

Seth Grob

Two adopt, or not two adopt? HB 1330 answers the question

By Matt Kailey



"We estimate that approximately 65,500 adopted children are being raised by lesbian or gay parents, accounting for more than four percent of all adopted children in the United States." - so says Adoption and Foster Care by Lesbian and Gay Parents in the United States, a recent report from the Williams Institute and the Urban Institute that examines U.S. gay and lesbian foster care and adoptive trends. The report is the final product in a study that examined data from the U.S. Census 2000, the National Survey of Family Growth (2002) and the Adoption and Foster Care Analysis and Reporting System (2004) in the face of controversial legislation in many states regarding gay and lesbian foster parenting and adoption.

Here in Colorado, HB 1330, Second Parent Adoption of a Child of a Sole Legal Parent, which will, among other things, allow a same-sex partner to adopt his or her partner's biological or adopted child, has passed the state legislature and was signed into law by Gov. Bill Ritter on Monday, May 14. The law will go into effect 90 days from the date of the governor's signature. Similar bills introduced in Colorado in the past have failed to pass a Republican-controlled legislature.

With HB 1330, Colorado is ahead of some states that ban adoption by same-sex couples or even by a single person who is known to be gay or lesbian.

Florida statute forbids "homosexuals" from adopting, according to the Williams Institute report. Mississippi bans "same-gender" couples from adopting, and Utah forbids adoption by all unmarried couples. But many other states have policies that forbid sexual orientation to be used as grounds to prevent adoption, such as California, Maryland, Massachusetts, Nevada, New Jersey, New York, Connecticut, Illinois, Indiana, Pennsylvania, Vermont and the District of Columbia.

The law in Colorado prior to the passage of HB 1330 did allow gay and lesbian singles, or one member of a same-sex couple, to adopt a child. However, this legal arrangement is fraught with difficulty, especially for the

child. HB 1330 will take care of that, says adoption attorney Seth Grob. Grob spent the first seven years of his legal career working for the Rocky Mountain Children's Law Center as a guardian ad litem and children's rights attorney. He has been in private practice for the last seven years, handling adoption and infertility law, including egg and sperm donation and surrogacy for both opposite-sex and same-sex couples. He also serves on the Board of Trustees for the American Academy of Adoption Attorneys, has handled many single-parent gay and lesbian adoptions and supports the passage of HB 1330, particularly for the sake of the child.

"From a child's perspective, it's important, because it gives the child a whole range of additional benefits that previously didn't exist," says Grob. "For example, the child now with two legal parents will have the right to inherit through both parents, will have the right to receive Social Security death benefits from each of the adoptive parents, will have the right to be claimed as a dependent on each of the adoptive parents' health insurance policies, and (the bill) will ensure continuity of care if one of the parents should die."

Aurora city clerk Debra Johnson has testified before the legislature on HB 1330 and has been an outspoken advocate for the bill. Johnson has been with her partner, Barb Gregg, for five and a half years, and the couple has two children - Matthew, Gregg's biological son, and Chloe, Johnson's adopted daughter, both age 9. Prior to the passage of HB1330, Johnson and Gregg could not adopt each other's children.

"(HB 1330 will) just make our lives a whole lot easier," Johnson says. "I cannot sign Matthew's school permission slips to go on field trips. Stuff like that. Simple. Your everyday life. All the way up to, like, any time that I go out of town, say, for business, I need to give a medical authorization to Barb. She cannot legally give medical authorization for Chloe. She drives both of the kids to school every morning. If they were to get into a car accident and (Chloe) needed medical attention, would she get it, is the big question. Because I'm not there to authorize." Each partner covers her own child on her insurance policy at work, but the policies are very different and allow for different levels of care. And if one member of the couple should die, the surviving parent might not be able get the child on her insurance policy. And the worst-case scenario is that the surviving partner could lose all rights to - and even contact with - the deceased partner's child, which would be emotionally damaging to both.

"We have all the legal paperwork," says Johnson. "What I say, and what I testified to, is that, yes, we have all the legal paperwork and we have wills and we have all that kind of stuff, legal guardianship, but those things have been contested in court and lost, versus adoption papers, (which) have not lost in court."

Now that the governor has signed the bill, Johnson and Gregg will begin proceedings to adopt each other's child. They also understand that this means legal responsibility for the other's child no matter what happens, even if the couple splits up.

"We already have that in our living agreement," says Johnson. "That there's some financial responsibilities." The Williams Institute report estimates the total number of adopted children living in the state of Colorado at 29,438, with 616 of those children living with a gay or lesbian adoptive parent (the number could be higher due to unreported same-sex sexual orientation in some homes). The state ranks 22nd in number of adoptive children living with a gay or lesbian parent. With HB 1330, many of those children will be able to enjoy the benefits and security of having two legal parents - benefits that include qualifying for health insurance, Social Security, child support, and other means of support from either adult. There will also be no fear that the child could be taken from the home if the legal parent dies. With two legal parents, if something happens to one, the other, with whom the child has also formed a parent/child bond, will continue to raise and parent the child without fear of losing the child due to lack of legal protections.

The Williams Institute report has found other benefits for children as well. With 114,000 children in the U.S. foster care system awaiting adoption, and 14,100 of those children in foster care with a lesbian or gay foster parent, not allowing gay and lesbian or same-sex-couple adoption can prevent these children from ever having a stable and permanent home life, with both the legal and emotional benefits such a life can provide. The report estimates that, in Colorado, up to 234 children could be in foster homes with gay or lesbian foster parents. Since many foster parents end up adopting their foster children if those children become available, HB 1330 can provide a long-term two-parent home for many of these children. Second-parent adoption, whether of a partner's biological child or adopted child, can ensure protection and permanence for many of Colorado's children. "Second parent adoption was one of the many basic legal rights included in Referendum I," says Pat Steadman, attorney with Mendez, Steadman and Associates and lobbyist for Equal Rights Colorado. "After voters rejected domestic partnerships last November, we were left with a strategy of taking a piecemeal approach. Equal Rights Colorado felt strongly that the first piece of Referendum I that we should bring to the legislature in 2007 was the piece that protected