

# Changing Gender on ID Documents

**I** ILLINOIS

Student Legal Services

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# Transgender Issues : Passports & Visas

- A valid passport is a prerequisite to obtaining a Visa to enter another country when that country requires a visa. Visitors often do not have to obtain a formal visa.
- Obtaining a Visa to enter the U.S. as a Transgender person should not theoretically be difficult as this is a “non-immigrant” visa.
  - ❖ The U.S. consulate will require proof of foreign citizenship-status/home country passport/and purpose of Visa, i.e., Student Visa, Visitor Visa, etc.
  - ❖ The ID needs to accurately reflect current appearance.

# Transgender Issues : Passports & Visas *-continued*

- Obtaining a *foreign* Visa for a transgender person can be much, much more complicated. The countries where same sex marriage is not recognized and where homosexuality or acts remain crimes (with varying degrees of enforcement and punishment) are generally NOT legally friendly toward transgender.
  - ❖ Where the U.S. Passport reflects complete transition, certified by Physician, a ten year Passport should be issued. This also assumes you have obtained a legal name change and have supplied the proof.
  - ❖ Where a Physician certifies “transition in process”, a two year Passport is available.

# Transgender Issues : Passports & Visas *-continued*

- A U.S. citizen/resident can use a Fiancé visa for a Transgender fiancé; both parties can be transgender.
- Keep in mind that a Fiancé Visa is an “immigrant visa” so the marriage is subject to the tests and bona fides of any other marriage where permanent residence is the goal.
- The strongest application will be where there has been gender reassignment for both persons.
- \$\$\$\$\$\$ Investor Visas. Money of substantial amounts to be legitimately invested in the U.S. make all aspects of Immigration easier regardless of L.G.B.T. , race or country of origin.

# Transgender Issues : Passports & Visas *-continued*

- Each country has forms that ask about age, gender, education, schools attended in Visa application.
- Some will ask for
  - ❖ Every address lived at from birth,
  - ❖ Parents names and jobs,
  - ❖ Even personal references
  - ❖ Name at Birth,
  - ❖ present Name, and
  - ❖ Photo.

# Transgender Issues : Passports & Visas *-continued*

- ID used needs to match **current** appearance.
- For long-term stays abroad a deeper background check is likely to take place and Visa application tends to be more extensive, i.e., working abroad, investing abroad, etc

# Transgender Issues : Passports & Visas *-continued*

## Why It Is Important To Get the Gender Marker Changed

- If living as a transgender person, do not travel out of country without your gender changed on your passport, passcard or other official ID.
- Even in those countries where you will not be killed or seriously injured if you are homosexual, persons who are transgender may not have any right to anything but confusion and misunderstanding at this point.
- These people's lives may depend upon the passport gender marker matching the lifestyle and the choices in gender identified actions they undertake.

# Transgender Issues : Passports & Visas *-continued*

- In order to have your passport reflect your current gender, for US citizens, you simply need to send in one of two forms. The one form is if your transition is complete; the other form is for if your transition is not complete. These are available at the State Department US passport website and are easy to handle.
- For some countries, the gender marker on your birth certificate will be the one shown on your passport. (You must ask for the change on your passport after changing your birth certificate.)



# Changing Gender Marker – A “Must Do”

- If there is any question about your proper use of gender-limited facilities,
  - the birth certificate for persons born in the United States is the key document upon which your gender assignment is based in the United States;
  - outside the US, the passport should handle this.
  - However, if someone is questioning this in the high risk countries, you are likely having other problems..

# Changing Gender Marker – A “Must Do” *-continued*

- [Lambda Legal Defense Fund](http://www.lambdalegal.org) has the most current and the easiest website to understand.

<http://www.lambdalegal.org/know-your-rights/transgender/changing-birth-certificate-sex-designations>

❖ There is a state-by-state list with links to a summary of:

1. The documents you need
2. The legal citations
3. Regulations of that state whether the gender marker on the birth certificate can be changed.

# Changing Gender Marker – A “Must Do” *-continued*

❖ Currently the states in the category of “will not change” the gender marker on the birth certificate or “will not issue an amended birth certificate” with the correct gender are

❑ KANSAS,

❑ OHIO, and

❑ TENNESSEE.

➤ Tennessee specifically prohibits gender marker change on the birth certificate for a person who is transgender.

# Changing The Gender Marker on Your Birth Certificate

- Depending on your state, you may need a court order directing the change to the birth certificate.
- Some states specify that the court order will state whether the birth certificate will be marked “amended” or not.
- Before the gender marker can be changed, most states require either:
  - ❖ A court order to change the gender marker, or
  - ❖ An affidavit from the physician who has performed the sex reassignment surgery (also referred to as *sex change operation*).

This is provided to the office that records/keeps the birth certificate.

# Changing The Gender Marker on Your Birth Certificate

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- Only a few states will allow the change with merely a statement of a medical or behavioral health provider that appropriate therapies or treatments have been provided to the person warranting a change in the gender on the birth certificate.
- Some states will change the birth certificate but will then only issue an **amended birth certificate**.
  - ❖ Of those states, some will indicate the portion or section of the birth certificate that was amended.
  - ❖ Maine requires a court order to amend the certificate and that the evidence upon which the gender change was ordered *must be attached to the original and any certified copy of the original birth certificate*.

# Changing The Gender Marker on Your Birth Certificate

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- Passports do not have a way to indicate such additional information.
  - ❖ This information is at least limited to the birth certificate in the public record, and a passport is usually accepted in place of the birth certificate for most purposes.

# Changing The Gender Marker on Your Birth Certificate

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- What can you do if a public official, legally authorized to make the change, refuses to make the change, claiming to exercise their discretion?
  - ❖ Several states allow the public official in charge of the birth certificate change to use their discretion to require additional investigation.
  - ❖ This does not mean they should be able to block the change.
  - ❖ If you run into issues:
    - Be prepared to use a private attorney to help you through the process.
    - Reach out to Lambda Legal Defense Fund for referrals.

# Changing The Gender Marker on Your Birth Certificate

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- Choose an attorney who is willing to call upon Lambda Legal's expertise to coordinate your case. You want them to:
  - Protect you from undue invasion of your privacy,
  - Obtain advocacy for change in the law,
  - Get your story out if you think it will help to save others from experiencing this in the future.



# Resources

## U.S. Dept. of State

<https://travel.state.gov/content/travel/en/passports/apply-renew-passport/change-correct.html>

<https://travel.state.gov/content/travel/en/passports/apply-renew-passport/change-of-sex-marker.html>

<https://travel.state.gov/content/travel/en/international-travel/before-you-go/travelers-with-special-considerations/lgbti.html>

## USCIS

<https://www.uscis.gov/ilink/docView/AFM/HTML/AFM/0-0-0-1/0-0-0-1067/Chapter10-22.html>

## Social Security Administration

<https://faq.ssa.gov/en-us/Topic/article/KA-01453>

# Resources *-continued*

## Illinois-Drivers License

Gender Designation Change Form:

[https://www.cyberdriveillinois.com/publications/pdf\\_publications/dsd\\_a329.pdf](https://www.cyberdriveillinois.com/publications/pdf_publications/dsd_a329.pdf)

To “correct” the name on the license:

*“A corrected license involves a change to the information on the original license, such as name or address. To obtain a corrected license, you must visit a Secretary of State facility to turn in your incorrect license and provide acceptable identification.”*

([https://www.cyberdriveillinois.com/departments/drivers/drivers\\_license/drlicid.html](https://www.cyberdriveillinois.com/departments/drivers/drivers_license/drlicid.html))

Acceptable identification:

[https://www.cyberdriveillinois.com/publications/pdf\\_publications/dsd\\_x173.pdf](https://www.cyberdriveillinois.com/publications/pdf_publications/dsd_x173.pdf)



# Student Legal Services

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