

[Name of mediator, evaluator, or recommending counselor]  
[Street address]  
[City, state zip]

Dear [name of child custody mediator, evaluator, or recommending counselor]:

I am the [petitioner/respondent] in the pending family court case, [case name] (case no. [#]), involving custody and visitation of [children's names], children in common with [opposing party name]. As a male survivor of same-sex domestic violence (DV), I am submitting this letter to you to address potential issues that disproportionately impact male survivors of same-sex abuse. I am hopeful this letter will supplement my pleadings and other evidence to help you better understand my family and me, and make the [mediation/evaluation] more effective. Specifically, this letter addresses my arrest for DV on [date], my lack of prior disclosure of the abuse at the hands of the other party, and my ability to parent as a [sexual orientation] man. These issues are interrelated, and have been discussed in some depth in pertinent social science literature and case law.

First, regarding the arrest on my record, in that scenario, I was actually the victim, not the perpetrator, of DV. [Briefly describe what happened.] On that occasion, the opposing party and I were both arrested. [Or change to fit your case.] This is actually typical for male survivors in same-sex relationships.<sup>1</sup>

A recently published study reviewing arrest rates in DV situations found that, “[w]hile approximately 1.3 percent of all intimate partner violence cases involve dual arrests, 26–27 percent of domestic violence incidents involving same-sex couples result in dual arrest.”<sup>2</sup> Failure of adequate police response to DV calls can make survivors like myself less likely to “seek police assistance in the future,”<sup>3</sup> which underscores why victims of same-sex abuse are less likely to seek police assistance than different-sex couples.<sup>4</sup>

The higher dual arrest rate for male DV survivors in same-sex relationships is likely because of one or more of the following reasons: (1) responding officers often “are not trained to identify primary aggressor roles”;<sup>5</sup> (2) implicit or explicit bias or prejudice against men who are attracted to men, whether actual or perceived;<sup>6</sup> (3) the unjustifiable belief that a man should be able to defend himself against his male partner;<sup>7</sup> (4) the damaging myth that gay, bisexual, or queer men are “more sensitive” than others, so their “potential for violence” is “minimal”;<sup>8</sup> and (5) the toxic deceit that “boys will be boys,” which basically means men are expected and allowed to be violent.<sup>9</sup> And when abused, men are more likely to “fight back,” although “this behavior does not constitute mutual battering”<sup>10</sup> or make me a primary aggressor under California law. These rationales, among others, are also employed by courts, implicitly or explicitly, when issuing mutual restraining orders to male same-sex couples.<sup>11</sup>

Second, I want to acknowledge this is the first time I am disclosing the abuse I have suffered at the hands of the opposing party. Anticipating possible concerns regarding my credibility of these allegations, I wish to explain why I had not previously disclosed the abuse.

One reason is that I had concerns about what would happen to my relationship with [children's names], with whom I have a loving parental relationship. However, without a biological or adoptive connection, I feared losing custody and visitation to the opposing party, who does have such a connection. My fears are shared by many male survivors of same-sex abuse.<sup>12</sup>

Moreover, I have had doubts about whether I could even be a victim of DV, and have felt shame and embarrassment about what the opposing party had done to me.<sup>13</sup> Furthermore, as with many male survivors of same-sex abuse, I feared the backlash I would face from my own community, as well as society at large, if I chose to disclose the abuse.<sup>14</sup> Indeed, being a [sexual orientation] man has boxed me into a sort of “double marginality,” in that my identity may not be fully embraced by either the heterosexual or gay community.<sup>15</sup>

Third, I want to address any doubts or concerns you may have about my ability to lovingly and effectively parent [children's names] due to my sexual orientation.<sup>16</sup> Over a decade ago, the California Supreme Court concluded “that an individual’s capacity to establish a loving and long-term committed relationship with another person and responsibly to care for and raise children does not depend upon the individual’s sexual orientation, and, more generally, that an individual’s sexual orientation—like a person’s race or gender—does not constitute a legitimate basis upon which to deny or withhold legal rights.”<sup>17</sup> Moreover, when legalizing same-sex marriage in every state, the U.S. Supreme Court recognized this same fact when it explained “that gays and lesbians can create loving, supportive families.”<sup>18</sup> If that were not enough, most studies looking at “how parents’ sexual orientation may influence their children’s well-being” have shown “no or minimal differences between same-sex and heterosexual couples in parenting skills and their children’s adjustments.”<sup>19</sup> Thus, my sexual orientation objectively has no negative impacts on my ability to care for [children's names].

The above reasons help demonstrate why I, a male victim of same-sex abuse, am at much higher risk of being arrested—and was indeed arrested on [dates]. Further, the above explains why I had previously been unable to disclose the abuse I was suffering at the hands of the opposing party. Finally, as a [sexual orientation] man, I am no less capable of loving, nurturing, and raising [children's names]. While I understand generalizations of any research article may not apply to every male survivor of same-sex abuse, the conclusions I have cited apply to me, as I have explained above.

I am happy to discuss any questions you may have regarding these, or other, points at our next scheduled meeting on [date]. Thank you for your time and consideration.

Sincerely,

[sign]

[name]

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<sup>1</sup> Adreano, *The Disproportionate Effect of Mutual Restraining Orders on Same-Sex Domestic Violence Victims* (2021) 108 Cal.L.Rev. 1046, 1048 (*Mutual Restraining Orders*).

<sup>2</sup> Adreano, *Mutual Restraining Orders, supra*, 108 Cal.L.Rev. at p. 1057.

<sup>3</sup> See U.S. Dept. of J., *Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence* (2016) p. 8.

<sup>4</sup> Pertnoy, *Same Violence, Same Sex, Different Standard: An Examination of Same-sex Domestic Violence and the Use of Expert Testimony on Battered Woman's Syndrome in Same-sex Domestic Violence Cases* (2012) 24 St. Thomas L.Rev. 544, 561.

<sup>5</sup> Hirschel et al., *A 10-Year Study of the Impact of Intimate Partner Violence Primary Aggressor Laws on Single and Dual Arrest* (2017) 36 J. of Interpersonal Violence 1, 28.

<sup>6</sup> *Id.* at p. 28.

<sup>7</sup> Adreano, *Mutual Restraining Orders, supra*, 108 Cal.L.Rev. at pp. 1059, 1066-1067.

<sup>8</sup> Duke & Davidson, *Same-sex Intimate Partner Violence: Lesbian, Gay, and Bisexual Affirmative Outreach and Advocacy* (2009) 18 J. of Aggression, Maltreatment & Trauma 795, 800 (*Affirmative Outreach*).

<sup>9</sup> Merrill & Wolfe, *Battered Gay Men* (2000) 39 J. of Homosexuality 1, 7.

<sup>10</sup> Duke & Davidson, *Affirmative Outreach, supra*, 18 J. of Aggression, Maltreatment & Trauma at pp. 801-802.

<sup>11</sup> Harada, *Additional Barriers to Breaking the Silence: Issues to Consider when Representing a Victim of Same-sex Domestic Violence* (2011) 41 U. Balt. L. Forum 150 167-168.

<sup>12</sup> Adreano, *Mutual Restraining Orders, supra*, 108 Cal.L.Rev. at p. 1059.

<sup>13</sup> See Subirana-Malaret et al., *Intersectionality and Sex and Gender-Based Analyses as Promising Approaches in Addressing Intimate Partner Violence Treatment Programs Among LGBT Couples: A Scoping Review* (2019) 5 Cogent Social Sciences 1, 3-4; Woulfe & Goodman, *Identity Abuse as a Tactic of Violence in LGBTQ Communities: Initial Validation of the Identity Abuse Measure* (2018) 36 J. of Interpersonal Violence 1, 4-5, 13.

<sup>14</sup> See Ramsey, *The Stereotyped Offender: Domestic Violence and the Failure of Intervention* (2015) 120 Penn. St. L.Rev. 337, 409 (“Fearing the prejudice of society in general, as well as pressure not to air the dirty laundry of the LGBT community, lesbian, gay, bisexual, and transgender victims are less likely to seek help than women battered by men.”).

<sup>15</sup> See Duke & Davidson, *Affirmative Outreach, supra*, 18 J. of Aggression, Maltreatment & Trauma at pp. 801-803.

<sup>16</sup> See Patterson, Am. Psychological Assn., *Lesbian & Gay Parenting* (2005) p. 5 (“Unlike heterosexual parents and their children, however, lesbian and gay parents and their children are often subject to prejudice *because of their sexual orientation* that can turn judges, legislators, professionals, and the public against them, sometimes resulting in negative outcomes, such as loss of physical custody, restrictions on visitation, and prohibitions against adoption.”), italics added and citations omitted; Adreano, *Mutual Restraining Orders, supra*, 108 Cal.L.Rev. at p. 1059 (“*Obergefell v. Hodges* . . . did not create a legally recognized parent-child relationship for children of unmarried couples. This legal gap leaves many unmarried same-sex parents in fear of losing their child, particularly if the abuser will not allow them to adopt the child or they cannot adopt for another reason.”), fn. omitted.

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<sup>17</sup> *In re Marriage Cases* (2008) 43 Cal.4th 757, 782, overruled in part on other grounds by Cal. Const., art. I, § 7.5, added by initiative, Gen. Elec. (Nov. 4, 2008), commonly known as Prop. 8, as explained in *Strauss v. Horton* (2009) 46 Cal.4th 364, and *Hollingsworth v. Perry* (2013) 570 U.S. 693. Section 7.5 of article I of the California Constitution was effectively abrogated by *Obergefell v. Hodges* (2015) 576 U.S. 644 and *Perry v. Schwarzenegger* (N.D. Cal. 2010) 704 F.Supp.2d 921.

<sup>18</sup> *Obergefell, supra*, 576 U.S. at p. 668.

<sup>19</sup> Ioverno et al., *Assessing Prejudice Toward Two-Father Parenting and Two-Mother Parenting: The Beliefs on Same-Sex Parenting Scale* (2017) J. of Sex Research 1, 2, citations omitted; see Patterson, *Lesbian & Gay Parenting, supra*, at pp. 5-15 (summarizing research).