

STATE OF INDIANA) IN THE _____ COURT
)SS:
COUNTY OF _____) CAUSE NO. _____

IN RE THE GENDER CHANGE OF:)
)
)
)
_____)
Petitioner)

APPEARANCE BY UNREPRESENTED PERSON

1. My name is _____ and I am the Petitioner, filing this case on my own behalf. I am not represented by a lawyer.

2. Contact information for receiving legal service of document and case information as required by Court Rules.

Address: _____

Email address: _____

I will accept service at the above email address.

Phone: _____

Fax: _____

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

4. There are related cases: *(If yes, please indicate below)*

Yes

No

Caption and case number of related cases:

Caption: _____ Case No.: _____

Caption: _____ Case No.: _____

Additional information as required by local rule:

Signature

STATE OF INDIANA) IN THE _____ COURT
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IN RE THE CHANGE OF GENDER)
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)
)
)
)
)
Petitioner)

VERIFIED PETITION FOR CHANGE OF GENDER

I, _____, respectfully petition this Court to change my gender pursuant to the inherent equity jurisdiction of the court. In support this petition, I state:

1. My current legal name is _____.
2. The current sex designation on my birth certificate is _____.
3. My date of birth is _____.
4. That my mailing address is:

And if different, my residence address is:

5. I have not been known by any other legal names.
 Previously, my legal name was _____.
6. I was born in _____.
7. 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 _____.
8. My petition is made in good faith and not for fraudulent purposes.
9. I want to make this change because:

I want my legal gender to accurately reflect my gender identity and presentation.

Other:

WHEREFORE the undersigned prays that the Court set this matter for hearing, that the Court grant the Petition for Change of Gender, and for all other just and proper relief.

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 _____ COURT
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 OF:)
)
)
 _____)
 Petitioner)

ORDER SETTING HEARING

Comes now _____, pro se, having filed a Verified Petition for Change of Gender, and the Court finds that the matter should be set for hearing.

IT IS THEREFORE ORDERED that this matter shall be heard on

_____.

 Date

 Judicial Officer

Distribution:

STATE OF INDIANA) IN THE _____ COURT
)SS:
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IN RE THE CHANGE OF GENDER)
OF:)
)
)
)
_____)
Petitioner)

ORDER ON VERIFIED PETITION FOR CHANGE OF GENDER

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

1. 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).

2. Petitioner does not have a former legal name.

Petitioner’s former legal name was _____.

3. Petitioner’s date of birth is _____.

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

Petitioner’s legal gender is changed from _____ 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.

So ORDERED: _____

Judicial Officer

Distribution:

You do not have to file the following documents, *but you may want to*. Read below and then decide whether you want to fill out and file them.

Court rules allow you to ask that records be sealed (not available to the public) for your safety. If you feel having this case public would put you at significant risk of substantial harm, fill out all of the following forms and submit them to the Clerk of Court **when you start your gender change case**.

1. The first document is Notice of Exclusion of Confidential Information From Public Access. This lets the court know you want the court to keep the papers you file out of public view.

2. The second document is the Verified Request to Prohibit Public Access Pursuant to Indiana Rules on Access to Court Records. This is a request to the Judge to make your case confidential. This is where you should detail all the reasons you would feel unsafe having your gender change made public

3. The third document is the Memorandum of Law in Support of Verified Request to Prohibit Public Access Pursuant to Rules on Access to Court Records. Indiana Legal Services wrote this memo to explain to the Judge why, in general, it can be unsafe for trans people to be outed, and why this means the gender change of a transgender person should be sealed (confidential).

4. The fourth document is the Public Notice of Hearing. The law says that if you ask a judge to make the case confidential, there must be a public hearing on the sealing request (that's the second document listed above). To let the public know about the hearing, the court posts this notice in the courthouse at least 30 days before the hearing.

5. Finally, the fifth document is the Order on Request to Prohibit Public Access Pursuant to Indiana Rules on Access to Court Records. This is a document that you want the Judge to sign. If the Judge decides that your case should remain confidential, not viewable by the public, then the Judge will sign this document and your case will be *sealed*.

STATE OF INDIANA) IN THE _____ COURT
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IN RE THE CHANGE OF GENDER)
OF:)
)
)
_____))
Petitioner)

NOTICE OF EXCLUSION OF CONFIDENTIAL INFORMATION FROM PUBLIC ACCESS

Contemporaneous with the filing of their Verified Petition For Change Of Gender and pursuant to Indiana Rules on Access to Court Records, Petitioner provides this notice that the information listed below is to remain excluded from public access in accordance with Rule 6.

1. Appearance
2. Verified Petition for Change of Gender
3. Order on Verified Petition for Change of Gender
4. Notice of Exclusion of Confidential Information for Public Access
5. Verified Request to Prohibit Public Access Pursuant to Indiana Rules on Access to Court Records
6. Memorandum of Law in Support of Verified Request to Prohibit Public Access and/or Waive Publication Pursuant to Rules on Access to Court Records
7. Order on Verified Request To Prohibit Public Access Pursuant to Indiana Rules on Access to Court Records

I am the only party to this proceeding. Hence there is no other party to be served.

Respectfully submitted,

Signature

Date

Printed Legal Name

STATE OF INDIANA) IN THE _____ COURT
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IN RE THE CHANGE OF GENDER)
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)
)
)
)
Petitioner)

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

I, _____, respectfully petition this Court to seal the record of my gender marker change proceeding, permanently prohibiting Public Access to the entire court record pursuant to Indiana Rules on Access to Court Records. In support of this request, I state:

1. I am: transgender
gender non-conforming
nonbinary

2. I am seeking to change my gender to accurately reflect my gender identity and presentation.

3. I am aware of the high rates of violence, discrimination, and invasion of privacy against transgender, gender non-conforming and nonbinary people in Indiana and nationwide and I fear that if the public knows my gender identity, I will personally experience violence, discrimination and an invasion of my privacy.

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

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

6. I have personally suffered physical harm discrimination harassment
 bullying threats of violence other:

7. I am attaching a Memorandum of Law in Support of Verified Request to Prohibit Public Access And/Or Waive Publication Pursuant to Rules on Access to Court Records by Indiana Legal Services as an Exhibit.

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

THEREFORE, I respectfully request that pursuant to Indiana Rules on Access to Courts, this case be excluded from public access by sealing the record of this proceeding.

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 4TH 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 4th 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 4th Amendment applies to the states under the 14th Amendment. *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
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PUBLIC NOTICE OF HEARING

Please take notice: Petitioner having filed a Verified Written Request for Sealing the Record pursuant to Indiana Rules on Access to Court Records requesting that the Court enter an Order excluding the entire case from public access now, and the Court, having duly examined said motion, hereby sets the matter for hearing

So ordered this _____

Judicial Officer

