



# **GAL CONSIDERATIONS FOR SAME SEX PARENTS, TRANSGENDER & TRANSITIONING PARENTS**

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# LANGUAGE MATTERS

*Language in Georgia Statutes for Georgia Domestic Cases*

# O.C.G.A. § 19-7-20

## LEGITIMATION BY MARRIAGE

(a) All children born in wedlock or within the usual period of gestation thereafter are legitimate.

(b) The legitimacy of a child born as described in subsection (a) of this Code section may be disputed. Where possibility of access exists, the strong presumption is in favor of legitimacy and the proof must be clear to establish the contrary. If pregnancy existed at the time of the marriage and a divorce is sought and obtained on that ground, the child, although born in wedlock, will not be legitimate.

(c) The marriage of the mother and reputed father of a child born out of wedlock and the recognition by the father of the child as his shall render the child legitimate; in such case the child shall immediately take the surname of his father.

# O.C.G.A. § 19-7-21

## LEGITIMATION BY MARRIAGE (AI)

All children born within wedlock or within the usual period of gestation thereafter who have been conceived by means of artificial insemination are irrebuttably presumed legitimate if both spouses have consented in writing to the use and administration of artificial insemination.

# *PATTON v. VANTERPOOL*, 302 GA. 253 (2017)

- HOLDING: O.C.G.A. § 19-7-21 does not apply to a child conceived by in-vitro fertilization (IVF).
- The Court reasoned that the legislature was aware of IVF when it passed the *Domestic Relations – Guardians – Social Services – Options to Adopt Act* (O.C.G.A. § 19-8-40 et seq.), addressing custody, relinquishment, and adoption of embryos. The legislature chose not to change the language of O.C.G.A. § 19-7-21 at that time.

# O.C.G.A. § 19-8-40 *ET SEQ.* DOMESTIC RELATIONS – GUARDIAN – SOCIAL SERVICES – OPTIONS TO ADOPTION ACT

O.C.G.A. § 19-8-40 key definitions:

(1) "Embryo" or "human embryo" means an individual fertilized ovum of the human species from the single-cell stage to eight-week development.

(2) "Embryo relinquishment" or "legal transfer of rights to an embryo" means the relinquishment of rights and responsibilities by the person or persons who hold the legal rights and responsibilities for an embryo and the acceptance of such rights and responsibilities by a recipient intended parent.

# O.C.G.A. § 19-8-40 *ET SEQ.* DOMESTIC RELATIONS – GUARDIAN – SOCIAL SERVICES – OPTIONS TO ADOPTION ACT

O.C.G.A. § 19-8-40 key definitions (cont'd):

(4) "Legal embryo custodian" means the person or persons who hold the legal rights and responsibilities for a human embryo and who relinquishes said embryo to another person or persons.

(5) "Recipient intended parent" means a person or persons who receive a relinquished embryo and who accepts full legal rights and responsibilities for such embryo and any child that may be born as a result of embryo transfer.

O.C.G.A. § 19-8-40 *ET SEQ.*  
DOMESTIC RELATIONS – GUARDIAN – SOCIAL  
SERVICES – OPTIONS TO ADOPTION ACT

O.C.G.A. § 19-8-41(d):

A child born to a recipient intended parent as the result of embryo relinquishment pursuant to subsection (a) of this Code section shall be presumed to be the legal child of the recipient intended parent; provided that each legal embryo custodian and each recipient intended parent has entered into a written contract.



# O.C.G.A. § 19-7-3.1 (HB 543)

Georgia's Equitable Caregiver Statute

# WHAT IS THE PURPOSE?

- Effective July 1, 2019 (Signed by Gov. Brian Kemp on May 6, 2019)
- A BILL to be entitled an Act to amend Article 1 of Chapter 7 of Title 19 of the Official Code of Georgia Annotated, relating to general provisions regarding parent and child relationship generally, so as to provide for equitable caregivers; to provide for standing and adjudication; to provide for a statutory form; to provide for related matters; to repeal conflicting laws; and for other purposes.
- Previously, there was no relief for parties who had contributed to the upbringing of a minor child to whom they were not biologically related where a break in that relationship would be detrimental to the BIOC

# WHAT IS THE STANDARD TO GAIN STANDING TO BE AN EQUITABLE CAREGIVER?

- Standing as an equitable caregiver will not be easy to prove
  - Clear and convincing requirement → Compare to requirements for grandparent custody
- A petitioner **MUST** establish that he/she/they have:
  - Fully and completely undertaken a permanent, unequivocal, committed, and responsible parental role in the child's life;
  - Engaged in consistent caretaking of the child;
  - Established a bonded and dependent relationship with the child;
  - The relationship was fostered or supported by a parent of the child;
  - The petitioner and the parent have understood, acknowledged, or accepted or behaved as though the petitioner is a parent of the child;
  - Accepted full and permanent responsibilities as a parent of the child without the expectation of financial compensation; AND
  - Demonstrated that the child will suffer physical harm or long-term emotional harm and that continuing the relationship between child and petitioner is in BIOC.

# WHAT IS HARM?

- With HB 543, a Court may consider:
  - Past and present caretakers with whom the child is psychologically bonded;
  - Whether competing parties expressed an interest in contacting the child over time;
  - The child's unique medical and psychological needs;
  - The existence of written agreements between bio parent and petitioner

# IMPACT OF HB 543

- Scenario → Unmarried lesbian couple in Atlanta is in a relationship for 15 years. During relationship, one mother gives birth to the parties' son using her egg. The other mother has no biological relationship with the child. At the time of dissolution, the child is 10 years old. The non-bio mother has served as a stay at home mother, responsible for all childcare, school, doctors, and other activities, and she and the child are incredibly bonded. For purposes of a standard divorce, she is the perfect and obvious primary custodian. However, bio mom says, "You will have no contact with my son, and I'm moving to California."
- Non-bio mom now has standing to file a petition under the equitable caregiver statute

# IMPACT OF HB 543

- A Court may order:
  - Custody to equitable caregiver
  - Child support
  - Parenting time/visitation
  - Decision-making powers
- A Court may not order or allow:
  - Equitable caregiving rights to paid employees (i.e. the nanny)
  - An original action for caregiving if the bio parents are not separated and the child is living with both bio parents
  - The termination of the parental right of another through the designation of an equitable caregiver

# LGB T TRANSGENDER CLIENTS & ISSUES

## TERMS, TIPS & CASE STUDIES

### *Top Level Terms*

- Transgender
  - Umbrella term. Includes Gender Non-Conforming
- Sex Assigned at Birth
  - Not Biological Sex.
- Gender Identity
  - Everyone has one.
  - Transgender or Cisgender.
  - Self-Determined.
    - Trans as Modifier.
- Intersex
  - Not necessarily Trans

### *Tips*

#### **Surgery**

- Not required.
- Not “Reassigned”: Confirmed.
- Private. Medical information.
- Not relevant if not relevant

#### **If relevant:**

- GD diagnosis?
- Where in transition process?

Attorneys: **Advocate.** Educate. **Normalize.**

# LGB **T** RANSGENDER CLIENTS & ISSUES

## *TERMS, TIPS & CASE STUDIES*

From a very young age, Trevor's parents simply thought of their "daughter" as a tomboy, and it wasn't until Trevor reached the 6th grade that Trevor's behavior and mood changed drastically, at which point Trevor and his mother began working with a social worker. In 2012, with the help of the social worker, Veronica informed her family that she was transgender, and actually saw herself as a male.

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# LGB T TRANSGENDER CLIENTS & ISSUES

## *TERMS, TIPS & CASE STUDIES*

### Family Law Matters

- Transgender Client in Custody Battle
  - *Ferrand v. Ferrand*, 221 So.3d 909 (La. Ct. App. 2016)
  - Trial court did not allow a GAL or mental health evaluator. Judgment vacated.
  - Advocate. **Educate**. Normalize.
  - **Trans status was non-issue. BIOC was issue.**
  - The dynamics of the American family, however, have drastically changed. The United States Supreme Court has recognized that "the demographic changes in the past century make it difficult to speak of an average American family." *Troxel, supra* at 63, [120 S.Ct. 2054](#). For example, same sex couples are raising more than two million children in the United States".
- Transgender or GNC Child in Custody Battle (GAL Case)
  - *Williams v. Frymire*, 377 S.W.3d 579 (Ky. Ct. App. 2012)
  - GD diagnosis, diagnosis was critical – Child should be treated gender neutral
  - Length of time: Persistent & Consistent
  - Mom's mental state important
  - "Finally, the court concluded that girls can prefer male sports, toys, and clothes without being pathologized as something requiring intervention, such as changing her gender for school, sending her to a separate bathroom, or changing her name to a Power Ranger character."

# LGB T TRANSGENDER CLIENTS & ISSUES

## *TERMS, TIPS & CASE STUDIES*

- **Name Change**

- Child: O.C.G.A. § 19-12-1 ,
  - Consent of parents if they are living and have not abandoned the child.
- *In re Candelaria*, 300 Ga. App. 303(2009)
  - Sound legal discretion standard; no abuse in denying based on father's objection

# *TIPS FOR GUARDIANS AD LITEMS*

- Be Patient
- Ask for Help and Guidance!
  - Admit what you don't know...it's okay!
- Be Open-Minded
- Watch Your Biases
- Be Mindful of Your Ethical Obligations
- Be Mindful of Your Duty to the Court
- Be Prepared for Confusion and Questions
  - Applies to Spouses and Children

# TIPS FOR THE GUARDIAN AD LITEM

- Adjust your GAL Questionnaire
  - Ask about pronouns
  - Use proper pronouns – Address everyone appropriately
    - He/Him/His
    - She/Her/Hers
    - They/Them/Theirs
    - Gender vs. Sex
- Avoid Unnecessary Terms
  - No need to highlight “same sex” relationship or “gay” marriage

# DEFINITIONS

- *Transgender* – An umbrella term for people whose gender identity and/or expression is different from cultural expectations based on the sex they were assigned at birth. Being transgender does not imply any specific sexual orientation.
- *Cisgender* – denoting or relating to a person whose sense of personal identity and gender corresponds with their birth sex
- *Androgynous* – Identifying and/or presenting as neither distinguishably masculine nor feminine
- *Bisexual* – A person emotionally, romantically, or sexual attracted to more than one sex, gender or gender identity through not necessarily simultaneously, in the same way or to the same degree.
- *Gay* – A person who is emotionally, romantically, or sexually attracted to members of the same gender.
- *Closeted* – Describes an LGBTQ person who has not disclosed their sexual orientation or gender identity. NOTE: DO NOT “OUT” THOSE IN YOUR CASES.

# DEFINITIONS

- *Gender Dysphoria* – Clinically significant distress caused when a person's assigned birth gender is not the same as the one with which they identify. According to the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM), the term – which replaced Gender Identity Disorder – “is intended to better characterize the experiences of affected children, adolescents, and adults.
- *Gender Expression* – External appearance of one's gender identity, usually expressed through behavior, clothing, haircut, or voice, and which may or may not conform to socially defined behaviors and characteristics typically associated with being either masculine or feminine.
- *Gender Identity* – One's innermost concept of self as male, female, a blend of both or neither – how individuals perceive themselves and what they call themselves. One's gender identity can be the same or difference from their sex assigned at birth.

# DEFINITIONS

- *Gender Transition* – The process by which some people strive to more closely align their internal knowledge of gender with its outward appearance. Some people socially transition, whereby they might begin dressing, using names and pronouns and/or be socially recognized as another gender. Others undergo physical transitions in which they modify their bodies through medical interventions.
- *Queer* – A term people often use to express fluid identities and orientations. Often used interchangeably with “LGBTQ”.
- *Sexual Orientation* – An inherent or immutable enduring emotional, romantic, or sexual attraction to other people



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