

FAMILY LAW

Practical Legal Name, Gender Change Process for NY Transgender Minors

By Karen Platt

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The early weeks and months after a child comes out as transgender or nonbinary (collectively, transgender) may feel overwhelming for parents and guardians as the status raises various issues. A common concern involves the request to change the child's name and/or gender marker.

This article endeavors to explain the process for changing a minor's name and gender marker on key identifying documents. While many schools and organizations may honor a child's preferred name and pronouns, even when they differ from what is reflected on identifying documents, making a legal record of the change is an important step both to honor and protect the child.

Court orders are required for a name change to ensure that the change is not being sought for nefarious reasons, such as to avoid criminal prosecution or financial obligations. While a gender marker change does not require a court order, the minor may request a gender marker change simultaneously with the name change or later through an application to correct a birth certificate. In recent years, many changes in policy and legislation have made name and gender

changes easier, but there are still many steps in this process.

To change the name and "sex designation" (the term used by the court system) of a minor who is a resident of New York

state, the first step is to petition for an "Order

Granting Name Change and/or Sex Designation Change for Individual Minor" (referred to herein as the Name Change Order). The New York State Supreme Court has jurisdiction to grant such changes for adults and minors (a minor here is anyone under the age of 18); for those residing in New York City, both the Supreme Court and the Civil Court have jurisdiction. The Uniform Court System's website has helpful information about this process and links for form petitions and affidavits in support thereof.

Note that the UCS website has different forms available, one for use when only a name change is sought and one where both a name change and a sex designation change are sought. The



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petition should be filed in the petitioner's county of residence; residents of New York City may file in any county within the City.

The name change petition may be filed by a parent, guardian or next friend of the minor. Any non-petitioning parent must be notified of the petition and given an opportunity to be heard regarding the application; if the non-petitioning parent supports the petition, he or she may file an affidavit in support. The petition must be accompanied by a certified copy of the minor's birth certificate, and a minor over the age of 14 must submit an affidavit in support of the petition.

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Act also amended the New York Civil Rights Law to permit the petitioner to request that the records of the name change proceeding be sealed to protect the applicant's safety, an important privacy protection that is routinely granted. Petitioners generally file in person with the clerk's office and a brief appearance before a judge may be required.

The Name Change Order is an essential document for many other steps in this process. It is wise to obtain several certified copies.

The process for changing a birth certificate depends on where the minor was born. For minors born in New York state, outside of New York City, the New York State Department of Health (DOH) website has forms to request a birth certificate change. For children under the age of 17, both parents or the minor's legal guardian(s) must submit an application and an "Affidavit of Gender" to request the change. In order

to change a minor's name in addition to the "gender designation" (the DOH's term), the Name Change Order must be filed with the application. Applications to the state are made by mail and no fee is required. Individuals aged 17 or older may submit applications on their own behalf to the DOH.

For minors born in New York City, the process is fairly similar. Key distinctions are that a minor for birth certificate change purposes under the City's Department of Health and Mental Hygiene (DOHMH) rules is anyone under the age of 18 (not 17), and applications may be made by mail or in person. In-person applications are recommended so that DOHMH employees can help ensure that the application is complete and accurate when filed.

DOHMH's website states that processing takes 12 weeks, plus two weeks for delivery; erroneous or incomplete applications are returned to the applicant by mail, with the 12-week period restarting upon resubmission. Appointments can be made online through a link found on the DOHMH's form "Application for Gender Marker Change," which lists the fees charged by the DOHMH and additional documentation required, such as proof of the petitioner's identity.

For minors born elsewhere, each state and country has its own rules for changing a name and gender on birth records. The National Center for Transgender Equality has compiled information and resources for name and gender marker changes in other states on its website. Many states and cities also have local LGBTQIA+ organizations that can provide guidance.

In most cases, a request to change the passport for a child under the age of 16 must be made in person, with both parents or guardians present (one parent may avoid appearing by providing an affidavit consenting to the issuance of the new passport). The State Department website provides forms to be completed in advance of an appointment. Appointments can be made online.

If both the minor's current passport and the Name Change Order were issued within the past year, the name change can be requested by mail using the same name change form applicable for those over the age of 16. Notably, there is no requirement that the minor's "gender marker" on the passport application match the gender marker on the supporting documentation submitted with the application. The applicant may designate "M" (male), "F" (female) and "X" (unspecified or another gender identity) on the passport forms, and the requested designation will appear on the passport irrespective of what is reflected on a prior passport or birth certificate.

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Social Security name and "sex identification" changes are most efficiently made in person at the local Social Security office. Even if the minor already has a social security number, the form to request the change(s) is SS-5, "Application for a Social Security Card." That form identifies the documentation to be submitted with the application, including a certified Name Change Order, ideally issued recently. The local office can be located, and appointments can be scheduled in advance, through the Social Security Administration (SSA)'s website (scheduling will most likely require a phone call to SSA's toll-free number).

A minor with a New York state driver's license, learner permit or non-driver ID card may amend that document by filing an application for a new such document. The applicant's gender can be noted as M, F or X. Although there are options to change one's name by mail, and to change one's

gender online, to do both requires an in-person visit to the Department of Motor Vehicles.

A New York City Identification Card (IDNYC) can be obtained or changed for any city resident over the age of 10 at an IDNYC Enrollment Center (appointments are required and can be scheduled online). Gender options on IDNYC cards are Female, Male, X (for neither) and "Not Designated."

The New York City Department of Education allows a parent or guardian to change a student's name and/or gender marker without supporting documentation such as a court order. The student's gender marker can be either F-Female, M-Male, or X-Neither Female nor Male. The name change process in other public school districts throughout the state and in private schools varies; the parent or guardian should contact the registration office in the local district or private school for guidance. The change should also be made at prior schools to allow for consistent school records.

In addition to the key documents discussed above, the minor's name and gender should be changed with health insurance, medical providers, frequent flyer programs, TSA precheck, providers of extracurricular activities and financial institutions holding accounts in the minor's name or for the minor's benefit (e.g. 529 accounts). Parents and guardians should also consider whether the minor's name needs to be changed in any of their own estate planning documents or beneficiary designations.

As with many aspects of transition, changing the minor's name and gender marker is a process. Both the federal and New York state governments have taken steps to make this process easier, but it is still cumbersome at times. Hopefully this article helps bring a little clarity.

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