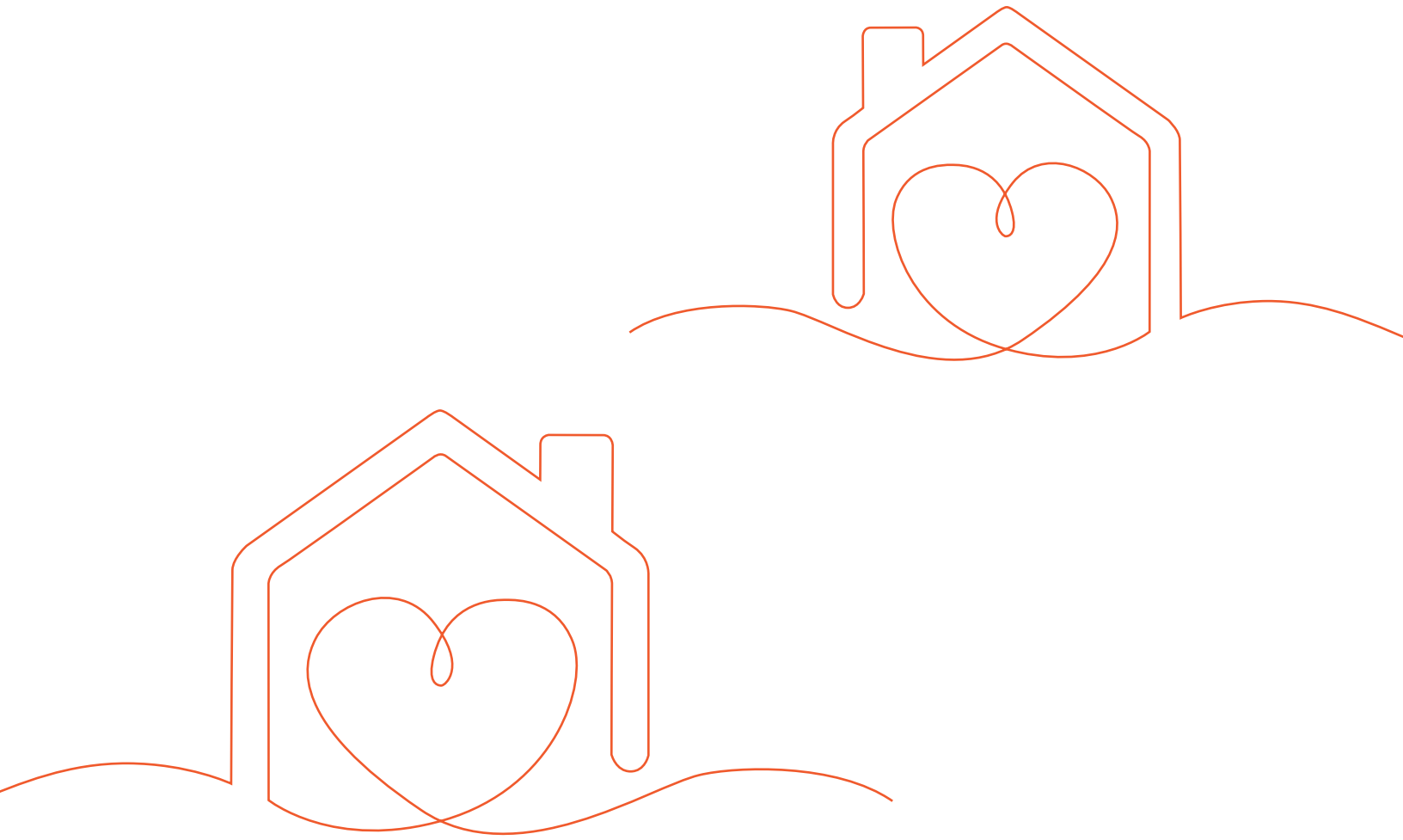

Care for Transgender and Gender Diverse Children Whose Parents Are Involved in a Custody Dispute

NATIONAL LGBTQIA+ HEALTH EDUCATION CENTER
A PROGRAM OF THE FENWAY INSTITUTE

INTRODUCTION

Custody disputes involving transgender and gender diverse (TGD) children and adolescents require careful consideration due to the unique medical, social, and mental health needs of TGD youth. This is especially the case when one parent is less accepting of the child's gender exploration/identity than the co-parent. Due to a lack of familiarity within family courts regarding TGD children, harmful misinformation has resulted in the more gender-affirming parent losing physical and/or legal decision-making custody of their TGD child to the non-affirming parent.[1,2]

In many cases, family courts call on the TGD child's primary care provider for guidance and professional opinions when parents disagree about a child's gender identity or expression. It is therefore imperative that health center clinicians understand the underlying issues that may adversely affect the physical and mental health of this particularly vulnerable subset of TGD children.

The purpose of this brief is to:

1. Provide a foundation and context for clinicians to feel better prepared and confident to educate family court professionals
2. Offer best practices to illustrate how clinicians can appropriately and compassionately navigate care when co-parents disagree regarding medically necessary interventions
3. Assist clinicians as they consider structural interventions to improve outcomes for TGD children and their families in the family court system

[1] Kuvalanka KA, Bellis C, Goldberg AE, McGuire JK. An exploratory study of custody challenges experienced by affirming mothers of transgender and gender-nonconforming children: Custody challenges involving trans children. Fam Court Rev. 2019;57(1):54-71. doi:10.1111/fcre.12387

[2] Margolis JB. Two divorced parents, one transgender child, many voices. Whittier J Child & Fam Advoc. 2016;15:125-164.

This brief is intended for medical and mental health clinicians, medical-legal professionals, legal practitioners, and parents of TGD children engaged in custody disputes (always consult with your organization's legal counsel).

Central to this brief is the importance of an affirming approach to gender-related care. Standards of care, such as the World Professional Association for Transgender Health Standards of Care[3] and the Endocrine Society Clinical Practice Guidelines,[4] provide guidance on medical and non-medical approaches to gender-affirming care. These approaches may include social interventions (e.g., change in name, pronouns, and clothing in ways consistent with the child's affirmed gender identity) and, for adolescents who meet the appropriate criteria, medical interventions such as pubertal suppression and gender-affirming hormone therapy. When one parent opposes gender-affirming care, however, it can be particularly challenging for clinicians to navigate best practices.[5,6]

Gender-affirmation processes that may be challenged during custody disputes include:

Due to transphobia and subsequent court delays, TGD youth in custody cases often must wait for long periods of time as their parents, clinicians, and court professionals determine if or when they will have access to gender-affirming interventions, oftentimes with puberty quickly approaching.

[3] Coleman E, Radix AE, Bouman WP, et al. Standards of care for the health of transgender and gender diverse people, version 8. Int J Transgend Health. 2022;23(Suppl 1):S1-S259. doi.org/10.1080/26895269.2022.2100644

[4] Hembree WC, Cohen-Kettenis PT, Gooren L, et al. Endocrine treatment of gender-dysphoric/gender-incongruent persons: An Endocrine Society clinical practice guideline. J Clin Endocrinol Metab. 2017;102(11):3869-3903. doi.org/10.1210/jc.2017-01658

[5] Clark BA, Virani A. "This wasn't a split-second decision": An empirical ethical analysis of transgender youth capacity, rights, and authority to consent to hormone therapy. J Bioeth Inq. 2021;18(1):151-164. doi:10.1007/s11673-020-10086-9

[6] Dubin S, Lane M, Morrison S, et al. Medically assisted gender affirmation: When children and parents disagree. J Med Ethics. 2020;46(5):295-299. doi:10.1136/medethics-2019-105567

ISSUES AFFECTING TGD CHILDREN AND ADOLESCENTS WHEN PARENTS DISAGREE

TGD children and adolescents may face a variety of complex situations when their parents disagree about how to proceed with care. Some examples include:

- A child is anxious to know what stage of puberty they are in because it is relevant to when they would start pubertal suppressant therapy, but one of the parents does not believe the child needs this information
- A child's gender dysphoria increases with the onset of pubertal changes, and only one parent knows of the child's desire to go on pubertal suppressant therapy
- One parent refuses to consent to any medical interventions, and parents have joint legal decision-making
- Family courts are unaware of the medical necessity of interventions; court delays due to case overload, lack of awareness, implicit bias, and transphobia may exacerbate gender dysphoria and cause additional detrimental consequences for youth
- A child presents to the emergency department for self-harm; one of the parents blames the other for "pushing the child to be transgender and confusing them, causing them to harm themselves"

NAVIGATING CLINICAL ISSUES AND THE FAMILY COURT SYSTEM

This section guides health center care teams in navigating clinical care and family court systems for TGD patients whose parents disagree about their child's gender affirmation process.

Clinical considerations

We acknowledge how challenging it can be to support young TGD patients and their families who are experiencing custody disputes. The following recommendations aim to clarify the role of clinicians and offer points to consider when providing gender-affirming care to your patients.

1. Follow current standards of care that recommend promoting acceptance and affirmation by families of children exploring their gender identity or expression. While some parents may find it stressful that their child has an expansive or fluid gender identity, it is important to explain that supporting and accepting a child's gender expression and identity improves the health and well-being of the child. Even if the child's gender exploration and gender-expansive expression do not persist, all children benefit from an affirming, loving, and supportive home environment.
2. As a clinician, it is crucial to validate and affirm the child's gender identity and expression to improve their resiliency and adaptive strengths and promote their self-worth.
3. It is common for one parent to be more accepting of the child's gender exploration than the co-parent. The less affirming parent may express hesitancy in allowing a child to freely explore their gender due to fear of bullying, discrimination, and bias. Additionally, some parents believe that gender exploration is a phase initiated by the other parent, and therefore, the child does not need to be affirmed. Children will often conform to please a disapproving parent out of their need to be accepted, though this has the potential to worsen health outcomes in the child because this can make them believe their gender identity is wrong and must be masked.
4. Should parents disagree on medical decision-making, it is important to ensure a safe clinical environment that enables all parties to discuss concerns openly and freely. In health centers with integrated behavioral health care, psychologists and social workers are often available to assist in discussing conflicts between parents. If these supports do not exist in your health center, it is essential to partner with affirming services and support groups in the community, so that you can offer referrals, should the need arise.

5. Clinicians must strike a delicate balance of supporting the child's gender identity and expression while not alienating a non-affirming parent. Though challenging to navigate in a highly charged emotional encounter, creating a space where parents can express their concerns and feel heard is essential. Additionally, clinicians can address parental concerns with current evidence-based medical knowledge, and psychologists and social workers can help mitigate the disagreement that may arise between parents through counseling. It is important to initiate ongoing dialogue with parents, validate concerns, and acknowledge parental beliefs while encouraging a non-affirming parent to support their child. Children thrive on the love and acceptance of all parents and caregivers.
6. There are times when the support of both parents is unattainable. An ethics consultation can help determine the child's best interests in a particular case outside of the courts. When gender-affirming care is determined to be in the best interest of the child, the opposing parent may be less likely to forestall a plan of care.
7. Ensure that all health center staff (and partnering agencies) are formally trained on gender-affirming care, including the complex dynamics when parents disagree on medical and mental health care for their TGD child. Training should cover the social drivers of physical and mental health disparities, and should work through cases where custody is challenged, with solutions grounded in best practices.
8. Familiarize yourself and your department with the health center's policies relevant to TGD people, including patient registration, nondiscrimination, and parental consent for gender-affirming interventions. For example, a recommended practice is to ensure that the registration form has fields for the patient's name and pronouns, multiple options for gender identities (including a write-in option) and that all staff follow the policy of honoring the patient's self-identified gender, name, and pronouns.
9. Be attuned to the ways you communicate about the child's gender identity and expression to colleagues and partners, and work to dismantle interpersonal and institutional transphobia in medicine. Many clinics refuse to take on a TGD patient whose family is involved in custody cases, due to the complexity of the situation; thus, it is especially critical for health center staff and leadership to become educated and prepared to handle complex custody cases for TGD patients. These children need supportive clinicians and allies in their corner. Take the time to understand the barriers these families face to advance health equity.

Within the family court system

The following recommendations provide a starting point as you consider how to advocate for your patients and effectively educate family courts. When called to testify about your patient or share your expert opinion on a case, you will want to review your health center's policies and guidelines.

1. Prepare to educate the courts on the components of gender affirmation, medical interventions from puberty onward, and current considerations for gender evaluations, including the fact that gender-creative play and exploration are normal.

2. Challenge misinformation- and disinformation-based beliefs and stances, such as the assumption that supporting a child's gender identity or expression is harmful, blaming a supportive parent for "causing" the child to be TGD, and pursuing gender identity change efforts.
3. Understand that fear and transphobia may be couched in claims of the child being gender "neutral." In these cases, an unsupportive parent claims the child is gender-neutral or gender-diverse, even though the child is expressing a binary transgender identity (strictly feminine or masculine). The parent then asks the courts to enforce gender neutrality, which can cause harm to the child. Prepare to educate the courts about the difference between having a binary and non-binary gender identity.
4. Advocate for affirming parenting plans and speak out against detrimental court orders that limit a child's gender identity or expression.
5. Establish an interdisciplinary team. Mental health clinicians can assess the child's readiness for gender-affirming interventions, capacity to assent, and mental health needs; they can also support the family and child before, during, and after initiation of pubertal suppression or hormone therapy. In conjunction with the primary care provider, the mental health clinician can more holistically address parental concerns, support families through the gender affirmation process, and help parents advocate for their child in school, their communities, and their respective homes.
6. Be prepared to speak about the social and structural determinants of health that adversely impact TGD children in family court cases, including disparate health outcomes when the child is prevented from being socially and/or medically affirmed in their gender.
7. Explicitly refute misinformation and interpersonal and institutional transphobia. Some examples include court professionals stating a child is "too young" to know their gender; questioning the validity of the child's stated gender identity; court orders forcing supportive parents to remove any items from the home not associated with the child's sex assigned at birth; and taking custody away from the affirming parent based on the incorrect assumption that supporting the child's gender identity is harmful or abusive to the child.
8. Be prepared to discuss why a child might behave and identify differently depending on which home they are in. Take the time to educate the courts that a TGD child will express and identify authentically in places where and around people with whom they feel most safe and validated. Expect that the child's behaviors will be different in one environment than the other. This does not mean their expressed gender identity is not real, but rather that they are adapting to different environments to stay safe and may sense that it is easier not to rock the boat in any given setting.
9. Center and listen to the child in family court cases. Clinicians and court-appointed professionals do not determine or prove the child's gender identity but rather ensure a safe and supportive environment where the child can thrive as their authentic self.

STRUCTURAL INTERVENTIONS TO SUPPORT TGD CHILDREN

In addition to providing inclusive, affirming care to TGD children and their families involved in the family court system, clinicians are in a unique position to intervene on the structural factors that contribute to adverse health outcomes. Structural competency[7] refers to the trained ability of healthcare providers to recognize, analyze, and intervene upon the structural factors that impact health disparities.[8,9] This innovative framework equips clinicians with opportunities to consider how they can intervene at one or more of the following levels:

LEVELS OF INTERVENTION	EXAMPLES
Individual	• Educate yourself on the barriers these families encounter • Recognize coercive tactics sometimes used by non-affirming parents • Stay up to date on current research • Become familiar with local resources for parents of TGD children, especially those related to family law
Interpersonal	• Reassure and support the affirming parent • Provide psychoeducation and resources to the non-affirming parent • Call out interpersonal transphobia among colleagues
Health Center/ Institution	• Conduct mandatory staff-wide training • Ensure your clinic is prepared to handle patients with family court issues • Explicitly name and counter transphobia in medicine and law • Recognize that affirming parents may need legal and/or financial assistance and connect them with appropriate resources
Community	• Oppose harmful court orders that restrict a child's gender identity or expression and/or those that restrict a parent from showing their support • Train family court practitioners on best practices • Think about how you can bring awareness of TGD children and family support in the health professional organizations you belong to and in other spheres of influence
Research	• Conduct a needs assessment among families of TGD children involved in custody disputes at your health center; make recommended changes • Consider writing a perspective piece in a professional journal • Get involved with research on TGD children in the family court system
Policy	• Engage in community education about gender-affirming care • Participate in the development of policies that protect the rights of TGD people • Author a policy brief and suggest ways law and medicine can advance health justice for TGD children in the family court system

CONCLUSION

Custody disputes involving TGD children can cause stress and harm to an already vulnerable population. It is essential that health centers are prepared to support their TGD patients and families involved in custody disputes, especially when the parents disagree with each other on affirming the child's gender identity. Support may come in the forms of providing evidence-based clinical care; offering community-based mental health and legal referrals with affirming partners; creating space for parents to voice their concerns and hopes for their child; educating non-affirming parents and courts on the health-promoting importance of supporting and accepting a child's gender expression and identity; and speaking out against misinformation and transphobia within the medical and family court system.

ADDITIONAL RESOURCES AND LITERATURE

Transgender Health & Medical-Legal Partnerships (2024)

National Center for Lesbian Rights (NCLR)

National Academies of Sciences, Engineering, and Medicine Consensus Study Report: Understanding the Well-Being of LGBTQI+ Populations (2020)

AAMC: News on state bans on gender-affirming care for minors (2024)

UCLA School of Law Williams Institute Report: Prohibiting Gender-Affirming Medical Care for Youth (March 2023)

Child Welfare Capacity Building Collaborative: Supporting Transgender Children and Youth Involved in the Court System (2016)

American College of Obstetricians and Gynecologists (ACOG): Health Care and Support for Transgender and Gender-Diverse Adolescents Issue Brief (2021)

[7] Metzl JM, Hansen H. Structural competency: Theorizing a new medical engagement with stigma and inequality. Social Science & Medicine. 2014;103:126-133. doi:10.1016/j.socscimed.2013.06.032

[8] Downey MM, Gómez AM. Structural competency and reproductive health. AMA J Ethics. 2018;20(3):211-223. doi:10.1001/journalofethics.2018.20.3.peer1-1803

[9] Donald CA, DasGupta S, Metzl JM, Eckstrand KL. Queer frontiers in medicine: A structural competency approach. Acad Med. 2017;92(3):345-350. doi:10.1097/ACM.0000000000001533

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