

CHAPTER XII

Transgender Parents

Thousands of children around the United States have parents who are transgender, an umbrella term used to describe people whose gender identity—one’s inner sense of being male, female or something else—differs from the sex assigned or presumed at birth.

These parents are like anyone else, whether married, living with partners or single, and whether adopting, giving birth, fostering or step-parenting. Indeed, while the fact that they’re transgender is often what others focus on first, transgender parents are generally more preoccupied with diapers, homework or getting dinner on the table. They are parents first.

Good parenting is good parenting, regardless of gender identity. A common misconception (often exploited in custody disputes) is that transitioning—living and presenting oneself consistent with one’s gender identity in everyday life—is a selfish act rather than a difficult journey that is not embarked upon casually. Transitioning is more accurately understood as a step toward the alignment of a person’s mind and body, and as such can benefit everyone affected, including children. And that’s not to mention the value to children of learning about human diversity and tolerance.

Nonetheless, judges and adoption agencies sometimes try to stop transgender adults from bringing children into their lives and even try to remove them from their homes. Misperceptions and prejudices about transgender people fuel many custody

disputes. High emotions are often in play when a cisgender co-parent is unable to accept a transgender parent’s transition and files for divorce. Sometimes an ex-partner questions a transgender parent’s suitability in court in order to try to change a custody arrangement.

Growing knowledge about this issue continues to benefit trans parents’ efforts to protect parent-child relationships, but the courts still have a long way to go.

This Lambda Legal fact sheet addresses some basic questions about the issues transgender parents face during custody and visitation disputes. It also offers practical advice and resources for transgender parents and their families seeking to protect themselves against challenges to their parental rights.

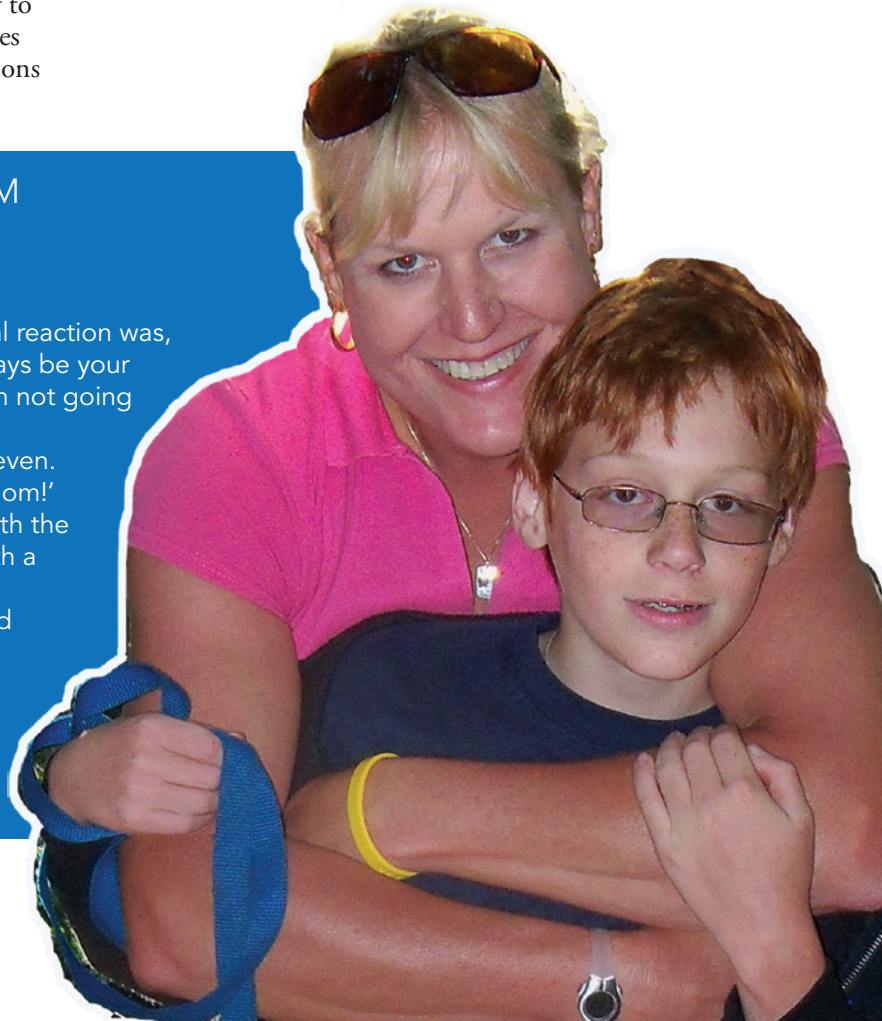
OUR STORY “I HAVE A DAD AND A MOM IN THE SAME BODY”

BRIANNA HARRIS, AND AIDAN HARRIS

“When I came out to Aidan when he was six, his initial reaction was, ‘But I’m gonna miss my Dad!’ And I told him, ‘I will always be your dad. No matter what happens we can’t change that. I’m not going anywhere.’

“The first year he marched at Pride with me he was seven. He made up a T-shirt that said ‘I’m proud of my trans mom!’ On the front, he drew a stick figure in a baseball cap with the words FROM THIS, and on the back it said TO THIS with a stick figure in a dress.

“Only on a few occasions that I’m aware of has he had trouble in school, but he’s always handled it great. When he was in third grade, a fifth-grader made some comment about his dad wearing dresses. He just turned to the kid and said, ‘Well, you’re just jealous that I have a dad and a mom in the same body.’”



FAQ

Answers to Common Questions about Parenting

Q: Do children need certain kinds of gender-specific parenting?

A: It doesn't matter what gender your parents are. Research shows that the most important influences on a child's happiness and development are the quality of the child's relationship with a parent or parents, the quality of parents' relationship with each other or other adults and economic factors. Having a single parent or having two of the same gender doesn't leave children any less well-adjusted than having parents who are a male and female couple.

A parent's "gender conformity"—how well they conform to society's expectations of gender roles—is also irrelevant for evaluating the "best interests of the child," the standard that courts use to determine custody issues. Studies on gender-nonconforming parents (such as masculine women or feminine men, for instance) have found that when traditionally gendered mom and dad parenting roles are reversed or reshuffled—or even combined in the caretaking of a single parent—there is no adverse effect on the child.

Q: Isn't a transgender parent's transition sometimes very upsetting to a child?

A: Children tend to have fewer preconceived notions about gender than adults do. Experiences vary for children with a transgender parent who transitions. Studies have shown that preschool age and adult children generally adapt better to a parent's transition, while adolescent children tend to face more challenges.

Extra factors come into play as well, however, such as the fact that it can be tricky finding someone to talk to who has gone through the same experience. There are a limited number of resources available to transgender parents and their families. (See "Coming Out to Your Child," next page.)

Also, when a married parent transitions, the change may cause some conflict in the marriage itself, a situation that is bound to affect the children. This is often made much worse if the cisgender parent is openly hostile about the transition—although that is by no means always the situation.

A recent national study found that 58% of transgender parents found their relationships with their children to be the same or better and 13% found that some things were better and some things were worse (National Transgender Discrimination Survey). There are many events in the lives of parents and children that may cause difficult emotional responses, and it is the job of parents and families to help children deal with them in a healthy way.

Q: Are transgender parents likely to influence the gender identity or sexual orientation of their children?

A: No, there is no evidence of any greater tendency for children of transgender parents to be transgender themselves, nor to be gay, lesbian or bisexual. A wide range of studies dating back to the 1970s have measured no such differences.

Q: Can a court change custody or visitation arrangements based purely on the fact that a parent is transgender?

A: Courts are generally only allowed to base custody or visitation rulings on factors that directly affect the "best interests of the child." If a transgender parent's gender identity can't be shown to hurt the child in some way, contact should not be limited, and other custody and visitation orders should not be changed because of a parent's transition.

Many courts have upheld this principle and have treated transgender custody cases like any other child custody determination—by focusing on standard factors such as parental skills. Judges have quite properly recognized the capabilities of transgender parents.¹ In *Mayfield v. Mayfield*, for instance, the court upheld a transgender parent's shared parenting plan because there was no evidence in the record that the parent would not be a "fit, loving and capable parent." Other times, courts considering a child's "interests" have ruled against the transgender parent, seemingly using a proper standard.² For instance, in *In re Marriage of Magnuson*, the court affirmed a ruling against a transgender parent by stating it had "properly considered the children's needs in making a residential placement decision, not a parent's transgender status, conforming to the principles in sexual [orientation] cases." This is not to say transgender parents don't lose access to their children based solely on their gender identity—unfortunately it does happen.³ Some courts have lacked understanding about a transgender parent's need to transition.

¹. See *M. v. M.; U. v. U.*, FA94-0064700, FA89-0050074, 1996 Conn. Super. LEXIS 1774 (July 11, 1996); *In re Custody of T.J.*, No. C2-87-1786, 1988 Minn. App. LEXIS 144 (Minn. Ct. App. Feb. 9, 1988); *Mayfield v. Mayfield*, Case No. 96AP030032, 1996 Ohio App. LEXIS 3724 (Ohio Ct. App. Aug. 14, 1996). ². *In re Marriage of Magnuson*, 170 P.3d 65, 66 (Wash. Ct. App. 2007).

“ I will always be your dad. No matter what happens we can't change that.

—BRIANNA HARRIS

For example, in *Cisek v. Cisek*,⁴ the court terminated a transgender parent's visitation rights, holding that there was a risk of both mental and “social harm” to the children. The court asked whether the parent's so-called “sex change” was “simply an indulgence of some fantasy.”⁵ An Ohio court imposed an indefinite moratorium on visitation based on the court's belief that it would be emotionally confusing for the children to see “their father as a woman.”⁶

The case law on this issue varies widely by state, however, so it's always best to check with a local attorney or contact Lambda Legal's Help Desk (toll-free at 866-542-8336 or at www.lambdalegal.org/help).

Q: Can the validity of a marriage itself be questioned when a spouse who is a non-biological parent transitions—thereby “canceling out” parental rights?

A: It all depends on which state you live in—and where you happen to travel. Families with a transgender mother or father may find “presumption of parentage” is not respected across one particular state line or another.

In *Kantaras v. Kantaras*, the wife of a transgender man who had transitioned before they married, attacked the validity of their 10-year marriage and the transgender man's status as a legal parent to the couple's two children. A Florida trial court issued a decision that was groundbreaking at the time; holding that Michael Kantaras was legally male—affirming the validity of the marriage and awarding him primary custody of the couple's children. A year later, though, the Florida Court of Appeals reversed, voiding the marriage and sending the case back to the trial court to determine Michael Kantaras' parental rights. He was eventually awarded shared custody of the children in an out-of-court settlement in spite of the court's ruling to void his marriage.⁷

The main takeaway is that transgender parents should not rely on marriage as a permanent connection to a child—and should file for adoption of any non-biological children as soon as possible. For more information, contact Lambda Legal's Help Desk at 866-542-8336 or visit www.lambdalegal.org/help.

Q: Is there anything special that transgender people should do when trying to foster or adopt a child?

A: Foster and adoption agencies put prospective parents through a rigorous series of interviews and investigations, and the process can be very invasive. None of these should bar transgender parents from approval, however. Some states do explicitly ban gay and lesbian couples from adopting, but none

specifically address prospective parents who are transgender. Only six states prohibit discrimination against foster and adoptive parent applicants based on gender identity in their laws or regulations, leaving transgender people in 44 states vulnerable to extra scrutiny or denial simply for being transgender. Placement of a child is up to a judge— although the process can also be sabotaged if an agency or individual staffer happens to have anti-transgender biases.

On the other hand, some agencies (such as True Colors in Hartford, Connecticut and Green Chimneys in New York City) actively seek out LGBT foster families for adolescent youth.

COMING OUT TO YOUR CHILDREN TRANS PARENTS AND THEIR CHILDREN SHARE THEIR ADVICE.

Marlow White, 47: “Be willing to have a dialogue. Kids are resilient—they are our best supporters and advocates. Since I have transitioned my children have marched with and supported me.”

LaAsha Nelson, 11 (White's daughter): “[When my Pops told me] I didn't really understand. When I got older and understood, it still had no effect. [I would tell kids] not to worry because even though their [parents'] bodies change, it doesn't mean that they're going to change. Love them the same.”

Crystall Otway, 13 (White's step-daughter): “Tell your child soon, as soon as possible. In my case, I had not been told my stepfather had transitioned, and it was because my mom wanted to ‘protect’ me. Honesty is the best policy.”

Sophie Marnin, 10: “Just act normal when you're telling your child.”

Seth Marnin, 43 (Sophie's father): “Trust your kid and your own love for your kid. At the end of the day, your kids want to know you love them.”

3. See also *M.B. v. D.W.*, 236 S.W.3d 31 (Ky. Ct. App. 2007). 4. *Cisek v. Cisek*, No. 80 C.A. 113, 1982 Ohio App. LEXIS 13335 (Ohio Ct. App. July 20, 1982). 5. *Id.* at *3-4. 6. *J.L.S. v. D.K.S.*, 943 S.W.2d 766 (Mo. Ct. App. 1997). 7. *Kantaras v. Kantaras*, 884 So. 2d 155 (Fla. Dist. Ct. App. 2d Dist. 2004).

Resources

These organizations and resources provide education and advocacy that may be helpful for transgender parents.

COLAGE

Support for anyone with a lesbian, gay, bisexual, transgender or queer parent. 415-861-KIDS
www.colage.org

GENDER SPECTRUM

Works toward creating a more gender-sensitive and inclusive experience for all children and teens. 510-788-4412
www.genderspectrum.org

NATIONAL CENTER FOR TRANSGENDER EQUALITY

Monitors federal activity on transgender issues and emphasizes national advocacy and education. 202-903-0112
www.transequality.org

PFLAG TRANSGENDER NETWORK

Though more focused on the parents of trans people than on transgender parents, PFLAG's family approach can be helpful. 202-467-8180
pflag.org/transgender

TRANSGENDER LAW CENTER

A California-based organization whose resources can be useful nationally. 415-865-0176
www.transgenderlawcenter.org

TRANSPARENT

A documentary film about 19 transgender men who gave birth to children.
www.julesrosskam.com/transparent/

TRANSYOUTH FAMILY ALLIES

Partners with educators and communities to develop supportive environments where gender may be expressed and respected. 888-462-8932
www.imatyfa.org

TIPS

HOW TO PROTECT PARENT-CHILD RELATIONSHIPS

There is a lot that transgender parents can do to protect their families in advance from any efforts to limit child-parent access by a hostile family member, ex-partner or judge:

- 1 Protect your legal relationship with your child, especially if you are not the biological parent. Go to court to legally adopt children who recognize you as their parent but aren't blood relatives.
- 2 Protect your marriage, if you have one, by executing a last will and testament for both you and your spouse; financial and medical powers of attorney designating each other; and a written agreement laying out each spouse's rights and responsibilities regarding your children (and including an acknowledgement that one spouse is transgender). Even if your marriage appears entirely valid, if one or both of you is transgender, its legality may be challenged. Consider hiring an attorney to make sure you're aware of jurisdictional variations and other issues. For more information, visit lambdalegal.org/publications/toolkits.
- 3 Research clearly shows both gender and "gender conformity" are irrelevant to a child's happiness and development; don't hesitate to share this with anyone claiming that transgender people influence children negatively.
- 4 Remember that kids are generally able to adapt much more easily to a parent's transition if family relationships stay loving and supportive. To find out more, call Lambda Legal's Help Desk at 866-542-8336 or visit www.lambdalegal.org/help.

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FOR MORE INFORMATION: Contact Lambda Legal at 212-809-8585, 120 Wall Street, 19th Floor, New York, NY 10005-3919. If you feel you have experienced discrimination, call our Legal Help Desk toll-free at 866-542-8336 or go to www.lambdalegal.org/help.