

1 [Petitioner/Respondent]: _____

2 Address line 1

3 Address line 2

4 Phone: _____

5 Email: _____

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8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**

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FOR THE COUNTY OF _____

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13 [Name])

14)

15 Petitioner,)

16)

17 v.)

18 [Name])

19)

20 Respondent.)

21)

22)

23)

24)

DECLARATION & MEMORANDUM OF
POINTS &
AUTHORITIES IN SUPPORT OF
SOLE LEGAL AND PHYSICAL
CUSTODY TO [PETITIONER/RESPONDENT]

CASE NUMBER: _____

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27 As a [transgender (trans)¹ and/or intersex²] survivor of domestic violence (DV), I am
28 submitting this memorandum to address potential issues that disproportionately impact [trans
29 and/or intersex] survivors of domestic abuse. Specifically, this memorandum addresses my
30 arrest for DV on [date], my lack of prior disclosure of the abuse at the hands of [opposing party]

¹ By trans, I mean my gender identity is not the same as the biological sex assigned at birth. (See, e.g., Am. Psychological Assn., Answers to Your Questions About Transgender People, Gender Identity, and Gender Expression (2011) p. 1.)
² By intersex, I mean I was born with biological sex characteristics that are not typically female or male. (See, e.g., Human Rights Watch, "I Want to Be Like Nature Made Me": Medically Unnecessary Surgeries on Intersex Children in the US (July 25, 2017) <<https://www.hrw.org/report/2017/07/25/i-want-be-nature-made-me/medically-unnecessary-surgeries-intersex-children-us>> (as of July 1, 2021); Am. Psychological Assn., Answers to Your Questions About Individuals with Intersex Conditions p. 1.)

1 [name], my constitutional right to medical privacy, and my ability to parent as a [trans and/or
2 intersex] individual. These issues are interrelated, and have been discussed in social science
3 literature and case law. I am also submitting this memorandum as a partial declaration to
4 provide the court with more information about how these issues specifically affect me. I am
5 willing and ready to testify in support of any factual matter related to my case, except as to
6 matters stated on information and belief, in which case I believe them to be true.

7 First, regarding the arrest on my record, in that scenario, I was the victim, not the
8 perpetrator, of DV. [Briefly describe what happened.] On that occasion, the other party and I
9 were both arrested. [Or change to fit your case.] This is typical for trans survivors of DV.

10 Research has found that when police were involved in DV incidents, about 26-27
11 percent of incidents involving same-sex couples resulted in dual arrest.³ This number, which
12 likely undercounts all trans people's experiences, is much higher than the dual arrest rate found
13 among the general population of DV survivors across the country.⁴ Indeed, according to the
14 most comprehensive survey of trans people in the U.S., 7% of trans people have been arrested
15 and held by police due to their gender identity or expression alone.⁵ [No study has yet been
16 done for intersex survivors, although logic suggests similar rates would occur.] Failure of
17 adequate police response to DV calls can make survivors like myself less likely to "seek police

³ Adreano, *The Disproportionate Effect of Mutual Restraining Order on Same Sex Domestic Violence Victims*, Cal. L.Rev. (2020) 1047, 1057.

⁴*Ibid.* ("While approximately 1.3 of all intimate partner violence cases involve dual arrests, 26-27% of domestic violence incidents involving same sex couples result in dual arrest.") ;;Hirschel et al., *A 10-Year Study of the Impact of Intimate Partner Violence Primary Aggressor Laws on Single and Dual Arrest* (2017) J. of Interpersonal Violence 1, 19 tbl. 2 (*10-Year Study*).

⁵ Grant et al., *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey* (2011) p. 158 (Injustice); see Goodmark, *Transgender People, Intimate Partner Abuse, and the Legal System* (2013) 48 Harv. C.R.-C.L. L.Rev. 51, 78-79 ("Transgender people are disproportionately involved in the court system, particularly the criminal justice system. A 2011 survey found that 17% of transgender people had been incarcerated at some point in their lives; 21% of transgender women and 10% of transgender men reported being incarcerated. Transgender people of color have been especially affected by the ever-increasing trend toward incarceration in the United States.") (*Transgender People*).

1 assistance in the future,”⁶ which underscores why [trans and/or intersex] victims of DV are less
2 likely to seek police assistance than other victims.⁷

3 The higher dual arrest rate for trans DV survivors is likely because of one or more of the
4 following reasons: (1) responding officers often “are not trained to identify primary aggressor
5 roles”;⁸ (2) implicit or explicit bias or prejudice against trans individuals, whether actual or
6 perceived;⁹ (3) the over-policing of trans individuals, especially trans women of color, who may
7 be “profiled as sex workers”;¹⁰ and (4) trans survivors, like victims in other marginalized
8 communities, are more likely to “fight back,”¹¹ although this does not constitute mutual
9 battering¹² or being a primary or dominant aggressor. Although information regarding dual
10 arrest rates for intersex DV survivors has not been studied, available information regarding
11 arrest of trans individuals is likely similar to what intersex DV survivors experience.

12 Second, I want to acknowledge this is the first time I am disclosing the abuse I have
13 suffered at the hands of the opposing party. Anticipating possible concerns regarding my
14 credibility of these allegations, I wish to explain why I had not previously disclosed the abuse in
15 court. One reason is that I had concerns about what would happen to my relationship with
16 [children’s names], with whom I have a loving parental relationship. However, without a
17 biological or adoptive connection, I feared losing custody and visitation to the opposing party,

⁶ See U.S. Dept. of J., Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence (2016) p. 54 (Gender Bias).

⁷ Greenberg, *Still Hidden in the Closet: Trans Women and Domestic Violence* (2012) 27 Berkeley J. of Gender L. & J. 198, 230-232 (*Still Hidden*).

⁸ 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 (*10-Year Study*).

⁹ *Id.* p. 28.; Greenberg, *Still Hidden*, *supra*, 27 Berkeley J. of Gender L. & J. at p. 230.

¹⁰ Greenberg, *Still Hidden*, *supra*, 27 Berkeley J. of Gender L. & J. at p. 214, 230-234; Goodmark, *Transgender People*, *supra*, 48 Harv. C.R.-C.L. L.Rev. at pp. 72-74.

¹¹ Goodmark, *Transgender People*, *supra*, 48 Harv. C.R.-C.L. L.Rev. at p. 99.

¹² *Ibid.*; see Duke & Davidson, *Same-Sex Intimate Partner Violence: Lesbian, Gay, and Bisexual Affirmative Outreach and Advocacy* (2009) J. of Aggression, Maltreatment & Trauma 795, 801-802.

1 who does have such a connection. My fears are shared by many [trans and/or intersex]
2 survivors of DV.¹³

3 Moreover, I have had doubts about whether I could even be a victim of DV, and have
4 felt shame and embarrassment about what the opposing party had done to me.¹⁴ Furthermore,
5 as with many [trans and/or intersex] survivors of DV, I feared the backlash I would face from my
6 own community, as well as society at large, if I chose to disclose the abuse.¹⁵

7 Third, I understand there may be questions about my medical or physiological condition,
8 as a [trans and/or intersex] individual, beyond what I have already stated.¹⁶ I would like to
9 assert here, however, that any such question is irrelevant. That is, any evidence about my
10 medical or physiological condition, as related to my [trans and/or intersex] identity, would not
11 “hav[e] any tendency in reason to prove or disprove any disputed fact that is of consequence to
12 the determination” of custody and visitation.¹⁷ Examples of irrelevant, and frankly offensive,
13 questions would be: “Have you transitioned, or do you plan to?” or “What genitalia do you
14 have?” Whether I have medically or surgically transitioned, or plan to, is beside the point when

¹³ See Grant et al., *Injustice, supra*, at p. 98; Courvant & Cook-Daniels, *Trans and Intersex Survivors of Domestic Violence: Defining Terms, Barriers, & Responsibilities* (1998) p. 3 (Trans and Intersex); Note, *Losing Your Children: The Failure to Extend Civil Rights Protections to Transgender Parents* (2017) 85 *George Wash. L.Rev.* 536, 539 (“thirteen percent of transgender individuals reported that judges limited or prevented them from seeing their children because of their gender identity.”).

¹⁴ 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.

¹⁵ See Greenberg, *Still Hidden, supra*, 27 *Berkeley J. of Gender L. & J.* at pp. 216-218 (“[T]he LGBT community in their town is small and insular (and the trans community even smaller) . . . the community may discourage disclosure of one’s ‘dirty laundry,’ fearing that it would increase negative perceptions of the LGBT community.”); Goodmark, *Transgender People, supra*, 48 *Harv. C.R.-C.L. L.Rev.* at pp. 86-87 (“The court process is a public process. . . . Such exposure can lead to negative reactions from family and friends, discrimination by landlords, employers, and others, and potentially, greater violence.”).

¹⁶ See Greenberg, *Still Hidden, supra*, 27 *Berkeley J. of Gender L. & J.* at p. 213 (“The belief that people have a ‘right to know’ the intimate details of a trans person’s medical history is reflected in the courtroom, where judges persist in asking questions about and documenting trans people’s medical histories and the physical state of their genitals in exhaustive detail.”).

¹⁷ See *Evid. Code*, §§ 210 & 350.

1 considering the best interests of [children's names].¹⁸ Further, requiring me to disclose any
2 such information without a court hearing and order on the issue would likely violate my
3 constitutional right to medical privacy.¹⁹

4 Fourth, I want to address any doubts or concerns you may have about my ability to
5 lovingly and effectively parent [children's names] due to my [gender and/or sex] identity.
6 Although "[r]esearch on families with a transgender parent is scarce,"²⁰ "social science research
7 strongly refutes concerns that a parent's gender identity may negatively affect a child."²¹ There
8 is even less research on intersex parents, although there is no reason to think intersex parents
9 are any less able and willing to properly raise children.

10 The above reasons help demonstrate why I, a [trans and/or intersex] victim of abuse,
11 was at much higher risk of being arrested, and was indeed arrested on [dates]. Additionally,
12 the above explains why I had previously been unable to, or otherwise chose not to, disclose the
13 abuse I was suffering at the hands of the opposing party. Moreover, I hereby assert my
14 constitutional right to medical privacy. Finally, as a [trans and/or intersex] parent, I am no less
15 capable of loving, nurturing, and raising [children's names]. While I understand the
16 generalizations of any research article may not necessarily apply to every [trans and/or
17 intersex] survivor of DV, the conclusions apply to me as I have explained.

18 Based on these considerations, and my other pleadings filed in this matter, I believe my
19 request for sole legal and physical custody, and [supervised/unsupervised/no] visitation to the

¹⁸ See Fam. Code, §§ 3011, 3020, 3040 & 3044. To be sure, gender dysphoria is a mental health disorder in the fifth edition of the Diagnostic Statistic Manual (DSM-V). The American Psychiatric Association has clarified "[t]he critical element of gender dysphoria is the presence of *clinically significant distress* associated with the condition." (Am. Psychiatric Assn., Gender Dysphoria (2017) p. 1, italics added.) I have not received this diagnosis.

¹⁹ See, e.g., *Manela v. Superior Court* (2009) 177 Cal.App.4th 1139, 1149-1152 ("There is no question that medical records are highly sensitive materials that fall within the scope of the right to privacy."), citations omitted.

²⁰ Bockting et al., *Adult Development and Quality of Life of Transgender and Gender Nonconforming People* (2016) 23 Current Opinion in Endocrinology, Diabetes, & Obesity 188, ___ (author manuscript at pp. 6-7).

²¹ Note, *Losing Your Children, surpa*, 85 George Wash. L.Rev. at p. 557.

1 opposing party, is appropriate under the law and in the best interest of [children’s names].²²
2 Moreover, this court must provide for everyone’s safety in the visitation exchange orders, and
3 ensure no one is exposed to abuse.²³ And in cases involving domestic abuse, the court must
4 ensure that any visitation orders protect the health, safety, and welfare of all family members,
5 including the parent who is a survivor of domestic abuse.²⁴ Finally, since there are allegations
6 of abuse against the opposing party, if they are granted sole or joint legal or physical custody,
7 this court must state its reasons in writing or on the record pursuant to Family Code section
8 3011, subdivision (5)(A).²⁵

9 I declare under penalty of perjury under the laws of the State of California that the
10 foregoing is true and correct.

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Dated: _____ Signed: _____
[Name]
[Petitioner/Respondent]

²² See Fam. Code, §§ 3011, 3020, 3040, 3044 & 3100.
²³ See Fam. Code, §§ 3020, subd. (c), 3031, subd. (b) & 3100, subd. (c); *Christina L. v. Chauncey B.* (2014) 229 Cal.App.4th 731, 736-737.
²⁴ See Fam. Code, § 3020, subd. (c); see, e.g., *De La Luz Perez v. Torres-Hernandez* (2016) 1 Cal.App.5th 389, 401-403 (conc. opn. of Streeter, J.); *Rybolt v. Riley* (2018) 20 Cal.App.5th 864, 586-588 (providing an example of how a trial court can fashion a safe parenting plan for everyone).
²⁵ See *Celia S. v. Hugo H.* (2016) 3 Cal.App.5th 655, 662; see also *Jaime G. v. H.L.* (2018) 25 Cal.App.5th 794, 805-807.