

# LGBTQ Rights in Family Court



## What does LGBTQ mean?

LGBTQ stands for lesbian, gay, bisexual, transgender, queer, or questioning.

**Lesbian** refers to a woman who is mostly romantically and/or sexually attracted to women.

**Gay** refers to a man who is mostly romantically and/or sexually attracted to men, or any person mostly romantically and/or sexually attracted to people who are the same sex as themselves.

**Bisexual** refers to a person who is romantically and/or sexually attracted to people of the same sex and people of different sexes.

**Transgender** refers to a person whose gender identity is different from the sex they were assigned at birth.

**Queer** is a catch-all word used by people who do not use labels such as LGB and/or T to describe their sexual orientation or sometimes gender identity.

**Questioning** refers to a process of exploring for people who may be unsure of their sexual orientation or gender identity.

A person's **sexual orientation** and **gender identity** are factors in whether a person considers themselves LGBTQ.

**Sexual orientation** refers to a person's romantic, physical, and/or sexual attraction to other people.

**Gender identity** a person's deeply felt sense of being a woman, a man, or another gender (non-binary).

## I am an LGBTQ person. What are my rights in Family Court?

You have the RIGHT to...

- Ask to be referred to by the name you choose and the pronouns you choose (he/him/his, she/her/hers, ze/hir/hirs, etc.)
- Wear clothing of your choice true to your gender identity
- Use the restroom facilities best aligned with your gender identity
- Whenever possible, be supervised by a person whose gender matches your gender identity during court-ordered drug testing
- Keep your sexual orientation and gender identity private if you want to, UNLESS the court determines it is relevant to the case
- Keep medical information private, UNLESS the court determines it is relevant to the case. If you are transgender and transitioning, details about your transition are considered private medical information
- Talk with an attorney if you do not agree with the judge's decision of what is relevant in your case.

The court (including the judge, court officers, and any other court employee) CANNOT...

- **Discriminate** or show bias against you because of your gender identity or sexual orientation
- Force you to hide your sexual orientation or gender identity
- Force you to share information about your sexual orientation or gender identity, UNLESS the court determines it is relevant to the case.

## I have been discriminated against in Family Court. Who can help me?

**Discrimination** is the unfair or unequal treatment of one person or a group of people because of certain personal characteristics such as (but not limited to): race, age, disability, religion, gender identity, or sexual orientation.

If you feel a judge, court officer, or other court employee has discriminated against you because of your sexual orientation or gender identity, then you can submit a complaint by writing a letter to the Administrative Judge for the court where your case took place. You can find a list of Administrative Judges online at [www.nycourts.gov/Admin/directory.shtml](http://www.nycourts.gov/Admin/directory.shtml). Or, you can submit a complaint to the Office of the Inspector General for Complaints Regarding Bias Matters. You can call the Toll-Free Complaint Number at 1-877-2EndBias / 1-877-236-3242 or you can print out a complaint form from the New York State Courts website at [www.nycourts.gov/admin/ig/index.shtml](http://www.nycourts.gov/admin/ig/index.shtml). You can also file a complaint against a judge with the State Commission on Judicial Conduct. Forms and mailing addresses are available online at [www.scjc.state.ny.us/General.Information/Gen.Info.Pages/filecomplaint.htm](http://www.scjc.state.ny.us/General.Information/Gen.Info.Pages/filecomplaint.htm).

For more information on how to submit a complaint against a judge, please visit [www.nycourts.gov/ip/judicialconduct/index.shtml](http://www.nycourts.gov/ip/judicialconduct/index.shtml).

If you feel an attorney has discriminated against you because of your sexual orientation or gender identity, you can file a complaint with the Attorney Grievance Committee in the Department where the attorney works. To find out which Attorney Grievance Committee to contact, please visit [www.nycourts.gov/attorneys/grievance/complaints.shtml](http://www.nycourts.gov/attorneys/grievance/complaints.shtml).

For more information, you can call LIFT's Family Law Helpline at 212-343-1122, or you can contact Lambda Legal's Help Desk online securely at [www.lambdalegal.org/help/form](http://www.lambdalegal.org/help/form) or call 212-809-8585.

## Can I get an order of protection against my partner or spouse in Family Court?

Yes. An **order of protection** is a written order from a judge that makes rules about contact between people. Orders of protection are available to people in same-sex and different-sex relationships. In Family Court, you can ask for an order of protection against someone if you are married, separated, divorced, related by blood or marriage, have a child in common with them, or have had an intimate relationship with them, including same-sex relationships.

To get an order of protection in Family Court, the person who wants the order of protection starts a case by filing a **Family Offense Petition** in the petition room.

A **petition** is a written request. The person filing the petition is called the **petitioner**. A family offense petition asks a judge to grant an order of protection. The person the case is against is called the **respondent**. The petition tells the judge and the respondent what the petitioner claims the respondent did, and what the petitioner wants. For more information, see LIFT's guide on **Orders of Protection**.

## I am HIV positive. What are my rights in Family Court?

You have the right to keep private your HIV status or other private medical concerns. However if the judge determines your HIV status is relevant to your case, then they may ask you about it in the courtroom.

This right applies to every kind of case. As an example, if you file for standby guardianship of your child because of your HIV status, the court may need to ask you more questions about your HIV status.

If you do not agree with the judge's decision of what is relevant to your case, you should talk with an attorney.

Please note that although case material is considered confidential, Family Court is open to the public.

## Can I get custody or visitation with my child?

In New York, same-sex parents have the same legal rights and responsibilities as different-sex parents.

If you are the child's biological parent, you can file for custody or visitation so long as your parental rights have not been terminated.

If you are not the child's biological parent, you can file for custody or visitation if you were married to the biological parent when the child was born, or if you adopted the child, or if you and the biological parent planned to conceive and raise the child together as co-parents.

For more information, see LIFT's guide on **Custody and Visitation**.

## Can I adopt my same-sex partner or spouse's child?

Yes. If your partner or spouse is the child's only legal parent, you can adopt the child if your partner or spouse agrees. If the child has another legal parent, that parent must also agree to the adoption. The child must also agree if they are over 14 years old. To start the adoption, go to Family Court or Surrogate's Court to file an adoption petition.

## I need more information. Who can help me?

For more information, you can call LIFT's Family Law Helpline at 212-343-1122, or you can contact Lambda Legal's Help Desk online securely at [www.lambdalegal.org/help/form](http://www.lambdalegal.org/help/form) or call 212-809-8585.

## The name I call myself is not the same as my legal name. What do I do?

You must include your legal name on all court papers, like petitions, but you may also give your chosen name. For example:

Legal name: John Doe  
Chosen Name: Jane Doe

You may also give your chosen name as "AKA." "AKA" stands for "also known as." For example, "Legal Name, AKA Chosen Name":

John Doe, AKA Jane Doe

You should make it clear in the court papers and in the courtroom which name you choose to go by. You have the right to ask court staff and lawyers to call you by your preferred name, pronouns, and title (e.g. Mr., Ms., Mx.). You can tell the judge and court staff what name you want to use.

For more information about changing your name on your birth certificate, see LIFT's guide on **Name Changes**.

*This document should not take the place of a consultation with a lawyer. LIFT encourages all individuals involved with the Criminal and Family Court systems to consult with a lawyer.*

This guide was created in collaboration with Lambda Legal's Fair Courts Project.

For more information about Lambda Legal, visit [www.lambdalegal.org](http://www.lambdalegal.org).



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