

CONFIDENTIAL MEMORANDUM

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TO Pennsylvania Senate Democratic Policy Committee

FROM Dechert LLP

RE Testimony of the Homeless Advocacy Project, Mazzoni Center, Philadelphia Bar Association, Rutgers Law School, Philadelphia VIP, Marsha Cohen, Esq., and Dechert LLP in connection with the Pennsylvania Senate Democratic Policy Committee Hearings of June 29, 2021

I. Introduction

A. The Current Name Change System is Burdensome and Unreasonable

The current system for a legal name change in the Commonwealth of Pennsylvania (“Commonwealth” or “Pennsylvania”) is complex and therefore poses many problems for potential name change applicants. Overall, the system is cumbersome, confusing, and expensive, and poses a risk to the personal safety of many applicants, especially those who are transgender. Practically speaking, it is difficult for Pennsylvania residents to obtain a name change without the help of a lawyer. While some people may have the capacity to afford a lawyer or the resources to obtain pro bono help, many residents do not. Some residents do not even have the capacity to pay the administrative fees for documents, let alone a lawyer or publication of a newspaper notice.

The current system is not only burdensome to applicants but also an inefficient burden on the courts and both state and federal agencies. Even when an applicant finally achieves a legal name change, they must take numerous additional steps to pursue implementation on documents separately with Pennsylvania Division of Vital Records (for a birth certificate), the Pennsylvania Department of Transportation (“PennDOT”) (for a driver’s license or state identification card), Social Security Administration (for a social security card), U.S. Department of State (for a passport), and other agencies (for other documentation). These additional steps unfortunately result in the issuance of inconsistent documentation for a period of time or even permanently. Such discrepancies are undesirable from an administrative perspective and also pose the risk of outing an individual as transgender, often resulting in humiliating treatment or discrimination.

In summary, the current system is inefficient and uncoordinated, and there are too many barriers in Pennsylvania for individuals to obtaining a valid legal name change. However, there is currently a national trend in which more and more states are moving toward affordable, just, and efficient name change systems. In this regard, in our testimony we offer our preliminary thoughts and recommendations to improve the Pennsylvania name change process. While our report summarizes the preliminary name change system we recommend, it may be improved through further research and/or feedback from advocates, potential applicants, past applicants, government officials, judges, and others.

B. The Importance of a Name Change

A legal name change is fundamentally important for many individuals because a person's name relates to their identity and how they present themselves to others. It is perhaps surprisingly common for an individual to discover a mismatch between their birth certificate and other identity documents they have been using throughout their life, causing them to lose access to crucial services and benefits. People often seek a name change to match last names with their spouse upon marriage. Upon divorce, people often change their name to what it was prior to marriage. Some people, such as those in witness protection, even change their name primarily for security-related reasons.

Many transgender individuals desire a legal name change to properly reflect and/or affirm their gender identity and expression. Further, a legal name change on all documentation may help a transgender person avoid being outed by old and now inaccurate identification.¹ Significantly, a legal name and/or gender change may be crucial to a transgender person's "emotional and psychological well-being" and serve as a "sign that they are acknowledged and accepted for who they truly know themselves to be."² But even beyond these reasons, a name change is especially important because it may be critical for a transgender person to have access to public accommodations and services.

The importance of a name change for transgender individuals is best demonstrated through the words of those who desire to have or have already had a legal name change. For example, the following are the words of Alex Myers, a transgender U.S. Army veteran seeking a legal name change in Pennsylvania:

¹ Mazzoni Center, *Name and Gender-Marker Changes* (2021), <https://www.mazzonicenter.org/supportive-services/legal-services/name-and-gender-marker-changes>.

² Lisa Rackner, *Support for HB 2673A*, (May 3, 2017), <https://olis.leg.state.or.us/liz/2017R1/Downloads/CommitteeMeetingDocument/123941>.

As a member of the transgender community my name is an essential part of my identity. My name provides me with more of a connection to my sense of self than I was ever able to previously enjoy in everyday life. It is dignity, it is honesty, and it is security. To hear it spoken, to see it in print, to say it aloud is a repeated agreement with the world that I can finally live and breathe.

My former name is a dangerous weapon. It has the power to deny me the right to housing, to fair employment, and to receive equal access to public accommodations. It also gives unnecessary and dangerous power to those who will use it to place myself and others like me at risk of physical assault and/or death.³

Myers' moving words demonstrate the power and importance of a name change. It is so important, that some transgender individuals are even potentially willing to risk their lives to merge their names with their identities. For example, in a comment submitted in support of removal of the name change publication requirement in New Jersey, one transgender lawyer-advocate wrote:

[T]here were family members who were concerned for my personal safety when they learned that information about my name change would appear in the newspaper [due to the name change publication requirement]. As one said to me, "Will you be okay? There's a lot of people out there that don't like people like you." For me, as for many transgender people, it was a risk I was required to take. Changing the [publication] rule would remove that concern for a community that is already at risk for a multitude of reasons.⁴

Further, beyond the importance of a name change to properly reflect a person's gender identity or expression, a legal name change is also important for obtaining proper documentation. Because of the discrimination against transgender people, this can have significant consequences related to access to public accommodations, social services and benefits, employment, housing, medical treatment, legal protection, and constitutional rights such as the right to marry or vote.⁵ In addition,

³ Alex Myers, *Written Statement on the Pennsylvania Publication Requirement*, (April 27, 2021).

⁴ *New Jersey Comment 6 on the Proposed Amendments to Rule 4:72 – Removal of Publication* (October 14, 2020), <https://www.njcourts.gov/courts/assets/supreme/reports/2020/comments/rule4.72comment006.pdf>.

⁵ See *New Jersey Comment 9 on the Proposed Amendments to Rule 4:72 – Removal of Publication* (October 14, 2020), <https://www.njcourts.gov/courts/assets/supreme/reports/2020/comments/rule4.72comment009.pdf> ("Post-9/11, basic transactions that require the presentation of identity documents include applying for public benefits such as Supplemental Nutrition Assistance Program, Social Security retirement benefits, Medicare, Social Security Disability Benefits, and Medicaid. Getting a job can require professional certifications and background checks, and all employees must fill out the U.S. Citizenship and Immigration I-9 form. Other everyday activities that may require presenting identification documents include obtaining a non-driver ID or driver's license, passport, purchasing a gun, and getting married. One must have a passport to travel internationally and a photo ID to fly

it can increase the risk that they will be harassed, discriminated against or even physically attacked because of how others may react to the fact that their identification does not match with their presenting gender (effectively outing them as transgender).⁶ Because of such discrepancies between identification and gender presentation, 25% of transgender people have been verbally harassed, 16% denied services or benefits, 9% asked to leave an establishment or location, and 2% assaulted or attacked.⁷ Further, transgender individuals have been “detained by police for false personation because officers perceived a legal name as mismatched with the person’s gender presentation.”⁸ Therefore, a name change is crucially important, as proper identification documents “reduce ... the likelihood” that transgender individuals will experience discrimination, ridicule, or violence.⁹ Yet a survey demonstrates a troubling statistic: “[68%] percent of transgender respondents reported that none of their identification documents had both their accurate name and accurate gender marker.”¹⁰ This means that a high percentage of transgender people will have trouble protecting the privacy of their identity or personal medical information every time they show their identification. Just as troubling, another study suggests that 42% of

domestically. Regulations under the 2001 USA PATRIOT Act require banks to verify a person’s identity before they can open a bank account. Having the correct name on identity documents is therefore critical for engaging in everyday transactions and accessing basic rights and benefits. Many of these rights, including the right to vote, marry, travel, and bear arms, have constitutional implications.”)

⁶ New York City Bar, *Report on Legislation by the Lesbian, Gay, Bisexual, Transgender & Queer Rights Committee, Civil Rights Committee, and Sex & Law Committee* (April 15, 2020), <https://s3.amazonaws.com/documents.nycbar.org/files/2020649-SupportforGenderRecognitionAct.pdf>; Jaime M. Grant et al., *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, Nat’l Gay & Lesbian Task Force & Nat’l Ctr. Transgender Equality (Sep. 11, 2012), http://transequality.org/PDFs/NTDS_Report.pdf.

⁷ James, S. E., Herman, J. L., Rankin, S., Keisling, M., Mottet, L., & Anafi, M. (2016). *The Report of the 2015 U.S. Transgender Survey* at 86. Washington, DC: National Center for Transgender Equality, <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>.

⁸ New York City Bar, *Report on Legislation by the Lesbian, Gay, Bisexual, Transgender & Queer Rights Committee, Civil Rights Committee, and Sex & Law Committee* (April 15, 2020) <https://s3.amazonaws.com/documents.nycbar.org/files/2020649-SupportforGenderRecognitionAct.pdf>; See Gabriel Arkles and Bobby Hodgson, *A Trans Woman Was Charged With ‘False Personation’ for Giving the NYPD Her Real Name*, ACLU: Speak Freely (Jan. 24, 2018) <https://www.aclu.org/blog/lgbt-rights/transgender-rights/trans-woman-was-charged-false-personation-giving-nypd-her-real>.

⁹ Lisa Rackner, *Support for HB 2673A*, (May 3, 2017), <https://olis.leg.state.or.us/liz/2017R1/Downloads/CommitteeMeetingDocument/123941>.

¹⁰ New York City Bar, *Report on Legislation by the Lesbian, Gay, Bisexual, Transgender & Queer Rights Committee, Civil Rights Committee, and Sex & Law Committee* (April 15, 2020), <https://s3.amazonaws.com/documents.nycbar.org/files/2020649-SupportforGenderRecognitionAct.pdf>; *Human Rights Campaign, A National Epidemic: Fatal Anti-Transgender Violence In America In 2018* at 53 (2018) <https://assets2.hrc.org/files/assets/resources/AntiTransViolence-2018Report-Final.pdf?ga=2.95270044.1252227909.1553540239-1772549041.1553540239>.

transgender people (over 378,000 people) eligible to vote “may face barriers to voting at the polls due to an incorrect name on the voter registration rolls or due to voter ID laws.”¹¹

C. A Proposed Solution

The current name change system, failing Pennsylvania’s transgender community, and residents generally, does not have to remain the same. In our report, we propose a system that offers a largely administrative path under the auspices of the Court of Common Pleas, to safely obtain a name change while assuring that the interests of the Commonwealth, parents, children, and creditors are safeguarded. This streamlined system will increase fairness and efficiency to achieve an important step in certain individuals’ lives without sacrificing the general safety of the Commonwealth.

In order to seek an understanding of potential other approaches, Dechert LLP attorneys and Rutgers Law School students researched the laws and rules governing legal name changes in 51 U.S. jurisdictions (all 50 states plus the District of Columbia). Initially, we focused on the requirement in some jurisdictions that a person desiring to change their name must publish notice of their intended name change.¹² In doing so, we consulted sources in the credit industry to understand whether they review publication notices in the context of protecting their interest. We also developed an understanding of the mechanisms already in place in some states to handle the name change process administratively.

This report summarizes our research, analyzes the purported rationales given for the publication requirement, and recommends—as an alternative to the public judicial processes currently in effect in many states – a largely administrative, well-coordinated and effective name and gender designation change system similar to that adopted in other states.

As discussed in greater detail below, the proposed administrative name change system would be under the auspices of the Court of Common Pleas, but its administrative aspects would be managed by a designated agency, possibly the Pennsylvania Division of Vital Records. The Court would be directly involved in certain circumstances, including, in particular name changes involving minors, presiding over hearings concerning the best interests of the minor and the parental rights of parents. The proposed system would, among other things, allow applicants to

¹¹ Kathryn O’Neill and Jody L. Herman, *The Potential Impact Of Voter Identification Laws On Transgender Voters In The 2020 General Election* at 2 (February 2020) <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Voter-ID-Feb-2020.pdf>.

¹² “Publishing” and “publication” herein refer to broadcasting notice of the intended name change to the general public (as opposed to particular individuals or entities) in a publicly available medium, such as in a newspaper or on the internet.

change their name on various records (e.g. birth certificates, driver’s licenses, and other identification records) with a single submission. This administrative system has numerous advantages over existing judicial and administrative processes, including that it is likely to be more efficient, less expensive, less burdensome for applicants and for the courts, and more protective of the privacy and confidentiality of applicants, a particularly important feature for many transgender applicants.

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Sections II to V provide background information about why name changes matter and whether it is feasible to change Pennsylvania’s name change system. Section VI, the Proposed Structure for the Name Change Process, includes a proposal for an improved name change system in Pennsylvania. The main focus of this report is to provide a comprehensive name change system, and we believe some readers may want to start with the proposed structure in Section VI (p. 35-46). The Appendix (p. 52-end) includes background research summaries consisting of a 50 state and Washington D.C. survey regarding name change systems.

II. The Current U.S. Landscape for Legal Name Changes

This section summarizes the current U.S. landscape for legal name changes and analyzes certain states' models for name changes. A majority of states (26) have either eliminated publication outright across the board (17), eliminated publication outright for transgender people (3), or presumptively eliminated publication for transgender people subject only to a court expressly imposing such a requirement (6). 22 jurisdictions provide the option of an M/F/X gender marker options on their driver's license, and 17 jurisdictions "allow residents to update gender markers based on self-attestation" requiring no letter or attestation from a medical provider.¹³

A. Purported Rationales for Publication Requirements

Purported rationales for publication requirements include: to prevent fraud; to give other persons an opportunity to object to the name change; to notify creditors of the name change; and to prevent people from hiding behind a new name to avoid legal obligations such as debt, child support payments, or criminal liability and/or punishment.

Some of these rationales are clearly unfounded. For example, according to Francis Creighton, President and CEO of the Consumer Data Industry Association (the U.S. trade association for consumer reporting agencies ("CRAs")), "the nationwide credit bureaus ... do not use the publication of name changes ... as a source for information for credit files."¹⁴ Instead, CRAs learn about a consumer name change after the consumer reports the name change to the

¹³ The M/F/X gender marker option jurisdictions are: Arkansas, California, Colorado, District of Columbia, Connecticut, Hawaii, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Hampshire, New Mexico, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Utah, Virginia, Vermont, and Washington. Movement Advancement Project, *Identity Document Laws And Policies*, https://www.lgbtmap.org/equality-maps/identity_document_laws. See Brody Levesque, *New York Governor Cuomo signs Gender Recognition Act into law* (June 24, 2021) <https://www.losangelesblade.com/2021/06/24/new-york-governor-cuomo-signs-gender-recognition-act-into-law/>. The jurisdictions that allow gender marker updates through self-attestation are: Arkansas, California, Connecticut, District of Columbia, Hawai'i, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New York, Oregon, Rhode Island, Vermont, Washington. National Center for Transgender Equality, *How Trans-Friendly Is the Driver's License Gender Change Policy in Your State?* (Jan. 2020), <https://transequality.org/sites/default/files/docs/resources/Drivers%20License%20Grades%20Jan%202020.pdf>; See quote at: New York City Bar, *Report on Legislation by the Lesbian, Gay, Bisexual, Transgender & Queer Rights Committee, Civil Rights Committee, and Sex & Law Committee* (April 15, 2020), <https://s3.amazonaws.com/documents.nycbar.org/files/2020649-SupportforGenderRecognitionAct.pdf>; See New York City Bar, *Report on Legislation by the Lesbian, Gay, Bisexual, Transgender & Queer Rights Committee, Civil Rights Committee, and Sex & Law Committee* (April 15, 2020), <https://s3.amazonaws.com/documents.nycbar.org/files/2020649-SupportforGenderRecognitionAct.pdf>.

¹⁴ 12/18/2020 Email from Francis Creighton (Consumer Data Industry Association) to the National Consumer Law Center.

consumer's lenders and creditors or, occasionally, through the dispute process; "the former name is recorded as an AKA [i.e., also known as]."¹⁵ "But the CRAs do not rely on newspapers or similar sources for this information."¹⁶

Even if there are some legitimate reasons for publication requirements, such requirements can unnecessarily burden name change applicants, and there are other, less burdensome, approaches to address those legitimate concerns. The costs associated with publication may be prohibitively expensive for poor applicants. A publication requirement can be particularly burdensome for a transgender person desiring to change their name to conform to their gender, because publication creates risks to the person's privacy and safety. Publication may invade person's privacy because the name change could indirectly reveal a person's transgender status (or personal medical information such as a person's gender transitioning process) and thus "give bad actors a roadmap to interfere with a transgender petitioner's name change and safety."¹⁷

There is a large amount of data demonstrating that transgender people "face an extreme and disproportionate risk of violence," raising concerns about the dangers of publication.¹⁸ According to the 2015 U.S. Transgender Survey "[n]early half (47%) of respondents have been sexually assaulted at some point in their lifetime, [and] more than half (54%) experienced some form of intimate partner violence."¹⁹ During the first six months of this year alone, from January to June of 2021, over 29 transgender or gender non-conforming people have been killed, about one in four transgender individuals have been assaulted (for being transgender), and the current data

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *New Jersey Comment 9 on the Proposed Amendments to Rule 4:72 – Removal of Publication* (October 14, 2020), <https://www.njcourts.gov/courts/assets/supreme/reports/2020/comments/rule4.72comment009.pdf>.

¹⁸ New York City Bar, *Report on Legislation by the Lesbian, Gay, Bisexual, Transgender & Queer Rights Committee, Civil Rights Committee, and Sex & Law Committee* (April 15, 2020), <https://s3.amazonaws.com/documents.nycbar.org/files/2020649-SupportforGenderRecognitionAct.pdf>; *See generally* Human Rights Campaign, *A National Epidemic: Fatal Anti-Transgender Violence In America In 2018* (2018), <https://assets2.hrc.org/files/assets/resources/AntiTransViolence-2018Report-Final.pdf?ga=2.95270044.1252227909.1553540239-1772549041.1553540239>; *New Jersey Comment 5 on the Proposed Amendments to Rule 4:72 – Removal of Publication* (October 6, 2020), <https://www.njcourts.gov/courts/assets/supreme/reports/2020/comments/rule4.72comment005.pdf>.

¹⁹ James, S. E., Herman, J. L., Rankin, S., Keisling, M., Mottet, L., & Anafi, M. (2016). *The Report of the 2015 U.S. Transgender Survey* at 198, Washington, DC: National Center for Transgender Equality, <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>; *New Jersey Comment 9 on the Proposed Amendments to Rule 4:72 – Removal of Publication* (October 14, 2020), <https://www.njcourts.gov/courts/assets/supreme/reports/2020/comments/rule4.72comment009.pdf> (internal quotation marks omitted).

on violence against transgender people likely understates the problem.²⁰ This shocking data may understate the problem because “too often these stories go unreported — or misreported” and there are no reporting requirements or central databases to track such crimes.²¹ For example, in New Jersey the Name Change Project (Transgender Legal Defense & Education Fund working with Lowenstein Sandler LLP) has had clients face harassment from strangers upon the publication of their name change.²²

Thus, the vulnerable position of the transgender community has been considered by the federal government and the courts in an effort to protect that community from harm. For example, Indiana’s Court of Appeals waived the publication requirement for a transgender applicant because it found his concern for his own safety due to publication of his status compelling, as transgender people face a high risk of harassment, violence, and homicide, and publication in a newspaper would likely appear on the internet – jeopardizing the applicant’s safety for life.²³ According to the New Jersey State Bar Association, “[t]he United States Court of Appeals for the Third Circuit has acknowledged, [t]here can be no denying that transgender individuals face discrimination, harassment and violence because of their gender identity.”²⁴ In New York, transgender petitioners have had the publication requirement waived, not only upon a showing of being a victim of gender identity-based violence but also based upon the threat to the group as a whole, recognizing “evidence that the murder rate of the transgender [population] was set to outpace that of all other

²⁰ *New Jersey Comment 5 on the Proposed Amendments to Rule 4:72 – Removal of Publication* (October 6, 2020), <https://www.njcourts.gov/courts/assets/supreme/reports/2020/comments/rule4.72comment005.pdf>; Human Rights Campaign, *Fatal Violence Against the Transgender and Gender Non-Conforming Community in 2021*, <https://www.hrc.org/resources/fatal-violence-against-the-transgender-and-gender-non-conforming-community-in-2021>; ACLU, *Deadly Violence Against Transgender People Is on the Rise. The Government Isn’t Helping*, <https://www.aclu.org/blog/lgbtq-rights/criminal-justice-reform-lgbtq-people/deadly-violence-against-transgender-people>.

²¹ Human Rights Campaign, *Fatal Violence Against the Transgender and Gender Non-Conforming Community in 2021*, <https://www.hrc.org/resources/fatal-violence-against-the-transgender-and-gender-non-conforming-community-in-2021>; Maggie Astor, *Violence Against Transgender People Is on the Rise, Advocates Say*, N.Y. Times (Nov. 9, 2017), <https://www.nytimes.com/2017/11/09/us/transgender-women-killed.html>; *New Jersey Comment 5 on the Proposed Amendments to Rule 4:72 – Removal of Publication* (October 6, 2020), <https://www.njcourts.gov/courts/assets/supreme/reports/2020/comments/rule4.72comment005.pdf>.

²² *New Jersey Comment 9 on the Proposed Amendments to Rule 4:72 – Removal of Publication* (October 14, 2020), <https://www.njcourts.gov/courts/assets/supreme/reports/2020/comments/rule4.72comment009.pdf>.

²³ *In re A.L.*, 81 N.E.3d 283, 290-91 (Ind. Ct. App. 2017); *New Jersey Comment 5 on the Proposed Amendments to Rule 4:72 – Removal of Publication* (October 6, 2020), <https://www.njcourts.gov/courts/assets/supreme/reports/2020/comments/rule4.72comment005.pdf>.

²⁴ *New Jersey Comment 13 on the Proposed Amendments to Rule 4:72 – Removal of Publication* (October 19, 2020) <https://www.njcourts.gov/courts/assets/supreme/reports/2020/comments/rule4.72comment013.pdf> (internal quotation marks omitted) (quoting *Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518, 528 (3d Cir. 2018) (quoting *Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. Of Educ.*, 858 F.3d 1034, 1051 (7th Cir. 2017))).

hate killings.”²⁵ Because of so much bias-motivated violence against transgender people, a federal hate crime bill has even included violence based on gender identity as a hate crime.²⁶

According to Jeanne LoCicero, Esq., Legal Director of the American Civil Liberties Union of New Jersey, “while name changes can be affirming and liberating for transgender, gender non-conforming, and nonbinary people, they are also a matter of safety and practical necessity.”²⁷ Publication of name changes provides little benefit in serving its alleged purpose, but results in considerable risk.²⁸ One lawyer explained how a woman who experienced violence and harassment for her gender identity, including rejection by her family, had to deal with “being repeatedly misgendered and having to explain her gender identity, due to the fact that her identity documents listed the incorrect gender.”²⁹ Further, as a victim of violence the client felt tremendous fear about the listing of her name at the courthouse out of fear that someone who saw her name would try to harm her.³⁰

As set out in greater detail below, many U.S. states have eliminated publication requirements in general and/or for transgender persons specifically, likely in recognition of the fact that the risks and burdens of publication requirements far outweigh the benefits.

²⁵ *New Jersey Comment 5 on the Proposed Amendments to Rule 4:72 – Removal of Publication* (October 6, 2020), <https://www.njcourts.gov/courts/assets/supreme/reports/2020/comments/rule4.72comment005.pdf> (quoting *Matter of E.P.L.*, 891 N.Y.S.2d 619, 621 (NY Sup. Ct. 2009) (citing Bob Moser, *Disposable People*, *Southern Poverty Law Center Intelligence Report* (2003))).

²⁶ *New Jersey Comment 5 on the Proposed Amendments to Rule 4:72 – Removal of Publication* (October 6, 2020), <https://www.njcourts.gov/courts/assets/supreme/reports/2020/comments/rule4.72comment005.pdf> (quoting *Sacklow v. Betts*, 450 N.J. Super. 425, 435-36 (Ch. Div. 2017) (quoting *Matter of E.P.L.*, 891 N.Y.S.2d 619, 621 (NY Sup. Ct. 2009))).

²⁷ *New Jersey Comment 8 on the Proposed Amendments to Rule 4:72 – Removal of Publication* (October 14, 2020), <https://www.njcourts.gov/courts/assets/supreme/reports/2020/comments/rule4.72comment008.pdf>.

²⁸ *New Jersey Comment 8 on the Proposed Amendments to Rule 4:72 – Removal of Publication* (October 14, 2020), <https://www.njcourts.gov/courts/assets/supreme/reports/2020/comments/rule4.72comment008.pdf>.

²⁹ American Civil Liberties Union of Oregon, *Testimony of Kimberly McCullough, Legislative Director In Support of HB 2673 Senate Committee on Judiciary* (May 3, 2017), <https://olis.leg.state.or.us/liz/2017R1/Downloads/CommitteeMeetingDocument/124551>.

³⁰ American Civil Liberties Union of Oregon, *Testimony of Kimberly McCullough, Legislative Director In Support of HB 2673 Senate Committee on Judiciary* (May 3, 2017), <https://olis.leg.state.or.us/liz/2017R1/Downloads/CommitteeMeetingDocument/124551>.

B. States That Have Completely Eliminated (or Never Had) the Publication Requirement

In 17 U.S. jurisdictions, there is no publication requirement for name change petitions under any circumstances.³¹ Recently, in November 2020, the New Jersey Supreme Court eliminated the publication requirement from their court rules.³² As the Acting Administrative Director of the Courts, the Honorable Glenn A. Grant, J.A.D. explained: Eliminating the publication requirement “will expand equal access to the courts for people who are poor, self-represented, and members of the LGBTQ+ community, including transgender women of color who disproportionately continue to be targeted victims of violence throughout our nation. Amending the publication requirement (Rule 4:72) advances the Judiciary’s goals of equal access, procedural fairness, and ongoing identification and elimination of obstacles to justice.”³³

New Jersey’s rule change followed a September 2020 Notice to the Bar that proposed eliminating the publication requirement.³⁴ The Notice identified several reasons for eliminating the requirement, including: “(1) print newspapers do not provide a realistically effective method of informing the community, to the extent such notice was intended; (2) other provisions of Rule 4:72 serve to identify and permit objections if a name change is sought for a wrongful purpose, and to ensure that State agencies are informed of court-approved name changes; (3) newspaper publication is burdensome, especially to self-represented litigants; and (4) publication already may be waived in particular cases under Rule 4:72 and, pursuant to N.J.S.A. 2A:34-21, is not required for name changes incident to divorce or dissolution of a civil union.”³⁵

Just as this report is being submitted as testimony, on Thursday, June 24, 2021, New York’s Governor signed into law the Gender Recognition Act (“GRA”) (2021 NY S.B. 4402).³⁶ Among

³¹ Alabama, Arkansas, Connecticut, District of Columbia, Florida, Kentucky, Louisiana, Minnesota, Mississippi, New Jersey, New York, Oregon, South Carolina, Tennessee, Texas, Vermont, Virginia. Please note that this count includes a jurisdiction in the “no publication” category even if it imposes a publication requirement on a specific subset of the population, such as felons. The focus here was on how publication applies to the general population of a state, including transgender people.

³² *Name Change Applications – Elimination Of The Requirement Of Newspaper Publication; Amendments To Rule 4:72* (Nov. 2020), <https://njcourts.gov/notices/2020/n201119b.pdf?c=19w>.

³³ *Name Change Applications – Elimination Of The Requirement Of Newspaper Publication; Amendments To Rule 4:72* (Nov. 2020), <https://njcourts.gov/notices/2020/n201119b.pdf?c=19w>.

³⁴ Notice to the Bar, *Name Changes -- Proposed Amendments To Rule 4:72 (“Actions For Change Of Name”) To Remove Newspaper Publication Requirements - Publication For Comment* (Sept. 2020) <https://njcourts.gov/notices/2020/n200916a.pdf>.

³⁵ Notice to the Bar, *Name Changes -- Proposed Amendments To Rule 4:72 (“Actions For Change Of Name”) To Remove Newspaper Publication Requirements - Publication For Comment* (Sept. 2020) <https://njcourts.gov/notices/2020/n200916a.pdf>.

³⁶ Tat Bellamy-Walker & Matt Tracy, *State Legislature Passes Gender Recognition Act*,

other reforms, the GRA removes the publication requirement for name change process “as it can unnecessarily increase risk and violate privacy.”³⁷ The GRA has been described as “update[ing] the legal name change process in the state of New York by eliminating the requirement that applicants publish their personal information in a local newspaper and by making it easier for transgender and non-binary applicants to have their name change records sealed.”³⁸ New York’s and New Jersey’s recent elimination of the publication requirement demonstrates a growing trend in the region.

C. States That Have Eliminated the Publication Requirement for Transgender Individuals

In 3 jurisdictions, the publication requirement has been eliminated for people seeking a gender-conforming name change, at least in part due to concerns about the burden that the requirement imposes on transgender individuals.³⁹

In California, by statute, a person seeking a name change to conform their name to their gender identity is exempt from the publication requirement.⁴⁰ The bill’s author and sponsor explained that eliminating the publication requirement would streamline the name change process, protect privacy for transgender persons, and reduce the risk of violence and harassment faced by transgender persons.⁴¹

<https://www.gaycitynews.com/gender-recognition-act-new-york-state/>; Brody Levesque, *New York Governor Cuomo signs Gender Recognition Act into law* (June 24, 2021) <https://www.losangelesblade.com/2021/06/24/new-york-governor-cuomo-signs-gender-recognition-act-into-law/>.

³⁷ Gender Recognition Act (2021 NY S.B. 4402); *see also* NYCLU, *Joint Memo of Support for Gender Recognition Act* (February 2020), <https://www.nyclu.org/en/publications/joint-memo-support-gender-recognition-act>; *see also* New York State Assembly, S04402,

https://nyassembly.gov/leg/?default_fld=%0D%0A&leg_video=&bn=S04402&term=&Summary=Y&Actions=Y&Committee%26nbspVotes=Y&Memo=Y; Brody Levesque, *New York Governor Cuomo signs Gender Recognition Act into law* (June 24, 2021) <https://www.losangelesblade.com/2021/06/24/new-york-governor-cuomo-signs-gender-recognition-act-into-law/>.

³⁸ New York City Bar, *Report on Legislation by the Lesbian, Gay, Bisexual, Transgender & Queer Rights Committee, Civil Rights Committee, and Sex & Law Committee* (April 15, 2020), <https://s3.amazonaws.com/documents.nycbar.org/files/2020649-SupportforGenderRecognitionAct.pdf>.

³⁹ California, Colorado, Nevada.

⁴⁰ *See* California Code of Civil Procedure § 1277.5; AB 1121, *available at* https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB1121.

⁴¹ *See* California Legislative Information, *Assembly Judiciary Analysis* (Apr. 15, 2013), https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201320140AB1121.

In Colorado, by statute, a person seeking a name change to conform their name to their gender identity is exempt from the publication requirement.⁴²

In Nevada, by statute, a person seeking a name change to conform their name to their gender identity is exempt from the publication requirement.⁴³

D. States That Require Publication Only at the Court's Discretion

In 6 additional jurisdictions, persons seeking a gender-conforming name change presumptively face no publication requirement, but it is within the court's discretion to require publication to be made.⁴⁴

E. States That Require Publication Absent Waiver or Other Exception

In 25 U.S. jurisdictions, there is a publication requirement that would apply, absent a discretionary waiver, to a person seeking a gender-conforming name change.⁴⁵ In 3 of those jurisdictions, there appears to be no option for a court to waive the publication requirement.⁴⁶ In 10 of these jurisdictions, the publication requirement may be waived for a person who is a victim of domestic or family violence, stalking, child abuse, or similar offenses.⁴⁷ In 15 of these jurisdictions,⁴⁸ the publication requirement may be waived to, more generally, protect the applicant, e.g. from physical harm,⁴⁹ discrimination,⁵⁰ harassment,⁵¹ or for other reasons specified by the applicant.⁵²

⁴² See C.R.S.A. §§ 13-15-102(4).

⁴³ Nevada Revised Statutes § 41.280.

⁴⁴ Arizona (publication may be required if court deems proper); Iowa (publication may be required if petitioner is married and spouse cannot be notified through other methods); Kansas (publication may be required in discretion of court); New Hampshire (court may proceed with or without notice, in judge's discretion); Utah (court orders what, if any, notice shall be given); Washington (some counties have rule required name change to be recorded with county auditor).

⁴⁵ Alaska, Delaware, Georgia, Hawaii, Idaho, Indiana, Illinois, Maine, Maryland, Massachusetts, Michigan, Missouri, Montana, Nebraska, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Dakota, West Virginia, Wisconsin, Wyoming.

⁴⁶ Delaware, Idaho, Nebraska.

⁴⁷ Arizona, Georgia, Illinois, Missouri, North Carolina, North Dakota, South Dakota, Oklahoma, Washington, Wyoming.

⁴⁸ Some of these 15 jurisdictions overlap with the 10 jurisdictions mentioned in the preceding sentence.

⁴⁹ Illinois, Michigan

⁵⁰ Illinois

⁵¹ Arizona, Illinois, Indiana.

⁵² Alaska, Hawaii, Illinois, Indiana, Maine, Massachusetts, Montana, New Mexico, Ohio, Pennsylvania, Rhode Island, West Virginia, Wisconsin.

In Maryland, a state in which publication is currently the default requirement, the state legislature is currently considering a bill that would eliminate the publication requirement for all name changes. Maryland's House Bill 427 would remove the publication requirement from the legal name change process. The bill provides that: "on motion by an individual who has filed an action for change of name under Maryland rule 15-901 [which involves actions for change of name other than in connection with an adoption or divorce], the court shall waive the publication requirement under the rule." In practical effect, there would be no publication requirement for name changes in Maryland not connected to adoption or divorce. Members of the transgender community have said "the publishing requirement previously prevented them from changing their names out of fear or lack of privacy."⁵³ This bill was passed by the Maryland House in February 2020 and was set for a March 2020 hearing in the Senate but the Senate hearing was cancelled due to COVID. Therefore, the bill remains pending.⁵⁴

Finally, in Pennsylvania, the Gay Lesbian, Bisexual and Transgender Rights Committee of the Pennsylvania Bar Association, in recommending reforms to Pennsylvania's name change process, explained: "The goal of this recommendation is to enable transgender and gender nonconforming persons to claim their identity at reduced risk of stigma, ostracism, harassment and violence. This goal does not seek special treatment for transgender persons, but recognition that equality requires that the law and court rules take into consideration the specific needs related to protection of their safety and privacy."⁵⁵ Further, this report recommends that the publication requirement be altogether eliminated in Pennsylvania, mitigating any potential concerns regarding "special treatment."

F. States That Provide M/F/X Gender Marker Options

In 22 jurisdictions, residents have the option of an M/F/X gender marker on their driver's license.⁵⁶ Similarly, the residents of at least 14 states may have M/F/X gender marker options on

⁵³ Deana Harley, *Name change bill passes Maryland House* (Mar. 2, 2020) <https://www.wmdt.com/2020/03/name-change-bill-passes-maryland-house/>.

⁵⁴ Legiscan, *Maryland House Bill 427* (2020), <https://legiscan.com/MD/bill/HB427/2020>.

⁵⁵ <https://www.pabar.org/public/committees/glb01/pdf/2019/GLBT-Cmte-Comm-Name-Change-Process-J-FINAL.PDF>. Previously, H.B. 433 PN 420 proposed removing the local publication requirement, requiring publication in a public database, and automatically removing the notice after the court hearing. *See* <https://legiscan.com/PA/bill/HB433/2019>. The bill was referred to Pennsylvania's Judiciary Committee in February 2019.

<https://www.legis.state.pa.us/CFDOCS/Legis/PN/Public/btCheck.cfm?txtType=PDF&sessYr=2019&sessInd=0&billBody=H&billTyp=B&billNbr=0433&pn=0420>

⁵⁶ The M/F/X gender marker option jurisdictions are: Arkansas, California, Colorado, District of Columbia, Connecticut, Hawaii, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Hampshire, New Mexico, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Utah, Virginia, Vermont, and Washington. Movement

their birth certificate.⁵⁷ Further, “[i]n February 2019, New Jersey became the fourth state to recognize nonbinary or undesignated genders on birth certificates.”⁵⁸

There has been a strong trend in the direction of providing M/F/X gender marker options on government identification. In line with this trend, most recently the GRA in New York not only eliminated the publication notice requirement for name changes but also facilitated the recordation of updated gender markers.⁵⁹ Specifically, it “updates the process for changing gender markers on New York State birth certificates and New York State driver’s licenses and non-driver’s identification documents” and “adds a third gender marker option, “X,” to driver’s licenses, non-driver’s licenses, and birth certificates for New Yorkers who do not identify as exclusively male or female.”⁶⁰ In line with the current trend, “LGBTQ+ advocates have been in talks with the Biden administration about executive action to add “X” gender markers to all federal documents, including passports and social security cards.”⁶¹ In the other states, “as long as an X gender marker is not available, the state is effectively requiring [medical] providers [where their attestation is required] and some transgender and intersex people to commit perjury when obtaining state-issued documents or amending the gender marker on their documents.”⁶²

G. States That Utilize Largely Administrative Processes for Changing Names on Identifying Documents

Certain states utilize largely administrative processes, rather than primarily judicial processes, for name changes on identifying documents such as birth certificates and driver’s licenses or other state-issued IDs. Largely administrative processes tend to be more convenient

Advancement Project, *Identity Document Laws And Policies*, https://www.lgbtmap.org/equality-maps/identity_document_laws.

⁵⁷ These states include California, Colorado, Connecticut, Illinois, Maine, Nevada, New Jersey, New Mexico, New York, Ohio, Oregon, Rhode Island, Utah, and Washington. Movement Advancement Project, *Identity Document Laws And Policies*, https://www.lgbtmap.org/equality-maps/identity_document_laws.

⁵⁸ 22 (N.J. P.L.2018, c.58 (July 3, 2018)). New York City Bar, *Report on Legislation by the Lesbian, Gay, Bisexual, Transgender & Queer Rights Committee, Civil Rights Committee, and Sex & Law Committee* (April 15, 2020), <https://s3.amazonaws.com/documents.nycbar.org/files/2020649-SupportforGenderRecognitionAct.pdf>.

⁵⁹ Tat Bellamy-Walker & Matt Tracy, *State Legislature Passes Gender Recognition Act*, <https://www.gaycitynews.com/gender-recognition-act-new-york-state/>.

⁶⁰ New York City Bar, *Report on Legislation by the Lesbian, Gay, Bisexual, Transgender & Queer Rights Committee, Civil Rights Committee, and Sex & Law Committee* (April 15, 2020), <https://s3.amazonaws.com/documents.nycbar.org/files/2020649-SupportforGenderRecognitionAct.pdf>; Gender Recognition Act (2021 NY S.B. 4402).

⁶¹ Kate Sosin, *Biden administration suggests it will add “X” gender markers to federal documents*, (Feb. 19 2021) <https://19thnews.org/2021/02/biden-administration-suggests-it-will-add-x-gender-markers-to-federal-documents/>.

⁶² NYCLU, *Joint Memo of Support for Gender Recognition Act* (February 2020), <https://www.nyclu.org/en/publications/joint-memo-support-gender-recognition-act>.

and may be faster and less expensive than solely judicial processes. However, changing one's name or gender on identifying documents does not amount to a legal name change, which can be obtained only through a state's legal name change process and may still be required to change one's name and gender on all applicable records.⁶³ Furthermore, some administrative processes require proof of a legal name change made through a judicial process.

For example, in Oregon, “[p]eople who were born in Oregon and who need to change their name or sex on their birth certificate to reflect their gender identity may do so by completing a notarized application rather than having to get a court order.”⁶⁴ According to the Oregon Vital Records Office, the intent of the name change rule in Oregon is to be as flexible as possible; people can choose to change their name, their sex, or both their name and sex. To change a name on a driver's license or other state ID in Oregon, however, an applicant must submit proof of a legal name change.⁶⁵

Maine is another example of a state that utilizes administrative processes for changing names on certain identifying documentation. In Maine, the “Gender Marker on Birth Record Rule” establishes an administrative process for a person who desires the issuing of “a new birth record reflecting the appropriate gender marker and name consistent with the individual's gender identity.”⁶⁶ Requests for such changes merely require the submission of certain forms.⁶⁷ “Adults and emancipated minors can change their first and middle names by submitting an individual notarized affirmation (on the state form) that the change is made to align the record with their gender identity.”⁶⁸ The administrative process requires that a name may only be changed

⁶³ The Social Security Administration accepts a new birth certificate and a letter from the state registrar as proof of a legal name change. National Center for Transgender Equality, *ID Documents Center: Oregon* (2021), <https://transequality.org/documents/state/oregon>; Social Security Administration, *Program Operations Manual System (POMS)* (Dec. 28, 2018), <https://secure.ssa.gov/poms.nsf/lnx/0110212090>.

⁶⁴ Oregon Health Authority, *House Bill 2673: Name and Sex Designation Changes on a Birth Certificate*, <https://www.oregon.gov/oha/PH/BIRTHDEATHCERTIFICATES/Pages/rules.aspx>; Oregon House Bill 2673, <https://olis.leg.state.or.us/liz/2017R1/Downloads/MeasureDocument/HB2673/Enrolled>.

⁶⁵ National Center for Transgender Equality, *ID Documents Center: Oregon* (2021), <https://transequality.org/documents/state/oregon>; Oregon Driver & Motor Vehicle Services, Changing Your Name, <https://www.oregon.gov/ODOT/DMV/pages/dv/chgname.aspx>.

⁶⁶ Gender Marker on Birth Record Rule (10-146 Code of Maine Rules Ch. 16), 22 MRS §§ 42 and 2761.

⁶⁷ *Id.*

⁶⁸ Maine Department of Health and Human Services, *Gender Marker Change on Birth Certificates Frequently Asked Questions*, <https://www.maine.gov/dhhs/mecdc/public-health-systems/data-research/vital-records/edrs/documents/pdf-files/QA-for-gender-marker.pdf>. Minors who are not emancipated can still seek an administrative name change, with some additional requirements. *See id.*

administratively when it is done at the same time as a gender marker change.⁶⁹ An applicant whose request has been denied has the right to request an administrative hearing within 60 days after the date of receipt of the decision.⁷⁰

In Maine, to change one's name on a driver's license or non-driver state ID card, an applicant must submit a document such as a court order to the Bureau of Motor Vehicles to provide proof of the legal name change (if applicable) within 30 days after the change.⁷¹ The court order is not administrative in nature.

H. The Oregon Name Change Process Provides a Useful Model for Other States

The Oregon name change process provides a useful model for other states to structure their system. While this report expands on the Oregon model to propose an even more efficient proposed system, an understanding of the Oregon model is helpful, as that model represents the leading edge of the current U.S. landscape for legal name changes. A brief summary of the Oregon model follows:

Oregon House Bill 2673, effective as of January 1, 2018, provides that “[p]eople who were born in Oregon and who need to change their [legal] name or sex on their birth certificate to reflect their gender identity may do so by completing a notarized application rather than having to get a court order.”⁷² The bill “creates a centralized process to change a name and gender marker (M/F/X “non-binary)⁷³ on a birth certificate and updates public posting requirements.”⁷⁴ Although some of the instructions on Oregon's form appears to condition eligibility for the administrative process on there also being a request for a change of gender identity, in practice Oregon's administrative name change process applies even outside of the gender change context.⁷⁵ According to an Oregon

⁶⁹ Maine Department of Health and Human Services, *Gender Marker Change on Birth Certificates Frequently Asked Questions*, <https://www.maine.gov/dhhs/mecdc/public-health-systems/data-research/vital-records/edrs/documents/pdf-files/QA-for-gender-marker.pdf>.

⁷⁰ *Id.*

⁷¹ *Id.*; Maine Bureau of Motor Vehicles, *Obtaining a Drivers License* (2015), <https://www.maine.gov/sos/bmv/licenses/getlicense.html>.

⁷² Oregon Health Authority, *House Bill 2673: Name and Sex Designation Changes on a Birth Certificate*, <https://www.oregon.gov/oha/PH/BIRTHDEATHCERTIFICATES/Pages/rules.aspx>; Oregon House Bill 2673, <https://olis.leg.state.or.us/liz/2017R1/Downloads/MeasureDocument/HB2673/Enrolled>.

⁷³ Oregon Health Authority, *Name and Sex Designation Changes on a Birth Certificate*, <https://www.oregon.gov/oha/PH/BIRTHDEATHCERTIFICATES/Pages/rules.aspx#:~:text=a%20court%20order.-,When%20does%20HB%202673%20go%20into%20effect%3F,becomes%20effective%20January%201st%2C%202018.>

⁷⁴ 79th Oregon Legislative Assembly, *Oregon Staff Measure Summary* (2017), <https://olis.leg.state.or.us/liz/2017r1/Downloads/MeasureAnalysisDocument/34627>.

⁷⁵ Communication with the Oregon Vital Records Office (2021).

Health Authority official, the intent of the name change administrative process in Oregon is to be as flexible as possible. People can choose to change their name, their sex, or both name and sex. Further, the bill eliminated “the requirement for courts to publicly post court orders on name and gender changes” and “allows for a person to request to have the records sealed.”⁷⁶

People over the age of 18 and emancipated minors born in Oregon are eligible for relief upon request.⁷⁷ People under the age of 18 who are born in Oregon are eligible for relief if a parent (on the birth certificate) or legal guardian (or legal representative) makes the request.⁷⁸ The updated “name and gender on the birth certificate” allows the use of “that documentation to update the child’s other documents and records.”⁷⁹ Under the administrative application process (Oregon Vital Statistics Rules: 333-011-0272 and 333-011-0275)⁸⁰ applicants may use the “Application to Change the Name and/or Sex on a Record of Live Birth to Support Gender Identity” form to update name and/or sex designation on the Oregon birth certificate.⁸¹ For a valid name change through the name change process the eligible applicant must: “Complete an Application to Change the Name and/or Sex on a Record of Live Birth to Support Gender Identity (PDF) signed with a Notary Public; Pay the required fees; order [a] new birth certificate; and Provide a valid ID.”⁸² The

⁷⁶ 79th Oregon Legislative Assembly, *Oregon Staff Measure Summary* (2017), <https://olis.leg.state.or.us/liz/2017r1/Downloads/MeasureAnalysisDocument/34627>.

⁷⁷ Oregon Health Authority, *Application to Change the Name and/or Sex on a Record of Live Birth to Support Gender Identity* (Jan. 2018), <https://www.oregon.gov/oha/PH/BIRTHDEATHCERTIFICATES/CHANGEVITALRECORDS/Documents/OHA-2673.pdf>.

⁷⁸ *Id.*; National Center for Transgender Equality, *Name Changes for Minors in Oregon*, <https://www.transequality.org/sites/default/files/docs/id/NameChangesforMinors/NCTE%20Minor%20Name%20Change%20Oregon.pdf>.

⁷⁹ *Id.*; The Social Security Administration accepts a new birth certificate and a letter from the state registrar as proof of a legal name change. National Center for Transgender Equality, *ID Documents Center: Oregon* (2021), <https://transequality.org/documents/state/oregon>; Social Security Administration, *Program Operations Manual System (POMS)* (Dec. 28, 2018), <https://secure.ssa.gov/poms.nsf/lnx/0110212090>.

⁸⁰ Oregon Health Authority, *Public Health Division Chapter 333, Division 11 Vital Statistics 333-011-0272*, [https://secure.sos.state.or.us/oard/viewSingleRule.action?ruleVrsnRsn=236038#:~:text=\(1\)\(a\)%20An%20applicant,gender%20identity%20of%20the%20registrant](https://secure.sos.state.or.us/oard/viewSingleRule.action?ruleVrsnRsn=236038#:~:text=(1)(a)%20An%20applicant,gender%20identity%20of%20the%20registrant); Oregon Health Authority, *Public Health Division Chapter 333, Division 11 Vital Statistics 333-011-0275*, <https://secure.sos.state.or.us/oard/viewSingleRule.action?ruleVrsnRsn=236040>.

⁸¹ Oregon Health Authority, *Application to Change the Name and/or Sex on a Record of Live Birth to Support Gender Identity* (Jan. 2018), <https://www.oregon.gov/oha/PH/BIRTHDEATHCERTIFICATES/CHANGEVITALRECORDS/Documents/OHA-2673.pdf>.

⁸² Oregon Health Authority, *Name and Sex Designation Changes on a Birth Certificate*, <https://www.oregon.gov/oha/PH/BIRTHDEATHCERTIFICATES/Pages/rules.aspx#:~:text=a%20court%20order.-,When%20does%20HB%202673%20go%20into%20effect%3F,becomes%20effective%20January%201st%2C%202018.>

process can be done through the mail.⁸³ There is a \$35 amendment fee, and “[b]irth certificates cost \$25 each for a short form certificate and \$30 each for a long form certificate.”⁸⁴ Then “the birth record will typically be amended within seven to ten working days [and] [a]n expedited option is available for an additional \$30 which would expedite the processing time to three business days.”⁸⁵

“If [the applicant is] unable to sufficiently prove [their] eligibility to amend or order the record, or otherwise lack appropriate documentation, [the Oregon Health Authority] may not be able to approve [the] request to change name or sex administratively.”⁸⁶ “In [such a] case, [the applicant] would receive correspondence explaining why [their] application cannot be processed.⁸⁷ But “[c]hanging your name and/or sex through a court order would still be possible.”⁸⁸ The court process is still available where people may want documentation from other agencies and are unsure if they will accept the Oregon birth certificate.⁸⁹

Non-emancipated minor applicants in Oregon must, however, pursue a judicial process. They must file a petition in the circuit court of their residence and must obtain a court judgment of their name change in order to make a valid change on their birth certificate.⁹⁰ Only emancipated minors may use the administrative process.⁹¹ According to the Oregon name change FAQs: “A minor can only change their own name and/or sex designation through [the administrative] process if they have been legally emancipated through a court of competent jurisdiction. A minor’s name and/or sex designation can be changed by: a legal parent[,] legal guardian with certified letters of guardianship issued by a court, or the legal representative of a parent or legal guardian with a notarized statement from the parent or legal guardian stating that the legal representative is authorized to act for them in this matter.”⁹²

As part of the administrative name change process, there is “[n]o background check and no other agencies are notified of name changes” although “several agencies use [the Vital Records]

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² Oregon Health Authority, *House Bill 2673: Name and Sex Designation Changes on a Birth Certificate*, <https://www.oregon.gov/oha/PH/BIRTHDEATHCERTIFICATES/Pages/rules.aspx>.

statistical database.”⁹³ However, “there is not a specific notification of change.”⁹⁴ The administrative name change process has “no relation to police records or expungements.”⁹⁵

While individuals born in Oregon may obtain a legal name change on their birth certificate without a court order, those born out of state must “submit a petition to the court in the county” of residence seeking a name and/or gender change.⁹⁶ “There will only be a hearing if the court tells [the applicant] or sends [them] a hearing notice.”⁹⁷ “The court will send a Notice of Entry of Judgement when the name change is granted, and contact the court to get a copy of the Judgement.”⁹⁸

For an applicant to update their name and/or gender on a driver’s license or other Oregon identification, “the applicant must apply in person, surrender their current Oregon ID, and submit: (1) an application for an original, renewal or replacement ID,” (2) pay the fee, (3) take a new photograph, and (4) if the change includes a legal name change, proof of such change must be provided.⁹⁹ The options for sex designation “are M, F, or X, and applicants should mark their desired designation [with] no additional evidence required.”¹⁰⁰ To solely change a gender marker on their driver’s license or Oregon identification the applicant must: “[m]ake an appointment at a DMV office; [r]equest a card with the desired indicator; [m]eet the requirements for issuance of a renewal or replacement license or ID card; and [p]ay the renewal or replacement fee.”¹⁰¹

III. The Systems That Require Publication and Impose Additional Barriers to Name Changes Are Flawed

Systems such as Pennsylvania’s, in requiring publication and imposing additional unnecessary requirements, create unreasonable barriers to access to justice. Such systems are too expensive, both because they require publication and because their complexity often necessitates

⁹³ 4/26/2021 Email from an Oregon Health Authority official to Vishan Patel (Dechert LLP).

⁹⁴ 4/26/2021 Email from an Oregon Health Authority official to Vishan Patel (Dechert LLP).

⁹⁵ 4/26/2021 Email from an Oregon Health Authority official to Vishan Patel (Dechert LLP).

⁹⁶ National Center for Transgender Equality, *ID Documents Oregon* (2021), <https://transequality.org/documents/state/oregon>.

⁹⁷ *Id.*; Or. Rev. Stat. Ann. § 33.420; *Oregon Name and Sex Change Packet*, [https://www.courts.oregon.gov/forms/Documents/Name%20and%20Sex%20Change%20Packet%20\(Adult\).pdf](https://www.courts.oregon.gov/forms/Documents/Name%20and%20Sex%20Change%20Packet%20(Adult).pdf).

⁹⁸ *Id.*

⁹⁹ National Center for Transgender Equality, *ID Documents Center: Oregon* (2021), <https://transequality.org/documents/state/oregon>; Oregon Driver & Motor Vehicle Services, Changing Your Name, <https://www.oregon.gov/ODOT/DMV/pages/dv/chgname.aspx>.

¹⁰⁰ *Id.*; Oregon Driver & Motor Vehicle Services, *Changing Your Sex Identifier on Your Driver License or ID Card*, https://www.oregon.gov/ODOT/DMV/Pages/driverid/chg_gender_designation.aspx.

¹⁰¹ Oregon Driver & Motor Vehicle Services, *Changing Your Sex Identifier on Your Driver License or ID Card*, https://www.oregon.gov/ODOT/DMV/Pages/driverid/chg_gender_designation.aspx.

the involvement of a lawyer. The costs themselves impose a barrier to many potential applicants.¹⁰² Further, such systems impose a structural lack of fairness and equal protection concerns by imposing on transgender individuals, certain former felons, and the general population a more cumbersome system than that available in the context of marriage and divorce.

We first describe Pennsylvania’s current name and gender designation change system. We then describe the impact of the burdens that this system and others like it impose. Finally, we address the constitutional equal protection concerns imbedded in the current system.

A. The Current Pennsylvania Name Change System

In order to legally change a name in Pennsylvania the applicant must petition the court.¹⁰³ In addition, “[t]he applicant must publish notice of the hearing in two newspapers.” While publication may be waived or records sealed for reasons related to safety, waiver or sealing is inconsistent, and should not be dependent on the judge before whom a petitioner appears.¹⁰⁴ A person “with a felony conviction may change their name if more than two years have passed since the end of the sentence and if not under probation or parole, or if the individual has been pardoned.”¹⁰⁵ But “[i]ndividuals who have been convicted of violent crimes are not eligible to change their name. Upon approval of the name change, the court will notify the Attorney General and the State Polic[e] who keep the name change information in a central repository. (54 Pa. Cons. Stat. Ann. §§ 701-705).”¹⁰⁶

Pennsylvanians may also “update the gender marker on their birth certificate with a letter from a physician stating that they have had appropriate clinical treatment for gender transition.”¹⁰⁷

¹⁰² See Alex Myers, *Written Statement on the Publication Requirement*, (April 27, 2021).

¹⁰³ National Center for Transgender Equality, *ID Documents Center Pennsylvania* (2021), <https://transequality.org/documents/state/pennsylvania#:~:text=To%20obtain%20a%20legal%20name,sealed%20for%20the%20applicant's%20safety>.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ National Center for Transgender Equality, *ID Documents Center Pennsylvania* (2021), <https://transequality.org/documents/state/pennsylvania#:~:text=To%20obtain%20a%20legal%20name,sealed%20for%20the%20applicant's%20safety>; Pennsylvania Department of Health, *Amending a Birth Record*, <https://www.health.pa.gov/topics/certificates/Pages/Amending-Birth-Record.aspx>; Pennsylvania Department of Health, *Request to Modify an Adult’s Birth Record (Age 18 years old and above)*, <https://www.health.pa.gov/topics/Documents/Certificates%20and%20Records/Request%20to%20Modify%20an%20Adult%27s%20Birth%20Record.pdf>.

¹⁰⁷ Refer to footnote 112 and the accompanying text for recent amendments to the process.; Pennsylvania Department of Health, *To Change Sex/Gender On A Pennsylvania Certification of Birth* (Aug. 8, 2016), <https://www.transequality.org/sites/default/files/docs/PA-BC-Policy.pdf>; National Center for Transgender Equality, *ID Documents Center: Pennsylvania* (May 2020), <https://transequality.org/documents/state/pennsylvania>.

Both individuals over and under the age of eighteen are eligible for such relief.¹⁰⁸ While adults need to provide medical documentation, minors do not.¹⁰⁹ Adult applicants (18 and older) should submit (1) the birth certificate or a correction form with the requested changes, (2) an application for a Certified Copy of Birth Record, (3) a government-issued photo ID or two other forms of identification, (4) \$20 for the cost of a new birth certificate, (5) and a physician's statement stating the applicant "has completed or is in the process of appropriate clinical treatment for gender transition."¹¹⁰ The applicant must "[m]ail [a] completed affidavit form, documents, application, fee."¹¹¹ The Pennsylvania Department of Health recently issued new forms (for both adults and minors) regarding the amendment of birth records, confusingly requiring the applicant to provide information about both their "sex" and (if different) "gender designation."¹¹²

Minors must have their applications completed by a parent (listed on the birth certificate) but such applications do not require medical documentation.¹¹³ The parent must submit (1) a birth certificate or a correction form with the requested changes (including change of sex) and sign in the presence of a notary, (2) an application for a Certified Copy of Birth Record, (3) a government-issued photo ID or two other forms of identification, and (4) \$20 for the cost of a new birth certificate.¹¹⁴

¹⁰⁸ Pennsylvania Department of Health, *To Change Sex/Gender On A Pennsylvania Certification of Birth* (Aug. 8, 2016), <https://www.transequality.org/sites/default/files/docs/PA-BC-Policy.pdf>.

¹⁰⁹ Refer to footnote 112 and the accompanying text for recent amendments to the process.; National Center for Transgender Equality, *ID Documents Center: Pennsylvania* (May 2020), <https://transequality.org/documents/state/pennsylvania>.

¹¹⁰ Refer to footnote 112 and the accompanying text for recent amendments to the process.; Pennsylvania Department of Health, *To Change Sex/Gender On A Pennsylvania Certification of Birth* (Aug. 8, 2016), <https://www.transequality.org/sites/default/files/docs/PA-BC-Policy.pdf>.

¹¹¹ Refer to footnote 112 and the accompanying text for recent amendments to the process.; National Center for Transgender Equality, *ID Documents Center: Pennsylvania* (May 2020), <https://transequality.org/documents/state/pennsylvania>.

¹¹² Pennsylvania Department of Health, *Amending a Birth Record*, <https://www.health.pa.gov/topics/certificates/Pages/Amending-Birth-Record.aspx>; Pennsylvania Department of Health, Request to Modify an Adult's Birth Record (Age 18 years old and above), <https://www.health.pa.gov/topics/Documents/Certificates%20and%20Records/Request%20to%20Modify%20an%20Adult%27s%20Birth%20Record.pdf>.

¹¹³ Refer to footnote 112 and the accompanying text for recent amendments to the process.; *Id.*; Department of Health, *Ordering a Birth Certificate* (2021), <https://www.health.pa.gov/topics/certificates/Pages/Birth-Certificates.aspx>

¹¹⁴ Refer to footnote 112 and the accompanying text for recent amendments to the process.; Pennsylvania Department of Health, *To Change Sex/Gender On A Pennsylvania Certification of Birth* (Aug. 8, 2016), <https://www.transequality.org/sites/default/files/docs/PA-BC-Policy.pdf>; Department of Health, *Ordering a Birth Certificate* (2021), <https://www.health.pa.gov/topics/certificates/Pages/Birth-Certificates.aspx>.

Gender designations on a driver's license or state ID in Pennsylvania may be administratively updated with a request. An applicant seeking to update their name and/or gender on a driver's license or state ID in Pennsylvania must submit: 1. A "Request for Gender Change" form specifying M/F or X (non-binary/ other); and 2. A "court order certifying the name change" if the applicant is changing their name.¹¹⁵ The court order is not administrative in nature.

In Pennsylvania, there is no administrative name change process for transgender adults or minors who do not qualify under the limited exception for those under the age of 15 as described below. Under 28 Pa. Code § 1.35 regarding the name change of children under the age of 15, a child who is 7 to 14 years old and "has established through usage a name different from the name originally recorded on the birth certificate" may obtain a name change to the one actually used upon application by their "custodial parent, guardian or legal representative" to the Pennsylvania Division of Vital Records.¹¹⁶ Before the Division issues a certificate, the applicant must submit adequate proof regarding the use of the name.¹¹⁷ Adequate proof (which should be sent to the Division) requires official records or documents evidencing "actual use of the name by the child during at least half of the child's lifetime."¹¹⁸

For other minors seeking a name change "[a] petitioner must file a petition in the Court of Common Pleas of the county in which the minor resides, setting forth the reasons for the name change, and attaching a certified copy of the minor's birth certificate and official set of fingerprints. Title 54 PA Cons. Stat. Sec. 701."¹¹⁹ Then a hearing date will be set by the court regarding the name change.¹²⁰ During the hearing the petitioner must provide proof of publication of notice regarding the change.¹²¹ Then "[t]he court may enter a decree approving the name change after it is satisfied that there are no lawful objections."¹²² While "[s]tate-specific forms for a minor name change are not available ... certain counties have minor name change forms available online, generally including: (1) a Name Change Petition; (2) a Fingerprinting Order; and (3) an Order

¹¹⁵ National Center for Transgender Equality, *ID Documents Center: Pennsylvania* (May 2020), <https://transequality.org/documents/state/pennsylvania>; Pennsylvania DMV, *Change Your Name or Address* (2021), <https://www.dmv.pa.gov/Driver-Services/Driver-Licensing/Pages/Change-Your-Name-or-Address.aspx>

¹¹⁶ 28 Pa. Code § 1.35 (available at:

<http://www.pacodeandbulletin.gov/Display/pacode?file=/secure/pacode/data/028/chapter1/s1.35.html&d=reduce>)

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ Title 54 PA Cons. Stat. Sec. 701; National Center for Minors in Pennsylvania, *Name Changes For Minors In Pennsylvania*,

<https://transequality.org/sites/default/files/docs/id/NameChangesforMinors/NCTE%20Minor%20Name%20Change%20Pennsylvania.pdf>.

¹²⁰ *Id.*; Title 54 PA Cons. Stat. Sec. 701.

¹²¹ *Id.*

¹²² *Id.*

scheduling a hearing date. In addition to obtaining fingerprints of the minor at the local police station, publishing notice, and providing notice to the non-petitioning parent, the applicant must search offices of the counties in which the petitioner has resided for the prior five years to confirm that there are no judgments, decrees, or other similar matters against the petitioner.”¹²³

Minor applicants may also request waiver of publication, sealing of the record, or a hearing “not held in open court, for the privacy of the minor.”¹²⁴ In most counties, the granting of publication waivers is quite dependent on the judge.¹²⁵ The applicant “may want to request more than one certified copy of the name change order, since certified copies may be required to update the minor’s legal name with other agencies.”¹²⁶ Parental consent is not required, but all parents or guardians must be provided notice.¹²⁷ The applicant “must publish notice of the petition in two newspapers of general circulation in the county where the minor resides or in a contiguous county and give notice to any non-petitioning parent.”¹²⁸ However, “the court may waive notice requirements if it determines such notice would jeopardize the safety of the minor.”¹²⁹ Judges have significant discretion in considering “the best interests of the child” and “[s]ome may have lots of questions and want to see lots of evidence regarding the name change of the child, [while] others may grant a name change as long as there are no objections.”¹³⁰ Judges “typically evaluate the best interest of the child by looking at a variety of factors, which may include the child’s preference (taking into consideration their age and experience), the length of time a child has used that name, the difficulties, harassment, or embarrassment a child may experience from the present or proposed name, and the motives or interests of the parent.”¹³¹

¹²³ National Center for Minors in Pennsylvania, *Name Changes For Minors In Pennsylvania*, <https://transequality.org/sites/default/files/docs/id/NameChangesforMinors/NCTE%20Minor%20Name%20Change%20Pennsylvania.pdf>.

¹²⁴ *Id.*

¹²⁵ “Philadelphia and Allegheny counties do often grant publication waivers.” *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*; Title 54 PA Cons. Stat. Sec. 701.

¹²⁸ *Id.*

¹²⁹ *Id.*; Title 54 PA Cons. Stat. Sec. 701.

¹³⁰ *Id.*

¹³¹ *Id.*

B. The Burdens Imposed by Systems such as Pennsylvania’s Reduce the Likelihood that Applicants Will Succeed in Changing Their Names or Gender Designations

National data compiled from U.S. jurisdictions including Pennsylvania reveal an unfavorable name change record. Concerning data has been demonstrated by the 2015 U.S. transgender survey as follows:

- “Of those who wanted to change the gender on their birth certificate, only an estimated 9% were able to do so.”¹³²
- “Eleven percent (11%) of respondents had their preferred name and gender on all IDs and records, while 68% reported that none of their IDs had the name and gender they preferred.”¹³³ “That figure was only 6% for people with no income.”¹³⁴
- “(49%) did not have an ID or record with the name they preferred, and 67% did not have an ID or record with the gender they preferred.”¹³⁵
- Only “(30%) of respondents completed a legal name change.”¹³⁶
- “Of those who wanted to update their driver’s license or state ID, an estimated 44% were able to change their name on the license and an estimated 29% were able to change their gender.”¹³⁷

The financial costs¹³⁸, potential of being outed, risk of harassment, and complexity of the system are all significant burdens created by the current name change system in Pennsylvania and explain some of the data above. The 2015 U.S. Transgender Survey also found that “(34%) of

¹³² James, S. E., Herman, J. L., Rankin, S., Keisling, M., Mottet, L., & Anafi, M. (2016). The Report of the 2015 U.S. Transgender Survey. Washington, DC: National Center for Transgender Equality.

<https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>

¹³³ *Id.*

¹³⁴ *Id.*; *New Jersey Comment 9 on the Proposed Amendments to Rule 4:72 – Removal of Publication* (October 14, 2020), <https://www.njcourts.gov/courts/assets/supreme/reports/2020/comments/rule4.72comment009.pdf>.

¹³⁵ James, S. E., Herman, J. L., Rankin, S., Keisling, M., Mottet, L., & Anafi, M. (2016). The Report of the 2015 U.S. Transgender Survey. Washington, DC: National Center for Transgender Equality.

<https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>.

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ A partner at a law firm in Oregon wrote that she has helped clients with name and/or gender marker changes “on a pro bono basis, because most transgender clients do not have the income to pay attorney fees—or in many cases even court fees. Second, the current court process is unnecessarily complex and invasive.” Lisa Rackner, *Support for HB 2673A*, (May 3, 2017), <https://olis.leg.state.or.us/liz/2017R1/Downloads/CommitteeMeetingDocument/123941>.

people who were granted a legal name change reported that they had spent over \$250, and 11% spent over \$500.”¹³⁹ Further, 35% of transgender individuals who did not attempt to legally change their name did not do so because it was too expensive to afford.¹⁴⁰ Also, according to one survey 31% of transgender people living in Pennsylvania were living in poverty.¹⁴¹ Clearly the costs of a name change can be improved in Pennsylvania through lower fees and also a more simple process to reduce the need to pay for a lawyer. Because of many transgender individuals’ inability to afford a name change on all documentation, they may be outed through inaccurate information when presenting identification in public. Further, publication may also result in the name change applicant being outed.¹⁴² As previously demonstrated in section I, being outed can be dangerous.

Even beyond violence, transgender people may be reluctant to obtain a name change as described by an Oregon lawyer because:

Judges and court staff sometimes lack training or background in the issue of gender designations, which can result in unnecessary and inappropriate comments or even inquiries into private details about the petitioner’s transition. Stories about these incidents are rampant throughout the trans community and present a barrier for people who might otherwise utilize the court system because they do not want to experience discrimination or an invasion of their privacy.¹⁴³

Similarly, in a comment submitted in support of removal of the name change publication requirement in New Jersey, one transgender lawyer-advocate wrote:

As someone who has gone through the name change process, I can also speak from personal experience. In my case, I recognize that I had many privileges most transgender people do not have. I am a practicing attorney with the ability to navigate the legal system; the costs associated with the proceeding, including the publication requirements, were not burdensome to me; and, after I came out, I was

¹³⁹ James, S. E., Herman, J. L., Rankin, S., Keisling, M., Mottet, L., & Anafi, M. (2016). *The Report of the 2015 U.S. Transgender Survey*. Washington, DC: National Center for Transgender Equality, <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>.

¹⁴⁰ *Id.*

¹⁴¹ 2015 U.S. Transgender Survey: *Pennsylvania State Report* (May 2017) <https://transequality.org/sites/default/files/docs/usts/PA-USTS-Report.pdf>.

¹⁴² New York City Bar, *Report on Legislation by the Lesbian, Gay, Bisexual, Transgender & Queer Rights Committee, Civil Rights Committee, and Sex & Law Committee* (April 15, 2020), <https://s3.amazonaws.com/documents.nycbar.org/files/2020649-SupportforGenderRecognitionAct.pdf>.

¹⁴³ Lorena Reynolds, Letter in Support of HB 2673A to the Oregon Senate Judiciary Committee (May 2, 2017), <https://olis.leg.state.or.us/liz/2017r1/Downloads/CommitteeMeetingDocument/124171>.

open concerning my status as a transgender person. But even with all those advantages, I still faced push back from some people close to me when I explained that the notice of my name change would be published twice in the local newspaper. Clearly, most transgender individuals do not have all the benefits that I enjoyed, and many do not want people to know about their status. For them the publication requirement can be a personal nightmare.¹⁴⁴

The current system in Pennsylvania is no less burdensome than New Jersey's former system, and shares many similar features. In addition, the written statement by Alex Myers (a Pennsylvanian) previously mentioned above best illustrates the deep flaws in Pennsylvania's current name change system:

I am currently involved in [the name change] process and am asking for a name change for the purpose of having my legal name correctly reflect the gender that I present in my everyday life. This process includes submitting a petition with a filing fee and submitting a fingerprint card and my current legal name for identification. Another part of this process includes the publication of this information in two newspapers in my vicinity. This is a costly, unnecessary requirement which places individuals like me at risk of discrimination in the form of housing, employment, and public accommodations. It also places individuals like me at risk of harassment, bodily harm, and homicide.

There is a process available to both waive this publication requirement and seal the records of an individual's petition. Petitioning for this supplemental component adds both time and cost to an already lengthy and expensive process, is out of reach for those who have neither the time nor resources available for completing the application and is not uniformly granted. I respectfully ask that this matter of safety and dignity receive your consideration.¹⁴⁵

In fact, these burdens often discourage people from even beginning the name change process, in some cases meaning that they are not able to access important governmental benefits. The testimony of Lindsay Schoonmaker, Esq., Supervising Attorney at Philadelphia VIP, illustrates the extent to which a name change is "prohibitively expensive" for so many of their pro bono "clients who are living at under 200% of the federal poverty guidelines."¹⁴⁶ Many individuals are unable

¹⁴⁴ *New Jersey Comment 6 on the Proposed Amendments to Rule 4:72 – Removal of Publication* (October 14, 2020), <https://www.njcourts.gov/courts/assets/supreme/reports/2020/comments/rule4.72comment006.pdf>.

¹⁴⁵ Alex Myers, *Written Statement on the Publication Requirement*, (April 27, 2021).

¹⁴⁶ Philadelphia VIP, *Testimony of Lindsay Schoonmaker*, (June 25, 2021), attached as Exhibit A to this report.

to cover a \$20 fingerprint fee and the costs of publication even though the legal services are free.¹⁴⁷ The stories of four clients seeking name changes provide insight into the consequences of Pennsylvania's antiquated name change system.¹⁴⁸

The first client, birthed by a midwife, did not have and could not obtain a birth certificate.¹⁴⁹ Further, he did not have a REAL ID.¹⁵⁰ Therefore, he would have to "petition to establish birth facts" to obtain valid documentation for a name change.¹⁵¹ The client ultimately abandoned the name change process because "he could not escrow money for the costs."¹⁵²

Similarly, a second client sought to change her legal name to the one she had used ever since she first enrolled in school.¹⁵³ Therefore, she desired to amend her birth certificate.¹⁵⁴ However, her uncle failed to help her pay the application process costs and she was unable to raise the funds required for the name change process.¹⁵⁵ As a result, she "no longer wanted VIP services" because she could not afford the costs of publication.¹⁵⁶

Third, one person who had a different name on her Social Security card and birth certificate sought a name change on her birth certificate in order to conform the two documents.¹⁵⁷ However, "[b]ecause of the discrepancy in her identity documents, [she] could not legally drive, get a credit card, or a get government-issued ID." Nevertheless, when informed about the costs, "she decided to not move forward with her case."¹⁵⁸

Fourth, the mother of two minors sought to change their names to fix spelling errors and change their last names so they would no longer reflect the name of their absent father.¹⁵⁹ The two minors "were not using their father's name despite it being on their birth certificates ... causing issues with school and after-school activities."¹⁶⁰ When informed about the cost of the name changes, the mother could not afford to proceed, so "[s]he asked for her case to be closed and

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

stated that she would come back if she was able to save up the money.”¹⁶¹ She has yet to reach out to Pennsylvania VIP again.¹⁶²

These testimonies help demonstrate some of the challenges of obtaining a name change nationally and in Pennsylvania. Specifically in Pennsylvania the most troubling issues are the costs, publication requirement, and the inability to have multiple documents (such as a driver’s license and birth certificate) changed efficiently and consistently through one system.

Further, additional requirements such as notarization or a required physician’s statement in the context of a gender designation change, pose additional burdens on would-be applicants. A gender designation change on a birth certificate in Pennsylvania currently requires a physician’s statement that the applicant “has had appropriate clinical treatment for gender transition.”¹⁶³ This is unnecessary and burdensome, in part because transgender individuals often lack access to medical care.¹⁶⁴ Requiring the attestation of a physician is not only time consuming and costly but it is an unnecessary invasion into a person’s medical privacy.¹⁶⁵ Additionally, some transgender individuals may have trouble finding a doctor who may be willing to provide such attestation or be forced into uncomfortable conversations.¹⁶⁶

C. Constitutional Equal Protection Concerns

Pennsylvania’s current name change system also raises equal protection concerns. Unlike the cumbersome name change system that transgender individuals and the general population seeking a name change must navigate, the process is streamlined in the context of marriage and divorce. For example, married or divorced individuals changing their last name are not required

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ National Center for Transgender Equality, *ID Documents Center Pennsylvania* (2021), <https://transequality.org/documents/state/pennsylvania#:~:text=To%20obtain%20a%20legal%20name,sealed%20for%20the%20applicant's%20safety>.

¹⁶⁴ NYCLU, *Joint Memo of Support for Gender Recognition Act* (February 2020), <https://www.nyclu.org/en/publications/joint-memo-support-gender-recognition-act>.

¹⁶⁵ 2015 U.S. Transgender Survey: *Pennsylvania State Report* (May 2017) <https://transequality.org/sites/default/files/docs/usts/PA-USTS-Report.pdf>; NYCLU, *Joint Memo of Support for Gender Recognition Act* (February 2020), <https://www.nyclu.org/en/publications/joint-memo-support-gender-recognition-act>.

¹⁶⁶ 2015 U.S. Transgender Survey: *Pennsylvania State Report* (May 2017) <https://transequality.org/sites/default/files/docs/usts/PA-USTS-Report.pdf>; NYCLU, *Joint Memo of Support for Gender Recognition Act* (February 2020), <https://www.nyclu.org/en/publications/joint-memo-support-gender-recognition-act>.

to publicize their name change.¹⁶⁷ Not only is this extra burden on transgender and other individuals unfair, but this unequal treatment may be in violation of both the equal protection clause of the United States Constitution and the Constitution of Pennsylvania, the latter stating that “[e]quality of rights under the law shall not be denied or abridged in the Commonwealth of Pennsylvania because of the sex of the individual.”¹⁶⁸

Further, the current Pennsylvania system may violate the rights of former felons as related to their ability to change their name. Currently some transgender former felons may be prohibited without due process from changing their name and or sex because of a prior felony.¹⁶⁹ As a result, felons with inaccurate identification are not able to access crucial governmental benefits. Under Pa.C.S. § 702(c)(1)–(2) the state has an “irrebuttable conviction bar” which precludes individuals “convicted of serious felonies from ever obtaining a name change” while other felonies result in a bar for two years after the end of the individual’s sentence.¹⁷⁰ In *Porter v. Commonwealth of Pennsylvania*, the petitioners, three transgender women brought suit to “change their names to reflect their female gender, but [were] barred from doing so simply because they were convicted of felonies years ago.”¹⁷¹ The case was ultimately dismissed because of the misjoinder of parties, failure to state a claim against named respondents, and lack of standing.¹⁷² But the court

¹⁶⁷ See Tyrone Jones, Name Change After Marriage in Pennsylvania, <https://www.marriagenamechange.com/blog/pennsylvania-name-change/>.

¹⁶⁸ Pa. CONST. Art I, § 28. *Prohibition against denial or abridgment of equality of rights because of sex.* <https://www.legis.state.pa.us/WU01/LI/LI/CT/HTM/00/00.001.028.000..HTM>.

¹⁶⁹ See *Porter v. Commonwealth of Pennsylvania*, No. 303 MD 2019, *Petition for Declaratory and Injunctive Relief* (May 29, 2019); Pennsylvania Statutes Title 54 Pa.C.S.A. Names § 702:“(C) Convicted felons. --

(1) The court may order a change of name for a person convicted of a felony, subject to provisions of paragraph (2), if:

(i) at least two calendar years have elapsed from the date of completion of a person's sentence and that person is not subject to the probation or parole jurisdiction of any court, county probation agency or the Pennsylvania Board of Probation and Parole; or

(ii) the person has been pardoned.

(2) The court may not order a change of name for a person convicted of murder, voluntary manslaughter, rape, involuntary deviate sexual intercourse, statutory sexual assault, sexual assault, aggravated indecent assault, robbery as defined in 18 Pa.C.S. § 3701(a)(1)(i) (relating to robbery), aggravated assault as defined in 18 Pa.C.S. § 2702(a)(1) or (2) (relating to aggravated assault), arson as defined in 18 Pa.C.S. § 3301(a) (relating to arson and related offenses), kidnapping or robbery of a motor vehicle or criminal attempt, criminal conspiracy or criminal solicitation to commit any of the offenses listed above or an equivalent crime under the laws of this Commonwealth in effect at the time of the commission of that offense or an equivalent crime in another jurisdiction.

54 Pa.C.S. § 702(c)(1)-(2).”

¹⁷⁰ 54 Pa.C.S. § 702(c)(1)–(2); *Porter v. Commonwealth of Pennsylvania*, No. 303 MD 2019, *Petition for Declaratory and Injunctive Relief* (May 29, 2019).

¹⁷¹ *Id.*

¹⁷² *Porter v. Commonwealth of Pennsylvania*, No. 303 MD 2019, *Memorandum Opinion* (Feb. 13, 2020).

acknowledged that it had not addressed the petitioners' constitutional claims. The following summarizes the compelling claims that petitioners made concerning the issue of the constitutionality of the irrebuttable conviction bar provision.

Petitioners argued that the irrebuttable conviction bar is unconstitutional under the Pennsylvania Constitution (1) article I, section 1,¹⁷³ a due process guarantee, "because it improperly infringes the right to control one's name"; (2) article I, section 7¹⁷⁴ regarding free speech "because it improperly infringes the guarantee against compelled speech"; and (3) article I, section 1 for violating "their interest in avoiding disclosure of personal matters."¹⁷⁵ They pointed out that "the irrebuttable conviction bar is identified early in the name change process, even before a hearing can be scheduled, and [they therefore lacked] any opportunity to make a case for a name change."¹⁷⁶

First, petitioners argued that irrebuttable conviction bar "violates Pa. Const. art. I, § 1's due process guarantee" because "[t]he right to control one's name is a fundamental right" because a name change implicates the right to privacy and the right to "acquir[e], possess[] and protect [one's] reputation".¹⁷⁷ Importantly "[c]itizens of this Commonwealth long have possessed the right to control their names. In 1852, Pennsylvania's legislature established a name change procedure in affirmance of that inherent right."¹⁷⁸ It was not until 1998 until the felony bar went into effect under the mistaken belief that that it would prevent fraud.¹⁷⁹ Petitioners added that "[t]he fundamental right to control one's name cannot be abridged by an irrebuttable presumption that people previously convicted of felonies are engaging in fraudulent activity when they seek to

¹⁷³ "Article I, section 1 of the Pennsylvania Constitution pertains to the "Inherent rights of mankind" and provides: All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness." Pa. CONST. art. I, § 1. *Porter v. Commonwealth of Pennsylvania*, No. 303 MD 2019, *Memorandum Opinion* (Feb. 13, 2020).

¹⁷⁴ "Article I, section 7 of the Pennsylvania Constitution pertains to "Freedom of press and speech; libels" and, in relevant part, provides: "The free communication of thoughts and opinions is one of the invaluable rights of man, and every citizen may freely speak, write and print on any subject, being responsible for the abuse of that liberty." Pa. CONST. art. I, § 7. *Porter v. Commonwealth of Pennsylvania*, No. 303 MD 2019, *Memorandum Opinion* (Feb. 13, 2020).

¹⁷⁵ *Porter v. Commonwealth of Pennsylvania*, No. 303 MD 2019, *Memorandum Opinion* (Feb. 13, 2020).

¹⁷⁶ See Allegheny County Civil and Family Court Rules, Local Rule 505(3)(d)-(e); Exhibit 1, Rosso Aff. ¶¶ 4-6 and Exhibit A thereto. *Porter v. Commonwealth of Pennsylvania*, No. 303 MD 2019, *Petition for Declaratory and Injunctive Relief* (May 29, 2019).

¹⁷⁷ Pa. CONST. art. I, § 1; *Porter v. Commonwealth of Pennsylvania*, No. 303 MD 2019, *Petition for Declaratory and Injunctive Relief* (May 29, 2019).

¹⁷⁸ *Porter v. Commonwealth of Pennsylvania*, No. 303 MD 2019, *Petition for Declaratory and Injunctive Relief* (May 29, 2019).

¹⁷⁹ *See id.*

change their names.” Further, felons are not even provided due process to be able to demonstrate that they are seeking a name change for legitimate purposes (not fraud).¹⁸⁰

Second, petitioners asserted that the irrebuttable conviction bar “violates Pa. Const. art. I, § 7’s guarantee against compelled speech, which protects the right to refrain from engaging in expressive conduct, [arguably] such as identifying oneself by an undesired name.”¹⁸¹ Because of the inability to change their names, petitioners would be “forced to speak and write an undesired name [from their government-issued identification] in order to travel [overseas], [drive], vote [“for the first time in a precinct”], pay taxes, or simply conduct their daily lives.”¹⁸² Therefore, “unless people with felony convictions choose to relinquish their constitutionally-protected rights to vote and travel freely, they must express their undesired names by force of law.”¹⁸³ And because fraud is not a major issue as relates to name changes, the government has no legitimate interest supporting the irrebuttable conviction bar.¹⁸⁴

Third, petitioners made a strong case that “the irrebuttable conviction bar is also unconstitutional as applied to Petitioners because it violates their paramount interest in avoiding disclosure of personal matters under Pa. Const. art. I, § 1.”¹⁸⁵ The inability of transgender individuals to have accurate identification forces them to publicly out themselves every time they have to show ID which potentially reveal personal medical information (such as that they are transitioning).¹⁸⁶ As petitioners argue, the “[f]orced publicity of a transgender person’s most private information is not justified by any legitimate government interest. To the contrary, it exposes transgender individuals to a substantial risk of stigma, discrimination, intimidation, and violence.”¹⁸⁷

In light of these arguments, the petitioners asserted that the irrebuttable conviction bar is unconstitutional.

IV. Pennsylvania’s Current Name Change System can be Streamlined to Better Serve its Residents

As described in the previous section, Pennsylvania’s current name change system is flawed and in need of much improvement. As described in section II, there are many states that have

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

improved their name change process over the years. Taking into consideration the best name change systems, we recommend a largely administrative name change system under the auspices of the Court of Common Pleas that is streamlined to be efficient and less burdensome on applicants. This structure is described in full detail in section VI.

Through a streamlined administrative process, more people who desire a name change will be able to afford one, as a lawyer will no longer be necessary in most instances. The application process will generally be fast, convenient, and affordable. Instead of having to go through multiple different application processes to ensure that all state documentation is matching, this system facilitates updating multiple documents (such as a birth certificate and a driver's license) at the same time through a single form. This will save transgender residents from being indirectly outed in places of public accommodation or when seeking social and public services.

Currently the name change related information is not automatically sealed in Pennsylvania and publication is required. The proposed system would remove the publication requirement and provide for automatic sealing to protect the safety of applicants; it also would lessen the burden of courts needing to make a determination regarding waiver of publication and sealing. This will help mitigate the legitimate concerns of the transgender community regarding the dangers of publication or the fear of a record of their name change on a public docket. It will further help transgender individuals avoid being outed or having to reveal private medical information. Further, this system will help applicants avoid some instances of discrimination, harassment, and violence as the result of a name change.

The removal of the notarization requirement and the letter from a physician regarding gender will lower the financial costs of seeking a name change and also the potential negative reaction that some public notaries or physicians may have to an applicant's transgender status. For these reasons, Pennsylvania should no longer require a physician's statement. Instead, the applicant would sign the application/petition for name and/or gender designation change under penalty of perjury, attesting that their application/petition is true and accurate. These changes would help applicants navigate the process more easily, more safely, and with lower with fewer expenditures. They will be relieved of certain of the unnecessary burdens in place in pursuing a name or gender designation change. A simple and straightforward, coordinated process would allow Pennsylvania residents to apply for such a change, generally from the safety of their home and without having to publicly "out" themselves.

V. The Legitimate Interests of the Commonwealth Will Be Safeguarded

The proposed name and gender designation change system will ensure that the legitimate interests of the Commonwealth are protected. In the proposed system, law enforcement will have

the ability to access both the old and the new name; parents of non-emancipated minor applicants whose parents have not consented will be provided notice unless such notice is excused for due cause; and creditors and other parties with a legitimate interest will still have access to all relevant information about applicants.

There will also be safeguards in place to protect the parental rights of parents. Parents of minors seeking a name change will be notified of the hearing by direct mail. Therefore, a parent would have the ability to preserve whatever rights they have under law to oppose a name change for their child on the basis that the change violates their parental rights or is not in the best interest of the child, and a court would make the necessary determination.

Regarding the issue of publication, Judge Kay Walcott-Henderson of Mercer County Superior Court in New Jersey wrote that she “never had anyone present opposition” to a name change through notification by publication and that in the two name change opposition cases before her, the person opposing a minor’s name change was a parent notified by direct mail.¹⁸⁸ This suggests that notification provided to a parent by mail would likely be sufficient to protect the rights of parents with children seeking a name change.

Further, this process would also protect the interests of children by involving the Court when the minor does not have the consent of a parent or a legal guardian or under specified circumstances. By presiding over related hearings if there is good cause to object, the Court will have the opportunity to protect the best interests of the child, giving due weight to the preference of the minor Applicant. This process helps ensure that the constitutional rights of parents are protected, while at the same time it avoids the rejection of the minor’s application for a name change simply on the basis of their parent’s objection.

Law enforcement will still have the ability to access both the changed name and the new name of applicants. The system leaves law enforcement with the ability to exercise its vigilance through their access to both names. Therefore, the current prohibitions on name changes by former felons are unnecessary in addition to being discriminatory and violative of equal protection provisions as discussed above.¹⁸⁹ Nor is publication necessary (or even relied upon) in the 21st century for law enforcement, creditors, or other parties with a legitimate interest in identifying individuals, because people can be identified by their Social Security number, fingerprints, or

¹⁸⁸ *New Jersey Comment 14 on the Proposed Amendments to Rule 4:72 – Removal of Publication* (October 16, 2020), <https://www.njcourts.gov/courts/assets/supreme/reports/2020/comments/rule4.72comment014.pdf>.

¹⁸⁹ Ironically, the prohibition also currently prohibit felons who desire to change their legal name to reflect their name listed on their conviction. Philadelphia VIP has even had a client denied a name change that would have matched the name listed on their conviction. 6/24/2021 Email from Lindsay H. Schoonmaker (Pennsylvania VIP) to Ethan Fogel (Dechert LLP) and Vishan Patel (Dechert LLP).

DNA.¹⁹⁰ As previously described, creditors do not rely upon publication regarding name changes in newspapers or similar sources.¹⁹¹ Thus, the publication requirement “is no longer necessary for its original purpose of notifying creditors of a name change” and in the era of the internet, financial institutions “no longer require publication information to keep accurate records.”¹⁹² Last, judges may “require specific, direct notifications to creditors and other parties when appropriate.”¹⁹³ For these reasons, no special additional safeguards in the name change system are needed for creditors or law enforcement beyond the resources that they already possess.

VI. Proposed Structure for the Name Change Process

This section proposes a recommended structure for a modernized, comprehensive yet user-friendly, largely administrative name change and gender designation recording process in Pennsylvania. As noted elsewhere, similar systems have already been established in other states, and Pennsylvania itself already has an administrative name change and an administrative birth record modification procedure in place under certain circumstances. Our proposal draws upon the best of such systems and provides what we believe to be a superior framework.

The system proposed below is a work in progress. We have received very helpful input from local and national legal services and advocacy organizations and practitioners, including the American Civil Liberties Union, the Transgender Legal Defense and Education Fund, Lamda Legal, the Penn Law Child Advocacy Clinic, and other agency and private practitioners in Pennsylvania, New York, New Jersey, Maryland, Oregon and other states. The proposal, however, is solely that of the members of our Steering Committee, who include Dechert LLP and current and former leaders at the Homeless Advocacy Project, Mazzoni, Philadelphia VIP, Rutgers Law School, and the Philadelphia Bar Association. We intend to widen the scope of review and solicit further input from the Pennsylvania courts, legislators, and agencies.

As more fully set out below, we propose that the system be established under the auspices of the Pennsylvania Courts of Common Pleas but that the ministerial aspects of the name change process be administered in large part by a designated Commonwealth administrative agency (the “Administrative Agency”), possibly the Pennsylvania Division of Vital Records (“DVR”).

¹⁹⁰ *New Jersey Comment 12 on the Proposed Amendments to Rule 4:72 – Removal of Publication* (October 14, 2020), <https://www.njcourts.gov/courts/assets/supreme/reports/2020/comments/rule4.72comment012.pdf>.

¹⁹¹ 12/18/2020 Email from Francis Creighton (Consumer Data Industry Association) to the National Consumer Law Center.

¹⁹² NYCLU, *Joint Memo of Support for Gender Recognition Act* (February 2020), <https://www.nyclu.org/en/publications/joint-memo-support-gender-recognition-act>.

¹⁹³ *See* NYCLU, *Joint Memo of Support for Gender Recognition Act* (February 2020), <https://www.nyclu.org/en/publications/joint-memo-support-gender-recognition-act>.

Those seeking a name change would submit an application/petition seeking the name and/or gender designations. In the first instance, the application/petition would be filed with the Administrative Agency. The Administrative Agency would review it for completeness and assess whether under the specific guidelines established by statute the circumstances require that the application/petition be referred to the Court for a hearing and initial determinations. Those circumstances are (i) the absence or inability to obtain documents that establish identity, such that the Court must make findings establishing identity or (ii) in the case of certain minors (as more fully described below), there is a need to determine whether the proposed action is consistent with parental rights and the best interests of the child.

When the guidelines do not require such referral to the Court for such hearings and initial findings, or once any such required initial findings have been made, the Court would finalize the legal name change process by issuing an Order effectuating the name and/or gender designation change.

After the issuance of the Order, the Administrative Agency would facilitate the issuance of new identity documents, such as birth certificates and (if requested) driver's licenses or state identification cards, in a coordinated and uniform manner, thus providing consistency and security.

Confidentiality would be maintained to the greatest possible extent at all times, a feature particularly important to protecting the safety and privacy of transgender persons seeking name changes.

Consistent with the national trend, including the recent experience of New Jersey and New York, the name and gender designation change procedures described below do not require publication in a newspaper. As noted above, most states in the United States either never require such publication for any applicant (17 states), never require such publication for transgender individuals (3 states), or presumptively do not require such publication for transgender individuals (6 states). Publication is also not required in the case of a name change arising in the context of a marriage or divorce, or in certain other administrative name change procedures already available in Pennsylvania. The publication requirement has become outdated over time and, as noted above, the credit industry has readily acknowledged that it does not rely on such publication for its purposes.

Similarly, the system proposed would permit name and/or gender designation changes by people with a history of convictions, as the rights of the Commonwealth and other parties are not adversely affected by such name or gender designation changes.

A. Adult Applications**1. Eligibility for Relief**

Adult persons eligible for relief include all individuals age 18 or older residing in Pennsylvania.

2. Application/Petition and Related Documents

The person whose name is sought to be changed (whether filing on their own or through another person, the “Applicant”) would submit to the Administrative Agency: (a) a completed and signed name and/or gender designation application/petition; (b) a signed draft judicial name change and/or gender designation change Order; (c) any required supporting documents; and (d) the payment of fees or a request for a fee waiver including an affidavit of indigency.

a. Administrative Name Change Application/Petition (required)

An application/petition for the change of legal name and/or gender designation must be signed under penalty of perjury. This process will have a single form allowing the Applicant to apply for all state documentation updates. The form is modeled in part on the form used in Oregon¹⁹⁴ but will also constitute a Court petition.

First, Applicants would fill out a basic information section of the form providing all relevant identifying information and the requested changes to their name and/or gender designation (M/F/X). Second, as more fully described in paragraph b., Applicants would fill out the “relief requested” section of the form designating which of the optional identity documents they request be issued or revised, including on identifying documents including certified copies of their revised birth certificate, driver’s license or state identification card, or any other vital records. Third, as more fully described in paragraph c. below, the Applicant would submit a completed draft proposed judicial name and/or gender designation change order. Fourth, as more fully described in paragraph d. below, the Applicant would supply any required supporting documentation.

¹⁹⁴ Oregon Health Authority, *Application to Change the Name and/or Sex on a Record of Live Birth to Support Gender Identity* (Jan. 2018), <https://www.oregon.gov/oha/PH/BIRTHDEATHCERTIFICATES/CHANGEVITALRECORDS/Documents/OHA-2673.pdf>

b. Selection of Optional Documents to be Issued

i. *Birth Certificate (required issuance but optional certified copies)*¹⁹⁵

While the issuance of an amended birth certificate is a required outcome if the original birth certificate or court substitute was issued in Pennsylvania, the Applicant may also opt to request a certified copy of the revised Pennsylvania birth certificate or new birth certificate (for those for whom the Court has issued a supplemental identification order as described in paragraph d. below).

ii. *Driver's License or State Identification Card*¹⁹⁶ (optional)

The Applicant may opt to request a new or updated driver's license or state identification card, which will reflect the Applicant's new name and revised gender. Also, veterans may check a box to request a "veteran's designation" on their driver's license or state identification card.

iii. *Other Vital Records (optional)*

The Applicant may opt to request that their name and/or gender designation be updated on any other vital record, such as their marriage license or the birth certificate of their child.

c. Judicial Name Change Order¹⁹⁷ (required)

The Applicant must sign and submit a completed draft of a name and/or gender designation change order. Such a court order is particularly useful when the Applicant seeks to update forms of identification outside of Pennsylvania, such as in applying for a federal passport or a new social security card. The name and/or gender designation change order and any related court process will be automatically sealed.

¹⁹⁵ For sample forms, see: Pennsylvania Department of Health Division of Vital Records, *Instructions to Correct Birth Certificate*,

https://www.health.pa.gov/topics/Documents/Certificates%20and%20Records/Birth_certificate_correction.pdf.

¹⁹⁶ For sample forms, see: Pennsylvania Department of Transportation, *Request For Gender Change On Driver's License/Identification Card*, <https://www.dot.state.pa.us/Public/DVSPubsForms/BDL/BDL%20Form/DL-32.pdf>

¹⁹⁷ The relevant section of the form can be created based on the following: Oregon Judicial Department, *Change of Name or Sex*,

[https://www.courts.oregon.gov/forms/Documents/Name%20and%20Sex%20Change%20Packet%20\(Adult\).pdf?_ga=2.199426539.49698297.1619466535-577359879.1619033983](https://www.courts.oregon.gov/forms/Documents/Name%20and%20Sex%20Change%20Packet%20(Adult).pdf?_ga=2.199426539.49698297.1619466535-577359879.1619033983).

d. Supporting Documents (Required)

The Applicant must provide supporting documents that properly identify the Applicant. Proper identification may be demonstrated through the Applicant's choice of documents adding up to a certain number of points. The point system would be similar to the system used when applying for a new passport,¹⁹⁸ and the permissible supporting documents would be similar to the forms of identification currently accepted for obtaining a birth certificate from the DVR¹⁹⁹ or modifying a child's birth certificate in Pennsylvania.²⁰⁰ With respect to gender changes, no additional supporting documentation (such as a physician's letter) shall be required; the Applicant's statement regarding gender will suffice.

The Applicant may request a judicial referral if the Applicant (1) was never issued or cannot obtain a birth certificate and would like one issued or (2) does not have any form of accepted identification and needs to prove their identity by some other means.

e. Payment of Fees or Request for Fee Waiver and Affidavit of Indigency (Required)

The Applicant would pay a general application fee (for agency processing and the judicial name and/or gender designation change order) and an additional fee for each updated identification document requested. Taking into consideration the deterrent or prohibitive effect of fees, (1) fee waivers be available for Applicants who submit an affidavit of indigency²⁰¹ and (2) if not waived, the fees for any requested birth certificate, driver's license, and state identification card will be nominal.

In signing the application/petition, the Applicant will acknowledge the following disclosure:

The Applicant understands that the application also is a petition to the Court of Common Pleas in the county of residence of the person whose name or gender designation is

¹⁹⁸ U.S. Department of State Travel.State.Gov, *Photo Identification*,
<https://travel.state.gov/content/travel/en/passports/how-apply/identification.html>.

¹⁹⁹ Pennsylvania Department of Health, *Acceptable ID*,
<https://www.health.pa.gov/topics/certificates/Pages/Acceptable-ID.aspx>.

²⁰⁰ See Pennsylvania Department of Health, *Request to Modify a Child's Birth Record*,
<https://www.health.pa.gov/topics/Documents/Certificates%20and%20Records/Request%20to%20Modify%20a%20Child%27s%20Birth%20Record.pdf>.

²⁰¹ This statement would not require supporting documents. Pennsylvania's form could be based on the affidavit used in Massachusetts, available here: <https://www.mass.gov/doc/affidavit-of-indigency/download>, and the related supplement, available here: <https://www.mass.gov/doc/supplement-to-the-affidavit-of-indigency/download>.

proposed to be changed for a sealed Order declaring that the name and/or gender designation has been changed as requested and, if required, an Order establishing proof of identity. If the application is for change of name and/or gender designation of a minor (a person under 18 years of age), it is also a petition for the Court to hold any hearings and make any rulings required by law that the proposed name and/or gender designation change is consistent with parental rights and is in the best interest of the minor.

Lastly, the Applicant must affirm under penalty of perjury (on the form) that the information submitted is true and correct.

3. Procedure for Processing of Application/Petition

Venue would reside in the Court of Common Pleas for the county of residence of the Applicant (as defined above to refer to the person whose name and/or gender designation is proposed to be changed). The Applicant would submit all application/petition materials and fees to the Administrative Agency.²⁰² The Administrative Agency would review the application for completeness and, if complete, then submit the draft judicial order and/or judicial referral (if requested by the Applicant) and supporting documents to the appropriate Court of Common Pleas.

Unless the Applicant has requested or the Court for cause has determined that an evidentiary hearing is required to establish identity (and except as provided below in the case of minors), the Court will issue and seal the name change and/or gender designation change order, seal such order, and send it to the Administrative Agency. The Order will then be assigned to a judge who would be statutorily required to approve the draft Order for all applications determined to be complete.²⁰³

If the Court determines that additional evidence is required to establish the facts of birth or identity of the Applicant, upon sufficient evidence that the Applicant is who they claim to be, the Court of Common Pleas will issue a re-constituted birth certificate. This process will be broad in scope and flexible to allow for the Applicant to prove facts of birth and for the judge to provide alternative options to an original birth certificate.

²⁰² For sample form, see: Oregon Judicial Department, *Change of Name or Sex*, [https://www.courts.oregon.gov/forms/Documents/Name%20and%20Sex%20Change%20Packet%20\(Adult\).pdf?_ga=2.199426539.49698297.1619466535-577359879.1619033983](https://www.courts.oregon.gov/forms/Documents/Name%20and%20Sex%20Change%20Packet%20(Adult).pdf?_ga=2.199426539.49698297.1619466535-577359879.1619033983); Pennsylvania Department of Health Division of Vital Records, *Instructions to Correct Birth Certificate*, https://www.health.pa.gov/topics/Documents/Certificates%20and%20Records/Birth_certificate_correction.pdf.

²⁰³ This process would require changes to Pennsylvania Statutes Title 54 Pa.C.S.A. Names § 701.

Once issued, the Order will be provided to any court identified in the application/petition (or later determined) to have issued a then in effect protection from abuse order or spousal or child support order against the person whose name has changed, requesting that such court substitute the new name in any such order, and that the person benefitting from the protection from abuse or spousal or child support order be provided a copy of the revised order.

Birth Certificate Issuance and Certified Copies. After the Court Order is issued, for Applicants with a Pennsylvania birth certificate, the Administrative Agency will submit the Order to the DVR with instructions that the birth certificate be amended to reflect the new name and any revised gender designation. If the Applicant requested and paid for the issuance of certified copies of the amended birth certificates, the Administrative Agency will also inform DVR of such request and transmit the fee paid. DVR will reflect amended gender designations, including M/F/or X, on the new birth certificates. Thereafter, DVR will further amend gender designations upon request of the Applicant. The publicly available short form of birth certificate will not reflect prior names or prior genders.

Applicants who were issued a birth certificate by another other U.S. state or country and are able to obtain that birth certificate must contact that state or country to change their birth certificate. [The Court Order will direct that other jurisdictions honor the name change and any revised gender designation by reflecting it on their records, including birth certificates and identification documents.]

Driver's Licenses or State Identification Cards. If the Applicant requested and paid for the issuance of such a license or identification card, the Applicant will be provided with the Court Order, once issued, and referred to the instructions issued by the Social Security Administration ("SSA") for the amendment of Social Security cards. [Note that the SSA does not currently provide for an X gender designation and that applicable law requires that PENNDot not issue an amended driver's license until SSA has amended the social security records to reflect the name change.] The Applicant will be directed to notify the Administrative Agency once the SSA has amended the Applicant's Social Security records. When the Administrative Agency is informed that SSA has reflected the name and/or gender designation change, it will forward to the Pennsylvania Department of Transportation the request for issuance of the new license or identification card and will also forward the fee paid by the Applicant for such license or card.

Other Vital Records. If the Applicant requested and paid for the issuance of other amended vital records as described above, DVR or any other relevant Pennsylvania agency will reflect such amended vital records. The publicly available short form of such vital records will not reflect prior names or prior gender designations.

Substitution of New Name on Criminal History Records. After a name change, the Applicant may request the substitution of their name on an existing criminal history records, but that process will be handled by the Applicant, rather than through the name and/or gender designation change process handled by the Administrative Agency under the auspices of the Court. However, any publicly available form of such records will not reflect prior names or any prior gender designation. Having such information withheld from a publicly available record would protect transgender people from discrimination or physical harm by not “outing” their transgender status. Prospective employers, for example, have no legitimate interest in accessing such information. Commonwealth agencies, including the Pennsylvania State Police, would continue to have access both to the current and prior information, but would not make such information available in the context of routine interactions with the public.

4. Receipt of Revised Post-Change Documents

Five (5) certified copies of the judicial Order will be provided to the Applicant via mail at such address as the Applicant shall have provided in the Application, as such address may have been updated thereafter. Counsel to the Applicant, if any, will also be provided a copy of the Order. Updated birth certificates, driver’s licenses, and state identification cards, if requested, will also be provided to the Applicant via mail at any address provided by the Applicant. The Applicant and any counsel to the Applicant will continue to have access to the record of the name change proceedings.

5. Confidentiality

As part of the name change process, all court records generated will be automatically sealed.²⁰⁴ This reflects the administrative nature of the process. Similar to other administrative records, the records would not be public. Entities not affected by Pennsylvania’s current provision regarding sealing (such as the Pennsylvania State Police, Department of Corrections, and Pennsylvania governmental agencies) would continue to have access to the sealed records generated by the name and/or gender designation change process.

²⁰⁴ In Oregon, sealing consists of the following: “[The] Records office prepares a new birth record and the original birth record and the adoption documents are placed in a sealed file. Vital Record sealed files can only be opened through a court order from an Oregon Court even when the birth parents are known to the adoptee or the adoptive parents. Under Oregon law, when adoptees reach the age of 21 they may order their pre-adoption birth record.” Oregon Health Authority, *How to get a new birth certificate after court adoption*, <https://www.oregon.gov/oha/PH/BIRTHDEATHCERTIFICATES/CHANGEVITALRECORDS/Pages/AdoptionInState.aspx>.

B. Minor Applications

Under the proposed system, the application/petition process for minors would generally be the same as that for adults, except as described below.

1. Eligibility for Relief

Individuals under the age of 18 (each a “minor Applicant” and collectively, “minor Applicants”), who are emancipated shall be eligible for the administrative process without need of any Court finding. Non-emancipated minor Applicants who have the consent of at least one parent or legal guardian²⁰⁵ (a “parent”) and whose other parent has not objected to the change of name or gender designation will also be eligible for the administrative process, provided that the Court first determines that due notice was given to the non-objecting parent or is excused under Section 3 below. A non-emancipated minor Applicant who does not have the consent of a parent or legal guardian, and whose parents have not objected, will be eligible for the administrative procedure, provided that the Court has made the due notice determination referenced above. Non-emancipated minor Applicants whose parent has objected to the application/petition would be referred to the Court of Common Pleas to determine whether the proposed name change is consistent with parental rights and is in the best interests of the child (*see* Judicial Referral section below).

The application/petition may be filed by the minor Applicant, the Applicant’s parent (as defined above to include legal guardians), or a “next friend”. For minors who are under the care of a child welfare agency, “next friend” will be deemed to include, for this purpose, such child welfare agency or its designee or the minor Applicant’s child advocate.

2. Application/Petition

In addition to the materials identified in the adult Application section, the application/petition for a minor Applicant must include the following: (1) proper identification of the minor Applicant (if the application is made through a parent or guardian or next friend but not if made by the minors themselves) through a certified copy of an original birth certificate or alternative form of identification;²⁰⁶ (2) proper identification of any consenting parent through a

²⁰⁵ Pa. R. Civ. P. 2027 defines “guardian” as “the party representing the interests of a minor party in any action, whether as (a) the guardian of a minor appointed by any court of competent jurisdiction, (b) a person in the nature of a next friend selected to represent a minor plaintiff in an action, or (c) a guardian ad litem specially appointed by the court in which the action is pending.”

²⁰⁶ *See* Adult Application section above.

certified copy of an original birth certificate or alternative form of identification;²⁰⁷ (3) and the consent of at least one parent²⁰⁸ or an emancipation order. For minor Applicants whose application/petition is being filed by someone other than the minor Applicant themselves, the consent of that minor Applicant, if they are 8 years or older, would also be required.

If the consent of all parents is not included, notice must be provided to the non-consenting parent(s). To that end, the application/petition must include either (1) the name and last known (or readily ascertainable from available sources)²⁰⁹ address of any other parent(s)²¹⁰ or (2) one of the following: (i) a certified copy of a death certificate; (ii) a court order indicating that parental rights have been terminated; or (iii) an affidavit requesting waiver of the notice requirement. The affidavit requesting waiver of the notice requirement must assert that either: (1) the minor Applicant has no other known parents;²¹¹ (2) the other parent has abandoned the minor Applicant; (3) the other parent has not contributed to the minor Applicant's support for a continuous period of 5 years or more immediately preceding the minor Applicant's application;²¹² (4) the other parent's address is unknown and cannot be located, thus making notice impossible; (5) the other parent has been convicted of certain violent or sexual crimes against the minor or a sibling; or (6) the waiver is necessary for the physical or emotional protection of the minor Applicant.²¹³

²⁰⁷ See Adult Application section above.

²⁰⁸ The need for approval by only one parent or guardian, along with the ability of a minor to apply on their own through a next friend, would allow minors in the child welfare system or with otherwise non-traditional family situations to change their names while the notice requirements respect parental rights.

²⁰⁹ This language is based upon the requirements in Oklahoma. *Tubbs v Harrison (In re Tubbs)*, 620 P2d 384, (Ok. 1980).

²¹⁰ See, e.g., Delaware Court of Common Pleas Civil Rule 81(c): "If the petition is signed by only one parent, it shall be served [by the court], before presentation, upon the parent who did not join in the petition. If personal service cannot be made, substituted service shall be made as the Court directs." California follows a similar approach in which the court orders interested people to make known any objections, and the clerk (rather than the petitioner) is responsible for publishing or posting such orders. See also Maryland.

²¹¹ In Ohio, if there is no known father of the minor, the notice shall be given to the person who the mother of the minor alleges to be the father. If no father is so alleged, or if either parent or the address of either parent is unknown, notice by publication shall be sufficient as to the father or parent. Notice may be waived. Ohio Stat. § 2717.01(B). In Utah, waiver is available if the other parent has never acknowledged paternity. Utah Code § 42-1-2.

²¹² Georgia follows this approach. Ga. Code Ann. § 19-12-1(c). Iowa includes abandonment and failing to pay child support without good cause. Iowa Code Ann. § 674.6(3). In Oregon, notice is not required if the petitioning parent files a verified statement that asserts that the minor child has not resided with the other parent and that the other parent has not contributed or has not tried to contribute to the support of the child.

²¹³ Hawai'i follows this approach. Haw. Rev. Stat. § 574-5(a)(2)(C). In Maine, the judge may also limit the notice required if the petitioner shows that the minor is a victim of abuse and the minor is currently in reasonable fear of their safety. In Virginia, waiver of notice is available if the court finds by clear and convincing evidence that such notice would present a serious threat to the health and safety of the applicant. Va. Code § 8.01-217(A).

3. Notice and Objections

If a notice is required under the above Sections 1 and 2, the Court would issue such notice to any non-consenting, living parents whose parental rights have not been terminated or who are otherwise entitled to notice. After a reasonable waiting period for objections, having received none, the name and/or gender designation change would be granted. If a timely written objection by a parent is received, the Administrative Agency would refer the case to the Court. As noted above, the Application would be considered a Petition whenever it is referred to the Court for action.

4. Legal Authority

The proposed administrative process for minors would require an expansion or replacement of 28 Pa. Code § 1.35. The current statute limits name changes for minors to those born in Pennsylvania and has different requirements or proof for minors of different ages. For example, those who are 7 to 14 years old must provide a court order or adequate proof of current name usage for at least half of their life.²¹⁴

In contrast, the process proposed here would apply to all minor residents under the age of 18 and would provide fewer hurdles by: (1) only requiring the consent of one parent; (2) allowing expanded forms of identification; (3) not requiring notarization; and (4) creating a more efficient process to update multiple documents and resolve disputes.

5. Judicial Referral

If a judicial referral is required as set forth above, the Administrative Agency would refer such minor Applicant's application/petition and supporting materials to the Court of Common Pleas in the county of the minor Applicant's residence (or if the minor Applicant has no permanent residence, in any Pennsylvania county). In any such judicial proceeding, the formal petitioner may be the minor Applicant, through their attorney, guardian ad litem, or next friend,²¹⁵ or the minor Applicant's parent (as defined above). Only if the name change is disputed may the Court require additional evidence or a hearing in support of the name and/or gender designation change. Otherwise, this process may be accomplished entirely administratively based upon the information and documentation provided with the application/petition.

²¹⁴ The different requirement for minors of different ages can be found on the forms available here: <https://www.health.pa.gov/topics/certificates/Pages/Forms.aspx>

²¹⁵ In Pennsylvania, minors have standing to petition the court for a name change on their own behalf. *In re Change of Name of E.M.L. to E.M.S. Appeal of L.D. and J.L., Birth Parents*, 19 A.3d 1068 (Penn. 2010).

The following will be the legal standard in judicial proceedings: The Court shall only consider the best interests of the child if there is good cause asserted to object to the name and/or gender designation change.²¹⁶ Objections based on concerns that the proposed change does not reflect the minor Applicant's sex or gender assigned at birth shall not constitute good cause.²¹⁷ If there is good cause to object, the Court will consider the best interests of the child, giving weight to the preference of the minor Applicant.²¹⁸ When considering the best interests of the child, the Court may consider whether the chosen name or gender designation reflects the current gender identity of the minor Applicant. However, concerns that the chosen name or gender designation does not reflect the minor Applicant's sex or gender assigned at birth shall not warrant denial of an application, regardless of the gender identity or status of medical transition of the minor Applicant.²¹⁹ If there is no good cause to object, the Court shall enter the Order effectuating the name and/or gender designation change.²²⁰

VII. Conclusion

This report has demonstrated that the inefficient and burdensome name change process in Pennsylvania poses many challenges for transgender residents who desire a name change. Yet, as illustrated there are feasible and efficient alternatives to the current system. As demonstrated, many states have recently improved their name change system, including the neighboring states New York and New Jersey. Building on this national and regional trend, our proposed largely administrative system, with appropriate involvement of the Courts as required, enhances the administration of justice by providing a fair, non-burdensome, and highly effective approach to legally change a name or gender designation.

²¹⁶ Missouri follows this approach. Currently, Pennsylvania law states that a name change *may* be granted if “there is no lawful objection to the granting of the petition.” 54 Pa. C.S.A. § 701(a)(5)(emphasis added). This would change the “may” to a “shall.”

²¹⁷ California follows this approach.

²¹⁸ Nevada follows this approach. It is important to codify this in statute as many juvenile and family courts will always consider the best interests of the child even when this standard explicitly does not apply.

²¹⁹ New Jersey courts follow this approach. *See Sacklow v. Betts*, 163 A.3d 367 (N.J.Super. 2017); *Matter of Eck*, 584 A.2d 859 (N.J. Super. 1991).

²²⁰ Missouri follows this approach. Mo. Stat § 527.270. *See also* Rule 95.04.

Respectfully submitted,

HOMELESS ADVOCACY PROJECT

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MAZZONI CENTER

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EXHIBIT A

TESTIMONY OF
LINDSAY SCHOONMAKER,
SUPERVISING ATTORNEY,
PHILADELPHIA VIP

June 25, 2021

To Whom It May Concern:

Thank you for the opportunity to comment on the proposed name change procedures. At Philadelphia VIP, we provide low-income Philadelphians with pro bono legal services. Each year, VIP serves around 900 clients, leveraging the powerful resources of the community to provide quality volunteer legal services to ensure access to justice. For our name change clients, however, a perpetual issue is being able to afford the cost of publication in order to move forward with a name change petition.

When a formal court process is required to change a client's name, the client is referred to VIP by another direct legal services agency in Philadelphia – most commonly, Community Legal Services (CLS). At CLS, the client is assisted in exhausting every administrative remedy available. If that fails, CLS refers the client to us so we can assist with the court name change process. VIP only assists clients who need name changes in order to obtain photo ID and/or access to benefits, to evade a life-threatening situation, or to be consistent with the client's gender identity. We unfortunately do not have the capacity to assist clients who want to change their names for personal or religious reasons. This means for the clients we are serving, obtaining a name change is of the utmost importance.

At VIP, when we get a new name change case, we ask the client to do a few things that will be necessary for the success of the case before we find a volunteer attorney. The client must get fingerprinted, which costs \$20, and the client must escrow money with us for the cost of publication. This price has changed over the years, but it is often prohibitively expensive for our clients who are living at under 200% of the federal poverty guidelines.

Publication costs have clearly been a barrier to name change cases moving forward. Without grant funding to cover the costs, our staff spends significant time communicating with clients about escrowing money. This results in clients losing touch during this process and/or clients specifically telling us they are unable to afford the process. In contrast, during a nine-month period when we had grant funding to cover publication costs, we were able to both prepare the case more quickly and place more cases with volunteers.

Here are just a few client stories about how the costs associated with publication prohibited our client from moving forward with their name change and thus prevented them from accessing benefits that were so desperately needed:

A senior, Walter Smith²²¹, never had a copy of his birth certificate, and when he tried to get it from Virginia Vital Records, he was told it was not on file. A midwife delivered him, and it is possible a birth certificate was never registered. Unfortunately, he had used different identifying information over the years, and so not only did Mr. Smith need a petition to establish birth facts, but he also needed a name change. Unusual for our clients, Mr. Smith actually did have a valid photo ID; however, it was not a REAL ID, and without a birth certificate, he did not have the underlying documents to get a new photo ID. We could foresee this causing him problems down the road and encouraged Mr. Smith to move forward with a petition to establish birth facts and for a change of name, asking him to escrow the money required for this process so we could refer his case to a volunteer attorney. When we explained the process to Mr. Smith, he decided not to move forward because he could not escrow money for the costs.

Another client, Tammara Garcia, who moved to Philadelphia when she was school-aged, was enrolled in school by a name that was not the name on her birth certificate. She used her name from school throughout her life and came to VIP in order to have her birth certificate amended. At first, she thought her uncle would help her escrow the money. When that fell through, she tried to raise the money on her own but could not. She finally told us she was going to get her name change “another way” and no longer wanted VIP services. We explained that any court procedure would require the publication costs, but Ms. Garcia did not change her mind because she simply could not cover the costs to publish her desired name change.

Kianna Brown, whose name on her birth certificate differed from the name on her Social Security card, wanted to change the name on her birth certificate to match the rest of her identity documents. Because of the discrepancy in her identity documents, Ms. Brown could not legally drive, get a credit card, or get government-issued ID. However, when told about the money that would need to be escrowed, she decided to not move forward with her case.

The costs of going through the name change process affect children as well. A single-mother, Nikki Jones, was living in a shelter with her children and was having trouble correcting the birth certificates of both of her minor children. There were some spelling errors, and she wanted to correct the last names so as not to reflect the last name of the children’s father who was not involved in their lives. The children were not using their father’s name despite it being on their birth certificates, which was causing issues with school and after-school activities. However, Ms. Jones was going to have to escrow the money for publication for the petitions of both children

²²¹ All names are pseudonyms.

and could not afford to do so at this time. She asked for her case to be closed and stated that she would come back if she was able to save up the money. We have not heard back from her.

With the struggles of Mr. Smith, Ms. Garcia, Ms. Brown, and Ms. Jones in mind, Philadelphia VIP fully supports the proposed changes to the name change statute to eliminate the publication cost. Removing the requirement for publication, which is largely no longer effective in the modern era, could be life-saving for our clients – allowing them to make crucial changes to their birth certificates in order to access benefits and other essential services. We appreciate your consideration of this proposal.

Sincerely,

Lindsay Schoonmaker
Supervising Attorney
(215) 523-9555

APPENDIX

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JURISDICTIONAL
RESEARCH

(To be submitted separately)