohibits discrimination against all “resource families” (adoptive, foster, kinship, etc.) on the bases of sexual orientation and gender identity. See [OAC 5101:2-42-20\(A\)\(2\), “Resource Family Bill of Rights”](#) (Nov 2021) and [Ohio Admin. Code 5101:2-48-09\(P\)](#).
- 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 agency policy prohibits discrimination against all individuals on the bases of sexual orientation and gender identity. See [Guidelines for Managing Children/Youth in DCS Custody Related to Sexual Orientation, Gender Identity and Expression](#) (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 [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 agency policy and regulations prohibit discrimination against all individuals on the bases of sexual orientation and gender identity. See [Administrative Policy 7.22](#) (2011), [DSHS nondiscrimination policy](#) (as early as Sept 2013), Wash. Admin. Code [388-147-1595](#) (2015), and Wash. Admin. Code [388-148-1520](#).
- 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



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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