



*ADVOCATING FOR OUR COMMUNITIES*

160 14<sup>TH</sup> STREET  
SAN FRANCISCO, CA 94103

(415) 865-0176  
(415) 777-5565

WWW.TRANSGENDERLAWCENTER.ORG  
INFO@TRANSGENDERLAWCENTER.ORG

## Transgender Law 101

### I. Identity Documents

#### A. State of the law

- Driver's License – varies from state to state.
- Social Security Number – name and gender marker may be changed with appropriate supporting documentation. Must be done at social security office.
- Common Law Name Change – this method is allowed in some states, but even in those states it is rapidly falling out of favor.
- Court Ordered Name Change – This method is allowed in every state and the “legality” of the new name should not be premised on gender stereotypes.
- “Legalizing” Gender and Birth Certificates – some states will issue court orders recognizing a person's gender identity as their “legal gender.” Others will change the birth certificate of a person born in that state. A handful of states refuse to do either of these things.
- Passport – name may be changed either with a court order or proof that the person has been using the name for the past five years (this last route to a name change seems to be a consistent practice, but not written policy seems to confirm it). Passport office has policy requiring “completed sex reassignment surgery” for issuance of a 10 year passport. No clear guidance on what this phrase means.
- Selective Service – transgender men seeking government support for programs like educational loans will need to get a waiver of selective service filing requirement. This can be done through submitting a Request for Status Information Letter available at [www.sss.gov/PDFs/SILForm.pdf](http://www.sss.gov/PDFs/SILForm.pdf).
- Immigration Service Records and Documents -- green card, visa, employment authorization, and/or naturalization certificate. All of these records can be changed. However, some confusion exists around what supporting documentation a person would need to do so.
- Non-government records (bank, credit cards, etc.) – each company will have its own policy, but few restrictions (mostly anti-fraud policies) should apply that would prevent a person from changing their name and gender with each of these institutions.

## II. Marriage and Custody Rights

### A. State of the law for marriage rights

- “Pre-Transition” Marriages – while the term “pre-transition” is an oversimplification for someone’s identity, it is used here to represent those marriages that are begun prior to a person transitioning. While no state seems to have litigated this issue, the law of most states seems to imply that the marriages would remain valid.
- “Post-Transition” Marriages -- while the term “post-transition” is an oversimplification for someone’s identity, it is used here to represent those marriages that are begun after a person transitions. On the other hand, the issue of whether these marriages are valid has been litigated extensively. Courts in Kansas, Texas, Ohio, Illinois, and Florida have either invalidated such marriages or clearly called their validity into question. Courts in New Jersey and California have upheld their validity.
- Because the question of the validity of these marriages is still an open one in most states, it is important that couples preserve as many rights as possible in the event that their marriage is ruled invalid upon challenge. Key steps to doing so include: a memorandum of understanding between the spouses, financial power of attorney, health care directive, and a will.

### B. State of the law for custody rights

- Biological children – Few states have explicit prohibitions regarding the rights of a transgender person to retain custody or visitation rights to their biological child. However, a parent’s transgender identity is often an issue used in a custody hearing to the detriment of the transgender parent.
- Children of a Post-Transition Marriage – many times, the transgender spouse in a post-transition marriage will adopt children of the marriage via spousal rights. Occasionally, one partner will challenge the transgender parents rights or responsibilities to that child by attacking the underlying marriage.

## III. Employment and Housing

### A. State of the law

- State anti-discrimination statutes – Six states have explicit protections: Minnesota, Rhode Island, New Mexico, California, Illinois, and Maine. The “sex discrimination” and/or “disability discrimination” language of anti-discrimination statutes of a number of other states have been found to protect transgender people.
- Federal – Federal Courts have produced mixed results on whether gender identity discrimination is prohibited as sex discrimination under Title VII of the Civil Rights Act. However, the federal trend is to prohibit such discrimination. Transsexualism and Gender Identity Disorder are *explicitly excluded* from protection under the ADA.

## **IV. Immigration**

### **A. State of the Law**

- General -- The Citizenship and Immigration Service (formerly the INS) does not bar transgender people from immigrating to the United States. As noted above, people can change the name and gender on their US immigration documents. While for years, “post-transition” marriages valid in the state in which they were performed were recognized for the purposes of fiancé and spousal visas. However, recent developments at the immigration service have cast doubts upon whether the service will continue to recognize them or not. (At time of publication, litigation is pending on this issue.)
- Asylum – Many Federal Circuit courts recognized transgender people’s ability to apply for asylum based on gender identity persecution.

## **V. Police Conduct and Prison/Jail Conditions**

### **A. State of the law**

- Street harassment – some police regulations and policies require officers to address transgender people by their proper name and pronoun. Searches of transgender people can not be done for the limited purpose of determining a person’s “biological gender.”
- Prison/Jail housing – as far as we know all state and federal prisons house inmates based on their “biological gender.” Often times, however transgender prisoners are housed in “soft cell” areas.
- Access to medicine and medical care - in some state prison systems, facilities have stated policies of maintaining inmates on any medication they were taking when they were incarcerated, including hormones.

## **VI. Health Care**

### **A. State of the law**

- Private Health Insurance – private health insurance will often explicitly exclude coverage for transition related procedures. Insurance carriers that do not explicitly exclude coverage sometimes try to deny coverage based on claims that procedures are “cosmetic” or “experimental.” Such claims are unlikely to survive legal challenge.
- Public Health Insurance -- Medicare denies coverage. No current case law explicitly prohibits these denials. Medicaid plans, however, should not be denying any funding requests from otherwise eligible recipients. Case law in a number of states supports the position that such blanket denials by a Medicaid is unlawful.
- Discrimination in the Provision of Care – many transgender people find that they face discrimination from their health care providers or staff members at clinics or hospitals. Such discrimination is likely illegal under Unruh.

## VII. Youth Issues

### A. State of the law

- A number of laws affect the ability of transgender people under the age of 18 to get treatment for and recognition of their gender identity. Many, but not all of these laws require that youth have permission of their parent or guardian unless they are emancipated. Youth are protected against gender identity based discrimination and harassment in a school setting in California and New Jersey.

## VIII. Legal Resource Publications

### **Representing Transsexual Clients: An Overview Of Selected Legal Issues**

By Shannon Minter, National Center for Lesbian Rights

This document provides a brief overview of the current state of the law in several areas, including employment, marriage, child custody and visitation, health care, prison issues, hate crimes, and asylum issues, as it has been applied to transsexual people.

Found at: <http://www.nclrights.org/publications/tgclients.htm>

### **A Quick and Easy Guide to Medicaid and Transition Related Procedures**

A non-comprehensive overview of some of the major Medicaid cases that have been argued in states around the country.

Found at: [www.transgenderlawcenter.org](http://www.transgenderlawcenter.org)

### **Advancements in Federal and California Employment Law Regarding Transgender People**

An overview, co-written with the National Center for Lesbian Rights, for employment attorneys and employers explaining new caselaw and statutes protecting transgender employees

Found at: [www.transgenderlawcenter.org](http://www.transgenderlawcenter.org)

### **California Transgender Law 101: A Resource Guide for California Lawyers and Advocates**

An annotated overview of the laws and regulations that affect our ability to express our gender identity. Combining practical information with cutting edge caselaw, this guide provides information about many different transgender legal issues in the state.

Found at: [www.transgenderlawcenter.org](http://www.transgenderlawcenter.org)

### **Policies or Practices for Changing Name and/or Gender Marker on Some Federal Identity Documents**

An abbreviated overview of how some federal agencies regard requests for change of name and/or gender.

Found at: [www.transgenderlawcenter.org](http://www.transgenderlawcenter.org)

*This document is intended to convey basic information about laws and regulations affecting our ability to express our gender identity. It is not intended to serve as legal advice. While every effort has been made to provide readers with accurate information, the law is often changing, especially in this area. Anyone with a specific legal question is strongly encouraged to contact the Transgender Law Center or another source of legal information to discuss the facts surrounding your particular circumstances.*