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By email to dempolicy@pasenate.com
Pennsylvania Senate Democratic Caucus Policy Committee
Sen. Katie Muth, Policy Chairwoman

**Re PA Senate Democratic Caucus Policy Committee Hearing:
Barriers in Pennsylvania for the Transgender Community**

Testimony of Thomas W. Ude, Jr., Esq., Mazzoni Center

Dear Senators:

Thank you for the opportunity to discuss barriers in Pennsylvania for members of the transgender community to legally change their name and gender. I am submitting this written testimony to supplement the comprehensive memorandum and testimony submitted by Dechert LLP from Mazzoni Center and several other organizations.

Mazzoni Center is a Philadelphia nonprofit organization whose mission is provide quality comprehensive health and wellness services in an LGBTQ-focused environment, while preserving the dignity and improving the quality of life of the individuals we serve. Our services include comprehensive primary and preventive care and a range of other services specifically for transgender, gender non-binary and gender expansive individuals.

I direct our legal services program, which provides direct legal services to, and advocacy on behalf of, low-income LGBTQ individuals in a range of areas. Each year, more than half of the requests for assistance we receive – hundreds each year – are from transgender, nonbinary, and gender-expansive people seeking help with the name change process, with changing gender-markers on identification, or both. Our resources limit our capacity to provide direct representation outside of Philadelphia, but individuals and attorneys contact us for information or assistance on these issues from all throughout Pennsylvania; in the past decade, we have been contacted for by people in 57 of Pennsylvania's 67 counties. Through those contacts and communications, our legal services team is familiar with challenges facing transgender, nonbinary, and gender-expansive people seeking to change their names and obtain accurate identification, including changing the gender markers on identification documents.

Pennsylvania permits informal use of names, but to have legal documents and identification records changed, the name change statute requires filing court proceedings.¹ The process currently required by statute is expensive and time-consuming. Although it is possible to file without an attorney, many people – including many attorneys – find the statutory process confusing and daunting. Useful information about the name change process is hard to find. Court procedures vary significantly from one county to another. Of the counties that provide

¹ See, e.g., 54 Pa.C.S.A. §§ 701-705.

information and forms that pro se petitioners can use, almost none mention that if publication would risk a petitioner's safety, the court can excuse that requirement. To help address the need for information on the name change process, we prepared a written guide, a copy of which is provided with this testimony.²

More than twenty years ago, the Pennsylvania Supreme Court explained that the court's role in name change proceedings is limited to ensuring that the process is not used to commit fraud.³ As explained in the memorandum submitted by Dechert, Philadelphia and Allegheny Counties have procedures that streamline the process somewhat. But many people who are transgender reside far from Philadelphia or Pittsburgh. Although social media portrayals of LGBT people often suggest that they live (or want to live) in urban areas, many LGBT people live in rural areas, and do so by choice. A recent report explains that approximately 4.5% of the entire adult population of the United States identifies as LGBT, and the proportion of the rural adult population that identifies as LGBT is comparable, ranging from 3% to 5%.⁴ For many LGBT folks, their rural existence may be just as important as other aspects of their identity.⁵

My testimony is intended to supplement the research and information provided to you by focusing on three of the most common barriers facing transgender name change petitioners: expense; delay; and safety.

1. Cost and Expense

The name change process is expensive financially, and in terms of the amount of time required at various steps. After drafting and filing the petition, judgment searches must be conducted in each county where the petitioner resided during the previous five years, and then there is preparation for and attendance at the hearing. Even without hiring an attorney, the expenses associated with the name change process add up quickly. Fees vary, but they are significant. In Philadelphia, for example:

<u>Name Change Expense</u>	<u>Amount</u>	<u>Can Expense Be Waived?</u>
Fingerprints	\$20.00 – 25.00	no
Filing fee	\$333.23	yes (based on income)
Publications	\$204.00 – 320.00	yes (based on safety)
Judgment Searches	\$78.52 or more	yes (based on income)
Certified Decrees (5)	\$207.90 (for 5)	yes (based on income)

Those expenses (including publication) total \$843.65; if judgment searches in other counties or out of state are needed, the expense increases even further.⁶

² Mazzoni Center, *The Mazzoni Center Quick Guide to Changing Your Name in Pennsylvania*, (April 2019) (copy provided with this letter). Because of our program's location, the Guide is oriented toward Philadelphia, but cautions readers to expect wide variations from county to county.

³ *McIntyre*, 552 Pa. 324, 715 A.2d 400, 401 (1998).

⁴ Movement Advancement Project. April 2019. *Where We Call Home: LGBT People in Rural America*, available at www.lgbtmap.or/rural-lgbt, p. 6.

⁵ *Id.*

⁶ *Mazzoni Center Name Change Guide*, p. 1.

If someone chooses (and can afford) to hire an attorney, that attorney's fees will reflect the multiple steps at which an attorney is required to act. Our income eligibility limit for free representation is approximately 185% of the federal poverty guidelines. If an attorney is providing free representation, or if a petitioner seeks court approval directly, the court fees can be waived. But if not waived, those expenses are significant; there is no sliding-scale option.

The costs of the name change process are only one of many expenses faced by transgender people that cisgender people do not. "Pervasive discrimination and a lack of clear legal protections means that transgender people struggle to find work and safe housing, make less on the job, and have higher medical costs than their non-transgender peers."⁷ And many people whose household income makes them ineligible for free assistance are nevertheless unable to afford to hire an attorney – even one whose fees are modest.

2. Delay

Pennsylvania's name change process is slow and time-consuming. Before filing a petition, a petitioner needs to have current identification; evidence of residency in the county where they are filing; have fingerprints taken, and save funds to pay for filing fees, and for publication – even if they are requesting the court to waive publication based on safety risks, in case the court denies that request. After filing, counsel or the petitioner is required to publish notice of the hearing and proceedings, and to conduct judgment searches in each jurisdiction where the petitioner lived during the previous five years. Some counties require petitioners to use, and pay for, the services of a private title search company. For petitioners who have moved, perhaps multiple times, that requires even more time and/or expense to determine how to obtain and submit that information.

By statute, the hearing on a petition is to be held within one to three months of filing.⁸ During that time, the court is to send a copy of the petition with the petitioner's fingerprint card to the Pennsylvania State Police, who are to examine its records and, within 60 days, report to the court whether the petitioner has a criminal record.⁹ Most of the time that report arrives by the hearing date, but not always – causing another delay.

A petitioner's felony conviction can lead to additional delays. The statute prevents a decree from being issued until at least two years after the sentence for a felony conviction has been completed. Some felony convictions are a complete lifetime barrier.¹⁰ We have had to tell dozens of people that, after gathering the courage to take the important step of changing their name, the law prevents them from doing so – either permanently, or for one, two, or more years.

Even when the name change statute does not expressly prevent a name change, courts have relied on it to impose delay. In late 2016, the court denied the name change petition of our client, A.S.D., based on her criminal record – even though the statute permitted the court to grant the name change. On its own, the court imposed an additional one-year waiting period beyond the

⁷ See, e.g., Center for Amer. Progress, et al., *Paying an Unfair Price: The Financial Penalty for Being Transgender in America* (2015).

⁸ 54 Pa.C.S. § 701(a.1)(3)(i).

⁹ 54 Pa.C.S. § 702(b)(3), (4).

¹⁰ 54 Pa.C.S. § 702(c).

statute's restrictions. In our appeal on her behalf, with co-counsel from Ballard Spahr, the Superior Court reversed and remanded with direction to hold a hearing.¹¹ That was an unsatisfying victory, however, because that decision was issued almost exactly one year after the improper denial – just as the judge had directed. During that time, our client had to continue living with inaccurate identification. We have been advised that other petitions, too, have been denied to individuals whose criminal records should not have prevented a name change.

Finally, there are delays after the issuance of a decree. A decree is the end of the court proceeding, but only the start of a new process. Starting with five certified decrees and a considerable amount of patience, the person has to then approach entities one by one to change their name on identification, and in the myriad of official records that our society maintains, including: bank accounts, school records, replacement diplomas, lease, employment records, Utilities, car title & registration; property deed(s), insurance, student loans, selective service, voter registration, medical records, credit bureau records, driving records from other states, professional licenses, wills & powers of attorney, family members' wills, business cards, email address, website, marriage license, and subscription services.

3. Safety

The name change statute generally requires petitioners to give notice of their petition and hearing date by newspaper publication, and/or to provide notice to any non-petitioning parent of a child whose name is impacted by the petition.¹² But “[i]f the court finds that the notice required in subparagraph (ii) would jeopardize the safety of the person seeking the name change or his or her child or ward, the notice required shall be waived by order of the court.”¹³ The statute directs that “[in] all cases filed under this paragraph, whether or not the name change petition is granted, there shall be no public access to the record of the name change petition, proceeding, or order, unless the name change is granted but the file is not sealed.”¹⁴

Under the statute, a petitioner who fears that publication would risk their safety must persuade a judge, who alone has the authority to waive publication. While the process is relatively straightforward in Philadelphia and Allegheny Counties, people elsewhere have encountered two issues when invoking the waiver provision. First, some are required to attend the hearing on their waiver request in open court and, contrary to statute, the court records were not sealed at the outset of the proceedings. Thus, the notices of hearing, testimony and other evidence, and the court docket are available to the public – including, in many cases, the people from whom the petitioner fears harm.

Second, either as policy or in practice, some judges do not grant publication waivers unless a petitioner's personal history includes threats and harassment against them – failing to consider whether the petitioner may have sought to avoid or reduce exposure to those risks, and failing to appreciate that the published notice itself, combined with online court records, can risk safety by outing the petitioner. And in contrast to years ago, online notices of name change proceedings

¹¹ *In re A.S.D.*, 2017 PA Super. 369, 175 A.3d 339, 344 (2017).

¹² 54 Pa.C.S. § 701(a.1)(3)(ii).

¹³ 54 Pa.C.S. § 701(a.1)(3)(iii).

¹⁴ 54 Pa.C.S. § 701(a.1)(3)(iii).

expose a trans individual to risks from afar by creating a permanent record that can jeopardize a person's safety for many years to come, from anyone who may seek to cause harm after learning that the petitioner is transgender.¹⁵

Persuading a judge of these safety concerns has proved daunting for many attorneys – who are trained advocates, equipped with the training and experience to take on that challenge. In some counties, judges understand and recognize these safety risks. In other areas of Pennsylvania, however, petitioners and their counsel must not only compile and present evidence to the court, but they also must undertake to provide a crash course on the risks they face. We have consulted with counsel for petitioners in several counties whose clients' waiver requests were denied. In each, the petitioner either chose not to proceed with the name change process, or chose to publish and take the very risk they had feared.

The statute requires the court to waive notice if providing it would jeopardize safety.¹⁶ That safety assessment should be made based on the impact of a prospective event – giving notice – that has not yet happened. The statute does not require specific evidence and does not limit the evidence relevant to that determination. The statute neither limits what a judge may consider nor requires a judge to reject evidence that is relevant. It does not limit its promise of safety to only those unfortunate petitioners whose personal history already includes specific incidents of harassment, threats, or violence.

Absent a waiver, notices published in newspapers and legal periodicals are available not only on paper but also online. Absent sealing, court dockets are also available online. Published notices of petitions and hearing dates include petitioners' current and proposed legal names, and the docket number – which, in turn, contain petitioners' addresses. For many transgender people, these names are associated with different genders, so that publication in 2021 creates permanent and public records – online as well as on paper – of a petitioner's transition and identity as someone who is transgender. At present, a basic internet search discloses name-change notices that were published dating back at least to January 2015.

The name change statute was written decades ago, in a different era. Rules and safeguards that may have been necessary then have ceased to serve their purpose. And more specifically, the rules were written decades ago based on the implicit premise that a name change was not a right but a privilege. But for people who are transgender, nonbinary, and gender expansive, a name change is a necessity. It is a right that, thus far, has been imperfectly recognized. Thank you for your interest and attention to removing barriers to those needs.

Respectfully submitted,



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¹⁵ See, e.g., Martin Kaste, Nat'l Pub. Radio, *Digital Data Make for a Really Permanent Record*, All Things Considered (October 29, 2009, 9:26 AM), <https://www.npr.org/templates/story/story.php?storyId=114276194>.

¹⁶ 54 Pa.C.S.A. § 701(a.1)(3)(iii).