



ADVOCATING FOR OUR COMMUNITIES

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California Transgender Law 101

I. Identity Documents

A. State of the law

- Driver's License – name may be changed without a court order. Gender marker may be changed without applicant having undergone any form of hormone or surgical treatment. Medical service provider must sign DMV form 328. People under the age of 18 will need parental support to apply unless person is an emancipated minor. (**Attachment A – DL 328**)
- Social Security Number – name and gender marker may be changed with appropriate supporting documentation. In the past, this documentation did not require a court ordered name change. As of late 2005, it seems the policy has changed. Change must be done at social security office. (**Attachment B – info from SSA website about change of name and gender**)
- Common Law Name Change – while this method of changing a person's name is falling quickly into disfavor due to concerns about identity fraud, it theoretically remains a recognized method of a legal name change. (**Attachment C – Opinion of Attorney General on Common Law Name Changes, June 9, 2000**)
- Court Ordered Name Change -- allowed under California law (California Code of Civil Procedure sec. 1275 et seq.). No court can ask if the petitioner has undergone any medical procedure prior to requesting a change of name as no such requirement exists under California law. People under the age of 18 will need parental support to apply unless person is an emancipated minor. Links to California court forms NC-100, NC-110, NC-120, NC-130 (additional forms necessary if a minor) are available at www.transgenderlawcenter.org. (**Attachment D – model P&As in response to request for proof of medical procedure**)
- “Legalizing” Gender – California allows anyone born in California to change the gender marker on a California birth certificate with an appropriate court order (California Health and Safety Code sec 103425 et seq). While the statute explicitly applies to people born in California, equitable jurisdiction has been found to give courts authority to grant change of gender for people born outside of California. Some restrictions apply. (**Attachment E – model P&As for equitable jurisdiction claims**)
- Birth Certificate – name and gender marker may be changed pursuant to a court order. Old birth certificate is sealed and new one is issued (California Health and Safety Code sec

103425 et seq). (**Attachment F – CA Dept of Vital Records Publication on Birth Certificate Change**)

- 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 no 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. (**Attachment G – Passport Bulletin 92-22** *only known written policy providing guidance to Passport Agents*)
- 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. (**Attachment H – Request for Status Information Letter**)
- 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. (*See attachment N for more information.*)
- Non-government records (bank, credit cards, etc.) – each company will have its own policy. Many institutions are interpreting the Patriot Act to require them to only change the name on an account if the account holder produces a court ordered name change.

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. These marriages are strongly believed to remain valid. No case law or statute exists directly on point. However, California law is well settled that the only ways to dissolve a marriage are divorce or death. Transition does not, by itself, dissolve a marriage.
- “Post-Transition” Marriages -- No explicit prohibitions exist in California or federal law to prevent a transgender person from entering into a heterosexual marriage. Challenges – with mixed results -- have been made to the validity of marriages involving a transgender person in a number of cases across the U.S. The one case that has been fully litigated in California found that the underlying marriage was valid. (**Attachment I – Decision in redacted Southern California Case**)
- While we have every reason to believe that the validity of marriages involving transgender people will be upheld in California, 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. (See *TLC's Transgender Family Law 101* for more information on these tools.)

B. State of the law for custody rights

- Biological children -- No explicit prohibition exists in California 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 regardless of the fact that no consideration should be given absent evidence of actual harm to the child. (**Attachment J – Redacted Amicus Brief in Southern California case involving a biological parent's rights to liberal visitation with her daughter**)
- 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 parent's rights or responsibilities to that child by attacking the underlying marriage. In addition to the above conclusions found in *Attachment I*, additional arguments for finding parental rights and responsibilities exist in California law. (**Attachment K – Excerpts from redacted brief in support of parental rights of a transgender father**) (Also, see *Elisa B v. Superior Court* 37 Cal.4th 108, 33 Cal.Rptr.3d 46 Cal.,2005 for the latest non-biological parent CA Supreme Court Case.)

III. Employment and Housing

A. State of the law

- California –FEHA explicitly protects transgender people due to the passage of Gender Nondiscrimination Bill of 2003. (**Attachment L – Evolutions in State and Federal Employment Law Regarding California Transgender Employees**)
- Federal – trend towards protection in Employment as sex under Title VII of the 1964 Civil Rights Act. (see *Attachment L*) Transsexualism and Gender Identity Disorder are *explicitly excluded* from protection under the American's with Disabilities Act.

IV. Public Accommodation

A. State of the law

- California – Explicit protection under the Unruh Act (California Civil Code sec 1801 et seq, as clarified by *AB 1400, the Civil Rights Act of 2004*). (**Attachment M – Decision of the CA Fair Employment and Housing Commission on public accommodation discrimination against woman in Central California.**)
- Federal – no apparent protection as *sex* is not a protected category in Title II of the 1964 Civil Rights Act.

V. 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. Over the last several years, the immigration service has attempted to reject post-transition applicants. (**Attachment N – April 2004 CIS Memo**) However, the Board of Immigration Appeals has rejected each such attempt and in 2005 issued a strong decision affirming the rights of some post-transition applicants. (**Attachment O – In re: Lovo-Lara**)
- Asylum -- The Ninth Circuit has recognized transgender people’s ability to apply for asylum based on gender identity persecution. (**Attachment P – Excerpts from Redacted Position Statement in Support of an Asylum Application**)

VI. 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 California and federal prisons house inmates based on their “biological gender.” Often times, however transgender prisoners are housed in “soft cell” areas. (**Attachment Q – Model Jail Protocols**)
- Access to medicine and medical care - in California prisons, the stated policy of penal facilities is to maintain inmates on any medication they were taking when they were incarcerated. For jails, policies vary from county to county. (**Attachment R – Decision (unpublished disposition) in support of hormone access for MTF prisoner**)

VII. 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. The *Insurance Gender Non-Discrimination Act* of 2005 made explicit in sections of the Insurance Code and Health and Safety Code that decisions by insurance companies motivated by anti-transgender bias are unlawful. (**Attachment S – text of AB 1586 as Chaptered on 9/29/05**)

- Public Health Insurance -- Medicare denies coverage. No current case law explicitly prohibits these denials. Medi-Cal, however, should not be denying any funding requests from otherwise eligible recipients. Case law supports the position that such blanket denial by Medi-Cal (and any other state Medicaid health program) is unlawful. (**Attachment T – Redacted Medi-Cal Position Statement for Top Surgery for an FTM Client.**)
- 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.

VIII. 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 (California Education Code 200). (**Attachment U – San Francisco Unified School District Regulations**, the first in the state to fully implement ED Code 200)

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.