

Indiana Legal Services, Inc.

Ensuring Equal Access to Justice



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LEGAL NAME AND GENDER CHANGES: ADULT FORMS AND GUIDE

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LGBT PROJECT

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Executive Director

WHAT IS IN THIS PACKET?

This packet includes the documents you need to bring to the court to start (called filing) your name and gender marker case. Some of these documents you sign (👉) and some are for the Judge to sign. The documents included are:

✓ **Name and gender change paperwork**

- Appearance by self-represented party* 👉

This form tells the court that you are representing yourself and what address they should send documents to. Sign this in your current legal name.

- Name and Gender Change Petition* 👉

This has all the things the law says you must tell the court for a name and gender marker change, including that you are not changing your name to avoid creditors and that you are changing your gender marker to match your gender identity.

- Order Setting Hearing*

This order lets you know what date/time your name and gender change hearing will be. After the Judge sets a date/time, the clerk will mail you a copy of the order.

- Name and Gender Change Order*

This is what you want the Judge to sign showing that your name and gender marker have been changed.

✓ **Fee Waiver (if you qualify)**

- Affidavit of Indigency and Request for Fee Waiver* 👉

This asks the Judge to let you file your case for free because you cannot afford the \$157 fee. Sign this, where flagged, in your current legal name. Some courts may require you to fill out an extra form that details your income and assets.

- Order on Fee Waiver Request*

The Judge signs this order after they waive the fees.

✓ **Publication Waiver and Sealing Request**

Usually in a name change, you are required to publish notice of your name change in a newspaper and the court records are public. However, court rules allow you to ask that the publication requirement be waived, and the records be sealed (not available to the public) for your safety.

- Verified Request to Prohibit Public Access* 👉

This asks the Judge to waive the publication requirement of the name change and make your case confidential (private). This is where you should detail all the reasons you would feel unsafe having your name and gender change made public.

- Exhibit A: Memorandum of Law*

This memo explains to the Judge why it can be unsafe for trans people to be outed, and they should make your name and gender marker case confidential (private).

Public Notice of Hearing

The law says that if you ask a judge to make your case confidential, there must be a public hearing on that request. To let the public know about the hearing, the court posts this notice in the courthouse before the hearing. This notice does not get published in the newspaper.

HOW DO I FILL OUT THESE FORMS?

You should print out the packet and fill out every page.

The first page of each form has a box on the top called a caption. You should fill out the county information and your legal name on each form but leave the case number blank.

STATE OF INDIANA COUNTY OF <u>MONROE</u> <i>(county you live in)</i> IN RE THE CHANGE OF NAME OF: <u>Ashley Crystal Smith</u> <i>(current legal name)</i> Petitioner	IN THE <u>MONROE</u> COUNTY COURT <i>(county you live in)</i> Case Number: SAMPLE
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------

Current legal name: The name that is on your IDs that you want to change from.

Mailing Name: The name you want the court to use when mailing you documents.

Signature: Unfortunately, you need to sign the paperwork in your legal name.

Judicial Officer: This should be left blank because it is a place for the judge to sign.

Check boxes: Where there are check boxes, you should check any box that is relevant, or if no box is, check other and then then give a brief explanation.

1. My petition is made in good faith and not for fraudulent purposes. I want to change my name to <u>Aiden Michael Smith</u> <input checked="" type="checkbox"/> So that my name matches my gender identity and presentation <input type="checkbox"/> Other _____ <p style="text-align: right;">SAMPLE</p>

We hope these forms are simple to use, but if you have questions, please contact the LGBT project at 317-829-3180 or lgbtgroup@ilsin.net.

HOW DO I FILE THESE FORMS?

Where do I file?

You must file your case with the county clerk in the county in which you live. For contact information for the Clerk of Court in your county, visit:

<http://www.in.gov/judiciary/2794.htm>.

How much does it cost?

As of January 2020, the current filing fee in most counties is \$157. If you cannot afford the fee, you can request that the Judge allow you to file for free or a reduced amount. This form is called an Affidavit of Indigency and Fee Waiver Request. If you make a fee waiver request that is denied, please contact the LGBT Project of Indiana Legal Services at 317-829-3180 or lgbtgroup@ils.net before you pay a fee.

Will my case be public?

Yes. Everything you file in your name and gender change cases are publicly available on <https://public.courts.in.gov/mycase>. If you feel unsafe having your case be made public, court rules allow you to ask that the records be sealed (not available to the public) for your safety. This is called an Access to Court Records request.

What do I file?

You should bring the original of the forms in this packet to the clerk, who will stamp the forms and assign a case number, and give you back a copy of the forms

✓ **Name and gender change paperwork**

- Appearance by self-represented party*
- Name and Gender Change Petition*
- Order Setting Hearing*
- Name and Gender Change Order*

✓ **Fee Waiver (if you qualify)**

- Affidavit of Indigency and Request for Fee Waiver*
- Order on Fee Waiver Request*

✓ **Publication Waiver and Sealing Request (optional)**

Usually in a name change, you are required to publish notice of your name change in a newspaper and the court records are public. However, court rules allow you to ask that the publication requirement be waived, and the records be sealed (not available to the public) for your safety.

- Verified Request to Prohibit Public*
- Exhibit A: Memorandum of Law*
- Public Notice of Hearing*

PUBLISHING IN A NEWSPAPER (if a sealing request is not made)

If you don't ask that the records of your case be made private and the publication requirement waived, before your hearing, you will need to place an ad in a newspaper in your county. The ad must run once a week for three weeks and the third ad must be at least 30 days before your hearing.

After the ad runs, the newspaper will send you proof of publication, which you should bring to your hearing or return to the clerk.

How publication works and what needs to be published varies from county to county, so you should ask the clerk what the procedure is where you live. Generally, when your hearing date is set, the clerk will stamp your Notice of Petition for Change of Name. You can then contact the newspaper in your county authorized to run legal ads and give them the stamped Notice with your hearing date and payment.

COURT HEARINGS

After you file the paperwork, the clerk will mail you an order letting you know when your hearing is. The hearing will be in the County Court in the county where you live. The hearing notice will let you know what court and in which courtroom.

Some Counties, like Marion, will have a hearing on your request to keep the records private the same day as your name and gender marker hearings, while a few others will schedule two hearings. You should bring the following to your hearing(s):

- Indiana photo ID;
- Original or certified copy of Birth Certificate;
- US passport, if you have one;
- Letter from your doctor or therapist about your transition, if you have one.

At the hearing, the Judge gets information from you about why you want to keep the records of the case private and why you want to change your name and gender marker. The Judge will likely just ask you about all the information in the documents you gave to the court. The parts of the hearing will be:

1. Why the court should seal the record and waive publication (optional)

The issue at this hearing is why the court should seal the record and waive publication. You will need to show the judge that you would face a significant risk of substantial harm if your name/gender marker change was published or made public. You can show this by telling the judge about any violence or discrimination you have experienced or witnessed, or why you fear for your safety should you be outed as trans.

-and-

2. Why the court should change your name and gender marker.

For name changes, you need to show the Judge that you are not changing your name to avoid creditors.

For gender marker changes, you need to show the Judge that you are changing your gender marker in good faith, which includes to have it match your gender identity. Some Judges want a letter from your doctor showing that you are in the process of medically transitioning. This is not required by law, but not giving it could cause the Judge to delay your case. If you don't feel comfortable giving this information to the Judge or you are not medically transitioning, please contact us at 317-829-2180 or lgbtgroup@ilsi.net.

AFTER THE HEARING

After the hearing, the Judge should sign the Name and Gender Marker Change Order you submitted when you started your case. When this Order is signed your name and gender marker are legally changed! Sometimes you get the order on the day of the hearing, other times the court will mail you a copy after they process the paperwork. We recommend getting 2-3 certified copies of the order from the clerk.

A guide from Indiana Legal Services about updating Indiana IDs is available [here](#). For information about updating put of state IDs, please visit the [National Center for Transgender Equality's Document Center](#).

STATE OF INDIANA

IN THE _____ COUNTY COURT

COUNTY OF _____
(county you live in)

(county you live in)

Case Number:

IN RE THE CHANGE OF
NAME OF:

_____,
(current legal name)

Petitioner

APPEARANCE BY SELF-REPRESENTED PERSON IN CIVIL CASE

1. My current legal name is _____ and I am initiating this case and am representing myself.
2. My contact information for receiving legal service of documents and case information is required by Court Rules:

Mailing Address:

Email Address: _____

Phone: _____

Fax: _____

3. This is a MI case type as defined in Administrative Rule 8(B)(3).

Date

Signature

Printed Legal Name

STATE OF INDIANA

IN THE _____ COUNTY COURT

COUNTY OF _____
(county you live in)

(county you live in)

Case Number:

IN RE THE CHANGE OF
NAME OF:

_____,
(current legal name)

Petitioner

AFFIDAVIT OF INDIGENCY AND REQUEST FOR FEE WAIVER

I, _____ state:
(current legal name)

1. I intend to file a Petition for Change of Name and Gender and I believe that I have a case with merit.
2. I cannot pay any of the filing fees, costs, security, bond, record preparation charges, or other expenses of this action because I do not have sufficient income or resources.
3. I have only minimal assets.

I affirm under penalties for perjury that the foregoing representations are true to the best of my knowledge and belief.

Date

Signature

Printed Legal Name

STATE OF INDIANA

IN THE _____ COUNTY COURT

COUNTY OF _____

(county you live in)

(county you live in)

Case Number:

IN RE THE CHANGE OF
NAME OF:

(current legal name)

Petitioner

ORDER ON FEE WAIVER

The Court, having reviewed Petitioner's Verified Affidavit of Indigency, issues the following

Order:

1. Petitioner has complied with I.C. § 33-37-3-2(a) and may file this Case without the pre-payment of any filing fees, costs, security, bond, or other expenses.
2. The Court will determine whether any or additional costs are to be paid at a preliminary or final hearing in this case.

ORDERED _____

Date

JUDICIAL OFFICER

Distribution:

(mailing name)

Mailing Address:

STATE OF INDIANA

IN THE _____ COUNTY COURT

(county you live in)

COUNTY OF _____
(county you live in)

Case Number:

IN RE THE CHANGE OF
NAME OF:

_____,
(current legal name)

Petitioner

VERIFIED PETITION FOR CHANGE OF NAME AND GENDER

I, _____ respectfully petition
(current legal name)

this Court to change my name, pursuant to Indiana Code §34-28-2-1, and to change my gender

pursuant to the inherent equity jurisdiction of the court. In support of this petition, I state:

1. My current legal name is _____.

2. The current sex designation my birth certificate is _____.

3. My date of birth is _____.

4. My current residential and mailing address is:

5. My Indiana identification card/ driver's license number is _____.

I do not have an Indiana Identification card or driver's license.

6. I have not been known by any other legal names.

Previously, my legal name was _____

and was changed to my current legal name via marriage adoption other_____

7. I was born in _____ and am a United States Citizen.

(City, State)

8. I do not hold a valid US passport
 My passport number is _____.
9. I have never been convicted of a felony.
10. I am not a registered sex or violent offender who is barred by I.C. § 11-8-8-16(a) from changing my name.
11. My petition is made in good faith and not for fraudulent purposes. I want to change my name to _____
 So that my name matches my gender identity and presentation Other _____

12. Pursuant to the inherent equity jurisdiction of the court and *In Re Petition for Change of Birth Certificate*, 22 N.E.3d 707 (Ind. Ct. App. 2014), I want to change my gender marker from _____ to _____. My petition is made in good faith and not for fraudulent purposes. I want to make this change because:
 I want my legal gender to accurately reflect my gender identity and presentation.
 Other _____

THEREFORE, I respectfully request that this Court grant my Petition for Change of Name and Gender, and for all other just and proper relief.¹

I affirm under penalties for perjury that the foregoing representations are true to the best of my knowledge and belief.

Date

Signature (Legal Name)

Printed Legal Name

¹ Notarization is not required under Trial Rule 11(B). Trial Rule 1 provides that the trial rules, not Indiana Statutes, govern procedure and practice in all civil suits. See also *Yang v. Stafford*, 515 N.E.2d 1157 (Ind. Ct. App. 1987).

STATE OF INDIANA

IN THE _____ COUNTY COURT

(county you live in)

COUNTY OF _____

(county you live in)

Case Number:

IN RE THE CHANGE OF
NAME OF:

(current legal name)

Petitioner

ORDER SETTING HEARING

The Court, having considered Petitioner's Verified Petition for Change of Name and Gender filed in this matter, now sets the matter for hearing on

_____ for _____ of the Court's time.

ORDERED _____

JUDICIAL OFFICER

Distribution:

(mailing name)

Mailing Address:

STATE OF INDIANA

IN THE _____ COUNTY COURT

COUNTY OF _____

(county you live in)

(county you live in)

Case Number:

IN RE THE CHANGE OF
NAME OF:

(current legal name)

Petitioner

NOTICE OF PETITION FOR CHANGE OF NAME

Notice is given that I have filed a Petition for a Change of Name in the _____

County Court and that said petition will be heard by the Court on

_____. Any person has the right to appear

at the hearing and file an objection.

Clerk

STATE OF INDIANA

IN THE _____ COUNTY COURT

(county you live in)

COUNTY OF _____
(county you live in)

Case Number:

IN RE THE CHANGE OF
NAME OF:

_____,
(current legal name)

Petitioner

ORDER ON VERIFIED PETITION FOR CHANGE OF NAME AND GENDER

The Court, having reviewed the Verified Petition for Change of Name and Gender and the evidence presented at the hearing now finds:

1. Petitioner has followed all requirements of Indiana Code § 34-28-2 *et seq.* for change of name and is not statutorily barred from a legal name change.
2. Petitioner is seeking to change their gender in good faith and not for a fraudulent or unlawful purpose. *In Re Petition for Change of Birth Certificate*, 22 N.E.3d 707 (Ind. Ct. App. 2014).
3. Petitioner’s date of birth is _____.
4. Petitioner’s current legal name is _____. Petitioner’s former legal name was _____.
5. The sex/gender on Petitioner’s birth certificate is _____.

IT IS THEREFORE ORDERED that Petitioner’s Petition for Change of Name and Gender is GRANTED.

Petitioner’s legal name is hereby changed to _____

Petitioner’s legal gender is changed to _____.

IT IS FURTHER ORDERED that all agencies and institutions issuing the Petitioner identity documents are directed to amend such documents consistent with this order, including but not limited to the Indiana State Department of Health and its subdivisions.

ORDERED _____

JUDICIAL OFFICER

STATE OF INDIANA

IN THE _____ COUNTY COURT

(county you live in)

COUNTY OF _____

(county you live in)

Case Number:

IN RE THE CHANGE OF
NAME OF:

_____,
(current legal name)

Petitioner

**VERIFIED REQUEST TO PROHIBIT PUBLIC ACCESS PURSUANT TO RULES ON
ACCESS TO COURT RECORDS**

I, _____ respectfully petition
(current legal name)
this Court to seal the record of my name and gender marker change proceeding, permanently prohibiting
Public Access to the entire court record and waiving the publication requirement of Indiana Code § 34-
28-2-3(a) pursuant to Indiana Access to Court Records Rule 6. In support of this request, I state:

1. I am transgender gender non-conforming nonbinary _____ and
am seeking to change my gender to accurately reflect my gender identity and presentation.
2. Along with that petition, I am submitting this request, in accordance with Rule 6 of the
Indiana Access to Court Records Rules (“A.C.R.”), asking that this case be excluded from
public access.
3. I am making this request so I can avoid harm from the widespread publication of my request
to change my name and to protect my confidential health information, privacy, and safety.
4. I believe that having my case publicly available puts me at substantial risk of harm and
presents a significant risk that I could be targeted by acts of discrimination or violence based
on my gender identity and/or by being outed as transgender.
5. I am aware of the high rates of violence, discrimination, and invasion of privacy against
transgender and gender non-conforming people in Indiana and nationwide and I fear that if

the public knows I am transgender, I will personally experience violence, discrimination and an invasion of my privacy.

6. I fear that if someone could find my gender change request and address on-line, that I could be targeted for discrimination and/or violence based on my gender identity.

7. I also fear for my safety because of my personal experience with violence and discrimination.

I have personally suffered physical harm discrimination harassment bullying

threats of violence other _____

because of my gender identity and presentation

8. I am attaching a Memorandum of Law in Support of Rule 9 Request prepared by Indiana Legal Services an Exhibit.

9. There are no other parties or interested persons to this action.

WHEREFORE, I respectfully that pursuant to Access to Court Records Rule 6 and 5, this case be excluded from public access by sealing the record of this proceeding and by waiving the publication requirements of Indiana Code § 34-28-2-3(a)..

I affirm under penalties for perjury that the foregoing representations are true to the best of my knowledge and belief.

Date

Signature

Printed Legal Name

**MEMORANDUM OF LAW IN SUPPORT OF
VERIFIED REQUEST TO PROHIBIT PUBLIC ACCESS AND/OR WAIVE
PUBLICATION PURSUANT TO RULES ON ACCESS TO COURT RECORDS**

1. This memorandum of law was drafted by Indiana Legal Services' LGBT Project to support self-represented litigants who fear for their safety to a request pursuant to the Rules on Access to Court Records¹ to waive publication and sale the records of their case.
2. Name change cases are subject to the public access rules containing in Indiana Rules of Court Administration 9. Ind. Code § 34-28-2-2.5(b).
- I. HAVING TO PUBLISH NOTICE IN A NEWSPAPER AND HAVING THEIR CASE PUBLICLY AVAILABLE PUTS PETITIONER AT SUBSTANTIAL RISK OF HARM.**
3. The Court of Appeals is clear that the evidence of heightened risk of harassment, violence, and homicide to transgender individuals nationally and in Indiana is enough to demonstrate significant risk of harm warranting prohibiting public access. *In re Name Change of M.E.B.*, 19A-MI-118 at ¶ 11 (June 21, 2019).
4. The purpose of the Access to Court Records Rule is, among other things, to minimize an individual's risk of injury. The Commentary to the Rule recognizes "that unrestricted access to certain information in Court Records could result in an unwarranted invasion of personal privacy or unduly increase the risk of injury to individuals and businesses." Ind. Access to Court Records 1, cmt. ". . . The goal of the Rules on Access to Court Records is proactive; it seeks to *prevent* harm. To force petitioners to wait until they have already experienced that harm would vitiate the purpose of the rule." *Id.*; accord *In Re K.H.*, 127 N.E.3d 257 (Ind. Ct. App. 2019)
5. A.C.R. Rule 6 requires Judges to look at the totality of the circumstances to evaluate if a substantial risk of harm exists and to proactively protect applicants' safety. Rule 6 does not require that Plaintiff endure targeted threats, violence, or abuse before granting temporary and permanent

¹ The Access to Court Records Rules replaced Administrative Rule 9 on January 1, 2020. Rules on Access to Court Records moved portions of Administrative Rule 9 and placed them in a more organized manner. A.C.R. Rule 6 is Administrative Rule 9(G)(4) without change.

sealing and a publication waiver. *In Re M.E.B.*, 126 N.E.3d 932 at 934 (Ind. Ct. App. 2019); *In Re K.H.*, 127 N.E.3d 257 (Ind. Ct. App. 2019)

6. Part of the circumstances to consider is the reality that transgender people are disproportionately impacted by violence and homicide. The United States is the third most deadly country for trans people.
7. Between 2013 and 2015, hate crimes against transgender people increased 239 percent, with LGBT people more likely than any other minority group to experience hate crimes in the United States. Haeyoung Park and Iaryna Mykhyalyshyn, *L.G.B.T. People Are More Likely to Be Targets of Hate Crimes Than Any Other Minority Group*, N.Y. TIMES, June 16, 2016.
8. The systemic violence transgender people experience neither begins nor ends with hate crimes, physical assault or homicide. Transgender people are more likely than the general population to experience discrimination, harassment, and violence in every facet of life, including family relations, education, employment, housing, public accommodations, obtaining accurate identification documents, and accessing adequate and appropriate medical treatment. . *See e.g.* James *et al.*, *The Report of the 2015 U.S. Transgender Survey* (2016), available at <http://www.ustranssurvey.org/reports/>; National Coalition of Anti-Violence Programs, *A Report from the National Coalition of Anti-Violence Programs: Lesbian, Gay, Bisexual, Transgender, Queer, and HIV-Affected Hate Violence in 2013* (2014), available at http://avp.org/wp-content/uploads/2017/04/2013_ncavp_hvreport_final.pdf; Jaime M. Grant *et al.*, *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey 2* (2011), available at http://www.thetaskforce.org/downloads/reports/reports/ntds_full.pdf.
9. This is no less true in the state of Indiana. A survey of transgender people in Indiana conducted in conjunction with the National Transgender Discrimination Survey found that 73% of respondents reported harassment in their K-12 school; and 27% reported physical assault. National Center for Transgender Equality and the National Gay and Lesbian Task Force, *Findings of the National*

Transgender Discrimination Survey: Indiana Results (2015), available at [http://www.transequality.org/sites/default/files/docs/usts/USTSINStateReport% 281017%29.pdf](http://www.transequality.org/sites/default/files/docs/usts/USTSINStateReport%281017%29.pdf).

10. In another study of Transgender Hoosiers, 74% of respondents reported experiencing harassment or mistreatment on the job. Christy Mallory and Brad Sears, *Employment Discrimination Based on Sexual Orientation and Gender Identity in Indiana*, August 2017, available at https://williamsinstitute.law.ucla.edu/research/in_discrimination_aug_2017/.
11. In 2016, an Indiana transgender woman was shot in the face while their attacker yelled anti-transgender sentiments. *Alleged Hate Group Member Charged in Shooting of Trans Woman in Indiana*, *The Advocate* (July 17, 2016), available at <http://www.advocate.com/transgender/2016/7/17/alleged-hate-group-member-charged-shooting-trans-woman-indiana>. Across the nation, violence against transgender individuals is on the rise. Maggie Astor, *Violence Against Transgender People Is on the Rise, Advocates Say*, N.Y. TIMES, Nov. 9, 2017.
12. Though the data on violence is staggering, the actual violence against transgender people is likely much worse, due to the underreporting of crimes. *See. E.g.* Lucas Waldron, *Deadnamed: The way cops in Jacksonville and other jurisdictions investigate the murders of transgender women adds insult to injury and may be delaying justice*, available at <https://www.propublica.org/article/deadnamed-transgender-black-women-murders-jacksonville-police-investigation>; Emma Keith et. al, *Lack of trust in law enforcement hinders reporting of LBGTQ crimes*, available at <https://www.publicintegrity.org/2018/08/24/22138/lack-trust-law-enforcement-hinders-reporting-lbgtq-crimes>.
13. The Court of Appeals is clear that these significantly higher rates of discrimination, harassment, and violence experienced by transgender people as compared to cisgender people (people who are not transgender) is enough to satisfy that there was clear and convincing evidence that the

Petitioner would face a significant risk of substantial harm if their transgender status was disclosed to the public. *In re Name Change of A.L.*, 81 N.E.3d 283, 291 (2017).

14. The Court of Appeals rejected the trial court's reasoning that Rule 9 was not applicable because the petitioner had not shown they were subjected to any specific threats or violence because of their gender identity. *Id.* At 290-91. Trial courts have no jurisdiction to disregard appellate precedent. *Cf. Ross v. State*, 877 N.E.2d 829, 835 (Ind. Ct. App. 2007) (appellate precedent is binding on trial courts), *trans. denied*.
15. There—on an evidentiary record substantively identical to that submitted here—the court found that the significant risk of harm came from the general public being able to access, on the internet, in perpetuity, information about petitioner being transgender.² *Id.*

II. COURT DOCUMENTS IDENTIFY PETITIONER AS TRANSGENDER, WHICH UNLAWFULLY DISCLOSES CONFIDENTIAL MEDICAL INFORMATION IN VIOLATION OF A.C.R. 5(A)(1).

16. A.C.R. Rule 5(A)(1) mandates that records declared confidential by Indiana statute or court rule must be excluded from public access. Both medical and mental health records are confidential and protected from public disclosure.
17. That Petitioner's is transgender is protected medical information. I.C. § 16-39-3-10 declares a patient's "mental health record or testimony related to a patient's mental health" offered in a legal proceeding to be a confidential court record.
18. Gender transitions involve both physical and social elements. Social elements, such as wearing clothing more readily associated with a specific gender, changing one's name and updating their identity documents to reflect their experienced sex, are therapeutic treatments for the psychological treatment of gender dysphoria. STANDARDS OF CARE FOR THE HEALTH OF TRANSSEXUAL,

²A publication notice in a local newspaper lives on past the three weeks in which it is published. All public notices published in Indiana are archived and searchable through the Hoosier State Press Association. Indiana Public Notice Search, available at <http://www.indianapublicnotices.com/>. Once publication is made or the court file accessed, it cannot be undone.

TRANSGENDER, AND GENDER-NONCONFORMING PEOPLE, WORLD PROFESSIONAL ASSOCIATION FOR TRANSGENDER HEALTH (7th ed. 2011), *available at* <https://www.wpath.org/publications/soc>.

19. The records in this case constitute protected health records that Indiana law requires trial courts to keep confidential. *See* Ind. Code § 16-39-3-10 (a “mental health record or testimony related to a patient’s mental health” offered in a legal proceeding is a confidential court record). Trial courts have no discretion, and therefore no jurisdiction, to order such records be made publicly available. *E.g. Groth v. Pence*, 67 N.E.3d 1104, 1112 (Ind. Ct. App. 2017) (“as a matter of law,” records declared confidential by statute “shall not be disclosed”), *trans. denied*.

III. BEING OUTED AS TRANSGENDER VIOLATES PETITIONER’S PRIVACY INTERESTS PROTECTED BY THE ACCESS TO COURT RECORDS RULES AND THE 14TH AMENDMENT OF THE US CONSTITUTION.

20. The purpose of the Rules on Access to Court Records is, among other things, to protect the privacy interests of litigants. The Commentary to the Rule recognizes “that unrestricted access to certain information in Court Records could result in an unwarranted invasion of personal privacy or unduly increase the risk of injury to individuals and businesses.” Ind. Access to Court Records Rule 1, cmt.
21. Petitioner has a fundamental right of privacy in preventing the release of their highly personal and intimate medical and mental health information and in deciding under what circumstances to release information that has a statistically significant likelihood to subject them to substantial harm. *Whalen v. Roe*, 429 U.S. 589, 599-600 (1977); *Nixon v. Adm’r of Gen. Servs.*, 433 U.S. 425, 464-65 (1977) (instructed that intrusions on legitimate informational privacy expectations must be weighed against the public interest in accessing that information); *NASA v. Nelson*, 562 U.S. 134, 138 (2011) (reaffirming *Nixon* balancing test); *Denius v. Dunlap*, 209 F.3d 944, 956 (7th Cir. 2000) (holding 14th Amendment right to informational privacy protects the “clearly established ‘substantial’ right in the confidentiality of medical information that can only be overcome by a sufficiently strong state interest”).

22. The United States Supreme Court has recognized that a constitutional right to information privacy protected by the 14th Amendment applies to the states. *Whalen v. Roe*, 429 U.S. 589, 599-600 (1977). This constitutional right to privacy means one has a venerable right “not to have intimate facts concerning one’s life disclosed without one’s consent.” *Bartnicki v. Vopper*, 200 F.3d 109, 122 (3d Cir. 1999). In fact, “the more intimate or personal the information, the more justified is the expectation that it will not be subject to public scrutiny.” *Fraternal Order of Police v. City of Philadelphia*, 812 F.2d 105, 112 (3d Cir. 1987). This right to privacy has been deemed by Federal Courts to include an individual’s gender identity. *See Powell v. Schriver*, 175 F.3d 107 (2d Cir. 1999).

Denying Petitioner’s Access to Court Records request would make public the fact that Petitioner is pursuing therapeutic treatment for their gender dysphoria and reveal medical and mental health information to a large number of disinterested persons with no legitimate interest in that information, in violation of the 14th Amendment to the United States Constitution, I.C. § 16-39-3-10, and the purpose of the Access to Court Records Rule.

*Prepared in January 2020 for use by pro se parties by:
LGBT Law Project
Indiana Legal Services
lgbtgroup@ilsa.net*

STATE OF INDIANA

IN THE _____ COUNTY COURT

(county you live in)

COUNTY OF _____

(county you live in)

Case Number:

IN RE THE CHANGE OF
GENDER OF:

_____,
(current legal name)

Petitioner

**ORDER SETTING HEARING ON PETITIONER'S VERIFIED REQUEST TO EXCLUDE
CASE FROM PUBLIC ACCESS**

PUBLIC NOTICE OF HEARING

Please take notice: Petitioner filed a Verified Written Request for Sealing the Record pursuant to the Rules on Access to Court Records and requested that the Court enter an Order excluding the entire case from public access. The Court, having duly examined said motion, hereby sets the matter for hearing on the matter for hearing on _____ for _____ of the Court's time.

ORDERED _____

Dated _____

STATE OF INDIANA

IN THE _____ COUNTY COURT

(county you live in)

COUNTY OF _____

(county you live in)

Case Number:

IN RE THE CHANGE OF
GENDER OF:

(current legal name)

Petitioner

**ORDER ON REQUEST TO PROHIBIT PUBLIC ACCESS PURSUANT TO RULES ON
ACCESS TO COURT RECORDS**

Following a hearing on the matter, held on _____, the Court now issues the following Findings and Order:

1. Petitioner has demonstrated by clear and convincing evidence that the requirement of Indiana Rules on Access to Court Records 6(A) are met.
2. Petitioner demonstrated that the personal safety interests served by prohibiting public access to the entire court record of this case outweigh the public access interests served by the Rules on Access to Court Records.
3. Permanently prohibiting Public Access to the entire court record is the least restrictive means and duration to protect Petitioner's personal safety.

WHEREFORE IT IS ORDERED that Public access to the all documents that comprise the entire court record under this case number is permanently prohibited and all Public access to all further proceedings under this case number is prohibited.

IT IS FURTHER ORDERED that the publication requirements of Indiana Code §34-28-2-3(a) are waived.

ORDERED _____

JUDICIAL OFFICER

Distribution:

(mailing name)

Mailing Address:
