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New York State Changes Policy on Birth Certificate Gender Marker Changes for Transgender Minors

On March 10, 2020, New York State announced it was changing its prior policy which prohibited transgender minors from correcting the sex designation on their birth certificates. Previously, New Yorkers could only correct the sex listed on their birth certificate if they were 18 or older. Minors were categorically prohibited from changing the sex listed on their birth certificate, even if they had parental consent.

This created a real issue for transgender minors in this State, as their birth certificate would contain conflicting identifying information even if the child had legally changed their name and corrected their gender on other identifying documents, such as their driver’s license, passport and/or social security card.

In February 2020, Lambda Legal filed a lawsuit against New York State (*M.H.W. v. Cuomo*), challenging this policy and arguing that the State’s policy of preventing minors from correcting their birth certificates in a manner consistent with their gender identity violates their State and Federal constitutional rights. Governor Andrew Cuomo and Attorney General Letitia James agreed, and announced that they would be implementing a change to this discriminatory policy, effective immediately.

Now, minors age 16 or younger can apply for a correction to their birth certificate through their parent(s) or legal guardian(s), and children aged 17 to 18 can apply on their own without parental consent. No medical affidavits will be necessary to correct the sex designation on a birth certificate for adults or minors. Following this decision, the New York State Department of Health promulgated forms for applicants to use in requesting a change to their gender designation, making the application process simple and user-friendly.

This is a huge victory for transgender children and their families in New York, as transgender minors can now obtain identity documents that match one another and that conform to that person’s gender identity. In the words of *M.H.W.*, the transgender teenager at the center of the New York State lawsuit: *“I can go forward not having to worry about legal documents conflicting with who I am again. I get to just go on being me.”*

However, a word of caution: a transgender minor is only permitted to change their gender marker under this policy if they have the consent of **both** parents/legal guardians (assuming there are two). If a child has one supportive parent/guardian and one who is non-supportive, that child may still be unable to pursue a gender designation change without additional litigation.

For more information, including completing applications or guidance on what to do if you have a non-supportive parent or parents, please contact attorney Joseph R. Williams at Copps DiPaola Silverman, PLLC.

Mr. Williams also assists transgender clients with name changes and gender marker changes on other State and Federal identification documents.



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