

NAME CHANGE OF ADULT IN TRIBAL COURT

This page explains what a name and sex field change is and how to go about it. This page includes name and sex field changes for adults.

WHAT IS A PETITION FOR NAME AND SEX FIELD CHANGE

An adult can petition a court to have their name and sex field legally changed to another name and sex on your birth certificate. A person could request a change of their first, middle or last name. They can also request their sex field changed on their original birth certificate.

However, a state may or may not honor the Tribal Order to change your sex field on your birth certificate depending on the state you were born in. Currently, the State of South Dakota has no laws preventing someone from changing the sex field on their amended birth certificate but gives little guidance on how to go about it. You will want to check with the state you were born to determine if they will amend the sex field on a birth certificate and if so, what the requirements are for such an order.

It appears that in almost all the states that allow the sex field to be amended on a birth certificate the state will require proof that the Petitioner participated in the requisite mental health counseling to obtain the recommendation to begin gender confirming clinical treatment and proof that the Petitioner is receiving the appropriate clinical treatment for gender transition.

HOW TO FILE A PETITION FOR NAME CHANGE

A person can petition a court to have their name changed to another name. A person can request a change of their first, middle or last name. You can also petition the court for an order to have the sex field on your birth certificate amended to reflect their current gender.

What is a petition. A petition is a document similar to a complaint except it does not require an answer from the respondent. It is a document where the petitioner formally requests the court to order something and sets out the petitioner's version of the facts.

How to file a petition. A petition is filed when you take it to the courthouse and file it along with the filing fee with the clerk of courts. When you file your petition with the clerk, please date and sign the form in front of the clerk so they can notarize your signature.

Filing and service fees. The court will require payment of a filing fee unless waived to file your petition with the court. Use the **Motion to Waive Filing and Service Fees** form to ask the court to waive the filing fee or for a partial waiver of the fee.

Once you file your petition for name change the court clerk will schedule a hearing on your petition for name change. The court will require that you publish the notice of hearing in the Todd County Tribune for 4 consecutive weeks before the hearing at your own expense (the newspaper will charge you for publishing the notice of hearing). You will need to bring an

affidavit of publication to the hearing to prove to the court that notice of hearing was in fact published in the newspaper. You must get the affidavit of publication from the newspaper.

Jurisdiction. Petitioner must show the court that it has jurisdiction over them. The Petitioner will need to establish that they are an enrolled member of the Rosebud Sioux Tribe and is currently residing within the exterior boundaries of the Rosebud Sioux Indian Reservation and has been bona fide resident of Todd County, South Dakota for more than six months prior to the filing of the petition.

NAME AND SEX FIELD CHANGE HEARING

Once a petition is filed and notice of hearing is published, the court will hold a hearing on the petition.

BURDEN OF PROOF. If a party files a Petition for Name and Sex Field Change, they have the burden of proving that claim in court. In a typical civil case a party has the burden of proving their claim by a **preponderance of the evidence**. Proving something by a preponderance of the evidence means evidence with greater weight or that is more convincing than the evidence of the opposing party(s). The court may require that a party prove their Petition by clear and convincing evidence (evidence that is both clear and convincing to the court). This means that by representing your self in a legal matter it is your responsibility to prove your case. Don't expect the judge to prove your case for you. The petitioner has the burden of proving by a preponderance of the evidence the following to the court:

1. Petitioner must also show the court that their request for name and sex field change is for a legitimate purpose. This means that petitioner cannot change their name for any illegal or fraudulent reasons. If petitioner is seeking to change their name to avoid creditors or avoid child support or deceive any government agency the court will not grant their request for a name change. If petitioner is seeking to change their name to their grandfather's name, for example, to honor your grandfather's memory or wishes, the court will probably grant their request.

2. Petitioner will be required to provide the court with evidence that Petitioner has . This information is required by the State Office of Vital Records to change the sex field on Petitioner's birth certificate.

WHAT DO I DO WHEN I GO TO COURT FOR A HEARING ON YOUR PETITION

The party bringing a petition for name change of minor children has the burden of proving their petition by a preponderance of the evidence. The petitioner (the party who brought the petition before the court) presents their evidence first and then defendant or respondent presents their evidence to the court.

How to present your Evidence to the Court. There are several ways of presenting your evidence and case in court. The best way is through live testimony of witnesses. This would include you (you need to testify to your claim) and any other person who has personal and

relevant knowledge of the facts of your claim. It is your responsibility to get your witnesses to court and to ask them questions about their knowledge of the facts. In order to compel or force your witnesses to testify at your trial or hearing you may need to subpoena each of your witnesses well before the trial or hearing or hearing date (Use the **Motion to Subpoena Witnesses** form to request the court to issue a subpoena to compel a witness to appear at your trial or hearing if they won't voluntarily appear). You can also subpoena a person or witnesses to bring evidence such as documents to your hearing or trial (Use the **Motion to Subpoena a Person to Bring Evidence to Court** form to request the court to issue a subpoena to compel a person to appear at your trial or hearing and bring specified evidence with them if they won't voluntarily appear). Once you and your witnesses testify the opposing party can cross examine you and your witness. This means that they can ask you and your witnesses questions.

It will be your responsibility to directly ask questions (direct examination) of your witnesses and to get your evidence introduced into the record. You can only ask questions during direct examination. Do not attempt to make statements or comments when you ask questioning witnesses. Your witnesses should be asked who they are, what they know and how they know it or anything they might have observed. Like cross examination you should prepare your questions for each of your witnesses well before the trial and take notes of any strong points testified to that you can use in your closing arguments to the Court.

It will also be your responsibility to get objects and other physical evidence, such as documents, introduced into the record. You do this by laying the foundation for the admissibility of the evidence by questioning the person you subpoenaed to bring the objects or pieces of evidence you want introduced into evidence. Ask the Court to mark the evidence as an Exhibit. Then you must ask this person who they are, what objects or pieces of evidence they brought to the Court, a description of the objects or pieces of evidence, how the evidence came into that persons possession and if the evidence are documents then you must ask if the documents are kept in the ordinary course of business. Then you must ask the Court to have the evidence introduced and accepted as evidence. Only evidence accepted by the Court after it is ruled admissible will be seen or considered by the Court.

Any interested party (next of kin) may appear after receiving notice. An interested party may object to the name change. Any interested party can present evidence at the trial regarding their objection.

You must cross examine any interested party or their witnesses to cast doubt on the interested party's objections. Cross examination is your chance to ask questions of the interested party's witnesses. You can only ask questions of the interested party or their witnesses during cross examination. Do not attempt to make statements or to testify during cross examination of another witness, the Court will shut you off from doing so.

Be courteous in Court. When you go to court the judge will control the proceedings. The petitioner presents their case first. Then the any interested party may object and can present their side of the case. Do not interrupt the other side when they are testifying unless you have an objection. Both sides will have an opportunity to cross examine the other party and their

witnesses. Be courteous to the other side. If you disrupt the proceedings the judge could hold you in contempt and throw you in jail.

WHAT DO I DO AFTER THE NAME AND SEX FIELD CHANGE IS ORDERED

If the petition is granted and a name and sex field change is ordered, the Petitioner will need to obtain a two (2) certified copy of the court order. Keep one copy for your records and mail a copy to the Office of Vital Records in the state where you were born to have your birth record amended to reflect the name change. The state may require a fee to amend your birth record.

If your original birth certificate is from South Dakota (if you were born in South Dakota), you will need to submit a certified copy of the Order for Name and Sex Field Change along with \$8.00 for the birth record you need amended by check or money order payable to the Department of Health, Office of Vital Records, to the following address:

Office of Vital Records
South Dakota Department of Health
207 E. Missouri Ave., Suite 1A
Pierre, SD 57501

If you were born in a different state, you need to contact the vital records office of that state to determine the process and applicable fee to amend your birth certificate.

Once you receive the amended birth record you will need to take further steps to change your name and gender on official documents. An Order granting a Name Change will not automatically change a name on other official documents. You will need to take additional steps to change your name and gender on other official documents upon receipt of the your amended birth certificate. Further, extra steps will need to be taken to change your name on their Social Security Card, Driver's License, Tribal Enrollment, etc.