

**ADOPTION BY GAYS AND LESBIANS:
A SURVEY OF THE LAW IN THE 50 STATES AND THE DISTRICT OF COLUMBIA**

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This survey is intended to provide basic information on the law in each of the 50 states and the District of Columbia regarding adoption by gays and lesbians.¹ This issue is likely to gather increasing attention as the question of same-sex marriage is debated by legislatures, courts, and the public. As a result of that debate, as demonstrated by this survey, the law regarding adoption by gays and lesbians is in a state of continuing change.

Sources of Adoption Law

The key sources of adoption law are state statutes and state court decisions. Each state has its own “adoption statute,” enacted by the state legislature, which provides the general procedures and policies for adoptions in that state. In each state, this adoption statute is the starting point for assessing whether gay or lesbian adoption is permitted. To date, the legislatures in three states (California, Connecticut, and New York) have passed statutes that expressly permit gays and lesbians to adopt, while one state (Florida) expressly bars such adoption entirely and two other states (Mississippi and Utah) have passed statutes that bar same sex couples from adopting but do not expressly bar single parent gay or lesbian adoption. The adoption statutes in the remaining 45 states and the District of Columbia neither expressly permit nor expressly bar adoption by gays and lesbians. Among these jurisdictions, the highest courts in three states (Massachusetts, Pennsylvania, and Vermont) and in the District of Columbia have interpreted their adoption statutes as permitting adoption by gays and lesbians. These decisions represent the law in their respective jurisdictions, making a total of six states and the District of Columbia which permit, either by statute or judicial ruling, adoption by gays and lesbians.²

Forty-two states have neither an express statutory provision on gay or lesbian adoption nor a high court ruling on the issue. For these states, this survey examines lower court decisions on gay and lesbian adoption, where available. Where a state’s courts have not yet addressed the issue of gay and lesbian adoption, this survey reviews court rulings involving gay and lesbian child visitation and custody rights. Such rulings provide some guidance on the approach of a given state’s courts to gay and lesbian domestic rights. For example, state courts that take a non-restrictive approach in child custody decisions involving gays or lesbians may be less likely to

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² Rulings by a state’s highest court, generally a “Supreme Court,” are binding on all lower courts in that state and are the law of the state until overturned (either by the state supreme court itself or by the U.S. Supreme Court) or until overridden by an enactment of the state legislature. Rulings by a state’s lower courts, such as its courts of appeal or its trial courts, are not binding throughout the state, though such rulings can give an indication of the general policy in the state.

restrict gay or lesbian adoption than state courts that take a restrictive approach. Nonetheless, court decisions regarding child custody and visitation are not a substitute for decisions regarding adoption. Because the standards for adoption are more rigorous than those for custody or visitation, it is possible that a state would permit gays and lesbians to obtain child custody or visitation, but not to adopt.

Stepparent and Second-Parent Adoptions

In nearly all 50 states and the District of Columbia, the adoption statutes provide for “stepparent” adoptions. A stepparent adoption occurs when one individual petitions to adopt the child of his or her spouse without divesting the spouse of his or her own parental rights. Stepparent adoptions are a statutory exception to the general rule that when a child is adopted, the child’s legal relationship with his or her pre-adoption parent(s) is terminated.

For gays and lesbians, stepparent adoptions are generally unavailable because the adoption statutes of most states permit such adoptions only in the case of a legally married couple. Currently, same-sex couples cannot be married in any jurisdiction other than Massachusetts. Thus, even if a state otherwise permits adoption by gay and lesbian individuals, it might nonetheless prohibit gays and lesbians from adopting their partner’s child without terminating their partner’s parental rights.

Some jurisdictions, however, do permit an unmarried person to adopt the child of his or her domestic partner without terminating the partner’s parental rights. In this survey, such adoptions are referred to as “second-parent” adoptions. To date, the legislatures in three states (California, Connecticut, and Vermont) have amended their adoption statutes to permit second-parent adoptions by same-sex couples. Florida, Mississippi, and Utah, by contrast, prohibit such adoptions by statute. The adoption statutes in the remaining 44 states and the District of Columbia neither expressly permit nor expressly bar second-parent adoptions. Among these jurisdictions, the highest courts in Massachusetts and the District of Columbia have interpreted their jurisdiction’s stepparent adoption provisions to permit second-parent adoptions by same-sex couples.³ In addition, the highest court in Pennsylvania has interpreted a separate provision of the state’s adoption statute to permit such adoptions, making a total of five states and the District of Columbia that permit, either by statute or judicial ruling, second-parent adoptions by same-sex couples. Conversely, the highest courts in Nebraska and Wisconsin have interpreted their state’s stepparent adoption provisions to prohibit second-parent adoptions by unmarried couples, making a total of five states that bar such adoptions.

In the 40 states in which neither the legislature nor the state supreme court has addressed the permissibility of second-parent adoptions, this survey reviews decisions of state trial courts and courts of appeal. In these states, the statutory language is particularly important. Most stepparent adoption statutes (38 out of 40) use the terms “married,” “spouse,” or “husband and wife.” These terms would appear to preclude second-parent adoptions because none of these 38

³ The D.C. Court of Appeals ruling is noteworthy in that the stepparent adoption statute the court interpreted preserved the parental rights of “the *spouse* of the adopter” (italics added).

states currently permits same-sex marriage.⁴ Nonetheless, lower courts in six of these states (Delaware, Illinois, Indiana, New Hampshire, New Jersey, and New York) have found that such language does not necessarily preclude second-parent adoptions by same-sex couples. In the remaining states, lower courts have either barred second-parent adoption (Arizona, Colorado, and Ohio) or not yet addressed the issue.

Ultimately, second-parent adoption in these 40 states is an issue that is intertwined with same-sex marriage and civil unions. States that legalize same-sex marriage or extend same-sex couples the same domestic rights as married couples, will, almost inevitably, enable second-parent adoption. Until such policies are settled, however, the permissibility of second-parent adoption in these states is likely to remain unclear.

DISCLAIMER

This survey is current as of December 2004. It does not reflect any changes in the law since that date. This survey is intended to provide an overview of the law in this area. It is not legal advice and cannot substitute for consultation with an attorney.

⁴ Two of these states, Hawaii and New Jersey, have statutes that extend some benefits to same-sex domestic partnerships, though it is not clear whether these benefits include second-parent adoption.

SURVEY OF LAW ON ADOPTION BY GAYS AND LESBIANS

ALABAMA

Overview	Alabama’s adoption statute does not expressly permit or bar gay and lesbian adoption, and the state’s courts have yet to interpret the statute as to whether such adoption is permissible. However, the Alabama Supreme Court has expressed hostility toward custody by gays and lesbians. Second-parent adoption does not appear to be available under Alabama’s statutes, although no published cases address the issue.
Individual Adoption	Alabama’s adoption statute allows adoption by “any adult person.” Ala. Code § 26-10A-5(a) (2004). While no reported cases deal directly with the issue of gay and lesbian adoption, at least one case dealing with child custody by a lesbian parent was hostile to gay and lesbian parents. <i>See Ex parte J.M.F.</i> , 730 So. 2d 1190 (Ala. 1998). In this case, the Alabama Supreme Court awarded custody to a heterosexual father over a lesbian mother based largely on the fact that the mother’s lesbian relationship was open rather than discreet. <i>Id.</i> at 1194. The Court stated that the mother “has chosen to expose the child continuously to a lifestyle that is ‘neither legal in this state, nor moral in the eyes of most of its citizens,’” and that “‘the degree of harm to children from the homosexual conduct of a parent is uncertain . . . and the range of potential harm is enormous.’” <i>Id.</i> at 1196 (internal citations omitted). However, the Alabama Supreme Court has had a significant turnover of justices since 1998 and the current court might not rule the same way.
Second-Parent Adoption	Neither Alabama’s adoption statute nor any published opinions of its courts directly address the issue of second-parent adoption. Alabama’s adoption statute permits stepparent adoption, allowing a person to adopt “his or her spouse’s child.” Ala. Code § 26-10A-27 (2004).

ALASKA

Overview	The Alaska adoption statute does not expressly permit or bar gay and lesbian adoption, and the state’s courts have yet to interpret the statute as to whether such adoption is permissible. Second-parent adoption does not appear to be available under Alaska’s statutes, although no published cases address the issue.
Individual Adoption	Under Alaska’s adoption statute, “an unmarried adult” is eligible to adopt. Alaska Sta. § 25.23.020 (2004). While Alaska’s courts have yet to address the issue of gay and lesbian adoption under the statute, the state’s Supreme Court has been receptive to gay and lesbian custodial rights. In a 1985 custody case, the Alaska Supreme Court found that a lower court’s grant of custody to a heterosexual father over a lesbian mother was “impermissibly tainted by reliance in part on the fact that Mother is a lesbian” <i>S.N.E. v. R.L.B.</i> , 699 P.2d 875, 879 (Alaska 1985). The Court remanded the case for further

	consideration, noting that “[c]onsideration of a parent’s conduct is appropriate only when the evidence supports a finding that a parent’s conduct has or reasonably will have an adverse impact on the child and his best interests.” <i>Id.</i> at 879.
Second-Parent Adoption	Neither Alaska’s adoption statute nor any published opinions of its courts directly address the issue of second-parent adoption. Alaska’s adoption statute permits stepparent adoptions, preserving the parental rights of “a spouse of the [adoption] petitioner.” Alaska Stat. § 25.23.130 (2004).

ARIZONA

Overview	Arizona’s adoption statute does not expressly permit or bar gay and lesbian adoption, and its highest court has yet to rule whether such adoption is permissible under the statute. However, at least one lower state court has expressed hostility toward gay and lesbian adoption. Gays and lesbians do not appear to be eligible for second-parent adoptions.
Individual Adoption	Under Arizona’s adoption statute, “any adult” is eligible to adopt a child. A.R.S. § 8-103 (2004). The state’s Supreme Court has not addressed the right of a gay or lesbian individual to adopt under this provision. However, in a 1986 case, an Arizona Court of Appeals upheld the denial of a bisexual’s petition to adopt. <i>In re Pima County Juvenile Action B-10489</i> , 727 P.2d 830 (Ariz. Ct. App. 1986). The court noted that denial of the petition was not predicated solely on the prospective adoptive parent’s bisexuality and that bisexuality alone did not render a prospective adoptive parent unfit to adopt, but the court did find that sexual orientation was a factor to be considered in adoption cases. <i>Id.</i> at 834-35. Significantly, the court noted that homosexual conduct was statutorily proscribed in Arizona and that it would be “anomalous” for the state to simultaneously outlaw homosexuality and permit homosexual adoption. <i>Id.</i> at 835 (citing A.R.S. §§ 13-1411, 13-1412). However, Arizona’s anti-homosexual statute was repealed in 2001, leaving the validity of <i>In re Pima County Juvenile Action B-10489</i> open to question.
Second-Parent Adoption	Neither Arizona’s adoption statute nor any published opinions of its courts directly address the issue of second-parent adoption. Arizona’s adoption statute permits stepparent adoptions by “the spouse of the child’s parent.” A.R.S. § 8-117 (2004). In a 1993 case, the Arizona Court of Appeals declined to apply the stepparent adoption provision to an unmarried heterosexual couple, notwithstanding the couple’s argument that other states had applied similar provisions in the case of homosexual relationships. <i>In re Pima County Juvenile Adoption Action No. B-13795</i> , 859 P.2d 1343, 1344 (Ariz. Ct. App. 1993). The court concluded that Arizona’s stepparent adoption provision applied “only in the context of a marriage between the natural parent and the adoptive parent.” <i>Id.</i>

ARKANSAS

Overview	Arkansas’s adoption statute does not expressly permit or bar gay and lesbian adoption, and the state’s courts have yet to interpret the statute as to whether
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	such adoption is permissible. Second-parent adoption does not appear to be available under Arkansas’s statutes, although no published cases address the issue.
Individual Adoption	Arkansas’s adoption statute permits adoption by “an unmarried adult.” A.C.A. § 9-9-204 (2003). The Arkansas courts have not ruled on the application of this provision to gays or lesbians. However, the Arkansas Supreme Court ruled that a lower court was justified in requiring a mother, as a condition of obtaining child custody, to prohibit her lesbian partner (with whom she had purchased a home) from staying overnight in the home when the children were present. <i>Taylor v. Taylor</i> , 47 S.W.3d 222, 223-225 (Ark. 2001). According to the court, “such a restriction or prohibition aids in structuring the home place so as to reduce the possibilities (or opportunities) where children may be present and subjected to a single parent’s sexual encounters, whether they be heterosexual or homosexual.” <i>Id.</i> at 225. See also <i>Taylor v. Taylor</i> , 110 S.W.3d 731, 737 (Ark. 2003).
Second-Parent Adoption	Neither Arkansas’s adoption statute nor any published opinions of its courts directly address the issue of second-parent adoption. Arkansas’s adoption statute permits stepparent adoptions, preserving the parental rights of “a spouse of the [adoption] petitioner.” A.C.A. § 9-9-215 (2003).

CALIFORNIA

Overview	The California Family Code has recently been amended to confer spousal rights and obligations, including adoption, to “registered domestic partners” within the state. Thus, although same-sex marriage remains illegal in California, “registered domestic partners” may adopt.
Individual Adoption	California permits adoption by any adult who is “at least 10 years older than the child.” Cal. Fam. Code §§ 8600; 8601 (2004). Because of the numerous child custody, visitation and parental rights cases that have been litigated in the California courts, the state legislature has amended the Family Code to provide that “[the] rights and obligations of registered domestic partners, with respect to a child of either of them, shall be the same as those of spouses.” Cal. Fam. Code § 297.5, operative Jan. 1, 2005.
Second-Parent Adoption	California allows registered domestic partners to adopt via the state’s stepparent adoption statute: “A domestic partner . . . desiring to adopt a child of his or her domestic partner may for that purpose file a petition.” Cal. Fam. Code § 9000(b) (2004). The California Supreme Court recognized second-parent adoptions by holding that a former domestic partner could complete an independent second-parent adoption of a biological child conceived by artificial insemination of the other partner during the partnership without relinquishment of parental rights by the other partner. <i>Sharon S. v. Superior Court of San Diego County</i> , 73 P.3d 554 (Cal. 2003).

COLORADO

Overview	Colorado’s adoption statute does not expressly permit or bar gay and lesbian adoption, and the state’s courts have yet to interpret the statute as to whether
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	such adoption is permissible. However, Colorado courts have been receptive to gay and lesbian visitation rights. A state appellate court has interpreted the adoption statute as barring second-parent adoption.
Individual Adoption	Colorado’s adoption statute states that “[a]ny person twenty-one years of age or older” may petition to adopt. Colo. Rev. Stat. § 19-5-202(1) (2003). While the state’s courts have not addressed the issue of gay and lesbian adoption, lower courts have been receptive to gay and lesbian visitation rights. In a 2001 visitation case, the former wife of a gay father sought to preclude the father from having overnight guests during periods when the child was visiting his father and from taking the child to his church, which had a largely gay congregation. <i>In re the Marriage of Edward E. Dorworth</i> , 33 P.3d 1260, 1261 (Colo. App. 2001). The appellate court vacated a lower court ruling granting these restrictions, ruling that “[the] trial court made no finding that father’s conduct endangered the child physically or impaired her emotional development. Nor does the evidence support such a finding.” <i>Id.</i> at 1262.
Second-Parent Adoption	Colorado’s adoption statute does not expressly address second-parent adoptions but does permit stepparent adoptions where the adopting person is “married to [the] natural parent.” Colo. Rev. Stat. § 19-5-211(2) (2003). A Colorado Court of Appeals has held that this provision did not apply in the case of an unmarried same-sex couple. In a 1996 case, two female domestic partners, each with a biological child, sought to adopt the other’s child. <i>In re T.K.J.</i> , 931 P.2d 488, 490 (Colo. App. 1996). The court stated that “[a] stepparent adoption constitutes the only exception to the general rule that an adoption divests both of the adoptee’s parents of all legal rights and duties relating to the adoptee. This exception applies only when a custodial parent is married to the adopting stepparent.” <i>Id.</i> at 493. Thus, “because petitioners were not married to each other, neither could consent to the adoption of her child by the other petitioner without terminating her parent-child relationship with her own natural child.” <i>Id.</i>

CONNECTICUT

Overview	Connecticut’s adoption statute directly addresses the issues of gay and lesbian adoption and second-parent adoption. By giving the state’s agencies and courts permission to consider the sexual orientation of adopting parents, the legislature has signaled that adoption by gays and lesbians is permissible, though perhaps subject to more probing than adoption by heterosexuals. Under the Connecticut statute, second-parent adoptions are permissible and available to gay and lesbian petitioners.
Individual Adoption	The Connecticut legislature has explicitly authorized the consideration of an applicant’s sexual orientation in making decisions about adoptions and foster care placements, thereby implying that gay and lesbian adoption is permissible, even if subject to scrutiny: “The Commissioner of Children and Families or a child-placing agency may consider the sexual orientation of the prospective adoptive or foster parent or parents when placing a child for adoption or in foster care.” Conn. Gen. Stat. § 45a-726(a) (2003).

Second Parent Adoption	Connecticut’s adoption statute was amended in 2000 to allow second-parent adoptions. “[A]ny parent of a minor child may agree in writing with one other person who shares parental responsibility for the child with such parent that the other person shall adopt or join in the adoption of the child” Conn. Gen. Stat. § 45a-724(3) (2003). The amendment of this statute to allow for second-parent adoptions when there is shared parental responsibility was in response to a 1999 Connecticut Supreme Court ruling that Connecticut’s stepparent adoption provision was not available to a lesbian who wished to adopt her partner’s biological child without terminating her partner’s rights to the child. <i>In re Adoption of Baby Z</i> , 724 A.2d 1035, 1057 (Conn. 1999) (interpreting Conn. Gen. Stat. § 45a-733). Thus, the statute appears to allow gay and lesbian second-parent adoption.
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DELAWARE

Overview	Delaware’s adoption statute does not expressly permit or bar gay and lesbian adoption, and the state’s courts have yet to interpret the statute as to whether such adoption is permissible. However, the state’s Family Court upheld a second-parent adoption by a gay couple.
Individual Adoption	Delaware’s adoption statute permits “an unmarried person” to adopt. 13 Del. C. § 903 (2004). No reported cases address the application of this provision to gays or lesbians.
Second-Parent Adoption	Delaware’s adoption statute does not expressly permit second-parent adoptions but does permit stepparent adoptions where the “stepparent” is “married” to the child’s “birth parent.” 13 Del. C. § 919(b) (2004). Delaware’s Supreme Court has not interpreted the state’s stepparent adoption provision in the context of a same-sex couple. However, the Delaware Family Court has applied this provision in the case of a gay man seeking to adopt the child of his partner without severing the partner’s parental rights. The court found that in certain instances, “a person [such as a same-sex partner] who may not have any legal duty to a child might maintain such a strong parental relationship with the child similar to that of a parent that he/she should be considered a ‘de facto parent.’” <i>In re Hart</i> , 806 A.2d 1179, 1186 (Del. Fam. Ct. 2001). In such cases, the court held, the de facto parent, even though not legally a “stepparent,” should be permitted to use the state’s stepparent adoption provision. <i>Id.</i> Furthermore, the court stated that “the notion that the [court’s] analysis should be any different because [the petitioner] is gay would violate the statutory proscription to resolve all questions of interpretation in the best interest of the children and would produce an absurd and unacceptable social result.” <i>Id.</i>

DISTRICT OF COLUMBIA

Overview	The District of Columbia adoption statute, as interpreted by its highest court, expressly permits adoption by gay and lesbian individuals and couples. The District’s high court has also permitted second-parent adoptions by gay and lesbian couples.
Individual	Under the D.C. adoption statute, “any person” may petition the court for

Adoption	adoption. D.C. Code § 16-302. The D.C. Court of Appeals has upheld the right of gays and lesbians to adopt under this provision. <i>In re: M.M.D. & B.N.H.</i> , 662 A.2d 837 (D.C. 1995).
Second-Parent Adoption	The District of Columbia’s adoption statute does not expressly permit second-parent adoptions but does provide for stepparent adoptions, preserving the parental rights of “the spouse of the adopter.” D.C. Code § 16-312(a) (2004). The D.C. Court of Appeals has held that this provision applies to same-sex couples. <i>In re: M.M.D. & B.N.H.</i> , 662 A.2d 837, 843 (D.C. 1995). Furthermore, the court concluded that same-sex couples can adopt under D.C. law either sequentially (via the stepparent exception) or simultaneously (by petitioning the court under § 16-302). <i>Id.</i>

FLORIDA

Overview	Florida’s policy toward gay and lesbian adoption is arguably the most restrictive in the United States. Along with Mississippi, Florida is one of only two states that currently has legislation in force expressly barring gay and lesbian adoption.
Individual Adoption	Florida’s adoption statute states: “No person eligible to adopt under this statute may adopt if that person is a homosexual.” Fla. Stat. § 63.042(3) (2003). The constitutionality of this provision has been considered in several cases. In a 1993 case, the Florida Court of Appeals upheld the statute against challenges that, under both the Florida and Federal constitutions, <i>inter alia</i> , the statute violated an individual’s privacy, due process, and equal protection rights. <i>Department of Health & Rehabilitative Servs. v. Cox</i> , 627 So. 2d 1210 (Fla. Dist. Ct. App. 1993). In 1995, the Florida Supreme Court affirmed the Court of Appeals in <i>Cox</i> on each of its findings except for the equal protection challenge, which the Supreme Court remanded for further fact finding. <i>Cox v. Department of Health & Rehabilitative Servs.</i> , 656 So. 2d 902 (Fla. 1995). The petitioner dropped the suit after remand. In 2001, the statute was challenged on due process and equal protection grounds in federal district court in <i>Lofton v. Kearney</i> . 157 F. Supp. 2d 1372 (S.D. Fla. 2001). The district court rejected these claims and in 2004, the Eleventh Circuit affirmed this decision. <i>Lofton v. Kearney</i> , 358 F.3d 804 (11th Cir. 2004).
Second-Parent Adoption	Since gays and lesbians are expressly prohibited from adopting in Florida, they are ineligible for second-parent adoption. Florida law does permit stepparent adoptions but clearly such adoptions would not be available to gays or lesbians. Fla. Stat. § 63.087 (2003).

GEORGIA

Overview	Georgia’s adoption statute does not expressly permit or bar gay and lesbian adoption, and the state’s courts have yet to interpret the statute as to whether such adoption is permissible. A Georgia court decision in a visitation case was receptive to gay parenting. Second-parent adoption does not appear to be available under Georgia’s statutes, although no published cases address the issue.
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Individual Adoption	Georgia’s adoption statute states that “any adult person may petition to adopt a child.” Ga. Code Ann. § 19-8-3(a) (2002). Although no reported cases address the topic of adoption by gays and lesbians, one appellate case was receptive to gay and lesbian custody and visitation rights. <i>In the Interest of R.E.W.</i> , 471 S.W.2d 6 (Ga. App. 1996), <i>cert. denied</i> , 267 S.E.2d 195 (Ga. 1996). “[T]he primary consideration in determining custody and visitation issues is not the sexual mores or behavior of the parent, but whether the child will somehow be harmed by the conduct of the parent. ‘Visitation rights must be determined with reference to the needs of the child rather than the sexual preferences of the parent.’” <i>Id.</i> at 9.
Second-Parent Adoptions	Neither Georgia’s adoption statute nor any published opinions of its courts directly address the issue of second-parent adoption. Georgia permits stepparent adoption, allowing a person to adopt the child of his or her “spouse.” Ga. Code Ann. § 19-8-6(a) (2002).

HAWAII

Overview	Hawaii’s adoption statute does not expressly permit or bar gay and lesbian adoption, and the state’s courts have yet to interpret the statute as to whether such adoption is permissible. Hawaii’s courts have not ruled whether second-parent adoption is permitted.
Individual Adoption	Hawaii’s adoption statute permits adoption by “any proper adult person.” HRS § 578-1 (2003). The Hawaii courts have not addressed the topic of adoption by gays and lesbians. Similarly, no published opinions have discussed child custody and visitation rights as they pertain to gay and lesbian individuals.
Second-Parent Adoption	Neither Hawaii’s adoption statute nor any published opinions of its courts directly address the issue of second-parent adoption. Hawaii’s adoption statute permits stepparent adoptions by “a person married to a legal parent of the [adopted] individual.” HRS § 578-16 (2003). Although this statute would appear not to apply to same-sex couples since the state does not recognize same-sex marriage, Hawaii does extend certain rights and benefits to same-sex couples who register as “reciprocal beneficiaries.” HRS § 572C-1 (2003). No published court cases address whether reciprocal beneficiaries may use the state’s stepparent adoption provision.

IDAHO

Overview	Idaho’s adoption statute does not expressly permit or bar gay and lesbian adoption, and the state’s courts have yet to interpret the statute as to whether such adoption is permissible. Idaho’s statutes leave room for second-parent adoption, although no published cases address the issue.
Individual Adoption	Idaho’s adoption statute permits adoption by “any adult person.” Idaho Code § 16-1501 (2004). Although the statute states that “[a]doptions shall not be denied solely on the basis of the disability of a prospective adoptive parent,” it makes clear that gays and lesbians are not protected by this clause: “Sexual preference or orientation [along with such things as pedophilia, kleptomania, and pyromania] is not considered an impairment or disability.” Idaho Code §

	16-1501 (2) (2004). This provision thereby implies that adoption can be denied solely on the basis of sexual orientation. However, no published cases address the rights of gays and lesbians to adopt. Similarly, no published opinions have discussed child custody and visitation rights as they pertain to gay and lesbian individuals.
Second-Parent Adoption	Idaho’s adoption statute leaves room for second-parent adoption: “ <i>Unless the decree of adoption otherwise provides</i> , the natural parents of an adopted child are, from the time of the adoption, relieved of all parental duties, and all responsibilities for, the child so adopted.” Idaho Code § 16-1509 (2004) (emphasis added). No published cases directly address the issue of second-parent adoption.

ILLINOIS

Overview	Illinois’s adoption statute does not expressly permit or bar gay and lesbian adoption, and the state’s highest court has yet to interpret the statute as to whether such adoption is permissible. However, Illinois’s lower courts have issued decisions that are favorable to gay and lesbian adoption and to second-parent adoption by unmarried gay or lesbian individuals.
Individual Adoption	Illinois’s adoption statute states that an adoption proceeding may be instituted by “[a] reputable person of legal age and of either sex” 750 ILCS 50/2 (2004). A state appellate court has interpreted the statute as allowing adoption by gays and lesbians. <i>In the Matter of C.M.A.</i> , 715 N.E.2d 674 (Ill. App. 1st Dist. 1999). “[N]othing in the Adoption Act suggests that sexual orientation is a relevant consideration in adoption cases.” <i>Id.</i> at 679. <i>See also In re Petition of K.M.</i> , 653 N.E.2d 888, 892 (Ill. App. 1st Dist. 1995) (“lesbians and gay men are permitted to adopt in Illinois”).
Second-Parent Adoption	Illinois’s adoption statute does not expressly provide for second-parent adoption but does permit stepparent adoption where “a husband or wife [desires] to adopt a child of the other spouse.” 750 ILCS 50/2(a) (2004). At least one Illinois court has interpreted the state’s adoption statute as allowing second-parent adoption by a same-sex partner. In a 1995 case in which a lesbian sought to adopt her partner’s child, the court held that Illinois’s adoption statute “must be construed to give standing to the unmarried persons in these cases, regardless of sex or sexual orientation, to petition for adoption jointly.” <i>In re Petition of K.M.</i> , 653 N.E.2d 888, 899 (Ill. App. 1st Dist. 1995) (interpreting 750 ILCS 50/2(a)).

INDIANA

Overview	Indiana’s adoption statute does not expressly permit or bar gay and lesbian adoption, and the state’s courts have yet to interpret the statute as to whether such adoption is permissible. Although not explicitly authorized by the adoption statutes, some Indiana courts have permitted gay and lesbian adoption through second-parent adoption rulings.
Individual Adoption	Indiana’s adoption statute states that “a resident of Indiana” may file a petition for adoption. Burns Ind. Code Ann. § 31-19-2-2 (2004). The state’s courts

	have yet to interpret the statute as to whether gay and lesbian adoption is permissible. However, as discussed below, Indiana courts are receptive to gay and lesbian second-parent adoption.
Second-Parent Adoption	Indiana’s adoption statute does not expressly permit second-parent adoptions but does provide for stepparent adoptions “if the adoptive parent . . . is married to a biological parent of the child.” Burns Ind. Code Ann. § 31-19-15-2 (2004). In a 2003 case in which the petitioner attempted to adopt the adoptive children of her lesbian partner, an Indiana Court of Appeals unanimously held that “[c]onsonant with our General Assembly’s policy of providing stable homes for children through adoption, we conclude that Indiana’s common law permits a second parent to adopt a child without divesting the rights of the first adoptive parent.” <i>In Adoption of M.M.G.C.</i> , 785 N.E.2d 267, 270-271 (Ind. Ct. App. 2003). This decision involved the parental rights of an adoptive parent; a subsequent case involved the parental rights of a biological parent. In that case, the court concluded that “where, as here, the prospective adoptive parent and the biological parent are both in fact acting as parents, Indiana law does not require a destructive choice between the two parents. Allowing continuation of the rights of both the biological and adoptive parent, where compelled by the best interests of the child, is the only rational result.” <i>Matter of the Adoption of Infant K.S.P.</i> , 804 N.E.2d 1253, 1255 (Ind. Ct. App. 2004) (internal citations omitted). Both <i>M.M.G.C.</i> and <i>K.S.P.</i> were remanded to their respective trial courts, and it is unclear whether the adoptions were granted.

IOWA

Overview	Iowa’s adoption statute does not expressly permit or bar gay and lesbian adoption, and the state’s courts have yet to interpret the statute as to whether such adoption is permissible. Second-parent adoption does not appear to be available under Iowa’s statutes, although no published cases address the issue.
Individual Adoption	Iowa’s adoption statute states that “any person” may file an adoption petition. Iowa Code § 600.4 (2003). Although the state’s courts have not directly addressed the issue of gay and lesbian adoption under this provision, the Iowa appellate courts have held that a parent’s sexual orientation is but one factor to consider when making custody and visitation determinations. In a 1990 visitation case, the Iowa Supreme Court vacated a portion of a divorce decree that limited a gay father’s visitation with his two children to times when no unrelated adult was present. <i>In re Marriage of Walsh</i> , 451 N.W.2d 492 (Iowa 1990). The court held that Iowa law encourages parents’ contact with their children absent some compelling reason to the contrary. <i>Id.</i> at 493 (interpreting Iowa Code Ann. §§ 598.21(4) and 598.41(1)). Similarly, in a 1990 custody case, an Iowa Court of Appeals held that a child’s best interest would be served by granting joint legal custody to both parents but primary physical custody to the mother, notwithstanding her same-sex relationship. <i>Hodson v. Moore</i> , 464 N.W.2d 699 (Iowa Ct. App. 1990). The court reasoned that both parents were involved in relationships and that there was no evidence that the mother’s relationship, in particular, was causing any harm to the child. <i>Id.</i> at 700-701. Similarly, in a 1993 custody case, an Iowa Court of Appeals upheld the

	decision of the trial court granting joint legal custody to the husband and wife, with the husband receiving primary physical custody of the child. <i>Marriage of Wiarda</i> , 505 N.W.2d 506 (Iowa Ct. App. 1993). The court did not emphasize the wife’s same-sex relationship, but instead analyzed the ability of each parent to adequately raise the child. <i>See also Marriage of Cupples</i> , 531 N.W.2d 656 (Iowa Ct. App. 1995) (awarding physical custody to the father because of the mother’s alcoholism and signs of physical child abuse, but not on the basis of the mother’s same-sex relationship).
Second-Parent Adoption	Neither Iowa’s adoption statute nor any published opinions of its courts directly address the issue of second-parent adoption. Iowa permits stepparent adoption, preserving the parental rights of “a spouse of the adoption petitioner.” Iowa Code § 600.13 (2003).

KANSAS

Overview	Kansas’s adoption statute does not expressly permit or bar gay and lesbian adoption, and the state’s courts have yet to interpret its statute as to whether such adoption is permissible. Second-parent adoption does not appear to be available under Kansas’s statutes, although no published cases address the issue.
Individual Adoption	Kansas’s adoption statute states that “[a]ny adult” may adopt. Kan. Stat. Ann. § 59-2113 (2003). The state’s courts have yet to interpret the statute as to whether gay and lesbian adoption is permissible. Similarly, no published opinions have discussed child custody and visitation rights as they pertain to gay and lesbian individuals.
Second-Parent Adoption	Neither Kansas’s adoption statute nor any published opinions of its courts directly address the issue of second-parent adoption. Kansas permits stepparent adoption, preserving the parental rights of “the spouse of the adopting parent.” Kan. Stat. Ann. § 59-2118 (2003).

KENTUCKY

Overview	Kentucky’s adoption statute does not expressly permit or bar gay and lesbian adoption, and the state’s courts have yet to interpret its statute as to whether such adoption is permissible. Second-parent adoption does not appear to be available under Kentucky’s statutes, although no published cases directly address the issue.
Individual Adoption	Kentucky’s adoption statute permits adoption by “any person who is 18 years of age.” KRS § 199.470 (2004). The state’s courts have yet to interpret the statute as to whether gay and lesbian adoption is permissible. Similarly, no published opinions have discussed child custody and visitation rights as they pertain to gay and lesbian individuals.
Second-Parent Adoption	Neither Kentucky’s adoption statute nor any published opinions of its courts directly address the issue of second-parent adoption. Kentucky’s adoption statute permits stepparent adoptions, preserving the parental rights of “the spouse of an adoptive parent.” KRS § 199.520(2) (2004).

LOUISIANA

Overview	Louisiana's adoption statute does not expressly permit or bar gay and lesbian adoption, and the state's courts have yet to interpret its statute as to whether such adoption is permissible. Second-parent adoption does not appear to be available under Louisiana's statutes, although no published cases directly address the issue.
Individual Adoption	Under Louisiana's adoption statute, "a single person, eighteen years or older" may petition to adopt a child." La. Ch. C. arts. 1198 (2004), 1221 (2004). The state's courts have yet to interpret the statute as to whether gay and lesbian adoption is permissible. Similarly, no published opinions have discussed child custody and visitation rights as they pertain to gay and lesbian individuals.
Second-Parent Adoption	Neither Louisiana's adoption statute nor any published opinions of its courts directly address the issue of second-parent adoption. Louisiana's adoption statute permits stepparent adoptions when the adopting person is "married to a blood parent of the adopted child." La. Ch. C. arts. 1243 (2004), 1256 (2004).

MAINE

Overview	Maine's adoption statute does not expressly permit or bar gay and lesbian adoption, and the state's courts have yet to interpret its statute as to whether such adoption is permissible. Second-parent adoption does not appear to be available under Maine's statutes, although no published cases directly address the issue. However, the Maine Supreme Judicial Court has strongly supported gay and lesbian parental rights.
Individual Adoption	Maine's adoption statute permits adoptions by "an unmarried person." 18-A M.R.S. § 9-301 (2003). Maine courts have yet to rule whether this statute permits adoption by gays or lesbians.
Second-Parent Adoption	Maine's courts have not considered whether a same-sex couple is eligible for a second-parent adoption. However, Maine's Supreme Judicial Court upheld a lower court finding that a lesbian was the de facto parent of a child that was born to her former partner during the time the two women were in a committed relationship. As a result, the lower court was authorized to consider an award of parental rights and responsibilities once the couple separated. <i>C.E.W. v. D.E.W.</i> , 845 A.2d 1146, 1152 (Me. 2004).

MARYLAND

Overview	Maryland's adoption statute does not expressly permit or bar gay and lesbian adoption, and the state's courts have yet to interpret its statute as to whether such adoption is permissible. However, the Maryland Supreme Court has been receptive to gay and lesbian visitation rights. Maryland's adoption statute does not provide for second-parent adoption, and no published cases address the issue.
Individual Adoption	Maryland's adoption statute states that "[a]ny adult may petition a court to decree an adoption." Md. Fam. Code Ann. § 5-309 (2004). The state's courts have yet to interpret the statute as to whether gay and lesbian adoption is

	permissible. In a case involving the visitation rights of a gay father, however, Maryland’s highest court vacated a visitation order that prohibited the father from having overnight visitation and from visiting with the children in the presence of the father’s partner. <i>Boswell v. Boswell</i> , 721 A.2d 662, 664 (Md. 1998). The court found that contact with the partner was not shown to have an adverse impact on the children. <i>Id.</i> at 679. “The only relevance that a parent’s sexual conduct or lifestyle has in the context of a visitation proceeding of this type is where that conduct or lifestyle is clearly shown to be detrimental to the children’s emotional and/or physical well-being.” <i>Id.</i> at 678.
Second-Parent Adoption	Neither Maryland’s adoption statute nor any published opinions of its courts directly address the issue of second-parent adoption. Maryland permits stepparent adoption by “the spouse of a natural parent.” <i>See</i> Md. Estates and Trusts Code Ann. § 1-207 (2004).

MASSACHUSETTS

Overview	Massachusetts’s adoption statute, as interpreted by its highest court, permits both individual and second-parent adoptions by gays and lesbians.
Individual Adoption	Massachusetts law permits adoption petitions by “a person of full age.” A.L.M. G.L. ch. 210, § 1 (2004). The Massachusetts Supreme Judicial Court has stated that “there is nothing in the statute that prohibits adoption based on gender or sexual orientation.” <i>Adoption of Tammy</i> , 619 N.E.2d 315, 319 n2 (1993).
Second-Parent Adoption	The Massachusetts Supreme Judicial Court found that the state’s adoption statute permitted a lesbian to adopt her partner’s daughter without severing the partner’s parental rights. <i>Adoption of Tammy</i> , 619 N.E.2d 315, 318, 321 (1993) (applying A.L.M. G.L. ch. 210, §§ 1, 6).

MICHIGAN

Overview	Michigan’s adoption statute does not expressly permit or bar gay and lesbian adoption, and the state’s courts have yet to interpret its statute as to whether such adoption is permissible. Lower court decisions in the areas of child custody and visitation suggest a restrictive approach to gay and lesbian parental rights. Second-parent adoption does not appear to be available under Michigan’s statutes, although no published cases address the issue.
Individual Adoption	Michigan’s adoption statute permits “a person” to petition to adopt. MCLS § 710.24 (2004). Michigan’s courts have not ruled whether this statute permits adoption by gays and lesbians. However, these courts have been unreceptive to gay and lesbian custodial and visitation rights. In a 1980 child visitation case, a Michigan Court of Appeals declined to overturn an order by a trial court that allowed a lesbian woman to visit with her children only if the children were not in the home when the woman’s partner stayed overnight. <i>Irish v. Irish</i> , 300 N.W.2d 739, 741 (Mich. Ct. App. 1980). The court found that such court-ordered limitations were “reasonably drawn” to prevent potential harm to the children. <i>Id.</i> A Court of Appeals has also found that the fact that a parent was engaged in a same-sex relationship could be considered as a factor in child custody decisions. <i>See Boot v. Boot</i> , No. 227262, 2001 Mich. App. LEXIS

	607, at *9 (Mich. Ct. App. 2001).
Second-Parent Adoption	Neither Michigan’s adoption statute nor any published opinions of its courts directly address the issue of second-parent adoption. Michigan’s adoption statute permits stepparent adoptions by “married” petitioners. MCLS § 710.51(5) (2004).

MINNESOTA

Overview	The Minnesota adoption statute does not expressly permit or bar gay and lesbian adoption, and the state’s courts have yet to interpret the statute as to whether such adoption is permissible. Second-parent adoption does not appear to be available under Minnesota’s statutes, although no published cases address the issue.
Individual Adoption	Minnesota’s adoption statute allows “[a]ny person” to petition to adopt. Minn. Stat. § 259.22 (2003). Although the state’s courts have not directly addressed the issue of gay and lesbian adoption under the statute, they have generally been receptive to gay and lesbian custodial rights. In a 2000 custody case, a Minnesota Court of Appeals affirmed the district court’s holding that a former lesbian partner, who was not the biological mother of the child, could seek custody of the child under Minnesota law. <i>LaChappelle v. Mitten</i> , 607 N.W.2d 151 (Minn. Ct. App. 2000) (interpreting Minn. Stat. § 518.156(1)). Similarly, a state appeals court reversed the decision of a lower court insofar as it restricted the lesbian mother’s visitation rights to the county of the father’s residence. <i>Marriage of McKay v. Johnson</i> , No. C6-95-1626, 1996 WL 12658 (Minn. Ct. App. 1996). The court noted that the father failed to provide any evidence that the children were harmed by their exposure to their mother’s gay rights events in other counties. <i>Id.</i> at *5.
Second-Parent Adoption	Neither Minnesota’s statutes nor any published opinions of its courts directly address the issue of second-parent adoption. Minnesota’s adoption statute permits stepparent adoption, preserving the parental rights of “the spouse of the petitioning stepparent.” Minn. Stat. § 259.59(1a) (2003).

MISSISSIPPI

Overview	Mississippi’s adoption statute expressly bars same sex couples from adopting. Surprisingly, however, the Mississippi Supreme Court’s rulings on gay and lesbian custody and visitation rights are more tolerant and flexible than the adoption legislation.
Individual Adoption	Mississippi’s adoption statute permits adoption by “an unmarried adult.” Miss. Code Ann. § 93-17-3(1) (2004). However, the adoption statute also states: “Adoption by couples of the same gender is prohibited.” Miss. Code Ann. § 93-17-3(2) (2004) (the statute is silent on <i>individual</i> adoption by gays or lesbians). At the same time, the Mississippi Supreme Court has issued several significant gay and lesbian child custody rulings. In a 2001 custody case, the court found that a lower court, in awarding primary custody to a father, abused its discretion by placing too much weight on allegations of a lesbian affair involving the child’s mother. <i>Hollon v. Hollon</i> , 784 So. 2d 943, 952-53 (Miss.

	2001). This decision followed an earlier decision by the court in which it upheld a lower court decision denying a father’s petition for a change of child custody where the father lived with his same-sex partner. <i>Weigand v. Houghton</i> , 730 So. 2d 581, 586-87 (Miss. 1999). In <i>Weigand</i> , the court noted that the father’s homosexual lifestyle was appropriately considered by the lower court, but was not the sole basis for its decision. Nevertheless, the court reversed the portion of the lower court’s order that banned the father’s partner from being present during visitation. <i>Id.</i> at 587. “[E]ven if [the child] is embarrassed, or does not like the living arrangement of his father, this is not the type of harm that rises to the level necessary to place such restrictions on [the father’s] visitation with his son.” <i>Id.</i> See also <i>Morris v. Morris</i> , 783 So. 2d 681, 693 (Miss. 2001) (noting that a “homosexual lifestyle” can be considered in a custody determination, but it cannot be the sole factor).
Second-Parent Adoption	In light of the Mississippi’s express prohibition on adoption by “couples of the same gender,” it is unlikely that gay or lesbian couples would be eligible for second-parent adoptions, or through a stepparent adoption, which Mississippi’s adoption statute permits. Miss. Code Ann. § 93-17-13 (2004).

MISSOURI

Overview	The Missouri adoption statute does not expressly permit or bar gay and lesbian adoption, and the state’s courts have yet to interpret the statute as to whether such adoption is permissible. Second-parent adoption does not appear to be available under Missouri’s statutes, although no published cases address the issue.
Individual Adoption	Missouri’s adoption statute allows “any person” to petition to adopt. Mo. Rev. Stat. § 453.010 (2004). The state’s courts have yet to interpret the statute as to whether gay and lesbian adoption is permissible. However, Missouri courts historically have been hostile to gay and lesbian custody and visitation rights. In a 1987 child visitation case, a Missouri Court of Appeals approved the restriction of a homosexual parent’s visitation to shield the child from the parent’s homosexuality. <i>S.E.G. v. R.A.G.</i> , 735 S.W.2d 164 (Mo. Ct. App. 1987). The court reasoned that the purpose of the restriction was to “prevent extreme exposure of the situation to the minor children.” <i>Id.</i> at 167. Similarly, in a 1989 child custody case, the court held that even where expert testimony demonstrated that the child had not been harmed by exposure to the parent’s homosexuality, the court “did not need to wait until the damage was done,” and thus, the custody order was modified to limit the gay father’s visitation with his children. <i>J.P. v. P.W.</i> , 772 S.W.2d 786, 792 (Mo. Ct. App. 1989) (citing <i>N.K.M. v. L.E.M.</i> , 606 S.W.2d 179, 186 (Mo. Ct. App. 1980)). See also <i>G.A. v. D.A.</i> , 745 S.W.2d 726 (Mo. Ct. App. 1987) (court affirmed the trial court’s award of custody to the father, finding that the welfare of the preschool-aged son was better served by granting custody to the father than to the lesbian mother who lived with her partner and her partner’s two teenage daughters). All of these cases appear to use a “per se” approach in determining which parent would receive custody. However, more recently an appellate court has overruled the “per se” approach and held that “[t]o the

	extent that Missouri case law automatically presumes that a homosexual parent is per se unfit to be [the] custodian of his or her child, it is not followed in this case.” <i>DeLong v. DeLong</i> , WD 52726, 1998 Mo. App. LEXIS 69 (Mo. Ct. App. Jan. 20, 1998). The court instead adopted the “nexus” approach and relied on all relevant criteria in determining which parent was most fit to raise the child.
Second-Parent Adoption	Neither Missouri’s adoption statute nor any published opinions of its courts directly address the issue of second-parent adoption. Missouri permits stepparent adoption “if the petitioner [is the] spouse” of the natural parent. Mo. Rev. Stat. §§ 453.090, 453.010(4) (2004).

MONTANA

Overview	Montana’s adoption statute does not expressly permit or bar gay and lesbian adoption, and the state’s courts have yet to interpret the statute as to whether such adoption is permissible. Second-parent adoption does not appear to be available under Montana’s statutes, although no published cases address the issue.
Individual Adoption	Under Montana’s adoption statute, “an unmarried individual who is at least 18 years of age” is eligible to adopt a child. Mont. Code Ann. § 42-1-106 (2003). No published decision of a Montana court has addressed whether the statute allows gay and lesbian adoption. Similarly, no published opinions have discussed child custody and visitation rights as they pertain to gay and lesbian individuals.
Second-Parent Adoption	Neither Montana’s adoption statute nor any published opinions of its courts directly address the issue of second-parent adoption. Montana’s adoption statute permits stepparent adoption by a “spouse.” Mont. Code Ann. §§ 42-1-106(1), 42-5-202 (2003).

NEBRASKA

Overview	Nebraska’s adoption statute does not expressly permit or bar gay and lesbian adoption, and the state’s courts have yet to interpret the statute as to whether such adoption is permissible. Nebraska’s Supreme Court has ruled that the state’s adoption statute does not permit second-parent adoption.
Individual Adoption	Nebraska’s adoption statute states that “any minor child may be adopted by any adult person or persons” Neb. Rev. Stat. Ann. § 43-101 (2003). The state’s courts have yet to interpret the statute as to whether gay and lesbian adoption is permissible. In a 1997 child custody case, a Nebraska Court of Appeals declined to change a custody arrangement where the custodial parent was a lesbian and the child was generally aware of her mother’s homosexual relationship. <i>Hassenstab v. Hassenstab</i> , 570 N.W.2d 368, 373-74 (Neb. Ct. App. 1997). The court stated “[w]e agree that sexual activity by a parent, whether it is heterosexual or homosexual, is governed by the rule that to establish a material change in circumstances justifying a change in custody there must be a showing that the minor child or children were exposed to such activity and that a change of custody is in the child or children’s best interests.”

	<i>Id.</i> at 372-73.
Second-Parent Adoption	Nebraska’s adoption statute, as interpreted by the state’s Supreme Court, does not permit second-parent adoption. Nebraska permits stepparent adoptions, allowing “an adult husband or wife [to] adopt a child of the other spouse whether born in or out of wedlock.” Neb. Rev. Stat. Ann. § 43-101. However, the Nebraska Supreme Court has held that this provision does not apply to unmarried couples. <i>Adoption of Luke</i> , 640 N.W.2d 374, 379 (Neb. 2002). “[With] the exception of the stepparent adoption, the parent or parents possessing existing parental rights must relinquish the child before ‘any minor child may be adopted by any adult person or persons.’” <i>Id.</i> at 379.

NEVADA

Overview	Nevada’s adoption statute does not expressly permit or bar gay and lesbian adoption, and the state’s courts have yet to interpret the statute as to whether such adoption is permissible. Second-parent adoption does not appear to be available under Nevada’s statutes, although no published cases address the issue.
Individual Adoption	Nevada’s adoption statute permits adoption by “any adult person.” NRS § 127.030 (2004). The state’s courts have yet to interpret the statute as to whether gay and lesbian adoption is permissible. No published opinions have discussed child custody and visitation rights as they pertain to gay and lesbian individuals.
Second-Parent Adoption	Neither Nevada’s adoption statute nor any published opinions of its courts directly address the issue of second-parent adoption. Nevada’s adoption statute permits stepparent adoptions by the “spouse” of the “natural parent.” NRS § 127.160 (2004).

NEW HAMPSHIRE

Overview	New Hampshire’s adoption statute on its face does not expressly permit or bar gay and lesbian adoption, although the statute’s legislative history suggests that the New Hampshire legislature intended to permit gay and lesbian adoption. New Hampshire’s courts have yet to interpret the statute as to whether such adoption is permissible, and they have yet to address the issue of second-parent adoption.
Individual Adoption	New Hampshire’s adoption statute permits adoption by “any . . . unmarried adult.” R.S.A. 170-B:4(II) (2003). This statute was amended in 1999 to eliminate express language prohibiting homosexuals from adopting. Since the statute’s amendment, New Hampshire courts have not ruled on the permissibility of gay or lesbian adoption. However, the state legislature, by repealing the express prohibition on gay and lesbian adoption, arguably intended to legalize such adoption.
Second-Parent Adoption	Neither New Hampshire’s adoption statute nor any published opinions of its courts directly address the issue of second-parent adoption. New Hampshire’s adoption statute permits stepparent adoptions if “[t]he other spouse is a parent of the individual to be adopted.” R.S.A. 170-B:4(V)(a) (2003).

NEW JERSEY

Overview	New Jersey's adoption statute does not expressly permit or bar gay and lesbian adoption, and the state's highest court has yet to interpret the statute as to whether such adoption is permissible. New Jersey's lower courts have issued decisions that are favorable to gay and lesbian adoption and to second-parent adoption by unmarried gay or lesbian individuals.
Individual Adoption	New Jersey's adoption statute states that "any person" can petition to adopt a child. N.J.S.A. 9:3-43(a) (2004). A New Jersey appellate court has stated in dicta that the statute qualifies "an unmarried person, either heterosexual or homosexual" to adopt. <i>In re Adoption of Two Children by H.N.R.</i> , 666 A.2d 535, 538 (N.J. Super. Ct. App. Div. 1995).
Second-Parent Adoption	New Jersey's adoption statute does not expressly permit second-parent adoptions but does provide for stepparent adoptions if the biological parent is the "spouse of the petitioner." N.J.S.A. 9:3-50(c)(1) (2004). A New Jersey appellate court has held that an unmarried homosexual second parent can adopt a child under the stepparent adoption provision. The court found that although this provision uses the term "spouse," New Jersey's adoption statute is to be "liberally construed to the end that the best interest of children be promoted," and that as such, the stepparent adoption provision should not be read literally or restrictively. <i>In re Adoption of Two Children by H.N.R.</i> , 666 A.2d 535, 538 (N.J. Super. Ct. App. Div. 1995) (applying N.J.S.A. 9:3-37 and 9:3-50). <i>See also In re Adoption of a Child by J.M.G.</i> , 632 A.2d 550 (N.J. Super. Ct. Chancery Div. 1993).

NEW MEXICO

Overview	New Mexico's adoption statute does not expressly permit or bar gay and lesbian adoption, and the state's courts have yet to interpret the statute as to whether such adoption is permissible. Second-parent adoption does not appear to be available under New Mexico's statutes, although no published cases address the issue.
Individual Adoption	New Mexico's adoption statute permits adoption by "any individual who has been approved by the court as a suitable adoptive parent." N.M. Stat. Ann. § 32A-5-11 (2004). The state's courts have yet to interpret the statute as to whether gay and lesbian adoption is permissible. However, some courts have been receptive to gay and lesbian custody and visitation rights. In a 1988 child custody case, a court of appeals held that the lower court exceeded its authority when it sought to prohibit placing the minor child with his gay elder brother. The sexual orientation of the child's brother, standing alone, the court held, was not enough to support a conclusion that the brother could not provide a proper environment. <i>State ex rel. Human Svcs. Dep't</i> , 764 P.2d 1327 (N.M. Ct. App. 1988). <i>See also A.C. v. C.B.</i> , 829 P.2d 660 (N.M. Ct. App 1992).
Second-Parent Adoption	Neither New Mexico's adoption statute nor any published opinions of its courts directly address the issue of second-parent adoption. New Mexico permits stepparent adoption, allowing a "married individual [to adopt a child] if the non-[petitioning] spouse is a parent of the adoptee." N.M. Stat. Ann. §§ 32A-5-

	11(2)(a), 32A-5-32 (2004).
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NEW YORK

Overview	The New York adoption statute, one of the most permissive in the country, expressly allows gay and lesbian adoption. New York also permits second-parent adoption.
Individual Adoption	New York’s adoption statute allows “any unmarried adult” to adopt a child. N.Y. Dom. Rel. Law § 110 et seq. (2004). New York also expressly prohibits discrimination based on sexual orientation when determining who may adopt. “Applicants shall not be rejected solely on the basis of homosexuality.” N.Y. Code 18 NYCRR § 421.16(h)(2) (2004).
Second-Parent Adoption	In a same-sex adoption case, the New York Surrogate’s Court held that the best interests of the child were served by allowing the lesbian partner of the biological mother to adopt the child. <i>Matter of Evan</i> , 153 Misc.2d 844 (N.Y. Surr. Ct. 1992) (citing 18 NYCRR § 421.16(h)(2)). The court also rejected the notion that adoption requires a termination of the biological mother’s parental rights. N.Y. Dom. Rel. Law § 117. Similarly, the New York Family Court held that the adoption statute provides “directory” rather than “mandatory” construction of the statute and no provision of New York law required that adoptive parents be of a particular gender. <i>Matter of Caitlin</i> , 163 Misc.2d 999 (N.Y. Fam. Ct. 1994) (citing N.Y. Dom. Rel. Law § 117). The court granted the petition of the lesbian partners to adopt each other’s biological children without severing either mother’s legal rights to their biological children. In 1994, the Family Court also held that the lesbian partner of the child’s biological mother would be permitted to file an adoption petition without filing for pre-placement certification (pre-certification is required under the N.Y. Dom. Rel. Law § 115-d(8) “stepparent exemption” provision) because the child had been in the custody of the mother and the partner since birth, thus obviating any need for pre-placement certification. <i>In re Adoption of Camilla</i> , 163 Misc.2d 272 (N.Y. Fam. Ct. 1994). <i>See also Matter of Jacob</i> , 86 N.Y.2d 651 (1995) (the court reversed the lower court’s denial of an adoption petition and held that adoption would not sever the biological parent’s ties and that the adoption was in the best interests of the child).

NORTH CAROLINA

Overview	North Carolina’s adoption statute does not expressly permit or bar gay and lesbian adoption, and the state’s courts have yet to interpret the statute as to whether such adoption is permissible. North Carolina’s Supreme Court has expressed some hostility to gay and lesbian custodial rights. Second-parent adoption does not appear to be available under North Carolina’s statutes, although no published cases address the issue.
Individual Adoption	North Carolina’s adoption statute states that “[any] adult may adopt another individual” N.C. Gen. Stat. § 48-1-103 (2004). The state’s courts have yet to interpret the statute as to whether gay and lesbian adoption is permissible. However, in a 1998 child custody case, the North Carolina Supreme Court

	expressed ambivalence toward gay and lesbian custody, transferring the custody of children from the father to the mother, and finding that the father’s co-habitation and sexual activity with his same-sex partner in the home, among other things, “support[ed] the trial court’s findings of ‘improper influences’ which were ‘detrimental to the best interest and the welfare of the two minor children.’” <i>Pulliam v. Smith</i> , 501 S.E.2d 898, 904 (N.C. 1998) (internal citations omitted). The court asserted that its decision was not based solely on the fact that the father was gay or a “practicing homosexual.” “This Court [does not] hold that the mere homosexual status of a parent is sufficient, taken alone, to support denying such parent custody of his or her child or children. That question is not presented by the facts of this case.” <i>Id.</i> at 904.
Second-Parent Adoption	Neither North Carolina’s adoption statute nor any published opinions of its courts directly address the issue of second-parent adoption. North Carolina’s adoption statute prohibits anyone from joining an adoption petition filed by an unmarried petitioner. N.C. Gen. Stat. § 48-2-301(c) (2004). North Carolina permits stepparent adoptions of a “child of the stepparent’s spouse.” §§ 48-4-101 (2004), 48-1-106(d) (2004).

NORTH DAKOTA

Overview	North Dakota’s adoption statute does not expressly permit or bar gay and lesbian adoption, and the state’s courts have yet to interpret the statute as to whether such adoption is permissible. Second-parent adoption does not appear to be available under North Dakota’s statutes, although no published cases directly address the issue.
Individual Adoption	North Dakota’s adoption statute states that “an unmarried adult” may adopt. N.D. Cent. Code § 14-15-03 (2003). While the state’s courts have not ruled whether the statute permits adoption by gays and lesbians, the North Dakota courts have been somewhat receptive to gay and lesbian custody rights. In a 1993 custody case, a lesbian mother challenged a court finding that a complete suspension of the mother’s visitation with her children, even if temporary, would be proper under North Dakota law only if visitation was likely to endanger the children’s physical or emotional health. <i>Johnson v. Schlotman</i> , 502 N.W.2d 831 (N.D. 1993) (citing N.D. Cent. Code § 14-05-22(2)). During the child custody hearing, there was testimony that after the children learned of their mother’s sexual orientation, they began having trouble sleeping as well as depression. In light of this testimony, and because the children expressed a strong preference to live with their father, the court awarded sole custody of the children to the father and granted the mother liberal visitation rights. However, in another custody dispute, the Supreme Court stated that under North Dakota law, a “custodial parent’s homosexual household is not grounds for modifying custody within two years of a prior custody order in the absence of evidence that the environment endangers or potentially endangers the children’s physical or emotional health or impairs their emotional development.” <i>Damron v. Damron</i> , 670 N.W.2d 871, 873 (N.D. 2003) (interpreting N.D. Cent. Code § 14-09-06.6(5)(b) (2003)).

Second-Parent Adoption	Neither North Dakota’s adoption statute nor any published opinions of its courts directly address the issue of second-parent adoption. North Dakota permits stepparent adoption by a “spouse.” N.D. Cent. Code § 14-15-14 (2003).
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OHIO

Overview	Ohio’s adoption statute does not expressly permit or bar gay and lesbian adoption, and the state’s highest court has yet to interpret the statute as to whether such adoption is permissible. Second-parent adoption does not appear to be available under Ohio’s statutes, although no published cases address the issue. However, the state’s lower courts have barred second-parent adoptions by same-sex couples, and the state’s Supreme Court has upheld the denial of a lesbian’s petition for a “shared parenting” arrangement, although it appeared more receptive to a “shared custody” arrangement.
Individual Adoption	Ohio’s adoption statute permits adoption by “an unmarried adult.” ORC Ann. 3107.03 (2004). Ohio courts have not ruled on the application of this provision to gays and lesbians.
Second-Parent Adoption	Ohio’s adoption statute does not expressly permit second-parent adoptions but does provide for stepparent adoptions if “[t]he other spouse is a parent of the person to be adopted and supports the adoption.” ORC Ann. 3107.03(D)(1) (2004). However, an Ohio Court of Appeals has found that the stepparent adoption provision does not apply in a case involving an unmarried lesbian. <i>In re: Adoption of Jane Doe</i> , 719 N.E.2d 1071 (Ohio Ct. App. 1998). “Inherent but unspoken in this case is the legal reality that two individuals of the same sex cannot marry under existing Ohio law and therefore, both cannot be spouses. Until such time as the General Assembly of Ohio changes the law pertaining to same-sex marriages or rewrites the adoption statutes to specifically allow the requested legal relationship, I can not interpret into the existing adoption statute a spousal relationship between two individuals of the same sex such as to create a stepparent relationship in a legal context.” <i>Id.</i> at 1073, <i>Wise, concurring</i> . The Ohio Supreme Court has not ruled on this issue, but it has found that a lesbian could not enter a “shared parenting” arrangement with her long-term partner because she did not meet the definition of “parent” under the Ohio code. <i>In re Bonfield</i> , 780 N.E.2d 241 (Ohio 2002). The Supreme Court stated, however, that the lower court could consider whether a petition for shared custody would be appropriate. <i>Id.</i> at 248.

OKLAHOMA

Overview	The Oklahoma adoption statute does not expressly permit or bar gay and lesbian adoption, and the state’s courts have yet to interpret the statute as to whether such adoption is permissible. Second-parent adoption does not appear to be available under Oklahoma’s statutes, although no published cases directly address the issue.
Individual Adoption	Oklahoma’s adoption statute states that “an unmarried person who is at least 21 years of age” is eligible to adopt. 10 Okl. Stat. § 7503-1.1 (2004). The courts

	<p>have not interpreted this statute in the context of gay and lesbian individuals, but the Oklahoma courts have given a mixed reception to gay and lesbian custody and visitation rights. In a child custody dispute, the Oklahoma Supreme Court held in favor of the lesbian mother’s custody rights, stating that the “evidence [is] insufficient to establish that the best interests of the children are directly affected by a significant change of circumstances of the custodial environment provided by appellant mother.” <i>Fox v. Fox</i>, 904 P.2d 66, 67-68 (Okla. 1995). The central issue on appeal was whether the evidence of the mother’s homosexual orientation was sufficient to support a modification of a permanent child custody order. The court noted that although the father asserted “the mother’s sexual proclivities are immoral and in contradiction of religious values,” he failed to establish that her homosexual lifestyle had any adverse impact on the children. <i>Id.</i> at 69. In an earlier child custody case, a father sought modification of a custody award alleging that the mother lived in an open lesbian relationship with another woman. <i>M.J.P. v. J.G.P.</i>, 640 P.2d 966 (Okla. 1982). On appeal, the Oklahoma Supreme Court found that the change in conditions required a change in custody. The court specifically cited a psychiatrist’s expert testimony that the child could potentially experience problems with his peers and his own sexuality as a result of his mother’s sexual orientation. <i>Id.</i> at 969.</p>
Second-Parent Adoption	<p>Neither Oklahoma’s adoption statute nor any published opinions of its courts directly address the issue of second-parent adoption. Oklahoma permits stepparent adoption by a “spouse.” 10 Okl. Stat. § 7505-6.5 (2004).</p>

OREGON

Overview	<p>The Oregon adoption statute does not expressly permit or bar gay and lesbian adoption, and the state’s courts have yet to interpret the statute as to whether such adoption is permissible. Oregon’s adoption statute does not address second-parent adoption, and no published cases address the issue. However, same-sex couples have been granted child custody.</p>
Individual Adoption	<p>Oregon’s adoption statute permits “any person” to petition the court for leave to adopt a minor. Or. Rev. Stat. § 109.309 (2003). The state’s courts have yet to interpret the statute as to whether gay and lesbian adoption is permissible. However, Oregon courts have been receptive to gay and lesbian visitation and custody rights. In a child custody matter, an Oregon Court of Appeals deleted that portion of the lower court’s child custody order that limited a lesbian mother’s visitation to times when she did not have lesbians or gays within her home and around her children. <i>Marriage of Ashling</i>, 599 P.2d 475 (Or. Ct. App. 1979). Finding nothing in the record to justify such a restrictive provision, the court stated that as long as the mother’s sexual practices remained discreet, there was no need to enforce such a restriction. In another custody dispute, an appellate court overruled the trial court’s custody determination and held that the fact that the mother’s companion was of the same sex was not a significant change of circumstances sufficient to transfer custody of the minor child to the father. <i>Marriage of Collins</i>, 51 P.3d 691 (Or. Ct. App. 2002).</p>

Second-Parent Adoption	Neither Oregon’s adoption statute nor any published opinions of its courts directly address the issue of second-parent adoption. Oregon permits stepparent adoption, preserving the parental rights of the “spouse of the person who [is adopting] the [child].” ORS § 109.041 (2003).
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PENNSYLVANIA

Overview	Pennsylvania’s adoption statute does not expressly permit or bar gay and lesbian adoption. However, the Pennsylvania Supreme Court has explicitly ruled that gays and lesbians can adopt as second parents under the state’s Adoption Act. The state’s courts have also signaled a permissive approach to gay and lesbian child visitation rights.
Individual Adoption	Pennsylvania’s adoption statute states that “any individual may become an adoption parent.” 23 Pa.C.S. § 2312 (2003). While no Pennsylvania appellate court has interpreted this provision in the context of a gay or lesbian individual, the state’s Court of Common Pleas upheld an adoption by two lesbian women. <i>See In re Adoption of E.O.G.</i> , 28 Pa. D. & C.4th 262 (1993). Likewise, a Pennsylvania Superior Court has held that a person’s custodial rights cannot be restricted on the basis of his or her sexual orientation, unless that orientation will harm the child. <i>See Blew v. Verta</i> , 617 A.2d 31 (Pa. Super. Ct. 1992).
Second-Parent Adoption	Pennsylvania’s Adoption Act does not expressly permit second-parent adoptions but does provide for stepparent adoptions provided that “[the] parent consents to the adoption of his child by his spouse.” 23 Pa.C.S. § 2903 (2003). The act also contains a provision that allows a court to grant an adoption without terminating the parental rights of the pre-adoption parent(s), if the court has cause to do so. 23 Pa.C.S. § 2901 (2003). The Pennsylvania Supreme Court has interpreted this provision to permit second-parent adoptions by unmarried homosexuals where good cause is shown. <i>In re Adoption of R.B.F.</i> , 803 A.2d 1195, 1201-02 (Pa. 2002).

RHODE ISLAND

Overview	Rhode Island’s adoption statute does not expressly permit or bar gay and lesbian adoption, and the state’s courts have yet to interpret the statute as to whether such adoption is permissible. Second-parent adoption does not appear to be available under Rhode Island’s statutes, although no published cases address the issue.
Individual Adoption	Rhode Island’s adoption statute permits adoption by “any person.” R.I. Gen. Laws § 15-7-4 (2004). The state’s courts have yet to interpret the statute as to whether gay and lesbian adoption is permissible. However, in a child visitation case, the Rhode Island Supreme Court ruled that a lesbian woman was eligible to petition the Family Court to determine whether there was a mother-child relationship between her and the child of her former partner. <i>Rubano v. DiCenzo</i> , 759 A.2d 959, 966-67 (R.I. 2000).
Second-Parent Adoption	Neither Rhode Island’s adoption statute nor any published opinions of its courts directly address the issue of second-parent adoption. Rhode Island’s adoption statute permits stepparent adoptions by a person who is “legally married” to the

	pre-adoption parent. R.I. Gen. Laws § 15-7-17 (2004).
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SOUTH CAROLINA

Overview	South Carolina’s adoption statute does not expressly permit or bar gay and lesbian adoption, and the state’s courts have yet to interpret the statute as to whether such adoption is permissible. Second-parent adoption does not appear to be available under South Carolina’s statutes, although no published cases address the issue. However, an appellate court decision in a custody case suggests that the state’s courts may be receptive to gay and lesbian parenting.
Individual Adoption	South Carolina’s adoption statute states that “[a]ny South Carolina resident may petition the court to adopt a child.” S.C. Code Ann. § 20-7-1670 (2003). South Carolina’s courts have not addressed the issue of adoption by gays and lesbians. However, a 1987 decision suggests that South Carolina’s courts may be receptive to gay and lesbian parenting. <i>Stroman v. Williams</i> , 353 S.E.2d 704 (S.C. App. 1987). In denying a father a change of custody based on his argument that the mother’s same-sex relationship substantially affected one of their daughters, the court cited a New York case holding that “the mere fact that a parent is a homosexual does not alone render the parent unfit[,] and a parent’s sexual indiscretions are a consideration in a custody dispute only if they are shown to adversely affect the child’s welfare.” <i>Id.</i> at 706 (internal citation omitted).
Second-Parent Adoption	Neither South Carolina’s adoption statute nor any published opinions of its courts directly address the issue of second-parent adoption. South Carolina permits stepparent adoptions, allowing a person to adopt “his spouse’s child.” S.C. Code Ann. § 20-7-1820 (2003).

SOUTH DAKOTA

Overview	The South Dakota adoption statute does not expressly permit or bar gay and lesbian adoption, and the state’s courts have yet to interpret the statute as to whether such adoption is permissible. Second-parent adoption does not appear to be available under South Dakota’s statutes, although no published cases address the issue.
Individual Adoption	South Dakota’s adoption statute permits “any adult person” to adopt a child. S.D. Codified Law § 25-6-2 (2003). Although the state’s courts have not addressed the issue of gay and lesbian adoption, they have given a mixed reception to gay and lesbian visitation and custody rights. In a child custody matter, the South Dakota Supreme Court held that the trial court should not have granted unsupervised overnight visitations to a lesbian mother unless it had first conducted a home study from which it could determine whether the mother’s home environment was safe and stable for overnight visits. <i>Chicone v. Chicone</i> , 479 N.W.2d 891 (S.D. 1992). On the other hand, in a 1994 custody case, the South Dakota Supreme Court declined to modify a custody arrangement where the sole ground for modification was the mother’s same-sex relationship. <i>Van Driel v. Van Driel</i> , 525 N.W.2d 37 (S.D. 1994). The court affirmed the trial court's award of primary physical custody of the children to

	the mother, stating that “immoral conduct by one parent does not automatically render that parent unfit to have custody of the children.” <i>Id.</i> at 39.
Second-Parent Adoption	Neither South Dakota’s adoption statute nor any published opinions of its courts directly address the issue of second-parent adoption. South Dakota permits stepparent adoptions where the adopting parent “is the present spouse of the natural parent.” S.D. Codified Laws § 25-6-17 (2003).

TENNESSEE

Overview	Tennessee’s adoption statute does not expressly permit or bar gay and lesbian adoption, and the state’s highest court has yet to interpret the statute as to whether such adoption is permissible. However, the state’s lower courts have permitted adoption by homosexuals, and the Tennessee Supreme Court has signaled a moderate approach to gay and lesbian child visitation rights.
Individual Adoption	Tennessee permits “any person over 18 years of age” to petition for adoption. Tenn. Code Ann. § 36-1-115 (2004). No Tennessee Supreme Court decisions have dealt with the application of this provision to gays or lesbians. However, a state court of appeals declined to overturn a decree permitting a lesbian woman to adopt a child. <i>In re Adoption of M.J.S.</i> , 44 S.W.3d 41, 57 (Tenn. Ct. App. 2000). The court stated that although “the lifestyle of a proposed adoptive parent is certainly a factor that the trial court should consider in determining whether a proposed adoption is in a child’s best interest, . . . [b]y itself . . . this factor does not control the outcome of custody or adoption decisions, particularly absent evidence of its effects on the child.” <i>Id.</i> Similarly, in a visitation decision, the Tennessee Supreme Court reinstated a trial court order permitting a child to visit her mother overnight without restriction, even though the mother lived with her lesbian partner. <i>Eldridge v. Eldridge</i> , 42 S.W.3d 82, 90 (Tenn. 2001). The court noted that although “a trial court may impose restrictions on a child’s overnight visitation in the presence of non-spouses,” in the case at hand the trial court did not abuse its discretion in finding that unrestricted visitation would not have negative effects on the child. <i>Id.</i> at 89.
Second-Parent Adoption	Neither Tennessee’s adoption statute nor any published opinions of its courts directly address the issue of second-parent adoption. Tennessee’s adoption statute permits stepparent adoption by “[the] spouse of the biological parent.” Tenn. Code Ann. § 36-1-115(c) (2004).

TEXAS

Overview	Texas’s adoption statute does not expressly permit or bar gay and lesbian adoption, and the state’s courts have yet to interpret the statute as to whether such adoption is permissible. However, Texas courts appear unreceptive to granting custody to lesbian and gay persons. Texas’s adoption statute does not address second-parent adoption, and no published cases address the issue.
Individual Adoption	Texas permits “an adult” to petition for the adoption of a child. Tex. Fam. Code § 162.001(a) (2004). Although no published cases interpret the adoption statute to permit adoptions by gay and lesbian individuals, the state supreme and appellate courts have adjudicated issues surrounding custody and visitation.

	In a 1998 child custody and visitation matter, the central gay and lesbian issue on appeal was whether the appellant, a lesbian woman, had standing under Texas law to seek visitation and custody of a child born to the appellee, her partner. <i>Jones v. Fowler</i> , 969 S.W.2d 429 (Tex. 1998). The Texas Supreme Court simply stated that the appellant did not have standing “[b]ecause she did not meet the custody, control, and possession requirements [of the statute]” at the time of filing suit. <i>Id</i> at 433. A court of appeals cited <i>Jones</i> when it held that “[a]t the time of filing suit, appellant, did not meet the statute’s requirement because she had not had actual care, control, and possession of the child since October, 1998.” <i>Andersen v. Andersen</i> , 104 S.W.3d 630, 634 (Tex. App. 2003). The court then upheld the decision of the lower court and dismissed the appeal.
Second-Parent Adoption	Neither Texas’s adoption statute nor any published opinions of its courts directly address the issue of second-parent adoptions. Texas permits stepparent adoptions if the “[biological] parent is the spouse of the petitioner.” Tex. Fam. Code § 162.001(b) (2004). No published court cases address whether the same-sex partner of a gay or lesbian parent can utilize the adoption statute’s stepparent provisions to secure a second-parent adoption. However, the Health and Safety Code requires that birth records of adopted children contain the names of the adoptive parents “one of whom must be a female, named as the mother, and the other of whom must be male, named as the father.” Tex. Health & Safety Code § 192.008(a) (2004).

UTAH

Overview	Utah’s adoption statute, while not expressly barring gay and lesbian adoption as such, effectively prevents same sex couples from adopting. Second-parent adoption does not appear to be available under Utah’s statutes, although no published cases address the issue.
Individual Adoption	According to Utah’s adoption statute “[a] child may be adopted by . . . any single adult . . .” Utah Code Ann. § 78-30-1(3)(b) (2004). However, the petitioner cannot be cohabitating and engaging in a sexual relationship with a person with whom the petitioner is not married. <i>See id.</i> at § 78-30-1(3)(b) (2004). No published Utah cases interpret this statute or otherwise address adoption by gays and lesbians.
Second-Parent Adoption	Utah’s adoption statute does not permit second-parent adoptions. “A child may not be adopted by a person who is cohabitating in a relationship that is not a legally valid and binding marriage under the laws of this state.” Utah Code Ann. § 78-30-1(3)(b) (2004). Utah does permit stepparent adoptions for persons “who are legally married to each other, including adoption by stepparents.” Utah Code Ann. § 78-30-1(3)(a)(i) (2004).

VERMONT

Overview	The Vermont adoption statute, as interpreted by the state’s highest court, expressly permits both individual and second-parent adoptions by gays and lesbians.
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Individual Adoption	Under the Vermont adoption statute, “any person may adopt.” 15A V.S.A. § 1-102(a) (2003). The Vermont Supreme Court has held that gays and lesbians can adopt. <i>See Baker v. State of Vermont</i> , 744 A.2d 864, 882 (Vt. 1999); <i>Titchenal v. Dexter</i> , 693 A.2d 682, 686-88 (Vt. 1997).
Second-Parent Adoption	Vermont’s adoption statute states: “If a family unit consists of a parent and the parent’s partner, and adoption is in the best interest of the child, the partner of a parent may adopt a child of the parent. Termination of the parent’s parental rights is unnecessary in an adoption under this subsection.” 15A V.S.A. § 1-102(b) (2003). The Vermont Supreme Court has interpreted this provision as expressly sanctioning second-parent adoptions by a parent’s same-sex partner. <i>Baker v. State of Vermont</i> , 744 A.2d 864, 882 (Vt. 1999); <i>Titchenal v. Dexter</i> , 693 A.2d 682, 687 (Vt. 1997).

VIRGINIA

Overview	Virginia’s adoption statute does not expressly permit or bar gay and lesbian adoption, and the state’s courts have yet to interpret the statute as to whether such adoption is permissible. Second-parent adoption does not appear to be available under Virginia’s statutes, although no published cases address the issue. However, a recent settlement agreement reached between the Virginia Department of Social Services and a lesbian attempting to adopt an out-of-state child suggests that gays and lesbians may adopt in Virginia.
Individual Adoption	Virginia’s adoption statute states that “any natural person” can petition to adopt. Va. Code Ann. § 63.2-1201 (2004). In August 2002, the Virginia Department of Social Services reached a settlement with a Virginia lesbian who wished to adopt a D.C. foster child, reversing its policy of barring gays and lesbians from adopting out-of-state children. <i>See Kaufman v. Virginia Department of Social Services</i> (2003), at http://www.lambdalegal.org/cgi-bin/iowa/cases/record?record=177 . According to Lambda Legal’s website, the Department was to “send its local departments and agencies a directive instructing that consideration of all applications for adopting out-of-state children ‘will be limited to whether the proposed placement is contrary to the interests of that child’” and that “‘there are no absolute barriers’ to potential adoptions.” It is uncertain, however, whether this directive applies to in-state adoptions. The Virginia Supreme Court’s ruling in a 1995 custody case suggests that Virginia’s courts would not permit sexual-orientation to be used as a per se bar to adoption. <i>Bottoms v. Bottoms</i> , 457 S.E.2d 102 (Va. 1995). Although the court awarded custody to the child’s grandmother instead of his mother and cited the (then) illegality of lesbianism in Virginia and the social stigma with which the mother’s lesbianism may brand the child, the court held that “a lesbian mother is not <i>per se</i> an unfit parent.” <i>Id.</i> at 108.
Second-Parent Adoption	Neither Virginia’s adoption statute nor any published opinions of its courts directly address the issue of second-parent adoption. Virginia permits stepparent adoptions where the petitioner is the “husband or wife” of the parent. Va. Code Ann. §§ 63.2-1215 (2004), 63.1-1241 (2004).

WASHINGTON

Overview	Washington’s adoption statute does not expressly permit or bar gay and lesbian adoption, and the state’s highest court has yet to interpret the statute as to whether such adoption is permissible. One Washington state court has ruled that the statute, in fact, permits gay or lesbian adoptions.
Individual Adoption	Washington’s adoption statute states that “[a]ny person who is legally competent and who is eighteen years of age or older may be an adoptive parent.” Rev. Code Wash § 26.33.140(2) (2004). Recently, a Washington court of appeals held that “the law does not prohibit adoption based on the sexual orientation of the adoptive parent. Second, the law provides for the determination of parentage regardless of the marital status of the parents.” <i>State ex rel. D.R.M. v. Wood</i> , 34 P.3d 887, 892 (Wash. Ct. App. 2001). The Washington courts also have been receptive to lesbian and gay custody and visitation rights. Vacating that portion of a child visitation order which prohibited the father from exercising his visitation privileges with his son in the presence of his gay partner, the court held that there was no evidence to support a finding that the visitation “would endanger the child’s physical, mental or emotional health.” <i>Matter of Marriage of Calbalquinto</i> , 718 P.2d 7, 519 (Wash. Ct. App. 1986). (Such a finding is required under Wash. Rev. Code Ann. § 26.09.240 in order to restrict a parent’s child visitation rights.) In another child custody matter, an appellate court held that the birth mother whose parental rights were legally terminated by court order lacked standing to object to a state agency’s selection of a gay couple as prospective adoptive parents for the child she relinquished. <i>Matter of G.C.B.</i> , 708 P.2d 1037 (Wash. Ct. App. 1994). Similarly, two years later, a court of appeals reversed a judgment in a marital dissolution action where the gay father’s visitation with the parties’ children was restricted. The court held that the children did not suffer from any mental, emotional or physical problems warranting a restriction on the father’s homosexual lifestyle. <i>Marriage of Wicklund</i> , 932 P.2d 652, 656 (Wash. Ct. App. 1996).
Second Parent Adoption	Neither Washington’s adoption statute nor any published opinions of its courts directly address the issue of second-parent adoption. Washington’s adoption statute permits stepparent adoptions provided that the biological parent is “married to the adoptive parent.” Rev. Code Wash. (ARCW) § 26.33.260 (2004).

WEST VIRGINIA

Overview	West Virginia’s adoption statute does not expressly permit or bar gay and lesbian adoption, and the state’s courts have yet to interpret the statute as to whether such adoption is permissible. Second-parent adoption does not appear to be available under West Virginia’s statutes, although no published cases address the issue.
Individual Adoption	West Virginia’s adoption statute states that “any person” may petition to adopt. W. Va. Code § 48-22-201 (2003). West Virginia’s courts have not addressed the issue of adoption by gays and lesbians. However, in a 1985 child custody

	case, the West Virginia Supreme Court of Appeals held that, absent a showing of an adverse impact on the children, “[t]he fact that a custodial parent and her children are in the presence of a woman who is reputed to be a lesbian is not a ground for changing custody to the non-custodial parent.” <i>Rowsey v. Rowsey</i> , 329 S.E.2d 57, 60-61 (W. Va. 1985). <i>See also M.S.P. v. P.E.P.</i> , 358 S.E.2d 442, 445 (W. Va. 1987) (holding that absent a showing that the primary custodial parent’s alleged association with a gay man was not a basis for finding the parent unfit to have custody).
Second-Parent Adoption	Neither West Virginia’s adoption statute nor any published opinions of its courts directly address the issue of second-parent adoption. West Virginia permits stepparent adoption in the case of a “husband or wife of the petitioner for adoption.” W. Va. Code § 48-22-703 (2003). Another provision of the code defines stepparent adoption as “an adoption in which the petitioner for adoption is married to one of the birth parents of the child or to the adoptive parent of the child.” W. Va. Code § 48-22-116 (2003).

WISCONSIN

Overview	Wisconsin’s adoption statute does not expressly permit or bar gay and lesbian adoption, and the state’s courts have yet to interpret the statute as to whether such adoption is permissible. The state’s supreme court has ruled that Wisconsin’s former adoption statute did not permit second-parent adoption, and the legislature has since amended the statute to clarify that, in fact, the statute does not contemplate second-parent adoption.
Individual Adoption	Wisconsin’s adoption statute allows adoption by “[a]n unmarried person.” Wis. Stat. § 48.81 (2003). The state’s courts have yet to address the issue of whether adoption by gays and lesbians is permissible and the state’s courts have given a lukewarm reception to gay and lesbian custody and visitation rights. In a 1995 custody decision, the Wisconsin Supreme Court overruled a circuit court opinion that a lesbian had no standing to assert custody and visitation rights to the biological child of her former partner. <i>Holtzman v. Knott</i> , 533 N.W.2d 419 (Wis. 1995). The court held that visitation may be granted to a third party if the petitioner can prove that she has developed a “parent-like” relationship with the child and that there has been a substantial interference with the petitioner’s ability to continue to engage in that relationship with the child. <i>Id.</i> at 438. The court remanded that portion of the case to the circuit court for further deliberations on the issue of gay and lesbian visitation rights. Similarly, in a 1993 custody decision, a court of appeals held that although the custodial parent (the child’s mother) was engaged in a lesbian relationship, the father had failed to present any evidence that the relationship was harmful to the son. <i>Marriage of Dinges v. Montgomery</i> , 514 N.W.2d 723 (Wis. Ct. App. 1993). As a result, the court declined to change custody from the mother to the father. <i>Id.</i>
Second-Parent Adoption	Although Wisconsin’s adoption statute permits stepparent adoption by the “husband or wife if the other spouse is a parent of the minor,” Wisconsin’s Supreme Court has interpreted the statute as prohibiting second-parent adoptions. In a 1994 case, the state Supreme Court upheld the a lower court’s

	denial of a petition to allow the mother’s lesbian partner to adopt the child. <i>In the Interest of Angel Lace M.</i> , 516 N.W.2d 678, 680 (Wis. 1994). The court found that although the adoption might be in the child’s best interests, under Wisconsin law the mother’s partner could not adopt the child without terminating the mother’s parental rights. <i>Id.</i> at 682-83 (interpreting Wis. Stat §§ 48.81, 48.92). “If the legislature had intended to sanction adoptions by nonmarital partners, it would not have mandated this ‘cut-off’ of the ‘rights, duties and other legal consequences’ of the birth parents in these adoptions.” <i>Id.</i> at 683. Since that ruling, the legislature has amended the state’s adoption laws to clarify that the parental rights of both of a child’s parents must be terminated before a child may be adopted, making it unlikely that the state’s courts could interpret the adoption statute’s stepparent adoption provision as applicable to same-sex couples. <i>See</i> Wis. Stat. §§ 48.81, 48.92 (2003).
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WYOMING

Overview	The Wyoming adoption statute does not expressly permit or bar gay and lesbian adoption, and the state’s courts have yet to interpret the statute as to whether such adoption is permissible. Wyoming’s adoption statute does not address second-parent adoption, and no published cases address the issue.
Individual Adoption	Wyoming’s adoption statute states that “[a]ny adult person” may adopt. Wyo. Stat. § 1-22-103 (2003). In a 1995 visitation case, the Wyoming Supreme Court upheld the lower court’s limitation of the lesbian mother’s visitation privileges, but only because of “the beneficial stabilizing effect” of removing the children from the two parents’ culture war. <i>Hertzler v. Hertzler</i> , 908 P.2d 946, 952 (Wyo. 1995). The court expressly disagreed with the lower court’s condemnation of the mother’s lifestyle, stating “[a]lthough we cannot condone the district court’s indulgence of a personal viewpoint, we likewise cannot reverse a discretionary decision which is reasonable and benefits from substantial support in the record.” <i>Id.</i> at 952. The court added that it was not “inclined towards exclusion in defining the family unit, particularly where the care and nurturing of children is at issue.” <i>Id.</i> at 950.
Second Parent Adoption	Neither Wyoming’s adoption statute nor any published opinions of its courts directly address the issue of second-parent adoption. Wyoming’s adoption statute permits stepparent adoption “by either the husband or wife if the other spouse if a parent of the child.” Wyo. Stat. § 1-22-104(b) (2003).