

GUIDE TO NAME AND GENDER MARKER CHANGE IN SC

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IMPORTANT DISCLAIMER: This guide provides general information about the legal and administrative steps to change your name and gender marker. State or federal law, policies, or other specific steps may have changed since this guide was developed. Some individuals may also have unique needs not addressed by this guide. This guide is to be a resource only and is not a substitute for legal advice.

Using this guide also does not create an attorney-client relationship with the Law Office of Melissa H. Moore, LLC.

Introduction.

For many transgender and nonbinary people, legally changing their name and gender marker are important parts of both social and legal transitioning, and are essential to a gender expression congruent with their true self. Often people are met with mixed receptivity when presenting documentation such as driver's license indicating a gender or name not reflective of their gender expression. This can be both a source of frustration and undue hardship.

Luckily, changing your name is not difficult, and while changing your gender marker is much more involved, it is not insurmountable. Changing your name and changing your gender both require a court order. You do not have to do both at the same time, you can get your name changed and then petition the court for a gender marker change at a later time or if no name change is needed you can simply get the gender marker change. However, if both are needed, you will save time and money if you file both in one petition.

Overview of SC Law Regarding Name Changes.

The requirements for an adult name change are found at S.C. Code Ann. § 15-49-10(a) and 15-49-20. An adult is a person 18 years of age or over and a child is a person 17 years of age and under. In the case of a name change for a minor child, you should consult an attorney.

1. You must file a petition with the family court in the appropriate circuit, *i.e.* the county where you live. You must indicate the reason for the change, your age, place of residence and birth, and the name by which you desire to be known; and
2. You must also provide the court with these documents:
 - a. The results of a fingerprint and criminal background check by the South Carolina Law Enforcement Division (SLED);
 - b. A sworn statement or affidavit stating whether you are under an order to pay child support or alimony;

- c. A screening statement from SLED stating whether you are on the sex offender registry; and
- d. A screening statement from DSS stating whether you are on the Central Registry of Child Abuse and Neglect.

The costs associated with these requirements include a \$150.00 family court filing fee, a \$10.00 fingerprint charge, a \$25.00 SLED check fee, and an \$8.00 DSS Registry Fee.

Gender Benders offers a great example of a [SC Name Change Packet](#).

After all documents are filed, you will request a 15-minute hearing.

Overview of S.C. Law Regarding Gender Marker Changes.

Section 44-63-100 of the South Carolina Code of Laws sets forth the procedure by which one may obtain an amended birth certificate. One reason listed in subsection (A) for amending a birth certificate is gender changes.

Subsection (D) of § 44-63-100 goes further to state in relevant part, “The court shall determine, and the order must include the registrant’s name at birth, subsequent name changes, gender at birth, gender changes, the date of birth, the county of birth, . . . , and **additional findings as the court considers necessary. The order also must include a description of the evidence presented to the court. . . .**”

At a minimum, the petition for gender marker change must contain your name at birth, subsequent name changes, date of birth, your age, place of residence and birth, gender at birth, reason for the change, and indicate you desire to amend your birth certificate and all other documents to reflect your true gender.

The additional findings the court considers necessary closely mirror those of a name change in that the SLED criminal and sex offender background checks and DSS Child Abuse and Neglect Registry checks are required.

In addition, you must have a notarized affidavit from a licensed physician stating in no uncertain terms it is your intent that the transition be permanent, **that it is permanent**, and that you are a different sex from your biological sex at birth and not merely in the process of transitioning. However, it is **not** required that you have evidence of sex reassignment surgery. (*See Attachment for an example of a physician's letter and other language.*)

Section 44-63-100 subsection (C) adds an additional requirement that once you have a “certified” copy (not a photocopy) of the filed petition, it must be served on the State Registrar of Vital Statistics at least thirty (30) days before a scheduled hearing. Once the hearing is scheduled, the registrar must be given at least ten days written notice of the hearing time and date. Proof of service of both the petition and hearing information must be filed with the court.

As previously stated, both a request for name change and gender marker change can be in one petition, but the requirements for each cause of action must be satisfied. The advantage to doing both the name change and gender marker change simultaneously is clear, you not only save time and money, but you also avoid having to go to court twice.

Getting to Court.

As you can see getting to court on a petition for gender marker change is more involved than that of a name change only. The exact steps and timing can vary with each person's situation. I recommend anyone looking to file for a gender marker change consult an attorney, whether it be myself or another queer affirming attorney. This is not to say this cannot be handled without an attorney, but while some family court judges are well versed in gender marker changes, others are not, and both will be looking to ensure all requirements are met.

What to expect at the hearing.

There is much anxiety and worry associated with appearing in court for anything. This can be overwhelming for some, but need not be. The hearing for a name

change and gender marker change generally last 15 minutes if everything is in order. If you appear without an attorney, know that although some family court judges are not well versed in gender marker changes, their questioning is intended to elicit information required by law to grant your petition and not meant to embarrass or harass you.

The questions generally fall in line with the information provided in your petition i.e. state your name, date of birth, county of residence, etc. . . . Questioning can vary but its purpose is to ensure the information you have provided is true and accurate. For instance, say you have been arrested and the SLED criminal check reflects as much, this will not generally prevent your request for name change or gender change from being granted. But what will, is if you do not tell the truth about it.

The question, however, most people are concerned about is the one dealing directly with why you are seeking an order changing your name and gender. Whether the question is asked by the judge or your attorney, your answer need not be long or overly detailed, but should mention any surgery or clinical treatments you have undergone. Remember by this point, the judge has read your physician's affidavit. An example response could be, "I was born female, but suffered from gender dysphoria and underwent gender reassignment surgery in April 2020 and have been undergoing hormone therapy as well." There are several ways of saying the same thing, "I was born female, but identify as male . . .", "I was assigned male at birth, but my true gender is female. . ." etc. . . but you must mention you have undergone appropriate clinical treatment.

The question that generally follows is whether these surgeries or treatments are permanent and not reversible. Remember, the law requires the transition be permanent and your response should reflect this, as should your physician's statement.

If you have an attorney, the attorney will provide the court with an order to sign. Generally, the judge will sign it from the bench, allowing the attorney to file it with the clerk directly after the hearing. Otherwise, it may be mailed to you later. Request multiple certified copies of the order; you will need them to amend your

identifying documents. Either way, you will know if your request was granted at the close of the hearing.

You have an order, now what?

Take a moment to celebrate, but now it is time to get to work getting all of your important documents changed to reflect your new name and true gender. Some agencies below will require a certified court order, while others do not. However, I recommend you keep a certified copy of your order on hand should you need it. The suggested order of changing your documents is as follows:

Amend your birth certificate.

The statute governing corrections to birth certificates is S.C. Code Ann. § 44-63-150. This section notes the corrected certificate will be marked as “amended,” but the corrected certificate will not reveal what information was amended.

The statute itself provides little guidance as to what is necessary to amend your gender on your birth certificate. However, the [Department of Health and Environment Control \(DHEC\)](#) states that to apply for an amended birth certificate you must submit the following:

1. [An Application for Birth Certificate](#)
2. A valid government, school or employer issued photo ID (photocopy of one);
3. A “**Certified**” **court order** correcting the birth certificate; and
4. The search fee (\$12.00), which includes one copy of the amended certificate and \$3.00 for each additional copy.
5. Mail the application and payment to the address for DHEC State Vital Records Office in Columbia, SC or drop it off at the Richland County location. Go to the [Department of Health and Environment Control \(DHEC\)](#) website for more information on how to file.

Change your driver's license.

You may change your name and gender at an [SCDMV branch](#) if you do the following:

1. Complete the [Application for Name and/or Address Change \(SCDMV Form 4057\)](#)
2. Present proper documentation of the name change and/or gender change including either of the following:
 - a. A **court order** (issued by your county's family court) showing the name and/o gender change; or
 - b. Your new birth certificate.

It costs \$10 for a new license that reflects your updated information unless you are interested in a REAL ID, then it is \$25. There are additional requirements for a [REAL ID](#).

Make sure the picture on your new license resembles your current appearance as this is important when applying for things such as a passport.

Change your Social Security Card.

Foremost, the only trusted source regarding your social security card is SSA.gov. There are other sites out there that reportedly allow you to change your social security information; however, these are not official government sites and should be assumed to be scams. Even if they are legitimate sites, there are additional fees involved that can be avoided by going through the Social Security Administration.

[SSA.gov](#) provides instructions to get your card changed. You must submit:

1. [An application for a Social Security Card](#);
2. SSA requires certified, original copies of your required documents. These include your birth certificate **and** a U. S. Driver's license (or a state issued ID), among others that have not been addressed yet or are less common. The website provides a complete listing.

The website also provides a [SSA office finder](#) for your particular zip code. This is where you will take the documents.

Update your passport.

Changing your gender marker on an existing passport differs greatly from other forms of identity in that the U. S. government allows you to change your gender marker whether you have had any medical procedures or not. The period of validity of the passport varies for each, 2 years if not transitioned completely and 10 years if complete. You can go [here](#) for additional information on the requirements for changing your existing passport. The [National Center for Trans Equality](#) is also an excellent source for a more in depth discussion about this process.

If you are looking to apply for a new passport, go to [Travel.State.Gov](#). This process does not differ from the process you would encounter if you had not changed your gender marker.

Update other miscellaneous information.

Once you have identification and documentation reflecting your new name and/or true gender you should update this information on bank accounts, health insurance, life insurance policies, retirement accounts, and your estate planning documents, just to name a few.

Conclusion

Although this guide cannot provide answers to all of your questions regarding name change and gender marker changes, I hope it puts you more at ease with the process.

Please do not hesitate to contact my office by [email](#) or phone at 864-483-8983 should you want to discuss your specific situation.

Attachments

EXAMPLE 1: PHYSICIAN'S LETTER

[PHYSICIAN LETTERHEAD]

[TODAY'S DATE]

Re: [CURRENT LEGAL NAME] [CHOSEN NAME] [DATE OF BIRTH]

To Whom It May Concern:

I, [MD'S NAME], am a physician licensed to practice medicine in the State of [STATE]. [PATIENT'S NAME] is a patient at [CLINIC] with whom I have a doctor-patient relationship. [PATIENT'S NAME] was evaluated on [APPOINTMENT DATE] for gender marker change.

I have reviewed and evaluated [PRONOUN] medical history and attest that [PATIENT'S NAME] has completed appropriate clinical treatment for the purpose of gender transition to [GENDER]. This transition is permanent and made with the intent to change permanently and for all purposes.

I declare that the foregoing declaration is true and correct to the best of my knowledge under penalty of perjury under the laws of the State of [STATE] and the United States of America, sworn on this day, [TODAY'S DATE], in [CITY], [STATE]. Please feel free to contact me at the number listed below should you need additional information.

Sincerely

[MD's NAME]

License:

Phone number:

[NOTARY SIGNATURE, STATE, EXPIRATION DATE, AND STAMP]

EXAMPLE 2: OTHER LANGUAGE

NOTE: ALL STATEMENTS MUST BE ON LETTERHEAD, SIGNED AND NOTARIZED AS ILLUSTRATED ON PAGE 8.

“This statement is a medical certification of a change of sex of [PATIENT’S NAME]. [PATIENT’S NAME] has completed medical treatment resulting in physical changes related to sex. [PATIENT’S NAME] is a different sex from their biological sex at birth, and is not merely in the process of transitioning, although additional procedures or treatment may still be continuing and life-long. [PATIENT’S NAME] change is permanent in nature and their change in sex is made with the intent to change permanently and for all purposes. [PATIENT’S NAME] identification documents should be updated accordingly.”

Transequility.org

EXAMPLE 3: OTHER LANGUAGE

To Whom It May Concern:

I am a surgeon licensed to practice in the State of _____. License# _____.

This letter is in regard to my patient, [PATIENT’S NAME], [DATE OF BIRTH] . I declare under the penalty of perjury under the laws of the United States the forgoing is true and correct.

[PATIENT’S NAME] has been referred for and undergone a surgical procedure on [DATE] to irreversibly correct [PRONOUN] anatomy and appearance from [GENDER] to [GENDER]. If you have any questions or concerns, please do not hesitate to call.