

NAME AND GENDER MARKER IN ALABAMA

Presented by



INTRODUCTION

- Sydney Duncan is the lead attorney for the MAGIC CITY LEGAL CENTER at Birmingham AIDS Outreach (“BAO”) where she brings eighteen years of legal experience to representing the LGBTQ community, with a focus on transgender issues.
- Born in Atlanta, Georgia, Sydney has lived the majority of her life in Birmingham, Alabama, where she attended the University of Alabama at Birmingham and graduated from Cumberland School of Law at Samford University.
- Sydney is the author of several critically acclaimed novels and comic books published by Random House, Simon & Schuster, Dark Horse Comics, and Humanoids Comics.

WHO WE ARE

- Magic City Wellness Center
- Magic City Acceptance Center
- Magic City Acceptance Academy
- Magic City Legal Center
- Magic City Research Institute



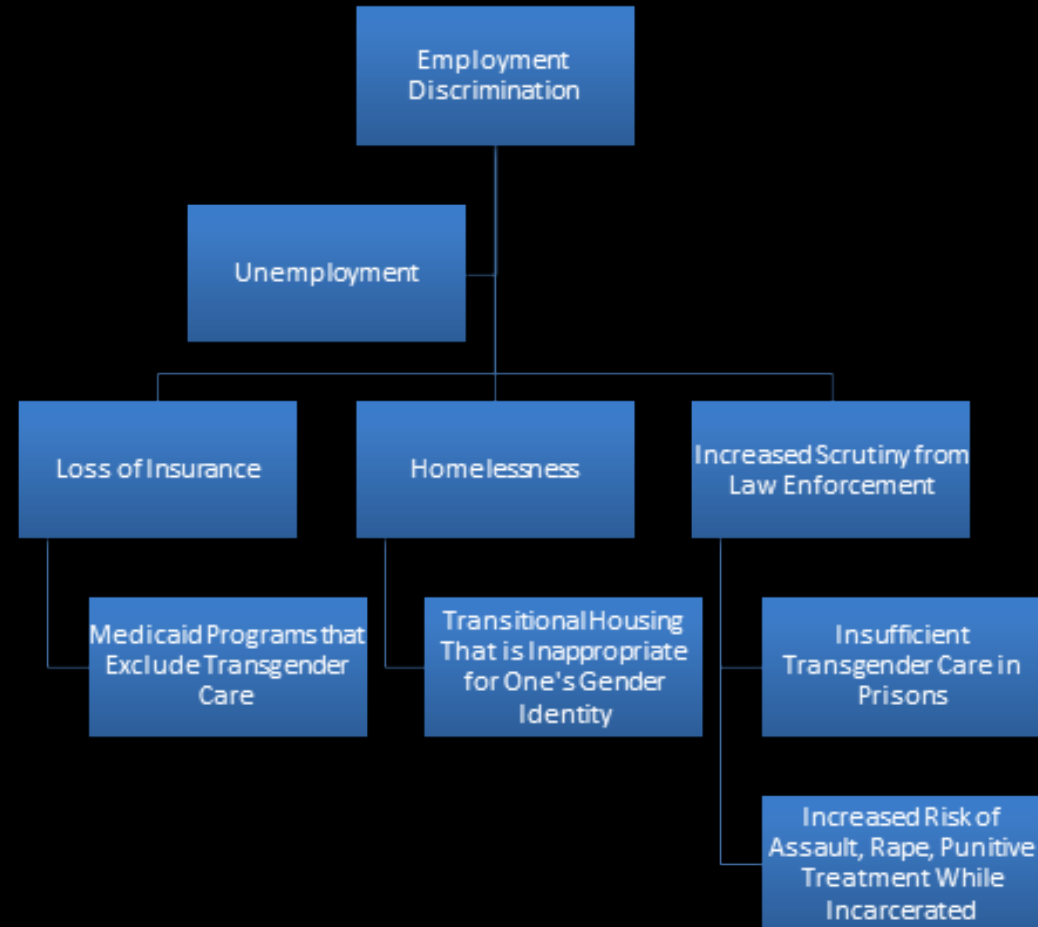
LEGAL AFFIRMATION OF LIVING AS A TRANS PERSON

- A life void of discrimination on the basis of our identity and free from artificial barriers that may stand in the way of the quiet enjoyment of our lives.
- Civil Rights guaranteed under the Constitution of the United States.
- Title VII Job Discrimination – see *Bostock v. Clayton County*.
- Title II Public Accommodation, scholastic issues under Title IX, Fair Housing under Title VIII?
- “I would like to be legally known in my community as I am known by my family and friends.”
- Name Change and Gender Marker Change.

THE IMPORTANCE OF AUTHENTIC IDENTIFICATION

- Personal Identification – Driver's License, Passport, Birth Certificate, Social Security Number/Card.
- Identity is connected to EVERYTHING.
- Incongruence between Identity & Identification can lead to:
 - Employment Problems
 - Issues with School Policy
 - Law Enforcement
 - Citizenship and Immigration Documents
- Safety
- Privacy

EFFECT OF DISCRIMINATION



ROADMAP TO AFFIRMATION

- Step 1: Probate Court (Name Change)
- Step 2: Social Security Administration
- Step 3: State Department (Passport)
- Step 4: Department of Motor Vehicles (Driver's License)
- Step 5: Probate Court (Gender Marker Change)
- Step 6: Vital Record Department (Gender Marker Change)

NAME CHANGE: YOUR RIGHTS

- There is no absolute right, granted by law, to a name change.
- However, a court's refusal to grant a name change because the petitioner is a person of trans experience constitutes discrimination on the basis of sex as defined by Bostock v. Clayton County.
 - No Alabama Caselaw Precedent for Trans Related Denial
 - Oklahoma – In re Harvey, 293 P.3d 224 (Okla. Div 1 2012). Ruled abuse of discretion to deny petitioner while undergoing transition on basis of fraud.
 - Georgia – In re Feldhaus, 796 S.E. 2d 316 (Ga. Ct. App. 2017). Procedure was in confirmation with statute, therefore denial of petition because of trans identity was abuse of discretion.

NAME CHANGE: JURISDICTION (ADULT)

- Ala.Code 12-13-1 General Jurisdiction
 - Probate Court has original jurisdiction over all matter regarding the change of name, under section 10 of the above section, which states:
 - "The change of the name of any person residing in their county, upon his filing a declaration in writing, signed by him, stating the name by which he is known and the name to which he wishes it to be changed." (Ala. Code 12-13-1 Jurisdiction generally; validity and presumptions to be accorded to judgments, orders, etc., of probate courts (Code Of Alabama (2021 Edition))).
 - 67 Counties in Alabama, each with one probate court. (Jefferson County has two.)
 - Judges - under Alabama Law, a Probate Judge does not need to be an attorney or have any legal training.
 - Petition for Name Change must conform with rules of probate court; execution of the petition may be subject to individual judge and court nuance.

NAME CHANGE: JURISDICTION (MINOR)

- Ala.Code 26-11-3, Generally
 - Partially intended as a function of legitimization.
 - Law is from Father's perspective, which is not reflected in practice.
 - Best Interest Standard - may require informal hearing.
 - Notice shall be sent to all interested parties.
 - Court shall appoint a Guardian ad Litem where a parent files an objection.

NAME CHANGE: PROCEDURE (ADULT)

- Name Change petitions must be filed with the clerk in the probate court of the petitioner's county of residence.
- There is a filing fee of \$25 - \$81, depending on the county
- Extra cost for any publication of notices
- Extra cost for background check, required by several counties.
- What you will need:
 - Driver's License or Government Issued Identification (A copy, front and back.)
 - Certified Copy of a Birth Certificate
 - Two forms of proof of residency, with name and address (mail, bills, deed, mortgage, tax card, voter registration)
 - Petition, filled out in BLACK INK, signed and notarized

NAME CHANGE: PROCEDURE (MINOR)

- Similar to Adult
- If both parent's names appear on birth certificate, both parents will need to sign the petition and present supporting documents.
- If the minor child is 14 or older, they will need to sign the petition to satisfy consent requirements.
- You will need:
 - Copy of Drivers License (or government ID) of BOTH parents
 - Certified Copy of Minor's Birth Certificate
 - Petition, signed by both parents, notarized
 - Both parent's addresses. No P.O. boxes

NAME CHANGE: RED FLAGS

- For Adults
 - Multiple Name Changes
 - Change of First and Last Names
 - Criminal Record or similar problem regarding background check.
 - Felonies of Moral Turpitude
 - Voter Registration
- For Minors
 - A parent objects.

NAME CHANGE: WHAT'S NEXT?

- While the Name Change Petition works its way through the Probate Court, for those who also intend to change their gender on legal documents, we recommend attaining a “transition letter” from the physician providing transition related medical care.
- Create a “Transition Folder” that will hold all documents necessary to facilitate identity transition.

NAME CHANGE: SOCIAL SECURITY ADMINISTRATION

- This step should be done IN PERSON.
- COVID NOTE: There is a mail-in option, but we DO NOT recommend mailing in documents.
- You will need:
 - An order from the probate court granting the name change
 - A doctor's transition letter (if you are seeking a gender marker change)
 - Fee
 - Completed SS-5 form. (Found online and at the office.)
 - Proof of Citizenship (Birth Certificate or Passport)
 - Driver's License

HINT: Upon completion of information update, be sure to ask for a printout of the change. Otherwise, you must wait on the new Social Security Card to be mailed.

NAME CHANGE: PASSPORT

- We now strongly recommend getting a passport change in order to receive the STAR ID from the State of Alabama.
- What you will need:
 - Your Name Change Order
 - A completed DS-11 Form (for gender marker change)
 - Doctor Transition Letter
 - Proof of Citizenship (Birth Certificate or older Passport)
 - Two 2x2 photographs of yourself
 - Valid government issued ID, such as Driver's License
 - Fees

NAME CHANGE: DRIVER'S LICENSE

- Amending Name Change – can be done at any DMV office.
- Amending Gender Marker – must be done at State Offices of DMV. This is typically where Driver's License Testing is conducted.
- Must be done IN PERSON.
- Alabama directs that you change Driver's License information within 30 days of receiving an Order granting Name Change.
- You may change gender marker, provided you have a Doctor Transition Letter.
- What you will need:
 - Identification
 - Name Change Order
 - Transition Letter
 - Certified Birth Certificate or Passport

NAME CHANGE: DRIVER'S LICENSE

- Alabama is currently a “Surgery State.”
 - See Policy Order 63 of Alabama Department of Public Safety which provides for changing the gender on a driver license only “due to gender reassignment surgery,” and requires applicants to submit “[a]n amended state certified birth certificate and/or a letter from the physician that performed the reassignment procedure.”
- Currently, there is a lawsuit to remove this requirement.
 - See *Corbit, et.al. v. Taylor, et.al.*
 - Seeks to make Alabama conform to Federal standard (Passport) which insists that petitioner “has had appropriate clinical treatment for gender transition to the new gender.”
- NOTE: No Alabama statute refers to gender with regard to Driver's License. Ala.Code 32-6-6 requires a license only contain contain a color photograph, name, birthdate, address, signature, and “description of the licensee.”

GENDER MARKER: YOUR RIGHTS

- Currently, there is no guarantee under the law to a gender marker change.
- Changing Gender Marker requires filing a separate petition seeking an order directing the Alabama Office of Vital Records to issue an amendment to the Birth Certificate.
- Alabama does not issue a “new” birth certificate.

GENDER MARKER: JURISDICTION

- Gender Marker changes are governed by Code of Alabama 22-9a-19(d) which provides:
 - “Upon receipt of a certified copy of an order of a court of competent jurisdiction indicating that the sex of an individual born in this state has been changed, the certificate of birth of the individual shall be amended as prescribed by the rules to reflect the changes.”

NOTE: There is disagreement as to what “Court of a Competent Jurisdiction” means. Most jurisdictions understand this to mean Probate Court, but we have experienced refusal of some jurisdictions to provide venue.

GENDER MARKER: NEXT STEP

- Once Order is Granted fill out the Amendment Package for Alabama Birth and Death Certificates (Form ADPH-HS-33)
 - You will need the Order Granting a Gender Marker Change
 - Fees

QUESTIONS?

- My contact:
 - Sydney Duncan, J.D.
 - SDuncan@mcac-bao.org