



California Transgender Family Law: A fact sheet for transgender spouses, partners, parents, and youth

MARRIAGE & CALIFORNIA REGISTERED DOMESTIC PARTNERSHIP (RDP)

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 in California?

There is no gender requirement for marriage in California, which has allowed both same-sex and different-sex couples to marry since June 28, 2013. Additionally, same-sex couples were able to marry in California between June 16 and November 4, 2008, and those marriages remain valid.

2. Who can register as domestic partners (RDP) in California?

In California, same-sex couples or any couple where one or both partners are over age 62 can register as domestic partners. Registered Domestic Partners (RDPs) have all the rights and responsibilities of marriage under California law. However, with some exceptions, an RDP may not be recognized by the U.S. federal government and may not be recognized in many other states.

3. Will the federal government recognize my relationship?

The federal government now recognizes all valid marriages regardless of the gender of the spouses. With some exceptions, the federal government may not recognize civil unions or registered domestic partnerships.

4. My spouse and I married as a different-sex couple, but one of us transitioned or took steps to affirm their gender after we married. Are we still married?

In general, changes in the spouses' circumstances after marriage will not invalidate the marriage. Once a couple validly marries, their marriage stays valid. The federal government should continue to recognize your marriage even if one of you later transitions or takes steps to affirm your gender.

5. We are a different-sex couple and one of us is transgender. Can we get married in California?

There is no gender requirement for marrying in California, and valid marriages should be recognized throughout the U.S. and its territories. However, your marriage may not be recognized in another country if you marry as a same-sex couple, even if you later transition or take steps to affirm your gender. California also allows transgender people to obtain court orders of gender change. If you would like to marry as different-sex spouses in order to be recognized as married in more places, you should take as many steps as possible to affirm your gender before marrying. If possible, you should get a court ordered gender change and amend your birth certificate. However, even if you legally change your gender, you may have issues in some countries having your marriage recognized. It is especially important to fill out advanced healthcare directives and keep them with you when traveling.

IMPORTANT: 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.

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.

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 registered as domestic partners as a same-sex couple and one of us later transitioned or took steps to affirm their gender. Is our RDP still valid?

Transition or affirming your gender after registering doesn't affect your RDP. If you also want to marry each other, you do not need to end your RDP first.

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

If you are a same-sex couple, you can register as domestic partners. If you are transgender, you should take as many steps as possible to transition or affirm your gender before registering. 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 in California if:

- You are a biological parent.
- You have adopted your child.
- You and your spouse or domestic partner had a child together while you were married or registered.
- You have lived with your child and held yourself out to the world as your child's parent.
- You consented to conception of a child by assisted reproduction.

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.

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. Otherwise, you may not be recognized as a parent in another state, even if you would be in California.

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

A transgender person should not be denied custody or visitation simply because of their 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. Once there is a court order denying or putting restrictions on custody or visitation, it can be very difficult to change later.

3. Can I be a foster parent?

Transgender people can be foster parents. Under California law, no one can be denied services or rejected as a foster family simply for being transgender.

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.

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

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. California public schools, including charter schools, or private schools that receive state or 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 possible to change a minor's name legally through the court. In those situations, parents may also petition the court to change a child's gender with a letter from the child's treating physician supporting the change.

IMPORTANT: You and your co-parent may not always agree on how to support your transgender or GNC child. It is very important to engage in a dialogue with the non-affirming co-parent in hopes of obtaining their consent when making important decisions about how to raise your child. If that is unsuccessful, it will likely still be in your child's best interest to come to an agreement together regarding your child's unique needs without going to court. Courts are very unfamiliar with transgender children and should be used as a last resort. In those situations, you should proceed cautiously, which includes taking your child to a qualified mental health and medical providers and closely following the advice of those professionals. This may mean delaying your child's access to treatments for gender dysphoria, including social transition and puberty-delaying medications.

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

Website: www.nclrights.org

Transgender Law Center

Main line: 877.847.1278

Email: info@transgenderlawcenter.org

Website: 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 California. *Last updated: June 2018*