

CHAPTER V

Identity Documents

Carrying identification that reflects your genuine, real-world self is basic—whether you're transgender or not. That's what IDs 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 surgery, it amounts to harassment and discrimination and, in many cases, a violation of privacy. 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 medical 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 one's gender identity, while for others there may be medical interventions required such as hormone therapy or gender-affirming surgery.

All this needs to be evaluated on a case-by-case basis between a trans person and their doctor.

These facts are beginning to influence ID policy. WPATH urged in 2010 that governments and other bodies “move to eliminate requirements for identity recognition that require surgical procedures.” Indeed, every single U.S. federal agency with the exception of the Department of Defense (as of August 2014) has changed its policy to be in sync with the medical community's standards for transition. About half the 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 *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, available at www.endtransdiscrimination.org/report.html

MY STORY

OLD DRIVER'S LICENSE, NEW STATE

ANAND KALRA

“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 non-discrimination 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 process 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.²

Among other key legal efforts to get IDs to reflect lived gender is the effort by advocates to remove outdated surgery requirements for gender marker changes on birth certificates. Lambda Legal and other advocates pushed New York State to lift its surgery requirement with great success, and now New York City also has changed its policy and stopped requiring surgical treatment.

2. *K.L. v. State*, No. 3AN-11-05431 C, 2012 WL 2685183 (Alaska Sup. Ct. Mar. 12, 2012).

Q: Do I need gender-affirming surgery to change the gender marker on my ID?

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

The American Medical Association (AMA), the nation’s largest physician organization, called in 2014 for “modernizing” birth certificate policies by eliminating surgery requirements.

The U.S. government is gradually falling into line. On June 9, 2010, the State Department stopped requiring proof of surgery 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, the Social Security Administration, Department of Homeland Security, Veteran’s Health Administration and Office of Personnel Management have followed suit and no longer require proof of surgery to obtain gender designation changes.

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 costly 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 gender-affirming surgery. California, the District of Columbia, Iowa, New York City, New York State, Oregon, Vermont and Washington State 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. Other states, such as Idaho and Ohio, prohibit it through either court decision or agency practice. A court in Puerto Rico recently ruled that gender markers can under no circumstance be changed on identity documents.

To find out about the law where you live, check out Lambda Legal’s “Changing Birth Certificate Sex Designations: State-By-State Guidelines” list at lambdalegal.org/your-rights/transgender/changing-birth-certificate-sex-designations.

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

A: These rules differ 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 driver’s licenses. One increasingly accepted way to simplify gender marker changes on driver’s licenses is to fill out a standardized form; neither legal nor medical approvals are required. At the Washington, D.C. Department of Motor Vehicles, where this new system is in place, the applicant fills out the top half of the form and the health or social service professional fills out the bottom half. Forms helps applicants avoid the subjective determination of specific clerks who may 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 to pay court fees, but in fact 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.

“When 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.

—ANAND KALRA

Q: What about changing my name on ID documents—does it matter?

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 a person’s transition, a concrete signpost that they are beginning to live in accordance with their gender identity. Opting not to change a name also puts some people at risk of violence because it reveals that they are transgender when they show their 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. Different states have different requirements. A fee is generally involved, and some courts require that a lawyer represent you.

Some states, like California, 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 their gender transition. Lambda Legal submitted an amicus brief in a 2009 case

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, “there is no sound basis in law or policy” to make transgender petitioners share private medical information just to change their names.³

Transgender residents of New York State seeking to change their names can get free 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 transgender-legal.org/work_show.php?id=7.

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

A: The Family Educational Rights and Privacy Act (FERPA) is a federal law that protects the privacy of student educational records and also gives current and former students the right to amend those records to match their legal documents if they are “inaccurate, misleading, or in violation of the student’s rights of privacy.” (For more records information, see “A Transgender Advocate’s Guide To Updating And Amending School Records” at lambdalegal.org/know-your-rights/transgender/ferpa-faq and www2.ed.gov/policy/gen/guid/fpco/faq.html.)

Also see “Transgender College Students,” another fact sheet in this Transgender Rights Toolkit at lambdalegal.org/publications/toolkits, as well as Lambda Legal’s *Bending the Mold* at lambdalegal.org/publications/bending-the-mold and GLSEN’s *Model District Policy* for TGNC students at glsen.org/modeltranspolicy.

PRIVACY

YOUR SOCIAL SECURITY NUMBER MAY REVEAL YOUR TRANSGENDER STATUS

One federal agency that is not 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 still performs it for public employers. 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 that Lambda Legal and eight advocacy groups wrote to the SSA to urge it to change its policies, visit lambdalegal.org/in-court/legal-docs/ltr_ssa_20120517_transgender-policies

3. *In re Winn-Ritzenberg*, 891 N.Y.S.2d 220 (N.Y. App. 2009)

Q: What if I am an undocumented immigrant?

A: If you are an undocumented immigrant, you will probably face even more obstacles in securing identity documents with your actual gender identity.

The following states, districts and territories offer driver's licenses for undocumented immigrants: California, Colorado, Connecticut, District of Columbia, Illinois, Maryland, Nevada, New Mexico, Puerto Rico (after 1 year of residency), Utah and Washington.

Many Latin American countries offer consular identification cards for their citizens in the U.S. However, it is not clear whether you can get a consular identification card or even a passport with your actual gender identity.

INTERNATIONAL**TRANS RIGHTS ARE HUMAN RIGHTS**

Transgender advocates around the world are gaining momentum in the push to modernize requirements for gender marker change on official documents. Argentina set an international standard in 2012 with a comprehensive transgender rights law that allows for a person to simply fill out a form to change their official name and gender marker without approval from a judge or doctor. Other countries, including Sweden, Denmark and the Netherlands, have recently eliminated requirements of sterilization, surgery and divorce after these requirements drew attention from international human rights organizations.

FOR MORE INFORMATION: Contact Lambda Legal at 212-809-8585, 120 Wall Street, 19th Floor, New York, NY 10005-3919. If you feel you have experienced discrimination, call our Legal Help Desk toll-free at 866-542-8336 or go to www.lambdalegal.org/help.

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: <http://www.lambdalegal.org/know-your-rights/transgender/changing-birth-certificate-sex-designations>

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: transequality.org/Resources/DL/DL_policies.html

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

NAME CHANGES AND OTHER STATE-SPECIFIC ASSISTANCE:

- Chicago House TransLIFE Center, Chicago, IL: chicagohouse.org/?post_causes=translife-center
- FreeState Legal, Baltimore, MD: freestatelegal.org/
- Gender Health Center, Sacramento, CA: thegenderhealthcenter.org/
- Gender Justice Nevada, Las Vegas, NV: <http://genderjusticenv.org/>
- GLBT Colorado, Denver, CO: glbtcolorado.org
- L.A. Gay and Lesbian Center, Los Angeles, CA: lalgbtcenter.org/
- Freedom Center for Social Justice LGBTQ Law Center, Charlotte, NC: fcsj.org/main/the-freedom-center-for-social-justice-lgbt-law-center/
- Mazzoni Center, Philadelphia, PA: mazzonicenter.org
- New York Legal Assistance Group, New York, NY: nylag.org
- Oklahoma Equality Center, Tulsa, OK: okeq.org/
- OutFront Minnesota, Minneapolis, MN: outfront.org
- QLaw, Seattle, WA: q-law.org
- Sylvia Rivera Law Project, New York, NY: srlp.org
- Trans Georgia Legal: transgeorgialegal.org/
- Transgender Law Center (San Francisco): transgenderlawcenter.org
- Trans Legal Advocates of Washington (TransLAW), Washington, DC (including Maryland and Virginia): translawdc.org/clinic
- Transgender Legal Defense and Education Project (TLDEF), New York, NY: transgenderlegal.org
- Whitman-Walker Health Legal Services, Washington, DC: whitman-walker.org