

[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 child custody and visitation of [children's names], children in common with [opposing party name]. As a female survivor of same-sex domestic violence (DV), I am submitting this letter to you to address potential issues that disproportionately impact female 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] woman. 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 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 typical for female survivors in same-sex relationships.¹

A study reviewing arrest rates in DV situations found that, "While 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."² Failure of adequate police response to DV calls can make survivors like myself less likely to "seek police assistance in the future,"³ which underscores why victims of same-sex abuse are less likely to seek police assistance than different-sex couples.⁴

The higher dual arrest rate for female 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";⁵ (2) implicit or explicit bias or prejudice against women who are attracted to women, whether actual or perceived;⁶ (3) the unjustifiable belief that a woman should be able to defend herself against her female partner;⁷ (4) the damaging myth that women simply cannot abuse or batter;⁸ and (5) more specifically, the unfounded misconception that female same-sex relationships are a sort of "utopian" ideal.⁹ And when abused, "lesbian victims are more likely to fight back than are heterosexual women,"¹⁰ but this does not constitute mutual battering,¹¹ or mean that I was a primary aggressor under California law. These rationales, among others, are also employed by courts, implicitly or explicitly, when issuing mutual restraining orders to female same-sex couples.¹²

Second, I want to acknowledge this is the first time I am disclosing the abuse I have suffered at the hands of Respondent. 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 female survivors of same-sex abuse.¹³

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.¹⁴ Furthermore, I feared the backlash I would face from my own community, as well as society at large, if I chose to disclose the abuse.¹⁵ [If appropriate: Indeed, being a [sexual orientation] woman has boxed me into a sort of “double marginality,” in that my identity may not be fully embraced by either the heterosexual or lesbian and gay community].¹⁶

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.¹⁷ 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.”¹⁸ 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.”¹⁹ 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.”²⁰ 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 female 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] woman, 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 female 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]

¹ Note, *The Disproportionate Effect of Mutual Restraining Orders on Same-Sex Domestic Violence Victims* (2020) 108 Cal.L.Rev. 1047, 1048 (*Mutual Restraining Orders*).

² *Id.* at p. 1057.

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

⁴ 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.

⁵ 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*); Ramsey, *The Stereotyped Offender: Domestic Violence and the Failure of Intervention* (2015) 120 Penn. St. L.Rev. 337, 408 (“When lesbian partner violence does get reported, police officers who are ignorant of the dynamics of abuse between women often have difficulty identifying the primary aggressor.”) (*Stereotyped Offender*).

⁶ Note, *Mutual Restraining Orders, supra*, 108 Cal.L.Rev. at pp. 1059-1068; Hirschel et al., *10-Year Study, supra*, 36 J. of Interpersonal Violence at p. 28.

⁷ Note, *Mutual Restraining Orders, supra*, 108 Cal.L.Rev. at pp. 1059, 1066-1067.

⁸ Duke & Davidson, *Same-sex Intimate Partner Violence: Lesbian, Gay, and Bisexual Affirmative Outreach and Advocacy* (2009) 18 J. of Aggression, Maltreatment & Trauma 795, 802 (*Affirmative Outreach*).

⁹ See Duke & Davidson, *Affirmative Outreach, supra*, 18 J. of Aggression, Maltreatment & Trauma at p. 799 (“There is a myth among members of the LGB community of a lesbian utopia, or that relationships between women constitute ideal egalitarian relationships.”), italics and citations omitted; Ramsey, *Stereotyped Offender, supra*, 120 Penn. St. L.Rev. at p. 408.

¹⁰ Qureshi, *Utilizing Florida's Stance on Domestic Violence Laws Regarding Same-sex Couples as an Effective Model for National Uniformity* (2017) 28 U. of Fla. J.L. & Public Policy 143, 149.

¹¹ See Duke & Davidson, *Affirmative Outreach, supra*, 18 J. of Aggression, Maltreatment & Trauma at pp. 801-802.

¹² See Note, *Mutual Restraining Orders, supra*, 108 Cal.L.Rev. at pp. 1059-1068;

¹³ Note, *Mutual Restraining Orders, supra*, 108 Cal.L.Rev. at p. 1059.

¹⁴ 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.

¹⁵ See Ramsey, *Stereotyped Offender, supra*, 120 Penn. St. L.Rev. at p. 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.”).

¹⁶ See Duke & Davidson, *Affirmative Outreach, supra*, 18 J. of Aggression, Maltreatment & Trauma at pp. 801-803.

¹⁷ 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.

¹⁸ *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.

¹⁹ *Obergefell*, *supra*, 576 U.S. at p. 668.

²⁰ 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).