



## Transgender Family Law in the U.S.:

### A fact sheet for transgender spouses, partners, parents, and youth

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#### **MARRIAGE, CIVIL UNIONS, AND REGISTERED DOMESTIC PARTNERSHIPS**

For transgender people, determining whether you can marry, enter into a civil union, or register as domestic partners can be complicated. The laws addressing transgender people are often unclear, and legal family relationships may depend on your legal gender.

**IMPORTANT:** It is important for all couples to complete documents that can help protect their families. This includes: creating a will, trust, or other estate plan and completing advanced health care directives.

#### **1. Who can marry?**

Any two people can now marry regardless of sex throughout the U.S. and its territories. In addition, a growing number of tribal nations also allow same-sex couples to marry. You can find information about this in our fact sheet summarizing relationship recognition for same-sex couples available at [www.nclrights.org/RRFactSheet](http://www.nclrights.org/RRFactSheet)

For more information about relationship recognition for same-sex couples, see [\*Marriage, Domestic Partnerships, and Civil Unions: An Overview of Relationship Recognition for Same-Sex Couples in the United States\*](#), available at [www.nclrights.org](http://www.nclrights.org).

#### **2. Who can enter into a civil union or register as domestic partners?**

As of June 2015, Colorado, Hawaii, Illinois, and New Jersey allow same-sex couples to enter civil unions, and California, Oregon, Nevada, and the District of Columbia offer domestic partnerships that include nearly all the rights and responsibilities of marriage. Some of these relationship statuses are open to same-sex and different-sex couples, but some are limited to same-sex couples.

NOTE: Washington state used to offer registered domestic partnerships to same-sex couples, but now allows same-sex couples to marry and no longer allows couples to enter into registered domestic partnerships unless one or both partners are over age 62. If you live in,

plan to move to, or entered into a registered domestic partnership in Washington state, please consult our publication linked to above for more information about registered domestic partnerships there. You may need to take additional action to protect recognition of your relationship.

### **3. We are a different-sex couple and one of us is transgender. Can we get married?**

As mentioned above, any two people can get married in the U.S. and its territories, regardless of their gender. However, some other countries may not recognize marriages entered by same-sex couples, so it may still be useful to take as many steps as possible to transition before marrying a different-sex partner.

**IMPORTANT:** Wherever you marry, you may want to take as many steps as possible to transition before marrying a different-sex partner. If possible, get a court ordered gender change and amend your birth certificate. Before marrying, we recommend that you and your intended spouse enter into a memorandum of understanding (MOU). This should include a statement that the non-transgender spouse is aware that the other spouse is transgender.

As a practical matter, transgender spouses may face some difficulties having their marriages recognized, even if they should be. It is important to fill out advanced healthcare directives and keep them with you when traveling especially outside the U.S.. For a blank advanced directive for your state, see: [www.caringinfo.org](http://www.caringinfo.org).

### **4. My spouse and I married as a different-sex couple, but one of us transitioned after we married. Are we still married?**

Changing your gender after marriage does not invalidate your marriage. Once a couple validly marries, their marriage stays valid. All states and the federal government should continue to recognize your marriage even if one of you later legally changes your gender.

### **5. Will the federal government recognize my relationship?**

If you are validly married, you will be fully recognized by the federal government as married for all purposes. With some exceptions, the federal government may not recognize civil unions or registered domestic partnerships.

### **6. One of us is not a U.S. citizen. If we get married, can we stay together in the U.S.?**

If you and your spouse marry, the U.S. citizen spouse should be able to sponsor the non-U.S. citizen spouse if you are otherwise eligible for spousal sponsorship. This is true for any two people who are married, regardless of sex.

**IMPORTANT:** Immigration based on marriage can be complicated. We **strongly encourage** you to contact NCLR and speak with an attorney **before** getting married and/or seeking family-based immigration status through your marriage.

**7. My partner and I entered into a civil union or registered as domestic partners (RDP) as a same-sex couple and one of us later transitioned. Is our RDP/civil union still valid?**

Transition after registering doesn't affect your RDP or civil union. If you also want to marry each other, you may not need to end your RDP or civil union first before you marry.

**8. My partner and I are a same-sex couple, and one of us is transgender. Can we enter into a civil union or register as domestic partners?**

Some states allow any two people regardless of gender to enter into a civil union or domestic partnership (D.C., Hawaii, Illinois, Nevada). If you must be a same-sex couple to enter a civil union or registered domestic partnership, if you are a same-sex couple and one of you has transitioned, you may be able to enter into a civil union or register as domestic partners. You should take as many steps as possible to transition before registering or entering into a civil union. If possible, you should get a court ordered gender change and amend your birth certificate.

## **PARENTING**

### **1. Am I legally recognized as my child's parent?**

Transgender people can become parents in many different ways. You could be legally recognized as a parent if:

- You are a biological parent.
- You have adopted your child.
- You and your spouse or partner had a child together while you were married, registered as domestic partners, or in a civil union AND your state recognizes your relationship.
- You may be a legal parent in some states based on holding yourself out to the world as your child's parent, and/or acting as a parent.

Parentage law is complicated. If you have questions about whether you are legally recognized as a parent, we strongly encourage you to speak to an attorney who is experienced with transgender family law.

### **2. How can I protect my relationship with my child if I am not a biological or adoptive parent?**

We strongly recommend that all non-biological and non-adoptive parents get an adoption or parentage judgment if possible. Otherwise, you may not be recognized as a parent in another state, even if you would be in the state where you live.

**IMPORTANT: It is not enough to have your name on your child's birth certificate. If you are not a biological or adoptive parent, it is important to have an adoption or parentage judgment from a court.**

### **3. Will I be able to have custody of my child if my spouse/partner and I separate?**

In most states, a transgender person who is a legal parent should not be denied custody or visitation simply because of his or her gender identity or expression. However, many courts are unfamiliar with transgender parents. It is very important to advocate for your rights as a parent from the start, including presenting expert testimony on the irrelevance of transgender status to parenting. Once there is a court order denying or putting restrictions on custody or visitation, it can be very difficult to change later.

If you are not a legal parent in your state, you may still be able to seek custody or visitation if you have acted as a parent and have a parent-child bond. Many states recognize that, where a person who is not a legal parent participated in the caretaking of the child and maintained a parent-like relationship with the child, he or she has standing (meaning the right to go to court)

to ask a court for visitation or custody. Such states have recognized this right to seek visitation or custody under an “equitable parent,” “parent by estoppel,” “de facto parent,” “psychological parent,” or “in loco parentis” theory. Only a small number of states have said that a non-legal parent has no standing to seek custody or visitation with the child of his or her former partner, even when he or she has been an equally contributing caretaker of the child.

#### **4. Can I be a foster parent?**

Transgender people can be foster parents. A few states explicitly prohibit discrimination against transgender foster parents. Prospective transgender foster parents may face discrimination in any state.

## **TRANSGENDER CHILDREN AND YOUTH**

### **1. We have a transgender or gender non-conforming (GNC) child. What should we do?**

It is very important to seek medical and mental health services for your child from practitioners who are experienced with treating and supporting transgender and GNC children. Gender Spectrum provides information and supportive services to families with transgender and GNC children, and may be able to help you find services in your area: [www.genderspectrum.org](http://www.genderspectrum.org).

### **2. Can we change our child's name and gender at school? Can we legally change our child's name?**

It is important to approach your child's school early on to discuss your child's need to be referred to by his or her chosen name and pronoun in school. Public schools, including charter schools, or private schools that receive federal funding, must respect a transgender child's gender, must take steps to protect them from harassment, and must allow students to use sex-segregated facilities consistent with their gender identity. This includes ensuring that the records system accurately reflects your child's chosen name and correct gender marker.

With consent from both parents, it is generally possible in all states to change a minor's name legally through the court. It may be possible in some states to legally change a minor's gender.

**IMPORTANT:** You and your co-parent may not always agree on how to support your transgender or GNC child. It is very important to do whatever you can to come to an agreement together without going to court. Courts are very unfamiliar with transgender children. If you and your co-parent disagree, you should proceed cautiously and only on the advice of a doctor or therapist before allowing your child to live as a different gender.

### **3. What are the rights of transgender youth in foster care?**

Youth in the foster care system have the right to express their gender. They can request a transfer if their foster family is not supportive. The staff at any facility should work with transgender youth to make sure that their identity is respected.

**If you have questions about transgender family law, please contact:**

National Center for Lesbian Rights

Helpline: 800.528.6257

Email: [info@nclrights.org](mailto:info@nclrights.org)

Website: [www.nclrights.org](http://www.nclrights.org)

Transgender Law Center

Main line: 877.847.1278

Email: [info@transgenderlawcenter.org](mailto:info@transgenderlawcenter.org)

Website: [www.transgenderlawcenter.org](http://www.transgenderlawcenter.org)

This fact sheet was adapted from a fact sheet developed by the Transgender Law Center (TLC), and is designed to answer basic legal questions related to marriage, domestic partnerships, parenting, foster care, and youth issues in the U.S.. This fact sheet is not intended to be legal advice. The law is always evolving, and its application is dependent on specific facts in each situation. You should consult with an attorney in your state about how the law will apply to you and what options you have in your particular situation.

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