

**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH**

6th Circuit Probate Division – Concord

CASE NO.

[name/s], Petitioners;
ON BEHALF OF [name of person
whose marker is sought to be
changed]

PETITION IN EQUITY FOR LEGAL CHANGE OF GENDER FOR MINOR

INTRODUCTION

1. The Petitioners, [name/s], on behalf of their child, [name of person whose marker is sought to be changed], (“Minor”) respectfully petition this Court to issue an order granting Minor a legal change of gender under its equitable powers. Minor was born in [municipality], New Hampshire on [DOB] and is currently a resident of [municipality, state]. Minor has had appropriate clinical treatment for a sex change from [male to female or female to male] and has lived exclusively as a [female or male] in all aspects of life since [date]. Petitioners, on behalf of Minor, seek this court order in furtherance of obtaining a corrected birth certificate from the New Hampshire Division of Vital Records Administration, which requires a court order stating that Minor has legally changed gender to [female or male].

2. New Hampshire permits a transgender person to obtain a new birth certificate when the transgender person has had appropriate treatment for a sex change. *See* RSA 5-C:87 (2016). New Hampshire law evinces the clear public policy of the state, which is to recognize transgender persons and facilitate their integration into society in their corrected gender. Having

met the standard articulated in Section 5-C:87, Petitioners ask this Court to issue the requested order pursuant to its equity jurisdiction.

3. Minor, and the Petitioners on Minor's behalf, fear experiencing discrimination and harassment based on gender identity, such discrimination and harassment having the tendency to cause adverse health effects. Therefore, for Minor's safety and economic well-being, Petitioners believe it is critical to omit the marginal notes on Minor's new birth certificate reflecting information referencing Minor's prior name and gender.

FACTS

4. Minor was born in [municipality], New Hampshire on [DOB].

5. Minor has had appropriate clinical treatment for a sex change from [male to female or female to male], and Minor has been living exclusively as [female or male] since [date], as attested by Minor's doctor in the attached **Exhibit A** ("Doctor Affidavit").

6. On Minor's New Hampshire birth certificate, Minor is designated as [male or female] and the birth certificate reflects the name given at birth. New Hampshire law requires a court order indicating that an individual has had appropriate clinical treatment for a sex change in order to obtain a new birth certificate with the corrected gender marker. RSA 5-C:87(IV-V) (2016).

7. In addition, a court order may instruct the New Hampshire Division of Vital Records Administration ("DVRA") not to include such marginal notes regarding the applicant's prior name or gender in the new birth certificate. The DVRA strictly adheres to any instructions included in a court order and looks to such order for affirmative direction. *See* **Exhibit B**, Letter from Stephen M. Wurtz (State Registrar and Director, DVRA) (hereinafter, the "DVRA Letter").

8. The Petitioners, on behalf of Minor, now seek an order from this Court to legally change Minor's sex so that Minor may amend Minor's New Hampshire birth certificate to correctly reflect Minor's new name and gender as [female or male]. The Petitioners also request that the order instruct the DVRA to omit any reference to Minor's prior name or gender marker.

ARGUMENT

9. The Probate Court has jurisdiction over this matter pursuant to RSA 547:3-b (2015) and RSA 5-C:87 (2012). Venue is proper in this Court because Petitioners and Minor are residents of [municipality], NH.

10. New Hampshire law provides a procedure for issuing a new birth certificate for a transgender person to reflect current gender. *See* RSA § 5-C:87. Section 5-C:87 provides that “[u]pon certified copy of a court order advising that such individual born in the state of New Hampshire has had a sex change, a new birth record shall be prepared to reflect such change.” *Id.* The existence of a clearly defined standard and procedure for a transgender individual to change their birth certificate in New Hampshire evinces statutory recognition of the importance of accepting and integrating transgender individuals.

11. New Hampshire is not alone in legally recognizing a transgender person's new name and gender. Courts around the country have issued orders such as the one requested by the Petitioners, as is demonstrated by the state statutes and regulations that contemplate the issuance of such orders. *See, e.g.*, Ala. Code § 22-9A-19(d) (2004); Ark. Code Ann. § 20-18-307(d) (2015); Colo. Rev. Stat § 25-2-115(4) (2013); Conn. Gen. Stat. § 19a-42(b) (2015); Ga. Code Ann. § 31-10-23(e) (2015); La. Rev. Stat. Ann. § 40:62 (2006); Mass. Gen. Laws c. 46 § 13(e) (2015); Md. Code Ann. §4-214(b)(5) (2006); Mo. Rev. Stat. § 193.215(9) (2016); Mont. Code

Ann. § 37-8-311(5) (2015); Or. Rev. Stat. § 33.460 (2015), Utah Code Ann. §26-2-11 (2015); *see also In re Heilig*, 816 A.2d 68, 70 (Md. 2003) (holding that the Maryland Circuit Court has equitable jurisdiction to “determine and declare that a person has changed from one gender to another”).

12. Here, Minor has met the applicable standard for a legal change of gender, as Petitioners have established that Minor has had appropriate clinical treatment for a sex change. *See Doctor Affidavit ¶ 2*. As such, Minor is entitled to an order advising that Minor has had appropriate clinical treatment for a sex change pursuant to this Court’s equitable powers.

13. Minor, and the Petitioners on Minor’s behalf, fear experiencing discrimination and harassment based on gender identity. Therefore, for Minor’s safety and economic well-being, the Petitioners believe it is critical to omit the marginal notes on Minor’s new birth certificate reflecting information referencing prior name and gender. The DVRA requires a court order directing that such marginalia be omitted from the corrected birth certificate.

CONCLUSION

14. Because Minor satisfies the standard articulated under New Hampshire law for issuing a new birth certificate with Minor’s correct gender marker and has no remedy at law to obtain the requested order, the Petitioners, on behalf of Minor, respectfully request that this Court, in an exercise of its equity jurisdiction, issue the requested order of legal change of gender and should include in such order a direction to omit marginal notes that reflect any information that references Minor’s prior name or gender, and for such other relief as may be just.

Dated:

Respectfully submitted,