



MINNESOTA JUDICIAL TRAINING UPDATE



TRANSGENDER NAME CHANGE PETITIONS: CHANGING GENDER ON A BIRTH CERTIFICATE

BACKGROUND & QUESTION: Presiding over a name change petition for an adult is a common occurrence for most judges. As long as certain legal and procedural requirements are met, approving the petition is usually simple and straightforward. This is true whether petitioner is male, female or transgender. A petition filed by a transgender person, seeking only a name change, is no different than a petition filed by any other adult male or female. However, in some cases, a petition filed by a transgender person may ask the court for an order changing the gender designation on the birth certificate. Amending the birth certificate to accurately reflect the gender with which the individual identifies, may be an extremely important step for a transgender person. **QUESTION:** When and under what authority can the court grant such a request?

IMPORTANT DEFINITIONS:

- Transgender:** An umbrella term for people whose gender identity differs from what is typically associated with the gender they were assigned at birth. People under the transgender umbrella may describe themselves using one or more of a wide variety of terms - including transgender, gender non-conforming or "gender queer." Many transgender people are prescribed hormones by their doctors to change their bodies. Some (approximately 30%) undergo surgery as well. But not all transgender people can or will take those steps, and a transgender identity is not dependent upon medical procedures.
- Transsexual:** An older term that originated in the medical and psychological communities which is disfavored by most gender non-conforming people. Unlike transgender, transsexual is **not** an umbrella term. Many transgender people do not identify as transsexual. You should NOT use that phrase unless a person self-identifies as "transsexual."
- Gender Dysphoria:** In the 2013 fifth edition of the *Diagnostic and Statistical Manual of Mental Disorders* (DSM-5), people whose gender at birth is contrary to the one they identify with will be diagnosed with "gender dysphoria." The psychiatric and medical communities recommend individualized medical treatment through hormones and/or surgeries to treat gender dysphoria.

Note: The Standards of Care for gender dysphoria was created by the World Professional Association for Transgender Health (WPATH), headquartered at the University of Minn. The WPATH Standards have been recognized by the Minnesota Supreme Court (*Doe v. Dept of Public Welfare*, 257 N.W.2d 816 (1977) and the Minnesota Court of Appeals (*Hare v. Dept. of Human Services*, 666 N.W.2d 427 (Minn.App.2003) as the prevailing treatment protocols. The full report can be viewed at: http://admin.associationonline.com/uploaded_files/140/files/Standards%20of%20Care,%20V7%20Full%20Book.pdf

ANSWER: TRANSGENDER PERSONS SEEKING TO AMEND THE GENDER DESIGNATION ON THEIR BIRTH CERTIFICATE HAVE TWO OPTIONS:

1. Petition the District Court for an order directing the Minnesota Department of Health (MDH) to amend the birth certificate, or
 2. Petition the MDH directly thru an internal Administrative Process to amend the birth certificate.
1. **BY DISTRICT COURT ORDER – M.S.144.218, subd 4:** State district court judges in Minnesota have authority under M.S. 144.218, subd 4, to order amendments to birth records if the judge finds that the information on the old record is "incomplete, inaccurate, or false." Many transgender persons have been able to demonstrate to judges' satisfaction that the sex information on their initial birth record is "incomplete, inaccurate, or false", by documenting through a letter from their doctor that they have experienced permanent, irreversible physical changes as part of their transition. HOWEVER, be aware that not all judges interpret the statute the same way. Some judges may take the position that M.S. 144.218 does not give the courts authority to amend birth certificates to reflect a change of gender at the request of a transgender person.
- Note:** Adult name and gender change forms now include a checkbox for requesting and ordering a change in gender designation. Forms are located on the [Minnesota Judicial Branch](#) public website (click on Self-Help Center).
2. **BY ADMINISTRATIVE PROCESS - Minnesota Department of Health (MDH):** MDH is responsible for making corrections to birth records. MDH has an [administrative process](#) available for amending birth records, including items such as name and sex. Individuals seeking to change information listed on their birth record should download and complete the amendment-application form, enclose needed supporting documentation, and mail with the administrative fee to MDH. Application forms are located at: <http://www.health.state.mn.us/divs/chs/osr/amend.html>.
3. **WHAT TYPE OF SUPPORTING DOCUMENTATION IS REQUIRED? ("ACT" LETTER):** Whether the petitioner applies to the district court for an order, or follows the administrative process, the petition to amend birth records should include an ACT letter (i.e. "appropriate clinical treatment" letter) to support the request. For example,
- a) Currently, transgender Minnesotans seeking to correct the sex information listed on driver's licenses/State ID cards, **birth records**, passports, immigration papers, or with Social Security may do so by submitting a letter from a doctor attesting to "appropriate clinical treatment" ("ACT") for gender dysphoria.
 - b) This approach is based on standards and recommendations of the World Professional Association for Transgender Health (WPATH), which is recognized as the authority in this field by the American Medical Association. WPATH is headquartered at the University of Minnesota.
 - c) For these purposes, MDs or DOs (osteopathic physicians) (from any number of specialties as well as from general practitioners) qualify as licensed physicians. Statements from persons who are not licensed physicians, such as psychologists, physician assistants, nurse practitioners, social workers, health practitioners, or chiropractors, are generally not accepted.

- d) The medical certification (ACT letter) should include the following information:
- ✓ Physician's full name;
 - ✓ Medical license or certificate number;
 - ✓ Issuing state, country, or other jurisdiction of medical license/certificate;
 - ✓ Drug Enforcement Administration registration number assigned to the doctor or comparable foreign registration number, if applicable;
 - ✓ Address and telephone number of the physician;
 - ✓ Language stating that that the individual has had appropriate clinical treatment for gender transition to the new gender (male or female);
 - ✓ Language stating that he/she has either treated the applicant in relation to the applicant's change in gender OR has reviewed and evaluated the medical history of the applicant in relation to the applicant's change in gender, AND that he/she has a doctor/patient relationship with the applicant.
 - ✓ Physician's signature and date of signature (the letter should be certified or authenticated).
4. **THERE ARE NO CLEAR JUDICIAL STANDARDS FOR JUDGES TO FOLLOW IN THIS AREA:** The above requirements are what the MDH follows and will accept as supporting documentation in the administrative process. Other than M.S. 144.218, subd 4, (which is subject to different judicial interpretations) there are no clear judicial standards for judges to follow in this area (no other applicable statutes or case law).
5. **SUGGESTED JUDICIAL BEST PRACTICE:** Assuming you are a judge that interprets M.S. 144.218 as authority to grant a transgender person's request to amend gender on the birth certificate, if a transgender petitioner came into court with the same information that MDH would accept (i.e. an ACT letter as outlined above), in the absence of compelling concerns, the petition should be granted.
6. **WHAT IF PETITIONER WAS BORN OUTSIDE OF MINNESOTA:** Minnesota residents born elsewhere should consult the requirements of their state of birth. For a summary of information about other states' requirements for amending birth records, go to: [Lambda Legal](http://www.lambdalegal.org/publications/changing-birth-certificate-sex-designations-state-by-state-guidelines) <http://www.lambdalegal.org/publications/changing-birth-certificate-sex-designations-state-by-state-guidelines>. If a person's state of birth requires a court order, the person may petition the court in their county of residence in Minnesota for an order directing the amendment of out-of-state records. Typically, states accept orders from "courts of competent jurisdiction," (i.e., a court with jurisdiction over the individual, even courts located in another state). OutFront Minnesota has collected sample orders from judges across Minnesota directing authorities elsewhere to change birth records (legal@outfront.org)

RESOURCES: OutFront Legal Director, Phil Duran, <http://www.outfront.org/library/certificates>; Ellen Krug, Executive Director, Call for Justice, LLC, www.callforjustice.org; Minnesota Department of Health (MDH), <http://www.health.state.mn.us/divs/chs/osr/amend.html>; Minnesota Administrative Rules 4601.1000 and 1100; M.S. 144.218 & 226; For a list of attorneys willing to assist pro-se petitioners contact the OutFront Minnesota Legal Program at legal@outfront.org; U of M law extern Jeff Phillips.