

Understanding the New York Gender Recognition Act



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Disclaimer

This training is only current as of October 13, 2021. The Gender Recognition Act will bring many changes to the name change process and new trainings will be made available as we gain a better understanding of how the Gender Recognition Act will be implemented.



Empire Justice Center



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About TLDEF

- The Transgender Legal Defense & Education Fund (TLDEF)
 - Founded in 2003 - **18 years ago**
 - NYC-based with national reach
 - Focuses: impact litigation, community education, the Trans Health Project, & the NCP



Empire Justice Center at a Glance

- Founded in Rochester in 1973; became Empire Justice in 2005
- Today, six offices across NY
- Technical assistance, direct service, policy advocacy
- Legal services organized into 3 units:
 - Civil Rights, Employment, Education and Health
 - Benefits, Disability Advocacy Program and Crime Victims
 - Consumer Finance, Housing and Immigration



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Key Vocabulary: Gender

- Gender identity
 - One's internal perception of their own maleness, femaleness, genderlessness, etc.
 - Gender expression
 - How one outwardly presents oneself through clothes, body language, etc.
- Sexual orientation
 - To whom one is attracted
 - Transgender is not a sexual orientation and transgender people can have any sexual orientation

Key Vocabulary: Gender

- Cis-
 - Latin prefix meaning “on the near side of” or “to this side of”
 - A cisgender person’s gender identity aligns with the sex they were assigned at birth
 - Cisgender woman, cisgender man
- Trans-
 - Latin prefix meaning “on the other side” or “across”
 - A transgender person’s gender identity is something other than the sex they were assigned at birth
 - Transgender woman: a woman who was assigned male at birth
 - Transgender man: a man who was assigned female at birth
 - Nonbinary transgender person: regardless of sex assigned at birth, they do not feel squarely male or female
- There are as many ways to transition or be trans as there are trans people

Key Vocabulary: Transition

- Social
 - Clothing
 - Activities
 - Using different name/pronouns
- Medical
 - Hormones/blockers
 - Surgical intervention
- Legal
 - Court-ordered or administrative name change
 - Gender marker change
 - Updating official documents



Best Practices

- Use chosen name even if there has not been a court-ordered name change (yet or ever; not everyone goes through one)*
- Use correct pronoun
 - "What pronoun do you use?" or "What is your pronoun?"
 - Singular they – use it like you would when not gender-related
 - The doctor left their phone on the table.
 - Did you order pizza for them?
- Mistakes – correct yourself and move on; say, "Thank you!"
- When in doubt, refer to the person as they refer to themselves even if you don't understand what that means

Best Practices

- Public/client-facing intake and administrative forms *and* internal systems and paperwork should allow for chosen name and pronouns/honorifics (Mr., Ms., Mx.)
 - Make honorific optional - not everyone uses one
- Bathrooms
 - New York requires that everyone must be allowed to use the restroom that accords with their gender identity, including specifically in courts and other public buildings
 - Cannot require people to use single-user restrooms simply because they are trans (though they may choose that option)

Best Practices

- Recruiting
 - Look in places where trans people are
 - LGBTQ groups at universities
 - LGBTQ community centers
 - Listservs/job posting websites
- Do not advertise yourself as safe and equitable if you do not have proper systems in place!



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Best Practices

- Onboarding and everyday
 - Assume trans people exist
 - Prepare for ID documents that may not match the name the person uses
 - Include pronouns in introductions, email signatures, Zoom names, etc.
 - Ensure health insurance coverage includes transgender care and that covered reproductive care is trans inclusive
- Have a Transition Policy



Best Practices in Court

- Everyone must have access to the courts
- Officers of the court should inspire confidence in the system
- Cultural awareness and diversity not only make people more confident in the system but provide more actual equity
- Failla Commission



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Best Practices in Court

- Refer to people using the name and pronouns they would like you to use, both in-person and in writing – including in papers
 - NY is a common law name change state
 - People can go by whatever name they choose without a court order
 - Footnote to establish the record
 - If applicable, discuss with the person how they would like mistakes on the record handled
 - Jump in? Let it go?
- Defendants in custody must be housed according to their gender identity or safety preference
- Professional rules for lawyers, court staff, and judges
 - Rule 8.4(g)
 - Judicial Rules



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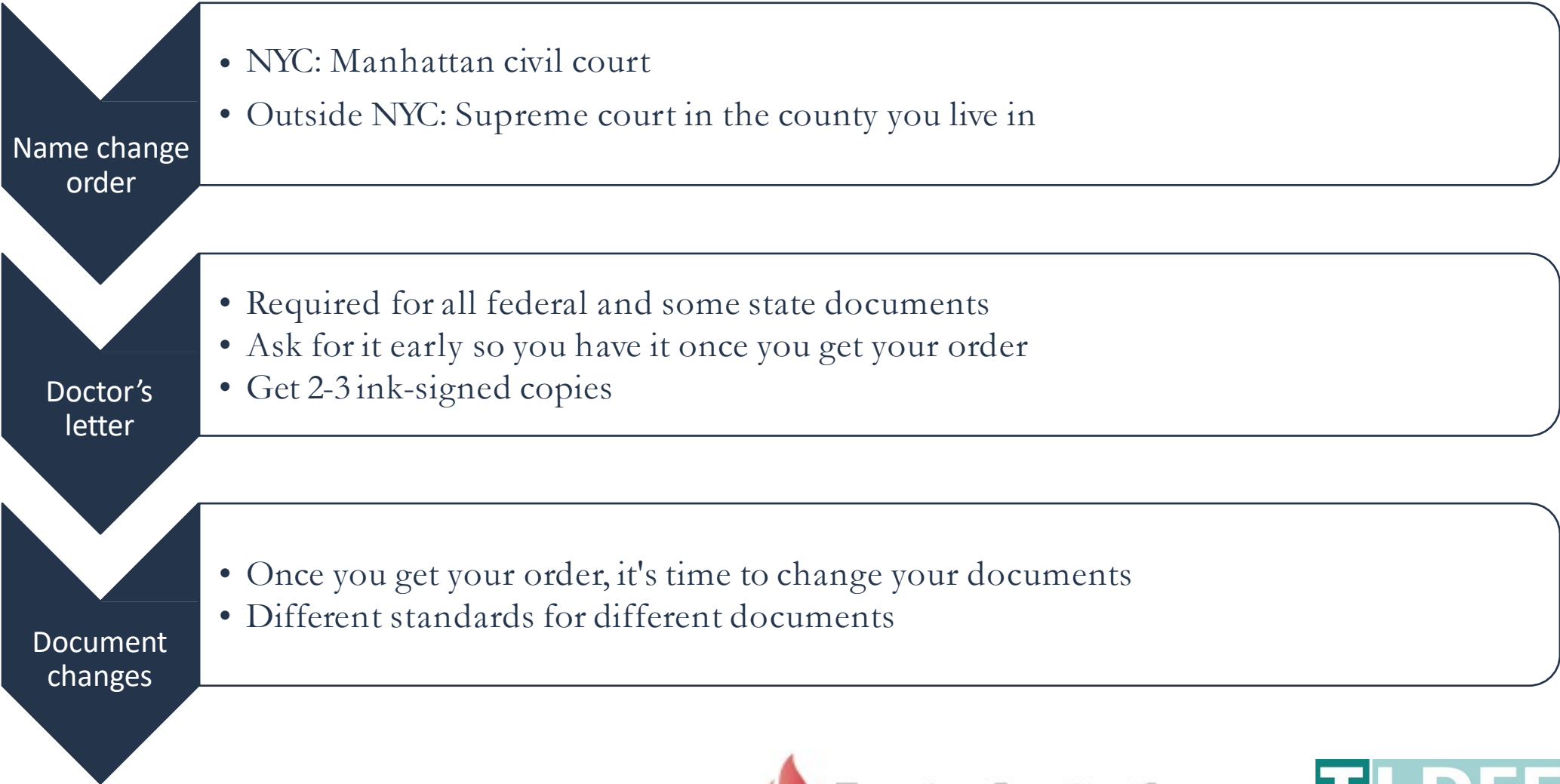
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Name Change Process



Gender Recognition Act

- Effective December 21, 2021 (except DMV provisions, which are effective in June 2022)
- All provisions are universally applicable – not just for transgender petitioners
- Removes publication requirement from name change statute
- Limits who the judge can order petitioner to notify and requires judge to explain justification in writing
- Spousal consent can no longer be required (mostly an issue in NYC)

Publication Changes

- Current name change statute requires publication in the newspaper but there is a waiver provision petitioner must affirmatively invoke
- New statute: no publication by default and can seal upon request
 - May want to include language about it in petition for a bit
- Once sealed, only petitioner will have access in the future

Consent & Notice Changes

- Consent versus notice
 - Consent: sometimes required as a condition of even getting the papers to the judge
 - Ex. In Manhattan Civil Court, all married petitioners must provide an affidavit of consent from their spouse even if estranged
 - Notice: sometimes required as a condition of obtaining certified copies *after* the order has been signed
 - Ex. The petitioner owes child support so the judge orders them to notify the Child Support Enforcement Bureau before the clerk will certify their order

Consent & Notice Changes

- The following can no longer be required:
 - Spousal consent if the petitioner is married
 - Parental consent if the petitioner is an adult with capacity
 - Notification to **any** immigration enforcement agency
 - Still required to notify/update docs so do it after you have the order - the court just can't condition giving you certified copies on you having notified
- Some notifications can still be required with written justification
 - Probation/parole/law enforcement
 - Creditors who have judgments/liens against petitioner
 - Other parties to a pending lawsuit/legal proceeding

Sex Designation/Gender Marker Orders

- NY and the federal government do gender marker changes administratively (doctor's letter or self-attestation)
- Some jurisdictions require a court order
 - Pre-GRA, judges said no authority so people were left with no mechanism to update their birth certificate
 - Different standards
 - Surgery, hormones, "appropriate clinical treatment"
- Required language will depend on jurisdiction of birth
 - Ex. "Petitioner has undergone irreversible change of sex," etc.

Document Changes

- Codifies administrative changes made over the past few years
 - Minor birth certificate amendments
 - Parental designation and name changes on child's birth certificate
 - X sex designations on birth certificates
 - Self-attestation instead of doctor's letter
- Effective June 2022, DMV will offer X designations and remove the doctor's letter requirement



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Implementation

- Court-related provisions effective December 21, 2021
- Working on new templates that contemplate the changes & providing judicial, legal, and community education
- Still in conversation about how to file for sex designation orders
 - Statute says you can request in same petition
- Please be in touch if there are hiccups!



Resources

- [Empire Justice Center](#)
- [Transgender Legal Defense & Education Fund](#)
- [Arrowood Law](#)
- [Movement Advancement Project](#)
- [Human Rights Campaign](#)
- [National Center for Transgender Equality](#)
- [Gender Spectrum](#)
- [GLAAD](#)



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Thank You!

Q&A

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