

IDENTITY DOCUMENTS

Carrying identification that reflects your genuine, real-world self is basic—whether you're transgender or not. That's what ID's are for. So imagine if every time you tried to travel, open a bank account or start a new job, someone harassed you about your ID. Is it fake? Are you pretending to be someone you're not?

When a transgender person's ID is called into question, whether on suspicion of lying or out of an inappropriate interest in finding out whether they've had sex reassignment surgery (SRS), it amounts to harassment and discrimination and, in many cases, reveals their transgender status, which is private information. Forty percent of National Transgender Discrimination Survey¹ participants who presented ID that didn't match their gender presentation were harassed, 15% were asked to leave an establishment, and 3% were assaulted.

There is no set formula for transitioning. The Standards of Care established by the World Professional Association for Transgender Health (WPATH) state that for some, transition involves simply living in accordance with your gender identity,

while for others there may be medical interventions required such as hormone therapy or SRS. All this needs to be evaluated on a case-by-case basis.

These facts are beginning to influence ID policy. WPATH urged in 2010 that governments and other bodies should “move to eliminate requirements for identity recognition that require surgical procedures.” Indeed, four U.S. federal agencies recently enacted policies that are more in sync with the realities of transition. And several states are modernizing their birth certificate and driver's license policies.

This fact sheet is intended to answer questions about changing the gender marker or name on your identification and to bring you up to date about some of the work advocates are doing to help transgender people obtain accurate identity documents that will make their lives easier.

¹ See National Gay and Lesbian Task Force and National Center for Transgender Equality's “National Transgender Discrimination Survey” (2011), available at www.endtransdiscrimination.org.

MY STORY

OLD DRIVER'S LICENSE, NEW STATE

Anand Kalya, 24

“Before I had any documentation that matched my public presentation and my gender identity, it was uncomfortable and could be scary—and it was a disincentive to apply for certain types of jobs. But then in California I was able to get a driver's license with a new name and gender.

“There was definitely a psychological affirmation that yes, this is who I am, this is what I look like, and I feel comfortable passing this around with friends. Whenever anyone says, ‘Let me see your driver's license picture,’ I feel good doing that.

“I live in Michigan now, and so far I've been very lucky because the places I have gotten work have already had gender identity as a protected class in the nondiscrimination policies.

“But I can't go in and get my Michigan driver's license by taking my California license and my passport or my social security card to the secretary of state's office. The laws here are different, so I would have to go and get my name officially changed and get my gender marker changed on my social security account. There's the financial barrier there, and then just the bureaucracy of it is enough to make me want to throw my hands up in the air.”



FAQ

Answers to Common Questions About Identity Documents

ID CASE LAW IDENTITY DOCUMENTS SHOULD SHOW "LIVED GENDER"

In March 2012, a federal court in Alaska became the first to rule that the absence of a procedure to change a person's gender marker on a driver's license to match one's "lived gender expression or identity" infringes on a person's constitutional right to privacy because it threatens the disclosure of personal medical information. The court ordered the Alaska Division of Motor Vehicles to come up with a new policy that allows for gender marker change.³ Among other key legal efforts to get IDs to reflect lived gender is a lawsuit filed in 2011 by the Transgender Legal Defense and Education Fund (TLDEF) that charges New York City's birth certificate SRS requirement with being arbitrary and discriminatory.

³ *K.L. v. State of Alaska*, Case no. 3AN-11-05431 (3rd Judicial Dist., 2012), filed by the American Civil Liberties Union

Q: Do I need sex-reassignment surgery (SRS) to change the gender marker on my ID?

A: Many agencies responsible for changing documents such as birth certificates or drivers licenses do still require proof of SRS, but there is a trend toward recognizing that this requirement is burdensome and creates an unfair barrier for most transgender people.

On June 9, 2010, the U.S. State Department stopped requiring proof of SRS for issuing passports and consular birth certificates to transgender people and began asking instead for proof of "appropriate clinical treatment for gender transition to the new gender"—better reflecting the individualized nature of treatment for gender transition. Since then, three other federal agencies have followed suit with parallel changes: The Office of Personnel Management (OPM)—which controls human resources for the entire federal government—the Veterans Health Administration (VHA) and the U.S. Citizenship and Immigration Services (USCIS).

DEFINITIONS

"Transgender" and "TGNC"

Transgender is an umbrella term used to describe people whose gender identity, one's inner sense of being male or female, differs from their assigned or presumed sex at birth; **Gender-NonConforming** people don't meet society's expectations of gender roles.

Q: How do I change the gender on my birth certificate?

A: Birth certificates are generally harder to change than other documents; the standard of proof is higher because it's a so-called vital record, considered "official" by government and private agencies alike.

Many of the 57 state, local and territorial jurisdictions that administer birth certificates require a court order to change or amend them (a cost-and-time-consuming process of petitioning a judge for an order stating that you are now male or female) and/or a letter from a surgeon certifying SRS. California, Vermont and Washington have removed surgical requirements completely for those applying to change a birth certificate. Tennessee is the only state that has a statute specifically forbidding the correction of gender designations on birth certificates for transgender people. Some other states prohibit it through either court decision or agency practice.

To find out about the law where you live, check out Lambda Legal's "Sources of Authority" list at lambdalegal.org/publications/sources-of-authority-to-amend.

Q: How do I change the gender on my driver's license?

A: These rules are different from state to state as well. Departments of Motor Vehicles in about half the states have removed surgical requirements completely for those applying to change their gender marker on their drivers' licenses. One concrete and increasingly accepted way to simplify gender marker changes on driver's licenses is to fill out standardized forms instead of having legal or medical approvals submitted by letter. At the Washington, D.C. Department of Motor Vehicles, the applicant fills out the top half and the health or social service professional fills out the bottom. Providing forms helps applicants avoid the subjective determination of specific clerks who may

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not know the legal specifics or may have prejudices of their own.

Q: Do I have to go to court to get my gender changed on my ID?

A: Some states and agencies do require that you obtain a court order to make the change on your documents. This can create an extra and unnecessary hurdle for some people who can’t afford an attorney or pay court fees, but it can be helpful to have an official judgment in hand if your gender identity is being questioned by someone in a position of authority.

Q: What about changing my name on ID documents—is it even important to do this?

A: Documenting a name change may be an irrelevant detail for some people—whether transgender or not, you just call yourself what you like and don’t worry about what government records say. But taking on a new name is very often the first step in an individual’s transition, a concrete signpost that you’re beginning to live in accordance with your gender identity. Opting not to change your name also puts some people at risk of violence because it reveals that they are transgender when they show ID. Having more than one name can also raise suspicions among employers, landlords or police officers.

Q: How do I change my name officially?

A: You’re usually allowed to change your (first or last) name to anything you like as long as it’s not for purposes of fraud and as long as you give notice. A fee is generally involved, and some courts require that a lawyer represent you.

Some states allow for common law name changes: If you live with a new name for a certain period of time, it automatically becomes official without needing to process any documents. Transgender people are generally advised to take advantage of more concrete

legal procedures when available, however, because banks and other institutions generally decline to recognize a common-law change.

In any case, transgender people are very commonly thwarted in the routine process of filing papers for a name change when courts ask invasive questions about a person’s gender transition. Lambda Legal submitted an amicus brief in a 2009 case² that challenged a New York City Civil Court judge’s requirement that transgender people show “medical need” for their name changes. In striking down the requirement, an appellate court stated, “[t]here is no sound basis in law or policy” to make transgender petitioners share private medical information just to change their names.

Transgender residents of New York State seeking to change their names can get pro bono legal assistance from the Transgender Legal Defense and Education Fund, Inc.’s Name Change Project. The Project is considered a model relationship between the private bar community and the transgender community. (Find out more at transgenderlegal.org/work_show.php?id=7).

Q: What about changing my name and gender marker on my school records?

A: Schools should accommodate transgender students by allowing them to use their preferred name whether or not they have had a legal name change. Some schools use a two-tiered system, keeping the student’s legal name in their computer system but the student’s preferred name in classroom documents in order to make sure the students’ transgender status is not revealed, putting them at greater risk of bullying. Another option is for schools to simply make a note of the student’s gender identity so that teachers and classmates are respectful.

² *In the Matter of the Application of LEAH URI WINN-RITZENBERG for Leave to Change His/Her Name To OLIN YURI WINN-RITZENBERG*

PRIVACY
YOUR SOCIAL
SECURITY NUMBER
MAY REVEAL YOUR
TRANSGENDER
STATUS

One federal agency that advocates are asking to get up to speed on transgender issues is the Social Security Agency (SSA). In this case, the policy that needs updating is not about identification, but about computer systems that disclose transgender status to employers doing background checks on prospective or current employees. It’s called “gender matching” and lots of people have lost jobs over it: If the record of your gender in the Social Security database does not match the gender marker on your work application, the SSA sends your employer a letter notifying them. The SSA has stopped gender-matching for private employers, but a coalition of advocates is urging the agency to make its public-employer systems consistent with passport rules and other federal policies. To see the letter which Lambda Legal and eight advocacy groups wrote to the SSA to urge it to change its policies, visit www.lambdalegal.org/in-court/legal-docs/ltr_ssa_20120517_transgender-policies

The school bullying statistics are frightening: 78% of the 6,450 TGNC respondents to the 2011 National Transgender Discrimination Survey (NTDS) who had expressed a TGNC identity while in grades K-12 reported being harassed; 35% were attacked and 12% sexually assaulted. Instituting a clear school policy helps ensure TGNC students are respected and have equal access to education.

For more information on TGNC school issues, see Lambda Legal's *Bending the Mold* at www.lambdalegal.org/publications/bending-the-mold and also GLSEN's *Model District Policy* for TGNC students at www.glsen.org/modeltranspolicy.

INTERNATIONAL TRANS RIGHTS ARE HUMAN RIGHTS

A 1972 Swedish law requiring sterilization (and divorce) for anyone hoping to update gender on an ID remains on the books there despite widespread opposition in Sweden and beyond. The situation has won the attention of international human rights organizations, who also object to the fact that more than 15 European countries and many U.S. states require proof of SRS if you want your papers changed.

It's quite a jump from there to Argentina's new transgender bill of rights, the most progressive in the world. The law, passed in May 2012, allows people to change their gender on official documents without approval from a judge or doctor. It also provides government funding for transition-related health care such as hormone therapy and SRS.

RESOURCES

HOW TO CHANGE YOUR ID DOCS

These organizations and websites can offer guidance to transgender people needing to change their gender markers or names on identity documents.

BIRTH CERTIFICATES: Lambda Legal has compiled a state-by-state directory of birth certificate guidelines: www.lambdalegal.org/publications/sources-of-authority-to-amend

DRIVER'S LICENSES: The National Center for Transgender Equality offers this guide to rules on changing your gender marker or your name on a driver's licenses: www.transequality.org/Resources/DL/DL_policies.html

FEDERAL LAW: Another resource from NCTE: www.transequality.org/Resources/NCTE_Blueprint_for_Equality2012_ID_Documents.pdf

NAME CHANGES AND OTHER STATE-SPECIFIC ASSISTANCE:

- Massachusetts Transgender Legal Advocates (Boston): www.transgenderlegaladvocates.blogspot.com
- Q-Law (Seattle): www.q-law.org
- Transgender Law Center (San Francisco): www.transgenderlawcenter.org
- Transgender Legal Defense and Education Fund (New York): www.transgenderlegal.org/work_show.php?id=7
- Whitman-Walker (Washington, DC): www.whitman-walker.org/page.aspx?pid=575

FOR MORE INFORMATION: Contact Lambda Legal at 212-809-8585, 120 Wall Street, Suite 1900, New York, NY 10005-3919. If you feel you have experienced discrimination, call our Help Desk toll-free at 866-542-8336 or go to www.lambdalegal.org/help-form