

## Know Your Rights in Family Court: A Guide for LGBTQ+ Families

### **You have the right to be free from discrimination or bias in legal proceedings**

*This includes the right to have your pronouns used in court and documents.*

- **By attorneys** – [RPC 8.4](#)
  - The rules of professional conduct for attorneys prohibit prejudice on the basis of sexual orientation, including gender identity.
  - These rules prohibit attorneys from discriminating on the basis of LGBTQ+ identity when they choose who to represent, and from taking legal positions which rely on negative stereotypes or other kinds of bias.
  - This means that any attorney who represents you must treat your LGBTQ+ identity with respect, and that the attorney representing any other party, such as your co-parent, must treat your LGBTQ+ identity with respect as well.
  - This includes using your correct name, pronouns, parent name (e.g., mom, dad, baba, etc.), and other important aspects of your identity.
- **By judges** – [CJC 2.3](#)
  - Judges have the obligation to foster a courtroom environment free from bias and discrimination.
  - This means that judges must avoid using negative stereotypes, offensive language, and avoid irrelevant references to a person’s characteristics.
  - Judges should also use correct pronouns and names for parties in court. You may have to explain to the judge if the name/pronoun you use is different from your legal name/pronoun.
- **By guardians ad litem** – [In re Marriage of Black, 188 Wn. 2d 114](#)
  - A court-appointed GAL must remain objective and impartial and is not permitted to discriminate against a person on the basis of LGBTQ+ status.
  - This means that a GAL *may* consider factors like which parent performs caregiving duties, which parent has strong emotional bonds with a child, or which parent can provide a child with the best supervision or stability, but the GAL *may not* decide those factors based on the parent’s LGBTQ+ status, even in light of the other parent’s religious beliefs or other objections.
- **Under the Washington Uniform Parentage Act** – [RCW 26.26A](#)
  - The Washington Uniform Parentage Act treats LGBTQ+ parents equally in determining who a child’s legal parents are. In addition to creating legal parent-child

relationships through genetics and marriage, the UPA also considers an adult who lives with a child full-time from birth to age four and holds the child out as their own to be a legal parent.

- Donors and surrogates are not legal parents. It is important that LGBTQ+ parents have a written agreement with their donor or surrogate which states they are not a legal parent, and that LGBTQ+ parents secure their rights with an adoption or parentage order if possible.

## **How will my LGBTQ+ status factor into my parenting plan?**

- In most cases, parenting plans are negotiated between the parties without the court's involvement, but if the court decides a parenting plan, it is important to note that the court does not factor LGBTQ+ status against a parent or treat the parenting plans of LGBTQ+ families differently than plans of other families.
  - The court uses the "best interests of the child" standard in allocating parenting responsibilities. – [RCW 26.09.002](#)
  - This means that the court identifies the parenting arrangement that best serves the child's emotional growth, physical care, health, and stability.
  - Typically, it is in the best interest of the child to change as little as possible, in terms of their schedule, activities, and most importantly, their existing parent-child relationship(s). This is **not** true when one parent is engaging in physically or emotionally abusive behavior toward the child or cannot provide a safe home environment for the child. In those cases, you should work with a lawyer.
- A parent's sexual preference in and of itself is not a bar to parenting time or reasonable rights of visitation. – [In re Marriage of Cabalquinto, 100 Wn.2d 325, 669 P.2d 886 \(1983\)](#)
- Washington courts have also held that being transgender is not a basis for determining parenting time. – [In re Marriage of Magnuson, 141 Wn. App. 347, 170 P.3d 65 \(2007\)](#)

## **LGBTQ+ status, name, and pronouns in legal documents**

- In most cases, your legal name must be on your case caption (the heading on the first page of every legal document which gives the names of the parties and the case number) but you can include the name you use within the document itself and request that the court and parties use it as well.

## **What if I experience anti-LGBTQ+ bias in the courtroom or by an attorney?**

- If bias occurs in the courtroom, you should make a note of it "on the record." "On the record" means stating what happened out loud, addressing your comments to the judge, and making the statement while you and the other party are talking about your case to the judge.
- If an attorney demonstrates bias against you, you can report the incident to the Washington State Bar Association.

- If you feel a GAL has discriminated against you, you can 1) file an objection to the GAL's report in your case and ask the judge to exclude it and appoint a new GAL; 2) report the GAL using either the local court's GAL grievance process (located in the local court rules) or, if the GAL works for a Court Appointed Special Advocate program, use that program's grievance procedure.
- Contact the LGBTQ+ Legal Clinic for assistance.

## **What if a family member is trying to interfere in my parenting?**

- **You have a fundamental right to parent your own child.**
  - Relatives often have strong feelings or opinions about how their family members are parenting their children.
  - If someone is trying to interfere with your parenting decisions, get visits, or change your parenting plan, you should know:
    - A third party cannot interfere with your parental rights unless a court makes a finding of parental unfitness. – [Troxel v. Granville, 530 U.S. 57, 120 S. Ct. 2054, 147 L. Ed. 2d 49, \(2000\)](#)

## **What if I have a criminal record?**

- A parent's criminal history may only impact their parenting time if:
  - The parent is convicted of abuse of a child, domestic violence; or other forms of emotional, physical, or sexual assault that impacted the child;
  - The parent has a long pattern of criminal offenses; or
  - If the parent's criminal history has impacted the child by causing prolonged absences from a child's life, if it has impaired parenting functions.
- Some criminal offenses may not be relevant. The court's primary concerns are the best interest of the child and the ties between parent and child. – [RCW 26.09.191](#)
- If you have a criminal record, you should consult with a lawyer, even if you don't believe your record is relevant to your parenting. The legal system, and the judges, attorneys, and staff working in it, all carry racism, ableism, and other biases, and you deserve to have as complete an understanding of their impact as possible before you go to court.

## **What if I have received mental health treatment?**

- **Seeking mental health care, by itself, is not evidence of parental unfitness.**
  - The court will look to whether mental health affects your parenting ability and the best interest of your child. – [RCW 26.09.191](#)
  - If the court has serious concerns about your ability to safely parent your child, the judge may appoint an expert, such as a Guardian ad Litem or Parenting Evaluator, or order assessments.
  - Seeking treatment for substance use/abuse may impact your parenting time if your substance use/abuse was long-term and interfered with the performance of parenting functions and impaired your emotional ties with your child.

- It is always the best legal choice to support yourself and your child by seeking help with any concerns you may have about your mental health or substance use. You are a valuable parent and community member, and you are at your best when you are healthy.

## What if there is domestic violence in my home?

- **People in LGBTQ+ relationships experience similar or higher rates of domestic violence as people in heterosexual relationships. For Black and LGBTQ+ persons, the rate is nearly double the white, heterosexual population. But accessing support may be harder.**
  - A domestic violence protection order can be obtained for individuals in a “family or household member” relationship, which can include intimate partners and/or housemates. – [RCW 26.50.010\(6\)](#)
  - If you do not fit the definition of “family or household member” for a domestic violence protection order, you may qualify for a different type of protective order.
  - If you need help, contact:
    - [National Domestic Violence Hotline](#) at 1-800-799-7233
    - Sexual violence law center at (844) 991-7852
    - [NW Network](#) at (866) 427-4747 (24-hour crisis line) or (206) 568-7777 from 9-5 Monday-Friday
  - For legal assistance, contact the DV LEAD program via 211
- **How might this affect my parenting plan?**
  - If a court determines domestic violence impacts the safety and well-being of your child, the court may restrict the accused person, even a parent, from unsupervised time with the child. The court may order schedule changes, supervision of parenting time, or mandate that the accused person go through a treatment program. The judge will look to the history of behaviors, such as prior protection orders and indications of future harm when deciding the parent’s time with the child. – [In re Marriage of Katare \[III\], 175 Wn.2d 23, 36, 283 P.3d 546 \(2012\)](#)

## What if immigration status is a factor?

- **A parent’s immigration status is irrelevant to the parent’s ability to perform parenting functions.**
  - Evidence about your immigration status is generally inadmissible in civil cases. This means that a party can only raise your immigration status in a family law proceeding if it is an essential fact to prove their case. The judge will first decide if this is permissible by considering a confidential motion. – [Washington Rule of Evidence 413](#)
  - ICE cannot be able to pick you up within one mile of the courthouse, and court staff cannot ask you about your immigration status unless it is directly related to the

court's decision in your case. – [Washington Court General Rule 38](#) , RCW [2.28.300-340](#)

- If you are concerned about this, contact [Washington Immigrant Solidarity Network](#) at 1-844-724-3737.

## **Legal Representation**

- If you feel you need an attorney for your family law matter, consider reaching out to the following resources:
  - Northwest Justice Project's CLEAR line at 1-888-201-1014 or [apply online](#)
  - Eastside Legal Assistance Project at (425) 747-7274 or (425) 620-2778 (Spanish)
  - Sexual Violence Law Center at (844) 991-7852
  - King County Bar Association's Neighborhood Legal Clinic at 206-267-7070, or visit their [website](#) for more free legal resources
  - Moderate Means Project at (855) 741-6930 or [apply online](#)
- Most free (also called pro bono) legal assistance programs can only take a limited number and type of case. You are most likely to be able to obtain representation if you are very low income and your child's safety will be impacted by your family law case.

*The information contained in this document is not legal advice. If you have questions about the rights outlined in this resource or experience discrimination in court and would like to consult with a lawyer about your situation, please make an appointment at QLaw Foundation's free LGBTQ+ Legal Clinic at [www.qlawfoundation.org](http://www qlawfoundation.org) or by calling 206-235-7235.*