

Same Sex and LGBT Q Custody in PA

In the custody context, both same-sex parents will be treated equally *if* there has been a valid adoption by both parents. An adoption decree provides both adoptive parents with rights to the child, including the right to seek custody in the event of a divorce. Therefore, if there has been a valid adoption, the court will determine custody the same way it does for opposite-sex parents— by looking at the child’s best interest.

Specifically, courts will determine the best interest of the child by considering all relevant factors (giving weighted consideration to those affecting safety of child), including:

- Which party is more likely to encourage and permit frequent and continuing contact between the child and another party.
- Present and past abuse committed by a party or by a member of the party’s household, if there is a continued risk of harm and which party can better provide adequate physical safeguards and supervision of child.
- Parental duties performed by each party on behalf of the child.
- The need for stability and continuity in the child’s education, family life and community life.
- The availability of extended family.
- The child’s sibling relationships.
- The well-reasoned preference of the child, based on the child’s maturity and judgment.
- Attempts of a parent to turn the child against the other parent, except in cases of domestic violence where reasonable safety measures are necessary to protect the child from harm.
- Which party is more likely to maintain loving, stable, consistent and nurturing relationship with the child adequate for the child’s emotional needs.
- Which party is more likely to attend to daily physical, emotional, developmental, educational and special needs of the child.
- The proximity of the residences of the parties.
- Each party’s availability to care for the child or ability to make appropriate child-care arrangements.
- Level of conflict between the parties and willingness and ability of parties to cooperate with each other. A party’s effort to protect a child from abuse by other party is not evidence of unwillingness or inability to cooperate with that party.
- History of drug or alcohol abuse of the party, or member of the party’s household.
- Mental and physical condition of party or member of a party’s household.
- Any other relevant factor, excluding gender.

Where a parent is not biologically related to the child and has not adopted the child, that parent’s right to custody of the child may not be protected under Pennsylvania law. The Pennsylvania Supreme Court recently said a former same-sex partner of a child’s biological mother could not seek custody since she was not biologically related to the child and had not legally adopted him. In this case, the party seeking custody was not married to the mother of the child, however, even where the parents are married and are both listed on the birth certificate, the law remains unsettled, highlighting the importance of going through with a formal adoption.

In order for same-sex parents to ensure their right to custody in the future, it may be best to legally adopt the child.

*(For more information on this topic or any topic in divorce, custody, mediation, child support, collaborative law, PFA matters, alimony, or other family law matters, visit www.Pittsburgh-Divorce-Lawyer.com or contact **Notaro & Associates, PC** at **412-281-1988** for a free phone consultation with an attorney. You can also schedule online by clicking [here](#).)*