

## 2024 Lavender Law CLE Materials for:

### **Weathering the Storm: Preventing and Mitigating Attacks on Name and Gender Correction Policies**

#### **1. Materials from ACLU of Kansas:**

- a. Identity Documents and Gender Markers: State and Federal Policy (online resource ACLU of Kansas made for trans Kansans explaining KS birth certificate and driver's license policy and federal ID options):  
<https://www.aclukansas.org/en/publications/identity-documents-gender-markers-state-and-federal-policy>.
- b. Kansas Name Change and Federal Gender Marker Change Virtual Clinic (YouTube recording of the presentation):  
<https://www.youtube.com/watch?v=AdRtiTxobLk&feature=youtu.be>.
- c. *Kansas v. Harper* case page (explaining ACLU of Kansas' lawsuit about trans Kansans access to accurate driver's licenses):  
<https://www.aclukansas.org/en/cases/motion-intervene-kansas-v-harper>.

#### **2. Materials from New York and New Jersey:**

- a. New York Senate Bill S9141 (ensuring the privacy of name change actions and of sex designation change actions),  
<https://www.nysenate.gov/legislation/bills/2023/S9141> [also attached].
- b. New Jersey Rule 1:38 - Public Access to Court Records and Administrative Records, <https://casetext.com/rule/new-jersey-rules-of-court/new-jersey-rules-of-court/njr-ct-part-i/part-i-rules-of-general-application/rule-138-public-access-to-court-records-and-administrative-records-effective-february-15-2021>.
- c. Sanford F. Young, Electronic Court Filings Are a Privacy Nightmare, Wall Street Journal (Jan. 4, 2023) [attached].

#### **3. Name Corrections and Identity Document Updates with Federal Agencies:**

- a. Social Security Implements Self-Attestation of Sex Marker in Social Security Number Records, Social Security Administration, Social Security Matters (October 20, 2022), <https://blog.ssa.gov/social-security-implements-self-attestation-of-sex-marker-in-social-security-number-records/>.
- b. X Gender Marker Available on U.S. Passports Starting April 11, U.S. Department of State (March 31, 2022), <https://www.state.gov/x-gender-marker-available-on-u-s-passports-starting-april-11/>.
- c. Federal ID FAQ: U.S. Passport Cards:  
<https://www.aclukansas.org/en/publications/federal-id-faq-us-passport-cards>  
(online resource from ACLU of Kansas, walking through the passport application process and sharing info about federal IDs)
- d. Policy Alert No. PA-2023-12 Selecting Gender on USCIS Forms, U.S. Citizenship and Immigration Services (March 31, 2023),  
<https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20230331-SelectingGender.pdf>.

# STATE OF NEW YORK

9141

## IN SENATE

April 30, 2024

Introduced by Sen. HOYLMAN-SIGAL -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the civil rights law, in relation to ensuring the privacy of name change actions and of sex designation change actions; and to repeal certain provisions of such law relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 64-a of the civil rights law is REPEALED and a new  
2 section 64-a is added to read as follows:

3 § 64-a. Ensuring privacy of name change actions. 1. At no time shall  
4 any paper or document filed by electronic or paper means in a name  
5 change action be available for public inspection in-person, online, or  
6 at any computer terminal in the courthouse or the office of the county  
7 clerk, except for access by the petitioner, the person changing their  
8 name if different from the petitioner, the attorney of record, or upon a  
9 finding of good cause. No order of the court shall be required for a  
10 petitioner, or a person whose name change a filing pertains to, to  
11 access their own file.

12 2. Any entity responsible for processing and maintaining court records  
13 shall ensure matters filed under this article are inaccessible to the  
14 public immediately upon filing, regardless of whether a petitioner makes  
15 a showing of risk and regardless of the reason for the name change. This  
16 section applies to all matters filed under this article regardless of  
17 whether a petitioner has made a specific request for their information  
18 to be kept private and regardless of whether a court has ordered seal-  
19 ing.

20 3. The office of court administration, clerks, and all other records  
21 custodians shall develop policies and procedures to ensure no identify-  
22 ing information or documentation relating to a matter filed under this  
23 article is visible or retrievable in any electronic database maintained  
24 by the state of New York or a subdivision thereof. Non-identifying  
25 administrative information including but not limited to index numbers,  
26 judges, courts, attorney names, information about the nature and status  
27 of the action, and initialized or anonymized captions may be visible.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

LBD15341-01-4

1 All custodial agencies and individuals shall ensure any platforms or  
2 systems used to file or maintain court records allow for custodians to  
3 input and maintain matters filed under this article consistent with this  
4 section.

5 4. Within ninety days of the effective date of this section, all  
6 custodial agencies and individuals maintaining existing name change  
7 records shall ensure all matters filed under this article prior to the  
8 effective date of this section are removed from public view in-person  
9 and in online databases consistent with this section.

10 5. If a person whose name was changed by court order prior to the  
11 effective date of this section discovers that information deemed private  
12 under this section is publicly accessible, such person may move ex parte  
13 at any time to request that information deemed private under this  
14 section be removed from public view consistent with this section,  
15 regardless of whether a request to seal was made at the time of the  
16 original petition or the matter was previously ordered sealed.

17 6. Nothing in this section shall be construed to limit the discretion  
18 of the court to order notice of a name change pursuant to this article.

19 § 2. Section 67-b of the civil rights law is REPEALED and a new  
20 section 67-b is added to read as follows:

21 § 67-b. Ensuring the privacy of sex designation change actions. 1. At  
22 no time shall any paper or document filed by electronic or paper means  
23 in a sex designation change action be available for public inspection  
24 in-person, online, or at any computer terminal in the courthouse or the  
25 office of the county clerk, except for access by the petitioner, the  
26 person changing their sex designation if different from the petitioner,  
27 the attorney of record, or upon a finding of good cause. No order of the  
28 court shall be required for a petitioner, or a person whose sex desig-  
29 nation change a filing pertains to, to access their own file.

30 2. Any entity responsible for processing and maintaining court records  
31 shall ensure matters filed under this article are inaccessible to the  
32 public immediately upon filing, regardless of whether a petitioner makes  
33 a showing of risk and regardless of the reason for the sex designation  
34 change. This section applies to all matters filed under this article  
35 regardless of whether a petitioner has made a specific request for their  
36 information to be kept private and regardless of whether a court has  
37 ordered sealing.

38 3. The office of court administration, clerks, and all other records  
39 custodians shall develop policies and procedures to ensure no identify-  
40 ing information or documentation relating to a matter filed under this  
41 article is visible or retrievable in any electronic database maintained  
42 by the state of New York or a subdivision thereof. Non-identifying  
43 administrative information including but not limited to index numbers,  
44 judges, courts, attorney names, information about the nature and status  
45 of the action, and initialized or anonymized captions may be visible.  
46 All custodial agencies and individuals shall ensure any platforms or  
47 systems used to file or maintain court records allow for custodians to  
48 input and maintain matters filed under this article consistent with this  
49 section.

50 4. Within ninety days of the effective date of this section, all  
51 custodial agencies and individuals maintaining existing sex designation  
52 change records shall ensure all matters filed under this article prior  
53 to the effective date of this section are removed from public view  
54 in-person and in online databases consistent with this section.

55 5. If a person whose sex designation was changed by court order prior  
56 to the effective date of this section discovers that information deemed

1 private under this section is publicly accessible, such person may move  
2 ex parte at any time to request that information deemed private under  
3 this section be removed from public view consistent with this section,  
4 regardless of whether a request to seal was made at the time of the  
5 original petition or the matter was previously ordered sealed.

6 § 3. This act shall take effect immediately.



<https://www.wsj.com/articles/electronic-court-filings-trial-privacy-records-motions-paper-trail-hippa-sensitive-personal-data-11672869403>

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# *Electronic Court Filings Are a Privacy Nightmare*

The private health and financial information of people involved in lawsuits is far too easy to search and steal.

By Sanford F. Young

Jan. 4, 2023 6:04 pm ET

Most courts of law have finally entered the computer age. Until recently, every case produced a mountain of papers that were eventually physically archived deep in the subterranean bowels of a courthouse. Now many courts require lawsuits to be filed online, where court papers are archived on publicly accessible websites. It's all very convenient, but the convenience comes with a downside: Sensitive personal information and documents—including medical, psychiatric and financial records—are forever accessible to anyone with access to the internet.

Every court system has its own website. Most make it easy to determine who has been a party to a lawsuit. Searching by name will often lead directly to case dockets and papers that can be easily opened and downloaded. These records are typically unencrypted. They aren't protected by modern data safeguards like two-factor authentication, such as you might find on a bank website. Accessing sensitive information filed as part of a case generally requires no permission or notice to the court, parties or attorneys. At most, the searcher may have to prove that he isn't a robot by answering captcha questions.

Before electronic court filing, confidentiality was of little concern. There was no central or organized index of files, other than logs—often handwritten—of cases filed in a particular courthouse. Those lists could be viewed only by visiting the clerk's office for the right court in the right county. Once physically present in the building, a researcher would have to do a line-by-line search of case filings in dozens, if not hundreds, of massive logbooks. Since these were logged in chronological order, there was no easy way to locate someone's lawsuits. If a case was identified, the physical file, assuming it wasn't destroyed or misfiled, would have to be located and retrieved by a court clerk. It would have to be reviewed in the courthouse during business hours. The inefficiency of that system and magnitude of the effort necessary to locate a case virtually assured privacy.

Courts considered the filing of a personal-injury or legal malpractice lawsuit an implicit waiver of legal confidentiality, giving defendants the right to obtain and review records that would normally be protected by the Health Insurance Portability and Accountability Act and other data-privacy

regulations. While the reason for giving defendants access to plaintiffs' confidential records hasn't changed, the implicit protection of privacy that existed before electronic court filing has been totally lost. Instead of adopting rules to protect the confidentiality of highly personal records, courts have done the opposite by requiring virtually all court papers to be filed electronically. (Courts do make exceptions for certain limited categories of cases, typically those involving domestic disputes, and mandate redaction of Social Security numbers, dates of birth, account numbers and the names of minors.)

Moreover, there's a double standard at work. Courts frequently grant businesses the right to protect trade secrets and settlement terms from public view. They do this even when the public has a legitimate interest in seeing such information. Yet, a person's intimate medical and financial confidences, which are of no legitimate interest to anyone other than the parties to the lawsuit, are mostly left unprotected by the courts.

Like smoke let out of a bottle, a person's privacy can't be restored after it's been violated. Court-system websites are becoming treasure troves of confidential information. While the benefits of electronic court filing are substantial, they shouldn't come at the cost of privacy. If court administrators and judges won't protect the data under their care, the people's elected representatives must step in.

*Mr. Young is a lawyer in New York and New Jersey.*

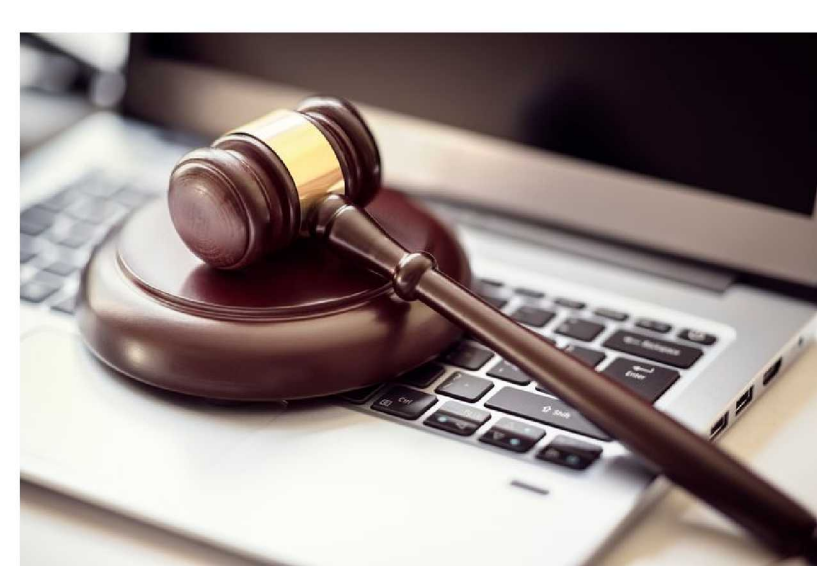


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