

**TRANSGENDER ISSUES
in
NAME CHANGE PROCEEDINGS**

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BASIC ASSUMPTION

- The basic assumption of this training is that all people have the right to live and express their gender identity without facing violence or discrimination
- The laws of New York City & State protect this, even if not all agree.

ROLE OF NAME CHANGE

- NY Right to name change is extremely broad – anyone may obtain a name change through common law (Matter of Golden, 56 AD3d 1109, 1110 [2008])
- For a long time, name change was as simple as walking into an office and telling them you want to change it
 - Common for trans people to do this with social Security, NYS ID, and Benefits cards

ROLE OF NAME CHANGE

- However, post-9/11, almost all agencies have become much stricter, and require a court ordered Name Change.
- Thus, a court-ordered name change is often the only way for a transgender person to update their ID's, records, and personal information
- A Name change can reduce discrimination, improve community relationships and increase access to buildings, other public spaces, and jobs

Other Ways Name Change Helps...

- Certified Name Change Orders gives you points under the DMV's 6-point system for proving age and identity required to obtain ID
- Required by NYC Department of Health & Mental Hygiene to change the *gender* on a birth certificate
- Filing immigration applications in the new name drastically reduces time Immigration applications take to process and avoids administrative delay and additional administrative filing.

NAME CHANGE STATUTE

- Name Changes are governed by New York Civil Rights Law § 60-65.
 - Venue and Jurisdiction (§60)
 - Contents of the Petition (§61)
 - When notice to third parties is required (§62)
 - Contents and form of the Order and Publication (§63)
 - Effect (§64)
 - Exemption from Publication (§64-a)
 - Optional Change of Name Upon Marriage or Divorce (§65)

§61 PETITION REQUIREMENTS

- the grounds of the application and proposed new name;
- the name, date of birth, place of birth, age and residence of the Petitioner;
- whether or not the petitioner has been convicted of a crime or adjudicated a bankrupt;
 - Additional requirements for individuals currently in custody or on parole for a violent felony offense.
- whether or not there are any judgments or liens of record against the petitioner or actions or proceedings pending to which the petitioner is a party and if so, identifying information;
- whether or not the petitioner is responsible for child support obligations and if so additional information;
- whether or not the petitioner is responsible for spousal support and if so additional information;
- Original Birth Certificates for those born in New York State

ISSUES IN PROCEEDINGS

- Documentation
- Privacy
- Publication & Safety

DOCUMENTATION

- Medical Documentation
 - Some judges used to require this for trans people
 - Beyond the scope of statute and not required of non-trans people
 - Many courts have affirmed that medical documentation is not required for a name change
 - ✦ 1st Department: Winn-Ritzenberg, 26 Misc.3d 1, 3, 891 N.Y.S.2d 220 (2009)
 - ✦ 3rd Department: In Re Powell 95 A.D.3d 1631 (2012); Golden, 56 A.D.3d at 1110 (2008)

DOCUMENTATION

- **Documentation of Criminal history**
 - Statute requires Petitioners to disclose *whether* they have been convicted of a crime, and requires those with an *open* violent felony case to follow strict notice requirements
 - For all other petitioners, statute does not require any particular proof or documentation

DOCUMENTATION

- **Birth Certificates**
 - Statute requires all Petitioners born *in New York State* to provide original birth certificates
 - Not required by law for other jurisdictions
 - Not possible for everyone to obtain these
 - E.g. asylees
 - low income people

DOCUMENTATION

- **Additional ID's**
 - Many low income people do not have photo documentation
 - Trans people often do not keep or use their old ID's because of bias, and may not have documents linking them to their birth certificate
 - Statute only requires sworn statements that the Petitioner is who they say they are

DOCUMENTATION

• Documentation of Immigration Status

- New York State name change law does not distinguish between immigrant and citizen applicants – residency (not status) is the operative factor for jurisdiction
- NY Civil Court Memo CCM-150: Non-citizens may obtain name changes
- In the Matter of Vital, NC-2579/12 affirmed the right of undocumented immigrants to change their name

PUBLICATION

• Effect of Publication

- Statute requires publication unless exception is granted for personal safety
- For transgender people, publication may out them as transgender to family, friends, and others

PUBLICATION

• §64-a Waiver of Publication

- 1. If the court shall find that the publication of an applicant's change of name would **jeopardize such applicant's personal safety**, the provisions of ~~sections sixty-three~~ and ~~sixty-four~~ of this article requiring publication shall be waived and shall be inapplicable. The court shall order the records of such change of name proceeding to be sealed, to be opened only by order of the court for good cause shown or at the request of the applicant.
- When does this section apply?
- Specific act or perpetrator vs. generalized risk of violence

PUBLICATION



- In one study, 53% of all anti-lgbtq homicides are transgender women. National Coalition of Anti-Violence Programs, Hate Violence, (2013).
- Another study found 43% of respondents reported having been a victim of violence or crime with 75% of them attributing the violence or crime to gender identity and expression discrimination. Jessica M. Xavier, The Washington Transgender Needs Assessment Survey (2000).

PUBLICATION



- Types of violence most often experienced:
 - Rage when someone is outed as trans
 - Sanesha Stewart, Amanda Gonzalez-Andujar, Trans Women who were killed when their dates discovered they were transgender
 - Street Violence
 - Verbal harassment or physical attacks by strangers when outed as trans
 - Family Rejection
 - As many as 57% of trans people are rejected by their families. When outed as transgender, many families will kick out trans people or cut them off socially

PUBLICATION



- Matter of E.P.L., 2009 WL 3764453– no specific act required
 - This case cites studies and statistics about the alarming and disproportionate risk of violence faced by transgender people
 - Holds that transgender people need not show a specific act or perpetrator due to the disproportionate generalized risk of violence
- QUESTION: If publication is not waived, is it possible to publish without address, or make other adjustments to protect privacy?

PUBLICATION

- **Cost**
 - Publication costs range from \$35 to hundreds of dollars
 - Irish Echo & New York Beacon are the cheapest – most judges give these ones under most circumstances
 - Papers like the NYTimes, NY Post, El Diario, and even the Village Voice can be cost-prohibitive (especially for pro-se Petitioners)

PRIVACY

- **Trans people may be “outed” publicly when their birth names are called out in the proceedings**
 - **RECOMMENDATION:** Use the Petitioner’s preferred name (requested new name) when calling out the case. Even if you deny the application to change the name, there is no legal reason you cannot refer to someone by their preferred name. This benefits all petitioners, not just transgender ones.

PRIVACY

- **Keep in mind that addressing petitioners as “Ms.” or “Mr.” and “He” or “She” may also result in accidentally mis-identifying trans people.**
 - **RECOMMENDATION:** Use “Petitioner” or full preferred name to refer to petitioners.

PRIVACY



- Trans people may also be “outed” if the proceedings are too public
 - RECOMMENDATION: Discuss the details of the case and any next steps or follow-up either at the bench or quietly at the counsel table, etc.

PRIVACY



- Discussion of criminal history may be difficult, traumatizing, and/or may out someone
 - RECOMMENDATION: Discuss criminal history inquiries in a similarly quiet manner. Also, statute limits discussion of criminal history to determination of fraud and/or required notice (for certin violent felonies).
