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'That Name Is Dead to Me': Reforming Name Change Laws to Protect Transgender and Nonbinary Youth

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“THAT NAME IS DEAD TO ME”: REFORMING NAME CHANGE LAWS TO PROTECT TRANSGENDER AND NONBINARY YOUTH

Sarah Steadman*

ABSTRACT

Content warning: this Article discusses suicidality.

For transgender and some nonbinary youth, living under a chosen name is a first step toward becoming their authentic selves. For these youth, a name change is powerful; it allows them to choose a name that matches their gender identity. They consider their birth name to be a distressing “dead” name—one that they cannot relate to and need to bury.

Using one’s chosen name decreases suicidality among transgender youth who face many challenges, including family rejection and other severe mental health stressors. Transgender and nonbinary youth can only require others to use their chosen names after obtaining a legal name change. But only two states in the nation currently allow minors to change their name legally without their parents’ consent and active assistance. Parental consent requirements are problematic because youth whose parents do not support their gender identity must wait, exposed to harm and distress. Thus, we deny them this first step towards correcting their gender and the accompanying mental health relief—delaying youth who have otherwise transitioned years before adulthood.

In the meantime, with identification cards that do not match their gender identity, transgender and nonbinary youth are at risk of discrimination and other harm. They may drop out of school and avoid seeking employment for fear of bias and rejection. Our laws must change to protect our transgender and nonbinary youth by allowing them to change their legal name independently. Their mental health and well-being depend on these crucial reforms.

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TABLE OF CONTENTS

INTRODUCTION	3
I. GENDER IDENTITY DEVELOPMENT AND AFFIRMATION	8
A. <i>Gender Identity Development and Mental Health Risk Factors</i>	9
B. <i>Gender Affirmation</i>	12
1. <i>Gender-Affirming Care</i>	13
2. <i>Legal Measures</i>	17
3. <i>Social Transition</i>	20
II. CURRENT LAW ON NAME CHANGES FOR MINORS	22
A. <i>Summary of State Name Change Laws for Minors</i>	22
B. <i>Existing Case Law Illustrates Judicial Bias</i>	23
III. PROBLEMATIC PROCEDURAL REQUIREMENTS AND OTHER BARRIERS	28
A. <i>Parental Notice</i>	28
B. <i>Publication and Court Hearing Requirements</i>	29
C. <i>Cost Barriers</i>	31
D. <i>Parental Rejection, Homelessness, and Foster Care Placement Barriers</i>	31
IV. INDEPENDENT DECISION MAKING AND PROPOSED REFORMS TO NAME CHANGE LAWS	33
A. <i>At Age Fourteen Youth Are Capable of Making Major Decisions Independently</i>	33
B. <i>Youth Age Fourteen and Older Should Be Allowed to Change Their Legal Name Independently</i>	36
C. <i>Granting a Name Change for Transgender and Nonbinary Youth Under Fourteen When Both Parents and the Youth Consent</i>	38
D. <i>A Best Interest Standard for Transgender and Nonbinary Youth Under Age Fourteen in Contested Proceedings</i>	39
CONCLUSION.....	43

INTRODUCTION

“I was living under a name that didn’t match who I was,” said Jude. “I wasn’t living as my true self, which caused a lot of self-hate. By changing this, it pretty much cuts off all association with that.”¹

“I know for sure that when my name was changed and people started calling me Tye that was a huge deal. . . . [I]t just meant more than a name. It was . . . more like respect. . . . The name was the first thing.”²

“[A] name change sends an important message to the world, a message solidified and made official with a court’s approval. . . . Recognizing the importance of a name change is one of the ways to help protect the well-being of a transgender minor child.”³

A person’s first name given at birth is typically associated with that individual’s “assigned sex.”⁴ For transgender individuals⁵—those whose assigned sex at birth does not match their gender identity⁶ or expression⁷—their given name may not match either. Many

1. Alex Burness, *A Transgender Teen Helped Pass a New Birth Certificate Law. She’s Now the First in Colorado to Benefit from It*, DENVER POST (Jan. 2, 2020, 10:07 PM), <https://www.denverpost.com/2020/01/02/transgender-birth-certificate-judes-law/> [perma.cc/XDL6-Q8B5].

2. Julia Sinclair-Palm, “*It’s Nonexistent*”: *Haunting in Trans Youth Narratives About Naming*, BANK ST. OCCASIONAL PAPER SERIES, 2017, at 1, <https://educate.bankstreet.edu/cgi/viewcontent.cgi?article=1102&context=occasional-paper-series> [https://perma.cc/9H78-F8RL].

3. Sacklow v. Betts, 163 A.3d 367, 373 (N.J. Super. Ct. Ch. Div. 2017) (citation omitted).

4. THE WORLD PRO. ASS’N FOR TRANSGENDER HEALTH, STANDARDS OF CARE FOR THE HEALTH OF TRANSSEXUAL, TRANSGENDER, AND GENDER EXPANSIVE PEOPLE 97 (7th ed. 2012) https://www.wpath.org/media/cms/Documents/SOC%20V7/SOC%20V7_English2012.pdf?t=161366934 [https://perma.cc/8DJ8-CLGJ] [hereinafter WPATH] (“Sex is assigned at birth as male or female, usually based on the appearance of the external genitalia .”).

5. Transgender “can include, for example, people who identify as male and female, neither male or female, or somewhere between male and female.” Kristina R. Olson, Lily Durwood, Madeleine DeMeules & Katie A. McLaughlin, *Mental Health of Transgender Children Who Are Supported in Their Identities*, 137 PEDIATRICS 1, 3 (2016), <http://pediatrics.aappublications.org/content/pediatrics/early/2016/02/24/peds.2015-3223.full.pdf> [https://perma.cc/8DJ8-CLGJ].

6. Gender identity “refers to an individual’s internal sense of gender. Since gender identity is internal, one’s gender identity is not necessarily perceived by or visible to others.” JAIME M. GRANT, LISA A. MOTTET, JUSTIN TANIS, JACK HARRISON, JODY L. HERMAN & MARA KEISLING, INJUSTICE AT EVERY TURN: A REPORT OF THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY 180 (2011), https://www.thetaskforce.org/wp-content/uploads/2019/07/ntds_full.pdf [https://perma.cc/8DJ8-CLGJ].

7. Gender expression is defined as the “[e]xternal appearance of one’s gender identity, usually expressed through behavior, clothing, haircut or voice, and which may or may not conform to socially defined behaviors and characteristics typically associated with being either masculine or

transgender and nonbinary individuals⁸ experience their birth name as a “dead name”⁹ associated with severe distress.¹⁰ It reminds them of a past with which they do not identify.¹¹ Imagine an adolescent’s distress if they identify as female and have chosen the name Veronica, but people address them by their male associated birth name as it appears in their school records and on their driver’s license.

For many transgender and nonbinary youth, choosing a different name for themselves is an initial step towards affirming their gender identity.¹² Choosing one’s name can be empowering and signal self-

feminine.” *Sexual Orientation and Gender Identity Definitions*, HUM. RTS. CAMPAIGN, <https://www.hrc.org/resources/sexual-orientation-and-gender-identity-terminology-and-definitions> [<https://perma.cc/5B5B-GRNA>].

8. Nonbinary is defined as

[a]n adjective describing a person who does not identify exclusively as a man or a woman. Non-binary people may identify as being both a man and a woman, somewhere in between, or as falling completely outside these categories. While many also identify as transgender, not all non-binary people do. Non-binary can also be used as an umbrella term encompassing identities such as agender, bigender, genderqueer or gender-fluid.

Glossary of Terms, HUM. RTS. CAMPAIGN, <https://www.hrc.org/resources/glossary-of-terms> [<https://perma.cc/97GF-KEUB>]. Youth who identify outside of the gender binary use varied and changing terminology to identify themselves. *See, e.g., Resources on Gender Expansive Children and Youth*, HUM. RTS. CAMPAIGN, <https://www.hrc.org/resources/resources-on-gender-expansive-children-and-youth> [<https://perma.cc/88D7-VAPY>]. (“The term ‘gender-expansive’ . . . [can be used] to classify youth who did not identify with traditional gender roles but were otherwise not confined to one gender narrative or experience. This term allows us to talk about youth who don’t meet our ‘traditional’ understandings of gender without putting their identity in a box.”) And the number of youths identifying as nonbinary is growing; a recent study shows one in four LGBTQ youth identify as nonbinary. Kaitlyn McNab, *New Study Finds 1 in 4 LGBTQ Youth Identify as Nonbinary*, TEEN VOGUE (July 14, 2021), <https://www.teenvogue.com/story/new-study-finds-1-in-4-lgbtq-youths-identify-as-non-binary> [<https://perma.cc/MYN6-JYWE>].

9. A dead name is “the name that a transgender person was given at birth and no longer uses upon transitioning.” *Deadname*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/deadname> [<https://perma.cc/CHX2-W83M>].

10. *Transgender FAQ*, GLADD, <https://www.glaad.org/transgender/transfaq> [<https://perma.cc/8RUJ-H69U>]; *see also* Adryan Corcione, *13 Stories of Folks Who Had a Legal Name Change*, TEEN VOGUE (Mar. 13, 2018), <https://www.teenvogue.com/story/trans-non-binary-name-change-stories> [<https://perma.cc/K5QJ-885A>] (“Every time I got letters in the mail addressed to my old name, I felt sick to my stomach.”).

11. *Transgender FAQ*, *supra* note 10 (“For some transgender people, being associated with their birth name is a tremendous source of anxiety, or it is simply a part of their life they wish to leave behind.”); *see also* Katy Steinmetz, *How Transgender People Choose Their New Names*, TIME (June 1, 2015, 6:38 PM), <https://time.com/3904004/caitlyn-jenner-trans-name-vaunt-fair/> [<https://perma.cc/8Q8G-9FKR>].

12. Sinclair-Palm, *supra* note 2; *see also* Melissa Dahl, *How Transgender People Choose Their New Names*, CUT (June 3, 2015), <http://nymag.com/scienceofus/2015/06/how-transgender-people-choose-their-new-names.html> [<https://perma.cc/7JR7-EJX2>]; LAMBDA LEGAL, *TRANSSEXUAL RIGHTS TOOLKIT 19* (2016) https://www.lambdalegal.org/sites/default/files/publications/downloads/2016_trans_toolkit_final.pdf [<https://perma.cc/JS2J-N5VV>] (“[T]aking on a new name is very often the first step in a person’s transition, a concrete signpost that they are beginning to live in accordance with their gender identity.”).

respect.¹³ More crucially, when *others* use a youth's chosen name, they safeguard transgender and nonbinary youths' mental health, and suicidal behavior appears to decrease.¹⁴ In fact, for each additional social context in which others use a transgender youth's chosen name, the youth's risk of suicidal behavior lowers by more than half.¹⁵ In contrast, when others call a transgender youth by their birth name and use incorrect pronouns after they transition,¹⁶ that act can "out" them. Outing exposes them to potential harm, including victimization and increased mental health risks.¹⁷

Many transgender youth feel significant distress because their gender identity conflicts with their sex assigned at birth.¹⁸ Advocates for transgender and nonbinary youth emphasize the need to affirm the youth's gender identity,¹⁹ which includes using their chosen name and pronouns.²⁰ Noted mental health stressors for transgender and nonbinary youth include being called by the wrong name and having identification documents that are incongruent with their gender

13. See Caitlin Gibson, *Another Challenge for Transgender People: Choosing a New Name*, WASH. POST (July 31, 2016), https://www.washingtonpost.com/lifestyle/style/another-challenge-for-transgender-people-choosing-a-new-name/2016/07/29/07df80f2-49d8-11e6-acbc-4d4870a079da_story.html [https://perma.cc/8PM2-L8VB]. MSNBC host Janet Mock renamed herself after a childhood nickname stating, "[t]here's power in naming yourself, in proclaiming to the world that this is who you are." *Id.* See Corcione, *supra* note 10 ("I love my name now, and it's all due to the fact that I was able to change it to fit who I know that I am.").

14. Stephen T. Russell, Amanda M. Pollitt, Gu Li & Arnold H. Grossman, *Chosen Name Use Is Linked to Reduced Depressive Symptoms, Suicidal Ideation, and Suicidal Behavior Among Transgender Youth*, 63 J. ADOLESCENT HEALTH 503, 505 (2018).

15. *Id.*

16. See, e.g., GABE MURCHISON, HUM. RTS. CAMPAIGN, SUPPORTING & CARING FOR TRANSGENDER CHILDREN 8 (2016) <https://assets2.hrc.org/files/documents/SupportingCaringforTransChildren.pdf> [https://perma.cc/X2LD-U3U5] ("Gender transition is an umbrella term for the steps a transgender person and their community take to affirm their gender identity."); see also *Frequently Asked Questions About Transgender People*, NAT'L CTR. FOR TRANSGENDER EQUAL (July 9, 2016) <http://www.transequality.org/issues/resources/frequently-asked-questions-about-transgender-people> [https://perma.cc/4XRT-RZM8] ("While not all transgender people transition, a great many do at some point in their lives. Gender transition looks different for every person.").

17. See, e.g., GRANT ET AL., *supra* note 6, at 154; Russell et al., *supra* note 14, at 504–05.

18. See WPATH, *supra* note 4, at 5.

19. See, e.g., Shoshana K. Goldberg, *Fair Play, The Importance of Sports Participation for Transgender Youth*, CTR. FOR AM. PROGRESS (Feb. 8, 2021, 9:01 AM) <https://www.americanprogress.org/issues/lgbtq-rights/reports/2021/02/08/495502/fair-play/> [https://perma.cc/DLF6-Q3K5] ("Lack of access to affirming spaces and a community that supports transgender youth by affirming their gender identity, name, and pronoun has also specifically been tied to increased suicidality and decreased mental well-being among transgender youth.").

20. See, e.g., *Working with Transgender Youth*, LAMBDA LEGAL (2012), https://www.lambdalegal.org/sites/default/files/gdtb_2013_09_transgender_youthr.pdf [https://perma.cc/H94X-TMDD]; see also WPATH, *supra* note 4, at 15–16, 30–31, 52, 61 (explaining that the World Professional Association for Transgender Health has developed internationally recognized protocols recommending that transgender young people gain real-life experience by, among other things, using a name associated with their gender identity); Russell, et al., *supra* note 14, at 505.

identity.²¹ Given the mental health vulnerability of many transgender and nonbinary youth, gender identity affirmation is vital.

Transgender youth often identify as such in early adolescence, and increasingly transition when they begin high school.²² For adolescents with gender dysphoria, pubertal changes can be “unbearable,” and affirming physical outcomes are compromised by delaying medical intervention beyond puberty.²³ This delay can “create[] difficult barriers with enormous life-long disadvantages.”²⁴ “[T]hose who transition later in life after already having developed secondary sex characteristics, may be at increased risk of stigma given their visible gender nonconformity. In fact, the degree to which others can tell whether an individual is transgender has been linked to discrimination and poor mental and physical health outcomes.”²⁵

Naming oneself is commonly the first step in an individual’s transition, and being able to require others to use one’s chosen name is one of the simplest and most effective ways to prevent harm.²⁶ The law does not reflect this reality, however—in every state but New Mexico and Wisconsin,²⁷ transgender and nonbinary youth must wait until they

21. Matthew Oransky, *Here’s What You Can Do About Trans Teen Suicide*, MOUNT SINAI ADOLESCENT HEALTH CTR. BLOG (Sept. 13, 2017), <https://www.teenhealthcare.org/blog/heres-what-you-can-do-about-trans-teen-suicide/> [https://perma.cc/C5LQ-NSUV].

22. WPATH, *supra* note 4, at 12; *see also* JODY L. HERMAN, ANDREW R. FLORES, TAYLOR N.T. BROWN, BIANCA D.M. WILSON & KERITH J. CONRON, THE WILLIAMS INST., AGE OF INDIVIDUALS WHO IDENTIFY AS TRANSGENDER IN THE UNITED STATES 6 (2017), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Age-Trans-Individuals-Jan-2017.pdf> [https://perma.cc/9X2K-FFDD]; JEROME HUNT & AISHA C. MOODIE-MILLS, CTR. FOR AM. PROGRESS, THE UNFAIR CRIMINALIZATION OF GAY AND TRANSGENDER YOUTH: AN OVERVIEW OF THE EXPERIENCES OF LGBT YOUTH IN THE JUVENILE JUSTICE SYSTEM 2, (2012), https://cdn.americanprogress.org/wp-content/uploads/issues/2012/06/pdf/juvenile_justice.pdf?_ga=2.136149233.1972253149.1613331193-303245488.1613331193 [https://perma.cc/L2WF-H35D].

23. Wylie C. Hembree, Peggy T. Cohen-Kettenis, Louis Gooren, Sabine E. Hannema, Walter J. Meyer, M. Hassan Murad, Stephen M. Rosenthal, Joshua D. Safer, Vin Tangpricha & Guy G. T’Sjoen, *Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons: An Endocrine Society Clinical Practice Guideline*, 102 J. CLINICAL ENDOCRINOLOGY & METABOLISM 3869, 3880–81 (2017) (“These recommendations place a high value on avoiding an unsatisfactory physical outcome when secondary sex characteristics have become manifest and irreversible. . .”).

24. *Id.* at 3880–81; *see also* *Outlawing Trans Youth: State Legislatures and the Battle over Gender-Affirming Healthcare for Minors*, 134 HARV. L. REV. 2163, 2170 (2021) (“Undergoing medical transition at an earlier age also allows many trans youth to ‘pass’ more easily as their identified gender and avoid many of the challenges associated with being visibly transgender.”) [hereinafter *Outlawing Trans Youth*].

25. Mark L. Hatzenbuehler & John E. Pachankis, *Stigma and Minority Stress as Social Determinants of Health Among Lesbian, Gay, Bisexual, and Transgender Youth: Research Evidence and Clinical Implications*, 63 PEDIATRIC CLINICS N. AM. 985, 989 (2016).

26. *See* Russell et al., *supra* note 14, at 504–05.

27. *See* N.M. STAT. ANN. § 40-8-1 (1989) (“Any resident of this state over the age of fourteen years may, upon petition to the district court of the district in which the petitioner resides and upon filing the notice required with proof of publication, if no sufficient cause is shown to the contrary, have his name changed or established by order of the court.”); WIS. STAT. ANN. § 786.36(1) (West 2018) (“[A]ny resident of this state, whether a minor or adult, upon petition to the circuit

are a legal adult to change their legal name without having to rely on one or both parents' agreement and active support.

In most states, at least one parent (or legal guardian) must file the request for a legal name change with a court.²⁸ The parent may also have to testify in support of the change.²⁹ Transgender and nonbinary minors are, therefore, dependent upon their parents' approval for this early key step to actualize their identity. This dependence is especially troubling since some parents reject their transgender or nonbinary children.³⁰ These unsupportive parents are unlikely to initiate or consent to the legal procedure enabling the youth to effectuate that identity. Moreover, a disproportionate number of LGBT youth are experiencing homelessness or are in foster care because of rejection by their families.³¹ Youth who are experiencing homelessness or are in foster care rarely have an engaged parent or guardian to petition a court for their name change.

For too many transgender and nonbinary youth, therefore, a legal name change is impossible. That creates an untenable scenario where a transgender or nonbinary adolescent might choose a name that is true to their identity, but still be forced to use their given name—their dead name. To avoid this injustice, legislatures should follow the lead of New Mexico and Wisconsin and allow minors, fourteen and older, to petition for a name change independently.³² I propose specific name change law reform for states to adopt to accommodate transgender and nonbinary youth by allowing them to change their legal name independently, thus supporting their mental health and welfare.

In Part I, I present an overview of gender identity development and the mental health harms endured by youth who are not affirmed in their gender identity. Additionally, I explain common steps involved in transitioning, including the importance of a legal name change. Part II

court of the county where he or she resides and upon filing a copy of the notice required under § 786.37(1), with proof of publication, may, if no sufficient cause is shown to the contrary, have his or her name changed or established by order of the court.”)

28. See, e.g., FLA. STAT. ANN. § 68.07(7)-(8) (West 2016); IDAHO CODE § 7-802(1) (2017); TEX. FAM. CODE ANN. § 45.001 (1995); N.C. GEN. STAT. ANN. § 101-2(d) (2019); MICH. COMP. LAWS ANN. § 711.1(5) (West 2020); LA. STAT. ANN. § 13:4751(C) (2015); NEV. REV. STAT. ANN. § 41.295 (West 2017).

29. See, e.g., *In re H.C.W.*, 123 N.E.3d 1048, 1049 (Ohio Ct. App. 2019); see also, e.g., ARIZ. REV. STAT. ANN. § 12-601(B) (2011) (requiring an evidentiary showing that the name change of a minor is in the minor's best interest).

30. GRANT ET AL., *supra* note 6, at 94 (noting that forty percent of respondents reported being rejected by parents or other family members due to their gender identity/expression, while sixty percent were not rejected).

31. See, e.g., Hannah Hussey, *Beyond 4 Walls and a Roof: Addressing Homelessness Among Transgender Youth*, CTR FOR AM. PROGRESS (Feb. 2, 2015), <https://cdn.americanprogress.org/wp-content/uploads/2015/02/TransgenderHomeless-report2.pdf> [<https://perma.cc/TN38-ZCCM>].

32. See § 40-8-1; § 786.36.

begins with a summary of U.S. state laws on name changes for minors. I then examine the case law regarding name changes for transgender youth. In Part III, I explain the barriers presented by widely used statutory name change provisions and common law restrictions that impede transgender and nonbinary youth's ability to legally change their name. I provide solutions to address those procedural barriers. In Part IV, I argue that lowering the age requirement to fourteen for a minor to independently change their legal name is consistent with many other legal decisions that people of that age may already make. Finally, I propose legal reforms to name change statutes and court proceedings to enable access to justice for transgender and nonbinary youth and to protect their best interests.

I. GENDER IDENTITY DEVELOPMENT AND AFFIRMATION

“Hearing you call me by the wrong name can make me think that you don't support who I am, or that you are like the other people in my life who have judged me for being transgender and refuse to acknowledge me for the person I am.”³³

When young people transition (affirm their gender), they often choose a different name than their given name to match their gender identity.³⁴ One study found that a majority of transgender youth aged fifteen to twenty-one chose a different name from the one given to them at birth.³⁵ “The name I grew up with caused me such dysphoria, it felt as if it was associated with a person that I just wholly was not any longer.”³⁶

This Part begins with an overview of gender identity development and the mental health harms endured by transgender and nonbinary youth. I then identify steps transgender youth may take if they transition to affirm their gender identity and address the importance of this individualized process. I discuss the particular significance of a

33. Jack Turban, Tony Ferraiolo, Andrés Martin & Christy Olezeski, *Ten Things Transgender and Gender Expansive Youth Want Their Doctors to Know*, 56 J. AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY 275, 276 (2017).

34. See Steinmetz, *supra* note 11; Dahl, *supra* note 12 (“Clinical psychologists who counsel transgender people say that there are a few common themes they tend to hear. Most often, they have chosen a name a long time ago.”); Corcione, *supra* note 10 (“I changed my name simply because my old one certainly didn't reflect who I was, inside or out. I knew I was a girl when I was 11. . . .”).

35. Russell et al., *supra* note 14, at 503.

36. Corcione, *supra* note 10.

legal name change to decrease risks resulting from a mismatch between legal identification and gender presentation.

A. Gender Identity Development and Mental Health Risk Factors

“Whether gender-expansive or transgender, signs that a child’s gender is ‘different’ can emerge at any age.”³⁷ The American Academy of Pediatrics asserts that by age three, most children identify their own gender as male or female and by age four know their gender identity.³⁸ Parents of transgender children report initially noticing gender differences at age four and a half on average.³⁹ By about age six, those children viewed their gender identity as different from what was assigned at birth.⁴⁰ In the U.S. Transgender Survey,⁴¹ a national study of transgender persons ages eighteen and older, sixty percent of respondents reported that they began to “feel different” from the sex on their birth certificate at age ten or younger.⁴² Thirty-two percent began to feel different at age five or younger, and twenty-eight percent between the ages of six and ten. Other research suggests that first identification as transgender occurs most commonly among those aged fifteen to seventeen.⁴³ Often, however, a transgender person will not show their identity before adolescence or even adulthood.⁴⁴

For most children, gender identity conforms to their sex assigned at birth and remains stable as they age.⁴⁵ While many children try out alternative gender expression and roles,⁴⁶ some experience a direct

37. MURCHISON, *supra* note 16, at 5.

38. Jason Rafferty, *Gender Identity Development in Children*, AM. ACAD. OF PEDIATRICS (Sept. 2018) <https://www.healthychildren.org/English/ages-stages/gradeschool/Pages/Gender-Identity-and-Gender-Confusion-In-Children.aspx> [<https://perma.cc/QDD2-PYZ8>].

39. MURCHISON, *supra* note 16, at 5–6.

40. *Id.*

41. SANDY E. JAMES, JODY L. HERMAN, SUSAN RANKIN, MARA KIESLING, LISA MOTTET & MA’AYAN ANAFI, NAT’L CTR. FOR TRANSGENDER EQUAL., *THE REPORT OF THE 2015 U.S. TRANSGENDER SURVEY* (2016), <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf> [<https://perma.cc/95MM-JDAU>].

42. *Id.* at 45.

43. See HERMAN ET AL., *supra* note 22, at 6.

44. MURCHISON, *supra* note 16, at 5.

45. See *Guidelines for Psychological Practice with Transgender and Gender Nonconforming Clients*, 70 AM. PSYCH. 832, 841–42 (2015).

46. See MURCHISON, *supra* note 16, at 5 (“Every child explores different ways of expressing gender.”); NAT’L CTR. ON PARENT, FAM. & CMTY. ENGAGEMENT, *HEALTHY GENDER DEVELOPMENT AND YOUNG CHILDREN: A GUIDE FOR EARLY CHILDHOOD PROGRAMS AND PROFESSIONALS* 7 <https://depts.washington.edu/dbped/healthy-gender-development.pdf> [<https://perma.cc/7Y35-TAQB>]; see also *Outlawing Trans Youth*, *supra* note 24, at 2178 (“There is a meaningful difference between a child who exhibits gender-atypical behavior and a child who persistently identifies as another gender. . . . And gender nonconforming children who later ‘desist’ from expressing the

conflict between their sex assigned at birth and their gender identity. If that conflict results in persistent distress and impaired functioning, the child is diagnosed with gender dysphoria.⁴⁷ Those with gender dysphoria are at higher risk of depression, suicidality, and anxiety.⁴⁸ However, research suggests that a majority of children who experience gender dysphoria grow out of it as they approach puberty or during its early stage.⁴⁹ Studies show that dysphoria perseveres past puberty for six to twenty-seven percent of gender dysphoric children.⁵⁰ For these children,⁵¹ the distress will escalate along with animosity towards their body as they go through puberty (typically between ages ten to thirteen) and, for example, begin menstruating and develop secondary sex characteristics, such as enlarged breasts and facial hair.⁵² For youth with escalating distress linked to the onset of the wrong puberty, transitioning provides crucial emotional protection. “[I]n many cases, the remedy for dysphoria is gender transition.”⁵³

Moreover, transgender and nonbinary youth whose family supports their gender identity and transition have better physical health, mental health, and well-being outcomes.⁵⁴ A study of transgender children ages three to twelve who had transitioned socially and whose families

binary gender opposite to their assigned sex may not necessarily identify as cisgender; they may be nonbinary or possess another gender identity.”).

47. DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS, DSM-5 452 (5th ed. 2013). The DSM-5 defines gender dysphoria as a significant difference between a person’s gender identity and their assumed gender at birth, which manifests as, among other symptoms, “[a] strong desire to be of the other gender,” and/or “[a] strong desire to be treated as the other gender.” *Id.* But see WPATH, *supra* note 4, at 2 (“Only some gender-expansive people experience gender dysphoria at some point in their lives.”).

48. Claire M. Peterson, Abigail Matthews, Emily Copps-Smith & Lee Ann Conard, *Suicidality, Self-Harm and Body Dissatisfaction in Transgender Adolescents and Emerging Adults with Gender Dysphoria*, 47 SUICIDE & LIFE-THREATENING BEHAVIOR 475, 479 (2017); see also MURCHISON, *supra* note 16, at 7.

49. WPATH, *supra* note 4, at 12; see also Hembree et al., *supra* note 23, at 3879.

50. WPATH, *supra* note 4, at 11.

51. *Id.* at 12 (“Data from one study suggest that more extreme gender nonconformity in childhood is associated with persistence of gender dysphoria into late adolescence and early adulthood.”).

52. See *id.*; see also Leonidas Panagiotakopoulos, *Transgender Medicine - Puberty Suppression*, 19 REVS. ENDOCRINE & METABOLIC DISORDERS 221, 221 (2018) <https://doi.org/10.1007/s11154-018-9457-0> [<https://perma.cc/D4WB-27XY>] (“A critical age that is emerging as the time window for desistance versus persistence of gender dysphoria is 10–13 years old. During this period, the severity of gender dysphoria intensifies, corresponding to the average age of pubertal onset in natal females and males.”).

53. MURCHISON, *supra* note 16, at 7.

54. See GRANT ET AL., *supra* note 6, at 101; Russell et al., *supra* note 14, at 504-05; Olson et al., *supra* note 5, at 5; CAITLIN RYAN, FAM. ACCEPTANCE PROJECT, SUPPORTIVE FAMILIES, HEALTHY CHILDREN: HELPING FAMILIES WITH LESBIAN, GAY, BISEXUAL & TRANSGENDER CHILDREN 17 (2009), https://familyproject.sfsu.edu/sites/default/files/FAP_English%20Booklet_pst.pdf [<https://perma.cc/E6A5-J5XE>] (“Transgender and gender non-conforming children who are supported by their families have higher self-esteem, a more positive sense of the future[,] and are at lower risk for health and mental health problems as young adults.”).

supported them found that the children had normal levels of depression and only slightly elevated levels of anxiety compared to the cisgender⁵⁵ participants.⁵⁶ Social support is consistently associated with improved mental health outcomes in transgender adolescents as well.⁵⁷

In contrast, social rejection exacerbates distress through factors such as familial emotional neglect and other adverse childhood experiences.⁵⁸ "Experiences of rejection and victimization may lead youth to believe their family, friends, and/or community do not need or want them, or would be better off if they were dead."⁵⁹ For transgender minors, chronic adversity includes "minority stress" from enduring and navigating social bias and hostility, as well as interpersonal, identity-based microaggressions, which increase their suicide risk.⁶⁰ Black and Latinx transgender and nonbinary children face compounded bias and resultant harms.⁶¹

"Within the transgender population, suicidality is highest among young people."⁶² Over one quarter of transgender youth have reportedly attempted suicide (half at age fifteen or sixteen) compared to eight percent of the general adolescent population.⁶³ Another study of suicidality rates between transgender and cisgender adolescents (average age of under sixteen) found that fifty percent of transgender youth had attempted suicide compared to twenty-three percent of cisgender heterosexual youth.⁶⁴ Moreover, eighty-seven percent of the

55. *Transgender and Non-Binary People FAQ*, HUM. RTS. CAMPAIGN, <https://www.hrc.org/resources/transgender-and-non-binary-faq> [<https://perma.cc/Y6ZV-MJ9Y>] ("Cisgender, or cis, generally refers to people who do not identify as transgender. Cisgender describes people whose gender identity or expression aligns with traits typically associated with the sex assigned to them at birth.")

56. Olson et al., *supra* note 5, at 5.

57. See, e.g., *id.* at 2; Russell et al., *supra* note 14, at 505.

58. Ashley Austin, Shelley L. Craig, Sandra D'Souza & Lauren B. McInroy, *Suicidality Among Transgender Youth: Elucidating the Role of Interpersonal Risk Factors*, J. INTERPERSONAL VIOLENCE, Apr. 2020, at 3, <https://journals.sagepub.com/doi/abs/10.1177/0886260520915554> [<https://perma.cc/29ST-23GN>].

59. *Id.*

60. Press Release, Am. Med. Ass'n, AMA to States: Stop Interfering in Health Care of Transgender Children (Apr. 26, 2021), <https://www.ama-assn.org/press-center/press-releases/ama-states-stop-interfering-health-care-transgender-children> [<https://perma.cc/RQZ5-77ZS>]; see also Brian C. Thoma, Rachel H. Salk, Sophia Choukas-Bradley, Tina R. Goldstein, Michele D. Levine & Michael P. Marshal, *Suicidality Disparities Between Transgender and Cisgender Adolescents*, PEDIATRICS 2 (Nov. 2019); Austin et al., *supra* note 58, at 2, 14. Minority stress includes "exposure to identity-based stressors such as prejudice, stigma, discrimination, rejection, bullying, and other forms of violence. . . ." and interpersonal microaggressions include "daily negative messages targeting youth's marginalized identity." Austin et al., *supra* note 58, at 2, 14.

61. MURCHISON, *supra* note 16, at 6.

62. Austin et al., *supra* note 58, at 2.

63. Arnold H. Grossman & Anthony R. D'Augelli, *Transgender Youth and Life-Threatening Behaviors*, 37 SUICIDE & LIFE-THREATENING BEHAVIOR 527, 532 (2007).

64. Thoma et al., *supra* note 60, at 6.

transgender youth had engaged in self-injuring behavior, compared to forty-eight percent of cisgender, heterosexual youth.⁶⁵ The same study reported that forty-four percent of nonbinary youth had attempted suicide, and suicidality was especially high for nonbinary youth assigned female at birth.⁶⁶ A further study found a fifty-six percent suicide attempt rate among transgender youth, and eighty-six percent of the youth had contemplated suicide in the prior six months.⁶⁷

The alarming suicidality and other self-harm rates among transgender and nonbinary youth underscore the urgency of societal support and individual affirmation, including by supporting these youth in transitioning (should they wish to do so and to whatever extent they choose).

B. Gender Affirmation

Transgender youth are increasingly transitioning at earlier ages.⁶⁸ “Adolescence is a crucial time for identity and psychosexual development in young people with gender identity concerns.”⁶⁹ More transgender adolescents are publicly presenting their authentic gender when they start high school.⁷⁰ Therefore, it is critical to allow people at that age—fourteen and older—to change their legal name independently in order to ensure that their school records reflect their chosen name, thus requiring school personnel to use it.

For those who desire and choose to transition, the process is individualized and varied.⁷¹ “Every transition is different;”⁷² some

65. See *id.* at 6; cf. Claire M. Peterson, Abigail Matthews, Emily Copps-Smith & Lee Ann Conard, *Suicidality, Self-Harm and Body Dissatisfaction in Transgender Adolescents and Emerging Adults with Gender Dysphoria*, 47 *SUICIDE & LIFE-THREATENING BEHAVIOR* 475, 479 (2017) (finding that forty-two percent of adolescents and emerging adults experiencing gender dysphoria reported a history of self-injurious behaviors); Grossman & D’Augelli, *supra* note 63, at 532.

66. Thoma et al. *supra* note 60, at 4–6.

67. Austin et al., *supra* note 58, at 11.

68. Hussey, *supra* note 31, at 1; see also Riittakerttu Kaltiala-Heino, Hannah Bergman, Marja Työlajärvi & Louise Frisé, *Gender Dysphoria in Adolescence: Current Perspectives*, 9 *ADOLESCENT HEALTH, MED. & THERAPEUTICS* 31, 32 (2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5841333/> [<https://perma.cc/XT6J-VKWJ>] (“The number of adolescents contacting specialized gender identity services has risen considerably over the past decade across Europe and North America.”); HUNT & MOODIE-MILLS, *supra* note 22, at 2.

69. Kaltiala-Heino et al., *supra* note 68, at 32, 33 (“Adolescence is an important period of identity formation and integration. Adolescents and young adults establish their identity by actively exploring identity-related choices and making identity commitments in their chosen directions.”).

70. WPATH, *supra* note 4, at 12. See generally HERMAN ET. AL., *supra* note 22, at 6.

71. See, e.g., Aiden Collazo, Ashley Austin & Shelley L. Craig, *Facilitating Transition Among Transgender Clients: Components of Effective Clinical Practice*, 41 *CLIN. SOC. WORK J.* 228, 233 (2013); see also Madeline B. Deutsch, *Overview of Gender-Affirming Treatments and Procedures*, UCSF

transgender and nonbinary youth do not want to transition beyond a name change, and some may not even take that step.⁷³ For many, transitioning includes three components: medical intervention, legal and administrative procedures, and social changes.⁷⁴ Some transgender youth experience minimal or no discomfort with their body, and do not seek medical intervention.⁷⁵ Moreover, "for children who have not reached puberty, gender transition involves no medical interventions at all: it consists of social changes like name, pronoun, and gender expression."⁷⁶

Whatever the changes desired and needed, "[f]amilies and doctors of transgender children often report that the gender transition process is transformative—even *life-saving*."⁷⁷

1. Gender-Affirming Care

"Puberty blockers and cross-sex hormones can save my life. . . . As I know people are judging me for being different, the quicker that I can feel like I am moving toward the body I am inside, the better and more comfortable I will feel with myself."⁷⁸

As the American Medical Association emphatically states, "[e]very major medical association in the United States recognizes the medical necessity of transition-related care for improving the physical and

TRANSGENDER CARE (June 17, 2016), <https://transcare.ucsf.edu/guidelines/overview> [<https://perma.cc/N6HA-M6Z5>] ("[N]ot all transgender people seek all interventions, and some may seek none . . . the current standard of care is to allow each transgender person to seek only those interventions which they desire to affirm their own gender identity.").

72. MURCHISON, *supra* note 16, at 9.

73. See WPATH, *supra* note 4, at 9 ("[I]ndividuals may not experience their process of identity affirmation as a 'transition,' because they never fully embraced the gender role they were assigned at birth or because they actualize their gender identity, role, and expression in a way that does not involve a change from one gender role to another.").

74. See, e.g., GRANT ET. AL., *supra* note 6, at 26 ("For some, the journey traveled from birth sex to current gender may involve primarily a social change but no medical component; for others, medical procedures are an essential step toward embodying their gender.").

75. See *id.* at 26, 181; see also Jack L. Turban, Dana King, Jeremi M. Carswell & Alex S. Keuroghlian, *Pubertal Suppression for Transgender Youth and Risk of Suicidal Ideation*, PEDIATRICS, Feb. 2020, at 2, 3, 6. *But see Outlawing Trans Youth*, *supra* note 24, at 2165 ("[A]lthough not all trans youth seek out gender-affirming healthcare, exponentially greater numbers of trans youth are pursuing this care.").

76. MURCHISON, *supra* note 16, at 7.

77. *Id.* at 7, 9 (emphasis added) ("With their gender identity no longer in conflict, the child can focus on the important work of learning and growing alongside their peers.").

78. Turban et al., *supra* note 33, at 276.

mental health of transgender people.”⁷⁹ Gender-affirming care initially consists of therapy and counseling,⁸⁰ and then includes access to pubertal suppression for transgender youth who desire that treatment.⁸¹ “By delaying puberty, the child and family gain time—typically several years—to explore gender-related feelings and options.”⁸² For those who desire it, pubertal suppression decreases suicidal ideation over the lifetime of transgender youth with treatment access, compared to those who do not have access to care.⁸³ Withholding necessary⁸⁴ transition care can prolong dysphoria and increase distress tied to gender-related abuse.⁸⁵ Therefore, depriving gender dysphoric adolescents and those transgender youth who want medical intervention is “not a neutral option”⁸⁶—it is harmful.

Denial of gender-affirming care is also associated with increased rates of suicide and other self-harm for already highly vulnerable transgender youth.⁸⁷ Consequently, it is alarming that Arkansas recently passed legislation prohibiting gender-affirming medical care for transitioning youth.⁸⁸ Since that bill’s passage, one Arkansas

79. Press Release, Am. Med. Ass’n, *supra* note 60, at 2 (“Studies [of transgender youth] suggest that improved body satisfaction and self-esteem following the receipt of gender affirming care is protective against poorer mental health.”).

80. WPATH, *supra* note 4, at 14, 18–19.

81. *Id.*; see also Panagiotakopoulos, *supra* note 52, at 221 (“[F]or adolescents with intense gender dysphoria, it is recommended that pubertal suppression be initiated as soon as physical signs of puberty are present”). *But see*, Tara Bahrapour, *Becoming Eli: For One Teen, Coming of Age Means Getting Their Parents to Embrace a New Name*, WASH. POST (Dec. 20, 2019) <https://www.washingtonpost.com/dc-md-va/2019/12/20/one-non-binary-teen-coming-age-means-getting-their-parents-embrace-new-name/> [https://perma.cc/MD9X-VZN4] (“Eli’s relationship with their body was more complicated. If there were an imaginary ‘male to female’ scale from left to right, Eli felt they floated above it. On days when Eli felt more feminine, they desired bigger breasts. But often, they wished for a flat chest and wore a binder under their shirt. Eli was also considering taking a small amount of testosterone, just enough to appear more androgynous.”).

82. MURCHISON, *supra* note 16, at 11.

83. Turban et al., *supra* note 75, at 5.

84. See *id.*; ENDOCRINE SOC’Y & PEDIATRIC ENDOCRINE SOC’Y, TRANSGENER HEALTH POSITION STATEMENT 1 (2020), https://www.endocrine.org/-/media/endocrine/files/advocacy/position-statement/position_statement_transgender_health_pes.pdf [https://perma.cc/XG4G-454Q] (“[T]reatment of gender dysphoria/incongruence is medically necessary and should be covered by insurance.”).

85. WPATH, *supra* note 4, at 21; see also ENDOCRINE SOC’Y & PEDIATRIC ENDOCRINE SOC’Y, *supra* note 84, at 2 (“Those gender diverse youth who have barriers to accessing adequate healthcare have poorer overall physical and mental health compared to their cisgender peers.”).

86. WPATH, *supra* note 4, at 21 (“Refusing timely medical interventions for adolescents might prolong gender dysphoria and contribute to an appearance that could provoke abuse and stigmatization. As the level of gender-related abuse is strongly associated with the degree of psychiatric distress during adolescence, withholding puberty suppression and subsequent feminizing or masculinizing hormone therapy is not a neutral option for adolescents.”).

87. ENDOCRINE SOC’Y & PEDIATRIC ENDOCRINE SOC’Y, *supra* note 84, at 2; see also Press Release, Am. Med. Ass’n, *supra* note 60.

88. Save Adolescents from Experimentation (SAFE) Act, H.B. 1570, 93d Gen. Assemb., Reg. Sess. (Ark. 2021) (enacted), <https://www.arkleg.state.ar.us/Bills/FTPDocument?path=%>

gender-affirming care provider has reported attempted suicides by youth who had been receiving transition care.⁸⁹ In 2021, similar bills were introduced in nineteen other states,⁹⁰ some criminalizing providers of gender-affirming care and parents who seek it on behalf of their child.⁹¹ Therefore, "[a]n estimated 45,100 transgender youth ages 13 and older in the U.S. are at risk of being denied gender-affirming medical care due to proposed and enacted state bans."⁹² Poor transgender youth and communities of color face a disproportionate lack of access to care.⁹³

Gender-affirming providers fear increased rates of suicide and other mental health crises among transgender youth as a result of the erasure threat posed by the bills.⁹⁴ For transgender youth who live in a state that threatens or prohibits gender-affirming treatment, a name change may be their only legal transition option and, therefore, even more vital to their well-being.

Although many transgender youth do not have access to gender-affirming treatment,⁹⁵ among those who do, there is no one-size-fits-all

2FBills%2F2021R%2FPublic%2FHB1570.pdf [https://perma.cc/7UPZ-CGBF]. The SAFE Act was enjoined in its entirety by a U.S. District Judge. Andrew DeMillo & John Raby, *Federal Judges Block Transgender Restrictions in 2 States*, ASSOCIATED PRESS (July 21, 2021), <https://apnews.com/article/business-health-government-and-politics-arkansas-eb81755d293622d71ff832d8cbbca97d> [https://perma.cc/T3GJ-ZJXH].

89. Marisa Fernandez & Orion Rummier, *Doctors Fear Next Steps if States Ban Care for Trans Youth*, AXIOS (May 4, 2021), <https://www.axios.com/transgender-youth-bills-doctors-health-care-bdefd950-b41d-4728-afi1-26afd2f484fo.html> [https://perma.cc/M9QC-HAMY].

90. See *Legislation Affecting LGBT Rights Across the Country*, ACLU (July 9, 2021) <https://www.aclu.org/legislation-affecting-lgbt-rights-across-country> [https://perma.cc/S8G5-FGV9].

91. See MOVEMENT ADVANCEMENT PROJECT, *LGBTQ POLICY SPOTLIGHT: EFFORTS TO BAN HEALTH CARE FOR TRANSGENDER YOUTH 4* (2021), <https://www.lgbtmap.org/file/policy-spotlight-trans-health-care-bans.pdf> [https://perma.cc/25Q6-R7GL].

92. See *Proposed Bans Put over 45,000 Transgender Youth at Risk of Losing Access to Gender-Affirming Care*, WILLIAMS INST. (Apr. 15, 2021), <https://williamsinstitute.law.ucla.edu/press/proposed-bans-put-over-45000-transgender-youth-at-risk-of-losing-access-to-gender-affirming-care/> [https://perma.cc/ZMP8-BNYK].

93. See *Outlawing Trans Youth*, *supra* note 24, at 2174 ("[The bills] would disproportionately burden trans youth from disadvantaged socioeconomic backgrounds and communities of color, who are less likely to have the resources to travel across state lines or to relocate for care.").

94. Fernandez & Rummier, *supra* note 89; see also Saeed Jones, *The Republican War Against Trans Kids*, GQ (May 5, 2021), <https://www.gq.com/story/chase-strangio-on-anti-trans-laws> [https://perma.cc/N5ND-7FJK] ("The bans on healthcare are targeted at kids because they want kids to not be trans. Instead of recognizing that what kids who are trans need is affirmation, love and support, they're saying it's harmful to be trans and we're going to take away your lifeline.").

95. See, e.g., ENDOCRINE SOC'Y & PEDIATRIC ENDOCRINE SOC'Y, *supra* note 84, at 2. There are barriers to care, including that "[o]ftentimes, medical treatment for gender dysphoria/gender incongruence is considered elective by insurance companies, which fail to provide coverage for physician-prescribed treatment. Access to appropriately trained healthcare professionals can also be challenging as there is a lack of formal education on gender dysphoria/gender incongruence among clinicians trained in the United States." *Id.*

medical intervention.⁹⁶ However, the World Professional Association for Transgender Health and the Endocrine Society publish standards of care and guidance to professionals providing gender-affirming treatment.⁹⁷ Such care may include pubertal suppression through hormones used to block and, thus, delay an incongruous puberty.⁹⁸ Pubertal suppression is completely reversible when the hormones are discontinued,⁹⁹ whereas undergoing puberty results in gender-noncongruent physical changes such as a lowered voice, incongruous bone structure, body hair, and breast development.¹⁰⁰ Such changes can result in potentially prohibitive cost to treat later, and may require surgery to undo, such as a mastectomy or facial feminization.

Other gender affirming care may include hormone therapy, which enables youth to physically develop age-appropriately at the same time as their peers and consistent with their gender identity.¹⁰¹ If the youth desires, the Endocrine Society recommends hormone transition therapy begin by age sixteen, or earlier if the medical provider believes that delaying treatment until then could be harmful.¹⁰² Medical experts in support of pre-pubescent treatment caution against waiting to begin hormone treatment, because waiting until “a high minimum age” for medical transition can expose transgender youth to distress resulting in risky behavior, such as seeking hormones from illegal and unregulated sources.¹⁰³ Additionally, the Endocrine Society emphasizes that, “[b]ecause of the psychological vulnerability of many individuals with [gender dysphoria]/gender incongruence, it is important that mental

96. See, e.g., Press Release, Am. Med. Ass'n, *supra* note 60 (“[P]hysicians . . . must tailor recommendations about specific interventions and the timing of those interventions to each patient’s unique circumstances.”). Recall that not all transgender and nonbinary youth want medical intervention as part of their transition. See, e.g., Turban et al., *supra* note 75, at 2, 6. There is a “diversity of experience among transgender and gender-diverse people, highlighting that not all will want every type of gender-affirming intervention.” *Id.* at 6.

97. See generally, Hembree et al., *supra* note 23; WPATH, *supra* note 4.

98. Hembree et al., *supra* note 23 at 3871.

99. *Id.* at 3880.

100. Turban et al., *supra* note 75 at 6.

101. See Hembree et al., *supra* note 23 at 3870, 3885. A potential risk of waiting until about age sixteen to begin sex hormone treatment is “the sense of social isolation from having the timing of puberty be so out of sync with peers.” *Id.* at 3885. See also *Outlawing Trans Youth*, *supra* note 24, at 2167 (“Some nonbinary youth also seek [hormone replacement therapy], but there are currently no formal standards of care for nonbinary people. . . .”).

102. Samantha J. Gridley, Julia M. Crouch, Yolanda Evans, Whitney Eng, Emily Antoon, Melissa Lyapustina, Allison Schimmel-Bristow, Jake Woodward, Kelly Dundon, RaNette Schaff, Carolyn McCarty, Kym Ahrens & David J. Breland, *Youth and Caregiver Perspectives on Barriers to Gender-Affirming Health Care for Transgender Youth*, 59 J. ADOLESCENT HEALTH, 241, 260 (2016).

103. See *id.*; see also Press Release, Am. Med. Ass'n, *supra* note 60.

health care is available before, during, and sometimes also after transitioning.”¹⁰⁴

2. Legal Measures

“I remember the first day that I got my new driver’s license with the right gender on it. It was a celebratory time for me. I had a party with my friends. That just kind of completes the person, to see that all the documents match up.”¹⁰⁵

“It feels good now to have my name legally recognized . . . because it’s easier to assert myself and get treated with respect more readily and challenged on my identity less often.”¹⁰⁶

Obtaining identity documents with a correct name and gender marker is necessary to maintain the welfare and safety of transgender and nonbinary individuals.¹⁰⁷ Enabling transgender and nonbinary youth to legally change their name and obtain gender affirming identification helps them to thrive.

Everyone must produce identification to verify their identities in many contexts, sometimes daily. For individuals with gender incongruent identification documents, each of these instances “outs” them as transgender or nonbinary and risks exposing them to discrimination and victimization.¹⁰⁸ In the U.S. Transgender Survey, almost a third of respondents reported negative experiences, including verbal harassment or being denied services, when they showed identification that did not conform to their gender presentation.¹⁰⁹

To illustrate, in an Ohio probate court case, a fifteen-year-old transgender boy sought to change his name from his female-associated birth name to a male-associated chosen name.¹¹⁰ When the probate judge asked him why it was necessary to change it legally, the youth

104. Hembree et al., *supra* note 23, at 3876; *see also id.* at 3870 (“For the care of peripubertal youths and older adolescents, we recommend that an expert multidisciplinary team comprised of medical professionals and mental health professionals manage this treatment.”).

105. Burness, *supra* note 1.

106. Corcione, *supra* note 10.

107. JAMES ET AL., *supra* note 41, at 90; *see also* Lisa Mottet, *Modernizing State Vital Statistics Statutes and Policies to Ensure Accurate Gender Markers on Birth Certificates: A Good Government Approach to Recognizing the Lives of Transgender People*, 19 MICH. J. GENDER & L. 373, 379 (2013).

108. GRANT ET AL., *supra* note 6, at 154 (“For transgender and gender non-conforming people, not having identification consistent with their gender identity or expression can have far-reaching negative consequences.”); *see also* Russell et al., *supra* note 14, at 503–05.

109. JAMES ET AL., *supra* note 41, at 89.

110. *In re H.C.W.*, 123 N.E.3d 1048, 1049 (Ohio Ct. App. 2019).

replied that because his school records officially referred to him by his birth name, substitute teachers called him that name during roll call, “causing him distress.”¹¹¹ That misgendering outed him to classmates who did not know he was transgender.¹¹² The court noted that the “timing of the name change is in part motivated by the need to have [the boy]’s driver’s license, passport, college applications, and similar documents reflect a name consistent with his male gender identity.”¹¹³

Transgender and nonbinary individuals, therefore, need the option to transition *legally* to protect and affirm themselves. A court-ordered name change is almost always required before an individual can apply for gender-congruent identity documents, such as a driver’s license.¹¹⁴ The federal government requires a court order to change one’s name on a Social Security card or U.S. passport,¹¹⁵ and states typically require a court order or other documentation of a legal name change to change the name on a driver’s license.¹¹⁶ It is, therefore, a crucial first step in a person’s legal transition.

For transgender and nonbinary adolescents, having identification that does not match the name they use socially can cause them to delay seeking employment, opening a bank account, and accessing health care.¹¹⁷ For example, employers require job applicants to present their social security card. Transgender and nonbinary youth, however, cannot change their name on their social security identification without a court-ordered name change.¹¹⁸ These youth, therefore, may not seek

111. *Id.* at 1050–51.

112. Samantha Allen, *Ohio Judge Holds Transgender Teen’s Identity ‘Hostage,’* DAILY BEAST (July 13, 2018, 12:40 PM), <https://www.thedailybeast.com/ohio-judge-holds-transgender-teens-identity-hostage> [https://perma.cc/UJ67-EVUP].

113. *H.C.W.*, 123 N.E.3d at 1055.

114. *Identification Documents and Transgender People: An Overview of the Name and Gender Marker Process in the United States*, NAT’L CTR. FOR TRANSGENDER EQUAL., <https://transequality.org/sites/default/files/docs/resources/ID-Documents-Overview.pdf> [https://perma.cc/4PFY-A34E].

115. *Corrected Card for a U.S. Born Child*, SOC. SEC. ADMIN., <https://www.ssa.gov/ssnumber/ss5doc.htm> [https://perma.cc/VVN5-8M4R].

116. See, e.g., ARK. CODE ANN. § 27-16-506(b)(2) (West 2007); CAL. CODE REGS. TIT. 13, § 20.04(d)(2)(B) (2009). As a practical matter many state departments of motor vehicles require a name change court order, see, e.g., *What to Bring*, FLA. HIGHWAY SAFETY & MOTOR VEHICLES, <https://www.flhsmv.gov/driver-licenses-id-cards/what-to-bring/u-s-citizen/> [https://perma.cc/QH5K-47RJ]; *Maryland Driver’s License*, MD. DEP’T OF TRANSP., <https://mva.maryland.gov/drivers/Pages/md-drivers-license.aspx> [https://perma.cc/2RFR-MA5S].

117. See, e.g., *Identity Documents & Privacy*, NAT’L CTR. FOR TRANSGENDER EQUAL., <http://www.transequality.org/issues/identity-documents-privacy> [https://perma.cc/2QZR-E7A8]; see also Hussey, *supra* note 31, at 13 (“Because many transgender youth lack appropriate forms of identification, they frequently face unnecessary hurdles when trying to access health care, as well as other social and educational services and employment opportunities.”).

118. See Jim Borland, *Need to Change Your Name on Your Social Security Card?*, SOC. SEC. MATTERS (July 16, 2021) <https://blog.ssa.gov/need-to-change-your-name-on-your-social-security-card/> [https://perma.cc/AMJ2-ST8W].

employment because their name does not match their gender identity—outing them to potential employers and risking bias in hiring decisions.

Further, transgender and nonbinary youth may avoid school if their school records do not reflect their chosen name or they are not allowed to use it.¹¹⁹ A youth’s decision to discontinue their education has a potentially lifelong impact, including limiting job prospects and future income.

Additionally, police officers often require transgender and homeless youth to show identification.¹²⁰ That act is particularly risky for youth whose identification does not correspond to their gender expression.¹²¹ One transgender man “recalled the time when he was pulled over before he had his name and gender marker changed on his driver’s license and the officer didn’t believe he was providing his real identification. It took hours to sort out the situation.”¹²²

Law enforcement may also show implicit or overt bias against transgender people. Fifty-eight percent of U.S. Transgender Survey respondents reported being mistreated, including being misgendered and verbally harassed, by law enforcement officers who suspected or knew they were transgender.¹²³ And in New York, for example, transgender youth can be arrested under a city ordinance for “false personation” if the youth “knowingly misrepresents his or her actual name, date of birth or address to a police officer or a peace officer with the intent to prevent such [person] from ascertaining such information.”¹²⁴

Access to legal name changes is especially beneficial to those who transition at a young age. In some states, youth can get a driver’s permit at age fourteen, and a driver’s license at age sixteen. That permit (and then license) is often a person’s first photograph identification card. A transgender or nonbinary youth’s photograph may not be gender

119. GLSEN, *THE 2019 NATIONAL SCHOOL CLIMATE SURVEY, THE EXPERIENCES OF LESBIAN, GAY, BISEXUAL, TRANSGENDER, AND QUEER YOUTH IN OUR NATION’S SCHOOLS* 94–96 (2019), https://www.glsen.org/sites/default/files/2021-04/NSCS19-FullReport-032421-Web_o.pdf [<https://perma.cc/2S8U-AFUS>].

120. Hussey, *supra* note 31, at 11.

121. *Id.*; see also *FAQ About Identity Documents*, LAMBDA LEGAL, <https://www.lambdalegal.org/know-your-rights/article/trans-identity-document-faq> [<https://perma.cc/U8LP-JBLP>] (“Opting not to change a name also puts some people at risk of violence because it reveals that they are transgender when they show their ID. Having more than one name can also raise suspicions among employers, landlords or police officers.”).

122. Beth Walton, *For Transgender People, New Name Brings Relief, Security*, ASHEVILLE CITIZEN TIMES (Dec. 22, 2016, 9:55 AM), <https://www.citizen-times.com/story/news/local/2016/12/21/transgender-people-new-name-brings-relief-security/95038872/> [<https://perma.cc/US8S-ZAHR>].

123. JAMES ET AL., *supra* note 41, at 185.

124. N.Y. Penal Law § 190.23 (McKinney 1998); see also Deborah Lolai, “You’re Going to Be Straight or You’re Not Going to Live Here”: *Child Support for LGBT Homeless Youth*, 24 TUL. J.L. & SEXUALITY 35, 56–57 (explaining that the NY ordinance and others like it target transgender youth).

congruent with the name on their identification. Securing a legal name change before those adolescents apply for a driver's permit or license would help protect them from the potential harm of exposure.

3. Social Transition

Transitioning socially entails “coming out” to others and living externally as one's true gender, whether to family, peers, at school, on the job, or in the wider community.¹²⁵ In addition to key factors like using one's chosen name and gender-affirming pronouns, transitioning socially also commonly includes using a gender-aligned bathroom, and choosing clothing, a hairstyle, and otherwise presenting oneself in public consistent with one's identity.¹²⁶ Youth who transition socially and are affirmed have improved mental health outcomes.¹²⁷ In contrast, transgender children who do not transition socially report poor mental health.¹²⁸

Youth, however, often face hostility when they transition in school.¹²⁹ A national survey of LGBTQ students found that approximately forty-three percent felt unsafe at school because of their gender expression, a majority were called names or threatened, around twenty-two percent experienced physical harassment because of their gender expression, and almost sixty percent of the students who reported victimization to school staff said that staff were unresponsive.¹³⁰ Moreover, and arguably most troubling, sixty-seven percent of students reported hearing hostile comments about gender expression from teachers and staff.¹³¹ Further, an unconscionable bill introduced in Arkansas would have disallowed requiring teachers to use a student's gender congruent pronouns “inconsistent with the public school student's biological sex”—permitting teachers to misgender and

125. Collazo et al., *supra* note 71, at 236.

126. OLSON ET AL., *supra* note 5, at 2 *see also* JAMES ET AL., *supra* note 41, at 41; MURCHISON, *supra* note 16, at 9.

127. Russell et al., *supra* note 14, at 503–05; *see also* ENDOCRINE SOC'Y & PEDIATRIC ENDOCRINE SOC'Y, *supra* note 84, at 2 (“Pre-pubertal youth who are supported and affirmed in their social transitions long before medical interventions are indicated, experience no elevation in depression compared to their cis-gender peers.”).

128. Lily Durwood, Katie A McLaughlin & Kristina R. Olson, *Mental Health and Self-Worth in Socially Transitioned Transgender Youth*, 56 J. AM. ACAD. CHILD ADOLESCENT PSYCHIATRY 116, 116 (2017).

129. GLSEN, THE 2019 NATIONAL SCHOOL CLIMATE SURVEY: EXECUTIVE SUMMARY 3 (2019), https://www.glsen.org/sites/default/files/2020-10/NSCS-2019-Executive-Summary-English_1.pdf [<https://perma.cc/N2VS-WN2U>] [hereinafter 2019 SCHOOL CLIMATE SURVEY].

130. *Id.* at 3–5.

131. *Id.* at 4.

disaffirm transgender and nonbinary students.¹³² The bill's sponsor said: "This bill is just a first step to help protect our teachers but when we have students in school now that don't identify as a boy or a girl but as a cat, as a furry, we have issues."¹³³

Schools and school systems that have discriminatory or nonprotective policies, such as prohibiting transgender students from using their chosen name, expose students to harm.¹³⁴ One surveyed student explained:

At my last school I felt miserable and got called "freak" and "weirdo" as if those were my name instead of the name I had asked them to call me. They called me by my birth name as well. . . . They had no respect for me despite how kind I had acted towards them. . . . I felt like there was no place for someone like me.¹³⁵

Transgender and nonbinary youth need validation and support of their gender identity at school to thrive.¹³⁶ National transgender and nonbinary advocacy groups have drafted a model school policy on transgender and nonbinary students that includes the right to be called by the name that aligns with their gender identity.¹³⁷ The nation's three largest school districts, New York City, Los Angeles, and Chicago, have adopted that model policy,¹³⁸ and other districts must follow suit to protect and respect transgender students.

132. H.B. 1749, 93d Gen. Assemb., Reg. Sess. (Ark. 2021), <https://www.arkleg.state.ar.us/Bills/Detail?id=HB1749&ddBienniumSession=2021/2021R> [<https://perma.cc/45LB-B6QS>]. Moreover, Texas, Oklahoma, Mississippi, and Louisiana have "Don't Say Gay" policies, restricting teachers and staff from discussing LGBTQ issues. See *Equality Maps: Safe Schools Laws*, MOVEMENT ADVANCEMENT PROJECT, https://www.lgbtmap.org/equality-maps/safe_school_laws/anti [<https://perma.cc/JW4Y-ELY6>].

133. Juwan J. Holmes, *Arkansas Legislature Now Aims to Ban Trans People's Correct Names and Pronouns in Schools*, LGBTQNATION (Apr. 9, 2020), <https://www.lgbtqnation.com/2021/04/arkansas-legislature-now-aims-ban-trans-peoples-correct-names-pronouns-schools/> [<https://perma.cc/7RRH-3T8U>].

134. 2019 SCHOOL CLIMATE SURVEY, *supra* note 129, at 5 (stating that approximately twenty-three percent of transgender students were prohibited from using their preferred name or pronoun); see also *Mischief and Mayhem: A Symposium on Legal Issues Affecting Youth in the Child Welfare and Juvenile Justice Systems*, 14 CARDOZO J.L. & GENDER 609, 691 (2008) ("[T]ransgender youth often encounter teachers and school administrators who refuse to recognize their chosen name and pronoun. . . .").

135. GLSEN, THE 2015 NATIONAL SCHOOL CLIMATE SURVEY: EXECUTIVE SUMMARY 12 (2016), <https://www.glsen.org/sites/default/files/GLSEN%202015%20National%20School%20Climate%20Survey%20%28NSCS%29%20-%20Executive%20Summary.pdf> [<https://perma.cc/7WBQ-WGDZ>].

136. See Allison S. Bohm, Samantha Del Duca, Emma Elliott, Shanna Holako & Alison Tanner, *Challenges Facing LGBT Youth*, 17 GEO. J. GENDER & L. 125, 141 (2016).

137. GLSEN, MODEL LOCAL EDUCATION AGENCY POLICY ON TRANSGENDER AND NONBINARY STUDENTS 3 (2020), <https://www.glsen.org/sites/default/files/2020-11/Model-Local-Education-Agency-Policy-on-Transgender-Nonbinary-Students.pdf> [<https://perma.cc/ZDF7-YBTQ>].

138. Bohm et al., *supra* note 136, at 141.

II. CURRENT LAW ON NAME CHANGES FOR MINORS

Federal and state governments require a court-ordered name change for a transgender or nonbinary person to change their name on legal documents.¹³⁹ States impose myriad requirements on individuals before they are permitted to make such a change, including age limitations and parental notification requirements. Additionally, courts often inject anti-trans bias into name-change proceedings, complicating name changes even for individuals with supportive families and medical professionals.

A. Summary of State Name Change Laws for Minors

Across the U.S., transgender and nonbinary youth are prevented from legally adopting their chosen name on their own. Forty-eight states do not allow minors to independently obtain a court-ordered name change. A majority of states require a parent or legal guardian of the minor to petition the court for the name change.¹⁴⁰ Of those states, a few also allow a next friend, guardian *ad litem*, or adult relative to file the petition,¹⁴¹ but many require that a parent petition the court.¹⁴² South Dakota theoretically allows a minor to petition for a name change, but requires that a guardian or conservator be appointed to

139. See *infra* Section II.A.

140. See, e.g., ALASKA R. CIV. P. 84(e); ARIZ. REV. STAT. ANN. § 12-601(B) (2011); CAL. CIV. PROC. CODE § 1276(a) (West 2019); CONN. PROB. CT. R. PROC. 47.2(a); DEL. CODE ANN. tit. 10, § 5902 (2020); FLA. STAT. ANN. § 68.07(7)-(8) (West 2016); IDAHO CODE ANN. § 7-802(1) (2017); IND. CODE ANN. § 34-28-2-2(b) (West 2016); 735 ILL. COMP. STAT. 5/ 21-102(a) (2018); KY. REV. STAT. ANN. § 401.020 (West 2013); ME. REV. STAT. ANN. tit. 18-C, § 1-701(1) (West 2020); MICH. COMP. LAWS ANN. § 711.1(5) (West 2020); MINN. STAT. ANN. § 259.10 (West 1995); MONT. CODE ANN. § 27-31-101 (West 2009); N.Y. CIV. RIGHTS LAW § 60 (McKinney 1962); N.C. GEN. STAT. ANN. § 101-2(d) (2019); OHIO REV. CODE ANN. § 2717.01(B) (West 2012); OKLA. STAT. ANN. tit. 12, § 1631 (West 2014); TEX. FAM. CODE ANN. § 45.001 (West 1995); VT. R. PROB. PROC. 80.6(b) (2011); VA. CODE ANN. § 8.01-217(A) (2015); W. VA. CODE ANN. § 48-25-101(a) (West 2013).

141. See, e.g., CONN. PROB. CT. R. PROC. 47.2(a); IND. CODE ANN. § 34-28-2-2(b); MINN. STAT. ANN. § 259.10; MONT. CODE ANN. § 27-31-101; N.Y. CIV. RIGHTS LAW § 60; OHIO REV. CODE ANN. § 2717.01(B); OKLA. STAT. ANN. tit. 12, § 1631. Kansas does not require a specific adult to request a minor's name change, see, KAN. STAT. ANN. § 60-1402 (1990), but an action brought on behalf of a minor must be filed by a next friend or guardian, see, KAN. STAT. ANN. § 60-217(c) (West 2010).

142. See, e.g., IOWA CODE ANN. § 674.6(3) (West 2018); LA. STAT. ANN. § 13:4751(C)(1) (2015); S.C. CODE ANN. § 15-49-10(B) (1990).

conduct the action for the minor.¹⁴³ Finally, in several states, the legal requirements for a minor’s name change vary by county.¹⁴⁴

In three states, legal name changes may be obtained administratively rather than through the courts. In Hawaii, a parent must still initiate the procedure with the other parent’s consent.¹⁴⁵ Pennsylvania allows both a name and gender change to a minor’s birth certificate, but requires a parent to make the request.¹⁴⁶ Oregon similarly allows birth certificate name and gender changes but allows either a parent or legal guardian to initiate the change.¹⁴⁷ By requiring that only one parent consent to the name change, both Pennsylvania and Oregon recognize that different requirements should exist for transgender and nonbinary youth because both parents may not approve of their child’s identity and transition.

Importantly, though, in almost every state the petitioning parent must serve the non-petitioning parent with notice of a name change court proceeding—enabling a nonconsenting parent to object and impede an otherwise valid request by the petitioning parent.¹⁴⁸ Exceptions include a non-petitioning parent who has abandoned, failed to support, or abused the child.¹⁴⁹ The requirement of notice to both parents as a potential barrier to name changes for transgender and nonbinary youth is discussed below.

B. Existing Case Law Illustrates Judicial Bias

The judge thought I was going through a phase that teenagers go through and that I was choosing to be this way. . . . Never

143. See S.D. CODIFIED LAWS § 26-1-3 (1993).

144. ID Documents Center, NAT’L CTR. FOR TRANSGENDER EQUAL., <https://transequality.org/documents> [https://perma.cc/4HEK-QMP6] (identifying that in Alabama, Michigan, Virginia, Washington, and Rhode Island, requirements for minor name changes appear to vary by county).

145. HAW. REV. STAT. ANN. § 574-5(b)(1-2) (West 2014).

146. 35 PA. STAT. AND CONS. STAT. § 450.603 (West 2021).

147. OR. REV. STAT. § 432.015 (2013).

148. See, e.g., ALASKA R. CIV. P. 84(e); CAL. CIV. PROC. CODE § 1277(a)(4) (West 2019); CONN. PROB. CT. R. PROC. 47.2(d)(2); FLA. STAT. ANN. § 68.07(8) (West 2016); GA. CODE ANN. § 19-12-1(f) (2017); HAW. REV. STAT. ANN. § 574-5(a)(2)(C) (West 2014); IDAHO CODE ANN. § 7-803(2) (2017); 735 ILL. COMP. STAT. ANN. 5/21-103.5 (2018); IND. CODE ANN. § 34-28-2-2(b) (West 2016); IOWA CODE ANN. § 674.6(3) (West 2018); KY. REV. STAT. ANN. § 401.020 (West 2013); LA. STAT. ANN. § 13:4751(C) (2015); MD. R. CIV. P. 15-901(d); MICH. COMP. LAWS ANN. § 711.1(5) (West 2020); MINN. STAT. ANN. § 259.10 (West 1995); NEB. REV. STAT. ANN. § 25-21,271(2) (West 2018); NEV. REV. STAT. ANN. § 41.296 (West 2017); N.M. STAT. ANN. § 40-8-1 (West 1989); N.Y. CIV. RIGHTS LAW § 62(1) (McKinney 2011); N.C. GEN. STAT. ANN. § 101-2(d) (2019).

149. See, e.g., GA. CODE ANN. § 19-12-1; IND. CODE ANN. § 34-28-2-2(b); IOWA CODE ANN. § 674.6(3); LA. STAT. ANN. § 13:4751(C); MD. R. CIV. P. 15-901(d); NEV. REV. STAT. ANN. § 41.296; N.Y. CIV. RIGHTS LAW § 62(1).

would I ever choose to have to go through this if it didn't trouble me. It's painful in so many ways to be trans.¹⁵⁰

The following three cases demonstrate judicial bias regarding transgender youths' name changes. The first is a Tennessee trial court case in which both parents sought to change the name of their sixteen-year-old transgender son from his birth name to his chosen name to align with his gender identity.¹⁵¹ The judge initially denied the name change without holding a hearing, stating that the parents had failed to present a valid reason for the name change.¹⁵² The youth's parents then had to press the court, through a motion with supportive documentation from the youth's "physician, therapist, and teacher," for the judge to hold a hearing on their petition.¹⁵³ At the evidentiary hearing, both parents and the youth testified that the name change was in his best interest.¹⁵⁴ Further, in a letter to the court, the youth's therapist supported the name change, stating:

"I believe it will aid in improving [the youth's] anxiety and depression. Not only do I expect this to have a direct impact on [the youth's] emotional wellbeing but I expect it to help improve struggles at school, work, and in relationships across the board."¹⁵⁵

Nevertheless, the judge again denied the name change, finding that the parents had failed to prove that it was in their son's best interest.¹⁵⁶ On appeal, the Court of Appeals of Tennessee reversed the trial court's decision and remanded the case, ordering the trial court to grant the name change.¹⁵⁷ The appellate court held that the trial court had no legal basis to deny the name change and that the evidence presented "unequivocally reveals that it is in the child's best interest to change the child's name."¹⁵⁸ Furthermore, the appellate court recognized that

150. Deanna Paul, *Ohio Judge Blocks Transgender Teens' New Names, So They Set out to Change the System*, WASH. POST (Aug. 14, 2018), <https://www.washingtonpost.com/news/post-nation/wp/2018/08/14/an-ohio-judge-blocked-transgender-teens-new-names-so-they-set-out-to-change-the-system/> [https://perma.cc/K4MH-8EGB].

151. No. M2016-02548-COA-R3YJV, 2017 WL 4083644 (Tenn. Ct. App. Sept. 15, 2017). Identifying case names have been purposefully omitted in an abundance of caution for privacy and so as not to deadname the youth involved.

152. *Id.* at *1.

153. *Id.*

154. *Id.* at *2.

155. *Id.* at *7. Youths' chosen names, while affirming, are omitted to respect their privacy.

156. *Id.* at *2.

157. *Id.* at *8-9.

158. *Id.* at *8.

minors have the same right as adults to change their name.¹⁵⁹ It reasoned that the state’s only “legitimate concern” was whether the name change was for a fraudulent or unlawful purpose.¹⁶⁰

Similarly, an Ohio probate court denied a name change to a fifteen-year-old transgender boy.¹⁶¹ His parents testified that the name change was in their child’s best interest, after they consulted extensively with mental health and medical professionals.¹⁶² The youth’s father testified that a legal name change was important before the youth applied for a driver’s permit and license, for a passport, to college, and for insurance.¹⁶³

Media coverage of the probate case cited egregiously biased statements by the probate judge during the hearing and in his written decision, including “referr[ing] to [the youth] as ‘she’ and ‘her’ because using [the youth’s ‘he’ and ‘his’] pronouns made it ‘difficult to read.’”¹⁶⁴ The judge dismissed the diagnosis of gender dysphoria by the mental health professional that the youth had seen for extensive counseling, stating:

Whether [the youth] is experiencing Gender Dysphoria or is just not comfortable with *her* [sic] body is something that only time will reveal. Is [the youth’s] distress brought about by confusion, peer pressure, or other non-transgender issues—or is it truly a mismatch between *her* [sic] gender identity and *her* [sic] body?¹⁶⁵

Although the youth should not have been required to present evidence beyond a preference to claim a new name, and that he did not seek a name change for an unlawful purpose, he further showed the court his commitment to transition, including having used his chosen name at home and school for over a year.¹⁶⁶ Despite that evidence, the probate court characterized the youth’s gender identity as a phase, doubting the youth’s knowledge of his own identity. The judge stated, “[a] name change request today by a child could be motivated by short-term desires or beliefs that may change over the passage of time as the child matures. . . . [the youth’s] brain is still growing and changing and is simply not ready to make this life-altering decision.”¹⁶⁷ In denying the

159. *Id.*

160. *Id.*

161. *In re H.C.W.*, 123 N.E. 3d 1048, 1049 (Ohio Ct. App. 2019).

162. *Id.* at 1050.

163. *Id.* at 1050–51.

164. Paul, *supra* note 150.

165. *H.C.W.*, 123 N.E. 3d at 1055 (emphasis added) (quoting the probate court’s decision).

166. *Id.* at 1050–51, 1055.

167. *Id.* at 1051 (quoting the probate court’s decision).

youth's name change, the judge decided against medical advice¹⁶⁸ and the youth's best interest. The judge denied the youth improved mental health, protection from bias, and identity affirmation. Further, the youth's "life-altering" decision to live his authentic gender identity through transitioning had already occurred, in line with gender identity development standards.

The Ohio Court of Appeals held that the probate judge had abused his discretion by denying the name change without considering the proper best interest factors.¹⁶⁹ It reversed the probate court's denial of the name change and remanded the case for reconsideration based on its proposed unique best interest factors.¹⁷⁰ In a separate concurrence, one appellate judge stated that he would have reversed the probate court's decision as a matter of law.¹⁷¹ He further objected to the majority giving "special weight" to the parents' preferences in a minor's name change matter.¹⁷² He stated that although a court should consider parental preferences, the majority gave those preferences greater weight than other factors without proper basis.¹⁷³

In a third case, a Missouri circuit court denied a name change to a fourteen-year-old transgender youth who petitioned the court through his mother.¹⁷⁴ The youth and his mother testified that the name change was in his best interest, not detrimental to anyone else, and that the youth had used his chosen name "for approximately two years," including at school.¹⁷⁵ Although Missouri law only authorizes a court to order a mental examination if a party's mental health or cognitive capacity is in controversy, if good cause is shown, and upon motion and notice, the judge *sua sponte* ordered the youth to undergo a mental examination.¹⁷⁶ Doing so suggests that the judge believed that Nathan was not mentally competent because of his gender identity and commitment to transitioning.

The Missouri Court of Appeals prohibited enforcement of the order, finding that the judge had exceeded his authority and that the law allowed name changes if evidence showed that it would be proper and

168. *Id.*

169. *Id.* at 1051, 1053–54, 1055.

170. *Id.* at 1056. The court adopted a variation of the *Sacklow* factors, described in more detail *infra* Section IV.D, in combination with the factors applied by Ohio courts in familial name change cases.

171. *Id.*

172. *Id.*

173. *Id.* at 1056–57.

174. *Missouri ex rel. N.N.H. v. Wagner*, 504 S.W.3d. 899, 900–01 (Mo. Ct. App. 2016).

175. *Id.*

176. *Id.* at 900–02.

not detrimental to anyone else.¹⁷⁷ The court reasoned that "[t]he mental state of the party requesting the name does not directly relate to any material element of the cause of action."¹⁷⁸

These cases where judges ignored substantial and compelling best interest evidence when denying name changes for transgender youth show that statutory reform, including a presumption that it is in the best interests of a transgender youth to change their name, is critical. Even if states modify their laws to allow transgender minors to change their legal names independently, individual judges like those in the aforementioned cases may deny the name change. The Ohio probate judge denied name changes to two other transgender youth the same day he denied the youth in the case discussed above. In fact, that judge denied all other name changes for transgender individuals in cases he presided over in the prior five months.¹⁷⁹

Because state district court decisions are not published, it is impossible to know how many other cases exist where judges have denied name changes for transgender youth based on bias. It is highly unlikely that many transgender youths denied a name change will have the confidence, means, and ability to appeal the denial. Therefore, even after modest legal reform, for some transgender youth, a legal name change will remain merely theoretical until judicial and societal attitudes towards transgender and nonbinary people evolve.

Based on the negative outcomes that arise from failing to support a transgender or nonbinary youth's gender identity and expression, a name change should be presumed to serve the youth's best interest. But such a presumption would be insufficient. A judge may simply decide it is against any child's best interest to change their name, erroneously believing that granting a name change to conform to a transgender or nonbinary youth's gender identity is *sanctioning* the youth's transition. As legal scholar Amanda Kennedy cautions, the best interest standard is subjective and discretionary, and prone to judicial bias.¹⁸⁰ Her concern was illuminated by U.S. Supreme Court Justice John P. Stevens, who wrote that "[the best interest of the minor standard] provides little real

177. *Id.* at 903–04.

178. *Id.* at 903.

179. Paul, *supra* note 150.

180. Laura Anne Foggar, *Parents' Selection of Children's Surnames*, 51 GEO. WASH. L. REV. 583, 595 n.89 (1983) ("The Supreme Court has criticized the 'best interests of the child' standard because the standard is so vague that judges have almost complete discretion to make decisions that reflect their own subjective values.") (citing *Bellotti v. Baird*, 443 U.S. 622, 655–56 (1979) (Stevens, J., concurring) (standard criticized in context of abortion); *Smith v. Org. of Foster Fams. for Equal. & Reform*, 431 U.S. 816, 835 n.36 (1977) (standard criticized in context of removing children from foster homes)).

guidance to the judge, and his decision must necessarily reflect personal and societal values and mores. . . .”¹⁸¹

III. PROBLEMATIC PROCEDURAL REQUIREMENTS AND OTHER BARRIERS

A. Parental Notice

Courts and legislatures have required notice to the parents as a compromise to requiring parental consent when minors make certain health care decisions.¹⁸² But notice and consent raise similar concerns; “[c]ourts and legislatures seem to regard parental notification requirements as less burdensome for adolescents than parental consent requirements, but it is not clear that adolescents in conflict with their parents make this distinction.”¹⁸³ Rationales for parental notice are like those for consent—preserving a role for parents to counsel their children about health care decisions and supporting parents’ control and family cohesiveness.¹⁸⁴ Those rationales fail to consider transgender and nonbinary youth rejected by their parents. Given parental rejection,¹⁸⁵ notifying parents of their child’s legal transition would expose some transgender and nonbinary youth to distress or safety risks. Further, statutes that allow minors to make some medical decisions in emergency situations or when the minor is independent may not require parental notice.¹⁸⁶ Those laws acknowledge that parental involvement through notice is not necessary when the adolescent is self-reliant and the need is critical. Protecting all transgender and nonbinary youth is a critical need—so name change statutes applicable to minors should not require notice.

In the abortion context, although the U.S. Supreme Court has held that states may impose parental notice requirements before a minor can

181. *Bellotti*, 443 U.S. at 655–56 (Stevens, J., concurring).

182. U.S. CONG., OFF. OF TECH. ASSESSMENT, *Chapter 17: Consent and Confidentiality in Adolescent Health Care Decisionmaking*, in ADOLESCENT HEALTH VOLUME III: CROSSCUTTING ISSUES IN THE DELIVERY OF HEALTH AND RELATED SERVICES 126, 131 (1991) [hereinafter U.S. CONG. ASSESSMENT]; see also Katherine Kubak, Shelby Martin, Natasha Mighell, Madison Winey & Rachel Wofford, *Abortion*, 20 GEO. J. GENDER & L. 265, 291 (2019). (“The judicial bypass provision strikes a compromise by serving the state interest in protecting the pregnant minor without interfering in the internal operation of the family.”).

183. U.S. CONG. ASSESSMENT, *supra* note 182, at 131.

184. *Id.* at 125, 131.

185. See *supra* note 30 and accompanying text.

186. See, e.g., N.D. CENT. CODE § 14-10-17.1 (West 2007); MONT. CODE ANN. § 41-1-402(2)(b) (2003); NEV. REV. STAT. ANN. §§ 129.030(1)(a), (d) (West 2021); WYO. STAT. ANN. § 14-1-101(b)(iv) (2009).

obtain an abortion,¹⁸⁷ it has not decided whether parental notice provisions must include a judicial bypass exception.¹⁸⁸ Generally though, states that require parental involvement do include a judicial bypass that gives the court discretion to allow an abortion without parental notification.¹⁸⁹ Courts will grant the bypass if the youth shows: “(1) [they are] mature and well-informed enough to make [their] own abortion decision, or (2) an abortion would be in [their] best interests.”¹⁹⁰

Courts can and should waive the requirement of parental notice when a transgender or nonbinary youth requests an exception, after finding that the youth was mature and sufficiently informed to decide to change their name or that the name change was in their best interest. As the Ohio Court of Appeals noted, “unlike the permanent physical changes [the youth] will experience from testosterone therapy, if the probate court’s expressed concerns are borne out, the name change is reversible.”¹⁹¹ Because name changes are not permanent, a statutory exception to parental notice is sound law.

B. Publication and Court Hearing Requirements

Many states require that an individual seeking a court-ordered name change publish notice of the proposed name change (often in a newspaper of general circulation in the resident’s county) or seek a waiver from the court available in only narrow circumstances which rarely apply to transgender individuals.¹⁹² Other states provide courts more discretion to waive the publication requirement based primarily

187. See *Bellotti v. Baird*, 443 U.S. 622, 640 (1979); *H.L. v. Matheson*, 450 U.S. 398, 407–10 (1981); *Planned Parenthood Ass’n of Kansas City, Mo., Inc. v. Ashcroft*, 462 U.S. 476, 494 (1983); *City of Akron v. Akron Ctr. for Reprod. Health*, 462 U.S. 416, 427 n.10 (1983), *overruled by Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833 (1992).

188. Kubak et al., *supra* note 182, at 292.

189. Wendy-Adele Humphrey, *Two-Stepping Around a Minor’s Constitutional Right to Abortion*, 38 CARDOZO L. REV. 1769, 1786 (2017) (citing *Bellotti*, 443 U.S. at 643–44) (“Some states also include a third ground for granting a minor’s application for judicial bypass: when notification or consent may lead to physical, sexual, mental, or emotional abuse of the minor.”).

190. *Id.*

191. *In re H.C.W.*, 123 N.E. 3d 1048, 1055 (Ohio Ct. App. 2019).

192. See, e.g., DEL. CODE ANN. tit. 10, § 5903 (West 2021); GA. CODE ANN. § 19-12-1(d) (West 2021); IDAHO CODE § 7-803 (2021); IND. CODE ANN. § 34-28-2-3(a) (West 2021); ME. REV. STAT. ANN. tit. 18-C, § 1-701(2)(B) (West 2021); MICH. COMP. LAWS ANN. § 711.3(1)–(2) (West 2021); MO. ANN. STAT. § 527.290 (West 2021); MONT. CODE ANN. § 27-31-201(3) (West 1997), *amended by* S.B. 222, 67th Leg. (Mont. 2021); NEB. REV. STAT. ANN. § 25-21,271 (West 2021); N.C. GEN. STAT. § 101-2(b) (2021); N.D. CENT. CODE § 32-28-02(3) (2021); OHIO REV. CODE ANN. § 2717.11 (West 2021); S.D. CODIFIED LAWS § 21-37-4 (2021); W. VA. CODE ANN. § 48-25-101(b) (West 2021); WYO. STAT. ANN. § 1-25-103 (2021).

on personal safety concerns.¹⁹³ Therefore, waivers of publication for safety reasons are well established in these proceedings.

Requiring publication or giving discretion to the court risks outing an individual as nonbinary or transgender, and creates an unnecessary permanent public record that prolongs that risk.¹⁹⁴ National transgender and nonbinary advocacy organizations propose that states modify their name change statutes to remove publication requirements for transgender and nonbinary individuals.¹⁹⁵ For example, in 2014, the Transgender Law Center and Equality California sponsored a law that changed California's name change proceeding by removing the publication and hearing requirement (if the proceeding is uncontested) for those seeking to change their name for gender identity purposes.¹⁹⁶ Similarly, Colorado passed "Jude's Law," which removed the publication requirement for transgender and nonbinary individuals.¹⁹⁷ Like California and Colorado, states should not require publication for those seeking to conform their name to their gender identity.

In addition, publicly accessible court hearings present a risk of exposure and inducing distress despite that "[t]here is no public policy reason to require a person to discuss their intimate feelings regarding their birth sex, gender identity, or the medical treatments they have received in *open* court."¹⁹⁸ A court hearing may be especially anxiety provoking for a young person who must disclose and discuss their gender identity in front of a stranger, the judge, and potentially other members of the public. States should, therefore, follow California's lead and grant a name change for gender identity conformance without a hearing if there are no good cause objections.¹⁹⁹

Finally, if a state's name change statute requires a hearing, the hearing should be sequestered for individuals seeking gender identity conformance. Another option, which some courts have used, is to allow transgender individuals to use a pseudonym or acronym in their court filings. Those courts have acknowledged the risk of harm in outing the

193. See, e.g., ALASKA R. CIV. P. 84; 735 ILL. COMP. STAT. ANN. 5 / 21-103(b-5) (West 2021); NEV. REV. STAT. ANN. § 41.280(2) (West 2021); N.M. STAT. ANN. § 40-8-2(B) (West 2021); N.Y. CIV. RIGHTS LAW § 64-a(1) (McKinney 2021); OKLA. STAT. ANN. tit. 12, § 1633(B) (West 2021); 54 PA. STAT. AND CONS. STAT. ANN. § 701(a)(3)(iii) (West 2021); WIS. STAT. ANN. § 786.37(4) (West 2021).

194. Publication of notice by newspaper is also largely obsolete because of ubiquitous social media usage and declining newspaper readership. It is also cost prohibitive for litigants.

195. See, e.g., NAT'L CTR. FOR TRANSGENDER EQUAL., A TRANSGENDER STATE AGENDA: AN OVERVIEW OF POLICIES FOR GOVERNORS AND STATE AGENCIES 1, 4 (2016), <http://www.transequality.org/sites/default/files/docs/resources/NCTE%20State%20Agenda%20web.pdf> [<https://perma.cc/5RU5-MYMH>].

196. CAL. CIV. PROC. CODE § 1277.5(b)-(c) (West 2019).

197. COLO. REV. STAT. ANN. § 13-15-102 (West 2020).

198. Mottet, *supra* note 107, at 432.

199. CAL. CIV. PROC. CODE § 1277.5(c) (West 2019).

individual as transgender.²⁰⁰ Allowing transgender and nonbinary youth to remain anonymous in court filings, if that is their preference, is an additional way to protect them. Moreover, court records in these proceedings should be automatically sealed to prevent record searches by the public. Record sealing is a necessary additional layer of privacy and safety protection.

C. Cost Barriers

The costs of filing a court proceeding are prohibitive for many young people, especially those of color and who are disadvantaged socioeconomically.²⁰¹ A nonbinary individual said of the court costs associated with a name change: "The financial stress was incredible, but it was such a mental health necessity that I knew I had to sacrifice for it."²⁰² Moreover, court costs are a disproportionate barrier for transgender youth who lack family support, including youth experiencing homelessness and unemployment.²⁰³ A waiver of court costs must be available for youth who qualify so that cost is not a barrier to justice. Similarly, for transgender and nonbinary youth, publication costs are a barrier to obtaining a legal name change. This is yet another argument for not requiring publication in these proceedings.

D. Parental Rejection, Homelessness, and Foster Care Placement Barriers

"I was kicked out of my parents' home. I ran out of what little money I had, and I had nowhere to go. My family offered to let me return to their home on the condition that I de-transition and live as a man. I accepted because I had no choice."²⁰⁴

200. *Doe v. United States*, No. 16-cv-0640, 2016 WL 3476313, at *1 (S.D. Ill. June 27, 2016) ("A number of district courts have found that transgendered plaintiffs may proceed anonymously because of the social stigma associated with non-conforming gender identities.") (citing *Doe v. Frank*, 951 F.2d 320, 324 (11th Cir. 1992); *Doe v. Rostker*, 89 F.R.D. 158, 161 (N.D. Cal. 1981); *Doe v. Blue Cross & Blue Shield of R.I.*, 794 F. Supp. 72, 72-73 (D.R.I. 1992)).

201. See Katriel Paige, *A Call for Flexible Name-Change Policies*, INSIDE HIGHER ED (Nov. 4, 2016), <https://www.insidehighered.com/advice/2016/11/04/trans-students-need-be-able-legally-change-their-names-official-college-records> [<https://perma.cc/NJZ2-7L87>].

202. Corcione, *supra* note 10.

203. See *JAMES ET AL.*, *supra* note 41, at 90 (noting that costs for legal name changes are a documented barrier for transgender persons to update their name on identity documents).

204. *Id.* at 110.

Researchers, scholars, and the media have documented the daunting challenges faced by transgender youth. According to a national survey on transgender discrimination, at least forty percent of respondents reported rejection by their parents or other family members because of their gender identity or expression.²⁰⁵ “Gay and transgender youth from highly rejecting families were more than [eight] times as likely to try to take their own lives by the time they were young adults.”²⁰⁶ Familial rejection also contributes to high rates of homelessness, foster care placement, and juvenile justice system involvement.²⁰⁷ “As more youth transition at earlier ages, they become both more visible and more susceptible to family rejection and societal discrimination.”²⁰⁸

Transgender and nonbinary youth who are rejected at home often end up unhoused or in foster care, as shown by studies reporting overrepresentation of LGBTQ youth in the child welfare system and among the population of youth experiencing homelessness.²⁰⁹ For example, a study of youth in foster care in Los Angeles found that the proportion identifying as LGBTQ was twice as high as the proportion of LGBTQ youth not in foster care.²¹⁰ While in the system, transgender youth are the least likely to find a stable home or a secure relationship with an adult.²¹¹ And LGBTQ youth continue to face prejudice, rejection, and other harms while in foster care.²¹²

205. GRANT ET AL., *supra* note 6, at 94.

206. RYAN, *supra* note 54, at 6. *See also* GRANT ET AL., *supra* note 6, at 88; BIANCA D.M. WILSON, KHUSH COOPER, ANGELIKI KASTANIS & SHEILA NEZHAD, SEXUAL AND GENDER MINORITY YOUTH IN FOSTER CARE 6 (2014), http://williamsinstitute.law.ucla.edu/wp-content/uploads/LAFYS_report_final-aug-2014.pdf [<https://perma.cc/HK7A-WXSY>].

207. *See, e.g.*, THE ANNIE E. CASEY FOUND., LGBTQ IN CHILD WELFARE: A SYSTEMATIC REVIEW OF THE LITERATURE 3 (2016), <http://www.aecf.org/m/resourcedoc/aecf-LGBTQinChildWelfare-2016.pdf> [<https://perma.cc/L5M3-HN3X>] (“[F]amily disapproval and rejection often force LGBTQ youth into foster care and homelessness, making them more likely to be part of the child welfare system.”); Hussey, *supra* note 31, at 15–17; HUNT & MOODIE-MILLS, *supra* note 68, at 2.

208. Hussey, *supra* note 31, at 1.

209. THE ANNIE E. CASEY FOUND., *supra* note 207, at 3; Hussey, *supra* note 31, at 1 (“In some regions, 25 percent to 37 percent of LGBT high school students are or have recently been homeless.”). Hussey’s study does not appear to have included youth identifying as “queer” (typically the Q in LGBTQ), which may include nonbinary youth not identifying as transgender. If so, the true degree of overrepresentation may be even more stark.

210. WILSON ET AL., *supra* note 206, at 6.

211. *See id.* at 11–12.

212. *Id.* at 11–12 (“Public systems charged with the care and wellbeing of LGBTQ youth have been unresponsive to their needs.”); HUNT & MOODIE-MILLS, *supra* note 22, at 2 (“Programs designed to keep children and youth off the streets, such as foster care, health centers, and other youth-serving institutions, are often ill-prepared or unsafe for gay and transgender youth due to institutional prejudice, lack of provider and foster-parent training, and discrimination against gay and transgender youth by adults and peers.”).

Further, transgender adolescents leave home at younger ages than other unhoused youth—one study reports two years earlier, at an average age of fourteen.²¹³ Youth experiencing homelessness face the combined health and safety risk factors of discrimination and poverty, including engaging in survival sex for income.²¹⁴ Moreover, transgender adolescents remain unhoused for twice as long as other youth experiencing homelessness.²¹⁵

For transgender and nonbinary youth in unsupportive foster placements, youth experiencing homelessness with no access to a consenting adult, and youth involved in the criminal justice system, a parent-initiated name change is a devastatingly inadequate remedy.

IV. INDEPENDENT DECISION MAKING AND PROPOSED REFORMS TO NAME CHANGE LAWS

This Part begins by presenting legal decisions that youth aged fourteen and older are allowed to make independently under existing law. Next, I propose legal reform to allow youth, age fourteen and older, to change their legal name without their parents' involvement. I then argue that for transgender and nonbinary youth under age fourteen, when the youth and their parents mutually consent to a name change, the court should grant it. Finally, I propose a modified best interest standard for courts to apply in contested proceedings involving transgender or nonbinary youth under age fourteen.

A. *At Age Fourteen Youth Are Capable of Making Major Decisions Independently*

At age fourteen, a minor's preferences usually carry weight by law or by judicial discretion in family law matters, including custody, guardianship, and adoption.²¹⁶ For example, most states recognize the

213. Hussey, *supra* note 31, at 6.

214. *Id.* at 7, 10 (“Lacking other resources and frequently facing employment discrimination, transgender homeless or unstably housed youth may engage in sex work or survival sex in order to generate income.”).

215. *Id.* at 6 (“Even when compared with lesbian, gay, and bisexual, or LGB, youth—who may or may not also identify as transgender—transgender youth reported a median of 52 months away from parents or guardians, 23 months more than their LGB counterparts.”).

216. See, e.g., Kimberly M. Mutcherson, *Whose Body Is It Anyway: An Updated Model of Healthcare Decision-Making Rights for Adolescents*, 14 CORNELL J.L. & PUB. POL'Y 252, 289–90 (2005); N.M. STAT. ANN. § 40-10B-11 (West 2001) (“[T]he court shall appoint a person nominated by a child who has reached his fourteenth birthday unless the court finds the nomination contrary to the best interests of the child; and . . . the court shall not appoint a person as guardian if a child who has reached his

capacity of a minor who is a parent to make major medical decisions for themselves and their child.²¹⁷ Moreover, a minor who has a child can give up their fundamental parental rights and place their child up for adoption.²¹⁸ Additionally, youth ages fourteen and older can consent to substance abuse treatment²¹⁹ and certain mental health care.²²⁰

Further, some states allow youth age fourteen and older to consent independently to emergency medical care²²¹ and prenatal care.²²² And, in some states, youth experiencing homelessness or those otherwise living apart from their parents can consent to routine medical treatment.²²³ Minors can also independently access birth control²²⁴ and consent to the diagnosis and treatment of sexually transmitted diseases, including HIV.²²⁵ In Alabama, for example, minors age fourteen can consent independently to all medical, dental, health, and mental health services.²²⁶

fourteenth birthday files a written objection in the proceeding before the person accepts appointment as guardian.”); GA. CODE ANN. § 19-8-4(b) (2002); N.M. STAT. ANN. § 40-4-9 (West 1977) (“If the minor is fourteen years of age or older, the court shall consider the desires of the minor as to with whom he wishes to live before awarding custody of such minor.”); HAW. REV. STAT. ANN. § 578-2(a) (West 2011); WASH. REV. CODE ANN. § 26.33.160 (West 1991).

217. See, e.g., ALA. CODE § 22-8-4 (2002); ALASKA STAT. § 25.20.025 (1975); FLA. STAT. ANN. §§ 743.064–743.0645 (LexisNexis 2015); 410 ILL. COMP. STAT. ANN. 210 / 1 (West 2018); KAN. STAT. ANN. § 38-123b (West 1969); 23 R.I. GEN. LAWS ANN. § 23-4.6-1 (West 2018).

218. *Minors’ Rights as Parents*, GUTTMACHER INST., <https://www.guttmacher.org/state-policy/explore/minors-rights-parents> [<https://perma.cc/XWU4-R5WM>].

219. See, e.g., COLO. REV. STAT. § 25-1-308 (2020); CONN. GEN. STAT. § 17a-682 (1997); DEL. CODE ANN. tit. 16, § 2210 (2011); D.C. Mun. Regs. tit. 22, § 600.7 (2021); FLA. STAT. ANN. § 394.499 (West 2020).

220. See, e.g., MD. CODE ANN., HEALTH-GEN. § 20-102 (West 2019); MICH. COMP. LAWS § 330.1707(1) (1996); OHIO REV. CODE ANN. § 5122.04 (West 1988); OR. REV. STAT. § 109.675(2) (West 2021); WASH. REV. CODE ANN. § 71.34.030 (West 2005).

221. See e.g., N.D. CENT. CODE §14-10-17.1 (2015); DEL. CODE ANN. tit. 13 §707(b)(5) (1999); MONT. CODE ANN. §41-1-402(2)(d) (West 2003); OKLA. STAT. ANN. tit. 63, § 2602(A)(7) (West 2016); NEV. REV. STAT. ANN. § 129.030(1)(d) (West 2021).

222. See, e.g., ALA. CODE § 22-8-6 (2004); ALASKA STAT. § 25.20.025 (2003); CAL. FAM. CODE § 6925 (West 2004); 325 ILL. COMP. STAT. 10 / 1 (2002); COLO. REV. STAT. § 13-22-105 (2004); D.C. Mun. Regs. subtit. 22-B, § 600.7 (2004); FLA. STAT. § 743.065 (2004); UTAH CODE ANN. § 78-14-5 (4)(f) (West 2019).

223. See, e.g., MONT. CODE ANN. § 41-1-402 (2003). (“A minor who professes to be or is found to be separated from the minor’s parent, parents, or legal guardian for whatever reason and is providing self-support by whatever means.”); NEV. REV. STAT. § 129.030 (2021) (“[L]iving apart from his or her parents or legal guardian, with or without the consent of the parent, parents or legal guardian”); WYO. STAT. ANN. § 14-1-101 (2009) (“The minor is living apart from his parents or guardian and is managing his own affairs regardless of his source of income.”); OKLA. STAT. ANN. tit. 63, § 2602(A)(2) (West 2016).

224. *Minors’ Access to Contraceptive Services*, GUTTMACHER INST. (Aug. 1, 2020), <https://www.guttmacher.org/state-policy/explore/minors-access-contraceptive-services> [[https://perma.cc/4D\]Q-ZA67](https://perma.cc/4D]Q-ZA67)].

225. *Minors’ Access to STI Services*, GUTTMACHER INST. (Aug. 1, 2020), <https://www.guttmacher.org/state-policy/explore/minors-access-sti-services> [<https://perma.cc/P64U-VXHP>].

226. ALA. CODE § 22-8-4 (2020).

As noted by the American Academy of Pediatrics, there is a lack of scientific evidence proving that by reaching age eighteen, the nearly universal legal age of majority, a youth has somehow transitioned from an incompetent to a competent decision-maker.²²⁷ Conversely, research instead indicates that by age fourteen, most youth understand the consequences of a major decision and “are able to make voluntary, rational, and independent decisions.”²²⁸ California recognizes that capacity by allowing youth to seek emancipation from their parents beginning at age fourteen, and Kansas does not have a minimum age requirement.²²⁹ An emancipated minor is considered an adult by law—the court terminates their parents’ rights. Emancipated minors, with few exceptions, have every right and responsibility of an adult, well before the age of majority, including the right and resulting obligations to purchase real estate and create a will.²³⁰ In contrast to these permitted independent decisions, a name change poses no risk of harm, such as medical complications, and is reversible. Accordingly, youth should be considered competent to make the change independently at least by age fourteen.

In most states, however, emancipation is not an option before age sixteen.²³¹ For transgender youth who wish to change their name earlier, for example on entrance to high school, emancipation is not a viable option.

Significantly, statutory and common law provide exceptions to parental involvement requirements for medical decision-making by certain minors. Those minors are living independently or have been

227. AAP Committee on Adolescence, *The Adolescent’s Right to Confidential Care When Considering Abortion Pediatrics*, 139 PEDIATRICS 2, 3 (2017), <https://pediatrics.aappublications.org/content/pediatrics/139/2/e20163861.full.pdf> [<https://perma.cc/JT4V-2XR4>].

228. *Id.* at 3; see also Mutcherson, *supra* note 216, at 285 (“Current laws ignore what many healthcare providers know from experience with young patients and what research has shown, mainly that adolescents possess a developed capacity for decision-making that is on par with that of young adults.”); U.S. CONG. ASSESSMENT, *supra* note 182, at 126, 138 (“[A]ssumptions concerning minors’ lack of health care decision-making capacity seem largely to reflect the intuition of judges and legislators rather than hard evidence . . .”).

229. CAL. FAM. CODE § 7120(b)(1) (West 2019) (requiring that the minor be at least fourteen years of age); see, e.g., KAN. STAT. ANN. § 38-109 (1875).

230. See, e.g., ALASKA STAT. § 09.55.590(g) (2015); CONN. GEN. STAT. ANN. § 46b-150d (West 2012); NEV. REV. STAT. ANN. § 129.130(3) (West 2004); N.M. STAT. ANN. § 32A-21-5 (West 1995); OR. REV. STAT. ANN. § 419B.552(1) (West 2015); TEX. FAM. CODE ANN. § 31.006 (West 1995).

231. Most states that have emancipation statutes require youth to be sixteen to seek emancipation through a court order. See, e.g., ALASKA STAT. § 09.55.590(a) (2015); CONN. GEN. STAT. ANN. § 46b-150 (West 2018); 750 ILL. COMP. STAT. 30 / 3-1 (1980); LA. CIV. CODE ANN. arts. 366, 368 (2009); ME. REV. STAT. ANN. tit. 15, § 3506-A(1) (2019); MONT. CODE ANN. § 41-1-501(1) (West 2009); NEV. REV. STAT. ANN. § 129.080 (West 2004); N.M. STAT. ANN. § 32A-21-7(C) (West 1995); N.C. GEN. STAT. § 7B-3500 (1999); OR. REV. STAT. ANN. § 419B.558(1) (West 2003); TEX. FAM. CODE ANN. § 31.001(a)(2) (West 1995).

determined by a court to be mature and capable.²³² “These exceptions seem to reflect legislative judgments that a minor who is not part of a functioning family, or whose parents exercise little or no control over him or her, is in a better position to make health care decisions than the minor’s parents.”²³³ As legal scholar Emily Ikuta notes, exceptions to parental consent requirements for certain medical decisions, such as obtaining contraceptives and treating sexually transmitted diseases, recognize that adolescents could avoid treatment and prevention because they do not want their parents to find out.²³⁴ For adolescents wishing to transition by changing their legal name and potentially taking other steps, they may fear that their parents will obstruct them. Delaying or avoiding transition risks adverse mental health and well-being consequences for vulnerable transgender and nonbinary youth.²³⁵

In sum, state laws and empirical research support a legal presumption that adolescents aged fourteen and older are competent to make significant health care and other decisions on par with adults. Given that the decision stakes regarding a name change are not comparable to, for example, adoption or abortion, the law must presume that adolescents aged fourteen and older are legally competent to decide to seek a name change independently, without parental involvement.

B. Youth Age Fourteen and Older Should Be Allowed to Change Their Legal Name Independently

Given that most fourteen-year-old youths are capable of making important decisions independently, and given the need to affirm and protect the mental health of transgender and nonbinary adolescents, all

232. See U.S. CONG. ASSESSMENT, *supra* note 182, at 126–27; see also, e.g., MINN. STAT. ANN. § 144.341 (West 1986) (“[A]ny minor who is living separate and apart from parents or legal guardian, whether with or without the consent of a parent or guardian and regardless of the duration of such separate residence, and who is managing personal financial affairs, regardless of the source or extent of the minor’s income, may give effective consent to personal medical, dental, mental and other health services, and the consent of no other person is required.” (emphasis added)).

233. U.S. CONG. ASSESSMENT, *supra* note 182, at 126–27.

234. Emily Ikuta, Note, *Overcoming the Parental Veto: How Transgender Adolescents Can Access Puberty-Suppressing Hormone Treatment in the Absence of Parental Consent Under the Mature Minor Doctrine*, 25 S. CAL. INTERDISC. L.J. 179, 197 (2016); see also *Minors’ Access to Contraceptive Services*, *supra* note 224; *Minors’ Access to STI Services*, *supra* note 225.

235. WPATH, *supra* note 4, at 5; see also Memorandum in Support of Plaintiff’s Motion for Preliminary Injunction at 59, *Brandt v. Rutledge*, No. 21-CV-00450 (E.D. Ark. June 15, 2021) <https://www.aclu.org/legal-document/brandt-et-al-v-rutledge-et-al-memorandum-support-plaintiffs-motion-preliminary> [<https://perma.cc/A3PW-7ZQH>] (“Transgender adolescents who do not receive gender-affirming healthcare die from suicide at far greater rates than those who can receive such care.”).

states should follow New Mexico's lead with respect to legal name changes. New Mexico presumes that those fourteen and older have a right to change their name, and requires the court to grant the name change "if no sufficient cause is shown to the contrary."²³⁶ New Mexico's court of appeals noted that "sufficient cause is demonstrated when there is evidence of an 'unworthy motive, the possibility of fraud on the public, or the choice of a name that is bizarre, unduly lengthy, ridiculous or offensive to common decency and good taste.'"²³⁷

This standard, although not invulnerable to biased judicial discretion, places the burden of proof not on the youth but on the court or a third party to show that there is a lawful cause that trumps the right to change one's name.²³⁸ In Wisconsin, individuals do not possess an affirmative right to a name change.²³⁹ However, like New Mexico, sufficient cause must be shown for a court to deny a name change to those age fourteen and older.²⁴⁰ Although the court has discretion to determine the sufficiency of cause, "this discretion is narrow."²⁴¹ The Wisconsin and New Mexico laws do not require a best interest finding to grant a name change to a youth aged fourteen or older.²⁴² Case law on children's name changes generally addresses a proposed name change within the child custody context, i.e., in parental disputes regarding custody of their children. Custody disputes, such as during a divorce, are the most common context for seeking a name change. Courts apply a "best interest of the child" standard to weigh and resolve custody disputes between parents.²⁴³ The name change proceedings contemplated in this Article, however, are not custody or other family court matters;²⁴⁴ rather, they are civil proceedings brought by the youth. Courts, therefore, should not apply a best interest standard and determination for youth aged fourteen and older. Instead, as is true

236. N.M. STAT. ANN. § 40-8-1 (1989).

237. *In re Mokiligon*, 106 P.3d 584, 587 (N.M. Ct. App. 2005) (citations omitted).

238. *Id.* at 585.

239. *Williams v. Racine City Cir. Ct.*, 541 N.W.2d 514, 516 (Wis. Ct. App. 1995).

240. *Id.* at 515-16 ("Only two groups require special consideration: minors under the age of fourteen and members of state-regulated professions. In those two instances, a name change is not precluded, but there are separate procedures and standards which apply.").

241. *Id.* at 516.

242. N.M. STAT. ANN. § 40-8-1 (1989); WIS. STAT. ANN. § 786.36 (West 2018).

243. *See e.g.*, MICH. COMP. LAWS ANN. § 722.27 (West 2015).

244. *See, e.g.*, N.M. STAT. ANN. § 40-10A-102(4) (2001). The Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA) defines a child-custody proceeding as "a proceeding in which legal custody, physical custody or visitation with respect to a child is an issue. The term includes a proceeding for dissolution of marriage, custody of a child when dissolution of a marriage is not an issue, neglect, abuse, dependency, guardianship, paternity, termination of parental rights whether filed alone or with an adoption proceeding and protection from domestic violence in which the issue may appear." *Id.*

when an adult seeks to change their legal name, the law should presume that youth aged fourteen and older have the right to change their name unless their motivation is for an unlawful purpose, such as fraud or to avoid criminal prosecution.²⁴⁵ If state legislatures do not change the age requirement to allow youth age fourteen and over to change their name without their parents' consent, they should at a minimum include a judicial bypass provision similar to those allowed in the abortion context.²⁴⁶ A judicial bypass provision waives parental consent, usually based on a best interest of the child analysis.²⁴⁷ A judicial bypass serves to give minors the option to obtain court approval instead of parental consent.²⁴⁸ A comparable bypass provision should be included in name change laws that apply to youth. The option to seek court approval as a remedy is critical in cases where one or both parents do not consent or support the name change or the parents and youth are estranged. This may describe a significant number, if not a majority, of cases. Alternatively, if a parent of a youth aged fourteen and older contests the name change, courts applying a best interest standard and determination should use the factors described in Section IV.D below, which have been crafted specifically for transgender and nonbinary youth.

C. Granting a Name Change for Transgender and Nonbinary Youth Under Fourteen When Both Parents and the Youth Consent

This Section describes solutions in cases where both parents and the child all agree to the name change. Generally, states have a variety of legal requirements for changing a minor's legal name. For example, California and Indiana require the consent of both parents.²⁴⁹ However, even when both parents consent, some state courts do not automatically grant the change. Instead, the court applies a best interest of the child standard to determine whether to allow the request.²⁵⁰ When parents

245. See, e.g., *In re H.C.W.*, 123 N.E. 3d 1048, 1051 (Ohio Ct. App. 2019) ("It is universally recognized that a person may adopt any name he may choose so long as such change is not made for fraudulent purposes." (quoting *Pierce v. Brushart*, 92 N.E.2d 4 (Ohio 1950))).

246. See *supra* Section III.A.

247. See Humphrey, *supra* note 189, at 1776–78. 248. *Parental Involvement in Minor's Abortions*, GUTTMACHER INST., <https://www.guttmacher.org/state-policy/explore/parental-involvement-minors-abortion> [<https://perma.cc/HZ83-63BY>] (last updated Oct. 1, 2021).

248. *Parental Involvement in Minor's Abortions*, GUTTMACHER INST., <https://www.guttmacher.org/state-policy/explore/parental-involvement-minors-abortion> [<https://perma.cc/HZ83-63BY>] (last updated Oct. 1, 2021).

249. *Sacklow v. Betts*, 163 A.3d 367, 373 (N.J. Super. Ct. Ch. Div. 2017) (listing examples of a range of state standards).

250. *Id.*

agree to their nonbinary child’s name change, there is no controversy unless the minor does not consent. Absent a dispute, the presumption should be to grant the change.²⁵¹

Virginia courts generally do not require a hearing if both parents consent.²⁵² South Dakota does not require a hearing if the parents and the minor, if at least twelve years old, all consent.²⁵³ Requiring a young adolescent aged twelve and older to consent protects transgender and nonbinary youth from a name change that is not their chosen name. By not requiring a hearing in cases of mutual consent, those states recognize that there is no controversy and courts should grant the change without additional steps.

Because of the potential for judicial bias against gender-based name changes, authorizing judges to apply a best interest standard when all parties agree opens the door to discretionary denial.²⁵⁴ Therefore, for transgender and nonbinary youth under fourteen, the consent of the youth and the parents should be sufficient.

D. A Best Interest Standard for Transgender and Nonbinary Youth Under Age Fourteen in Contested Proceedings

“To force him to legally keep [a] feminine name . . . would not be in his best interest.”²⁵⁵

This Section proposes solutions applicable to cases in which one or both parents do not agree to the name change of a youth under fourteen. Because using a transgender or nonbinary youth’s chosen name is linked to decreased suicidality, granting them a legal name is presumptively in their best interest. Therefore, if a parent contests the name change of a transgender or nonbinary youth, the contesting parent should have the burden of proving that it is adverse to the youth’s best interests. As in California, courts should reject a parent’s objection to the name change to conform to a gender identity if the reason is “based solely on concerns that the proposed change is not the

251. *Troxel v. Granville*, 530 U.S. 57, 68–69 (2000) (“[S]o long as a parent adequately cares for his or her children (*i.e.*, is fit), there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent’s children.” (citing *Reno v. Flores*, 507 U.S. 292, 304 (1993))).

252. VA. CODE ANN. § 8.01-217(A)(C) (West 2015) (hearing required if demanded).

253. See S.D. CODIFIED LAWS § 21-37-5.1 (2016).

254. See *supra* Section II.B.

255. *Sacklow*, 163 A.3d at 375 (emphasis added).

person's actual gender identity or gender assigned at birth."²⁵⁶ Under California law those objections do not constitute good cause.

Additionally, in contested cases, the court should appoint a guardian *ad litem* to represent the youth's position and best interests. There is a risk, however, that a guardian *ad litem* could be biased or uninformed about the imperative of affirming a transgender and nonbinary youth's gender identity and transition. Before appointing a guardian *ad litem*, the judge should inquire about that guardian *ad litem*'s knowledge or willingness to thoroughly inform themselves of the issues and biases relating to transgender and nonbinary people.

In *Sacklow v. Betts*, a New Jersey case regarding a name change for a transgender youth, the New Jersey Superior Court crafted unique best interest factors based on gender identity conformance.²⁵⁷ Those factors are:

- 1) age of the child,
- 2) length of time the child has used their chosen name,
- 3) any potential anxiety, embarrassment, or discomfort that may result from having a name that the child does not feel corresponds with their outward appearance and gender identity (the "most compelling factor for the court in this case"),²⁵⁸
- 4) the history of any medical or mental health counseling the child has received,
- 5) whether the child's family and community, including school, identify the child by their chosen name,
- 6) the child's preference and motivations for seeking the name change,
- 7) whether both parents consent to the name change, and if consent is not given, the reason for withholding consent.²⁵⁹

Later, the Ohio Court of Appeals applied the "*Sacklow* factors" when it addressed the name change of a transgender youth.²⁶⁰ With some

256. CAL. CIV. PROC. CODE § 1277.5(c) (West 2019).

257. *Sacklow*, 163 A.3d at 373–74.

258. *Id.*

259. *Id.*

260. *In re H.C.W.*, 123 N.E. 3d 1048, 1053 (Ohio Ct. App. 2019).

important changes, described below, courts should adopt the *Sacklow* best interest factors for transgender and nonbinary youth in contested name change proceedings to ensure their specific interests are protected.

The *Sacklow* factors should be amended so the first factor, the age of the youth, is invalid if the youth is fourteen or older as codified by New Mexico and Wisconsin. The factors that courts should accord the most weight are the third, regarding the youth's anxiety from having a gender incongruent name, and the sixth, the youth's preference. Factor three is the "most compelling" because of the distress and impact on the youth's mental health when others do not use the youth's chosen name. Moreover, as the *Sacklow* court noted,

"The fear that [the youth] will be bullied or harassed if his name is not changed from [his birth name] to [his chosen name] is supported by the myriad studies demonstrating that transgender youth are bullied and harassed at an alarming rate."²⁶¹

The youth's preference for the name change, factor six, is also crucial to support the youth's well-being by ensuring the youth's name matches their identity.

Factor five, "whether the minor child's family and community, including school, identify the child by [their chosen] name" is potentially problematic because it depends on the willingness of others, including schools, to acknowledge and address the youth by their chosen name. Schools, moreover, may have a policy, or school staff may be biased, against using a transgender or nonbinary youth's preferred name.²⁶² Also, the youth may not be out in the community at the time they seek a legal name change and may delay coming out until their identification matches their gender identity. Moreover, it may not be safe for them to be out to their family or community, including at school. Therefore, courts should not require the youth to ask others to use their chosen name. Consequently, factor five should instead ask "whether the minor child identifies and, if not currently, eventually

261. *Sacklow*, 163 A.3d at 374 (citing JOSEPH G. KOSCIW, EMILY A. GREYAK, NEAL A. PALMER & MADELYN J. BOESEN, GLSEN, THE 2013 NATIONAL SCHOOL CLIMATE SURVEY xvii (2014), <https://www.glsen.org/sites/default/files/2020-03/GLSEN-2013-National-School-Climate-Survey-Full-Report.pdf> [<https://perma.cc/U5P4-9WJ7>]).

262. See, e.g., the policy of a Georgia high school, which stated that "only legal names" could be read at graduation. As students walk across the stage in a moment of celebration, before all their peers and their families, the school ignores their true, preferred name—and instead deadnames them with their given legal name. James Factora, *Over 19,000 People Urge High School to Not Deadname Trans Student at Graduation*, THEM (May 25, 2021), <https://www.them.us/story/petition-urges-high-school-not-deadname-trans-student-graduation> [<https://perma.cc/V7EQ-MJ3D>].

wants others to identify them by their chosen name within the family and community.” That language refocuses the factor on the youth’s commitment to the name change and desire to have others use it, which, unlike the current language, is within the youth’s control.

For the many transgender and nonbinary youth who experience family rejection and bias, the most dangerous factor is the seventh—the parents’ support for the name change. If one or both parents do not consent based on bias against the youth’s gender identity and transition, then the court should consider the parents’ position as adverse to the youth’s best interest.

Furthermore, because the child’s surname, not their first or given name, typically identifies the child in relation to their parents,²⁶³ the parents’ interest in preventing the name change is inconsequential. Courts have viewed the surname as preserving the parent-child bond.²⁶⁴ “The function of surnames as a link to the family is so widely recognized that the term ‘family name’ is a synonym for the term ‘surname.’”²⁶⁵ For example, in cases in which unmarried parents contest their child’s surname, Ohio courts consider factors that emphasize the relationship of the parents to the child and that the surname identifies the child “as part of a family unit.”²⁶⁶ But first names rarely identify a parental or family relationship. The state does not further any interest in promoting or preserving the family unit by denying a transgender minor a change of first name. Regardless, an interest in preserving or promoting a family unit must not supplant a transgender or nonbinary child’s welfare.

263. C.B. v. B.W., 985 N.E.2d 340, 348 (Ind. Ct. App. 2013) (“A child’s *surname* connects the child with the parent.” (emphasis added)); see also *In re Marriage of Schiffman*, 620 P.2d 579, 582 (Cal. 1980) (“[C]ourts and commentators have pointed out that identification with the paternal surname may give the child a healthy sense of family as well as ethnic and religious identity and also maintain her or his rightful link with an absent or noncustodial father.” (citing Richard H. Thornton, Note, *The Controversy over Children’s Surnames: Familial Autonomy, Equal Protection and the Child’s Best Interests*, 1979 UTAH L. REV. 303, 321–25)).

264. See, e.g., *In re Howard*, 799 N.E.2d 1004, 1010–11 (2003) (“[T]he trial court here could legitimately consider the child’s own preferences, did not need to rely on speculation about the child’s best interest, and could disregard the significance of preserving the (nonexistent) parent-child bond.”).

265. Foggar, *supra* note 180, at 588 (citing THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (W. Morris ed. 1970) (defining a surname as “a person’s family name as distinguished from his given name”)).

266. *Bobo v. Jewell*, 528 N.E.2d 180, 185 (Ohio 1988).

CONCLUSION

For most of us, a name is much more than just a tag or a label. It is a symbol which stands for the unique combination of attributes that define us as an individual. It is the closest thing that we have to a shorthand for self-concept.²⁶⁷

Our name—what we call ourselves and what others call us—is central to our identity. For many transgender and nonbinary youth, the first name they are given at birth does not match their gender identity. Often though, individuals choose a name for themselves that does align. Being allowed to legally change their name is a crucial step in their transition towards aligning with their gender identity. Affirming a transgender or nonbinary youth's gender identity and supporting their transition, including by using their chosen name, is key to their mental health. Such support can be lifesaving, given the risk of suicidality and mental health vulnerability among this population.

Beginning at age fourteen, many youth are able to independently make certain consequential medical and other major decisions without their parents' approval. Nonetheless, all but two states prohibit youth under eighteen from legally changing their name without their parent or guardian's initiative and support. For numerous transgender youths, this is impossible because of parental rejection. These youth face an insurmountable barrier to actualizing their gender identity through a formal name change. Not having documents that match their gender identity places them in danger and harms their futures by deterring them from seeking employment and medical care.

In addition to statutory age, parental consent, and notice barriers, transgender youth face other legal injustices. Judges in at least three states have demonstrated bias in name change cases involving transgender youth. Those judges denied youth legal name changes, despite their parents' approval. One judge, for example, questioned the transgender youth's mental competency because of his gender identity and commitment to transition. To counter such bias, there must be a legal presumption that a name change is in a transgender youth's best interest when that youth is committed to transitioning. Additionally, best interest standards in these cases must be modified to accommodate and protect transgender youth. Transgender youth are further marginalized by the costs and effort required to pursue a legal proceeding, the need to testify about deeply personal matters in court,

267. Omi Morgenstern Leissner, *The Problem That Has No Name*, 4 CARDOZO WOMEN'S L.J. 321, 329 (1998) (quoting Elsdon C. Smith, *THE STORY OF OUR NAMES* 277 (1950)).

and the dangerous risk of exposure by publication and hearing requirements in name change cases.

Addressing these access-to-justice problems through statutory change is critical, and the necessary legislative reform is straightforward. New Mexico, California, and Wisconsin have modeled some of the necessary legal reforms, but even those states need to do more to protect the well-being of transgender and nonbinary youth. States that fail to protect these youth only perpetuate their marginalization. Our transgender and nonbinary youth need those of us whose voices carry weight in the legislative and judicial systems to protect and advocate for them by improving our laws. Protection must begin with granting them the name they choose, the one that affirms and safeguards who they are. Transgender and nonbinary youth cannot wait for society at large to respect and defend their best interests.