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## Legal Issues for Transgendered Women

*Disclaimer: This is legal talk, not legal advice. Laws vary by state, and some of the information discussed on this page may not be applicable in your case. It is up to you to confirm any information herein by doing your own research.*

Recommended overviews:

The [Transgender Law and Policy](#) page has up-to-date listings of all laws in the U.S. that are transgender-inclusive. In addition, it has resources and information on legal issues affecting transgendered and gender variant people in the U.S. Overview and regular updates on jurisdictions with trans-inclusive non-discrimination laws. Intended for activists, policymakers, and academics.

Lawyer Shannon Minter has also compiled excellent information available on the [National Center for Lesbian Rights Page](#).

### Special note to young women

Many young women are reluctant to take these legal steps because they don't want to deal with the hassle, or because they find official acknowledgement of their wrongly identified gender to be painfully embarrassing. Making these legal changes are **essential** for things like marriage and employment. If you want to live a quiet happy life in mainstream society, these steps are absolutely necessary. In fact, failure to do them when you are young could lead to much worse problems later. Women in several states have been named in highly publicized landmark court cases because they didn't bother to take care of the legal documents we need in order to protect our rights as women in the eyes of the law.

An ounce of prevention is worth a ton of cure in this case. Get your legal documents taken care of as soon as possible. You'll thank me later!

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## Documentation changes

[Court Order For Name Change](#) (expanded)

I recommend getting a court order for name change before anything else. You will not run into any problems if you get this document first, since everyone accepts it as valid proof. Other documents might not be adequate in some cases.

This has been expanded and moved to its own special section.

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## **Social Security Card**

After getting a [court order for name change](#), I would recommend getting your Social Security card changed next. This section assumes you already have a Social Security number and are merely changing the name and (hopefully) sex. If not, this may not apply to you.

It usually takes about a week to get a new card, so the sooner you get going, the better. Some states require a Social Security card for a driver's license name change, but in others (such as Illinois) you can get a driver's license changed with nothing more than your old license and an acceptable document indicating your name change (such as a court order).

You will probably need your Social Security switched over to change any employment and financial information. In addition, my employer won't let me switch any work documents until I have my new card actually in my possession.

The process is simple.

### **1. Fill out the form (Form SS-5)**

This form is available at any Social Security branch office. To find the nearest office, call 1-800-772-1213 (7 am to 7 pm). They also have a cool search page at their website:

<http://www.ssa.gov>

It lets you type in your zip code and shows a map with your nearest office marked, as well as its address and hours.

There is also a downloadable copy of Form SS-5 at the Social Security website:

[http://www.ssa.gov/replace\\_sscard.html](http://www.ssa.gov/replace_sscard.html)

It's a valid copy of the form, acceptable for official use. It's a .pdf file, which can be opened in Adobe Acrobat. This can then be printed and filled out at home, then mailed or taken to your branch office.

You will need evidence showing your old and new names. Social Security requires original documents or certified copies made by the county clerk or other official whose duty it is to keep the records (hence the extra copies I got). Photocopies and notarized copies are not acceptable.

Common acceptable documents include:

- Court order for name change (this is my recommendation)

- Clinic, doctor, or hospital records (You might be able to use a letter from your therapist, for example, but to be safe and official, get the court order.)
- Driver's license (if you can do this prior to Social Security in your state)

The following are usually used to establish former identity:

- School ID card, record, or report card
- Marriage or divorce record
- Military records
- Adoption records
- Church membership or confirmation record
- Health insurance card
- Insurance policy
- U.S. government or state government employee ID card
- U.S. passport

At their site they say: "We will NOT accept a birth certificate or hospital record as proof of your identity. We will accept other documents if they have enough information to identify you. Remember, we must see original documents or copies certified by the county clerk or other official who keeps the record."

You write in your chosen name and below that your name at birth. If you have a certified copy of your court order, you can just mail it in. Otherwise, you may need to present original documentation or certified copies in person.

## 2. Wait for your new card to come in the mail

The whole thing took one hour, then eight days before it came, and cost nothing.

I wanted to cover an issue you do not currently address. Stealth and your Social Security Number. Maximum stealth would require a new ss# as well as new first and last names. Most people are unable to change their ss#.

Even if first & last names are changed, using the same ss# can lead to discrepancies that can come back to haunt you years later. Let me share just a couple of ways this has happened to a friend of mine. When opening a new bank account, the banks run a social security trace. This a background check to see if other names are or have been associated with your number. Immediately after opening a new checking account my friend's bank was putting extended holds on her deposits & treating her weird. She assumes that the

bank thought she might try some kind of theft like writing bad/fraudulent checks. Another example, she recently had lab results come back to her new physician for a minor skin biopsy. The lab report that came back had incorrect name and sex information identifying her as a male, since they had a preexisting entry for that ss# already in their system from years earlier using information from another doctor. Both the bank and the doctor's office kept the discrepancy to themselves, but they treated her differently from that point onward. Obviously this is not desirable.

If you can't change your number, then you can minimize using it. I have noticed that preventative measures to prevent identity theft simultaneously maximize your privacy and minimize your history outing you. As identity theft is a generally known problem, any request you make that is consistent with prevention will be considered reasonable. Restrict your ss# to a "need to know" basis. Only your employer, accountant, bank, investment broker, and IRS need your ss#. Insist that all others use an alternative number for identification or enrollment. Don't write or print your number on checks. Do not allow your number to be used in on your insurance card or student id card. Insist that insurance companies and schools to use an alternate number for identifying you.

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## **Driver's License**

States differ, so you will have to contact your local bureau to find out what procedure and identification is required in your case. You will probably need to present some or all of the following ID:

- Birth certificate (old name)
- Social security card (new name)
- Two forms of other ID, showing your new name, such as utility bills or medical records.
- While my local bureau did not give me a list of acceptable ID, I presume they would accept the same documents as Social Security.

*The following is from from [Common Law Name Changes for Transsexuals](#), Copyleft © 1995 Gary Bowen. My name and gender were changed concurrently on my Social Security Card and Driver's License without any problems. If you have trouble, please refer to the information below:*

### **How to Change Gender**

You will have to decide if you can live with the 'inappropriate' gender marked on ID. This is not so bad, clerks rarely check ID for check writing, all they want is your driver's license number. I went four years without clerk's noticing that my address on my checks was different than the address on my driver's license. To circumvent this, have your driver's license number printed on your checks, then the clerks will only check that your picture matches your face, and that will be that.

However, if you are determined to attempt a common law gender change, you are entering murky waters, which will be both a boon and a risk. Social Security has no

established procedure for gender changes, so you will be at the mercy of whomever processes your name change form. However-there's no rule against it, either.

### Social Security Gender Change

When you fill out the application for name change, mark the box of your choice for gender. You can be brave and hope they process it through without bothering to cross check the gender with the old records (it might happen), or you can provide them with an explanation. Add a note to the application telling them that you are a transsexual in transition and that you want your new gender listed in the record. Supply the therapist's number for them to call if they need confirmation or have questions. Be sure and give your therapist a **WRITTEN** statement of permission to discuss your case for this purpose. A verbal permission is not adequate, should your therapist be challenged on it. This is for your therapist's protection; your medical records are private and they have no right to discuss them without your permission.

Assuming that Social Security accepts your gender change, the Social Security records can be used to change all subsequent records. If Social Security does not accept your gender change, you can ask your therapist to intervene upon your behalf. Other transsexuals have made their gender change with exactly the information provided here, if you are denied, ask your local support group for help. Beating them over the head with the fact that they have approved other people with the same level of documentation will prove a powerful argument compelling them to approve you too.

However, you can perform a gender change another way: through bodily evidence. Simply allow enough time for the hormones to alter your face to the gender you desire, then go into the Social Security office (or whatever agency you need ID from), and say, "Excuse me, there seems to be a mistake on my records..."

Changing your Driver's License and Social Security Card, in combination with your court order for name change, should be enough to switch over most official documents you'll need for day-to-day living. The only tricky thing may be if you plan to leave the United States: most people have found switching the name and (especially) sex on their passport and birth certificate to be more strict. Many have needed confirmation of SRS from a doctor.

### **Special note to young women:**

A reader sent this good advice along on limiting the use of your Social Security number before and after transition:

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## **Birth Certificate**

This varies by state. If you don't live in the state where you were born, you may need to have a court order performed in your current state of residence and then have it sent to you birth state. Becky Allison has a list of [state by state information](#).

I strongly urge you to amend your birth certificate as soon as you are done with SRS.

1. It's fresh on your mind
2. The necessary documents will be handy.
3. After SRS, you get sort of burned out with transition matters, and it's easy to put it off for a long time.
4. The laws in your birth state can change at any time, and you might miss your chance to have the record impounded.

Here's why you should do it:

1. Marriage and other legal documents. Some TS women have run into legal troubles when trying to get a marriage license, or even long after they've been married because of discrepancies on their birth certificate, especially sex designation. In one Texas case, a widow was denied the right to collect damages in her husband's wrongful death suit, and her unchanged out of state birth certificate was used as evidence against her.
2. Travel: if you do not have a U.S. Passport, it is sometimes possible to travel to certain parts of the world using an original birth certificate. If you plan to do this, your name and sex should match your birth certificate.

3. Stealth/privacy: One less record of your old name floating around. For those who are living stealth, it's possible that this information can come back to haunt them.

If it's available in your state of birth, **request that your record is impounded or sealed and a new record is created.**

**Instructions** (*a general guide-- laws vary by state*)

1. Have SRS.
2. Get a signed, dated, **notarized** letter from your surgeon confirming the date of the procedure. The surgeon should include your name, date of birth, date of surgery, type of surgery (male-to-female), and where it was performed.
3. Obtain your original birth certificate or a **certified** copy.
4. Obtain a **certified** copy of your Court Order for Name Change
5. Write a letter to the Department of Health and Human Services in your birth state (see Becky's [state by state information](#)). Explain that you are transsexual and seek to amend your name and sex and have the original birth record impounded. They will send you instructions, or possibly a form which can be used by any state to order information on your birth record to be changed. Remember, your state may have their own rules as to what they are authorized to order another state to change on a birth record. You will need to check state law yourself or contact your courthouse or legal advisor. It's a good idea to **obtain written instructions from your birth state**. I needed to show my instructions to the judge so that she understood what was being requested.
6. Fill out all forms **exactly** as specified, making sure to specify that the birth certificate should be impounded and a new birth certificate should be created for the registrant.
7. If your current state of residence allows ordering the record in your birth state to be impounded, you can get the order certified where you live (otherwise, you should see about returning to your birth state and doing it in person). Go to your county courthouse, where the Clerk of Court or Deputy can assist you in preparing the proper forms. It is very likely you will have to pay a fee, and it is also likely you will need to appear before a judge. The cost for the appearance will vary significantly: I paid \$221 in Illinois.
8. Appear in court. You can appear in court for yourself (pro se), meaning you are your own lawyer. It's easy if you have all the forms filled out correctly. You should consider having a lawyer or TS friend who has been through this help you if you are uncomfortable filling out forms yourself. You will probably have to fill out a cover sheet, a Complaint, and an Order that the judge will sign.

Everyone I encountered at my local courthouse, including the judge, had never done one of these before, and they process almost 20,000 cases a year. I recommend coming in with all of the necessary information, including the written instructions you received

from your state. Below is the text of the Complaint and Order I wrote out by hand, which worked fine.

### **Complaint**

I, [full name], seek to amend the name and sex on my birth certificate to reflect my Court Order for Name Change and to reflect my surgical sex reassignment to female. I also seek to have the original birth record impounded as allowed under [birth state] law. I ask the Court to grant relief in this complaint by ordering the Clerk of Court to certify the [name of form or order required by birth state].

### **Order**

In this case which came today, Plaintiff testified under oath in the complaint. Relief in this complaint was granted after presentation of a notarized letter dated [date on letter] from [SRS surgeon], M.D., confirming that he performed surgical sex change on the Plaintiff on [SRS date].

The [birth state] Department of Health and Family Services is directed, upon receipt of appropriate fees, to make the following changes on this birth record:

1. Amend the name to read [new name]
2. Amend sex to read female
3. Impound the old record and create a new birth certificate for the registrant.

The Clerk of Court is so ordered to certify the Order To Change Name & Sex On Birth Certificate Due To Surgical Sex-Change Procedure.

Again, the wording will depend on your state's laws, and your birth state's requirements. Be sure to have someone in the County Court offices look over all your materials before you appear in front of a judge.

9. Return the form imprinted with the court seal along with any required fees and documents. I recommend you not trust this document to the standard U.S. Mail-- you should send this through an express service so it can be tracked in the event of its loss.

10. Enjoy your new birth certificate!

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### **Passport**

To get your name and sex changed on a valid passport, you will need a court-ordered name change and a notarized letter from your surgeon showing you have had sex reassignment surgery.

**Note: without a NOTARIZED surgery letter, your passport will either say "Male" on the first page or will say "Female" with a notation in the back that says you are transsexual.**

I have a friend whose letter from her surgeon in Thailand was not accepted and has this notation in her passport. She's not too happy, either. Another reason to consider North American surgeons.

The U.S. State Department has a [list of forms](#). I believe you will need:

### **DSP-19: Passport Amendment/Validation Application**

Below is a letter from a reader explaining why you should get a court-ordered name change:

Recently, I was asked to travel to Asia on business. I knew that you could get a temporary passport in your new gender by getting letters from your doctors, so I gathered all the information and tried to get a new passport. My application was rejected, not because of my gender, but because of my name.

Apparently, the passport agency is adamant that they will only accept a new name if you have a court-ordered decree, or if you have been using the name at least five years. Otherwise, they will not do it. They will put Old Name (AKA New Name) on the passport if you like, but obviously that doesn't quite work for TS folks. It struck me as bizarre that they were quite willing to list me as a woman, but only with my old, male name.

Despite the trip being six weeks off, I was out of luck, as the country where I live requires a background check on name changes, and that takes 12 weeks. I had to request that someone else go in my place. I was very disappointed as I love to visit Asia.

When I started my transition, I was led to believe that a common-usage name change was good enough. I have to say based on personal experience that this is simply not the case. Despite California law requiring that such a change be honored, I have run into flak in case after case for not having a court order. Finally, the federal government obviously is not bound by California law, so it won't work there. I had been planning a court order, but it was a low priority and I wasn't really working on it. If I had only known, I could have done it months ago and been able to go on this overseas trip for my company.

I would strongly urge all people who transition to get a court-ordered name change as soon as possible. If you cannot afford the fees then you can petition the court to waive them. It's quite simple to do yourself. I used the book "How to Change your Name in California" from Nolo Press (which had the passport rules, but I had missed them).

### **Travel advisory**

Following the 2001 terrorist attacks in the U.S., are more stringent requirements for documentation used when traveling by air, train, or bus in the U.S. and abroad. For this reason, I strongly urge all transgendered travelers to get all documentation dealt with quickly and completely, especially Passport and Birth Certificate changes following SRS.

Those planning vaginoplasty outside the U.S. should make preparations with the U.S. State Department well in advance of their expected travel date. I recommend having all necessary papers in hand at least two months before traveling. Be sure to check with them as your travel date approaches to make sure no new requirements have been put in place.

Besides the potential embarrassment of having to explain discrepancies of name or sex in your documentation to airport security or customs officials, discrepancies in documentation may delay or even eliminate your ability to travel. It could also cause problems in the country to which you are traveling and may affect your ability to get back into the U.S.

Although some states allow a name change on a state driver's license without a court order, I strongly recommend getting a court order for name change in order to facilitate any documentation changes, especially federally issued items like passports.

### **Travel to Canada**

In January 2004, I received the following letter:

Since a lot of women go to Bressard and Menard in Canada, this may well be old news, but I thought I'd pass it along since it was from my personal experience last month. Ever since September 11th, US Customs requires a birth certificate or a passport for US citizens to get back into the US when they visit Canada.

They used to just require a drivers license.

My traveling companion and I attempted to go to Vancouver one day and we were advised by "good ol' Duane" (which is my name for Canadian Customs) that it would not be a good idea to continue on into British Columbia without one of these.

The US authorities let us back in, since we turned around right there at the customs site, and they just looked at the drivers license without checking anything further.

But this might be something to tell others about and for them to consider, not just from the viewpoint of going once, but going again and again and having the ID change "suddenly" on the next trip. We do not plan to go back to Canada until after I get a passport that has my correct gender on it. Being from Texas, I may have to wait some years for the birth certificate to change. Rats - and we \*so\* wanted to visit there, too! Since this was the first time I have traveled to Canada using my new name, I don't want to get logged into their systems as the wrong gender and have to worry about undoing it in the future.

### **Temporary passports**

I travel about 4 times a year to the UK, and so getting my passport changed was pretty important. I started full-time in July 2003, have my surgery scheduled for June of this year, but I did not want to have to travel under my old name and sex. So I filled out the new passport form that I downloaded from the web, checked the "F" box and included my name change court-order. About a week later I got a call from the passport office telling me that they could issue a temporary (1 year) passport with my new name and "Female" as long as my doctor sent a letter to them stating that I was his patient and had SRS scheduled.

A few days later, I received my new passport with everything as it should be; no aliases, no indication of my transgender status, just a note that this is a temporary passport. I can have the passport extended to the usual 10 year period after surgery when my doctor

sends a letter stating that I have had SRS. What is really nice about all this is that I couldn't get my DMV to change the M to an F on my license, but at least now I have one piece of ID that has the correct sex on it.

Also, I should say that the people at the passport agency were incredibly nice about all this, and seemed to have handled this before.

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