



United States Department of State

Washington, D.C. 20520

I, Jonathan M. Rolbin, Director, Office of Legal Affairs and Law Enforcement Liaison, Passport Services Directorate, Bureau of Consular Affairs, United States Department of State, certify under penalty of perjury that the enclosed documents are originals, or copies thereof, from the records of the U.S. Department of State.

The attached documents are (i) a complete record of the adjudication of the U.S. passport application of Dana Alix Zzyym (“Plaintiff”), and the reconsideration of that adjudication upon remand, pursuant to the November 22, 2016 order of the District Court in *Zzyym v. Tillerson, et al.*, D. Col. No. 1:15-cv-2362-RBJ (Doc. 55)¹; and (ii) a complete record of the reconsideration of the policy of the Passport Services Directorate regarding designation of sex in U.S. passports and passport applications, undertaken in part in response to such remand.

Because some of the attached documents contain both personally identifiable information (PII) and protected health information (PHI) relating to Plaintiff, the court should impose appropriate safeguards against unauthorized disclosure.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Jonathan M. Rolbin', with a long, sweeping flourish extending to the right.

Jonathan M. Rolbin
Director
Office of Legal Affairs and
Law Enforcement Liaison
Passport Services Directorate

Dated: August 8, 2017

¹ Redactions have been made for personal privacy information.

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1:15-cv-02362-RBJ

Part 1: U.S. Passport Application number 172460355 (Sep. 2, 2014 - Dec. 30, 2014)

Page	Date	Exhibit	Subject
1	8/7/2014		Aug. 7, 2017 - Certificate of Administrative Record by Jonathan M. Rolbin, Director, Office of Legal Affairs and Law Enforcement Liaison, Passport Services Directorate, Bureau of Consular Affairs, U.S. Department of State
2	8/7/2017		Index
7	9/2/2014	1	Sep. 2, 2014 - Applicant's signed U.S. Passport Application number 172460355 on Form DS-11
9			Sep. 2, 2014 - Letter from Applicant requesting third sex marker of "X"
10			Nov. 1, 2013 - Amended Michigan Birth Certificate listing Applicant's sex as "UnKnown"
11			Jan. 12, 1995 - Order of County Court, Larimer County, Colorado for Applicant's name change
12			Jun. 25, 2010 - Applicant's Colorado Driver's License issued in sex of "F" for female
13			Applicant's Dept. of Veterans Affairs Healthcare Card expiring 05/27/2024
15			Oct. 15, 2013 - Letter from Laura Ann Harper, M.D., Dept. of Veterans Affairs, Bay Pines FL
16			Sep. 2, 2014 - Letter from Plaintiff requesting third sex marker of "X"
17			Sep. 4, 2014 - Privacy Act Waiver for Sen. Michael F. Bennet constituent advocate to inquire on applicant's behalf
18			Sep. 4, 2014 - Privacy Act Waiver on Form DS-5505 for Dept. of State to release data to members of Congress and Staff
20			Sep. 5, 2014 - Letter from Organisation Intersex International USA to Eva Serenil, constituent advocate for Sen. Bennet
22			Applicant's business card with OII-USA
23	9/24/2014	2	Sep. 24, 2014 - Letter to Applicant from Colorado Passport Agency requesting clarification of applicant's wishes with respect to sex marker
25	9/29/2014	3	Sep. 29, 2014 - Letter from Organisation Intersex International USA to Eva Serenil, constituent advocate for Sen. Bennet
26	12/18/2014	4	Dec. 18, 2014 - Letter from Applicant requesting third sex marker of "X"
28			Dec. 16, 2014 - Letter from Terri Orcutt, M.D., Dept. of Veterans Affairs, Cheyenne WY
29			Dec. 5, 2015 - Cover letter to Applicant from Dept. of Veterans Affairs, Cheyenne WY
30			Dec. 4, 2014 - Progress Note from Amanda Johnson, M.D., Dept. of Veterans Affairs, Cheyenne WY
33	12/29/2014	5	Dec. 29, 2014 - Letter to Applicant from Colorado Passport Agency denying application for U.S. passport in third sex of "X"
34	12/30/2014		Dec. 30, 2014 - Waybill for denial letter

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Part 2: U.S. Passport Application number 172460355 (Dec. 30, 2014 - May 1, 2017)

Page	Date	Exhibit	Subject
35	2/26/2015	6	Feb. 26, 2015 - E-mail to Colorado Passport Agency from Applicant's counsel, Lambda Legal
36	2/26/2015	7	Feb. 26, 2015 - Letter to Colorado Passport Agency from Applicant's counsel, Lambda Legal, with enclosures
39			Sep. 2, 2014 (copy) - Letter from Applicant requesting third sex marker of "X"
40			Sep. 2, 2014 (copy) - Applicant's copy of U.S Passport Application on Form DS-11
42			Nov. 1, 2013 (copy) - Amended Michigan Birth Certificate listing Applicant's sex as "UnKnown"
43			Oct. 23, 2013 - Progress Note from Elzbieta J. Chobot-Sochet, M.D., Dept. of Veterans Affairs, Bay Pines FL
44			Jan. 23, 2008 - Certified Copy of Jan. 12, 1995 Order of County Court, Larimer County, Colorado for Applicant's name change
45			Dec. 18, 2014 (copy) - Letter from Applicant requesting third sex marker of "X"
47			Dec. 4, 2014 (copy) - Progress Note from Amanda Johnson, M.D., Dept. of Veterans Affairs, Cheyenne WY
48			Dec. 16, 2014 (copy) - Letter from Terri Orcutt, M.D., Dept. of Veterans Affairs, Cheyenne WY
49			Sep. 24, 2014 (copy) - Letter to Applicant from Colorado Passport Agency requesting clarification of applicant's wishes with respect to sex marker
51			Dec. 29, 2014 (copy) - Letter to Applicant from Colorado Passport Agency denying application for U.S. passport in third sex of "X"
52	4/10/2015	8	Apr. 10, 2015 - Letter to Lambda Legal from Jonathan M. Rolbin, Director, Legal Affairs and Law Enforcement Liaison, Bureau of Consular Affairs, Passport Services Directorate
53	1/25/2016	9	Sep. 4, 2016 - Privacy Act Waiver on Form DS-5505 for Dept. of State to release data to Paul Castillo, Michael Ponto, and Jessica Kunevicius
55	11/22/2016	10	Nov. 22, 2016 - Order of District Judge R. Brooke Jackson Remanding for Reconsideration of Sex Designation Policy and Re-adjudication of Plaintiff's U.S. Passport Application (ECF Doc. No. 55)
67	3/6/2017	11	Mar. 6, 2017 - Letter to DOS from Lambda Legal regarding Applicant's plan to travel to Amsterdam for Fourth International Intersex Forum
70	3/15/2017	12	Mar. 15, 2017 - E-mail from Robert C. Satrom, CA/PPT/S/L/LA, to Colorado Information Analysis Center, with copy of Applicant's Colorado Driver's License issued Jun. 25, 2010, listing Applicant's sex as female.
71			Jun. 25, 2010 - Colorado Driver's License issued to Applicant on Jun. 25, 2010, listing Applicant's sex as female
72	3/15/2017	13	Mar. 15, 2017 - E-mail to CA/PPT/S/L/LA from Colorado Information Analysis Center forwarding Record of Applicant's valid Colorado Driver's License issued Feb. 24, 2015
74			Feb. 24, 2015 - Record of Colorado Driver's License issued to Applicant on Feb. 24, 2015, listing Applicant's sex as female
75	3/15/2017	14	Mar. 15, 2017 - Letter to Lambda Legal from Jonathan M. Rolbin, Director, Office of Legal Affairs and Law Enforcement Liaison, Bureau of Consular Affairs, Passport Services Directorate
77	3/29/2017	15	Mar. 29, 2017 - Letter to DOS from Lambda Legal
79	5/1/2017	16	May 1, 2017 - Letter to Applicant from DOS denying application for U.S. passport in third sex marker of "X"
81	5/3/2017		May 3, 2017 Waybill for denial letter

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Part 3: Policy Reconsideration and Continuation

Page	Date	Exhibit	Subject
82	5/1/2017	17	May 1, 2017 - Memorandum from CA/PPT/S to CA/PPT Regional Directors, Directors, Assistant Directors, Adjudication Managers, Fraud Prevention Managers, and Customer Service Managers, "Sex Designation Policy for U.S. Passports"
			Subpart A: History of the Designation of Sex in U.S. Passports
87	5/1/2017	18	Memo - History of the Designation of Sex in U.S. Passports
91		19	May 4, 1971 - Passport Instruction 2510.9C, Appendix A, General Guideline No. 10, "Use of Names Indicating a Change of Sex"
107		20	Nov. 1975, Oct. 1976 - Passport Application, Form DSP-82
109		21	Nov. 8, 1977 - "Citizenship and Passport Matters," STATE 267726
111		22	Dec. 23, 1977 - "Revision of Passport Application Form and Passport Amendment and Extension Form," STATE 305744
115		23	Oct. 1, 1992 - Passport Bulletin 92-22, "Procedures for Handling Requests for a Change of Gender in Passports"
118		24	Mar. 26, 1993 - "Change of Gender in Passports," STATE 090654
120		25	May 14, 2010 - CA/OCS Action Memo for A/S Jacobs
122		26	June 9, 2010 - Media Note
123		27	June 10, 2010 - 7 FAM 1300 Appendix M, "Gender Change"
132		28	Aug. 30, 2010 - E-mail of Mara Keisling, Executive Director, National Center for Transgender Equality, on behalf of Council for Global Equality, National Center for Lesbian Rights, National Center for Transgender Equality, and National Gay & Lesbian Task Force, with Recommendations Regarding Gender- and Intersex-Related Revisions to FAM
135		29	Dec. 8, 2010 - CA/OCS Action Memo for A/S Jacobs
137		30	Jan. 20, 2011 - 7 FAM 1300 Appendix M, "Gender Change"
148		31	Sept. 9, 2013 - Memorandum to Brenda S. Sprague, Deputy Assistant Secretary for Passport Services, from Harper Jean Tobin, Director of Policy, National Center for Transgender Equality
165		32	Sept. 27, 2013 - Letter to National Center for Transgender Equality from DAS Sprague, Passport Services
166		33	Dec. 30, 2013 - CA/PPT/S Action Memo from CA/PPT/S to DAS Sprague, Passport Services, for response to National Center for Transgender Equality
167		34	Dec. 30, 2013 - Letter to National Center for Transgender Equality from DAS Sprague, Passport Services
169		35	Dec. 12, 2014 - 7 FAM 1300 Appendix M, "Gender Change"
178		36	Mar. 31, 2016 - 7 FAM 1300 Appendix M, "Gender Change"
188		37	Mar. 1, 2016 - Memorandum from CA/PPT/S to CA/PPT Regional Directors, Directors, and Assistant Directors, "Court-Ordered Gender Change Not Acceptable"
			Additional references not included in record
			The United States Passport: Past, Present, Future; U.S. Passport Office, Department of State (Washington, DC: GPO, 1976)
			The American Passport: Its History and a Digest of Laws, Rulings, and Regulations Governing its Issuance by the Department of State; Hunt, Gaillard (Washington, DC: GPO, 1898)
			The Passport in America: The History of a Document; Robertson, Craig (New York: Oxford Univ. Press, 2010)
			Subpart B: Male/Female Designation of Sex in U.S. Birth Certificates, Driver's Licenses, and Identification Cards
189	5/1/2017	38	Memo - Male/Female Designation of Sex in U.S. Birth Certificates, Driver's Licenses, and Identification Cards
192		39	Mar. 15, 2017 - Notice of Proposed Rulemaking, State of Oregon Department of Transportation, Driver and Motor Vehicle Services Division
196		40	Apr. 17, 2017 - SB-179, introduced in the California State Senate on Jan. 24, 2017, as amended in the Senate Apr. 17, 2017

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Page	Date	Exhibit	Subject
217		41	Oct. 2014 - Birth Certificate Application, New York City Department of Health, Office of Vital Records, Form VR 67
219		42	2013 - "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
318		43	Sep. 2016 - "Resource Guide on Gender Designation on Driver's Licenses and Identification Cards," American Association of Motor Vehicle Administrators (AAMVA)
361		44	Aug. 2011 - Form SS-5, "Application for a Social Security Card," U.S. Social Security Administration (SSA)
366		45	June 2013 - "RM 10212.200 - Changing Numident Data for Reasons other than Name Change," U.S. Social Security Administration Program Operations Manual System (POMS)
			Subpart C: Use of a Third Sex Marker by Contracting States as Permitted by ICAO
372	5/1/2017	46	Memo - Use of a Third Sex Marker by Contracting States as Permitted by ICAO
374		47	Sept. 13, 1974 - "Fourth Report of the Panel on Passport Cards," ICAO Air Transport Committee
440		48	1980 - ICAO Doc 9303, "A Passport with Machine Readable Capability," 1st Edition
464		49	1999 - ICAO Doc 9303, "Machine Readable Travel Documents," 4th Edition, Part 1 - Machine Readable Passports
489		50	2015 - ICAO Doc 9303, "Machine Readable Travel Documents," 7th Edition, Part 1, "Introduction"
521		51	2015 - ICAO Doc 9303, "Machine Readable Travel Documents," 7th Edition, Part 4, "Specifications for Machine Readable Passports (MRPs) and other TD3 Size MRTDs"
554		52	Nov. 20, 2012 - "A Review of the Requirement to Display the Holder's Gender on Travel Documents," ICAO Technical Advisory Group on Machine Readable Travel Documents, Information Paper TAG/MRTD/21-IP/4
564		53	2015 - "Gender and Sex Designations for Identification Purposes: A Discussion on Inclusive Documentation for a Less Assimilationist Society," 3 Wisc. J. Law, Gender & Society 131
590		54	June 30, 2014 - "Third Gender: A Short History," Foreign Policy
595		55	Oct. 9, 2011 - "On Australia passports and 'X' for sex," Organisation Intersex International Australia Ltd.
598		56	Jan. 19, 2015 - "Statement on Identity Recognition," World Professional Association for Transgender Health (WPATH)
			Subpart D: Medical Concepts of "Intersex Condition" and "Non-Binary Gender"
599		57	July 10, 2016 - "Intersex," MedlinePlus Medical Encyclopedia, U.S. National Library of Medicine, National Institutes of Health
605		58	2016 - Fact Sheet: Intersex, United Nations Office of the High Commissioner for Human Rights
607		59	"How Common is Intersex?," Intersex Society of North America (ISNA), www.isna.org/faq/frequency
608		60	Nov. 21, 2014 - "This is What Intersex Means," Time
610		61	Feb. 19, 2015 - "Sex Redefined," Nature
614		62	Feb. 2001 - "Standards of Care for Gender Identity Disorders," 6th Version, World Professional Association for Transgender Health (WPATH, formerly Harry Benjamin International Gender Dysphoria Association)
636		63	June 2006 - "Consensus statement on management of intersex disorders," Journal of Pediatric Urology, Vol. 2 No. 3
646		64	2011 - "Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People," 7th Version, World Professional Association for Transgender Health (WPATH)
764		65	Feb. 8, 2013 - "Providing Health Card for Transgender and Intersex Veterans," VHA Directive 2013-003, Department of Veterans Affairs, Veterans Health Administration

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Part 3: Policy Reconsideration and Continuation

Page	Date	Exhibit	Subject
777		66	May 13, 2016 - Expert Declaration of Deanna Adkins, M.D. in <i>Cernaño, et al., v. McCrory, et al.</i> (M.D.N.C. No. 1:16-cv-236)
789		67	Sept. 13, 2016 - Expert Declaration of Deanna Adkins, M.D. in <i>U.S.A. v. North Carolina, et al.</i> (M.D.N.C. No. 1:16-cv-425)
798		68	June 20, 2016 - Expert Declaration of George R. Brown, M.D., DFAPA in <i>U.S.A. v. North Carolina, et al.</i> (M.D.N.C. No. 1:16-cv-425)
864		69	Sept. 14, 2016 - Expert Declaration of George R. Brown, M.D., DFAPA in <i>U.S.A. v. North Carolina, et al.</i> (M.D.N.C. No. 1:16-cv-425)
875		70	Aug. 9, 2016 - Expert Declaration of Paul W. Hruz, M.D., Ph.D. in <i>Cernaño, et al., v. McCrory, et al.</i> (M.D.N.C. No. 1:16-cv-236) and <i>U.S.A. v. North Carolina, et al.</i> (M.D.N.C. No. 1:16-cv-425)
903		71	2015 - Berenbaum S.A. and Meyer-Bahlburg H.F.L. "Gender Development and Sexuality in Disorders of Sex Development," <i>Horm. Metab. Res.</i> 47: 361-66
909		72	July 2002 - Diamond, M. "Sex and Gender are Different: Sexual Identity and Gender Identity are Different," <i>Clinical Child Psychology & Psychiatry</i> 7(3): 320-334
928		73	2004 - Diamond, M. "Sex, Gender, and Identity Over the Years: A Changing Perspective," in <i>Child and Adolescent Psychiatric Clinics of North America</i> , 13: 5911-607
947		74	October 2012 - Furtado P. S.; et al. "Gender dysphoria associated with disorders of sex development," <i>Nat. Rev. Urol.</i> 9: 620-627 (online); <i>Nat. Rev. Urol.</i> 9: 620-627 (November 2012)
955		75	2015 - Kraus, C. "Classifying intersex in DSM-5: Critical Reflections on Gender Dysphoria," <i>Arch. Sex. Behav.</i> 44: 1147-1163
972		76	2016 - Lee, P.A., et al. , "Global Disorders of Sex Development Update since 2006: Perceptions, Approach and Care," <i>Horm. Res. Paediatr.</i> 85: 158-180
996		77	2005 - MacGillivray, M.H. and Mazur, T. "Intersex," <i>Advances in Pediatrics</i> 52:295-319
1021		78	2007 - Mazur, T., Colsman, M. and Sandberg, D. "Intersex: Definition, Examples, Gender Stability, and the Case Against Merging with Transsexualism," in <i>Principles of Transgender Medicine and Surgery</i> (Ettner, R. et al. , eds.) 235 (1st ed.), Chap. 12, 235-259
1048		79	2004 - McLaughlin, D. T., & Donahoe, P. K. "Sex Determination and Differentiation," <i>N. Engl. J. Med.</i> 350: 367-378
1061		80	2002 - Meyer-Bahlburg, H. F. L. "Gender assignment and reassignment in intersexuality: Controversies, data, and guidelines for research," <i>Advances in Experimental Medicine and Biology</i> , 511, 199-223
1086		81	June 2001 - Schober, J.M. "Sexual Behaviors, Sexual Orientation and Gender Identity in Adult Intersexuals: A Pilot Study," <i>J. of Urology</i> 165(6): 2350-2353
1090		82	1999 - Zucker, K. J. "Intersexuality and gender identity differentiation," <i>Ann. Rev. Sex. Res.</i> 10(1): 1-69
1159		83	2016 - Zucker, K. J., Lawrence, A. A., and Kreukels, B. P.C. "Gender Dysphoria in Adults," <i>Annu. Rev. Clin. Psychol.</i> 12: 217-247
			<i>Additional references not included in record</i>
			2006 - Sytsma, Sharon E., ed. <i>Ethics and Intersex</i> (Springer; Netherlands)

00006368-1618

WC

Thur @ 2 pm

APPLICATION FOR A U.S. PASSPORT

Please Print Legibly Using Black Ink Only

OMB CONTROL NO. 1405-0004
OMB EXPIRATION DATE: 01-31-2017
ESTIMATED BURDEN: 05 MIN

Attention: Read WARNING on page 1 of instructions.

Please select the document(s) for which you are applying:

- U.S. Passport Book
- U.S. Passport Card
- Both
- 28 Page Book (Standard)
- 52 Page Book (Non-Standard)

Note: The 52 page option is for those who frequently travel abroad during the passport validity period, and is recommended for applicants who have previously required the addition of visa pages.



172460355

1. Name Last

ZZYym

D O Dep DOTS

End. # Exp.

First

DANA

Middle

ALIX

2. Date of Birth (mm/dd/yyyy)

1958

3. Sex

INTERSEX

4. Place of Birth (City & State if in the U.S., or City & Country as it is presently known.)

(MICHIGAN)

5. Social Security Number

6. Email Address (e.g., my_email@domain.com)

7. Primary Contact Phone Number

8. Mailing Address: Line 1: Street/Lst, P.O. Box, or DRB

Address Line 2: Clearly label Apartment, Company, Suite, Unit, Building, Floor, In Care Of or Attention if applicable. (e.g., In Care Of - Jane Doe, Apt # 100)

City

FORT COLLINS

State

CO

Zip Code

80521

Country, if outside the United States

9. List all other names you have used. (Examples: Birth Name, Maiden, Previous Marriage, Legal Name Change. Attach additional pages if needed)

BRIAN DRIN WHITNEY



STOP! CONTINUE TO PAGE 2

DO NOT SIGN APPLICATION UNTIL REQUESTED TO DO SO BY AUTHORIZED AGENT

Identifying Documents - Applicant or Mother/Father/Parent on Second Signature Line (if identifying minor)

- Driver's License
- State issued ID Card
- Passport
- Military
- Other

Name Dana Alix Zzyym

Issue Date (mm/dd/yyyy) 06 25 2010

Exp. Date (mm/dd/yyyy) 2015

State of Issuance CO

ID No. Country of Issuance

Identifying Documents - Applicant or Mother/Father/Parent on Third Signature Line (if identifying minor)

- Driver's License
- State issued ID Card
- Passport
- Military
- Other

Name

Issue Date (mm/dd/yyyy)

Exp. Date (mm/dd/yyyy)

State of Issuance

ID No. Country of Issuance

I declare under penalty of perjury all of the following: 1) I am a citizen or non-citizen national of the United States and have not, since acquiring U.S. citizenship or nationality, performed any of the acts listed under "Acts or Conditions" on page four of the instructions of this application (unless explanatory statement is attached); 2) the statements made on the application are true and correct; 3) I have not knowingly and willfully made false statements or included false documents in support of this application; 4) the photograph attached to this application is a genuine, current photograph of me; and 5) I have read and understood the warning on page one of the instructions to the application form.



Name of courier company (if applicable)

Facility ID Number

Dana Alix Zzyym
Applicant's Legal Signature - age 16 and older

Mother/Father/Parent/Legal Guardian's Signature (if identifying minor)

Mother/Father/Parent/Legal Guardian's Signature (if identifying minor)

Signature of person authorized to accept applications

Date



For Issuing Office Only -> Bk 110 Card 30 EF 60 Postage Execution 25 Other

* DS 11 C 09 2013 1 *

00006368-1619

Name of Applicant (Last, First, & Middle) **Zzyym DANA ALIX** Date of Birth (mm/dd/yyyy) **1958**

10. Parental Information Last Name (at Parent's Birth)

Mother/Father/Parent - First & Middle Name

Date of Birth (mm/dd/yyyy) Place of Birth Sex Male Female U.S. Citizen? Yes No

Mother/Father/Parent - First & Middle Name Last Name (at Parent's Birth)

Date of Birth (mm/dd/yyyy) Place of Birth Sex Male Female U.S. Citizen? Yes No

11. Have you ever been married? Yes No If yes, complete the remaining items in #11.

Full Name of Current Spouse or Most Recent Spouse Date of Birth (mm/dd/yyyy) Place of Birth

U.S. Citizen? Yes No Date of Marriage (mm/dd/yyyy) **02/06/2004** Have you ever been widowed or divorced? Yes No Widow/Divorce Date (mm/dd/yyyy) **01/08/2008**

12. Additional Contact Phone Number Home Cell **DISABLED** 13. Occupation (If age 16 or older) 14. Employer or School (If applicable)

15. Height **5'9"** 16. Hair Color **Grey** 17. Eye Color **Blue** 18. Travel Plans Departure Date (mm/dd/yyyy) **10/24/2014** Return Date (mm/dd/yyyy) **11/03/2014** Countries to be Visited **MEXICO**

19. Permanent Address - If P.O. Box is listed under Mailing Address, or if residence is different from Mailing Address.

Street/RED # or URB (No P.O. Box) Apartment/Unit

City State Zip Code

20. Emergency Contact - Provide the information of a person not traveling with you to be contacted in the event of an emergency.

Name Address/Street/RED # or P.O. Box Apartment/Unit

City State Zip Code Phone Number Relationship

21. Have you ever applied for or been issued a U.S. Passport Book or Passport Card? Yes No If yes, complete the remaining items in #21.

Name as printed on your most recent passport book Most recent passport book number Most recent passport book issue date (mm/dd/yyyy)

Status of your most recent passport book. Submitting with application Stolen Lost In my possession (if expired)

Name as printed on your most recent passport card Most recent passport card number Most recent passport card issue date (mm/dd/yyyy)

Status of your most recent passport card. Submitting with application Stolen Lost In my possession (if expired)

PLEASE DO NOT WRITE BELOW THIS LINE - FOR ISSUING OFFICE ONLY

Name as it appears on citizenship evidence **Brian Orin Whitney**

Birth Certificate **SR** CR City Filed: **3-3-58** Issued: **NIC notated on BC**

Nat. / Citiz. Cert. USCIS - USDC Date/Place Acquired: **AR**

Report of Birth Filed/Place: **11-12-95**

Passport C/R, S/R Per PIERS #/DOI: **Dana Alix Zzyym**

Other **Old NIC # FA4C4063 - Larimer City Cit. CO - from: Brian Orin Whitney**

Attached To: **Dana Alix Zzyym**

P/C of ID DS-3053 DS-64 DS-5520 DS-6513 Citiz W/S

P/C of Citiz DS-10 DS-86 DS-71 IRL CIS Ver

*** DS 11 C 09 2013 2 ***

2 September 2014

To: The US Passport Office

My name is Dana Alix Zzyym. I am an intersex person. Both my biological sex and my gender is Intersex.

The International Civil Aviation Organization, the UN organization that controls passports worldwide allows for a third sex marker on passports an "X". As an intersex person, I'm not male or female. I want the third sex marker on my passport the "X".

Sincerely,

Dana Alix Zzyym

A handwritten signature in dark ink, appearing to read "Dana Alix Zzyym". The signature is written in a cursive style with a large initial "D" and a long, sweeping underline.

STATE OF MICHIGAN

00006368-1621
 IMPORTANT INFORMATION

This certificate is a valuable and legal document. Please keep it in a safe place.

Errors or omissions should be reported to the State Vital Records Office within 30 days of issue by calling (517)335-8666

DANA ZZYIM
 [REDACTED]

STATE OF MICHIGAN



STATE OF MICHIGAN
 DEPARTMENT OF COMMUNITY HEALTH

LF 64
 CF _____

CERTIFICATE OF LIVE BIRTH
 Attended

121- 1334217
 State File Number

1. CHILD'S NAME (First, Middle, Last, Suffix) Brian Orin Whitney			
2. SEX Unknown	3a. PLURALITY - Single, Twin, Triplet, etc. (Specify) Single	3b. IF NOT SINGLE BIRTH - First, Second, Third, etc. (Specify)	4a. DATE OF BIRTH (Month, Day, Year) [REDACTED] 1958
5a. CHILD'S BIRTHPLACE (Hospital or Address if other) [REDACTED]		5b. COUNTY [REDACTED]	
6a. MOTHER'S CURRENT LEGAL NAME (First, Middle, Last) [REDACTED]		6b. MOTHER'S FULL NAME BEFORE FIRST MARRIED (First, Middle, Last) [REDACTED]	
7a. STATE OF BIRTH - Name - Country if not USA Michigan	7b. DATE OF BIRTH OR AGE [REDACTED]	7c. COUNTY OF RESIDENCE [REDACTED]	7d. STATE OF RESIDENCE Michigan
8a. FATHER'S CURRENT LEGAL NAME (First, Middle, Last) [REDACTED]		8b. STATE OF BIRTH - Name - Country if not USA Michigan	8c. DATE OF BIRTH OR AGE [REDACTED]
9a. REGISTRAR'S SIGNATURE [Signature] Fred G. Catrell		9b. DATE FILED BY LOCAL REGISTRAR - (Month, Day, Year) March 3, 1958	

New Name: Dana Alix Zzyim, Established By: Larimer County, Colorado County Court, January 12, 1995.

I hereby certify that the above is a true and correct representation of the birth facts on file with the State of Michigan, issued from the Michigan Centralized Birth Certification System.

Certified by: *Glenn Copeland*
 Glenn Copeland
 State Registrar

Date Issued: **November 1, 2013**
 AFS: 2605850



20182341



VOID WITHOUT WATERMARK OR IF ALTERED OR ERASED

COUNTY COURT, LARIMER COUNTY, COLORADO

CASE NO. F9404088

PUBLIC NOTICE

IN THE MATTER OF THE PETITION OF: BRIAN ORIN WHITNEY FOR A CHANGE OF NAME TO:
DANA ALIX ZZYYM

PUBLIC NOTICE is hereby given that on the 12 day of Jan 1995,
by an order of the County Court of Larimer County, Colorado, the name of
BRIAN ORIN WHITNEY, was changed to
DANA ALIX ZZYYM, and in accordance with
such Order this Notice is given.

WILLIAM R. PERMER
Clerk of the County Court of
Larimer County, Colorado

By Linda Neuse
Deputy



FOR BILLING PURPOSES:

Name BRIAN O. WHITNEY

Address [REDACTED]

City, State, ZIP FORT COLLINS CO. 80526

00006368-1620

Colorado Driver License



[Redacted] Expires: [Redacted]-2015
 Class: R Issued: 06-25-2010
 End: M ✓ DOB: [Redacted]-1958
 Rest: V Previous Type: A
 Ht: 5'10" Wt: 260 Eyes: BLU Sex: F
 Voter: Y

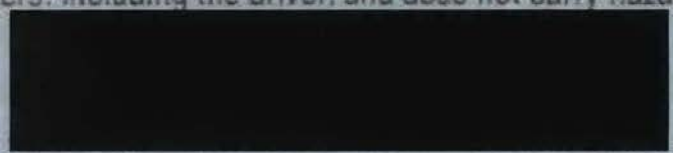
Dana Alix Zzyym

DANA ALIX ZZYYM
 [Redacted]
 FT COLLINS, CO 80525



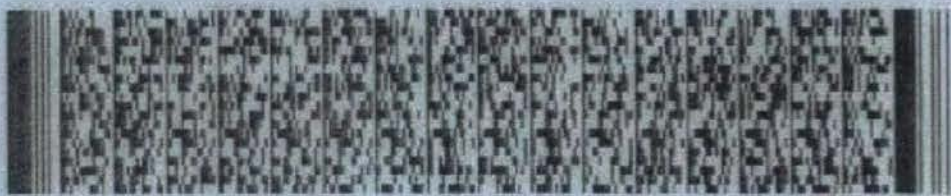
Class R: Any motor vehicle with a GVWR of less than 26,001 lbs. as a single unit or in combination, designed to carry 15 or fewer passengers, including the driver, and does not carry hazardous material.

Restrictions:
V - Corrective Lenses



FT Collins Co 80525

Endorsements:
M - Motorcycle



00006368-1622



00006368-1623

VA  U.S. Department of Veterans Affairs

Card Expires: 05/27/024

Plan ID (B0840) 

Member
DANA A ZZYM

VA HEALTHCARE ENROLLEE
SERVICE CONNECTED

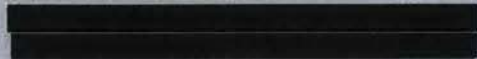




Department of Veterans Affairs
P.O. Box 5005
Bay Pines, FL 33744

OCT 15, 2013

DANA ALIX ZZYIM



To whom it may concern:

Dana Zzyim was born with ambiguous genitalia which would classify her as intersex.

Sincerely,

LAURA ANN HARPER MD

00006368-1633

2 September 2014

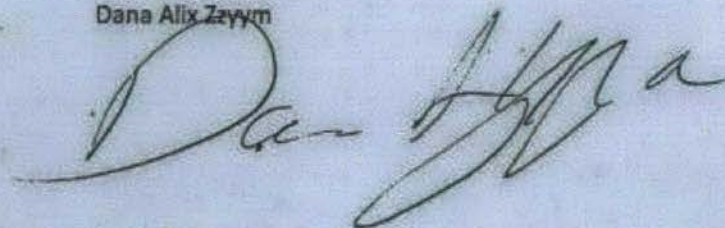
To: The US Passport Office

My name is Dana Alix Zzyym. I am an Intersex person. Both my biological sex and my gender is Intersex.

The International Civil Aviation Organization, the UN organization that controls passports worldwide allows for a third sex marker on passports an "X". As an Intersex person, I'm not male or female. I want the third sex marker on my passport the "X".

Sincerely,

Dana Alix Zzyym

A handwritten signature in black ink, appearing to read "Dana Alix Zzyym", written in a cursive style.

00006368-1630



Office of United States Senator
Michael F. Bennet

RELEASE OF INFORMATION FORM

Before an inquiry can be made on your behalf and subject to the provisions of the Privacy Act of 1974 (Title 5, Sec. 552A of the U.S. Code), the Office of United States Senator Michael Bennet must first receive, in writing, your permission. Please provide the information below (please print) and mail, email, or fax this form and other necessary documents to your Constituent Advocate.

Printed Name: DANA ALIX ZZYHUN

Signature: [Handwritten Signature] Date: 9/4/14

(not typed) Your signature on this form authorizes us to obtain information on your behalf.

Please complete the following section as we must have this information to effectively assist you:

Address: <u>[Redacted]</u>	City: <u>FORT COLLINS</u>	Zip: <u>80521</u>
Preferred Phone#: <u>[Redacted]</u>	Email: <u>[Redacted]</u>	
Social Security #: <u>[Redacted]</u>	Date of Birth: <u>[Redacted]</u>	<u>58</u>

Please include the information that pertains to your issue:

Housing Loan #: <u>PASSPORT</u>	Name of Bank: _____
IRS Case #: _____	Specific years in question: _____
Social Security Case #: _____	New Enrollment? YES NO Date: _____
Immigration File#: _____	DHS/DOS office: _____
Military Rank: _____ Branch: _____	Years of Service: _____ Last Post/Base/Port: _____
Retirement/Separation Date: _____	Disabled? YES NO Percentage? _____

Have you retained an attorney? YES NO Name: no yet

Have you contacted another congressional office? If so, whom? no

Please describe problem and attach supporting documents:

Return to Constituent Advocate:

[Aaron.Torres@bennet.senate.gov](mailto: Aaron.Torres@bennet.senate.gov)
FAX: 303-455-8854

1127 Sherman St, Suite 150, Denver, CO 81501
Call for Assistance: 303-837-3806

00006368-1631



U.S. Department of State

CONSULAR OFFICES OF THE UNITED STATES OF AMERICA

AUTHORIZATION FOR THE RELEASE OF INFORMATION UNDER THE PRIVACY ACT

In accordance with the Privacy Act (PL 93-579) passed by Congress in 1974, a U.S. Consular Office cannot release any information regarding you to anyone without your written consent except as set forth in the Act. Please complete the authorization below, specifying whom a U.S. Consular Office may contact and to whom to release information with regard to your case. Please return the completed authorization to a U.S. Consular Office. Local language translations are acceptable to facilitate completion of the form in English.

The U.S. Government, by providing the Authorization for the Release of Information Under the Privacy Act Form, cannot under any circumstances compel an individual to complete and submit the form. PLEASE CAREFULLY CONSIDER TO WHOM, AND WHAT INFORMATION IS BEING DISCLOSED.

IMPORTANT: You are not obliged to grant anyone access to information regarding you but failure to provide the information requested on this form may make it more difficult, or impossible, for the Department of State or the U.S. Consular Office to assist you.

Your Full Name (Last, First, MI)

Zzyym DANA A

Place of Birth (City, State/Province, Country)

Born At: [Redacted] Michigan

Date of Birth (mm-dd-yyyy)

On: [Redacted] 1953

SECTION A

I hereby authorize the U.S. Consular Office of the United States of America and the U.S. Department of State to release information regarding me to the following individuals:

Name (Last, First)	Telephone Number	Address	Relationship

00006368-1632

IN THE EVENT OTHER PERSONS REQUEST INFORMATION REGARDING MY CASE, INFORMATION CAN BE RELEASED TO THE FOLLOWING:

- | | | |
|-------------------------------------|--------------------------|---|
| YES | NO | |
| <input type="checkbox"/> | <input type="checkbox"/> | Family (Other than Those Listed Under Section A) |
| <input type="checkbox"/> | <input type="checkbox"/> | Friends (Other than Those Listed Under Section A) |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Individual Members of Congress and Staff |
| <input type="checkbox"/> | <input type="checkbox"/> | Members of the Media |
| <input type="checkbox"/> | <input type="checkbox"/> | The General Public |
| <input type="checkbox"/> | <input type="checkbox"/> | Employer |

Please review the form before signing. Information will only be released under Section A if requested and if we have your signed authorization.

[Handwritten Signature]

Signature of the Applicant
(Please Sign in Black or Blue Ink)

Fort Collins, Colorado

City, Country

DANA A Zzyym

Print Your Name

09/04/2011

Date (mm-dd-yyyy)

PRIVACY ACT STATEMENT

This information is needed to assist you in your present need for consular services. The primary purpose for soliciting this information is to establish your citizenship, identity, and entitlement to welfare protection services offered by the U.S. Government.

The U.S. Department of State is committed to ensuring that any personal information received is safeguarded against unauthorized disclosure. The data you provide is subject to the provisions of the Privacy Act (5 U.S.C. 552a). This means that the U.S. Department of State will not disclose the information you provide unless you have given us written authorization to do so, or unless the disclosure is otherwise permitted under the provisions of the Act or in accordance with our routine uses published in Title 22 of the Code of Federal Regulations. The information solicited on this form may be made available as a routine use to other government agencies for law enforcement and administrative purposes. For further information on routine uses, please visit <http://www.state.gov/documents/organization/102787.pdf>.

00006368-1627



Organisation Intersex International USA
 United States affiliate of the world's largest organization of intersex people.
 3060 Kansas Street, Oakland, CA 94602
 +1 415 374-1255
 info@oii-usa.org
 oii-usa.org

September 5, 2014.

Dear Ms. Serenil:

I am writing on behalf of Dana Zzyym, our Rocky Mountain Regional Rep, and Dana's ability to attend the 4th International Intersex Forum, October 27-31, 2014, in Mexico City. Intersex people are born with sex anatomy (chromosomes, gonads, and/or genitalia) that is not typically male or female, and the Intersex Forum (hosted by ILGA: <http://ilga.org>), is an international gathering of intersex human rights activists. At this year's Forum, held in conjunction with the ILGA World Conference, organizations will be voting on representatives including, for the first time, an Intersex Secretariat, who will serve as a liaison and representative on intersex issues to ILGA staff and members (<http://ilga.org/ilga-xxvii-world-conference-second-mailing/>). I cannot attend this year, nor can our Associate Director, and thus we would like Dana to attend and vote for OII-USA, which requires obtaining a passport.

Dana is not male or female but intersex, as reflected in their birth certificate designation of "sex unknown" (note: Dana uses "their" rather than "him" or "her"). Dana is also a veteran, and the Veteran's Administration (which acknowledges intersex people in VHA DIRECTIVE 2011-024, http://www.va.gov/vhapublications/ViewPublication.asp?pub_ID=2416), has also issued medical records confirming Dana's intersex status.

Dana is thus seeking an "X" sex designator, which is available through the ICAO, the agency that governs passports. ICAO Doc 9303 specifies in Part I, Section IV, p. IV-16, that the category of "sex" on passports may be "female", "male", or "unspecified" (http://www.icao.int/publications/Documents/9303_p1_v1_cons_en.pdf). The ICAO's 2012 paper, "Technical Advisory Group on Machine Readable Travel Documents", which advises nations on how to comply with its regulations, elaborates in Part IV, Technical Specifications for Machine Readable Passports, Section VIII, 8.6, that Field No. 11, "Sex", is to be "specified by use of the single initial commonly used in the language of the state. If English/French or Spanish necessary use F/M/X" (http://www.icao.int/Meetings/TAG-MRTD/Documents/Tag-Mrtd-21/Tag-Mrtd21_WP10.pdf).

Australia made the X available to citizens providing documentation of being neither male nor female in 2011, as traveling with an incorrect sex designation often results in discrimination and/or harassment. U.N. Human Rights Commissioner Navi Pillay stated, "I... urge other states around the world to review their own laws, policies and practices to ensure that discrimination against transgender and intersex individuals is addressed in a systematic and effective way." (<http://news.smh.com.au/breaking-news-world/un-welcomes-aust-passport-changes-20110916-1kee2.html>).

All members of the ICAO, including the U.S., are able to submit applications with "Sex" listed as X, as it is one of the three available passport sex designators, but Dana's passport officials are unaware of this. We thus kindly ask that you contact them and request that they expedite Dana's passport application, with their sex listed as "X" as Dana is not male or female, in order for Dana to be accurately identified.

Thank you for your assistance, and please do not hesitate to contact me with any questions.

Respectfully,

Hida Vioria
 Director, OII-USA

00006368-1628

<http://oii-usa.org>
hida@oii-usa.org

00006368-1629

Dana Zzyym

Hermaphrodite/Intersex, Advocate & Activist
Public Speaker/Panelist, Personal Story
National/International Issues
Intersex & Genderqueer Recognition Project Member
Qii USA Member

P [REDACTED]
E [REDACTED]



00006368-1634



United States Department of State

Colorado Passport Agency
3151 South Vaughn Way, Suite 600
Aurora, Colorado 80014

September 24, 2014

Dana Alix Zzyym

[REDACTED]
Fort Collins, CO 80521

RE: 172460355

Dear Dana Zzyym:

Thank you for your recent passport application.

The Department of State currently requires the sex field on United States passports to be listed as "M" or "F." Therefore, we are unable to fulfill your request to list your sex as "X." If you wish to receive a passport listing you as female as shown on your driver's license, please return a signed statement indicating that to our office.

If you wish to receive a passport listing you as male, please refer to the second page of this letter.

If you wish to withdraw your application, please let us know.

We appreciate your assistance in this matter so that we may continue processing your passport application. If we do not receive the requested information **within ninety (90) days from the date of this letter**; or the information you submit is insufficient to establish your entitlement to a U.S. passport in accordance with the relevant provisions of Part 51, Title 22 of the Code of Federal Regulations, your application will be denied and your evidence returned to you. By law, the passport execution and application fees are non-refundable. Any special return postage will be returned or refunded.

If you have any questions regarding this letter or your passport application, contact the National Passport Information Center (NPIC), toll-free, at 1-877-487-2778 (TTY/TDD: 1-888-874-7793). For general passport information, to check the status of your passport application, or to enroll in our Smart Traveler Enrollment Program (STEP), please visit us online at travel.state.gov.

PLEASE RETURN A COPY OF THIS LETTER WITH YOUR REPLY.

Sincerely,

Customer Service Department

00006368-1635

In order to issue you a full validity passport book reflecting a gender different from the one on some or all of your citizenship and/or identity evidence, please send us a signed original statement on office letterhead from your attending medical physician. Statements from medical physicians can be from licensed medical doctors (M.D.) and osteopathic doctors (D.O.); the physicians may specialize in various medical fields, including, but not limited to: internal medicine, endocrinology, gynecology, urology, surgery, psychiatry, pediatrics, and family practice. The statement must include the following information:

- a) Physician's full name;
- b) Medical license or certificate number;
- c) Issuing state of medical license/certificate;
- d) Address and telephone number of the physician;
- e) Language stating that he/she has treated you or has reviewed and evaluated your medical history and that he/she has a doctor/patient relationship with you;
- f) Language stating that you have had appropriate clinical treatment for transition to the new gender (the new gender, male or female, must be stated); and
- g) The statement must clearly state the following: "I declare under penalty of perjury under the laws of the United States that the forgoing is true and correct."

If your gender transition process is ongoing, a two-year limited validity passport book reflecting the new gender will be issued upon submission of the letter stated above with language from your attending physician that you are in the process of gender transition.

The two-year passport may be replaced for the remaining validity period without additional fees (except for expedited service), if you apply within two (2) years of issuance using a DS-5504 Application for a U.S. Passport (Name Change, Data Correction and Limited Passport Book Replacement) and provide a new statement from your attending physician attesting that you have had appropriate clinical treatment for transition to the new gender.



Organisation Intersex International USA
United States affiliate of the world's largest organization of intersex people.
3060 Kansas Street, Oakland, CA 94602
+1 415 374-1255
info@oii-usa.org
oii-usa.org

September 29, 2014

Eva Serenil
Constituent Advocate
U.S. Senator Michael Bennet
1127 Sherman Street, Ste. 150
Denver, CO 80203

Dear Ms. Serenil:

Thank you for providing ongoing assistance to Dana Zzyym in her efforts to attain a passport with an "X" sex designation, as they are not male or female but intersex. I am aware that Dana's passport application was rejected by the U.S. Department of State Colorado Passport Agency, in Aurora, Colorado, for the stated reason that, "The Department of State currently requires the sex field on United States passports to be listed as "M" or "F".

As you know, Dana is seeking their passport in order to attend the International Intersex Forum in Mexico City, in order to represent and vote on behalf of OII-USA. The deadline for payment of conference fees is September 30th, but there is a 15-day extension available with a \$50 late fee.

Also, I was just informed by my colleague Morgan Carpenter, President of OII Australia (our Australian affiliate), that the U.S. Consulate approved his X passport, and he can receive a visa to enter the country. While he obviously does not hold a United States passport, it is evidence that the United States recognizes the X sex designator in some capacity.

I hope that this information is useful to you in advocating to the Department of State on Dana's behalf, in order that Dana be able to pay the fees knowing their passport application has been approved.

Thank you once again, and please let me know if I can provide any further assistance.

Sincerely,

Hida Vilorio
Chairperson, Organisation Intersex International
<http://oiiinternational.com/>
Director, OII-USA
<http://oii-usa.org>
hida@oii-usa.org

12/18/14

Dear Passport Appeal Officer:

I was recently notified in a letter from the Colorado Passport Agency that my passport application was denied because "the Department of State currently requires the sex field on United States passports to be listed as "M" or "F". I was provided two choices, male or female, for obtaining a United States passport, but neither of these applies because I am intersex, both biologically and in terms of my Gender (as per Supreme Court Justice Ruth Bader Ginsberg). In addition to being intersex, I am a United States Navy veteran, and served six years of active duty in Beirut.

Delivered with this appeal are two signed, sworn documents which verify that my sex is intersex, from my current doctors, both of whom work for the VA MEDICAL CENTER in Cheyenne, WY. I am thus providing the required documentation for obtaining a "passport book reflecting a gender different from the one on some or all of [my] citizenship and/or identity evidence" – as the gender listed on my Colorado state driver's license is "female"—but the gender I wish to have reflected is not male, but intersex.

As I stated in my letter delivered with the original passport application, the International Civil Aviation Organization, which controls passports worldwide, allows for an "X" gender marker in the sex field of passports, representing "indeterminate sex" or "sex unknown". Intersex Australian citizens are legally utilizing an X sex marker on their passports (upon their request), representing "Intersex/Indeterminate/Unspecified". In fact, the Department of State recently recognized the "X"/intersex individuals legally identified by an "X" gender marker, by providing a Visa for entry to an intersex Australian (Morgan Carpenter) with an "X" in the sex field of his passport. I would thus like, for international consistency and bureaucratic ease, to likewise have my intersex status represented by an "X" sex marker on my passport.

The U.N. Declaration of Human Rights states:

Article 2. Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. **Article 6.** Everyone has the right to recognition everywhere as a person before the law. **Article 13.** (2) Everyone has the right to leave any country, including his own, and to return to his country.

In addition, the Organization of American States (OAS) aims: 1. To... urge the states within the parameters of the legal institutions of their domestic systems to eliminate, where they exist, barriers faced by lesbians, gays, and bisexual, transsexual, and intersex (LGBTI) persons in equal access to political participation and in other areas of public life, and to avoid interferences in their private life.. 4. In addition, to encourage states, within their institutional capacities, to produce data on homophobic and transphobic violence, with a view to fostering public policies that protect the human rights of lesbians, gays, and bisexual, transsexual, and intersex people.

00006368-1642

In the United States, the authority of the Secretary of State to issue passports was made exclusive by the Act of Congress, August 18, 1856. ... The decisions in *Crandal v. Nevada*¹, *Edwards v. California*³, and *Williams v. Fears*⁴, although concerned with interstate travel, reflect a philosophy of basic rights readily applicable to travel abroad. ... the decision gave the first legal recognition ... to the right to travel outside the United States as a civil liberty ... of increasing importance to the ordinary citizen. (William & Mary Law Review, Vol. issue 2, Passport Denial and the Freedom to Travel, Roger M. Johnson).

The U.S. Department of Veterans Affairs recognizes intersex citizens in VHA DIRECTIVE 2011-024, http://www.va.gov/vhapublications/ViewPublication.asp?pub_ID=2416). It likewise behooves the Department of State to recognize the existence of intersex American citizens. Denying me my passport because I will not incorrectly identify my sex as male or female denies me the right to legal recognition and the right to leave and return to my country that is granted to male and female U.S. citizens.

Discrimination against marginalized communities is facilitated and reflected by a lack of equal legal rights and recognition. This is why in 2011, in response to Australia's X passport legislation, the U.N. High Commissioner of Human Rights stated, "I... urge other states around the world to review their own laws, policies and practices to ensure that discrimination against transgender and intersex individuals is addressed in a systematic and effective way." (<http://news.smh.com.au/breaking-news-world/un-welcomes-aust-passport-changes-20110916-1kee2.html>). As the article in the link discusses, England is considering abolishing sex markers altogether in identification documents.

I urge you to join other Commonwealth nations in enacting policies that are inclusive of intersex citizens. A small technicality such as updating sex marker fields in passport forms and documents should not prevent U.S. citizens, particularly those who have served their country, from obtaining accurate legal recognition and equal rights under the eyes of the law.

Thank you,



Dana Zzyym

Intersex Person/IGM survivor

[REDACTED] Fort Collins CO. 80521
[REDACTED]



DEPARTMENT OF VETERANS AFFAIRS
Medical Center
2360 East Pershing Boulevard
Cheyenne WY 82001

December 16, 2014

To Whom it May Concern,

Re: Dana Zzym, DOB [REDACTED]/58

I have been veteran's mental health provider since 6/23/08. I have had a 6 year doctor/patient relationship with her. She has had the appropriate clinical treatment for transition to intersex.

I declare under penalty of perjury under the laws of the United States of America that the forgoing is true and correct.

Terri Orcutt M.D.
Terri Orcutt M.D.

Colorado medical license number CO 38367

Fort Collins VA Outpatient Clinic

2509 Research Blvd

Fort Collins, CO 80526

00006368-1640

**DEPARTMENT OF
VETERANS AFFAIRS**

**Cheyenne VAMC
2360 E. Pershing Blvd
Mail Stop: 136
Cheyenne, WY 82001**

**DATE: 12/5/2014
In Reply Refer To: 136
SSN: [REDACTED]**

DANA ALIXZZYYM
[REDACTED]

FORT COLLINS, CO 80521

RE: ROI PlusRequest for DANA ALIX ZZYYM

Dear MS ZZYYM:

This individually identifiable information is privileged its confidentiality should be maintained along with appropriate securitysafeguards to protect against individual harm (identity theft), embarrassment, or inconvenience.

Sincerely,

[Handwritten Signature]

**BOOKS, LARRY
Chief, HIMS**

Prepared by: GILBERT R MADRID - Release of Information

Press Notes

Printed On Dec 05, 2014

Sincerely,

Cheyenne VAMC - (307) 778-7550, Ext. 7555
 Fort Collins CBOC - (970) 224-1550
 Greeley CBOC - (970) 313-0027
 Tricare/ChampVA/Sharing - (307) 778-7513

PATIENT NAME AND ADDRESS (Mechanical imprinting, if available)

ZZYIM, DANA ALIX

████████████████████
FORT COLLINS, COLORADO 80521

VISTA Electronic Medical Documentation

Printed at CHEYENNE VAMC

Interim Electronic Accounting of Disclosure for: ZZYIM,DANA ALIX

Page 1

Patient: ZZYIM,DANA ALIX
[REDACTED]
FORT COLLINS, CO 80521

Requestor: DANA ALIX ZZYIM
[REDACTED]
FORT COLLINS, CO 80521

Current Status: OPEN

Entered On: Dec 05, 2014

Closed On:

Assigned Clerk: GILBERT R. MADRID

Request Comments:
DR JOHNSON WROTE LETTER -GRM

Released info:
ProgressNotes: [REDACTED] December 04, 2014

00006368-1643



United States Department of State
Colorado Passport Agency
44132 Mercure Circle
PO Box 1045
Sterling, Virginia 20166-1045

December 29, 2014

Dana Alix Zzyym

[REDACTED]
Fort Collins, CO 80521

RE: 172460355

Dear Dana Zzyym:

Thank you for your passport application. Because your application did not meet our requirements, our office sent you a letter on September 24, 2014, requesting additional information. A copy of that letter is enclosed. You appeared at our office on December 19, 2014, to present additional documentation and to discuss our letter.

As explained in our letter of September 24, and as you discussed with our staff on December 19, the Department of State requires the sex field on United States passports to be listed as "M" or "F." Therefore, we cannot fulfill your request to list your sex as "X."

You indicated both in your letter dated December 18 and in person on December 19 that you did not wish a passport to be issued to you unless it could be issued showing the sex as "X." Because we are unable to accommodate your request, your passport application is denied. The original documents you submitted with your application are enclosed. By law, the passport execution and application fees are non-refundable.

If you still wish to obtain a passport book and/or card, you will need to re-apply on a new application, provide all required information, and pay the appropriate fees.

If you have any questions regarding this letter you may contact the National Passport Information Center (NPIC), toll-free, at 1-877-487-2778 (TTY/TDD: 1-888-874-7793).

Sincerely,

Sherman D. Portell
Director

UPS CampusShip: Shipment Label

Page 1 of 1

UPS CampusShip: View/Print Label

1. **Ensure there are no other shipping or tracking labels attached to your package.** Select the Print button on the print dialog box that appears. Note: If your browser does not support this function select Print from the File menu to print the label.
2. **Fold the printed sheet containing the label at the line so that the entire shipping label is visible.** Place the label on a single side of the package and cover it completely with clear plastic shipping tape. Do not cover any seams or closures on the package with the label. Place the label in a UPS Shipping Pouch. If you do not have a pouch, affix the folded label using clear plastic shipping tape over the entire label.
3. **GETTING YOUR SHIPMENT TO UPS**
 UPS locations include the UPS Store®, UPS drop boxes, UPS customer centers, authorized retail outlets and UPS drivers.
 Schedule a same day or future day Pickup to have a UPS driver pickup all your CampusShip packages.
 Hand the package to any UPS driver in your area.
 Take your package to any location of The UPS Store®, UPS Drop Box, UPS Customer Center, UPS Alliances (Office Depot® or Staples®) or Authorized Shipping Outlet near you. Items sent via UPS Return Services(SM) (including via Ground) are also accepted at Drop Boxes. To find the location nearest you, please visit the Resources area of CampusShip and select UPS Locations.

Customers with a Daily Pickup

Your driver will pickup your shipment(s) as usual.

FOLD HERE

<p>0.0 LBS LTR</p> <p>1 OF 1</p> <p>SHIP TO: DANA ALIX ZZNYM FORT COLLINS CO 80521-5118</p>	<p>CO 805 0-01</p> 	<p>UPS NEXT DAY AIR</p> <p>TRACKING #: 1Z X32 590 01 9553 1943</p> <p>1</p> 	<p>BILLING: P/P</p> <p>DEC 30 2014</p>  <p><small>© 1995-2014 UPS of America, Inc. All rights reserved.</small></p>
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From: Paul Castillo [<mailto:pcastillo@lambdalegal.org>]
Sent: Thursday, February 26, 2015 4:57 PM
To: Portell, Sherman D
Subject: Passport Applicant Zzyym (No. 172460355)

Dear Mr. Portell,

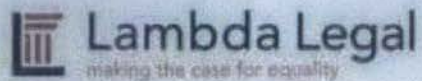
Please find attached a letter requesting reconsideration of the decision to deny a U.S. passport to Dana Alix Zzyym or, alternatively, a hearing for final decision by the Deputy Assistant Secretary for Passport Services. Due to the size of the electronic file for the enclosures, those documents were submitted along with the original letter to your attention via overnight mail.

Thank you kindly for your attention.

Sincerely,

Paul D. Castillo
Staff Attorney
Lambda Legal
South Central Regional Office
3500 Oak Lawn Avenue, Suite 500
Dallas, TX 75219-6722
Phone: 214-219-8585
Direct: 214-302-2216
Fax: 214-219-4455
pcastillo@lambdalegal.org

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PAUL D. CASTILLO STAFF ATTORNEY
EMAIL: PCASTILLO@LAMBDALEGAL.ORG

February 26, 2015

Via overnight mail and email to portellsd@state.gov

Mr. Sherman D. Portell, Director
United States Department of State
Colorado Passport Agency
44132 Mercure Cir.
P.O. Box 1045
Sterling, VA 20166-1045

**RE: Dana Alix Zzyym, Passport Applicant – Request for Reconsideration or Hearing
U.S. Department of State, File No. 172460355**

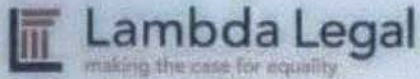
Dear Mr. Portell:

Lambda Legal Defense and Education Fund, Inc. (“Lambda Legal”) and the Law Office of Jessica Kunevicius, LLC jointly represent Dana Alix Zzyym, an intersex American citizen and veteran who applied for a passport through the Colorado Passport Agency. We write to request that the United States Department of State (“DOS”) reconsider its decision to deny Dana a passport that accurately designates Dana’s sex as ‘X.’ Alternatively, we request a hearing pursuant to 22 CFR § 51.70(a) for final decision by the Deputy Assistant Secretary for Passport Services.

In Dana’s case, as is true for numerous other intersex people, a passport with the designation of male or female is inaccurate, inappropriate, and dangerous to Dana’s security and well-being. Many Americans do not and cannot identify as male or female because their sex chromosomes, gonads, and/or internal or external sexual anatomy do not fit clearly into binary categories. Dana was identified as intersex at birth, which is reflected on Dana’s birth certificate. However, for others, an inability to identify as male or female becomes evident later in life. In any event, a passport that mischaracterizes the holder as male or female can subject the holder to discrimination in numerous contexts and prevents the holder from traveling safely. Accordingly, we request the use of ‘X’ on Dana’s passport in accordance with international travel standards for designating people who are neither male nor female.

In early September 2014, Dana visited the Colorado Passport Agency in Aurora, Colorado to obtain a U.S. passport. Dana submitted an Application for a U.S. Passport, Form DS-11 (09-2013) (“Form”) with the requisite identity and citizenship documentation, photograph, and fee payment. Dana accurately listed “intersex” in the sex field on the Form and, by separate letter, clarified that “[a]s an intersex person, I’m not male or female.” Dana requested ‘X’ as the marker in the sex field on Dana’s passport, noting that such designation conforms to

00007293-0141



Mr. Sherman D. Portell
February 26, 2015
Page 2

the International Civil Aviation Organization (ICAO) standards for machine-readable travel documents. See ICAO Doc 9303, Part 1, Volume 1 Sixth Ed. (2006).

By letter dated September 24, 2014 ("September 24 Letter"), CPA acknowledged receipt of Dana's application, but asserted that DOS "currently requires the sex field on U.S. passports to be listed as 'M' or 'F.'" Although Dana clearly and unequivocally informed DOS that Dana is neither male nor female, but intersex, DOS directed Dana to select either a male or female sex designation if Dana wanted to receive a passport for international travel. Alternatively, DOS invited Dana to withdraw Dana's passport application.

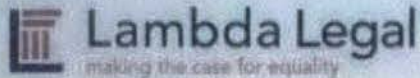
Dana timely responded to DOS's September 24 Letter, reiterating that neither male nor female applies "because I am intersex." Indeed, as part of the original application, Dana had previously submitted a certified Michigan Certificate of Live Birth showing "unknown" in the sex field. Nevertheless, Dana provided CPA with additional documentation, including sworn statements from licensed physicians at the U.S. Department of Veterans Affairs attesting to the fact that Dana is intersex. Despite submitting supplemental information and complying with the relevant provisions of Part 51, Title 22 of the Code of Federal Regulations ("Passport Regulations"), DOS denied Dana a U.S. passport by letter dated December 29, 2014 ("Notification of Denial"). See Enclosed Application Materials and DOS Responses.

The Notification of Denial did not set forth any explanation, specific reason, or legal basis for the assertion that DOS "requires the sex field on United States passports to be listed as 'M' or 'F.'" (emphasis added). Nor did the Notification of Denial set forth the procedures for review available under 22 CFR § 51.70 through 51.74. At minimum, DOS must articulate the reasoning behind its conclusion that Dana is not entitled to a U.S. passport for international travel with an accurate sex marker, 'X'. In the absence of statute, regulation, or other referenced authority "requiring" use of the 'M'/'F' sex binary in DOS's issuance of U.S. passports, the Foreign Affairs Manual specifically allows for Dana's request insofar as the applicant's "birth documentation will determine the gender to be listed on the passport." 7 FAM 1350, Appendix M §(c), Intersex Conditions. Given that Dana's birth certificate lists "unknown" as Dana's sex, 'X' would be the only accurate and appropriate designation for the sex field on Dana's passport.

In light of the foregoing, we respectfully request that DOS reconsider its decision to deprive Dana of a passport for international travel or, alternatively, provide Dana a hearing in accordance with Subpart F of the Passport Regulations for final decision by the Deputy Assistant Secretary for Passport Services. If such a hearing is granted, our client waives the requirement that the hearing occur within 60 days after DOS receives this request and recommends a mutually convenient time and place to be determined by the parties through counsel.

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Mr. Sherman D. Portell
February 26, 2015
Page 3



Please submit your response to this letter at your earliest convenience. Also, do not hesitate to contact us if we can be of further assistance in providing additional information in support of our client's request.

Very truly yours,

LAMBDA LEGAL DEFENSE AND
EDUCATION FUND, INC.

Paul D. Castillo
Staff Attorney

Encl.

cc: Director, Colorado Passport Agency
United States Department of State
3151 South Vaughn Way, Suite 600
Aurora, Colorado 80014

00007293-0143

2 September 2014

To: The US Passport Office

My name is Dana Alix Zzym. I am an Intersex person. Both my biological sex and my gender is Intersex.

The International Civil Aviation Organization, the UN organization that controls passports worldwide allows for a third sex marker on passports an "X". As an Intersex person, I'm not male or female. I want the third sex marker on my passport the "X".

Sincerely,

Dana Alix Zzym

00007293-0144

APPLICATION FOR A U.S. PASSPORT

Please Print Legibly Using Black Ink Only

CMS CONTROL NO. 1405-0504
CMS EXPIRATION DATE: 01-31-2017
ESTIMATED BURDEN: 35 MIN

Attention: Read WARNING on page 1 of instructions
Please select the document(s) for which you are applying:

U.S. Passport Book U.S. Passport Card Both
The U.S. passport card is not valid for international air travel. For more information see page 1 of instructions.

28 Page Book (Standard) 52 Page Book (Non-Standard)

Note: The 52 page option is for those who frequently travel abroad during the passport validity period, and is recommended for applicants who have previously received the addition of visa pages.

1. Name Last: **ZZYIM** D C Dep. DOTS

First: **DANA** Middle: **ALIX** End.# _____ Exp. _____

2. Date of Birth (mm/dd/yyyy): **1958** 3. Sex: **Intersex** 4. Place of Birth (City & State if in the U.S., or City & Country as it is presently known.): **MICHIGAN**

5. Social Security Number _____ 6. Email Address (e.g., my_email@domain.com) _____ 7. Primary Contact Phone Number _____

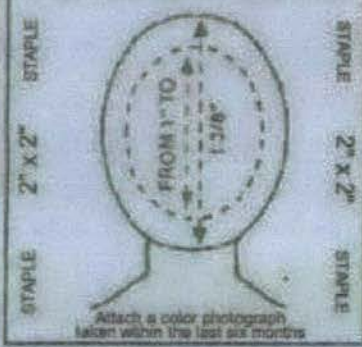
8. Mailing Address: Line 1: Street/RFD#, P.O. Box, or URB. _____

Address Line 2: Clearly label Apartment, Company, Suite, Unit, Building, Floor, In Care Of or Attention if applicable. (e.g., In Care Of - Jane Doe, Apt # 100) _____

City: **FORT COLLINS** State: **CO** Zip Code: **80521** Country, if outside the United States _____

9. List all other names you have used. (Examples: Birth Name, Maiden, Previous Marriage, Legal Name Change. Attach additional pages if needed)
A. BRIAN DRIN WHITNEY B.

STOP! CONTINUE TO PAGE 2
DO NOT SIGN APPLICATION UNTIL REQUESTED TO DO SO BY AUTHORIZED AGENT



Identifying Documents - Applicant or Mother/Father/Parent on Second Signature Line (if identifying minor)

Driver's License State issued ID Card Passport Military Other _____

Name _____

Issue Date (mm/dd/yyyy) _____ Exp. Date (mm/dd/yyyy) _____ State of Issuance _____

ID No. _____ Country of Issuance _____

Identifying Documents - Applicant or Mother/Father/Parent on Third Signature Line (if identifying minor)

Driver's License State issued ID Card Passport Military Other _____

Name _____

Issue Date (mm/dd/yyyy) _____ Exp. Date (mm/dd/yyyy) _____ State of Issuance _____

ID No. _____ Country of Issuance _____

I declare under penalty of perjury all of the following: 1) I am a citizen or non-citizen national of the United States and have not, since acquiring U.S. citizenship or nationality, performed any of the acts listed under "Acts or Conditions" on page four of the instructions of this application (unless explanatory statement is attached); 2) the statements made on the application are true and correct; 3) I have not knowingly and willfully made false statements or included false documents in support of this application; 4) the photograph attached to this application is a genuine, current photograph of me; and 5) I have read and understood the warning on page one of the instructions to the application form.

Acceptance Agent (Visit) Consul USA

Passport Staff Agent

(Seal)

Name of issuer company (if applicable) _____ Facility ID Number _____

Facility Name/Location _____ Agent ID Number _____

Signature of parent/authorities to accept application _____ Date _____

Applicant's Legal Signature - age 16 and older

Mother/Father/Parent/Legal Guardian's Signature (if identifying minor)

Mother/Father/Parent/Legal Guardian's Signature (if identifying minor)

00007293-0145

Name of Applicant (Last, First, & Middle) **Zzyym DANA ALIX** Date of Birth (mm/dd/yyyy) **[REDACTED] 1958**

10. Parental Information
 Mother/Father/Parent - First & Middle Name **[REDACTED]** Last Name (at Parent's Birth) **[REDACTED]**
 Date of Birth (mm/dd/yyyy) **[REDACTED]** Place of Birth **[REDACTED]** Sex Male Female U.S. Citizen? Yes No
 Mother/Father/Parent - First & Middle Name **[REDACTED]** Last Name (at Parent's Birth) **[REDACTED]**
 Date of Birth (mm/dd/yyyy) **[REDACTED]** Place of Birth **[REDACTED]** Sex Male Female U.S. Citizen? Yes No

11. Have you ever been married? Yes No If yes, complete the remaining items in #11.
 Full Name of Current Spouse or Most Recent Spouse **[REDACTED]** Date of Birth (mm/dd/yyyy) **[REDACTED]** Place of Birth **[REDACTED]**

U.S. Citizen? Yes No Date of Marriage (mm/dd/yyyy) **02/06/2004** Have you ever been widowed or divorced? Yes No Widow/Divorce Date (mm/dd/yyyy) **01/08/2008**

12. Additional Contact Phone Number **[REDACTED]** 13. Occupation (if age 16 or older) **Disabled** 14. Employer or School (if applicable) **[REDACTED]**

15. Height **5'9"** 16. Hair Color **Grey** 17. Eye Color **Blue** 18. Travel Plans
 Departure Date (mm/dd/yyyy) **10/24/2014** Return Date (mm/dd/yyyy) **11/03/2014** Countries to be Visited **Mexico**

19. Permanent Address - If P.O. Box is listed under Mailing Address or if residence is different from Mailing Address.
 Street/RFD # or URB (No P.O. Box) **[REDACTED]** Apartment/Unit **[REDACTED]**
 City **[REDACTED]** State **[REDACTED]** Zip Code **[REDACTED]**

20. Emergency Contact - Provide the information of a person not traveling with you to be contacted in the event of an emergency.
 Name **[REDACTED]** Address: Street/RFD # or P.O. Box **[REDACTED]** Apartment/Unit **[REDACTED]**
 City **[REDACTED]** State **[REDACTED]** Zip Code **[REDACTED]** Phone Number **[REDACTED]** Relationship **[REDACTED]**

21. Have you ever applied for or been issued a U.S. Passport Book or Passport Card? Yes No If yes, complete the remaining items in #21.
 Name as printed on your most recent passport book **[REDACTED]** Most recent passport book number **[REDACTED]** Most recent passport book issue date (mm/dd/yyyy) **[REDACTED]**
 Status of your most recent passport book: Submitting with application Stolen Lost In my possession (if expired)
 Name as printed on your most recent passport card **[REDACTED]** Most recent passport card number **[REDACTED]** Most recent passport card issue date (mm/dd/yyyy) **[REDACTED]**
 Status of your most recent passport card: Submitting with application Stolen Lost In my possession (if expired)

PLEASE DO NOT WRITE BELOW THIS LINE - FOR ISSUING OFFICE ONLY

Name as it appears on citizenship evidence _____

Birth Certificate SR CR City Filed _____ Issued: _____
 Nat. / Citiz. Cert. USCIS USDC Date/Place Acquired: _____ At: _____
 Report of Birth Filed/Place: _____
 Passport C/R S/R Pw PIERS #/DOE _____
 Other: _____
 Attached: _____

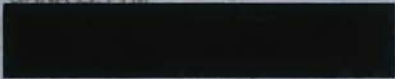
PIC of ID DS-3053 DS-64 DS-6520 DS-5513 Citiz WIS _____
 PIC of Citiz DS-10 DS-66 DS-71 IRL Citiz Ver _____

* DS 11 C 09 2013 2 *

00007293-0146

STATE OF MICHIGAN

DANA ZZYYM



IMPORTANT INFORMATION

This certificate is a valuable and legal document. Please keep it in a safe place.

Errors or omissions should be reported to the State Vital Records Office within 30 days of issue by calling (517)335-8666

STATE OF MICHIGAN

LF 64



STATE OF MICHIGAN DEPARTMENT OF COMMUNITY HEALTH

CF

CERTIFICATE OF LIVE BIRTH Addended

121 - 1334217 State File Number

1. CHILD'S NAME (First, Middle, Last, Suffix) Brian Orin Whitney				
2. SEX UnKnown	3a. PLURALITY (Single, Twin, Triplet, etc. (Specify)) Single	3b. IF NOT SINGLE BIRTH (First, Second, Third, etc. (Specify))	4a. DATE OF BIRTH (Month, Day, Year) [REDACTED] 1958	4b. TIME OF BIRTH Not Recorded
5a. CHILD'S BIRTHPLACE (Hospital or Address if other) [REDACTED]			5b. COUNTY [REDACTED]	
6a. MOTHER'S CURRENT LEGAL NAME (First, Middle, Last) [REDACTED]		6b. MOTHER'S FULL NAME BEFORE FIRST MARRIED (First, Middle, Last) [REDACTED]		
7a. STATE OF BIRTH - Name (Country if not USA) Michigan	7b. DATE OF BIRTH OR AGE [REDACTED]	7c. COUNTY OF RESIDENCE [REDACTED]	7d. STATE OF RESIDENCE Michigan	
8a. FATHER'S CURRENT LEGAL NAME (First, Middle, Last) [REDACTED]		8b. STATE OF BIRTH - Name (Country if not USA) Michigan	8c. DATE OF BIRTH OR AGE [REDACTED]	

9a. REGISTRAR'S SIGNATURE [Signature] Fred G. Catrell	9b. DATE FILED BY LOCAL REGISTRAR (Month, Day, Year) March 3, 1958
--	---

New Name: Dana Alix Zzyym, Established By: Larimer County, Colorado County Court, January 12, 1995.

I hereby certify that the above is a true and correct representation of the birth facts on file with the State of Michigan, Issued from the Michigan Centralized Birth Certification System.

Certified by: [Signature] Glenn Copeland State Registrar

Date issued: November 1, 2013 AFS: 2605850

20182341



VOID WITHOUT WATERMARK OR IF ALTERED OR ERASED

Progress Notes

Page 1

Oct 24, 2013

LOCAL TITLE: MHC FOLLOW UP
 DATE OF NOTE: OCT 23, 2013@13:40 ENTRY DATE: OCT 23, 2013@13:40:30
 AUTHOR: CHOBOT-SOCHET, ELZBI EXP COSIGNER:
 URGENCY: STATUS: COMPLETED

To Whom It May Concern :

Dana Zzyym was born with ambiguous genitalia which would classify her as intersex.

Sincerely

/s/ ELZBIETA J CHOBOT-SOCHET MD
 PSYCHIATRY
 Signed: 10/23/2013 13:41

PATIENT NAME AND ADDRESS (Mechanical imprinting, if available)

ZZYYM, DANA ALIX
 [REDACTED]
 RUSKIN, FLORIDA 33570

Printed at BAY PINES VA HCS

00007293-0148

COUNTY COURT, LARIMER COUNTY, COLORADO

CASE NO. F94C4088

ORDER

IN THE MATTER OF THE PETITION OF: FOR A CHANGE OF NAME TO:

BRIAN ORIN WHITNEY DANA ALIX ZZYVM

The petition of BRIAN ORIN WHITNEY to change his/her legal name and designation from BRIAN ORIN WHITNEY to DANA ALIX ZZYVM, having been presented to this Court on the 12 day of Jan, 1995, and upon interrogation of the petitioner and examination of said Petition, the Court finds the same sufficient and regular in form, and that the desired name change would be proper and not detrimental to the interest of any other person.

IT IS THEREFORE ORDERED: That the name of the said BRIAN ORIN WHITNEY is hereby changed to DANA ALIX ZZYVM, and (s)he is hereby authorized to hereafter use said latter name as his/her legal name; and that such change shall be made and spread upon the records of this Court.

IT IS FURTHER ORDERED that public notice of such change be given at least three times in the Reporter Herald a newspaper published in Larimer County, where Petitioner is residing, within twenty days of the date of this Order, and shall file proper affidavit of publication of said notice with the Clerk of this Court.

DATED THIS 12 day of Jan 1995

BY THE COURT:



JUDGE

CERTIFIED TRUE COPY
Dated 01-23-2008
SHERLYN K. SAMPSON
County & District Court Clerk
Larimer County Colorado
By Just & Sama
Deputy Clerk

12/18/14

Dear Passport Appeal Officer:

I was recently notified in a letter from the Colorado Passport Agency that my passport application was denied because "the Department of State currently requires the sex field on United States passports to be listed as 'M' or 'F'. I was provided two choices, male or female, for obtaining a United States passport, but neither of these applies because I am, intersex, both biologically and in terms of my Gender (as per Supreme Court Justice Ruth Bader Ginsberg). In addition to being intersex, I am a United States Navy veteran, and served six years of active duty in Beirut.

Delivered with this appeal are two signed, sworn documents which verify that my sex is intersex, from my current doctors, both of whom work for the VA MEDICAL CENTER in Cheyenne, WY. I am thus providing the required documentation for obtaining a "passport book reflecting a gender different from the one on some or all of [my] citizenship and/or identity evidence" -- as the gender listed on my Colorado state driver's license is "female"—but the gender I wish to have reflected is not male, but intersex.

As I stated in my letter delivered with the original passport application, the International Civil Aviation Organization, which controls passports worldwide, allows for an "X" gender marker in the sex field of passports, representing "indeterminate sex" or "sex unknown". Intersex Australian citizens are legally utilizing an X sex marker on their passports (upon their request), representing "Intersex/Indeterminate/Unspecified". In fact, the Department of State recently recognized the "X"/intersex individuals legally identified by an "X" gender marker, by providing a Visa for entry to an intersex Australian (Morgan Carpenter) with an "X" in the sex field of his passport. I would thus like, for international consistency and bureaucratic ease, to likewise have my intersex status represented by an "X" sex marker on my passport.

The U.N. Declaration of Human Rights states:

Article 2. Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. **Article 6.** Everyone has the right to recognition everywhere as a person before the law. **Article 13. (2)** Everyone has the right to leave any country, including his own, and to return to his country.

In addition, the Organization of American States (OAS) aims: 1. To ... urge the states within the parameters of the legal institutions of their domestic systems to eliminate, where they exist, barriers faced by lesbians, gays, and bisexual, transsexual, and intersex (LGBTI) persons in equal access to political participation and in other areas of public life, and to avoid interferences in their private life. 4. In addition, to encourage states, within their institutional capacities, to produce data on homophobic and transphobic violence with a view to fostering public policies that protect the human rights of lesbians, gays, and bisexual, transsexual, and intersex people.

00007293-0150

In the United States, the authority of the Secretary of State to issue passports was made exclusive by the Act of Congress, August 18, 1858. . . The decisions in *Crandall v. Nevada*¹, *Edwards v. California*³, and *Williams v. Fears*⁴, although concerned with interstate travel, reflect a philosophy of basic rights readily applicable to travel abroad. . . the decision gave the first legal recognition . . . to the right to travel outside the United States as a civil liberty . . . of increasing importance to the ordinary citizen. (William & Mary Law Review, Vol. issue 2, Passport Denial and the Freedom to Travel, Roger M. Johnson).

The U.S. Department of Veterans Affairs recognizes intersex citizens in VHA DIRECTIVE 2011-024, http://www.va.gov/vhapublications/ViewPublication.asp?pub_ID=2416). It likewise behooves the Department of State to recognize the existence of intersex American citizens. Denying me my passport because I will not incorrectly identify my sex as male or female denies me the right to legal recognition and the right to leave and return to my country that is granted to male and female U.S. citizens.

Discrimination against marginalized communities is facilitated and reflected by a lack of equal legal rights and recognition. This is why in 2011, in response to Australia's X passport legislation, the U.N. High Commissioner of Human Rights stated, "I... urge other states around the world to review their own laws, policies and practices to ensure that discrimination against transgender and intersex individuals is addressed in a systematic and effective way." (<http://news.smh.com.au/breaking-news-world/un-welcomes-aust-passport-changes-20110916-1kee2.html>). As the article in the link discusses, England is considering abolishing sex markers altogether in identification documents.

I urge you to join other Commonwealth nations in enacting policies that are inclusive of intersex citizens. A small technicality such as updating sex marker fields in passport forms and documents should not prevent U.S. citizens, particularly those who have served their country, from obtaining accurate legal recognition and equal rights under the eyes of the law.

Thank you


Dana Zzym

Intersex Person/IGM survivor

Fort Collins CO, 80521

00007293-0151

Progress Notes

Printed On Dec 05, 2014

LOCAL TITLE: PAF NORMAL
 STANDARD TITLE: LETTERS
 DATE OF NOTE: DEC 04, 2014 15:23 ENTRY DATE: DEC 04, 2014 15:01:06
 AUTHOR: JOHNSON, AMANDA M EXE COSIGNER:
 URGENCY: STATUS: COMPLETED

DEPARTMENT OF VETERANS AFFAIRS
 CHEYENNE VA MEDICAL CENTER
 2360 EAST PERSHING BLVD.
 CHEYENNE, WYOMING 82001

DANA ALIX ZZYM
 [REDACTED]
 FORT COLLINS, COLORADO 80521

Dear Ms. ZZYM, DANA ALIX.

To Whom it May Concern:

My name is Amanda Moore Johnson, MD. Wyoming medical license number 8190A. I am an obstetrician/gynecologist.

I have evaluated Dana Alix Zzym, DOB [REDACTED] 1958 as a gynecologic consult after genital surgery for Dana's intersex condition. It is my understanding, as a physician, that Dana was born intersex. She identifies as intersex. She has had surgery for transition to female genitalia and, based on record review, it appears that her treatment for transition has been appropriate.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

My address and telephone at the Cheyenne VAMC, where I have seen and evaluated Dana Zzym is 2360 East Pershing Blvd, Cheyenne, WY 82001, 307-778-7526.

Sincerely,

Amanda Johnson, MD

PATIENT NAME AND ADDRESS (mechanical imprinting, if available)

ZZYM, DANA ALIX

[REDACTED]

VISTA Electronic Medical Documentation

Printed at CHEYENNE VAMC

00007293-0152



DEPARTMENT OF VETERANS AFFAIRS
Medical Center
2360 East Pershing Boulevard
Cheyenne WY 82001

December 16, 2014

To Whom It May Concern,

Re: Dana Zzym, DOB [REDACTED]/58

I have been veteran's mental health provider since 6/23/08. I have had a 6 year doctor/patient relationship with her. She has had the appropriate clinical treatment for transition to intersex.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Terri Orcutt M.D.

Terri Orcutt M.D.

Colorado medical license number CO 38367

Fort Collins VA Outpatient Clinic

2509 Research Blvd

Fort Collins, CO 80526

00007293-0153



United States Department of State

Colorado Passport Agency
3151 South Virginia Way, Suite 600
Aurora, Colorado 80014

September 24, 2014

Dana Alix Zzyym
[REDACTED]

Fort Collins, CO 80521

RE: 172460355

Dear Dana Zzyym:

Thank you for your recent passport application.

The Department of State currently requires the sex field on United States passports to be listed as "M" or "F." Therefore, we are unable to fulfill your request to list your sex as "X." If you wish to receive a passport listing you as female as shown on your driver's license, please return a signed statement indicating that to our office.

If you wish to receive a passport listing you as male, please refer to the second page of this letter.

If you wish to withdraw your application, please let us know.

We appreciate your assistance in this matter so that we may continue processing your passport application. If we do not receive the requested information within ninety (90) days from the date of this letter; or the information you submit is insufficient to establish your entitlement to a U.S. passport in accordance with the relevant provisions of Part 51, Title 22 of the Code of Federal Regulations, your application will be denied and your evidence returned to you. By law, the passport execution and application fees are non-refundable. Any special return postage will be returned or refunded.

If you have any questions regarding this letter or your passport application, contact the National Passport Information Center (NPIC), toll-free, at 1-877-487-2778 (TTY/TDD: 1-888-874-7793). For general passport information, to check the status of your passport application, or to enroll in our Smart Traveler Enrollment Program (STEP), please visit us online at travel.state.gov.

PLEASE RETURN A COPY OF THIS LETTER WITH YOUR REPLY.

Sincerely,

Customer Service Department

00007293-0154

In order to issue you a full validity passport book reflecting a gender different from the one on some or all of your citizenship and/or identity evidence, please send us a signed original statement on office letterhead from your attending medical physician. Statements from medical physicians can be from licensed medical doctors (M.D.) and osteopathic doctors (D.O.); the physicians may specialize in various medical fields, including, but not limited to: internal medicine, endocrinology, gynecology, urology, surgery, psychiatry, pediatrics, and family practice. The statement must include the following information:

- a) Physician's full name;
- b) Medical license or certificate number;
- c) Issuing state of medical license/certificate;
- d) Address and telephone number of the physician;
- e) Language stating that he/she has treated you or has reviewed and evaluated your medical history and that he/she has a doctor/patient relationship with you;
- f) Language stating that you have had appropriate clinical treatment for transition to the new gender (the new gender, male or female, must be stated); and
- g) The statement must clearly state the following: "I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct."

If your gender transition process is ongoing, a two-year limited validity passport book reflecting the new gender will be issued upon submission of the letter stated above with language from your attending physician that you are in the process of gender transition.

The two-year passport may be replaced for the remaining validity period without additional fees (except for expedited service), if you apply within two (2) years of issuance using a DS-5504 Application for a U.S. Passport (Name Change, Data Correction and Limited Passport Book Replacement) and provide a new statement from your attending physician attesting that you have had appropriate clinical treatment for transition to the new gender.

00007293-0155



United States Department of State
Colorado Passport Agency
44132 Mercury Circle
PO Box 1645
Sterling, Virginia 20166-1045

December 29, 2014

Dana Alix Zzyym

[REDACTED]
Fort Collins, CO 80521

RE: 172460355

Dear Dana Zzyym:

Thank you for your passport application. Because your application did not meet our requirements, our office sent you a letter on September 24, 2014, requesting additional information. A copy of that letter is enclosed. You appeared at our office on December 19, 2014, to present additional documentation and to discuss our letter.

As explained in our letter of September 24, and as you discussed with our staff on December 19, the Department of State requires the sex field on United States passports to be listed as "M" or "F." Therefore, we cannot fulfill your request to list your sex as "X."

You indicated both in your letter dated December 18 and in person on December 19 that you did not wish a passport to be issued to you unless it could be issued showing the sex as "X." Because we are unable to accommodate your request, your passport application is denied. The original documents you submitted with your application are enclosed. By law, the passport execution and application fees are non-refundable.

If you still wish to obtain a passport book and/or card, you will need to re-apply on a new application, provide all required information, and pay the appropriate fees.

If you have any questions regarding this letter you may contact the National Passport Information Center (NPIC), toll-free, at 1-877-487-2778 (TTY/TDD: 1-888-874-7793).

Sincerely,

Sherman D. Portell
Director

00061409-1023

United States Department of State

Washington, D.C. 20520



April 10, 2015

Mr. Paul D. Castillo
Lambda Legal
3500 Oak Lawn Avenue
Suite 500
Dallas, Texas 75219-6722

Dear Mr. Castillo:

Our office received your February 26, 2015 letter concerning Dana Alix Zzyym's passport application number 172460355. You requested that the Department of State reconsider its decision to deny Dana Zzyym's passport application, or alternatively, provide a hearing regarding the denial of the application.

The denial was the final decision of the Department on Dana Zzyym's passport application and the request for a designation of "intersex." This action does not meet the requirements for a review hearing specified at 22 C.F.R. § 51.70. As noted in our previous communications with Dana, and consistent with several other federal agencies, the Department of State's current policy requires that the applicant select "M" or "F" on the sex field on a U.S. passport application, and that the corresponding sex of "M" or "F" be identified on the issued passport. The Department does not recognize the use of "X" on a U.S. passport, and therefore Dana cannot select the sex as "X." While the denial of passport application number 172460355 is final, Dana remains eligible at any time to submit a new passport application, provide sufficient supporting documentation, and receive a U.S. passport listing the sex supported by the documentation.

Thank you for your inquiry.

Sincerely,

Jonathan M. Rolbin
Director
for Legal Affairs and Law Enforcement Liaison
Passport Services



U.S. Department of State

CONSULAR OFFICES OF THE UNITED STATES OF AMERICA

AUTHORIZATION FOR THE RELEASE OF INFORMATION UNDER THE PRIVACY ACT

In accordance with the Privacy Act (PL 93-579) passed by Congress in 1974, a U.S. Consular Office cannot release any information regarding you to anyone without your written consent except as set forth in the Act. Please complete the authorization below, specifying whom a U.S. Consular Office may contact and to whom to release information with regard to your case. Please return the completed authorization to a U.S. Consular Office. Local language translations are acceptable to facilitate completion of the form in English.

The U.S. Government, by providing the Authorization for the Release of Information Under the Privacy Act Form, cannot under any circumstances compel an individual to complete and submit the form. PLEASE CAREFULLY CONSIDER TO WHOM, AND WHAT INFORMATION IS BEING DISCLOSED.

IMPORTANT: You are not obliged to grant anyone access to information regarding you but failure to provide the information requested on this form may make it more difficult, or impossible, for the Department of State or the U.S. Consular Office to assist you.

Your Full Name (Last, First, MI)
 Zzyym Dana A

Place of Birth (City, State/Province, Country)
 Born At Howell, Michigan

On: Date of Birth (mm-dd-yyyy)
 02-12-1958

SECTION A

I hereby authorize the U.S. Consular Office of the United States of America and the U.S. Department of State to release information regarding me to the following individuals :

Name (Last, First)	Telephone Number	Address	Relationship
Castillo Paul	(214) 302-2216	3500 Oak Lawn Ave., #500 Dallas, TX 75219	Attorney
Ponto Michael	(612) 766-7000	90 South Seventh St, #2200 Minneapolis, MN 55402	Attorney
Kunevicius Jessica	(303) 439-2806	695 S Colorado Blvd, #480 Denver, CO 80246	Attorney
Name (Last, First)	Telephone Number	Address	Relationship
Name (Last, First)	Telephone Number	Address	Relationship

IN THE EVENT OTHER PERSONS REQUEST INFORMATION REGARDING MY CASE, INFORMATION CAN BE RELEASED TO THE FOLLOWING:

- | YES | NO | |
|--------------------------|-------------------------------------|---|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Family (Other than Those Listed Under Section A) |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Friends (Other than Those Listed Under Section A) |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Individual Members of Congress and Staff |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Members of the Media |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | The General Public |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Employer |

Please review the form before signing. Information will only be released under Section A if requested and if we have your signed authorization.



 Signature of the Applicant
 (Please Sign in Black or Blue Ink)

Fort Collins, CO - USA

 City, Country

Dana Alix Zzyym

 Print Your Name

01-25-2016

 Date (mm-dd-yyyy)

PRIVACY ACT STATEMENT

This information is needed to assist you in your present need for consular services. The primary purpose for soliciting this information is to establish your citizenship, identity, and entitlement to welfare protection services offered by the U.S. Government.

The U.S. Department of State is committed to ensuring that any personal information received is safeguarded against unauthorized disclosure. The data you provide is subject to the provisions of the Privacy Act (5 U.S.C. 552a). This means that the U.S. Department of State will not disclose the information you provide unless you have given us written authorization to do so, or unless the disclosure is otherwise permitted under the provisions of the Act or in accordance with our routine uses published in Title 22 of the Code of Federal Regulations. The information solicited on this form may be made available as a routine use to other government agencies for law enforcement and administrative purposes. For further information on routine uses, please visit <http://www.state.gov/documents/organization/102787.pdf>.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge R. Brooke Jackson

Civil Action No 15-cv-02362-RBJ

DANA ALIX ZZYYM,

Plaintiff,

v.

JOHN FORBES KERRY, in his official capacity as the Secretary of State; and
SHERMAN PORTELL, in his official capacity as the Director of the Colorado Passport Agency
for the United States Department of State,

Defendants.

ORDER

Dana Alix Zzyym is an intersex individual.¹ ECF No. 1 at ¶1 (Complaint). In September 2014 Dana submitted an application for a United States passport. *Id.* at ¶34. Instead of checking the box labeled “M” for male or “F” for female on the application form, Dana instead wrote “intersex” below the “sex” category. ECF No. 34 at 2 (Administrative Record). By separate letter Dana informed the passport authorities that Dana was neither male nor female. *Id.* at 4. The letter requested “X” as an acceptable marker in the sex field to conform to International Civil Aviation Organization (“ICAO”) standards for machine-readable travel documents. ECF No. 1 at ¶35.

¹ Plaintiff explains: “‘Intersex’ is an umbrella term used to describe a wide range of natural bodily variations. Intersex people are born with sex characteristics that do not fit typical binary notions of bodies designated ‘male’ or ‘female.’ In some cases, intersex traits are visible at birth, while in others they are not apparent until puberty. Some variations may not be visibly apparent at all.” Complaint, ECF No. 1, at ¶11.

It is undisputed that in every other respect Dana is qualified to receive a passport.

However, the application was denied. ECF No. 34 at 18. Dana sued, contending that the State Department's denial of the application and its underlying binary-only gender policy violated the Administrative Procedures Act ("APA"), 5 U.S.C. § 706(2)(A), as well as plaintiff's due process and equal protection rights under the Fifth Amendment of the U.S. Constitution. *See generally* ECF No. 1.

Administrative Record

The Department issued its initial denial of Dana's passport application on September 24, 2014, explaining that "[t]he Department of State currently requires the sex field on United States passports to be listed as 'M' or 'F[,]'" and that the Department would be "unable to fulfill your request to list your sex as 'X.'" ECF No. 34 at 18. The Department nevertheless stated that it would issue Dana a passport listing gender as "female," which was the sex listed on the driver's license plaintiff submitted to prove Dana's identity during the application process. *Id.* Alternatively, the Department explained that it could issue Dana a "male" passport if Dana provided "a signed original statement on office letterhead from [Dana's] attending medical physician" in which the doctor attested to Dana's "new gender." *Id.* at 19 (referencing 7 FAM 1300 App. M "Gender Change").

Dana chose neither. Instead, Dana submitted a letter to the Department on December 18, 2014 appealing the Department's decision. *Id.* at 29–30. Dana included with that appeal two sworn documents by physicians from the United States Department of Veterans Affairs Medical Center in Cheyenne, Wyoming (Dana served in the Navy) that verified Dana's sex as "intersex."² *Id.* at 31–32. Dana also met with people at the Colorado Passport Agency (part of

² Dana also included a birth certificate that had been amended in 2012 to list Dana's sex as "unknown." ECF No. 34 at 5; ECF No. 1 at ¶10.

the State Department) and informed them that Dana “did not wish a passport to be issued . . . unless it could be issued showing the sex as ‘X.’” *Id.*

The Department nevertheless denied Dana’s appeal on December 29, 2014, informing Dana that the Department could not accommodate the request for the same reasons it stated in its initial denial letter. *Id.*; ECF No. 1 at ¶38. The Department, however, explained that Dana could still obtain a passport by reapplying and providing all required information on the passport application form—that is, checking either the box “M” for male or “F” for female. ECF No. 34 at 36. On February 26, 2015 Dana requested that the Department once again reconsider its decision or conduct a review hearing under 22 C.F.R. § 51.70(a). ECF No. 1 at ¶39. The Department denied both requests on April 10, 2015. *Id.* at ¶40.

Procedural History

Dana subsequently brought suit against defendants Secretary of State John Forbes Kerry and Sherman Portell, the Director of the Colorado Passport Agency, in their official capacities on October 25, 2015. *Id.* The Complaint asserts (1) that the Department’s conduct was in violation of the APA because it was “arbitrary and capricious;” (2) that the conduct also violated the APA because it exceeded the Department’s Congressionally-delegated authority; (3) that such action deprived plaintiff of due process in violation of the Fifth Amendment; (4) that it similarly deprived plaintiff of equal protection in violation of the Fifth Amendment; and (5) that the Court should issue a writ of mandamus to compel the Department to issue a passport accurately reflecting plaintiff’s self-described sex. *Id.* at ¶¶48–95. Several months later on March 18, 2016 defendants filed a motion seeking judgment on the administrative record on plaintiff’s APA claims and dismissal of the claims contained within the remainder of plaintiff’s Complaint. ECF

No. 35. The Court held oral arguments on that motion on July 20, 2016. ECF No. 51 (Transcript). That motion is the subject of this Order.³

II. STANDARD OF REVIEW

A. Motion for Judgment on the Administrative Record.

Under the APA, a court must “hold unlawful and set aside agency action, findings, and conclusions” that it finds to be, among other things: (1) “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;” or (2) “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right[.]” 5 U.S.C. § 706(2)(A), (C). I discuss each standard below.

1. “Arbitrary or Capricious” Standard.

Typically, “[a]n agency’s action is entitled to a presumption of validity, and the burden is upon the petitioner to establish the action is arbitrary or capricious.” *Sorenson Commc’ns, Inc. v. F.C.C.*, 567 F.3d 1215, 1221 (10th Cir. 2009). Once agency action is challenged as arbitrary or capricious, a district court reviews that action under the APA as if it were an appellate court.⁴ *See Olenhouse v. Commodity Credit Corp.*, 42 F.3d 1560, 1580 (10th Cir. 1994). As part of the appeal, the court “ascertain[s] whether the agency examined the relevant data and articulated a rational connection between the facts found and the decision made.” *Id.* at 1574 (citing *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Ins. Co.*, 463 U.S. 29, 43 (1983)). That is, the court

³ The parties confusingly appear to suggest that plaintiff has also filed a dispositive motion in this case. *See, e.g.*, ECF No. 45 (Plaintiff’s “Reply Brief” in Support of Declaratory, Injunctive, and Other Relief). Defendants characterize plaintiff’s Response to their dispositive motion as one that “raises a distinct motion for (summary) judgment on *all* claims.” ECF No. 41 at 5 n.2 (emphasis in original). However, plaintiff has not formally submitted a motion for summary judgment or any other dispositive motion in this case, aside from plaintiff’s APA “appeal” of the Department’s action discussed *infra*.

⁴ As defendant explains, although in the District of Colorado a plaintiff or petitioner typically files the opening brief when “appealing” a government agency’s decision under the APA, the parties have agreed “with the Court’s approval, that defendants would file the first dispositive motion in this case,” and that their motion would address the APA claims. ECF No. 35 at 6 n.1.

“must determine whether the agency considered all relevant factors and whether there has been a clear error of judgment.” *Id.*

A court will set aside agency action “if the agency relied on factors which Congress has not intended for it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” *Id.* (citing *State Farm*, 463 U.S. at 43) (internal quotation marks omitted).

Furthermore, “[b]ecause the arbitrary and capricious standard focuses on the rationality of an agency’s decisionmaking process rather than on the rationality of the actual decision, it is well-established that an agency’s action must be upheld, if at all, on the basis articulated by the agency itself.” *Id.* at 1575 (citing *State Farm*, 463 U.S. at 50) (internal quotation marks and brackets omitted).

In terms of remedies, if “a court finds that an agency has acted arbitrarily in violation of the APA . . . the appropriate remedy is to remand the issue back to the agency for reconsideration and, if appropriate, further investigation or an explanation adequate to support the agency’s decision upon remand.” *Mohammed v. Holder*, 47 F. Supp. 3d 1236, 1263 (D. Colo. 2014), *appeal dismissed* (Nov. 19, 2014) (citing *Fox Television Stations, Inc. v. F.C.C.*, 280 F.3d 1027, 1047 (D.C. Cir. 2002)).

2. “Excess of Authority” Standard.

Plaintiff also challenges the Department’s conduct under the APA as being in excess of its Congressionally-delegated authority. “Determination of whether the agency acted within the scope of its authority requires a delineation of the scope of the agency’s authority and discretion, and consideration of whether on the facts, the agency’s action can reasonably be said to be

within that range.” *Olenhouse*, 42 F.3d at 1574 (citing *Citizens to Pres. Overton Park, Inc. v. Volpe*, 401 U.S. 402, 415–16 (1971)).

B. Rule 12(b)(6) Motion to Dismiss.

To survive a 12(b)(6) motion to dismiss, the complaint must contain “enough facts to state a claim to relief that is plausible on its face.” *Ridge at Red Hawk, L.L.C. v. Schneider*, 493 F.3d 1174, 1177 (10th Cir. 2007) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A plausible claim is a claim that “allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). While the Court must accept the well-pleaded allegations of the complaint as true and construe them in the light most favorable to the plaintiff, *Robbins v. Wilkie*, 300 F.3d 1208, 1210 (10th Cir. 2002), conclusory allegations are not entitled to be presumed true, *Iqbal*, 556 U.S. at 681. However, so long as the plaintiff offers sufficient factual allegations such that the right to relief is raised above the speculative level, he has met the threshold pleading standard. *See, e.g., Twombly*, 550 U.S. at 556; *Bryson v. Gonzales*, 534 F.3d 1282, 1286 (10th Cir. 2008).

III. ANALYSIS

Plaintiff seeks a passport marked “X” to comport with plaintiff’s intersex identity. Citing its binary-only gender policy, the government has refused. Plaintiff contends that the government’s unwillingness to adapt to the needs and desires of intersex individuals, in contrast to policies it has implemented for others such as transsexuals, is of constitutional significance. But in my view, we are not yet at the point where this Court must venture into the constitutional fray. I find that the administrative record contains no evidence that the Department followed a rational decisionmaking process in deciding to implement its binary-only gender passport policy. Therefore, the proper next step is to remand the case to the Department to give it an opportunity

either to shore up the record, if it can, or reconsider its policy. *See Mohammed*, 47 F. Supp. 3d at 1263 (explaining that a remand is the proper remedy after a finding that an agency has acted in an “arbitrary or capricious” way).

A. The State Department’s Binary-Only Gender “Policy.”

As indicated above, because plaintiff alleges that the Department’s binary-only gender policy was not the product of reasoned decisionmaking, the Court begins by examining the administrative record for evidence that the government formulated its policy in a rational manner. *Olenhouse*, 42 F.3d at 1575. Before turning to that task, however, I note that plaintiff takes issue with the decisionmaking behind both the Department’s denial of plaintiff’s specific passport application, as well as its underlying binary-only gender “policy.” ECF No. 1 at ¶50. But because the Department explains its decision to deny plaintiff’s individual application by reference to its underlying policy, my focus will be on whether the Department formulated its broader policy in a rational manner.

I also note that while both parties refer to this agency action as a singular Department “policy,” doing so is a bit of a misnomer. The “policy” which the Department claims requires it to issue passports only marked “M” for male or “F” for female is really a collection of rules pertaining to gender contained within the Foreign Affairs Manual (“FAM”). *See* ECF No. 34 at 20–27 (citing 7 FAM 1310 Appendix M, 7 FAM 1320 Appendix M, 7 FAM 1330 Appendix M, 7 FAM 1340 Appendix M, 7 FAM 1350 Appendix M, 7 FAM 1360 Appendix M, 7 FAM 1370 Appendix M, 7 FAM 1380 Appendix M, and 7 FAM 1390 Appendix M). These rules do not explicitly state that the Department cannot issue a passport containing an alternative gender marking. *See id.* Rather, they simply explain how the Department deals with different issues related to gender on passport applications. *Id.* The rules collectively do not contemplate the

existence of a gender other than male or female. Accordingly, the Department insists that it cannot (or at least will not) issue passports that are only marked “M” or “F.”

B. The Administrative Record and the Declaration of Bennet S. Fellows.

As mentioned above, the Court begins its analysis by examining the administrative record. Here, however, the original record provided to the Court gave no justification for why the Department decided to institute a binary-only gender policy. Rather, it simply justified the Department’s decision to deny Dana’s application by referring to that policy. It explained that the Department requires applicants to check a box marked either “M” or “F” before it will issue a passport. Because plaintiff did not check either box, her application was denied. End of story.

See generally ECF No. 34.

Perhaps recognizing this justification is no justification at all when it comes to the government’s decision to follow a binary-only gender policy, defendants supplemented the record after litigation commenced. They did so by generating and providing the Court with a declaration from Bennet S. Fellows, the Division Chief of the Office of Adjudication Policy in the Office of Adjudication of the U.S. Department of State. ECF No. 41-1.⁵ Nevertheless, as explained below, while this declaration gets the government somewhat closer to rationally explaining its decision to issue passports only marked “M” or “F,” it still falls short.⁶

⁵ Plaintiff objects to the presentation of “extra-record” material. However, the Supreme Court has instructed that when the administrative record is devoid of a justification for a challenged informal agency action, the court should “obtain from the agency, either through affidavits or testimony, such additional explanation of the reasons for the agency decision as may prove necessary.” *See Camp v. Pitts*, 411 U.S. 138, 142–43 (1973) (per curiam); *Olenhouse*, 42 F.3d at 1575 (“If the agency has failed to provide a reasoned explanation for its action, or if limitations in the administrative record make it impossible to conclude the action was the product of reasoned decisionmaking, the reviewing court may supplement the record or remand the case to the agency for further proceedings.”). This Court’s evaluation of the reasons provided in the declaration essentially moots the matter in any event.

⁶ Mr. Fellows informs the Court that before 1976 applicants for U.S. passports were not required to identify their sex. However, since October 1976 all applicants must specify their sex as “M” or “F.” ECF No. 41-1 at ¶4. That of course begs the question, what was it that motivated the Department to change

First, much of Mr. Fellows' declaration consists of background information that merely describes and clarifies the government's policy. For instance, Mr. Fellows states that sex is one of the key data such as name, date of birth, and place of birth that the Department deems material to its adjudication of the applicant's claim. *Id.* at ¶¶5, 13. An application without "M" or "F" checked is not considered to be complete. *Id.* at ¶6. Writing a word above "M" or "F" does not constitute submitting the data required by the form. *Id.* at ¶¶6, 9. Furthermore, the Department requires visa applicants to select one of these two sex markers. *Id.* at ¶8. And similarly, no other federal agency that issues citizenship documents recognizes the use of a third marker. *Id.* at ¶15. While this is helpful background information, none of it rationalizes the decisionmaking process behind this policy.

Next, the declaration attempts to explain the government's decision to institute its binary-only gender policy by rationalizing the policy itself. It states that key data (again sex, name, date of birth, place of birth) "must . . . be supported by documentation generated by third parties, such as birth certificates, driver's licenses, social security cards, third-party affidavits, and/or other documentation consistent with the information submitted by the applicant," but that none of the entities issuing many of these documents "currently authorize[] the use of an "X" or any marker other than "M" and "F." *Id.* at ¶¶5, 15. Thus, as the reasoning goes, the government decided to issue passports only marked "M" or "F" because the proper documentation needed to prove a passport applicant's sex necessarily took that form.

But this rationale is unpersuasive for two reasons. First, it is entirely self-fulfilling. As Dana's passport application experience reveals, the government rejects otherwise proper identity documents (e.g. "third-party affidavits") when they support a sex other than male or female. *See*

course in 1976? While I searched the declaration for answers and found none, this question gets at the heart of plaintiff's APA challenge—why did the government make this change and how did it go about doing so?

ECF No. 34 at 29–36. Thus, *substance* is what drives the government’s decision about what qualifies as “proper” documentation, not necessarily form. Furthermore, the Department does not even uniformly rely on these binary systems used by other jurisdictions to verify applicants’ identities. For example, although plaintiff previously obtained a driver’s license as a female, see ECF No. 34 at 7, the Department nevertheless instructed plaintiff that it would issue a passport marked “M” for male if plaintiff simply provided a physician’s letter attesting to that gender. *Id.* at 18–19. This is evidently the regulation the Department also follows with transgender applicants or with those whom are in the process of transitioning. *Id.* at 19–21.

A third rationale the declaration advances is that the applicant’s sex and photograph are among the data that are stored in a contactless chip embedded in the passport book, and that only the binary options “M” and “F” appear in these chips. *Id.* at ¶¶10, 14. To the extent that is just another recitation of the Department’s current policy, it does not advance the ball. If the implication is that a decision to permit intersex individuals to write “intersex” or “X” on their application would require reprogramming the software and hardware that produce the chips (or the production of new forms and waste of existing supplies), then that does not explain why the government first began to require passport applicants to choose either sex in 1976, see *supra* note 6, but it would at least provide a reason for the Department’s reluctance to change course now. In any event, the Department hasn’t yet made that argument or attempted to show why it would consider that to be worse than accommodating this presumably small population of intersex individuals.

Fourth, the declaration stresses the importance of enabling U.S. passport information to sync with law enforcement databases that exclusively use binary gender systems. *Id.* at ¶16. Mr. Fellows candidly acknowledges, however, that “not every law enforcement record from which

data is input to this system designates an individual's sex" and states that "a field left blank in the system is assumed to reflect that the particular datum is unknown or unrecorded, and not to indicate 'intersex' or other possible alternative categorization." *Id.* Nevertheless, if syncing passport information to the records contained within law enforcement databases is truly critical for the Department, then how does it rationally explain its decision to inform plaintiff that it would issue plaintiff a "male" passport knowing full well that plaintiff had state identification documents (and perhaps law enforcement database records?) listing plaintiff as "female?" *See* ECF No. 34 at 28. How does the Department sync a transgender individual's passport information with law enforcement records that might list that very same passport holder as the opposite sex? Without answers to these questions, I cannot conclude that the government rationally decided to formulate a binary-only gender policy.

Finally, Mr. Fellows explains that "because only a few countries recognize a third sex marker in their issuance of passports and visas under the precatory specification of the International Civil Aviation Organization (ICAO) . . . the Department's introduction of a third gender marker in the sex field of U.S. passports could lead to inconvenience and uncertainty if U.S. citizens face difficulty entering tourist and business destinations abroad in countries that do not yet recognize a third gender marker." *Id.* at ¶17. That raises several questions. Is this pure speculation? Is it a fact that other countries validate the information contained within a passport, as opposed to simply verifying the authenticity of the passport itself? And if a third gender marker did lead to inconvenience or difficulty entering other countries, isn't that solely the problem of the passport holder who made the choice? The current record does not explain why these factors rationally support the policy in place.

CONCLUSION AND ORDER

I find that the administrative record, as supplemented by the Fellows declaration, does not show that the decisionmaking process that resulted in the policy in question was rational. That is not to say that it can't be done, but the Department's first effort to get over the arbitrary and capricious hump was not convincing. The Court remands the matter to the Department for reconsideration. The Court will not address the constitutional issues unless and until it needs to.

DATED this 22nd day of November, 2016.

BY THE COURT:



R. Brooke Jackson
United States District Judge



PAUL D. CASTILLO, SENIOR STAFF ATTORNEY
EMAIL: PCASTILLO@LAMBDALEGAL.ORG

March 6, 2017

Via email to ryan.parker@usdoj.gov

Secretary Rex W. Tillerson, United States Department of State
Director Sherman D. Portell, Colorado Passport Agency
c/o Mr. Ryan Parker
United States Department of Justice
20 Massachusetts Avenue NW
Washington, DC 20001

RE: *Dana Alix Zzyym v. Rex Tillerson et al. (formerly Zzyym v. Kerry et al.)*
U.S. District Court for the District of Colorado, Case 1:15-cv-2362-RBJ

Dear Counsel:

We write with particular urgency as our client, Dana Alix Zzyym (“Dana”), has not yet been informed whether or not the United States Department of State (“State Department”) will issue Dana a full-validity U.S. passport without a male or female gender marker. On April 20, 2017, intersex advocates and organizations from around the world will assemble in Amsterdam, the Netherlands, for the Fourth International Intersex Forum (“4IIF Amsterdam”). See <http://4iif.org/>. As further explained below, Dana has been asked to attend 4IIF Amsterdam in order to represent the Intersex Campaign for Equality (a/k/a OII-USA). Because time is of the essence for Dana, we request the State Department render a decision immediately on Dana’s pending passport application or, alternatively, issue a temporary passport bearing an X or other third-gender marking in the sex field to enable Dana to attend this important four-day world conference.

Background

In September 2014, Dana visited the Colorado Passport Agency in Aurora, Colorado to obtain a U.S. passport in order to attend the ILGA World Conference 2014 in Mexico City, Mexico. Dana listed “intersex” in the sex field of the passport application and, by separate letter, clarified that “[a]s an intersex person, I’m not male or female.” Dana requested X as the marker in the sex field on Dana’s passport, noting that such designation conforms to the International Civil Aviation Organization standards for machine-readable travel documents. After the State Department denied Dana’s passport application because it claimed the gender marker on a passport must be either M (male) or F (female), Dana filed the above-captioned federal lawsuit asserting that the State Department’s binary-only gender marker policy was arbitrary and capricious, exceeded statutory authority and violated Dana’s right to equal protection and due process under the Fifth Amendment to the United States Constitution. On November 22, 2016, the Court ruled that denying Dana’s passport application seeking a gender marker other than male or female was



Mr. Ryan Parker
 March 6, 2017
 Page 2

arbitrary and capricious and directed the State Department to reconsider Dana's passport application. *Zzyym v Kerry*, No. 15-cv-2362-RBJ, 2016 WL 7324157 (D. Colo. Nov. 22, 2016) (stating "the proper next step is to remand the case to the Department to give it an opportunity to shore up the record, if it can, or reconsider its [binary-only gender marker passport] policy").

Fourth International Intersex Forum¹

Last week, the organizers of 4IIF Amsterdam released details regarding the four-day world intersex conference, including a call for applications from advocates and organizations. See <http://ilga.org/fourth-international-intersex-forum-applications/>. In previous years, OII-USA Director Hida Vioria attended the conference and, quite significantly, served as one of the three intersex co-organizers of the Third International Intersex Forum in Malta. That event culminated in a consensus statement that affirms the existence of intersex people and includes a demand to end "discrimination against intersex people and to insure the right to bodily integrity, physical autonomy and self-determination." See *Malta Declaration*, available at <https://oiieurope.org/public-statement-by-the-third-international-intersex-forum/>. Central to the statement is opposition to surgeries on intersex infants and children who are frequently sterilized, deprived of sexual function, and otherwise traumatized for life—in the absence of medical necessity.

This year Hida is unable to attend 4IIF Amsterdam and has requested that Dana apply to and attend the world intersex conference. As explained in our briefs before the Court, Dana is the Associate Director of OII-USA. See <http://oii-usa.org/>. Dana is next in succession after Hida to represent the organization at conferences such as 4IIF Amsterdam and other events. As was the case in 2014, when Dana sought to represent OII-USA at an intersex conference in Mexico City, Dana cannot travel internationally without a passport. Thus, Dana is currently at risk of missing the upcoming 4IIF Amsterdam absent immediate action from the State Department.

Request for Decision on Dana's Passport Application

Over three months have elapsed since the Honorable R. Brooke Jackson remanded Dana's application to the agency for reconsideration. During a hearing before the Court on July 20, 2016, Defendants' counsel suggested that processing the application on remand "could be done in a relatively short period of time." See ECF Doc. 51, Reporter's Transcript, Hearing on Pending Motions, p. 48. The State Department's own website estimates eight (8) business days for expedited processing of a passport application through the State Department. See

¹ More information about the International Intersex Forum is available at https://en.wikipedia.org/wiki/International_Intersex_Forum.



Mr. Ryan Parker
March 6, 2017
Page 3

<https://travel.state.gov/content/passports/en/passports.html>. Dana indeed paid for expedited processing at the time their original passport application was submitted in September 2014.²

Two and a half years after seeking a passport, Dana, a U.S. citizen and Navy veteran, remains prohibited from international travel. Dana continues to be deprived of their statutory and constitutional rights. The State Department's action and subsequent inaction directly inhibit Dana's ability to effectively serve as an advocate for intersex people and as Associate Director of OII-USA. In light of the foregoing, we request that the State Department immediately render a decision on Dana's pending passport application or, alternatively, issue a temporary passport bearing an X or other third-gender marking in the sex field to enable Dana to attend 4IIF Amsterdam.

Please respond to this letter no later than Wednesday, March 15, 2017. In the absence of a decision on remand or a temporary passport (as described above) within a reasonable period of time that will enable Dana to attend 4IIF Amsterdam, our client is prepared to seek emergency relief from the court. Please do not hesitate to contact us if we can be of further assistance in support of our client's request.

Very truly yours,

LAMBDA LEGAL DEFENSE AND
EDUCATION FUND, INC.

Paul D. Castillo
Senior Staff Attorney
pcastillo@lambdalegal.org

cc: Dana Alix Zzyym

² Even considering the change of administration and new head of the U.S. Department of State, Rex Tillerson, sufficient time has elapsed for the agency to consider Dana's application or, at minimum, reach a decision on issuing Dana a temporary passport.

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Satrom, Robert C

From: Satrom, Robert C
Sent: Wednesday, March 15, 2017 2:54 PM
To: 'cdps_ciac@state.co.us'
Subject: Colorado DL check
Attachments: DL 2015-09719.pdf

Importance: High

Follow Up Flag: Follow up
Flag Status: Flagged

Your law enforcement telephone line referred me to this e-mail inbox for a Colorado driver's license verification needed in connection with a pending application to the U.S. Department of State for a U.S. passport.

The attached DL was presented to the Department in 2014 in support of a passport application:

Name: Dana Alix Zzyym
Colorado DL # [REDACTED]
DOB: [REDACTED]-1958
DOI: 06-25-2010
DOE: [REDACTED]-2015
Sex: F

My Office would like verification (1) that the DL has been renewed by the holder, and (ii) that the sex shown on the holder's current DL remains F or was changed to M or other letter.

This is a rush project, and I appreciate your effort to respond today!

Robert C. Satrom
*Attorney-Adviser
Office of Legal Affairs & Law Enforcement Liaison
Bureau of Consular Affairs, Passport Services
U.S. Department of State
(202) 485-6569
SatromRC@state.gov*

Official - Privacy/PII
UNCLASSIFIED

Satrom, Robert C

UNCLASSIFIED
Official - Privacy/PII

00006368-1620

Colorado Driver License



[Redacted] Expires: [Redacted]-2015
 Class: R Issued: 06-25-2010
 End: M ✓ DOB: [Redacted]-1958
 Rest: V Previous Type: A
 Ht: [Redacted] Wt: [Redacted] Eyes: [Redacted] Sex: F
 Voter: Y

Dana Alix Zzyym

DANA ALIX ZZYYM

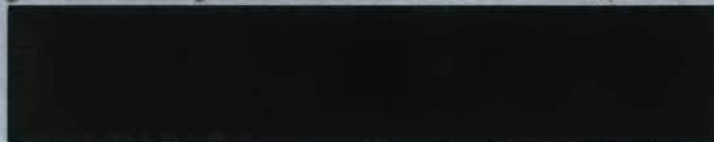
[Redacted]
FT COLLINS, CO 80525



Class R: Any motor vehicle with a GVWR of less than 26,001 lbs. as a single unit or in combination, designed to carry 15 or fewer passengers, including the driver, and does not carry hazardous material.

Restrictions:

V - Corrective Lenses



FT Collins, CO 80531

Endorsements:

M - Motorcycle



NO DISCERNIBLE CLASSIFICATION

Satrom, Robert C

From: [REDACTED]@state.co.us on behalf of Email - CDPS, CIAC <cdps_ciac@state.co.us>
Sent: Wednesday, March 15, 2017 3:07 PM
To: Satrom, Robert C
Subject: Re: Colorado DL check
Attachments: ZZYM_DANA_[REDACTED]-[REDACTED].pdf

This message was sent securely using ZixCorp.

Hello Sir,

I have attached your request. Please let us know if you need any further assistance. On the attached form, it lists the renew date and shows female.

Regards,

[REDACTED]

On Wed, Mar 15, 2017 at 12:54 PM, Satrom, Robert C <SatromRC@state.gov> wrote:

Your law enforcement telephone line referred me to this e-mail inbox for a Colorado driver's license verification needed in connection with a pending application to the U.S. Department of State for a U.S. passport.

The attached DL was presented to the Department in 2014 in support of a passport application:

Name: Dana Alix Zzyym

Colorado DL # [REDACTED]

DOB: [REDACTED]-1958

DOI: 06-25-2010

DOE: [REDACTED]-2015

Sex: F

My Office would like verification (i) that the DL has been renewed by the holder, and (ii) that the sex shown on the holder's current DL remains F or was changed to M or other letter.

Satrom, Robert C

NO DISCERNIBLE CLASSIFICATION

1

NO DISCERNIBLE CLASSIFICATION

This is a rush project, and I appreciate your effort to respond today!

Robert C. Satrom

Attorney-Adviser

Office of Legal Affairs & Law Enforcement Liaison

Bureau of Consular Affairs, Passport Services

U.S. Department of State

(202) 485-6569

SatromRC@state.gov

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CIAC
Colorado Information
Analysis Center

Department of Public Safety

Toll Free: [877-509-2422](tel:877-509-2422) (24 hours)

Fax: [720-852-6758](tel:720-852-6758)

Email: cdps_ciac@state.co.us

Website: <http://www.dhsem.state.co.us/prevention-security/ciac>

(U) This information is property of the Colorado Information Analysis Center (CIAC). Information bearing the LES caveat may be distributed to state, tribal, local and federal law enforcement officials with a need-to-know. Information bearing the FOUO caveat may be distributed within official channels for those with a valid need-to-know. Information bearing the Unclassified caveat may be releasable to the public. The CIAC does not confirm, edit or proof-read, or otherwise alter the content of other agency documents. Further distribution without CIAC or originating agency authorization is prohibited. Precautions should be taken to ensure this information is stored and/or destroyed in a manner that precludes unauthorized access. Information bearing the LES/FOUO caveat may not be used in legal proceedings without first receiving authorization from the originating agency. Recipients are prohibited from subsequently posting the information marked LES/FOUO on a website or an unclassified network.

This message was secured by **ZixCorp^(R)**.

COLORADO Division of Motor Vehicles

FOR USE ONLY AS AUTHORIZED BY DMV

WARNING

By law, all information appearing on a DMV dossier, including any photograph, signature or fingerprint, is for the exclusive use of criminal justice agencies and is not to be released to any other party for any purpose. Any agency that releases DMV information for an unauthorized purpose or to an unauthorized users risks losing access to DMV records and Dossiers



Dana Alix Zzyym



Right Index

PIN [REDACTED]		URN [REDACTED]		
SSN [REDACTED]				
FULL LEGAL NAME ZZYYM DANA ALIX			DOB [REDACTED]/1958	
ADDRESS [REDACTED]				
CITY FT COLLINS		State CO	Zip 80521	
Height [REDACTED]	Weight [REDACTED]	Hair [REDACTED]	Eyes [REDACTED]	Sex Female
Issued Date 02/24/2015		Expiration Date [REDACTED]/2020		
Card Type CODL_DL		Card Description Driver License		
Restrictions C		Endorsments M	Class R	
Operator ID [REDACTED]		Office Code [REDACTED]	Office FT COLLINS DL	
Production Status [REDACTED]		Record Type N	Record Status A	
Veteran N		Donor Flag Y		
Status Date N/A		Upload Date N/A		

Created by: [REDACTED] 3/15/2017 1:02:01 PM



United States Department of State

Washington, D.C. 20520

March 15, 2017

Mr. Paul D. Castillo
Senior Staff Attorney
Lambda Legal Defense and Education Fund

RE: *Dana Alix Zzyym v. Rex Tillerson, et al.* (formerly *Zzyym v. Kerry, et al.*)
U.S. District Court for the District of Colorado, Case 1:15-cv-2362-RBJ

Dear Mr. Castillo,

We are in receipt of your letter of March 6, 2017, in which you request that the Department of State ("Department") render a decision "immediately" on the application of your client, Dana Alix Zzyym, for a passport.

To the extent your letter requests a determination on the reconsideration of Department policy relating to Dana's passport application by March 15, 2017, the Department declines to meet such deadline. The Department anticipates notifying you and your client of its determination by May 1, 2017.

In your letter, you advised that your client has upcoming travel plans. Specifically, you advised that Dana wishes to travel to Amsterdam, The Netherlands, on or about April 20, 2017, to attend a conference, and will return to the United States a few days later.

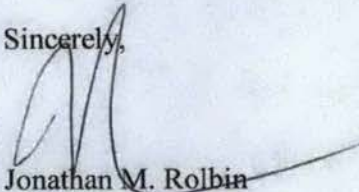
In order to facilitate your client's upcoming travel, and without prejudice to the pending re-adjudication of Dana's application or Dana's claims in litigation, the Department is willing to issue Dana a passport consistent with its policies. Specifically, the Department is prepared to issue your client a one-year, limited-validity passport in the sex of female, consistent with Dana's Colorado driver's license issued February 24, 2015, in the sex of female and Dana's medical certification from Amanda Johnson, M.D., dated December 4, 2014. The Department is unable to issue a passport, including a temporary or limited-validity passport, in a sex other than male or female.

A one-year passport will satisfy the Netherlands' entry requirement that a passport be valid for at least six months beyond the traveler's intended date of departure. We request that Dana return the limited-validity passport to the Colorado Passport Agency promptly after completing Dana's travel and returning to the United States. As mentioned above, the Department anticipates notifying you and your client shortly of its decision on reconsideration.

Please advise whether this proposal is acceptable to your client. If so, the Department will take all appropriate measures to expedite issuance of such passport so as to accommodate your client's intended travel. In order to ensure prompt attention to your request, your response

to this proposal may be communicated care of the Department of Justice, Office of Federal Programs.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jonathan M. Rolbin', with a long horizontal line extending to the right.

Jonathan M. Rolbin
Director
Office of Legal Affairs and Law Enforcement Liaison
Bureau of Consular Affairs
Passport Services



PAUL D. CASTILLO, SENIOR STAFF ATTORNEY
EMAIL: PCASTILLO@LAMBDALEGAL.ORG

March 29, 2017

Via email to ryan.parker@usdoj.gov

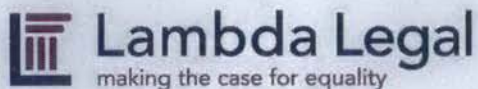
Secretary Rex W. Tillerson, United States Department of State
Director Sherman D. Portell, Colorado Passport Agency
c/o Mr. Ryan Parker
United States Department of Justice
20 Massachusetts Avenue NW
Washington, DC 20001

RE: *Dana Alix Zzyym v. Rex Tillerson et al. (formerly Zzyym v. Kerry et al.)*
U.S. District Court for the District of Colorado, Case 1:15-cv-2362-RBJ

Dear Counsel:

On March 6, 2017, we sent a letter on behalf of our client, Dana Alix Zzyym, requesting that the United States Department of State (“State Department”) immediately render a decision on Dana’s pending passport application, which had been remanded back to the agency for further consideration in the above-captioned case. Specifically, Dana requested that the State Department issue a full-validity or temporary passport *bearing an X or other third-gender marking on the sex field* to enable Dana to travel to Amsterdam, the Netherlands, in order to participate in the Fourth International Intersex Forum (“4IIF Amsterdam”). In correspondence dated March 15, 2017, from Mr. Jonathan M. Rolbin on behalf of the State Department, the agency refused to render a decision on the full-validity passport and it also declined to issue the temporary passport as requested by our client, thereby precluding Dana from attending the international conference at the end of April 2017.

The State Department’s “offer” of a limited-validity passport is wholly illusory. It unlawfully compels Dana to accept the inaccurate “F” (female) gender designation on their passport in exchange for the right to leave the United States. As we explain extensively in the *Zzyym* matter, Dana is an intersex person who is neither male nor female. It is both inaccurate and harmful for the State Department to issue a passport for Dana, temporary or otherwise, bearing a binary male or female gender marker. It bears repeating that as a young child, Dana was subjected to several irreversible, invasive, painful and medically unnecessary surgeries (i.e., genital mutilation) designed to make Dana’s body conform to sex stereotypes of either male or female. The surgeries failed and caused Dana permanent scarring and damage. None of the surgeries Dana underwent altered, or even fully disguised, Dana’s intersex nature. Accepting the purported “offer” forces Dana to suffer the indignity of denying their own existence and it would understandably trigger connections to past physical and psychological suffering. Therefore, the State Department’s “offer” is nothing more than a constructive denial of Dana’s request for a temporary passport to travel to 4IIF Amsterdam.



Mr. Ryan Parker
March 29, 2017
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We also note that Mr. Rolbin's characterization of the physician's certification by Amanda Johnson, M.D., is erroneous. Dana's medical certification documents from doctors employed with the United States Department of Veterans Affairs—Amanda Johnson, M.D., dated December 4, 2014, and Terri Orcutt M.D., dated December 16, 2014—certify under the penalty of perjury that Dana is intersex. Moreover, notably absent from the letter, the sex field on Dana's Michigan birth certificate states "Unknown." Mr. Rolbin's reliance on Dana's Colorado driver's license is also unavailing since the State Department's own policy recognizes that the gender marker in state identification documents may or may not correspond to gender requested by a passport applicant. 7 FAM 1321(b) Appendix M ("[S]tate law and foreign laws vary as to whether a driver's license ... may be issued reflecting a gender change.")

Based on the State Department's actions, Dana remains prohibited from international travel without a passport and the agency continues to impede Dana's ability to effectively represent the Intersex Campaign for Equality (aka OII-USA) at 4IIF Amsterdam and other future international intersex conferences. *See Aptheker v. Secretary of State*, 378 U.S. 500, 517 (1964) (noting that "freedom of travel is a constitutional liberty closely related to rights of free speech and association[.]") We rely, however, on assurances by the State Department that the agency will render its decision on reconsideration of Dana's application for a full-validity passport by May 1, 2017.

Sincerely,

LAMBDA LEGAL DEFENSE AND
EDUCATION FUND, INC.

Paul D. Castillo
Senior Staff Attorney
pcastillo@lambdalegal.org

cc: Dana Alix Zzyym



United States Department of State

Washington, D.C. 20520

May 1, 2017

Dana Alix Zzyym

[REDACTED]
Fort Collins, CO 80521-5118

RE: 172460355

Dear Dana Alix Zzyym:

In response to the November 22, 2016 order of the District Court in *Zzyym v. Tillerson, et al.*, D. Col. No. 1:15-cv-2362-RBJ (Doc. 55), the Department of State has reconsidered its previous decision to deny your passport application, in which you requested a passport issued in a sex other than male or female. Consistent with the court order, we reviewed our policies and practices and reconsidered your previous application, supporting evidence, and all additional information. However, upon reconsideration the Department cannot fulfill your request for such a passport, and therefore your application is denied.

On your September 2, 2016 passport application, you did not indicate your sex as male or female. Rather, you wrote the word "Intersex" in the sex field and requested by supplemental letter that the Department issue you a passport book and card in a sex other than male or female. Among other documents supporting your application, you provided:

- (i) an amended birth certificate issued to you by the State of Michigan on November 1, 2013, listing your sex as "Unknown";
- (ii) a driver's license issued to you by the State of Colorado on June 25, 2010, listing your sex as female; and
- (iii) a copy of a medical certification dated October 15, 2013, in which Laura Ann Harper, M.D., certified that you were "born with ambiguous genitalia" which would classify you as "intersex."

With a subsequent December 18, 2014 response letter, you provided signed originals of two additional supporting documents from your physicians:

- (iv) a medical certification dated December 4, 2014, in which Amanda Johnson, M.D., certified that you were "born intersex," have had "surgery for transition to female genitalia," and that your "treatment for transition has been appropriate"; and

- (v) a medical certification dated December 16, 2014, in which Terri Orcutt, M.D., certified that you have “had the appropriate clinical treatment for transition to intersex.”

After the December 29, 2014 denial of your passport application by the Colorado Passport Agency, your counsel, Lambda Legal Defense and Education Fund, Inc., and the Law Office of Jessica Kunevisius, LLC, submitted a request for reconsideration or hearing on your behalf dated February 26, 2015, which enclosed additional copies of several of the aforementioned documents, and a copy of an additional supporting document from a physician:

- (vi) a medical certification dated October 23, 2013, in which Elzbieta J. Chobot-Sochet, M.D., certified that you were “born with [ambiguous] genitalia” which would classify you as “intersex.”

Subsequently, the Department learned that you applied for and were issued the following:

- (vii) a driver’s license issued to you by the State of Colorado on February 24, 2015, valid through [REDACTED], 2020, listing your sex as female.

As indicated on the passport application form, the Department recognizes and issues passports in two sexes, male and female. While the Department does accept a medical certification of an applicant’s transition from one of these two sexes to the other, the Department is unaware of generally accepted medical standards for diagnosing and evaluating a transition to any sex other than male or female. Thus, the Department does not accept a medical certification that specifies transition to a sex other than male or female as evidence for the issuance of a passport.

Additionally, the Department does not accept an amended birth certificate as evidence of a change in sex. Consistent with this policy, an amended birth certificate listing sex as “unknown” does not satisfy the Department’s requirements for issuance of a passport reflecting a sex that differs from the sex established by the applicant’s other evidence of identity and citizenship.

Because we are unable to accommodate your request for a passport in a sex other than male or female, your passport application is denied. If you wish to obtain a passport in a sex consistent with the sex listed in your currently valid driver’s license, you will need to submit a new application, provide all required evidence and information, and pay the appropriate fees.

Sincerely,

Bureau of Consular Affairs
Passport Services Directorate

cc: Paul D. Castillo, Lambda Legal Defense and Education Fund

UPS CampusShip: Shipment Label

Page 1 of 1

<p>0.0 LBS LTR 1 OF 1</p> <p>DCS-CA/PPT/HQ 600 19TH STREET, NW WASHINGTON DC 20006</p> <p>SHIP TO: DANA ALIX ZZYVM [REDACTED] FORT COLLINS CO 80521-5118</p>	<p>CO 805 0-01</p>  	<p>UPS NEXT DAY AIR</p> <p>1</p> <p>TRACKING #: LZ X33 70W 01 9628 1431</p>		<p>BILLING: P/P</p>  <p>CS 19.0.04 WNTN050 87.0A 04/2017</p>
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United States Department of State

Washington, D.C. 20520

UNCLASSIFIED
MEMORANDUM

May 1, 2017

TO: CA/PPT – Regional Directors, Directors, Assistant Directors, Adjudication Managers, Fraud Program Managers, and Customer Service Managers

THROUGH: CA/PPT/I – Florence G. Fultz

FROM: CA/PPT/S – Barry J. Conway *BJC*

SUBJECT: Sex Designation Policy for U.S. Passports

In 2015, a lawsuit, *Zzyym v. Kerry*, No., 15-cv-02362-RBJ, was commenced against the Department in the United States District Court for the District of Colorado after the Department denied a U.S. passport to an applicant who stated that they were neither male nor female, but “intersex,” and requested a U.S. passport with their sex designated as “X.” Since 2015, a couple of other applicants have requested issuance of a passport reflecting a sex other than male or female.

A handful of countries allow passport applicants the option of selecting a sex other than male or female on their passport applications, and issue passports containing a third sex indicator, generally but not exclusively an “X”. The technical specifications of the International Civil Aviation Organization (ICAO) provide for the issuance of travel documents, including passports, with a third sex marker, identified as “unspecified” and represented by an “X” in the printed zone, and a filler character (“<”) in the machine-readable zone.

In light of the above and a November 22, 2016 decision of the court in *Zzyym* to remand the case, the Department has re-evaluated its policy with respect to the designation of a bearer’s sex on U.S. passports and passport applications, specifically, allowing only “M” and “F” sex designations in U.S. passports. Upon careful consideration, the Department has determined to maintain its existing policy, which is described in existing 7 FAM 1340, ACCEPTANCE AND ADJUDICATION OF PASSPORT APPLICATIONS, and 7 FAM 1300 APPENDIX M, GENDER CHANGE (“Appendix M”). For the benefit of Passport Adjudication Managers, Passport Adjudicators and other officials, the policy may be summarized as follows:

- The Department only issues passports with the sex designations “M” (male) and “F” (female).
- Every applicant for a passport must indicate their sex as either male or female by checking the appropriate box in the sex field of the application form.
- Where an applicant indicates a sex on their application matching the sex designated consistently in the applicant’s evidence of identity and

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citizenship (typically an original birth certificate and/or previous passport), the Department will issue a passport in the indicated sex, assuming the applicant otherwise establishes entitlement to a passport.

- Where an applicant indicates a sex on their passport application that does *not* match the sex designated in the applicant's evidence of identity and citizenship, or when the applicant's evidence of identity and citizenship is inconsistent, the applicant must provide a medical certification from a licensed physician that the applicant has undergone, or is undergoing, appropriate treatment for transition to the new sex, male or female, as appropriate. Sex reassignment surgery is not a prerequisite for issuance of a passport in a new sex.

The reasons for maintaining this policy are described below.

Accuracy and Reliability of Passport as an Identity Document

First, the Department's policy is necessary to ensure that the information contained in U.S. passports is accurate and verifiable, and thus to ensure the integrity of the U.S. passport as proof of identity and citizenship.

In verifying the sex of a passport applicant to be designated on their passport, the Department does not itself conduct physical or medical examinations, but instead relies primarily on third-party documentation issued by state, municipal, and/or foreign country authorities, just as it does to establish other aspects of an applicant's identity. Such documents include, among others, birth certificates, driver's licenses, and government-issued non-driver identification cards.

There are fifty-seven (57) U.S. jurisdictions that issue original birth certificates, identity cards and driver's licenses, and the Department is not aware of a single one with a policy providing for issuance of such documents bearing a sex other than male or female. Because the documentation that the Department relies upon to determine an applicant's sex exists in all, or almost all, cases in only two sexes, male and female, the Department cannot unilaterally allow applicants to select a third option. Issuing passports bearing a sex that is not supported by underlying evidence of identity would compromise the Department's ability to ensure the accuracy and verifiability of the information in U.S. passports, and thus undermine the integrity of the U.S. passport as an identity document.

The Department is aware that in a handful of individual cases in recent months, a few vital records authorities have issued amended birth certificates in a third sex, and that a very small number of state courts have issued court orders recognizing a sex change to a sex other than male or female. The Department, however, does not rely on *amended* government-issued documents or court orders as evidence of a change of sex, regardless of the sex requested. This is because the requirements for amending the sex designated on a birth certificate, or for obtaining a court order changing a person's sex, vary significantly by jurisdiction in terms of whether, how, and on what evidentiary basis such a court order or amended document can be obtained. The Department is therefore unable to determine from such an amended document alone whether the applicant can meet its standard for documenting a change of sex.

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Utility of an Applicant's Sex to Identify Persons Ineligible for Passports

Second, the sex of a passport applicant is a vital data point in performing the adjudication of passports. For example, we deny applications and revoke passports for the reasons set forth in 22 C.F.R. §§ 51.60-51.62. Individuals who may not be entitled to passports include those subject to outstanding felony arrest warrants, criminal court orders prohibiting them from leaving the country, or requests for extradition. The Department's name check clearance system and other systems used to verify the identity of applicants rely upon reliable sharing of accurate records from numerous government agencies (such as the Social Security Administration, Department of the Treasury, the Department of Health and Human Services, and state and federal law enforcement authorities) and the ability to reliably data-match with those sources. Sex is one of the primary data points used by these agencies in recordkeeping and ensures accurate matches with the information contained within these databases as we adjudicate. As far as the Department is aware, all such agencies recognize only two sexes.

Utility of the U.S. Passport and Passport Data for Law Enforcement and Other Purposes

Third, in addition to their primary use to facilitate international travel, U.S. passports serve important secondary purposes as proof of identity and citizenship for state and local governments and a wide variety of other public and private institutions. A U.S. passport is a uniquely reliable, and thus widely accepted, proof of identity for such purposes as issuing birth records, driver's licenses, identification cards, and vehicle registrations, as well as application and registration for employment, government benefits, education, medical treatment, financial services, and many others. U.S. passport data is shared with various federal and state agencies. The introduction of a new, third sex option in U.S. passport applications and Passport data systems could introduce verification difficulties in name checks and complicate automated data sharing among these other agencies. This would likely cause operational complications for those agencies as well, potentially impairing adjudication of social security benefits, immigration decisions, and other government functions. Adding a third sex marker to U.S. passports would thus cause operational complications for such entities, most if not all of which have designed their own systems to accommodate only two sexes.

A particularly important aspect of these secondary purposes is the use of passport data for law enforcement. Law enforcement agencies make use of passport data for a wide range of purposes, from identifying crime victims and individuals in custody, to tracking or locating persons of interest when they apply for a passport or use a passport to enter the United States. When an individual applies for or uses a U.S. passport, the Department (and/or U.S. Customs and Border Protection (CBP)) uses a computerized namecheck system that, among other things, identifies individuals who may be of interest to courts and law enforcement agencies.

An individual's sex is part of the biodata that is included in law enforcement and criminal justice computer systems used to make matches between travelers, passport applicants, and law enforcement database records that may pertain to them. To the best of the Department's knowledge, all U.S. law enforcement and criminal justice records use only male or female to identify the sex of individuals in their records. The compatibility of Passport systems with the

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systems that make use of its data furthers law enforcement interests by facilitating data-matching of passport records with records in those systems. Adding a third sex designation to Passport systems would impair that compatibility, which could compromise law enforcement efforts to match, and thus identify, track, locate, contact, or arrest suspected or convicted criminals.

Lack of Standards for Defining a Third Sex as a Component of Identity

Fourth, there is no generally accepted medical consensus as to how to define a third sex, making it unreliable as a component of identity. The Department recognizes that not all individuals live in the sex to which they were assigned at birth. Accordingly, the Department does issue U.S. passports bearing a sex that differs from the sex on an applicant's underlying evidence of identity. **However, the Department does not issue passports based on an individual's gender identity (i.e., their perception, or personal experience, of gender).** Rather, the Department issues a passport in a new sex only when the applicant "has had appropriate clinical treatment for gender transition to the new gender of either male or female." Although the Department is aware that there are individuals whose gender identity is neither male nor female,¹ the Department lacks a sound basis on which to make a reliable determination that such an individual has changed their sex to match that gender identity.

When adjudicating passports, the Department lacks the medical expertise to assess whether an individual has had "appropriate" clinical treatment to warrant the issuance of an identity document in the new sex. Therefore, since 2010, the Department has relied on the signed certification of a licensed physician that the applicant has had appropriate treatment. The Department adopted Appendix M in 2010 based upon the development of a medical consensus that sex-reassignment surgery was not a necessary step for transition, and that what constituted appropriate treatment for gender dysphoria had become more individualized. As a result, the Department does not take a position on what treatment is "appropriate" for transition, but instead relies on the certification of a licensed physician that an individual's course of treatment was appropriate for transition to male or female, in light of the medical consensus that has developed over time.

Broadly, the goal of treatment in such cases is to alleviate the individual's "gender dysphoria," typically by bringing their gender expression (physical, hormonal, and/or social) into alignment with their gender identity. "Appropriate" treatment, therefore, is treatment that successfully accomplishes such alignment with respect to the particular individual. Based on this medical consensus, the Department accepts that when such alignment is achieved, as established by the certification of a licensed physician that the individual's treatment is appropriate, it can rely on that certification to conclude that the individual has transitioned to the new sex, and therefore the Department may issue a passport in the new sex.

Review of recent expert declarations and medical literature confirms that there is no comparable consensus at this time as to the definition of a third sex, and therefore, what it would

¹ Examples of such other identities the Department has encountered to date are "born intersex," "transition to intersex," and "transition to a nonbinary gender." Other possibilities may be "both male and female" and "neither male nor female," "genderfluid," "genderqueer," or others.

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mean to align one's physical, hormonal, or social gender expression with such a new sex. This is partly due to the lack of consensus of what it means, biologically, for an individual to have a sex other than male or female. Rather, there are a number of genetic, hormonal and physiological conditions in which an individual is not easily classified as male or female (often referred to as disorders of sexual development, or DSDs). These DSDs are highly distinct from one another, both as to their biological cause and as to their presentation (*i.e.*, whether the individual appears to be, and/or identifies as, male, female or neither).² In other words, there is no single, biological set of traits described by the terms "intersex" or "non-binary."

Thus, when a person's gender identity is something other than male or female, there is no consensus in the medical community as to what treatment, if any, would be "appropriate" for transition to such a third sex. Although applicants have submitted certifications from licensed physicians that they have "had appropriate treatment for transition to" another gender identity, such a certification reflects only the views of the individual doctor who signed them, and are not founded in a common medical understanding on which the Department is able to rely for purposes of documenting such applicant's identity.

Feasibility of adding a Third Sex Designation on U.S. Passports

Finally, altering Department systems to permit the issuance of passports with a third sex option would be expensive and time-consuming. At present, the Department's systems are incapable of printing a passport that does not include an "M" or "F" in both the printed and machine-readable areas of the passport. There is no work-around. To minimize the possibility of fraudulently issued passports, the Department specifically designed its Passport systems so that the printed biodata page must exactly match the biodata contained in the system. There is no way to disable this feature. Where circumstances under which a passport was issued require clarification of biodata information (such as an a/k/a), an endorsement may be added.

Although the Department has not undertaken a level of effort (LOE) estimation on the time and cost to add a third sex designation option to the U.S. passport biodata page, the time and cost to do so is anticipated to be considerable. In addition to altering numerous systems within the Passport Directorate, other systems within the Bureau of Consular Affairs, including systems used by overseas posts, would also need to be updated to conform to such a change. In addition, other diverse systems within the Department of State (*e.g.*, Human Resources) and in other federal agencies that rely on passport data (*e.g.*, Citizenship and Immigration Services (CIS) and CBP) would also require conforming updates to assure continued interoperability. These updates would have to be carefully coordinated, so that, for example, a data mismatch between CBP and Department of State systems does not cause problems for U.S. citizens attempting to enter the United States. The degree of coordination required to assure continuing operations without interruption, and the time and cost required to implement such coordination, should not be underestimated.

Therefore, please continue to adjudicate applications consistent with the Department's binary sex policy.

² Most individuals with a DSD self-identify as either male or female, but many do not.

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United States Department of State

Washington, D.C. 20520

May 1, 2017

Exhibit 18 – History of the Designation of Sex in U.S. Passports***Origin and Development of Sex Designation on Passports***

In adherence to foreign passport requirements, the physical description of a passport bearer was introduced in U.S. passports issued abroad in the late eighteenth century. *See* The United States Passport: Past, Present, Future; U.S. Passport Office, Department of State (Washington, DC: GPO, 1976), at 207. By the early nineteenth century, all U.S. passports included in the body of the passport a description of the person of the bearer, including name, age, height, complexion, hair, eyes, distinguishing physical marks or features, forehead, nose, mouth, chin, and face. *Id.*, at 61, 207; The American Passport: Its History and a Digest of Laws, Rulings, and Regulations Governing its Issuance by the Department of State; Hunt, Gaillard (Washington, DC: GPO, 1898) at 46, 61, 78-79. In 1914, the Department introduced a requirement that a passport include a photograph of the bearer. *See* The United States Passport: Past, Present, Future; at 63, 207. However, the physical description of the bearer initially remained, to help officials establish that the photograph had not been altered or substituted. *See* The Passport in America: The History of a Document; Robertson, Craig (New York: Oxford Univ. Press, 2010), at 93. While the photograph requirement continued and has been standardized, the physical description elements were eventually removed from U.S. passports. Applicants are still required to provide height, hair color, and eye color in their passport applications.

Although the text of early U.S. passports indicated sex in the use of masculine and feminine pronouns and the word “wife,” prior to 1977 U.S. passports did not include a specific designation of the applicant’s sex. After the passport text was shortened and made uniform, the sex of an individual issued a U.S. passport became evident only from the individual’s name or photograph. In 1971, the Department issued an instruction stating that a name change suggestive of a change of sex was allowable to the same extent as any other name change, but requiring that “photographs shall depict the sex of the applicant as indicated on the citizenship evidence,” unless the applicant provided a physician’s statement confirming that the applicant had undergone a medical change of sex (*i.e.*, surgery). *See* Passport Instruction 2510.9C, Appendix A, General Guideline No. 10, “Use of Names Indicating a Change of Sex” (May 4, 1971) (Exh. 19).

To address border security concerns which arose after the introduction of high-volume aircraft and the resulting increase in international air travel, a panel of passport experts was commissioned in 1968 under the auspices of the International Civil Aviation Organization (ICAO). The group consisted of representatives from Australia, Canada, France, Germany, India, Kenya, Sweden, and the United States. Between 1969 and 1973, the group agreed to suggest standards for passport data elements, both for existing, conventional travel documents and for the machine-readable passports then in development. In January 1972, the group agreed to suggest basic standard data elements for passports, including, for the first time, the bearer’s sex. This data element was recommended because the experts recognized that, in light of the

increasing number of international air travelers, and the rise in the early 1970s of unisex attire and hairstyles, photographs had become a less reliable means for ascertaining a traveler's sex. In a 1974 report, an ICAO panel confirmed that a holder's sex should be included on passports because names did not always provide a ready indication, and appearances from the passport photograph could be misleading. *See* "Fourth Report of the Panel on Passport Cards," ICAO Air Transport Committee (Sept. 13, 1974) (Exh. 47), at ¶ 51.

In conformity with this nascent "international standard," in 1976 the Department added a field labeled "SEX (M-F)" to U.S. passport application forms. *See* Passport Application, Form DS-82 (1975 and 1976) (Exh. 20). During 1976 and 1977, the Department phased-in the collection of sex data on passport application forms used domestically and at embassies and consulates abroad. *See* "Citizenship and Passport Matters," STATE 267726 (Nov. 8, 1977) (Exh. 21); "Revision of Passport Application Form and Passport Amendment and Extension Form," STATE 305744 (Dec. 23, 1977) (Exh. 22). Since 1978, Department policy has required every passport applicant to indicate their sex as "M" for male or "F" for female in their application. Similarly, the Department requires applicants to provide evidence of identity and citizenship consistent with such designation, with an exception, until 2010, only for medical (*i.e.*, surgical) changes of sex. *See* Passport Instruction 2510.9C, Appendix A, General Guideline No. 10, "Use of Names Indicating a Change of Sex" (May 4, 1971) (Exh. 19).

A new passport book introduced in 1977 was the first to include the sex of the holder in the printed area. In 1981, when the Department became the first country to introduce machine-readable passports, the designation of sex was also included in the machine-readable zone as either an "F" for female or an "M" for male, in conformity with the technical specifications of ICAO. *See* ICAO Document 9303, "A Passport with Machine Readable Capability," 1st Edition (1980) (Exh. 48). At the time, there was no consideration given to permitting the use of a third sex marker, inasmuch as ICAO's specifications did not permit one.

Introduction of Policy on Reflecting Change of Sex in Passports

In 1992, the Department issued new procedures for handling requests for passports to individuals who had undergone a change in sex. These procedures emphasized the need for complete and detailed documentation regarding the change, as well as the need for accurate identification photographs reflecting the applicant's current appearance. *See* Passport Bulletin 92-22, "Procedures for Handling Requests for a Change of Gender in Passports" (Oct. 1, 1992) (Exh. 23); "Change of Gender in Passports," STATE 090654 (Mar. 26, 1993) (Exh. 24). These procedures still required evidence of surgical reassignment for issuance of a full-validity passport in the new sex, but provided for issuance of a one-year, limited-validity passport to an individual who was "immediately *en route*" to reassignment surgery and who submitted sufficient evidence of their "past medical history relating to the gender disorder" and their upcoming surgery. *See* Passport Bulletin 92-22, "Procedures for Handling Requests for a Change of Gender in Passports" (Oct. 1, 1992) (Exh. 23). The Department also changed its policy regarding photographs: they were required to "agree with the submitted identification evidence" and to "reflect the applicant's current and true appearance," but were no longer required to conform to a preconceived "male" or "female" appearance. *Id.*

2010 Revision of Policy on Changes of Sex

On June 10, 2010, the Department published new policy guidance that eliminated the requirement of surgical reassignment for issuance of a passport in a new sex. *See* CA/OCS Action Memo for A/S Jacobs (May 14, 2010) (Exh. 25); Media Note (June 9, 2010) (Exh. 26); 7 FAM 1300 Appendix M, “Gender Change” (June 10, 2010) (Exh. 27). The new policy, published in the Department’s Foreign Affairs Manual (FAM) at 7 FAM 1300 Appendix M, “Gender Change,” provided for issuance of a full-validity passport in the new sex upon presentation of a signed certification from an attending medical physician that the applicant had had “appropriate clinical treatment for gender transition” (*i.e.*, transition to a new sex of male or female). In recognition that various treatment options were accepted by the medical community, including not only surgery, but also hormone therapy, psychotherapy, and combinations of these, and that the choice among these treatment options was properly a medical decision to be made between patient and physician, the new policy did not attempt to define “appropriate clinical treatment.” The guidance also provided for issuance of a two-year, limited-validity passport in the new sex for applicants who are certified by a physician as being in early stages of gender transition, which can be replaced with a full-validity passport without further fee upon certification that the applicant has completed appropriate clinical treatment for transition. *See* 7 FAM 1320 Appendix M b(2)-b(4) (June 10, 2010) (Exh. 27). The Department’s new policy was based on standards and recommendations of the World Professional Association for Transgender Health (WPATH), recognized as the authority in this field by the American Medical Association (AMA). *See* Media Note (June 9, 2010) (Exh. 26); 7 FAM 1310 Appendix M b (June 10, 2010) (Exh. 27).

Several months after the publication of this policy, the Department received a letter from several non-governmental organizations (NGOs) recommending certain changes and clarifications to the policy. *See* E-mail of Mara Keisling, Executive Director, National Center for Transgender Equality, on behalf of Council for Global Equality, National Center for Lesbian Rights, National Center for Transgender Equality, and National Gay & Lesbian Task Force, with Recommendations Regarding Gender- and Intersex-Related Revisions to FAM (Aug. 30, 2010) (Exh. 28). The Department accepted all but one of the NGOs’ recommendations, and revised the guidance in December 2010: (i) to substitute the term “licensed physician” for the less-well-understood term “attending physician”; (ii) to allow any licensed physician to provide the required certification, eliminating language that had restricted this to certain medical specialists; (iii) to retitle the section, “Cases of Unspecified Gender,” with the better-understood “Intersex Conditions,” so as to facilitate its use by individuals to whom it applies; and (iv) to replace the text of that section with language provided by the NGOs, to clarify that the medical certification in such cases would reference “correction,” rather than “transition.” *See id.*; CA/OCS Action Memo for A/S Jacobs (Dec. 8, 2010) (Exh. 29); 7 FAM 1300 Appendix M, “Gender Change” (updated Jan. 20, 2011) (Exh. 30). The Department rejected the NGOs’ recommendation that it expand the policy to accept certification from practitioners other than licensed physicians, such as nurse practitioners and chiropractors. *Id.*

Since 2010, the Department has made a handful of additional technical or procedural changes to this policy guidance. *See, e.g.*, Memorandum to Brenda S. Sprague, Deputy Assistant Secretary for Passport Services, from Harper Jean Tobin, Director of Policy, National Center for

Transgender Equality Action (Sept. 9, 2013) (Exh. 31); Letter to National Center for Transgender Equality from DAS Sprague (Sept. 27, 2013) (Exh. 32); CA/PPT/S Action Memo from CA/PPT/S to DAS Sprague, Passport Services, for response to National Center for Transgender Equality (Dec. 30, 2013) (Exh. 33); Passport Services Letter to National Center for Transgender Equality (Dec. 30, 2013) (Exh. 34); 7 FAM 1300 Appendix M, "Gender Change" (updated Dec. 12, 2014) (Exh. 35). The Department's guidance was last revised in 2016. *See* 7 FAM 1300 Appendix M, "Gender Change" (updated Mar. 31, 2016) (Exh. 36).

In a March 2016 Memo to the Field, CA/PPT/S reminded passport adjudicators that a court-ordered sex change is not sufficient evidence for issuance of a passport in the new sex, and directed them to require the applicant to also submit the medical certification specified in the policy guidance. *See* CA/PPT/S Memorandum, "Court-Ordered Gender Change Not Acceptable" (Mar. 1, 2016) (Exh. 37).

PASSPORT OFFICE

2510.9C
PP/L:JLR:PT/D:APH:aph
May 4, 1971

* INSTRUCTION 2510.9C

To : All Employees, Domestic Operations Division
All Supervisors - Washington

From: Frances G. Knight, Director

Subj: Names to be Written in Passports

1. Purpose. This Instruction clarifies the policy and procedures for writing names in passports not only when the applicant claims the use of more than one name or a name which differs from that which is shown in the documents submitted, but also when the names which are shown in two places on the application and on the photographs are not in agreement.

2. Background. A large number of applicants have assumed new names without the benefit of legal action. The increasing use of names other than the legal name (name contained on citizenship evidence) and the exceptions which have arisen to using the legal name requires a restatement of the policies and procedures to be followed in determining the name to be written in the passport.

3. Policy. It is the general policy of the Passport Office to write only one full name of the passport bearer in a passport. The use of two or more full names should be avoided, if at all possible. The name which is written, however, should be the one which best identifies the passport bearer for all purposes. Normally, the name to be written in the passport shall be the name appearing on the evidence of citizenship submitted with the passport application. In the case of married women, the name shall be the woman's given name or names, middle name or maiden name, and husband's surname.

4. Exceptions. The following are exceptions to the policy stated in Section three of this Instruction:

a. Change of Name by Court Order. When an applicant submits a court order which shows a judicial change of name from the one appearing on the evidence of citizenship, the name shall be written as shown in the court order.

b. Change of Name Without Court Order.

(1) Use of Adoptive Names Only. Passports shall be issued in the adoptive name only when the applicant claims that his name was changed

* Entire Instruction Revised

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from that shown on his citizenship evidence or other supporting documents and submits the following:

(a) Affidavits executed by two or more persons attesting that both names refer to the applicant, that they have known the applicant by the adoptive name for over ten years, that the applicant uses the adoptive name exclusively for all purposes and is known by the adoptive name in his home community;

(b) In addition, the affidavits must be supported by documentary evidence such as school records, military records, employment records, tax returns, or other public records. A passport issued more than ten years ago with a "known as" name is not sufficient documentary evidence unless it is accompanied by supporting documents which show exclusive use of the adoptive name.

(c) Identification. The applicant must be able to submit in his adoptive name only acceptable documents of identity as shown in Instruction 3120.2B (Identification of Applicant).

(2) Use of "Known As" Names. Any applicant requesting the issuance of a passport in a name other than the name appearing on the citizenship evidence or a name not supported by evidence meeting the criteria in Section 4b(1) above, may have that name included in the passport as a "known as" name along with the legal name, provided the applicant submits documentary evidence that the "known as" name has been used for more than two years. Documentary evidence may be in the form of affidavits from two or more persons attesting that they have known the applicant by both names.

5. Additional Evidence. The evidence requirement set out in Section 4 of this Instruction is the minimum evidence required by the Passport Office. If the Agent executing the application or the Examiner adjudicating the application is not satisfied as to the bona fides of each particular case, he may require additional evidence.

6. Agent/Examiner Responsibility. Agents and Examiners are responsible for the proper selection and sequence of names to be written in the passport. The wishes of the applicant shall be considered in making the selection. The name on line one of the application should be written in full and in normal sequence: first name, middle name, and surname. (See Attachments B and C for exceptions in writing Chinese and Spanish names.) Initials for the given name and surname may not be used unless the citizenship evidence AND evidence of identity contain initials only. The Examiner shall verify that line one properly reflects the name which best identifies the applicant in accordance with the policy and procedures set forth in this Instruction and that the signature appearing on page two, as well as on the photographs, is not in conflict with line one. NOTE: The name which is shown on line one need not be identical to the signature appearing on page two and on the photographs, but the three must be in agreement. For example, if Mary Louise Martin is shown on line one, the signature on the photograph and on page two is in agreement if it is shown as Mary L. Martin, M. L. Martin, Mary Martin, or Louise Martin. It is not in agreement if it is shown as Mary M. Martin, Margaret Martin, or Louise M. Martin. When the names are not in agreement, the Examiner shall determine which is the correct name to be written in the passport and shall change line one accordingly.

7. Procedures for Processing Names by Examiners. After determining the proper name(s) to be written in the passport, the Examiner shall: (1) Line out extraneous information or punctuation (i.e., initials of religious orders, professional titles, nicknames, parentheses, "NMI", etc.); (2) Change Roman numeral designations to Arabic ordinals and circle (i.e., change II, III, etc. to 2nd, 3rd, etc. and circle); (3) Add or circle "Jr." or "Sr." when written as part of the name or signature; (4) Draw a vertical line between parts of multiple-part names to indicate they are to be separated when written (i.e., Le Roy, Mc Mahon, Van den Berg, del la Rosa, etc.); (5) Overscore hyphens or apostrophes when they constitute a necessary part of the name (i.e., Ann-Marie, Taylor-Smith, O'Boyle, etc.); (6) Add, or clarify the spelling of, any name to be written in the passport. When it is determined that two names are to be written in the passport, the Examiner shall write "K-A" before the second name, e.g. Stuart Jones K-A Lucas Levine.

8. Clearance. All names and aliases which are shown on the passport application and on the accompanying documents, regardless of whether or not these names will appear in the passport, shall be cleared through the computer. Minor variations in the given name such as transpositions need not be specifically cleared. However, all changes or variations in the surname must be cleared.

a. Automatic Name Search Variations. The computer will search a name in the following manner:

"I John Andrew Doe/July 4, 1924"

John Andrew Doe
John Doe
Andrew Doe
J. A. Doe
J. Doe
A. Doe

b. Adjudicative Action. The Examiner shall record in or near the evidence block all names shown on the accompanying documents which are in addition to those shown on line one and in Section B of the application. A green flag or completed DS-1373, "Passport Agent's Check List", shall alert Processing personnel to the need to clear additional names.

c. Inclusions. The given name which is written in the passport is automatically cleared through the computer. The Examiner should request clearance of additional names when necessary. (See "clearance" under appropriate items in the attached Guidelines.)

9. Amendment or Correction of Name in Passport.

a. Amendment. A request to show a legal or other change in name, or to include a person's name, shall be cleared through the computer.

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b. Correction of Name. When a passport is returned because of an error in the name, the corrected name shall be cleared by the computer. Where applicable, the Examiner shall request verification of the name as it appeared on the original application.

10. Guidelines. The attachments provide guidelines to assist Examiners in following the policy of the Passport Office in using the correct names of the passport bearers.

- a. Attachment A: General Guidelines.
- b. Attachment B: Guidelines - Chinese Names
- c. Attachment C: Guidelines - Spanish Names

11. Directives Canceled. This Instruction cancels Instructions 2510.9B dated October 7, 1964 and 2500.6A dated November 24, 1969.

12. Effective Date. Immediately.

Attachments:

As stated

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GENERAL GUIDELINES

1. Minor Changes in Names on Application and on Citizenship Evidence. When the name written on the application differs only slightly from the name shown on the citizenship evidence, the name as shown on the application shall be written in the passport. The Examiner shall note on the application near the evidence block, the name as shown on the evidence. Acceptable documents of identity shall be submitted to support the use of the name as shown on the application. Frequent examples are: (a) Phonetic Changes: An applicant may change the spelling of his name while retaining the basic phonetic sound, e.g. Jo Ann to Joanne; Smyth to Smith. (b) Transpositions: An applicant may rearrange the sequence of his given names shown on the citizenship evidence, e.g. John Joseph to Joseph John. (c) Additional Given Name: An applicant may adopt an additional given name while retaining the names shown on the citizenship evidence, e.g. John Johnson to John Robert Johnson. (d) Dropping a Given Name: An applicant may drop the use of a given name where more than one given name is shown on the citizenship evidence. Married women will frequently drop a first or middle name after assuming the husband's surname, e.g. Mary Jane Louise Smith to Mary Louise Smith; Sue Lynn Jones to Lynn Jones Henderson.

CLEARANCE: All names shown on the application and documents must be cleared. The Examiner need not request specific clearance for minor variations in the given name such as transpositions. All changes in the surname must be cleared.

2. Given Name not Recorded or Name Recorded Incorrectly at Birth. When an applicant's given name was not recorded at birth or was recorded incorrectly at birth, an affidavit executed by a blood relative familiar with the facts of the birth, may be submitted with the birth record to document the use of the given name. The affidavit should set forth the facts of the birth and explain the discrepancy between the name on the birth record and the name on the application. If it is not possible to secure an affidavit from a blood relative, the applicant should submit other supporting documentation in accordance with Instruction 3120.3A (Acceptable Evidence of Acquisition of U.S. Citizenship).

CLEARANCE: All names shown on the application and documents must be cleared.

3. Change of Name During Minority. When an applicant's given name was changed during childhood from that shown on the birth record, affidavits from two persons who can attest that both names refer to the applicant, and who state the basis of their knowledge regarding the applicant and the change of name, may be submitted to document the use of the given name. NOTE: Only one affidavit need be submitted if it is executed by a blood relative. In instances where affidavits are not obtainable and where the applicant has been known in the community by his adoptive name only, supporting documentation in accordance with

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Instruction 3120.3A (Acceptable Evidence of Acquisition of U.S. Citizenship) should be submitted.

CLEARANCE: All names shown on the application and documents must be cleared.

4. Foreign Names. Applications received from a family (usually Slavic) which show different spellings of the surname for the male (Rukowski) and female (Rukowska) members should be transcribed as signed by the applicant. Applicants with foreign names will often change (translate) their given name to the English equivalent without the benefit of a court order. Such translations are to be considered minor changes and may be documented by the submission of acceptable documents of identity in the English equivalent name. Example: Giuseppe to Joseph. The Examiner should be guided by the booklet entitled "Foreign Version of English Names" (M-131) which is published by the Immigration and Naturalization Service of the Department of Justice. The Examiner shall note in the evidence block the name as it appears on the citizenship evidence. An applicant whose foreign given name does not have an English equivalent and who has assumed an "English" name during minority may submit evidence as stated in Section 3 of these guidelines. Example: Appollonia to Arlene.

CLEARANCE: Foreign names and their English equivalents (Except minor variations in given names such as Maria to Mary, Rosa to Rose) and all variations in the spelling of surnames, that are shown on the application and documents must be cleared.

5. Professional Names. In many instances an individual will assume an adopted name for professional reasons but will retain his legal name for other purposes. The applicant may have his "known as" name included in his passport if he is able to submit evidence in accordance with Section 4b(2) of this Instruction. Frequent examples are: (a) Individual assumes a shortened version of his legal name: Alexander Goldman K-A Al Gold. (b) Individual adopts her maiden name as her professional name: Mary Jane Simpson K-A Mary Martin. (c) Individual adopts a completely different name as his professional name: George Alan Peterson K-A Aloysius P. Gartenbrau.

CLEARANCE: All names including "known as" names that are shown on the application and documents must be cleared.

6. Religious Names. If only the civil name appears on the application, that name only shall be written in the passport even though the photograph shows the applicant in religious attire. If the religious title "Sister", "Mother", "Reverend", "Brother", or "Father" precedes the full civil name on line one of the application, the Examiner shall line through the title to show the passport is to be written in the civil name only. When the civil and religious name or the religious name only is shown on line one, the passport shall be written in both the civil and religious names. Examples: if line one shows Sister Mary Eileen

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Donohue write as Mary Eileen Donohue; if line one shows Sister Mary Eileen write as Mary Eileen Donohue K-A Sister Mary Eileen; if line one shows Mary Eileen Donohue K-A Sister Mary Eileen write as shown. Where the applicant has assumed a completely different religious name, the passport shall be written in both the civil and religious names. Examples: Sara Mack Jones K-A Sister Mary Therese; Jonas Wittman K-A Abdulla Ali.

Generally, for members of recognized religious organizations, identification reflecting the religious "known as" name is sufficient to document the use of the name.

An applicant requesting his "known as" name be included in his passport who claims affiliation with a religious organization not coming within the above subparagraph, will have to submit affidavits and supporting documentation in accordance with Section 4b(2) of this Instruction.

CLEARANCE: All names, including religious "known as" names, that are shown on the application and documents must be cleared.

7. Married Women. Passports will be written in the surname of the husband. When a married woman requests that her maiden name be written, she will be required to submit evidence in accordance with Section 4 of this Instruction. The applicant's given name must always be written as, for example, Dorothy Jane Black rather than Mrs. Joseph Alan Black. If the application is signed in the husband's name (i.e. Mrs. Joseph Alan Black) and the Examiner is satisfied that the documents and the application related to the same person, the application shall be changed to show the given name to be written in the passport. The Examiner should also print the given name above the signature. A marriage certificate need not be requested as evidence except when identification in the married name is not available due to a recent marriage, or when there is reason to believe the marriage did not occur prior to the date of execution of the application.

A woman who is divorced or widowed may have her passport written in her maiden name or former married name if she submits evidence in accordance with Sections 4a or 4b(1) of this Instruction. (NOTE: A divorce decree permitting a woman to resume the use of a prior name is a legal change of name.) If the above evidence can not be presented, a woman may have her maiden name or former married name included in her passport as a "known as" name even though the two years specified in Section 4b(2) of this Instruction has not elapsed since the divorce or death. The woman shall submit her statement regarding the resumption of the previous name. In addition, she shall submit citizenship evidence in her maiden name, and if she is resuming a former married name, evidence of the previous marriage. The Examiner shall note on page two of the application (DSP-11), "Identifying Document Submitted", the name in which her identity documents are in.

CLEARANCE: All names including maiden and previous married surnames that are shown on the application and documents shall be cleared. When the

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maiden surname is included as a middle name on line one of the application, the adjudicator shall indicate to the flexowriter operator that both surnames are to be cleared by drawing two vertical lines immediately before the maiden surname, e.g. Mary || Parker Jones. The two vertical lines shall indicate that a surname marker is to be inserted in the clearance request tape at that point. The surname marker will cause the computer to search each name to the right of the marker as the surname. For example, the above name will be searched as Mary Parker Jones, Mary Jones, and Mary Parker.

If the maiden surname is not included on line one, or if the wife is included in the passport of her husband, the Examiner shall request clearance of the maiden surname by completing and attaching DS-1373 to the application.

8. Adoption. In most instances a person will have acquired a new name through adoption. Where a final decree of adoption has been issued, the adoptive name only, as it appears on the decree, shall be written in the passport (see Section 4a of this Instruction). During the probationary period prior to issuance of the final decree, where adoption has not been finalized, a child may be documented in the name of his adoptive parents provided the adoption agency, or other organization having legal custody of the child, authorizes the adoptive parents to take the child abroad and certifies to the adoptive name, and the date and place of birth of the child. The passport shall be written in the adoptive name only.

CLEARANCE: All names including the name(s) before adoption that are shown on the application and documents must be cleared.

9. Use of Stepfather's Surname. Unless legally adopted or his name legally changed, passports for children may not be written in the surname of the stepfather unless the application is accompanied by the written consent of the natural father. However, in cases where the whereabouts of the natural father is unknown (desertion) or the natural father is deceased, and the mother has remarried, the passport may be written in the stepfather's surname if that is the name by which the child is known, in the absence of a letter of objection from the natural father. An affidavit from the mother regarding the whereabouts of the natural father and the child's assumption of the stepfather's surname shall accompany the application. If it is not possible to obtain the consent of the natural father before issuance of the passport, the surname of the stepfather may be included in the passport as a "known as" name even though the child has not used the stepfather's surname for the two years specified in Section 4b(2) of this Instruction. When such child is to be included in a passport, the child's given name with the natural father's surname shall be written.

Where a letter of objection to a child using the stepfather's surname is on file in the Passport Office, the passport shall be written in the natural father's surname only.

A child born out of wedlock whose mother has subsequently married and who has assumed his stepfather's surname may have his passport written in the stepfather's surname. The Examiner shall note in the evidence block the name in which the citizenship evidence was issued.

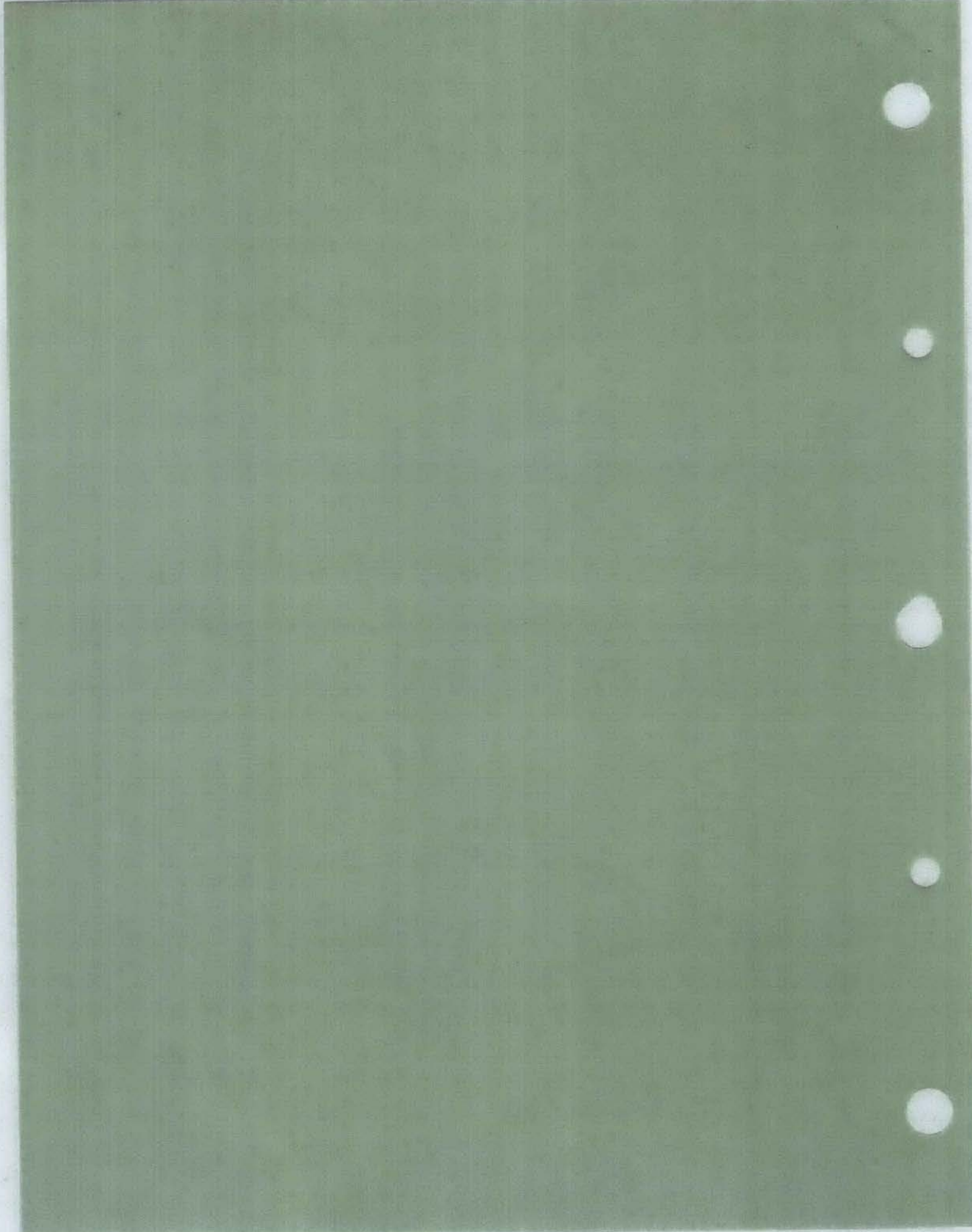
The Examiner is responsible for determining the name of the child and for changing the application accordingly.

CLEARANCE: All names, including the surnames of the natural father and stepfather, that are shown on the application and documents must be cleared.

10. Use of Names Indicating a Change of Sex. An applicant may assume a name indicating a change of sex provided evidence in accordance with Section 4 of this Instruction is submitted. However, photographs shall depict the sex of the applicant as indicated on the citizenship evidence unless a physician's statement that a medical change of sex has been undergone accompanies the application.

Whenever it appears that the discrepancy in name and sex is due to a bona fide error at the time of the recording of birth the matter should be handled as a clerical error.

CLEARANCE: All names, including "known as" or adoptive names, that are shown on the application and documents must be cleared.



GUIDELINES - CHINESE NAMES

EXAMINERS MUST REFER TO INSTRUCTION 3200.6 (APPLICATIONS SUBMITTED BY PERSONS OF CHINESE DESCENT) BEFORE APPROVING APPLICATION

1. Execution of Applications. Applications of persons with Chinese names will be executed giving the Chinese names in the manner customarily used by the applicant. An applicant who adheres to the Chinese custom may execute his application and set forth his name on line one giving the family name first, e.g., WONG LU LENG; WONG being the family name. An applicant who has rearranged his Chinese name to conform to the custom of writing the family name last, will execute his application and show his name on line one giving the family name last, e.g., LU LENG WONG; WONG being the family name. The rearrangement of the Chinese name is not required to be substantiated by documents other than those of identity.
2. Recording - Washington only. Chinese names shall be transcribed on interim control cards as follows: SURNAME, GIVEN NAME, and MIDDLE NAME. The last name appearing on line one of the application reading from left to right shall constitute the surname for recording purposes and may or may not be the family name.
3. Determination of Family Name. Adjudicators shall be responsible for making the determination with respect to the family name of applicants who have Chinese names.
 - a. Method. The family name of a person with a Chinese name may generally be determined by checking the name of the applicant's father or husband, whichever is controlling, as it appears on the application.
 - b. Action. The adjudicator shall underline TWICE, in red ink, the family name which appears on line one of the application. If the name is shown on the right margin of the application, the adjudicator shall insure that it is set forth in the following manner: FAMILY NAME, GIVEN NAME, and MIDDLE NAME.
4. Transcription of Name. Names shall be transcribed as set forth on line one of the application reading from left to right. The flexowriter operator shall attach no significance to the underlining of the family name on line one.
5. Clearance. As a general rule, clearance is required for all names and aliases which are shown on the passport application and documents, whether or not these names will appear in the passport. In addition, a surname marker is required at the beginning of Chinese names in the clearance request tape. This causes the computer to search each part of the name as though it were the surname. For example, if the name on line one is WONG LU LENG, the clearance request shall be transmitted WONG LU LENG with a surname marker preceding WONG. The computer will search the name as WONG LU LENG, LU WONG LENG, LU LENG WONG, LENG LU WONG, LENG WONG LU, and WONG LENG LU. Thus, a Chinese name will be properly cleared regardless of where the family name is placed.

Attachment B
2510.9C
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- 2 -

6. Filing of Records.

a. Index Cards. Index cards shall be filed under the last name transcribed on the card, e.g., a card reading WONG LU LENG will be filed under LENG, which may or may not be the family name of the applicant.

b. Interim Control Cards - Washington Only. Shall be filed under the surname as transcribed on the cards which may or may not be the family name of the applicant.

c. Passport Applications. Applications shall be filed in the Passport Office Files Section, PT/RAF, under the family name. The name underscored TWICE on line one of the application shall be used as the family name.

GUIDELINES - SPANISH NAMES

1. Composition of Spanish Names. Generally, Spanish names consist of the:

<u>(X) GIVEN</u>	<u>(P) PATRONYMIC</u>	<u>(M) MATRONYMIC</u>
Christian name	father's surname	mother's surname

The patronymic and matronymic may, or may not, be joined by "y" or by hyphenation.

<u>(X)</u>	<u>(P)</u>	<u>(M)</u>
Jose	Perez	Gonzalez
Jose	Perez y	Gonzalez
Jose	Perez -	Gonzalez

The given, the patronymic, or the matronymic, or all three may be compound. The parts of the compound patronymic or matronymic may be joined by "de" or by hyphenation.

<u>(X)</u>	<u>(P)</u>	<u>(M)</u>
Jose	Perez y	Gonzalez-Crespo
Jose	Perez-Diaz y	Gonzalez
Jose Maria	Perez de Diaz y	Gonzalez de Crespo

a. Married Women. A married woman may join her husband's name to her own name by the use of "de", generally retaining her patronymic and dropping her matronymic. However, the woman may retain, or in some instances drop, both her patronymic and matronymic. Example: If Anna Menendez Robledo marries Jose Perez Gonzalez, her married name may be one of these combinations:

<u>(X)</u>	<u>(P)</u>	<u>(M)</u>		<u>(HP)</u>	<u>(HM)</u>
Anna	Menendez	Robledo	de	Perez	Gonzalez
Anna	Menendez		de	Perez	Gonzalez
Anna	Menendez		de	Perez	
Anna	Menendez			Perez	
Anna				Perez	

b. Widows. A woman whose husband has died may use the title "Viuda" (widow) or its abbreviation, "Vda." either before her given name or before the prefix "de" and her husband's surname. "Viuda" shall be transcribed into the passport as shown but shall be disregarded for filing purposes.

Viuda Anna	Menendez		de	Perez
Anna	Menendez, Viuda,		de	Perez
Anna	Menendez, Vda.,		de	Perez

2. Execution of Applications. Applications of persons with Spanish names will be executed giving the Spanish names in the manner customarily used by the applicant. An applicant who adheres to the Spanish custom may execute his application and set forth his name on line one giving his mother's surname as his last name and his father's surname as his middle name, e.g. Jose PEREZ Gonzalez, PEREZ being the patronymic. However, other

Attachment C

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applicants may drop the use of the mother's surname or may rearrange their names to conform to the custom of writing the father's (or husband's) surname last, e.g. Jose PEREZ; Jose Gonzalez PEREZ. The dropping of the matronymic or the re-arrangement of the patronymic and matronymic are to be considered minor name changes and need not be substantiated by documents other than those of identity. In all instances, the controlling patronymic (the father or husband's surname) MUST BE WRITTEN IN FULL in the passport.

3. Recording - Washington Only. Spanish names shall be transcribed on interim control cards as follows: SURNAME, GIVEN NAME, MIDDLE NAME. The last name appearing on line one of the application reading from left to right shall constitute the surname for recording purposes and may or may not be the controlling patronymic.

4. How to Determine the Controlling Patronymic. It is the adjudicator's responsibility to determine the controlling patronymic of applicants with Spanish names. The controlling patronymic is the legal surname acquired at birth or by marriage. For men and unmarried women, the legal or controlling surname is the patronymic (father's surname). For married women, the legal or controlling surname is the husband's patronymic.

a. Method. The controlling patronymic of the applicant can generally be determined by checking the names of the applicant's father and mother, or husband where applicable, as they appear in Section D of the passport application (DSF-11).

b. Action. The adjudicator shall underline TWICE, in red ink, the controlling patronymic which appears on line one of the application. This action will indicate the surname under which the application is to be filed. In addition, the adjudicator shall draw TWO vertical lines immediately after the given name(s) to separate the given name(s) from the surnames. This second action will indicate the surnames under which the applicant must be cleared. Examples:

Jose ||Gonzalez Perez
 Jose ||Perez Gonzalez
 Jose Maria || Perez Gonzalez
 Anna ||Menendez de Perez
 Anna Perez

5. Transcription of Name. The name shall be transcribed into the passport as set forth on line one of the application. The controlling patronymic must be written in full regardless of its position in the name.

6. Clearance. As a general rule, clearance is required for all names and aliases which are shown on the passport application and documents, whether or not these names will appear in the passport. For all applicants, the patronymic must be cleared. The matronymic of men and unmarried women should also be cleared as a possible surname, if it can be ascertained from the application or evidence. For married women, the patronymic (maiden surname) and the husband's patronymic must be cleared.

When two vertical lines are drawn by the adjudicator after the given name(s), the flexowriter operator shall insert a surname marker in the clearance request tape at that point. This will cause the computer to search each name to the right of the marker as the surname. Example: Jose || Perez Gonzalez will be searched as Jose Perez Gonzalez, Jose Gonzalez, and Jose Perez. Thus, a Spanish name will be properly searched regardless of whether the patronymic is written as a middle or last name.

In those instances where the matronymic of men and unmarried women, or the patronymic (maiden surname) of married women, does not appear as part of the name on page one of the application, the adjudicator shall request clearance of the additional surname using the DS-1373.

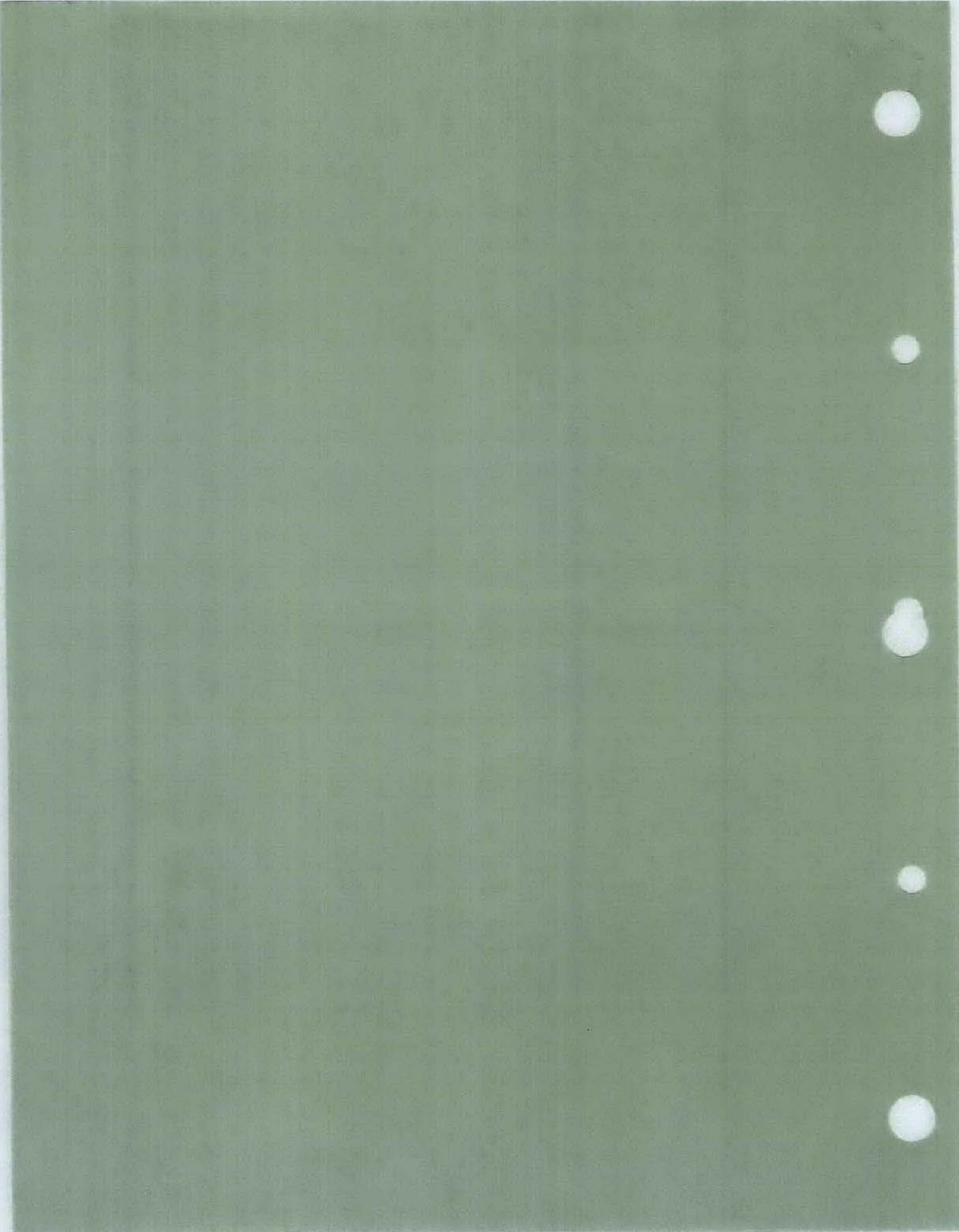
7. Filing of Records.

a. Index Cards and Interim Control Cards. Shall be filed under the last name transcribed on the card which may or may not be the controlling patronymic.

b. Passport Applications. Shall be filed in the Passport Office Files Section, PE/RAF, under the controlling patronymic. The name underscored TWICE on line one of the application is the patronymic under which the application shall be filed.

8. Summary of the Adjudication and Processing of Spanish Names.

	<u>Unmarried Women (and Men)</u>	<u>Married Women (and Widows)</u>
<u>Information on DSP-11</u>		
Name of applicant	Anna Gomez Conte	Anna Gomez della Casa
Name of father	Piedro Gomez Bonilla	Piedro Gomez Bonilla
Name of mother	Inez Conte Garcia	Inez Conte Garcia
Name of husband	---	Juan della Casa Lopez
<u>Definition of Terms</u>		
Applicant's patronymic	Gomez	Gomez
Applicant's matronymic	Conte	Conte
Husband's patronymic	---	della Casa
Controlling patronymic	Gomez	della Casa
<u>Preparation of Line One</u>		
Controlling patronymic shall be written in full	Gomez	della Casa
Adjudicator markings	Anna <u>Gomez</u> Bonilla	Anna Gomez <u>della Casa</u>
<u>Processing</u>		
Transcription of Name	Anna Gomez Bonilla	Anna Gomez della Casa
Surname marker *	Anna * Gomez Bonilla	Anna * Gomez della Casa
Surnames cleared	Gomez and Bonilla	Gomez and della Casa
<u>Filing</u>		
Index/Interim Control Cards	Conte, Anna Gomez	Casa, Anna Gomez della
Passport application	<u>Gomez</u> , Anna Conte	<u>della Casa</u> , Anna Gomez



DON'T PUT IT OFF
APPLY NOW

PLEASE TYPE OR PRINT
(Pencil is not acceptable)

MINUTE RUSH

DEPARTMENT OF STATE APPLICATION FOR PASSPORT BY MAIL				(PASSPORT OFFICE USE ONLY)	
Your most recent passport issued within the past eight years, two signed photographs and the fee of \$10 MUST accompany this application.				Endorsement _____	
A					
(First name)		(Middle name)		(Last name)	
I, _____ a citizen of the United States, do hereby apply to the Department of State for a passport.					
MAIL PASSPORT TO:					
IN CARE OF (if applicable) _____					
STREET _____					
CITY _____		STATE _____		ZIP CODE _____	
PHONE NOS. Area Code: _____ Home: _____ Business: _____					
DATE OF BIRTH		PLACE OF BIRTH (City, State, Province, Country)			
Month	Day	Year			
HEIGHT	COLOR OF HAIR (Spell out)	COLOR OF EYES (Spell out)	APPROXIMATE DATE OF DEPARTURE		
____ FT. ____ IN.					
VISIBLE DISTINGUISHING MARKS			OCCUPATION		
B MOST RECENT PASSPORT ISSUED WITHIN PAST 8 YEARS MUST BE ATTACHED				SOCIAL SECURITY NUMBER (Not Mandatory)	
No. _____ Issue Date _____					
MY PERMANENT RESIDENCE (Street Address, City, State, ZIP Code)			COUNTY OF RESIDENCE (Not Mandatory)	IF YOU WERE BORN ABROAD, WERE BOTH OF YOUR PARENTS U.S. CITIZENS AT THE TIME OF YOUR BIRTH?	
				FATHER: <input type="checkbox"/> Yes <input type="checkbox"/> No	
				MOTHER: <input type="checkbox"/> Yes <input type="checkbox"/> No	
IN THE EVENT OF ACCIDENT OR DEATH NOTIFY (Do not show name of a person who will accompany you when traveling) (Not Mandatory)					
(Name in full)		(Relationship)		(Street address, City, State, ZIP Code) (Phone No.)	
C PROPOSED TRAVEL PLANS (Not Mandatory)					
PURPOSE OF TRIP	MEANS OF TRANSPORTATION			COUNTRIES TO BE VISITED	
PROPOSED LENGTH OF STAY	Sea Air Other				
	Departure <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>				
			Return <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>		
NO. OF PREVIOUS TRIPS ABROAD WITHIN LAST 12 MONTHS			DO YOU EXPECT TO TAKE ANOTHER TRIP ABROAD?		
			<input type="checkbox"/> Yes <input type="checkbox"/> No IF SO, WITHIN <input type="checkbox"/> 1 year <input type="checkbox"/> 2 years <input type="checkbox"/> 5 years		
D I have not since acquiring United States citizenship, been naturalized as a citizen of a foreign state; taken an oath, or made an affirmation or other formal declaration of allegiance to a foreign state; entered or served in the armed forces of a foreign state; accepted or performed the duties of any office, post, or employment under the Government of a foreign state or political subdivision thereof; made a formal renunciation of nationality either in the United States or before a diplomatic or consular officer of the United States in a foreign state; ever sought or claimed the benefits of the nationality of any foreign state; or been convicted by a court or court martial of competent jurisdiction of committing any act of treason against, or attempting by force to overthrow, or bearing arms against the United States, or conspiring to overthrow, put down or to destroy by force, the Government of the United States.					
(If any of the above-mentioned acts or conditions have been performed by or apply to the applicant, the portion which applies should be struck out, and a supplementary explanatory statement should be attached, signed and made a part of this application.)					
<p style="text-align: center;">DO NOT ATTACH PHOTOGRAPHS</p> <p>See detailed requirements for photographs in paragraph 2 on reverse. This application will not be accepted if the photographs do not meet the requirements, were not taken within the past 6 months, or are not a likeness of or do not identify the applicant.</p>			<p>WARNING: False statements made knowingly and willfully in passport applications or affidavits or other supporting documents are punishable by fine and/or imprisonment under the provisions of 18 USC 1001 and/or 18 USC 1542. The alteration or mutilation of a passport issued pursuant to this application is punishable by fine and/or imprisonment under 18 USC 1543. The use of a passport in violation of the restrictions therein is punishable by fine and/or imprisonment under 18 USC 1544.</p> <p style="text-align: center;">DECLARATION</p> <p>I declare that the statements made in this application are true and complete to the best of my knowledge and belief, that the attached photographs are a true likeness of me, and that I have not been issued or included in a passport issued subsequent to the one submitted herein.</p>		
			(Date) _____ (Signature of applicant) _____		
(PASSPORT OFFICE USE ONLY)					

DO NOT PUT IT OFF
APPLY NOW

PLEASE TYPE OR PRINT CLEARLY IN INK
(Pencil is not acceptable)

AVOID THE LAST
MINUTE RUSH

DEPARTMENT OF STATE
APPLICATION FOR PASSPORT BY MAIL

Your most recent passport issued within the past eight years, two signed photographs and the fee of \$10 MUST accompany this application.

(PASSPORT OFFICE USE ONLY)

Endorsement _____

(First name) (Middle name) (Last name)

I, _____
a citizen of the United States, do hereby apply to the Department of State for a passport.

MAIL PASSPORT TO:

IN CARE OF (if applicable) _____
STREET _____
CITY _____ STATE _____ ZIP CODE _____
PHONE NOS. Area Code: _____ Home: _____ Business: _____

SEX (M-F) _____ PLACE OF BIRTH (City, State or Province, Country) _____ DATE OF BIRTH
Month _____ Day _____ Year _____

HEIGHT _____ FT. _____ IN. COLOR OF HAIR (Spell out) _____ COLOR OF EYES (Spell out) _____ DATE OF DEPARTURE _____

VISIBLE DISTINGUISHING MARKS _____ OCCUPATION _____

EVIDENCE OF NAME CHANGE

Type _____
Date _____
Place _____

B MOST RECENT PASSPORT ISSUED WITHIN PAST 8 YEARS MUST BE ATTACHED

No. _____ Issue Date _____

SOCIAL SECURITY NUMBER (Not Mandatory) _____

MY PERMANENT RESIDENCE (Street Address, City, State, ZIP Code) _____

COUNTY OF RESIDENCE (Not Mandatory) _____

IF YOU WERE BORN ABROAD, WERE YOUR PARENTS U.S. CITIZENS AT THE TIME OF YOUR BIRTH?

FATHER: Yes No
MOTHER: Yes No

IN THE EVENT OF ACCIDENT OR DEATH NOTIFY (Not Mandatory) (Do not show name of a person who will accompany you when traveling)
(Name in full) (Relationship) (Street address, City, State, ZIP Code) (Phone No.)

C PROPOSED TRAVEL PLANS (Not Mandatory)

PURPOSE OF TRIP	MEANS OF TRANSPORTATION			COUNTRIES TO BE VISITED
	Sea	Air	Other	
PROPOSED LENGTH OF STAY	Departure	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Return	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
NO. OF PREVIOUS TRIPS ABROAD WITHIN LAST 12 MONTHS	DO YOU EXPECT TO TAKE ANOTHER TRIP ABROAD?			
	<input type="checkbox"/> Yes <input type="checkbox"/> No	IF SO, WITHIN <input type="checkbox"/> 1 year <input type="checkbox"/> 2 years <input type="checkbox"/> 5 years		

D I have not since acquiring United States citizenship, been naturalized as a citizen of a foreign state; taken an oath, or made an affirmation or other formal declaration of allegiance to a foreign state; entered or served in the armed forces of a foreign state; accepted or performed the duties of any office, post, or employment under the Government of a foreign state or political subdivision thereof; made a formal renunciation of nationality either in the United States or before a diplomatic or consular officer of the United States in a foreign state; ever sought or claimed the benefits of the nationality of any foreign state; or been convicted by a court or court martial of competent jurisdiction of committing any act of treason against, or attempting by force to overthrow, or bearing arms against the United States, or conspiring to overthrow, put down or to destroy by force, the Government of the United States.

(If any of the above-mentioned acts or conditions have been performed by or apply to the applicant, the portion which applies should be struck out, and a supplementary explanatory statement should be attached, signed and made a part of this application.)

DO NOT ATTACH PHOTOGRAPHS

See detailed requirements for photographs in paragraph 2 on reverse. This application will not be accepted if the photographs do not meet the requirements, were not taken within the past 6 months, or are not a likeness of or do not identify the applicant. Sign the photographs on the front along the left-hand margin.

WARNING: False statements made knowingly and willfully in passport applications or affidavits or other supporting documents are punishable by fine and/or imprisonment under the provisions of 18 USC 1001 and/or 18 USC 1542. The alteration or mutilation of a passport issued pursuant to this application is punishable by fine and/or imprisonment under 18 USC 1543. The use of a passport in violation of the restrictions therein is punishable by fine and/or imprisonment under 18 USC 1544.

DECLARATION

I declare that the statements made in this application are true and complete to the best of my knowledge and belief, that the attached photographs are a true likeness of me, and that I have not been issued or included in a passport issued subsequent to the one submitted herein.

(Date) _____

(Signature of applicant) _____

(PASSPORT OFFICE USE ONLY)

FORM 10-76 DSP-82

PLEASE RECHECK THE APPLICATION AND ENCLOSURES BEFORE MAILING. INCOMPLETE OR IMPROPERLY PREPARED APPLICATIONS WILL BE RETURNED THUS CAUSING DELAY IN THE ISSUANCE OF YOUR PASSPORT.

FORM APPROVED O.M.B. NO. 47-R0172

UNCLASSIFIED

1 of 2

UNCLASSIFIED

PAGE 01 STATE 267726
ORIGIN PPTE-00

INFO OCT-01 CA-01 ISO-00 /002 R

DRAFTED BY PPT/FE :IMKANTER :MTW
APPROVED BY PPT/F :FGRANDO
PT/L - JODOWD
PT/FC - GSCANLAN

-----010031 090013Z /66

O 082302Z NOV 77
FM SECSTATE WASHDC
TO AMEMBASSY SEOUL IMMEDIATE

UNCLAS STATE 267726

PASSPORT

E.O. 11652: N/A

TAGS: CPAS

SUBJECT: CITIZENSHIP AND PASSPORT MATTERS

REF : TELCON RINI - KANTER NOVEMBER 8

1. PLEASE PASS FOLLOWING INFORMATION PROMPTLY TO MR. JAY RINI, PASSPORT OFFICE REPRESENTATIVE CONSULAR CONFERENCE.

2. GENDER WILL BE SHOWN ON NEW FORM APPLICATIONS. THE REVISED FS-176 AND 176S WILL BE DISTRIBUTED ALL POSTS IN TIME FOR NEW YEAR.

3. NAME CHANGE :AMEMBASSY TOKYO'S MEMO NOT REPEAT NOT RECEIVED BY PT/AOC OR PT/L. UNDER HAWAIIAN LAW CHANGE OF NAME HANDLED BY LT. GOVERNOR. USUALLY DONE IN ABOUT ONE WEEK. WHEN NAME LEGALLY CHANGED PASSPORT CANNOT BE DENIED EXCEPT UNDER PROVISIONS OF 22 CFR 51.70(B)4.

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PAGE 02 STATE 267726

THIS APPEARS UNLIKELY UNDER FACTS PRESENTLY KNOWN. IF REPATRIATION LOAN GIVEN NEW PASSPORT WOULD NOT BE ISSUED UNTIL LOAN REPAID.

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4. CHILD CUSTODY :A PASSPORT MUST BE ISSUED TO A CHILD IN A CASE IN WHICH ONE PARENT APPLIES FOR A PASSPORT ABROAD

EVEN THOUGH THERE IS A DOMESTIC COURT ORDER AWARDING CUSTODY TO THE OTHER PARENT. THIS STEMS FROM THE DEPARTMENT'S POLICY OF NOT ALLOWING UNITED STATES CITIZEN'S TO REMAIN UNDOCUMENTED WHILE TRAVELLING OR LIVING ABROAD. IN ADDITION, FAILURE TO ISSUE IN SUCH CASES WOULD NOT INSURE THE RETURN OF THE CHILD TO THE UNITED STATES AND MAY CREATE PROBLEMS FOR THE CHILD WITH THE HOST GOVERNMENT (E.G. DETENTION OR ARREST FOR LACK OF DOCUMENTATION). HOWEVER, A PASSPORT SHOULD NOT BE ISSUED TO A NONCUSTODIAL PARENT IN A CASE IN WHICH THERE IS A COURT ORDER FROM THE COUNTRY WHERE THE POST IS LOCATED.

5. REVISION 8FAM 261.12, PROCEDURES :STUDY REGISTRATION PROCEDURES CONTINUING. POSSIBLY 261.12 WILL BE REVISED AS RESULT. SECTION REMAINS IN EFFECT UNTIL FURTHER NOTICE. VANCE

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2 of 2

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1 of 4

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PAGE 01 STATE 305744
ORIGIN PPTE-00

INFO OCT-01 CA-01 ISO-00 AF-10 /012 R

DRAFTED BY PT/FC:GSCANLAN:VNB
APPROVED BY PT/F:FGRANDO
PT/A:EMIL W. KONTAK
PT/L:WILLIAM B. WHARTON
PT:ROBERT E. LAMB

-----000121 230750Z /14

R 230135Z DEC 77
FM SECSTATE WASHDC
TO ALL DIPLOMATIC AND CONSULAR POSTS

UNCLAS STATE 305744

PASSPORT

E.O. 11652: N/A

TAGS: CPAS

SUBJECT: REVISION OF PASSPORT APPLICATION FORM AND PASSPORT
AMENDMENT AND EXTENSION FORM

1. THE PASSPORT APPLICATION FORM (OF-178) AND THE PASSPORT
AMENDMENT AND EXTENSION FORM (OF-195) HAVE BEEN REVISED
EFFECTIVE JANUARY 1978. A SIX MONTH SUPPLY OF THE FORMS
IS BEING SENT TO ALL POSTS AND SHOULD BE PUT INTO USE
AS SOON AS RECEIVED. OLD FORMS SHOULD BE DESTROYED.

2. THE NEW FORMS (A) TAKE ACCOUNT OF THE NEW FORMAT
PASSPORTS; (B) GIVE THE NEW PHOTOGRAPH AND INCLUSION
REQUIREMENTS (C) INCLUDE THE PRIVACY ACT STATEMENT
(D) CONFORM THE FOREIGN APPLICATION FORMS AS MUCH AS
POSSIBLE TO THE DOMESTIC APPLICATION FORMS (E) INCLUDE AS
MUCH INFORMATION AS POSSIBLE ON THE FRONT PAGE TO
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FACILITATE THE FILES MINIATURIZATION PROGRAM NOW IN
PROGRESS IN THE PASSPORT OFFICE.

3. THE NEW PHOTOGRAPH REQUIREMENTS ARE AS FOLLOWS:

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1 of 4

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2 of 4

(A) NUMBER AND RECENCY OF PHOTOGRAPHS REQUIRED. TWO IDENTICAL PHOTOGRAPHS OF THE PASSPORT BEARER PLUS TWO IDENTICAL PHOTOGRAPHS OF ANY INCLUSIONS WHICH HAVE BEEN

TAKEN WITHIN 6 MONTHS OF THE DATE OF THE APPLICATION AND WHICH PORTRAY A GOOD LIKENESS OF AND SATISFACTORILY IDENTIFY THE APPLICANT AND INCLUDED PERSONS SHALL BE PRESENTED WITH THE APPLICATION. PHOTOGRAPHS SHOULD BE TAKEN IN NORMAL STREET ATTIRE, WITHOUT A HAT. DARK GLASSES ARE NOT ACCEPTABLE UNLESS REQUIRED FOR MEDICAL REASONS. ONLY APPLICANTS WHO ARE IN THE ACTIVE SERVICE OF THE ARMED FORCES AND WHO ARE PROCEEDING ABROAD IN THE DISCHARGE OF THEIR DUTIES MAY SUBMIT PHOTOGRAPHS IN THE UNIFORM OF THE ARMED FORCES OF THE UNITED STATES.

(B) PHOTOGRAPHS OF THE PASSPORT BEARER. INDIVIDUAL PHOTOGRAPHS OF THE PASSPORT BEARER ARE REQUIRED AT ALL TIMES. NO JOINT PHOTOGRAPHS OF THE BEARER AND INCLUDED PERSON(S) WILL BE ACCEPTABLE.

1. SIZE. PHOTOGRAPHS SHALL BE 2 X 2 INCHES IN SIZE. THE IMAGE SIZE MEASURED FROM THE BOTTOM OF THE CHIN TO THE TOP OF THE HEAD (INCLUDING HAIR) SHALL BE NOT LESS THAN 1 INCH NOR MORE THAN 1 3/8 INCHES.

2. SIGNATURE. PHOTOGRAPHS MUST BE SIGNED BOTH ON THE FRONT LEFT-HAND SIDE WITHOUT MARRING THE FEATURES AND IN THE CENTER ON THE REVERSE OF THE PHOTOGRAPH. THE SIGNATURE ON THE PHOTOGRAPHS MUST AGREE WITH THE UNCLASSIFIED

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SIGNATURE OF THE APPICATION.

(C) PHOTOGRAPHS OF INCLUSIONS. WHEN A WIFE/HUSBAND AND/OR CHILDREN ARE TO BE INCLUDED IN THE PASSPORT, TWO ADDITIONAL PHOTOGRAPHS SHALL BE SUBMITTED SHOWING ONLY THE INCLUSION(S). WHEN MORE THAN ONE PERSON IS TO BE INCLUDED, A GROUP PHOTOGRAPH OF THE INCLUSIONS IS REQUIRED.

1. SIZE. PHOTOGRAPHS SHALL BE 2 X 2 INCHES IN SIZE. WHEN ONE PERSON IS TO BE INCLUDED, THE IMAGE SIZE MEASURED FROM THE BOTTOM OF THE CHIN TO THE TOP OF THE HEAD (INCLUDING HAIR) SHALL BE NOT LESS THAN 1 INCH NOR MORE THAN 1 3/8 INCHES. WHEN MORE THAN ONE PERSON IS TO BE INCLUDED, THE IMAGES SHOULD BE OF SUFFICIENT SIZE FOR

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IDENTIFICATION PURPOSES.

2. SIGNATURE. PHOTOGRAPHS OF INCLUSIONS MUST BE SIGNED BY THE PASSPORT APPLICANT (BEARER) ON THE REVERSE OF THE PHOTOGRAPH.

D. PHOTOGRAPHS MAY BE IN COLOR OR IN BLACK AND WHITE. PASSPORT PHOTOGRAPHS ARE ACCEPTABLE IN BLACK AND WHITE OR IN COLOR. PHOTOGRAPHS RETOUCHE TO A POINT WHERE THE APPLICANT'S APPEARANCE IS CHANGED ARE UNACCEPTABLE. HOWEVER, THOSE RETOUCHE MERELY TO ELIMINATE SHADOWS AND LINES ARE ACCEPTABLE.

E. QUALITY OF PHOTOGRAPHS. WE WELCOME PHOTOGRAPHS WHICH DEPICT THE APPLICANT AS RELAXED AND SMILING. PHOTOGRAPHS SHALL BE CLEAR, FRONT VIEW, FULL FACE AND SHALL BE PRINTED ON THIN, NON-GLOSSY PAPER WITH A LIGHT, PLAIN BACKGROUND. PRINTS SHALL BE CAPABLE OF WITHSTANDING A MOUNTING TEMPERATURE OF UP TO 225 DEGREES FAHRENHEIT (107 DEGREES CELSIUS) FOR 30 SECONDS. MOST VENDING MACHINE PRINTS WILL NOT WITHSTAND THE MOUNTING TEMPERA-
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TURE AND THEREFORE ARE NOT ACCEPTABLE. ALSO, MAGAZINE OR FULL LENGTH PHOTOGRAPHS ARE NOT ACCEPTABLE.

4. POSTS SHOULD REPRODUCE THE PHOTOGRAPH REQUIREMENTS AND DISTRIBUTE THEM WITH PASSPORT APPLICATION FORMS. AS OF JANUARY 1, 1978 PERSONS REQUESTING INFORMATION ABOUT PASSPORT PHOTOGRAPHS SHOULD BE ADVISED OF THE NEW REQUIREMENTS ONLY. HOWEVER, IN ORDER TO AVOID INCONVENIENCE TO APPLICANTS, PROPERLY COMPLETED APPLICATIONS REFLECTING THE PREVIOUS PHOTOGRAPH REQUIREMENTS MAY BE ACCEPTED UNTIL JULY 1, 1978. AS OF JULY 1 ONLY APPLICATIONS MEETING THE NEW REQUIREMENTS ARE ACCEPTABLE.

5. THE REQUIREMENTS CONCERNING PERSONS WHO MAY BE INCLUDED IN A PASSPORT APPLICATION HAVE ALSO BEEN CHANGED. THE NEW REQUIREMENTS ARE AS FOLLOWS: A WIFE OR HUSBAND WHO IS TO BE INCLUDED IN THE PASSPORT MUST APPEAR IN PERSON WITH THE APPLICANT AND ALSO SIGN THE APPLICATION. UNMARRIED CHILDREN UNDER 13 YEARS OF AGE WHO ARE TO BE INCLUDED IN THE APPLICATION ARE NOT REQUIRED TO APPEAR IN PERSON. AN UNMARRIED PERSON WHO HAS ATTAINED THE AGE OF 13 YEARS AS OPPOSED TO 18 UNDER THE OLD REQUIREMENTS, MUST OBTAIN A PASSPORT IN HIS OR

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HER OWN NAME. A PERSON INCLUDED IN THE PASSPORT OF ANOTHER MAY NOT USE THE PASSPORT FOR TRAVEL UNLESS ACCOMPANIED BY THE BEARER. THE PROHIBITION AGAINST INCLUSION OF A CHILD 13 YEARS OLD OR OVER IS EFFECTIVE JANUARY 1, 1978. ALL APPLICANTS SHOULD BE ADVISED OF IT. HOWEVER, TO AVOID INCONVENIENCE TO APPLICANTS, PROPERLY COMPLETED APPLICATIONS INCLUDING MINORS OVER AGE 13 MAY BE ACCEPTED BUT ONLY UNTIL JULY 1, 1978.

6. ALL POSTS SHOULD PUT THE NEW FORMS INTO USE WHEN UNCLASSIFIED

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THEY ARE RECEIVED. 8 FAM WILL BE REVISED TO REFLECT THESE CHANGES. VANCE

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United States Department of State
Washington, D.C. 20520
October 1, 1992

Passport Bulletin 92- 22

TO CA/PPT All Regional Directors
All Office Directors
All Passport Services Staff

FROM CA/PPT - Carmen A. DiPlacido
Acting Deputy Assistant Secretary
Passport Services

SUBJECT Procedures for Handling Requests for a Change of Gender in Passports

REFERENCE Instruction 2510.9F
Instruction 3120.2D
Instruction 3120.3C

SUMMARY

This bulletin provides a more detailed explanation of Passport Services' policy, and the procedures adjudicators are to follow, in cases where an applicant requests a different gender on the passport application from that on the applicant's citizenship evidence. It expands upon the previous information given to adjudicators as contained in current Instruction 2510.9F entitled "Names to be Written in Passports". It emphasizes the need for complete and detailed documentation regarding the change in gender; as well as the need for accurate identification and photographs reflecting the applicant's current appearance.

Because of the need for further medical guidance concerning certain aspects of this subject, a new and separate Instruction cannot be issued at this time. However, with the forthcoming publication of new Instruction 2105 regarding names, which does not contain any mention of gender disorder issues, it was believed essential to provide adjudicators with a uniform set of procedures to be followed in these types of cases.

PROCEDURES

A. Documents to be submitted with an application:

- (1) Evidence of U.S. citizenship
- (2) Evidence of Identity.

(3) Photographs. Two recent and identical photographs reflecting a good likeness of, and satisfactorily identifying, the applicant. The adjudicator should not, in any instance, require photographs to conform to a preconceived "male" or "female" appearance. However, the photographs should agree with the submitted identification evidence and reflect the applicant's current and true appearance.

(4) Fee.

(5) Medical Documentation.

(a) "Preoperative" Applicant. In the case of a preoperative transsexual, submitted documentation should be, at the very least, in the form of a detailed statement from the attending medical physician or surgeon outlining the applicant's past medical history relating to the gender disorder, such as past psychological and hormonal treatment, the treatment stage the applicant currently is in, and the approximate date of the sexual reassignment surgery.

(b) "Postoperative" Applicant. In the case of a postoperative transsexual, submitted documentation should be in the form of appropriate medical documentation from either the attending surgeon or hospital evidencing that the sexual reassignment surgery has taken place.

(6) Name change. While some applicants may not have a name different from that on the citizenship evidence, most do. Adjudication of the name change should be handled as a routine request, and conform to the requirements listed in Section 3A of Instruction 2105 for change of name by court order, or in Section 5 of the Attachment to Instruction 2105 for a change of name without the benefit of a court order.

B. Validity of passport to be issued:

(1) Limited Validity. A one year limited validity passport reflecting a different gender from the citizenship evidence provided may be issued for a preoperative transsexual, if the applicant is immediately enroute to his or her gender reassign-surgery and upon presentation of acceptable medical documentation as listed in Section A (5) (a) above.

(2) Full Validity. A full validity passport reflecting a different gender from the citizenship evidence provided may be issued for a postoperative transsexual upon presentation of acceptable medical documentation as listed in Section A(5)(b) above.

Any further questions regarding the acceptability of submitted evidence in such cases should be referred to the Office of Citizenship Appeals and Legal Assistance, PPT/C. The office telephone is (202) 326-6168/6178.

DISTRIBUTION:

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PAGE 01 STATE 090654 261018Z
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E.O. 12356: N/A
TAGS: CPAS
SUBJECT: CHANGE OF GENDER IN PASSPORTS
REF: GENEVA 02375

1. DEPARMMENT POLICY IN SUCH CASES IS THAT A LIMITED ONE YEAR VALIDITY PASSPORT REFLECTING A DIFFERENT GENDER FROM THE CITIZENSHIP EVIDENCE SUBMITTED MAY BE ISSUED TO A PREOPERATIVE TRANSSEXUAL IF THE APPLICANT IS IMMEDIATELY ENROUTE TO HIS OR HER GENDER REASSIGNMENT SURGERY; AND, UPON PRESENTATION OF ACCEPTABLE MEDICAL DOCUMENTATION. THIS DOCUMENTATION MUST BE, AT THE VERY LEAST, IN THE FORM OF A DETAILED STATEMENT FROM THE ATTENDING MEDICAL PHYSICIAN OR SURGEON OUTLINING THE APPLICANT'S PAST MEDICAL HISTORY RELATING TO THE GENDER DISORDER, (SUCH AS PAST PSYCHOLOGICAL AND HORMONAL TREATMENT), HE TREATMENT STAGE THE APPLICANT CURRENTLY IS IN, AND THE APPROXIMATE DATE OF THE SEXUAL REASSIGNMENT SURGERY.

2. IN THE CASE OF A POSTOPERATIVE TRANSSEXUAL, A FULL VALIDITY PASSPORT MAY BE ISSUED, (OR A LIMITED PASSPORT ISSUED FOR A PREOPERATIVE TRANSSEXUAL MAY BE EXTENDED TO FULL VALIDITY), IF DOCUMENTATION FROM EITHER THE ATTENDING SURGEON OR HOSPITAL IS SUBMITTED EVIDENCING THAT THE SEXUAL REASSIGNMENT SURGERY HAS TAKEN PLACE.

3. LAST YEAR, THE DEPARTMENT CHANGED ITS POLICY CONCERNING PHOTOGRAPH REQUIREMENTS FOR PREOPERATIVE TRANSSEXUALS. PHOTOGRAPHS ARE NO LONGER REQUIRED TO CONFORM TO A PRECONCEIVED QUOTE MALE UNQUOTE OR QUOTE FEMALE UNQUOTE APPEARANCE. HOWEVER, THE PHOTOGRAPHS SHOULD AGREE WITH THE SUBMITTED IDENTIFICATION EVIDENCE AND REFLECT THE APPLICANT'S CURRENT AND TRUE APPEARANCE.

4. REFTEL ALSO REQUESTED INFORMATION CONCERNING STATE LAWS/PROCEDURES IN GENDER CHANGE CASES AS TO THE AMENDMENT OF BIRTH CERTIFICATES, WILLS, ETC. THE DEPARTMENT HAS NO INFORMATION CONCERNING INDIVIDUAL STATE LAWS REGARDING THIS ISSUE. PERSONS REQUESTING THIS INFORMATION SHOULD BE REFERRED TO THE PERTINENT STATE INVOLVED FOR FURTHER GUIDANCE.

5. IF POST HAS ANY FURTHER QUESTIONS CONCERNING ISSUE, PLEASE REFER THEM TO DEPARTMENT, ATTN: CA/PPT/C. CHRISTOPHER

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United States Department of State

Deputy Assistant Secretary
for Overseas Citizen Services

Washington, D.C. 20520

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May 14, 2010

ACTION MEMO FOR ASSISTANT SECRETARY JACOBS – CA

FROM: CA/OCS – Michele Thoren Bond

SUBJECT: 7 FAM 1300 Appendix M – Gender Change

Recommendation:

That you approve publication of 7 FAM 1300 Appendix M Gender Change.

Approve MX 5/14/2010 Disapprove _____

Background:

The attached 7 FAM 1300 Appendix M provides new policy guidance for CA regarding gender change in a U.S. Passport or Consular Report of Birth Abroad (CRBA). Specifically, upon presentation of a certification, done under penalty of perjury, from the attending medical physician (internist, endocrinologist, gynecologist, urologist or psychiatrist) that the applicant has had appropriate clinical treatment for gender transition, the passport or CRBA can be written or amended in the new gender.

The physician's certification must include the physician's name, address, phone number, medical license or certificate number, state of issuance, DEA registration number, and a statement that the physician has a doctor-patient relationship with the applicant. A full-validity passport in the new gender will be issued on the basis of this certification. The physician's statement may also state that the patient is in the process of gender transition, which will result in issuance of a two-year limited validity passport in the new gender.

The new policy and procedures in the Appendix are based on standards and recommendations of the World Professional Association for Transgender Health (WPATH), recognized as the authority in this field by the American Medical Association. The FAM Appendix has been cleared by PPT, OCS, FPP, L/CA, M/MED and reviewed by the OIG.

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We believe that the Appendix addresses the concerns raised by Ambassador Guest and the Council for Global Equality. While we will not create a new form for change of gender, we provided an exhibit with model language to be used by the attending physician. The passport applicant may indicate the new gender on the passport application itself.

L/CA discussed the Appendix with Jim Thessin, who recommended that CA inform Under Secretary Kennedy of the change but did not believe a formal Department clearance was required. The Appendix will be published Unclassified on both the Internet and Intranet.

Media Note

Office of the Spokesman
Washington, DC
June 9, 2010

The U.S. Department of State is pleased to use the occasion of Lesbian, Gay, Bisexual, Transgender Pride Month to announce its new policy guidelines regarding gender change in passports and Consular Reports of Birth Abroad.

Beginning June 10, when a passport applicant presents a certification from an attending medical physician that the applicant has undergone appropriate clinical treatment for gender transition, the passport will reflect the new gender. The guidelines include detailed information about what information the certification must include. It is also possible to obtain a limited-validity passport if the physician's statement shows the applicant is in the process of gender transition. No additional medical records are required. Sexual reassignment surgery is no longer a prerequisite for passport issuance. A Consular Report of Birth Abroad can also be amended with the new gender.

As with all passport applicants, passport issuing officers at embassies and consulates abroad and domestic passport agencies and centers will only ask appropriate questions to obtain information necessary to determine citizenship and identity.

The new policy and procedures are based on standards and recommendations of the World Professional Association for Transgender Health (WPATH), recognized by the American Medical Association as the authority in this field.

PRN: 2010/766

7 FAM 1300 APPENDIX M GENDER CHANGE

(CT:CON-334; 06-10-2010)
(Office of Origin: CA/OCS/PRI)

7 FAM 1310 APPENDIX M SUMMARY

(CT:CON-334; 06-10-2010)

- a. This appendix provides policy and procedure that passport specialists and consular officers must follow in cases in which an applicant requests a gender on the passport application different from the one reflected on some or all of the submitted citizenship and/or identity evidence, including a prior passport.
- b. This policy explains the need for medical certification from an attending medical physician regarding the change in gender, as well as the need for accurate identification and a photograph reflecting the applicant's current appearance. It is based on standards and recommendations of the World Professional Association for Transgender Health (WPATH), recognized as the authority in the field by the American Medical Association.
- c. A passport is defined by INA 101(a)(30) (Immigration and Nationality Act) (8 U.S.C. 1101(a)(30)) as "any travel document issued by competent authority showing the bearer's origin, identity, and nationality if any, which is valid for the entry of the bearer into a foreign country." An individual's gender is an integral part of that person's identity.
- d. Sexual reassignment surgery is not a prerequisite for passport issuance and such documentation must not be requested.
- e. Medical certification of gender transition from an attending medical physician as described in 7 FAM 1320 Appendix M is the only documentation of gender change required. Other medical records are not to be requested. If a passport adjudicating officer or consular officer has questions about this guidance or a particular case, see 7 FAM 1380 Appendix M.

7 FAM 1320 APPENDIX M DOCUMENTS TO BE SUBMITTED WITH PASSPORT APPLICATION

(CT:CON-334; 06-10-2010)

a. Requirements for all elements of the passport application aside from gender still apply, including:

- (1) Evidence of U.S. citizenship/nationality. The applicant must submit acceptable evidence of U.S. citizenship or nationality. (See 7 FAM 1100 Acquisition and Retention of U.S. Citizenship and Nationality.) It is not necessary, however, for the applicant to obtain an amended birth record reflecting the change of gender. State law in the United States and the laws of other countries vary on whether an amended birth certificate may be issued reflecting a gender change;
- (2) Evidence of identity. The applicant must be asked to submit acceptable evidence of identity in the new gender, if available, and must submit evidence of the new name, if changed. (See 7 FAM 1320.) State law and foreign laws vary as to whether a driver's license or other State government form of identity document may be issued reflecting a gender change. If evidence of change of gender in the identity documents is not obtainable because of state or local requirements, the passport may still be issued in the new gender based on the medical certification outlined below in paragraph b(1)(f).
- (3) Photograph. A recent photograph that reflects a good likeness of, and satisfactorily identifies the applicant must be submitted. The photograph must agree with the submitted identification evidence and reflect the applicant's current and true appearance. (See also 7 FAM 1300 Appendix E Passport Photographs.)
- (4) Passport Fee. All necessary passport fees must be submitted. (See 7 FAM 1300 Appendix G Passport Fees.)
- (5) Name Change. If the applicant's name has been changed, he/she must present satisfactory evidence of a legal name change. Adjudication of the name change must be handled as a routine request and conform to the requirements of 7 FAM 1300 Appendix C Names to Be Used in Passports.

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b. Medical Certification.

(1) A full validity U.S. passport will be issued reflecting a new gender upon presentation of the following: A signed original statement, on office letterhead, from the attending medical physician (internist, endocrinologist, gynecologist, urologist or psychiatrist). The statement must include the following information (See 7 FAM 1320 Appendix M Exhibit B):

- (a) Physician's full name;
- (b) Medical license or certificate number;
- (c) Issuing state or other jurisdiction of medical license/certificate;
- (d) Drug Enforcement Administration (DEA) registration number assigned to the physician;

NOTE: If the attending physician does not have or provide a DEA number, the passport application is to be suspended for further clarification or verification of the physician's bona fides. Physicians in foreign countries, for example, would not have a DEA number.

- (e) Address and telephone number of the physician;
- (f) Language stating that he/she is the attending physician for the applicant and that he/she has a doctor/patient relationship with the applicant;
- (g) Language stating the applicant has had appropriate clinical treatment for gender transition to the new gender (male or female);
- (h) Language stating "I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct": and
- (i) Annotate the application "gender transition" to record the reason for issuing the full validity passport in the new gender.

NOTE: Passport adjudicators and consular officers must not ask for additional medical information from the

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applicant.

- (2) A two year limited validity passport reflecting the new gender will be issued upon presentation of the following:
- (a) Information listed in paragraph 1(a)-(h) above;
 - (b) Language stating the applicant is in the process of gender transition to the new gender (male or female); and
 - (c) Use endorsement code 46 for domestic and Overseas Photodigitized Passports (OPDP) issuance. Annotate the application "gender transition" to record the reason for the limited validity book in the new gender.

Endorsement Code 46: THIS PASSPORT EXPIRES ON (MON DAY, YEAR). IT CANNOT BE REPLACED WITHOUT THE EXPRESS AUTHORIZATION OF THE DEPARTMENT OF STATE.

- (3) If overseas, and an Emergency Photodigitized Passport (EPDP) must be issued so that the applicant can travel, the passport must be limited to three months using endorsement code 109. Annotate the application "gender transition" to record the reason for the limited validity book in the new gender.

Endorsement Code 109: THIS PASSPORT EXPIRES ON (mon day, year). IT CANNOT BE REPLACED WITHOUT THE EXPRESS AUTHORIZATION OF THE DEPARTMENT OF STATE.

- (4) The applicant will receive a passport for the remaining full validity period without further fee, (except for expedited service), if:
- (a) He/she applies for the new passport within two years of issuance using form DS-5504, Application for a U.S. Passport (Name Change, Data Correction and Limited Passport Book Replacement);
 - (b) Meets the requirements of (1) or (2) above. ; and
 - (c) Use Endorsement Code 3 for domestic and OPDP passports.

Endorsement Code 3: THIS PASSPORT REPLACES (REGULAR/OFFICIAL/ DIPLOMATIC) PASSPORT NUMBER (NUMBER) ISSUED ON (MON DAY, YEAR).

IT IS VALID UNTIL (MON DAY, YEAR).

To replace a passport canceled in error, spoiled or defective book, or a passport containing a data error. Limit to expiration date of original passport.

- c. If the applicant has not submitted the requested medical certification, use the appropriate Information Request Letter (IRL) in corresponding with the passport applicant. (See also 7 FAM 1320 Appendix M Exhibit A, Information Request Letter Regarding Gender Change.) (See 7 FAM 1300 Appendix T for general guidance about IRLs.)

7 FAM 1330 APPENDIX M CONVERSATIONS WITH PASSPORT APPLICANTS SEEKING TO DOCUMENT GENDER TRANSITION

(CT:CON-334; 06-10-2010)

- a. As with all passport applicants, you must be sensitive and respectful at all times.
- b. Refer to the applicant by the pronoun appropriate to his/her new gender.
- c. Ask only appropriate questions regarding information necessary to determine citizenship and identity of the applicant.

7 FAM 1340 APPENDIX M AMENDING GENDER IN REPORTS OF BIRTH

(CT:CON-334; 06-10-2010)

The Form FS-240, Consular Report of Birth Abroad of Citizen of the United States of America, can be amended by the Vital Records Section of Passport Services (CA/PPT/TO/RS/VR) to reflect the change in gender. The same documentary requirements specified above for passport services would pertain to amending gender in a Form FS-240. (See 7 FAM 1440, Consular Report of Birth Abroad of a Citizen of the United States of America.) Inquirers should be directed to Passport Vital Records.

Contact ...

U.S. Department of State
Passport Services
Vital Records Section
1111 19th Street, NW, Suite 510
Washington, DC 20522-1705
(202) 955-0307

7 FAM 1350 APPENDIX M CASES OF UNSPECIFIED GENDER

(CT:CON-334; 06-10-2010)

“Intersex” is a group of conditions where there is a discrepancy between the internal and external genitals (previously this was referred to as hermaphroditism). Unless the applicant has undergone gender transition as outlined in this appendix, the gender listed on the applicant’s birth documentation will determine the gender to be listed in the passport.

7 FAM 1360 APPENDIX M GENDER ERRORS IN ORIGINAL BIRTH CERTIFICATE

(CT:CON-334; 06-10-2010)

If an applicant advises that the gender on his/her birth document mistakenly lists the wrong gender due to typographical error, refer the applicant to the appropriate issuing vital records office.

7 FAM 1370 APPENDIX M QUESTIONS

(CT:CON-334; 06-10-2010)

- a. Passport agencies and centers should contact CA-PPT-ADJQ@state.gov for specific guidance.
- b. U.S. embassies and consulates should contact ASKPRI@state.gov for specific guidance.

7 FAM 1380 THROUGH 1390 APPENDIX M UNASSIGNED

7 FAM 1320 APPENDIX M EXHIBIT A INFORMATION REQUEST LETTER TO APPLICANTS REGARDING GENDER CHANGE

(CT:CON-334; 06-10-2010)

Dear [Name of subject]:

Thank you for your recent passport application. We need your help in order to continue processing your request for the issuance of a passport reflecting a gender different from the one reflected on some or all of the submitted citizenship and/or identity evidence.

A full validity passport reflecting the new gender will be issued to you upon submission of a signed original statement, on office letterhead, from your attending medical physician (internist, endocrinologist, gynecologist or urologist, psychiatrist). The statement, signed under penalty of perjury, must include the following information:

- (a) Physician's full name;
- (b) Medical license/certificate number;
- (c) Issuing state of medical license/certificate;
- (d) Drug Enforcement Administration (DEA) registration number assigned to the physician;
- (e) Address and telephone number of the physician;
- (f) Language stating that he/she is the attending physician for the applicant. He/she has a doctor/patient relationship with the applicant; and
- (g) Language stating that the applicant has had appropriate clinical treatment for gender transition to the new gender (male or female).

If your gender transition process is ongoing, a two year limited validity passport reflecting the new gender will be issued upon submission of the items above and a statement from your attending physician that you are in

the process of gender transition.

If we do not receive the requested information within ninety (90) days or the information you submit is insufficient to establish your gender transition, your passport will be issued in your birth gender. If you prefer you may withdraw your application. By law, passport fees are not refundable. Any special return postage will be returned or refunded.

Sincerely,

[Signature]

[Name]

[Title]

[Name of Passport Issuing Office]

7 FAM 1320 APPENDIX M EXHIBIT B MODEL LETTER FOR ATTENDING PHYSICIAN CERTIFYING TO THE APPLICANT'S GENDER CHANGE

(ET:CON 334; 06-10-2010)

**Attending Physician's Letterhead
(Physician's Address and Telephone Number)**

I, (physician's full name), (physician's medical license or certificate number), (issuing state of medical license/certificate), (DEA Registration number), am the attending physician of (name of patient), with whom I have a doctor/patient relationship. (The letter must indicate that the physician is either an internist, endocrinologist, gynecologist, urologist or psychiatrist.)

(Name of patient) has had appropriate clinical treatment for gender transition to the new gender (specify new gender male or female).

Or

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(Name of patient) is in the process of gender transition to the new gender (specify new gender male or female).

I declare under penalty of perjury under the laws of the United States that the forgoing is true and correct.

Signature of Physician

Type Name of Physician

Date

ARCHIVE COPY

From: Mara Keisling [<mailto:mkeisling@transequality.org>]
Sent: Monday, August 30, 2010 5:31 PM
To: Conway, Barry J
Cc: mike@globalequality.org; Shannon Minter; mark bromley; lmottet@thetaskforce.org; Julie Dorf; Harper Jean Tobin
Subject:

Mr. Conway,

We deeply appreciate the actions taken by the State Department on June 10 to update passport policies so as better to serve transgender citizens' needs for safe foreign travel and accurate identification documents. Both our organizations and those whose interests we represent are grateful for this effort to ensure that the passport needs of all U.S. citizens are respected and met.

Since these policies were introduced, we have spoken with a range of transgender citizens, doctors, mental health providers, and lawyers who advise transgender clients to discuss and explain the changes that were made. In these discussions, it has become clear that several difficulties have already arisen in the implementation of the new policies. For reasons of both clarity and effectiveness, we have framed a set of modest recommended changes to the Foreign Affairs Manual. These recommendations are attached.

We know that the nuances of transgender and intersex issues are not always evident or easily understood. For that reason, we would be pleased to meet or speak by conference call with you and your team to follow up on these recommendations. We also would be happy to provide additional documentation, as needed.

Again, we are grateful for the Department's actions to date and hope that you will find the attached recommendations useful in your mission to ensure fast, user-friendly customer service.

Mara Keisling
Executive Director, National Center for Transgender Equality

On behalf of

Council for Global Equality
National Center for Lesbian Rights
National Center for Transgender Equality
National Gay & Lesbian Task Force

Attachment:
As stated.

Recommendations Regarding Gender- and Intersex-Related Revisions to FAM

Expanded List of Medical Specialists Permitted to Certify Gender Transition

The FAM lists only five types of medical specialists authorized to certify gender transition: psychiatrists, gynecologists, urologists, endocrinologists and internists. This limited list fails to capture many, even most providers who commonly provide and/or oversee transition-related care. Internationally recognized standards of care for the medical treatment of transgender people include a range of other providers, including therapists, surgeons, pediatricians and family practitioners. Failure to include these and other care providers has caused confusion among those with whom we have held discussions and would disadvantage some transgender citizens who do not have contacts with the limited range of specialists currently identified in the FAM.

Recommendation: That certification be accepted from any licensed physician or licensed mental health provider who has treated or evaluated the applicant and provides a statement certifying that relationship under penalty of perjury, along with his/her professional license number.

Clarifications to the Term “Attending Physicians”

Given that the FAM is a public document, we would appreciate an appropriate clarification of the term “attending physician,” as used by the State Department in passport adjudications. This term is not commonly used or understood in the context of transition-related care for transgender people. Of note, many people apply for a passport years after they transition and no longer are in contact with any of the professionals who may have coordinated their care during transition.

Recommendation: That the relevant section of the FAM clarify or replacing the term “attending physician” for the benefit of transgender citizens and providers who consult the FAM in the passport application process.

Accurate Elaboration of Intersex Conditions

Several issues related to the FAM’s treatment of intersex conditions bear revision or elaboration:

Title: The section title “Cases of Unspecified Gender” is misleading and inaccurate: it is exceedingly rare that anyone has an officially “unspecified gender,” which implies that no gender was specified on one’s birth documentation or other records. Using commonly accepted medical terminology should enable people with intersex conditions to recognize the policy section that is relevant to them.

Recommendation: That this section be renamed “Intersex Conditions (Disorders of Sex Development)” for the above reasons.

Definition: The new policy states that “‘Intersex’ is a group of conditions where there is a discrepancy between the internal and external genitals (previously referred to as hermaphroditism).” This definition is inaccurate as there are many Disorders of Sex Development that do not necessarily involve a discrepancy between internal and external genitals.

Recommendation: That the FAM’s definition of “intersex,” as noted above, be revised to note that “‘Intersex’ is a condition in which a person is born with a reproductive or sexual anatomy and/or chromosomal pattern that does not fit typical definitions of male or female.” This definition is used by Advocates for Informed Choice (AIC), an organization that specializes in public education and advocacy on behalf of intersex people.

Treatment Standards: The new policy requires a person with an intersex condition to meet exactly the same standard as a transgender person—that is, to submit proof of “treatment for gender transition.” That requirement does not make medical sense, however, because many people with intersex conditions do not undergo “gender transitions.” Rather, they may not have been identified with the correct gender on their birth certificates due to an error of medical diagnosis, and a correct gender assignment may have been made months or years later, in childhood, adolescence, or adulthood. Birth documentation often is not updated to reflect the corrected gender, for logistical, geographical or financial reasons, or due to refusal of state authorities to make relevant changes. Moreover, medical treatment may not have been required in this process, and when it is required, medical providers do not typically refer to that treatment as “gender transition,” which is a term used only in reference to transgender people. It is important that federal policies accurately track medical practice in this area.

Recommendation: That the Intersex section reproduce the documentary requirements set out in section b of 7 FAM 1320 Appendix M, with the following changes:

- Replace the current language in b(1)(g) with the following: “Language stating that the applicant has an intersex condition or disorder of sex development, and that the correct gender designation should be (male or female);
- Replace the term “new gender” with “corrected gender”; and,
- Replace the term “gender transition” with “gender correction.”

On behalf of

Council for Global Equality

National Center for Lesbian Rights

National Center for Transgender Equality

National Gay & Lesbian Task Force

UNCLASSIFIED

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- Revises the subsection entitled “Cases of Unspecified Gender” to read “Intersex Conditions” and revise text as recommended by the NGOs; and
- Clarifies documentary evidence from foreign licensed physicians who do not have a DEA number.

We also took the opportunity to clarify some of the procedural language for passport agencies and centers and consular officers. If you approve, we will share our changes with the NGO contacts just prior to publication to give them the opportunity to review the revisions.

Attachments:

Tab 1 – 7 FAM 1300 Appendix M Draft Revision

Tab 2 – NGO Recommendations Regarding 7 FAM 1300 Appendix M

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7 FAM 1300 APPENDIX M GENDER CHANGE

(CT:CON-351; 01-20-2011)
(Office of Origin: CA/OCS/PRI)

7 FAM 1310 APPENDIX M SUMMARY

(CT:CON-351; 01-20-2011)

- a. This appendix provides policy and procedures that passport specialists and consular officers must follow in cases in which an applicant requests a gender on the passport application different from the one reflected on some or all of the submitted citizenship and/or identity evidence, including a prior passport.
- b. This policy explains the need for medical certification from a *licensed physician who has treated the applicant or reviewed and evaluated the medical history of the applicant* regarding the change in gender, as well as the need for accurate identification and a photograph reflecting the applicant's current appearance. It is based on standards and recommendations of the World Professional Association for Transgender Health (WPATH), recognized as the authority in this field by the American Medical Association.
- c. A passport is defined by INA 101(a)(30) (Immigration and Nationality Act) (50 U.S.C. 1171(a)(30)) as "any travel document issued by competent authority showing the bearer's origin, identity, and nationality if any, which is valid for the entry of the bearer into a foreign country." An individual's gender is an integral part of that person's identity.
- d. Sexual reassignment surgery is not a prerequisite for passport issuance.
- e. Medical certification of gender transition from a *licensed physician* as described in 7 FAM 1320 Appendix M is the only documentation of gender change required. Other medical records are not to be requested. If a passport *specialist* or consular officer has questions about this guidance or a particular case, see 7 FAM 1370 Appendix M.

7 FAM 1320 APPENDIX M DOCUMENTS TO BE SUBMITTED WITH PASSPORT APPLICATION

(CT:CON-351; 01-20-2011)

- a. Requirements for all elements of the passport application aside from gender still apply, including:
- (1) **Evidence of U.S. citizenship/nationality.** The applicant must submit acceptable evidence of U.S. citizenship or nationality. (See 7 FAM 1100 Acquisition and Retention of U.S. Citizenship and Nationality.) It is not necessary, however, for the applicant to obtain an amended birth record reflecting the change of gender. State law in the United States and the laws of other countries vary on whether an amended birth certificate may be issued reflecting a gender change;
 - (2) **Evidence of identity.** The applicant must be asked to submit acceptable evidence of identity in the new gender, if available, and must submit evidence of the new name, if changed. (See 7 FAM 1320.) State law and foreign laws vary as to whether a driver's license or other State government form of identity document may be issued reflecting a gender change. If evidence of change of gender in the identity documents is not obtainable because of state or local requirements, the passport may still be issued in the new gender based on the medical certification outlined below in paragraph b(1)(f);
 - (3) **Photograph.** A recent photograph that reflects a good likeness of, and satisfactorily identifies the applicant must be submitted. The photograph must agree with the submitted identification evidence and reflect the applicant's current and true appearance. (See also 7 FAM 1300 Appendix E Passport Photographs.)
 - (4) **Passport Fee.** All necessary passport fees must be submitted. (See 7 FAM 1300 Appendix G Passport Fees.)
 - (5) **Name Change.** If the applicant's name has been changed, he/she must present satisfactory evidence of a legal name change. Adjudication of the name change must be handled as a routine request and conform to the requirements of 7 FAM 1300 Appendix C, Names to Be Used in Passports.

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b. **Medical Certification Accepted for Gender Change/Transition.**

- (1) A full validity U.S. passport will be issued reflecting a new gender upon presentation of a signed original statement, **on office letterhead**, from a licensed physician who has treated the applicant for his/her gender-related care or reviewed and evaluated the gender-related medical history of the applicant.

Note:

Such licensed physicians include Medical Doctors (M.D.) and Doctors of Osteopathy (D.O.). The physicians may specialize in various medical fields, including, but not limited to, internists, endocrinologists, gynecologists, urologists, surgeons, psychiatrists, pediatricians, and family practitioners.

Statements from persons who are not licensed physicians, such as psychologists, nurse practitioners, health practitioners, chiropractors, are not acceptable.

The statement **must** include the following information (See 7 FAM 1320 Appendix M Exhibit B):

- (a) Physician's full name;
- (b) Medical license or certificate number;
- (c) Issuing state, country, or other jurisdiction of medical license/certificate;
- (d) Drug Enforcement Administration (DEA) registration number assigned to the doctor or comparable foreign registration number, if applicable;

(i) If the U.S.-based licensed physician does not provide a DEA number, you must request that this be provided in a new statement. If the statement with the DEA number is not provided after an appropriate period of time (generally 90 days), the application must be denied.

(ii) Licensed physicians in foreign countries might not have a DEA number, but might have a comparable foreign registration number. Domestic passport agencies/centers

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must scan copies of the application and attach all submitted documents to the Adjudication Policy Division (CA/PPT/A/AP) at CA-PPT-AdjQ@state.gov. CA/PPT/A/AP will work with the Directorate of Overseas Citizens Services' Office of Policy Review and Inter Agency Liaison (CA/OCS/PRI) to verify the bona fides of the foreign physician with the applicable post abroad.

- (iii) *Posts must verify their own foreign-based licensed physicians or, if the statement is from a physician in another country, contact the post which covers that country for verification.*
- (e) Address and telephone number of the physician;
- (f) Language stating that he/she *has treated the applicant or has reviewed and evaluated the medical history of the applicant* and that he/she has a doctor/patient relationship with the applicant;
- (g) Language stating the applicant has had appropriate clinical treatment for gender transition to the new gender *of either male or female, and*
- (h) Language stating "I declare under penalty of perjury under the laws of the United States that the forgoing is true and correct."
- (2) A two year limited validity passport reflecting the new gender will be issued upon presentation of the following:
- (a) Information listed in paragraph 1(a)-(f) above;
- (b) Language stating the applicant is in the process of gender transition to the new gender *of either male or female; and*
- (c) Language stating "I declare under penalty of perjury under the laws of the United States that the forgoing is true and correct."

c. Adjudication Actions.

- (1) *The passport specialist or consular officer will annotate the application "gender change" to record the reason for issuing the full validity passport in the new gender.*

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NOTE: *Passport specialists and consular officers must not ask for additional specific clinical details regarding the gender change from the applicant.*

(2) *The passport specialist or consular officer will annotate the application "gender transition" to record the reason for issuing the limited validity passport in the new gender. When limited passports are issued in these cases:*

(a) *Use endorsement code 46 for domestic and Overseas Photodigitized Passports (OPDP) issuance. Annotate the application "gender transition" to record the reason for the limited validity book in the new gender.*

Endorsement Code 46: THIS PASSPORT EXPIRES ON (MON DAY, YEAR). IT CANNOT BE REPLACED WITHOUT THE EXPRESS AUTHORIZATION OF THE DEPARTMENT OF STATE.

(b) *Use endorsement code 109 in Emergency Photodigitized Passports (EPDPs) for urgent overseas cases where the applicant must travel immediately. Limit the EPDP to three months.*

Endorsement Code 109: THIS PASSPORT EXPIRES ON (mon day, year). IT CANNOT BE REPLACED WITHOUT THE EXPRESS AUTHORIZATION OF THE DEPARTMENT OF STATE.

(3) *An applicant will receive a passport for the remaining full validity period without further fee (except for expedited service), if:*

(a) *He/she applies for the new passport within two years of issuance using Form DS-5504, Application for a U.S. Passport (Name Change, Data Correction, and Limited Passport Book Replacement); and*

(b) *Meets the requirements of 7 FAM 1320 Appendix M paragraph a and 7 FAM 1320 Appendix M paragraph b(1).*

(c) *Use endorsement code 3 and list the expiration date as five (for minors) or ten years from the issuance date of the original, limited validity passport book, minus one day.*

Example (for an adult):

The issuance date of the limited passport is "July 31, 2010."

The issuance date in the new full validity passport will be automatically assigned by TDIS.

However, the issuance date is placed in endorsement code must be that of the original, limited passport "July 31, 2010."

The expiration date listed in the endorsement must be five (for minors) or ten years from the issuance date of the original, limited validity passport book, minus one day.

Endorsement Code: THIS PASSPORT REPLACES (REGULAR/OFFICIAL/ DIPLOMATIC) PASSPORT NUMBER (NUMBER) ISSUED ON (MON DAY, YEAR). IT IS VALID UNTIL (MON DAY, YEAR).

- ARCHIVE COPY**
- (4) *If the applicant has not submitted the requested medical certification, use the appropriate Information Request Letter (IRL) in corresponding with the passport applicant. (See also 7 FAM 1320 Appendix M Exhibit A, Example Letter Regarding Gender Change.) (See 7 FAM 1300 Appendix T for general guidance about IRLs.)*
 - (5) *If, after two years, the applicant applies for a new passport and gender transition has not been completed, the applicant must submit a new physician's statement reflecting that the applicant still is in the process of gender transition. Another two-year validity passport will be issued.*
 - (6) *If an applicant is renewing his/her passport, but is applying for the*

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renewal in a new gender, the applicant must use Form DS-11, and submit medical certification, including all elements previously stated in listed in 7 FAM 1320 Appendix M paragraph b, or birth documentation in the new gender.

- (7) *If an applicant who has been issued a passport in a new gender requests issuance of a passport in the birth gender, a certification under penalty of perjury from a licensed physician who has treated the applicant or reviewed and evaluated the medical history of applicant is required. The statement must include all the elements previously stated in 7 FAM 1320 Appendix M paragraph b.*

7 FAM 1330 APPENDIX M CONVERSATIONS WITH PASSPORT APPLICANTS SEEKING TO DOCUMENT GENDER TRANSITION

(CT:CON-334; 06-10-2010)

- a. As with all passport applicants, you must be sensitive and respectful at all times.
- b. Refer to the applicant by the pronoun appropriate to his/her new gender.
- c. Ask only appropriate questions regarding information necessary to determine citizenship and identity of the applicant.

7 FAM 1340 APPENDIX M AMENDING GENDER IN REPORTS OF BIRTH

(CT:CON-351; 01-20-2011)

The Form FS-240, Consular Report of Birth Abroad of Citizen of the United States of America, can be amended by the Vital Records Section of Passport Services (CA/PPT/TO/RS/VR) to reflect the change in gender. The same documentary requirements specified above for passport services would pertain to amending gender in a Form FS-240. (See 7 FAM 1440, Consular Report of Birth Abroad of a Citizen/*Non-Citizen National* of the United States of America.) Inquirers should be directed to Passport Vital Records.

Contact ...

U.S. Department of State
Passport Services
Vital Records Section
1111 19th Street, NW, Suite 510
Washington, DC 20522-1705
(202) 955-0307

7 FAM 1350 APPENDIX M INTERSEX CONDITIONS (DISORDERS OF SEX DEVELOPMENT)

(CT:CON-351; 01-20-2011)

- a. *"Intersex" is a condition in which a person is born with a reproductive or sexual anatomy and/or chromosomal pattern that does not fit typical definitions of male or female.*
- b. *Birth documentation is often not updated to reflect corrected gender. The applicant must provide a statement from a licensed physician who has treated the applicant for his/her gender-related care or reviewed and evaluated the gender-related medical history of the applicant. The statement must include all the information required in 7 FAM 1320 Appendix M paragraph b(1), adjusting the language to reflect the intersex condition and specify the gender correction to either male or female.*
- c. *Unless the applicant provides the statement described above, the gender listed on his/her birth documentation will determine the gender to be listed in the passport.*

7 FAM 1360 APPENDIX M GENDER ERRORS IN ORIGINAL BIRTH CERTIFICATE

(CT:CON-351; 01-20-2011)

If an applicant advises that the gender on his/her birth document mistakenly lists the wrong gender due to typographical error, refer the applicant to the appropriate issuing vital records office *to have the error corrected.*

7 FAM 1370 APPENDIX M QUESTIONS

(CT:CON-334; 06-10-2010)

- a. Passport agencies and centers should contact CA-PPT-ADJQ@state.gov for specific guidance.
- b. U.S. embassies and consulates should contact ASKPRI@state.gov for specific guidance.

7 FAM 1380 APPENDIX M THROUGH 1390 APPENDIX M UNASSIGNED

7 FAM 1320 APPENDIX M EXHIBIT A INFORMATION REQUEST LETTER TO APPLICANTS REGARDING GENDER CHANGE

(CT:CON-351; 01-20-2011)

Dear [Name of subject]:

Thank you for your recent passport application. We need your help in order to continue processing your request for the issuance of a passport reflecting a gender different from the one reflected on some or all of the submitted citizenship and/or identity evidence.

A full validity passport reflecting the new gender will be issued to you upon submission of a signed original statement, on office letterhead, from your *licensed* physician. The statement, signed under penalty of perjury, must include *all* of the following information:

- (a) Physician's full name;
- (b) Medical license or certificate number;
- (c) Issuing state of medical license/certificate;
- (d) Drug Enforcement Administration (DEA) registration number assigned to the physician *or comparable foreign designation, if applicable*;

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- (e) Address and telephone number of the physician;
- (f) Language stating that he/she *has treated the applicant or reviewed and evaluated the medical history of the applicant*. He/she *also* has a doctor/patient relationship with the applicant;
- (g) Language stating that the applicant has had appropriate clinical treatment for gender transition to the new gender (*specifying male or female*); *and*
- (h) *Language stating "I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct."*

If your gender transition process is ongoing, a two year limited validity passport reflecting the new gender will be issued upon submission of the items above and a statement from your *licensed* physician that you are in the process of gender transition.

If we do not receive the requested information within ninety (90) days or the information you submit is insufficient to establish your gender transition, your passport will be issued in your birth gender. If you prefer you may withdraw your application. By law, passport fees are not refundable. Any special return postage will be returned or refunded.

Sincerely,

[Signature]

[Name]

[Title]

[Name of Passport Issuing Office]

**7 FAM 1320 APPENDIX M EXHIBIT B MODEL
 LETTER FOR LICENSED PHYSICIAN
 CERTIFYING TO THE APPLICANT'S GENDER
 CHANGE**

(CT:CON-351; 01-20-2011)

Licensed Physician's Letterhead (Physician's Address and Telephone Number)

I, (physician's full name), (physician's medical license or certificate number), (issuing *U.S. State/Foreign Country* of medical license/certificate), (DEA Registration number *or comparable foreign designation*), am the physician of (name of patient), with whom I have a doctor/patient relationship *and whom I have treated (or with whom I have a doctor/patient relationship and whose medical history I have reviewed and evaluated)*.

(Name of patient) has had appropriate clinical treatment for gender transition to the new gender (specify new gender male or female).

Or

(Name of patient) is in the process of gender transition to the new gender (specify new gender male or female).

I declare under penalty of perjury under the laws of the United States that the forgoing is true and correct.

Signature of Physician

Typed Name of Physician

Date

ARCHIVE COPY

TO: Brenda S. Sprague, Deputy Assistant Secretary for Passport Services

FROM: Harper Jean Tobin, Director of Policy
National Center for Transgender Equality

DATE: September 9, 2013

RE: **Recommended Revisions to 7 FAM 1300 Appendix M, Gender Change**

We greatly appreciate the State Department's work to adopt and implement a modernized policy for changing listed gender on passports, including making further updates to the policy in 2011, and working with our organizations to troubleshoot implementation issues. Based on our observation and study of community experiences with State's current policy, as well as the experiences of other state and federal agencies, we recommend a number of further updates intended to improve the efficiency and accessibility of the process for changing gender markers. As our knowledge about the needs and lives of transgender people continues to develop, and as federal and state agencies continue to improve their knowledge and experiences in addressing these issues, we believe it important that policies and procedures continue to evolve.

This memorandum summarizes several key aspects of current policy and procedures, and offers suggestions for improvements based on observations of the success of other agency policies, and on direct feedback from the transgender community, in order to recognize and try to ameliorate these issues. Our recommendations are intended to help improve the efficiency, accessibility, and equity of the Department's policy and procedures.

I. Licensed Physician Requirement

The Department should accept certifications from the full range of licensed health care providers who are qualified to assess and provide treatment under the Standards of Care. The Standards of Care repeatedly emphasize that, "For individuals seeking care for gender dysphoria, a variety of therapeutic options can be considered. The number and type of interventions applied and the order in which these take place may differ from person to person."¹ The Standards state qualified mental health providers "are best prepared" to assess and diagnose gender dysphoria,² and that qualified mental health providers can include those with clinical training in "psychology, psychiatry, social work, mental health counseling, marriage and family therapy, nursing, or family medicine with specific training in behavioral health and counseling."³ This same range of qualified mental health providers may provide appropriate clinical treatments including psychotherapy. Other treatments, such as hormone therapy, "can be managed by a variety of providers, including nurse practitioners and primary care physicians."⁴ Licensed non-physician mental health providers are in many cases the primary providers and coordinators of

¹ World Professional Association for Transgender Health, *Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People*, Seventh Edition, 9 (2011), available at <http://www.wpath.org/documents/Standards%20of%20Care%20V7%20-%202011%20WPATH.pdf>.

² *Id.* at 24.

³ *Id.* at 22.

⁴ *Id.* at 41.

care for people undergoing gender transition, and are therefore often the most appropriate professionals to provide certification. Particularly for transgender people of limited means, access to professional assistance and guidance during transition may be limited to clinical social workers accessible to them through free clinics and other community agencies. Transgender people who receive medical care at community clinics are also frequently treated by nurse practitioners or physicians' assistants – who in many states are licensed to prescribe medications – instead of medical doctors.

These licensed healthcare professionals are bound by the same ethical responsibilities as physicians, and should be subject to the same requirements that ensure the integrity of provider certifications of gender change. All healthcare professionals would be required to provide (1) a certification on office letterhead, (2) with their professional license number, (3) signed under penalty of law, (4) stating that the provider has a professional provider/patient relationship with the applicant, and further stating (5) that the provider has treated the applicant or reviewed their relevant medical history, and (6) has determined that the applicants has had appropriate clinical treatment for gender transition. These requirements ensure all certifying providers are professionally and legally accountable for the information they submit and establish an adequate audit trail.

Permitting certifications from licensed non-physician providers is particularly important because many transgender people do not have regular access to a doctor – and those who do often find it much more difficult to discuss transgender-related issues with their doctor than with a mental health provider. A study published last year in the *American Journal of Public Health* found that 40% of transgender Virginians did not have a primary care doctor – and of those who did, 29% were not out to that doctor.⁵ Other studies have also found that as many as 30-40% of transgender people do not have a primary care physician,⁶ and many who do have doctors are not out to their doctor regarding their transgender status.⁷ Because transgender people have disproportionately low incomes,⁸ and rely disproportionately on community clinics,⁹ they are more likely to have access to non-physician medical and mental health providers than to physicians.

⁵ Bradford, J. Reisner, S. L., Honnold, J. A. & Xavier, J. (2012). Experiences of Transgender-Related Discrimination and Implications for Health: Results from the Virginia Transgender Health Initiative Study. *American Journal of Public Health*, Published online ahead of print Nov. 15, 2012, e1-e10; see also XAVIER, J. M., BRADFORD, J., & HONNOLD, J., *THE HEALTH, HEALTH-RELATED NEEDS, AND LIFECOURSE EXPERIENCES OF TRANSGENDER VIRGINIANS*, RICHMOND, VA: VIRGINIA DEPARTMENT OF HEALTH (2007) (presenting additional data from the same survey).

⁶ Kenagy G., Bostwick W. (2005), Health and Social Service Needs of Transgendered People in Chicago. *Int. J. Transgenderism*, 8(2/3):57-66 (28% of sample did not have a doctor); Kenagy, G. P. (2005), The Health and Social Service Needs of Transgender People in Philadelphia, *International Journal of Transgenderism*, 8(2-3):49-56 (38% of sample did not have a doctor); Xavier J, Bobbin M, Singer B, Budd E., A needs assessment of transgendered people of color living in Washington, DC. *International Journal of Transgenderism*, 2005; 8(2/3): 31-47 (40% of sample did not have a doctor).

⁷ GRANT, JM, ET AL., *INJUSTICE AT EVERY TURN: A REPORT OF THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY*, WASHINGTON, DC: NATIONAL CENTER FOR TRANSGENDER EQUALITY AND NATIONAL GAY AND LESBIAN TASK FORCE (2011) (33% of respondents had only come out to a few medical providers, while 21% were out to none);

⁸ *Id.* at 22 (15% of respondents in a national survey reported making under \$10,000 per year, nearly four times the rate of this income category for the general population).

⁹ *Id.* at 73 (28% of respondents relied on community health centers or clinics for primary care; 4% relied on emergency rooms).

At least 16 states currently permit change of a gender designation on a driver's license or state ID based on certification by a licensed non-physician healthcare professional. Many of these states permit any of a range of licensed providers to complete the required certification, including nurse practitioners, physician assistants, psychologists, and clinical social workers — all licensed professions with professional oversight boards and ethical codes. According to our research (summarized in Appendix A):

- At least 16 states and the District of Columbia accept certifications from *psychologists*;
- At least 12 states and the District of Columbia accept certifications from *clinical/psychiatric social workers*;
- At least seven states and the District of Columbia accept certifications from *nurse practitioners*; and,
- At least six states and the District of Columbia accept certifications from *physician assistants*.

Permitting licensed non-physician healthcare providers to complete gender change certifications would better comport with contemporary standards of care and make the process more accessible to transgender people, particularly those who are low-income or live in geographically remote or resource-poor areas. At a minimum, we recommend that the Department accept certifications from independently licensed *physicians, nurse practitioners, physician assistants, psychologists, and clinical/psychiatric social workers*.

II. Provider DEA Registration Number Requirement

While most of the data elements currently required for provider certifications are necessary and appropriate, providers' Drug Enforcement Administration (DEA) registration numbers should not be required. This use of DEA numbers is contrary to their purpose as defined by the DEA, and is sometimes resisted by providers. The legal purpose of DEA numbers is to track the prescription of controlled substances, not to be used to otherwise monitor the activities of physicians. Physicians may be wary of supplying their DEA registration numbers for purposes other than prescribing medications due to fears of drug diversion or putting themselves at risk for possible unauthorized use of their DEA numbers. The requirements for a provider's office letterhead, professional license number, and signature under penalty of law are more than sufficient to prevent fraud and ensure legitimacy.

Nearly every state has procedures for gender change on driver's licenses and birth certificates, and in many states certifications by physicians or other health care providers are accepted as proof of gender change. Yet *no* state requires such certifications, for *either* driver's licenses or birth certificates, to include a DEA registration number. In June 2013, the Social Security Administration updated its gender change policy to mirror the Department's policy in many respects, but decided not to require providers to submit a DEA registration number.¹⁰ The successful use by these state and federal agencies of gender change procedures that do not rely on collecting DEA registration numbers demonstrates that it is feasible and preferable for the Department to eliminate this data requirement for provider certifications.

¹⁰ SSA POMS, RM 10212.200 Changing Numident Data for Reasons other than Name Change, <https://secure.ssa.gov/poms.nsf/lnx/0110212200> (accessed June 20, 2013).

III. Eliminate the Issuance of Provisional Passports for Gender Change

The issuance of provisional passports reflecting gender change is a holdover from the era when the Department required proof surgical treatment to document gender transition. Recognizing that many people needed to use their passports precisely to travel abroad for such surgery, the former policy contained an exception easing the surgical requirement for those cases where an applicant had a date scheduled for surgery.¹¹ Since 2010, however, the Department has recognized that, “The number and type of interventions applied and the order in which these take place may differ from person to person.”¹² Today’s Standards of Care recognize that what is appropriate treatment for one patient may not be for another; and that a specific, tailored course of treatment may be appropriate for a patient at one point in time, even though additional treatment might be appropriate at a later time. Accordingly, the Department does not require or seek evidence of any specific form or extent of treatment, leaving the determination of appropriate treatment instead to providers and patients. In this context, we have found that distinguishing between individuals who “have had appropriate clinical treatment” and those who “are in the process of gender transition” is more confusing than helpful.

In our experience, this two-tiered approach has tended to be confusing for applicants, health care providers, and passport agents alike. Because of the two-tiered approach, many applicants, providers, and agents mistakenly believe that there is still a surgical requirement to obtain a full ten-year passport with the correct gender. In some cases, we have found that providers, attempting to divine the meaning of this bifurcated system, refuse to write letters stating that an applicant has had appropriate clinical treatment for gender transition if there is a possibility that the individual will need additional treatment, including surgery, in the future. While many providers understand the current policy better now than they did in 2010, confusion still exists. The distinction between two different forms of required language also makes the policy more difficult to understand for passport agents who only see applications involving gender changes occasionally. Finally, the need to reapply after just two years creates an unnecessary paperwork burden on both passport-holders and the government.

We are aware of no other federal agency, or any state vital records agency, and only a handful of state motor vehicle agencies that use this type of bifurcated approach. The experience of other agencies indicates that this bifurcation is unnecessary, and in our experience it is burdensome and confusing. We recommend that the Department simply issue full validity ten-year passports based on certification that an individual has had appropriate clinical treatment for gender transition, or on other documentary evidence as discussed below.

¹¹ Carmen A. DiPlacido, Acting Deputy Assistant Secretary, Passport Services, Memo to All Regional Directors, Office Directors, and Passport Services Staff, “Procedures for Handling Requests for a Change of Gender in Passports” (Oct. 1, 1992).

¹² World Professional Association for Transgender Health, *Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People*, Seventh Edition, 9 (2011), available at <http://www.wpath.org/documents/Standards%20of%20Care%20V7%20-%202011%20WPATH.pdf>.

IV. Alternative Forms of Acceptable Evidence

Other federal and state agencies routinely accept other forms of state or federal identification as an alternative to a provider certification of gender change. This simplifies the process of updating multiple documents by limiting the number of times an individual must provide a provider certification. While other agencies have standards similar to, or stricter than, the Department's requirements for provider certifications, minor technical differences in agency policies or gaps in time may mean that individuals would otherwise be required to make multiple efforts to obtain provider certifications for different agencies.

Among federal agencies:

- U.S. Citizenship and Immigration Services will accept a provider certification similar to that required by the State Department, or alternatively will accept an *amended birth certificate, passport, or court order* recognizing the new gender.¹³
- The Office of Personnel Management will accept a *passport* or any *otherwise acceptable evidence of identity* reflecting the new gender as an alternative to a provider certification.¹⁴
- The Veterans Health Administration will accept an *amendment birth certificate, court order, or passport* in lieu of a provider certification.¹⁵
- The Social Security Administration will accept a state-issued *birth certificate or court order* recognizing the new gender in lieu of a provider certification.¹⁶

The Department's policy on gender change has been revised several times since 2010, and at times has permitted amended birth records showing the new gender as an alternative form of evidence of gender change. Currently, the FAM states that an amended birth certificate is not acceptable evidence of gender change, and a provider certification is the only acceptable form of evidence. The Department should revise the current policy to accept government-issued documents recognizing the new gender as an alternative form of acceptable evidence of gender change, including, at a minimum, amended birth certificates, court orders, and naturalization certificates. This approach is readily administrable, proven, and saves effort for individuals and the agency in cases where adequate documentation already exists.

¹³ U.S. Citizenship and Immigration Services (USCIS), Adjudicator's Field Manual, Ch. 10.22 Document Issuance Involving Status and Identity for Transgender Individuals (Amended 8/10/2012; PM-602-0061.1. Added 4/10/2012; PM-602-0061. AD12-02), available at <http://www.uscis.gov/ilink/docView/AFM/HTML/AFM/0-0-0-1/Chapter10-22.html>.

¹⁴ The Guide to Personnel Recordkeeping, Office of Personnel Management, June 1, 2011 available at http://www.opm.gov/feddata/Ch4_ReconstructPersonnelFolder.pdf.

¹⁵ Veterans Health Administration Directive 2013-003, Providing Healthcare for Transgender and Intersex Veterans (Feb. 8, 2013), available at http://www1.va.gov/vhapublications/ViewPublication.asp?pub_ID=2863.

¹⁶ SSA POMS, RM 10212.200 Changing Numident Data for Reasons other than Name Change, <https://secure.ssa.gov/poms.nsf/lnx/0110212200> (accessed June 20, 2013).

V. Renewal by Mail

Submitting an application involving gender change can be a source of tremendous anxiety for transgender people. Most transgender people have had many experiences of being harassed, ridiculed, abused, or discriminated against because of their transgender status – in fact, more than one in four report having been the victim of bias-related physical assault at some point in their lives.¹⁷ Transgender people are acutely aware of a history of discrimination by government officials, and nearly one in three respondents (32%) in the National Transgender Discrimination Survey reported having had at least one experience of being harassed, disrespected, or treated unequally by a government official.¹⁸ Notwithstanding the Department's laudable efforts to train personnel and address problematic incidents, transgender people have good reason to be apprehensive about insensitive treatment by passport agents, security staff, or other customers at passport acceptance facilities. For these reasons, a renewal-by-mail option would provide significant relief for many passport-holders who are making a gender transition.

Several federal and state agencies routinely process requests for gender change on identifying documents and records by mail. US Citizenship and Immigration Services generally permits applications for a replacement employment authorization document (EAD) reflecting a gender change to be submitted by mail in the same manner as a name change. The Social Security Administration also permits gender changes to SSA records to be processed by mail using the standard Application for a Social Security Card. To the best of our knowledge, no state vital records agency requires gender change applicants to be made in person. These state and federal practices demonstrate that for a wide range of identifying documents and records, including photo identification documents, gender change applications can be effectively processed by mail.

In general, the Department permits any individual 16 or older who can submit an undamaged passport issued within the last 15 years to apply for a renewal by mail. The Department does not have any published policy outlining exceptions to this general policy of permitting renewals by mail. The Department's website does state that a passport may cease to be accepted "if your appearance has changed significantly or if you cannot be identified from the photo in your current passport," and gives the examples of "significant facial injury or trauma," "add[ing] or remov[ing] numerous/large facial piercings or tattoos," and "a significant amount of weight loss or gain," as well as gender transition.¹⁹ Unlike the other examples listed here, gender transition typically will not involve or result in a change in facial features so substantial as to make it impossible to identify the individual. Except for the small minority of transgender women who undergo facial feminizing surgery,²⁰ changes in facial appearance are no different from those ordinarily caused by changes in grooming, hairstyle, aging, or modest weight loss or gain that are unrelated to gender transition. Accordingly, there is no reason why the Department

¹⁷ GRANT ET AL., *INJUSTICE AT EVERY TURN*, at 80.

¹⁸ *Id.* at 130-33.

¹⁹ U.S. Dept. of State, "Passport Photo Requirements," http://travel.state.gov/passport/pptphotoreq/pptphotoreq_5333.html (accessed July 19, 2013).

²⁰ Just 17% of transgender women in the National Transgender Discrimination Survey reported having had any form of transition-related facial surgery. Facial surgery for transgender men is even rarer and was not reported in the survey. GRANT ET AL., *INJUSTICE AT EVERY TURN*, at 79.

should not be able to process a renewal by mail for applicants who have made a gender transition, using a new photo submitted with the Form DS-82. Additionally, because gender is not remotely akin to a unique identifier – there are currently only two designations, and about half of passport-holders have each one – the likelihood that gender change applications will be, or even *could* be, used to facilitate fraud is negligible.

VI. Conclusion

We once again thank the Department for their continuing dedication to fairness for transgender passport-holders and look forward to working with you on making further improvements. We believe that the implementation of our suggestions will offer many advantages, and will not only better protect the rights of transgender people, but also increase administrative efficiency by further streamlining the passport application process for transgender Americans. Our detailed recommendations for revising the Foreign Affairs Manual section on gender change are presented in Appendix B.

APPENDIX A
**STATES PERMITTING CERTIFICATION OF GENDER CHANGE BY NON-
 PHYSICIAN LICENSED HEALTHCARE PROFESSIONALS**

State	Licensed professionals who may certify gender change	Source
Alaska	<ul style="list-style-type: none"> • Physician • Social worker • Psychologist • Professional counselor • Physician assistant • Nurse practitioner 	Alaska DMV Form 427, Certification for Change of Sex Designation on Driver License or Identification Card, http://doa.alaska.gov/dmv/forms/pdfs/427.pdf
California	<ul style="list-style-type: none"> • Physician • Psychologist 	Form DL-329, Medical Certification and Authorization (Gender Change), http://www.dmv.ca.gov/forms/dl/dl329.pdf
Delaware	<ul style="list-style-type: none"> • Physician • Therapist/counselor • Social worker 	Form MV2020 - Request for Gender Change on Driver License/ Identification Card. http://www.dmv.de.gov/forms/driver_serv_forms/pdfs/gender_change_request_form.pdf
District of Columbia	<ul style="list-style-type: none"> • Physician • Therapist/counselor • Social worker • Other medical or social service provider 	Gender Designation form, http://dmv.dc.gov/sites/default/files/dc/sites/dmv/publication/attachments/Gender_Change_Policies.pdf
Hawaii	<ul style="list-style-type: none"> • Physician • Nurse practitioner • Physician assistant • Psychologist • Social worker • Licensed counselor • Marriage and family therapist 	Gender Designation Form, http://acluhawaii.files.wordpress.com/2012/07/gender-designation-form2.pdf
Maine	<ul style="list-style-type: none"> • Physician • Therapist/counselor • Social worker • Other medical or social service provider 	Gender Designation Form, http://www.maine.gov/sos/bmv/licenses/GENDER%20DESIGNATION%20FORM.pdf
Massachusetts	<ul style="list-style-type: none"> • Physician • Therapist/counselor • Psychiatric social worker 	Gender Designation Change Form, http://www.massrmv.com/rmv/forms/21816.pdf
New Jersey	<ul style="list-style-type: none"> • Physician • Therapist/counselor • Social worker • Other medical or social service provider 	Declaration of Gender Designation Change Form, http://www.state.nj.us/mvc/pdf/Licenses/genderchange.pdf

New Mexico	<ul style="list-style-type: none"> • Physician • Therapist/counselor • Psychiatric social worker • Other medical or social service provider 	Form MVD 10237, Gender Designation Change Request, http://www.mvd.newmexico.gov/SiteCollectionDocuments/assets/Mvd10237.pdf
New York	<ul style="list-style-type: none"> • Physician • Psychologist 	http://nysdmv.custhelp.com/app/answers/detail/a_id/405
Ohio	<ul style="list-style-type: none"> • Physician • Psychologist/licensed therapist 	Form BMV 2369, Declaration of Gender Change
Oregon	<ul style="list-style-type: none"> • Physician • Licensed psychologist/therapist 	Oregon Driver License Procedure Manual, Ch. 18-05, Change of Sex
Pennsylvania	<ul style="list-style-type: none"> • Physician • Licensed therapist/counselor • Social worker 	Form DL-32, Request for Gender Change on Driver's License/ Identification Card, http://www.dmv.state.pa.us/pdotforms/dl_forms/DL-32.pdf
Rhode Island	<ul style="list-style-type: none"> • Physician • Licensed therapist/counselor • Social worker 	Gender Designation Form, http://www.dmv.ri.gov/documents/forms/license/gender_designation.pdf
Vermont	<ul style="list-style-type: none"> • Physician • Psychologist 	http://dmv.vermont.gov/sites/dmv/files/pdf/DMV-Change_of_Gender.pdf
Virginia	<ul style="list-style-type: none"> • Physician • Nurse practitioner • Psychologist • Social worker • Professional counselor 	Form DL 17, Gender Change Request, http://www.dmv.state.va.us/webdoc/pdf/dl17.pdf
Washington State	<ul style="list-style-type: none"> • Physician • Psychologist • Professional counselor • Physician assistant • Nurse practitioner 	Form DR-500-043, Change of Gender Designation Request, http://www.dol.wa.gov/forms/500043.pdf

**APPENDIX B
RECOMMENDED REVISIONS TO
FOREIGN AFFAIRS MANUAL**

7 FAM 1300 APPENDIX M

GENDER CHANGE

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(Office of Origin: CA/OCS/L)

7 FAM 1310 APPENDIX M SUMMARY

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a. This appendix provides policy and procedures that passport specialists and consular officers must follow in cases in which an applicant requests a gender on the passport application different from the one reflected on some or all of the submitted citizenship and/or identity evidence, including a prior passport. b. This policy explains the need for medical certification from a licensed ~~physician~~ healthcare provider who has treated the applicant or reviewed and evaluated the medical history of the applicant regarding the change in gender, as well as the need for accurate identification and a photograph reflecting the applicant's current appearance. It is based on standards and recommendations of the World Professional Association for Transgender Health (WPATH), recognized as the authority in this field by the American Medical Association (AMA).

c. A passport is defined by INA 101(a)(30) (Immigration and Nationality Act) (8 U.S.C. 1101(a)(30)) as "any travel document issued by competent authority showing the bearer's origin, identity, and nationality if any, which is valid for the entry of the bearer into a foreign country." An individual's gender is an integral part of that person's identity.

d. Sexual reassignment surgery is not a prerequisite for passport issuance based on gender change.

e. Medical certification of gender transition from a licensed ~~physician~~ healthcare provider as described in 7 FAM 1320 Appendix M is the only documentation of gender change required. Other medical records are not to be requested. If a passport specialist or consular officer has questions about this guidance or a particular case, see 7 FAM 1370 Appendix M.

f. A DS-11 "Application for U.S. Passport" must be used initially as a change in gender is a change in the identity and the name of the applicant and identification in the new gender is required.

**7 FAM 1320 APPENDIX M DOCUMENTS TO BE SUBMITTED WITH FORM DS-11
PASSPORT APPLICATION**

[]

a. Requirements for all elements of the Form DS-11 passport application aside from gender still apply, including:

(1) Evidence of U.S. citizenship/nationality. The applicant must submit acceptable evidence of U.S. citizenship or nationality. (See 7 FAM 1100 "Acquisition and Retention of U.S. Citizenship and Nationality".) The applicant is not required to obtain an amended birth record, amended Consular Report of Birth (CRBA), or to request that the U.S. Citizenship and Immigration Services (USCIS) issue a replacement Certificate of Naturalization/Citizenship reflecting the change of gender. State law in the United States and the laws of other countries vary on whether an amended birth certificate may be issued reflecting a gender change;

(2) Evidence of identity. As with all applications, the applicant must be asked to submit acceptable evidence of identity in the new gender and name, if available. (See 7 FAM 1320 "Identity of the Passport Applicant".) However, state law and foreign laws vary as to whether a driver's license or other State government form of identity document may be issued reflecting a gender change. If evidence of change of gender in the identity documents is not obtainable because of state or local requirements, the passport may still be issued in the new gender based on the combination of medical certification outlined below in paragraph b(1)(f) and the previous identity document with the former gender;

NOTE: Some form of photographic identification must be presented; you cannot use the doctor's statement as the only evidence to identify an applicant.

(3) Photograph. A recent photograph that reflects a good likeness of the applicant, and satisfactorily identifies the applicant must be submitted. The photograph must agree with the submitted identification evidence and reflect the applicant's current and true appearance (see also 7 FAM 1300 Appendix E "Passport Photographs");

(4) Passport Fee. All necessary passport fees must be submitted (see 7 FAM 1300 Appendix G "Passport Fees");

(5) Name Change. If the applicant's name has been changed, either by court order or through exclusive use for five years, he/she must present satisfactory evidence of the legal name change. Adjudication of the name change must be handled as a routine request and conform to the requirements of 7 FAM 1300 Appendix C "Names to Be Used in Passports".

b. Medical Certification Accepted for Gender Change/Transition.

(1) A full validity U.S. passport will be issued reflecting a new gender upon presentation of a signed original statement, on office letterhead, from a licensed physician healthcare provider who has treated the applicant for his/her gender-related care or reviewed and evaluated the gender-related medical history of the applicant.

NOTE: Such licensed physicians healthcare providers include physicians (Medical Doctors (M.D.) and Doctors of Osteopathy (D.O.)), nurse practitioners, physician assistants, psychologists, and clinical/psychiatric social workers. The physicians may specialize in various medical fields, including, but not limited to, internists, endocrinologists, gynecologists, urologists, surgeons, psychiatrists, pediatricians, and family practitioners.

Statements from persons who are not licensed physicians healthcare professionals as listed above, such as psychologists, nurse practitioners, unlicensed counselors or health practitioners, chiropractors, and pharmacists, are not acceptable.

The statement must include the following information (See 7 FAM 1300

Appendix M Exhibit 1):

- (a) Physician's Healthcare provider's full name;
- (b) Medical license or certificate number;
- (c) Issuing state, country, or other jurisdiction of medical license/certificate;
- (d) Drug Enforcement Administration (DEA) registration number assigned to the doctor or comparable foreign registration number, if applicable;
- (i) If the U.S. based licensed physician does not provide a DEA number, you must request that this be provided in a new statement. If the statement with the DEA number is not provided after an appropriate period of time (generally 90 days), the application must be denied.
- (ii) Licensed physicians in foreign countries might not have a DEA number, but might have a comparable foreign registration number. For all foreign licensed physician gender change requests, domestic passport agencies/centers must scan copies of the application and attach all submitted documents to Passport Services' Adjudication Policy Division (CA/PPT/S/A/AP) at CA-PPT-Suggestion-Box@state.gov. CA/PPT/S/A/AP works with the Overseas Citizens Services' Office of Legal Affairs (CA/OCS/L) to verify the bona fides of the foreign physician with the applicable post abroad.

~~(iii) Posts must verify their own foreign-based licensed physicians or, if the statement is from a physician in another country, contact the post which covers that country for verification.~~

~~(e) Address and telephone number of the physician/healthcare provider;~~

~~(f) Language stating that he/she has treated the applicant or has reviewed and evaluated the medical history of the applicant and that he/she has a doctor/provider/patient relationship with the applicant;~~

~~(g) Language stating the applicant has had appropriate clinical treatment for gender transition to the new gender of either male or female; and~~

~~(h) Language stating "I declare under penalty of perjury under the laws of the United States that the forgoing is true and correct."~~

~~(2) A two-year limited validity passport reflecting the new gender will be issued upon presentation of the following:~~

~~(a) Information listed in paragraph 1(a)-(f) above;~~

~~(b) Language stating the applicant is in the process of gender transition to the new gender of either male or female; and~~

~~(c) Language stating "I declare under penalty of perjury under the laws of the United States that the forgoing is true and correct."~~

c. Adjudication Actions.

(1) The passport specialist or consular officer will annotate the application "gender change" (in the "For Issuing Office Only" block of the DS-11) to record the reason for issuing the full validity passport in the new gender.

NOTE: Passport specialists and consular officers must not ask for additional specific clinical details regarding the gender change from the applicant.

~~(2) The passport specialist or consular officer will annotate the application "gender transition" (in the "For Issuing Office Only" block of the DS-11) to record the reason for issuing the limited validity passport in the new gender. When limited passports are issued in these cases:~~

~~(a) Use endorsement code 46 for domestic and Overseas Photodigitized Passports (OPDP) issuance. Annotate the application "gender transition" to record the reason for the limited validity book in the new gender. (See 7 FAM 1300 Appendix B "Endorsements" for appropriate code.)~~

(b) Use endorsement code 109 in Emergency Photodigitized Passports (EPDPs) for urgent overseas cases where the applicant must travel immediately. Limit the EPDP to three months. (See 7 FAM 1300 Appendix B for appropriate code.)

(3) An applicant will receive a passport for the remaining full validity period without further fee (except for expedited service), if:

(a) He/she applies for the new passport within two years of issuance using Form DS 5504, Application for a U.S. Passport (Name Change, Data Correction, and Limited Passport Book Replacement); and

(b) Meets the requirements of 7 FAM 1320 Appendix M paragraph a and 7 FAM 1320 Appendix M paragraph b(1).

(c) You must use endorsement code 3 (see 7 FAM 1300 Appendix B for appropriate code) in all gender change replacement books.

Example (for an adult):

The issuance date of the limited passport is "July 31, 2010." The issuance date in the new full validity passport will be automatically assigned by TDIS.

However, the issuance date in endorsement code must be that of the original, limited passport "July 31, 2010."

The expiration date listed in the endorsement must be ten years from the issuance date of the original, limited validity passport book, minus one day "July 30, 2020".

(4) If the applicant has not submitted the requested medical certification, use the appropriate letter (or similar language for overseas posts) available in Information Request Letter (IRL) 706 in corresponding with the passport applicant. (See 7 FAM 1300 Appendix T "Information Request Letters and Information Notices".)

(5) If, after two years, the applicant applies for a new passport and gender transition has not been completed, the applicant must submit a new physician's statement, following the same information and licensure requirements in 7 FAM 1320 Appendix M, paragraph b (1) above, reflecting that the applicant still is in the process of gender transition. Another two year validity passport will be issued.

(6) If an applicant is renewing his/her passport, but is applying for the renewal in a new gender, the applicant ~~must~~ may use Form DS-1182, and submit medical certification, including all elements previously stated in listed in 7 FAM 1320 Appendix M paragraph b. An amended birth certificate or naturalization certificate in the new gender, or a court

order recognizing the new gender, is ~~not~~ acceptable alternative evidence to issue the passport in the new gender.

(7) If an applicant who already has been issued a passport in a new gender requests issuance of a passport in the birth gender, a certification under penalty of perjury from a licensed physician-healthcare provider who has treated the applicant or reviewed and evaluated the medical history of applicant for transition back to the birth gender, is required. The statement must include all the elements previously stated in 7 FAM 1320 Appendix M paragraph b(1).

**7 FAM 1330 APPENDIX M CONVERSATIONS WITH PASSPORT APPLICANTS
SEEKING TO DOCUMENT GENDER TRANSITION**

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- a. As with all passport applicants, you must be sensitive and respectful at all times.
- b. Refer to the applicant by the pronoun appropriate to his/her new gender.
- c. Ask only appropriate questions regarding information necessary to determine citizenship and identity of the applicant.

7 FAM 1340 APPENDIX M AMENDING GENDER IN REPORTS OF BIRTH

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The Form FS-240, Consular Report of Birth Abroad of Citizen of the United States of America, can be amended by the Vital Records Section of Passport Services (CA/PPT/S/TO/RS/VR) to reflect the change in gender. The same documentary requirements specified above for passport services would pertain to amending gender in a Form FS-240. (See 7 FAM 1440, Consular Report of Birth Abroad of a Citizen/Non-Citizen National of the United States of America.) Inquirers should be directed to Passport Services' Vital Records Section.

Contact ...

U.S. Department of State

Passport Services

Vital Records Section

1111 19th Street, NW, Suite 510

Washington, DC 20522-1705

(202) 955-0307

7 FAM 1350 APPENDIX M INTERSEX CONDITIONS (DISORDERS OF SEX DEVELOPMENT)

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- a. "Intersex" is a condition in which a person is born with a reproductive or sexual anatomy and/or chromosomal pattern that does not fit typical definitions of male or female.
- b. Birth documentation is often not updated to reflect corrected gender. The applicant, or his/her applying parents in the case of a minor child, must provide a statement from a licensed ~~physician~~ healthcare provider who has treated the applicant for his/her gender-related care or reviewed and evaluated the gender-related medical history of the applicant. The statement must include all the information required in 7 FAM 1320 Appendix M paragraph b(1), adjusting the language to reflect the intersex condition and specify the gender correction to either male or female. In the case of a minor child, the applying parent also must submit a signed statement confirming the gender correction to either male or female.
- c. Unless the applicant, or his/her applying parent, provides the statements described above, the gender listed on his/her birth documentation will determine the gender to be listed in the passport.

7 FAM 1360 APPENDIX M GENDER ERRORS IN ORIGINAL BIRTH CERTIFICATE

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- a. If an applicant advises that the gender on his/her birth document mistakenly lists the wrong gender due to typographical error, and there is sufficient time before the listed departure date, refer the applicant to the appropriate issuing vital records office to have the error corrected.
- b. If the departure date is imminent, you may issue a limited one year validity passport using endorsement code 46 (see 7 FAM 1300, Appendix B.) A corrected certified copy of the birth document will be required before issuance of a full validity passport.

7 FAM 1370 APPENDIX M QUESTIONS

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- a. Passport agencies and centers must contact CA-PPT-Adjudication-SuggestionBox@state.gov for specific guidance.
- b. U.S. embassies and consulates must contact Ask-OCS-L@state.gov for specific guidance.

7 FAM 1380 APPENDIX M AND 1390 APPENDIX M UNASSIGNED

7 FAM 1300 Appendix M Exhibit 1

**MODEL LETTER FOR LICENSED PHYSICIAN HEALTHCARE PROVIDER
CERTIFYING TO THE APPLICANT'S GENDER CHANGE**

[]

Licensed Physician's Healthcare Provider's Letterhead

(Physician's Healthcare provider's Address and Telephone Number)

I, (physician's healthcare provider's full name), (physician's healthcare provider's medical professional license or certificate number), (issuing U.S. State/Foreign Country of medical license/certificate), (~~DEA Registration number or comparable foreign designation~~), am a licensed (physician, nurse practitioner, physician assistant, psychologist, or clinical/psychiatric social worker).

I am the physician healthcare provider of (name of patient), with whom I have a ~~doctor~~provider/patient relationship and whom I have treated (or with whom I have a ~~doctor~~provider/patient relationship and whose medical history I have reviewed and evaluated).

(Name of patient) has had appropriate clinical treatment for gender transition to the new gender (specify new gender male or female).

Or

(Name of patient) is in the process of gender transition to the new gender (specify new gender male or female).

I declare under penalty of perjury under the laws of the United States that the forgoing is true and correct.

Signature of Physician Healthcare Provider

Typed Name of Physician Healthcare Provider

Date



United States Department of State

*Deputy Assistant Secretary
of Passport Services for Consular Affairs*

Washington, D.C. 20520

September 27, 2013

Ms. Harper Jean Tobin
Director of Policy
National Center for Transgender Equality
1325 Massachusetts Avenue, N.W., Suite 700
Washington, D.C. 20005

Dear Ms. Tobin:

Thank you for your September 9 memorandum regarding your organization's recommended revisions to the Department's Foreign Affairs Manual (FAM) appendix pertaining to gender change. Your kind comments on the Bureau of Consular Affairs' efforts to make U.S. passport gender change policy contemporary and easy for the community is very much appreciated.

You have provided us with five well researched recommendations, in addition to some specific changes to our current Foreign Affairs Manual appendix on gender change. My staff, along with my colleagues in the Office of Overseas Citizens Services, would like to have some time to study the information you provided and determine the effect your proposed changes would have on our product and business processes. I can assure you we will devote appropriate resources to examine fully the issues you raised.

I appreciate your valuable ideas and input regarding this subject, and look forward to providing you with a decision regarding your recommendations.

Sincerely,

A handwritten signature in cursive script that reads "Brenda S. Sprague".

Brenda S. Sprague



United States Department of State

Washington, D.C. 20520

UNCLASSIFIED

December 30, 2013

ACTION MEMORANDUM FOR DAS SPRAGUE - CA/PPT

FROM: CA/PPT/S – Barry J. Conway

SUBJECT: National Center for Transgender Equality Recommendations to Amend our Gender Change Policy

Recommendation

That you sign the attached letter to Harper Jean Tobin, Director of Policy for the National Center for Transgender Equality (NCTE), responding to her request to amend our current gender change policy.

Approve Brunda 12-30-13 Disapprove _____

Background

On September 9, Ms. Tobin sent you a request to consider five NCTE recommendations to amend our current gender change policy and procedures. On September 27, you sent an interim response to Ms. Tobin stating that PPT and OCS would carefully consider these recommendations and advise her whether we could make any additional changes to our current policy. Subsequently, PPT and OCS representatives met to discuss the NCTE request and determined that we could recommend the adoption of only one of the NCTE recommendations at this time. PPT drafted a response to Ms. Tobin informing her of our conclusions and recommendations regarding amendment of the current gender change policy.

Attachments:

- Tab 1 – Letter to NCTE on Gender Change Policy Amendment
- Tab 2 – DAS letter to NCTE, September 27

UNCLASSIFIED



United States Department of State

*Deputy Assistant Secretary
for Passport Services*

Washington, D.C. 20520

December 30, 2013

Ms. Harper Jean Tobin
Director of Policy
National Center for Transgender Equality
1325 Massachusetts Avenue, N.W., Suite 700
Washington, D.C. 20005

Dear Ms. Tobin:

Thank you again for your September 9 memorandum regarding the National Center for Transgender Equality's (NCTE) suggested revisions to the Department of State's Foreign Affairs Manual (FAM) appendix pertaining to gender change. NCTE's memorandum proposed that the Department make five additional changes to our procedures for applicants applying for a gender change in their U.S. passports. My staff, along with my colleagues in the Office of Overseas Citizens Services, reviewed your information thoughtfully and considered what changes we could make without affecting the integrity of the passport issuance process. We are implementing one of your proposals; however, we could not accept the others. Let me explain our decisions below.

NCTE asked that we expand the certification requirement to permit certifications from psychologists, nurse practitioners, clinical social workers, and physician assistants. Currently, a large majority of the states do not accept certifications from these types of health care providers. Because of this situation, and in order to treat applicants uniformly to similar standards and requirements, we will continue with our existing practice and require certifications from licensed medical physicians, including medical doctors and doctors of osteopathy.

Similarly, we cannot accept alternative documents such as amended birth certificates or court orders in lieu of a licensed physician certification. There are several reasons for this. First, many amended birth certificates do not indicate what information was changed and an amended change (such as a change in a date of birth, place of birth or parents' information) may affect the bearer's entitlement to a U.S. passport or ability to transmit U.S. citizenship derivatively to a child. Additionally, because of the different laws and regulations in place for each state, if we accepted only an amended birth certificate for gender transition purposes or a court order, we would be forced to accept vital records amended by states using evidence the Department would not accept otherwise. Of course, we will continue to accept an amended birth certificate noting gender change with the required physician certification statement.

- 2 -

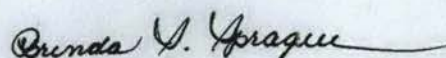
NCTE also requested that we eliminate the need for the physician to provide the DEA registration number. When the Department pioneered our new policy regarding gender change in passports, we thought this information would help us verify a physician's status if needed. Time and experience during the last three years has taught us that, while physicians generally have provided us with their DEA registration number on their patients' gender change certification, we have found that we have been able to verify physicians' status by other means. Therefore, I am pleased to tell you that we plan to stop requiring the DEA registration number and will be taking steps to implement this policy change. The requirement will cease once our FAM appendix on gender change has been revised and published.

NCTE also asks that we eliminate the provisional two year passport for applicants in the process of gender transition. The Department determined that we needed the option of a limited passport for someone undergoing the gender transition process who wanted a U.S. passport to travel in the new gender. While doing away with this requirement might simplify our process, as well as that for the applicant, we believe that the identity component of the passport would be compromised if that individual later decided not to complete the transition process. Gender transitioning applicants have been given a major exception to the normal replacement process by allowing two years (as opposed to one), or more if requested, in which to obtain a full validity passport with appropriate medical certification and without having to pay a new fee. The determination on how long the transition process takes is entirely in the hands of the attending physician and the patient. Once the physician certifies the applicant has had appropriate clinical treatment for transition to the new gender, we will issue an applicant a full validity passport.

Your final suggestion was that we allow gender change applicants to use the form DS-82 "Passport by Mail" when they initially are trying to change their gender. This application was created solely for use by applicants who have had a previous U.S. passport, have proven their identity, and whose biographical information either remains the same, or is limited to a name change. Additionally, if changing his or her name, the applicant must be able to document the name change by one legal document, such as a court order, marriage certificate or divorce decree. We require the use of the DS-11 for individuals who are changing their names and gender identities, because of the transition to a new gender and the need for specific supporting documentation.

Thank you for your recommendations on enhancing the gender change in a U.S. passport process. You provided us with some notable ideas and information. I look forward to a continued productive relationship with your organization.

Sincerely,



Brenda S. Sprague

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7
Consular Affairs

7 FAM 1300 APPENDIX M GENDER CHANGE

(CT:CON-551; 12-12-2014)
(Office of Origin: CA/OCS/L)

7 FAM 1310 APPENDIX M SUMMARY

(CT:CON-541; 11-13-2014)

- a. This appendix provides policy and procedures that passport specialists and consular officers must follow in cases in which an applicant requests a gender on the passport application different from the one reflected on some or all of the submitted citizenship and/or identity evidence, including a prior passport.
- b. This policy explains the need for medical certification from a licensed physician who has treated the applicant or reviewed and evaluated the medical history of the applicant regarding the change in gender, as well as the need for accurate identification and a photograph reflecting the applicant's current appearance. It is based on standards and recommendations of the World Professional Association for Transgender Health (WPATH), recognized as the authority in this field by the American Medical Association (AMA).
- c. A passport is defined by INA 1101(a)(30) (Immigration and Nationality Act) (8 U.S.C. 1101(a)(30)) as "any travel document issued by competent authority showing the bearer's origin, identity, and nationality if any, which is valid for the entry of the bearer into a foreign country." An individual's gender is an integral part of that person's identity.
- d. Sexual reassignment surgery is not a prerequisite for passport issuance based on gender change.
- e. Medical certification of gender transition from a licensed physician as described in 7 FAM 1320 Appendix M is the **only** documentation of gender change required. Other medical records are not to be requested.
- f. A Form DS-11 "Application for U.S. Passport" must be used initially as personal appearance for execution is required. A change in gender is a change in the identity of the applicant, and the identification in the new name and gender must be presented.

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Consular Affairs**7 FAM 1320 APPENDIX M DOCUMENTS TO BE SUBMITTED WITH FORM DS-11 PASSPORT APPLICATION***(CT:CON-541; 11-13-2014)*

a. Requirements for all elements of the Form DS-11 passport application aside from gender still apply, including:

- (1) **Evidence of U.S. citizenship/nationality.** The applicant must submit acceptable evidence of U.S. citizenship or nationality. (See 7 FAM 1100 "Acquisition and Retention of U.S. Citizenship and Nationality.") The applicant is not required to obtain an amended birth record, amended Consular Report of Birth (CRBA), or to request that the U.S. Citizenship and Immigration Services (USCIS) issue a replacement Certificate of Naturalization/Citizenship reflecting the change of gender. State law in the United States and the laws of other countries vary on whether an amended birth certificate may be issued reflecting a gender change.
- (2) **Evidence of identity.** As with all applications, the applicant must be asked to submit acceptable evidence of identity (in the new gender and name, if available. (See 7 FAM 1320 "Identity of the Passport Applicant".) However, state law and foreign law vary as to whether a driver's license or other State government form of ID document may be issued reflecting a gender change. So, the applicant may document her/his identity by submitting any of the following ID documents:
 - (a) Acceptable, for passport purposes, primary ID in the new gender (e.g., state issued driver's license, Certificate of Naturalization/Citizenship);
 - (b) Secondary ID documents (two or more) in the new gender. The U.S. Department of State Bureau of Consular Affairs Internet page provides information and examples of secondary evidence of identification.
 - (c) Acceptable primary ID in the old gender.

NOTE: Some form of photographic identification must be presented; You cannot use the doctor's certification as the only evidence to identify an applicant.

- (3) **Photograph.** A recent photograph that reflects a good likeness of the applicant, and satisfactorily identifies the applicant must be submitted. The photograph must agree with the submitted identification evidence and reflect the applicant's current and true appearance (see also 7 FAM 1300 Appendix E "Passport Photographs");
- (4) **Passport Fee.** All necessary passport fees must be submitted (see 7 FAM 1300 Appendix G "Passport Fees");
- (5) **Name Change.** If the applicant's name has been changed, either by court

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order or through exclusive use for five years, he/she must present satisfactory evidence of the legal name change. Adjudication of the name change must be handled in accordance with requirements contained in 7 FAM 1300 Appendix C "Names to Be Used in Passports".

b. Medical Certification Accepted for Gender Change/Transition That Must be Submitted with the Passport Application.

- (1) A full validity U.S. passport will be issued reflecting a new gender upon presentation of a signed original certification or statement, **on office letterhead**, from a licensed physician who has treated the applicant for his/her gender-related care or reviewed and evaluated the gender-related medical history of the applicant.

NOTE: Such licensed physicians include Medical Doctors (M.D.) and Doctors of Osteopathy (D.O.). (Not to be confused with Doctors of Optometry (O.D.), whose certifications are **not** acceptable. The physicians may specialize in various medical fields, including, but not limited to, internists, endocrinologists, gynecologists, urologists, surgeons, psychiatrists, pediatricians, and family practitioners.

Certifications from persons who are not licensed physicians are **not** acceptable. They include, but are not limited to psychologists, physician assistants, nurse practitioners, health practitioners, licensed vocational nurse; registered nurse, chiropractors, or pharmacists, are not acceptable.

The certification or statement **must** include the following information (See 7 FAM 1300 Appendix M Exhibit 1):

- (a) Licensed physician's full name;
- (b) Medical license or certificate number;
- (i) Licensed physicians in foreign countries must have a comparable foreign license or certificate registration number.
- (ii) For all foreign licensed physician gender change requests, passport agencies/centers must scan copies of the application and attach all submitted documents to Passport Services' Adjudication Policy Division (CA/PPT/S/A/AP) at "CA-PPT-Adjudication-Suggestion-Box". CA/PPT/S/A/AP works with the Overseas Citizens Services' Office of Legal Affairs (CA/OCS/L) to verify the bona fides of the foreign-based licensed physician with the applicable post abroad. CA/PPT/S/A/AP will advise the passport agency/center of the outcome of post's verification as soon as possible.
- (iii) Posts must verify their own foreign-based licensed physicians or, if the statement is from a physician in another country, contact the post which covers that country for verification.

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- (d) Address and telephone number of the licensed physician;
 - (e) Language stating that he/she has treated the applicant or has reviewed and evaluated the medical history of the applicant and that he/she has a doctor/patient relationship with the applicant;
 - (f) Language stating the applicant has had appropriate clinical treatment for gender transition to the new gender of either male or female; and
 - (g) Language stating "I declare under penalty of perjury under the laws of the United States that the forgoing is true and correct."
- (2) For individuals who have just begun and may be in the initial stages of the gender transition process, a two year limited validity passport reflecting the new gender will be issued upon presentation of the following:
- (a) Information listed in paragraph 1(a)-(e) above;
 - (b) Language stating the applicant is in the process of gender transition to the new gender of either male or female; and
 - (c) Language stating "I declare under penalty of perjury under the laws of the United States that the forgoing is true and correct."
- (3) Faxed, e-mailed, or scanned photocopies of medical certifications are not acceptable.

c. Adjudication Actions.

- (1) The passport specialist or consular officer will annotate the application "**gender change**" (in the "For Issuing Office Only" block of the Form DS-11) to record the reason for issuing the full validity passport in the new gender. Attach the medical certification to the application.

NOTE: Passport specialists and consular officers must not ask for additional specific clinical details regarding the gender change from the applicant.

- (2) The passport specialist or consular officer will annotate the application "**gender transition**" (in the "For Issuing Office Only" block of the Form DS-11) to record the reason for issuing the limited validity passport in the new gender. Attach the medical certification to the application when limited passports are issued in these cases:
- (a) Use endorsement code 46 for U.S. and Overseas Photodigitized Passports (OPDP) issuance. Annotate the application "gender transition" to record the reason for the limited validity book in the new gender. (See 7 FAM 1300 Appendix B "Endorsement Codes" for appropriate code.)
 - (b) Use endorsement code 109 in Emergency Photodigitized Passports (EPDPs) for urgent overseas cases where the applicant must travel immediately. Limit the EPDP to three months. (See 7 FAM 1300 Appendix B for appropriate code.)

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- (3) An applicant will receive a passport for the remaining full validity period without further fee (except for expedited service), if:
- He/she applies for the new passport within two years of issuance using Form DS-5504, Application for a U.S. Passport (Name Change, Data Correction, and Limited Passport Book Replacement); and
 - Meets the requirements of 7 FAM 1320 Appendix M paragraph a and 7 FAM 1320 Appendix M paragraph b(1).
 - You must use endorsement code 3 (see 7 FAM 1300 Appendix B for appropriate code) in all gender change replacement books.

Example (for an adult):

- The issuance date of the limited passport is "July 31, 2010."
- The issuance date in the new full validity passport will be automatically assigned by TDIS.
- However, the issuance date placed in the endorsement code must be that of the original, limited passport - "July 31, 2010."
- The expiration date listed in the endorsement must be ten years from the issuance date of the original, limited validity passport book, minus one day - "July 30, 2020".

- (4) If the applicant has not submitted the requested medical certification, use the appropriate letter (or similar language for overseas posts) available in Information Request Letter (IRL) 700 in corresponding with the passport applicant. (See 7 FAM 1300 Appendix T "Information Request Letters and Information Notices.")
- (5) If, after two years, the applicant applies for a new passport and gender transition has not been completed, the applicant must submit a new physician's statement following the same information and licensure requirements in 7 FAM 1320 Appendix M, paragraph b (1) above, reflecting that the applicant still is in the process of gender transition. The application must be made on a Form DS-11, with appropriate identity, citizenship and passport fees submitted. Another two-year limited validity passport will be issued.
- (6) If an applicant is renewing his/her passport, but is applying for the renewal in a new gender, the applicant must use Form DS-11, and submit medical certification, including all elements previously indicated in 7 FAM 1320 Appendix M paragraph b. An amended birth certificate in the new gender is not acceptable evidence to issue the passport in the new gender.
- (7) If an applicant who already has been issued a passport in a new gender requests issuance of a passport in the birth gender, a certification under penalty of perjury from a licensed physician who has treated the applicant

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or reviewed and evaluated the medical history of applicant for transition back to the birth gender, is required. The statement must include all the elements previously stated in 7 FAM 1320 Appendix M paragraph b(1). The same procedures for adjudication and issuance of full validity (gender change) or limited validity (gender transition) passports apply if the applicant is returning to the birth gender (see also 7 FAM 1320 Appendix M paragraph c.)

7 FAM 1330 APPENDIX M CONVERSATIONS WITH PASSPORT APPLICANTS SEEKING TO DOCUMENT GENDER TRANSITION

(CT:CON-334; 06-10-2010)

- a. As with all passport applicants, you must be sensitive and respectful at all times.
- b. Refer to the applicant by the pronoun appropriate to his/her new gender.
- c. Ask only appropriate questions regarding information necessary to determine citizenship and identity of the applicant.

7 FAM 1340 APPENDIX M AMENDING GENDER IN REPORTS OF BIRTH

(CT:CON-551; 12-12-2014)

The Form FS-240, Consular Report of Birth Abroad of Citizen of the United States of America, can be amended by the Vital Records Section of Passport Services (CA/PPT/S/TO/RS/VR) to reflect the change in gender. The same documentary requirements specified in this Appendix for passport services are the same for amending gender on a Form FS-240. (See 7 FAM 1440, Consular Report of Birth Abroad of a Citizen/Non-Citizen National of the United States of America.) See Bureau of Consular Affairs Internet Information on amending an FS-240. Inquirers are directed to contact Passport Services' Vital Records Section, using the below dual addresses, both physical and P.O. box address, and the nine-digit zip code.

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U.S. Department of State Record Services Division CA/PPT/S/TO/RS 44132 Mercure Cir PO Box 1213 Sterling, VA 20166-1213 Telephone (public): 202-485-8300

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Fax: 202-485-8302

7 FAM 1350 APPENDIX M INTERSEX CONDITIONS (DISORDERS OF SEX DEVELOPMENT)

(CT:CON-541; 11-13-2014)

- a. "Intersex" is a condition in which a person is born with a reproductive or sexual anatomy and/or chromosomal pattern that does not fit typical definitions of male or female.
- b. Birth documentation is often not updated to reflect corrected gender. The applicant, or his/her applying parents in the case of a minor child, must provide a statement from a licensed physician who has treated the applicant for his/her gender-related care or reviewed and evaluated the gender-related medical history of the applicant. The statement must include all the information required in 7 FAM 1320 Appendix M paragraph b(1), adjusting the language to reflect the intersex condition and specify the gender correction to either male or female. In the case of a minor child, the applying parent also must submit a signed statement confirming the gender correction to either male or female. These statements must be attached to the passport application.
- c. Unless the applicant, or his/her applying parent, provides the statements described above, the gender listed on his/her birth documentation will determine the gender to be listed in the passport.

7 FAM 1360 APPENDIX M GENDER ERRORS IN ORIGINAL BIRTH CERTIFICATE

(CT:CON-541; 11-13-2014)

- a. If an applicant advises that the gender on his/her birth document mistakenly lists the wrong gender due to typographical error, and there is sufficient time before the listed departure date, refer the applicant to the appropriate issuing vital records office to have the error corrected.
- b. If the departure date is imminent, you may issue a limited one year validity passport, listing the applicant's requested gender, using endorsement code 46 (see 7 FAM 1300 Appendix B.) A corrected certified copy of the amended birth document will be required before issuance of a full validity passport in the requested gender.

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7 FAM 1370 APPENDIX M QUESTIONS

(CT:CON-464; 06-17-2013)

- a. Passport agencies and centers must contact CA-PPT-Adjudication-Suggestion-Box@state.gov for specific guidance.
- b. U.S. embassies and consulates must contact Ask-OCS-L@state.gov for specific guidance.

7 FAM 1380 APPENDIX M AND 1390 APPENDIX M UNASSIGNED

**7 FAM 1300 Appendix M Exhibit 1
Model Letter for Licensed Physician Certifying to
the Applicant's Gender Change**

(CT:CON-548; 11-08-2014)

**Licensed Physician's Letterhead
(Physician's Address and Telephone Number)**

I, (physician's full name), (physician's medical license or certificate number), (issuing U.S. State/Foreign Country of medical license/certificate), am the physician of (name of patient), with whom I have a doctor/patient relationship and whom I have treated (or with whom I have a doctor/patient relationship and whose medical history I have reviewed and evaluated).

(Name of patient) has had appropriate clinical treatment for gender transition to the new gender (specify new gender male or female).

(Name of patient) is in the process of gender transition to the new gender (specify new gender male or female). **(NOTE TO PHYSICIAN ONLY:** Use this sentence **only** when the patient has just begun or is in the early stages of his or her gender transition.)

I declare under penalty of perjury under the laws of the United States that the forgoing is true and correct.

Signature of Physician

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Typed Name of Physician

Date

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7 FAM 1300 APPENDIX M GENDER CHANGE

(CT:CON-653; 03-31-2016)
(Office of Origin: CA/OCS/L)

7 FAM 1310 APPENDIX M SUMMARY

(CT:CON-653; 03-31-2016)

- a. This appendix provides policy and procedures that passport specialists and consular officers ("you") must follow when an applicant indicates a gender on the "sex" line on the passport application with information different from the one reflected on some or all of the submitted citizenship and/or identity evidence, including a prior passport.
- b. This policy explains the need for medical certification from a licensed physician who has treated the applicant or reviewed and evaluated the medical history of the applicant regarding the change in gender, as well as the need for accurate identification and a photograph reflecting the applicant's current appearance. It is based on standards and recommendations of the World Professional Association for Transgender Health (WPATH), recognized as the authority in this field by the American Medical Association (AMA).
- c. A passport is defined by INA 101(a)(30) (Immigration and Nationality Act) (8 U.S.C. 1101(a)(30)) as "any travel document issued by competent authority showing the bearer's origin, identity, and nationality if any, which is valid for the entry of the bearer into a foreign country." An individual's gender is an integral part of that person's identity.
- d. Sex reassignment surgery is not a prerequisite for passport issuance based on gender change.
- e. Medical certification of gender transition from a licensed physician as described in 7 FAM 1320 Appendix M is the **only** documentation of gender change required. Other medical records must not be requested.
- f. A Form DS-11 "Application for U.S. Passport" must be used the first time an applicant applies for a passport in reassigned gender, as personal appearance for execution is required, even if the applicant has a previous passport. A change in gender is a change in the identity of the applicant, and evidence of identity in the new name (if applicable) and gender must be presented. Subsequent applications in the same gender may be submitted on a Form DS-82 if the applicant is eligible (see 7 FAM 1345.4 regarding eligibility to apply on a Form DS-82 and 7 FAM 1334 Appendix M regarding resumption of the birth gender).

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UNCLASSIFIED (U)U.S. Department of State Foreign Affairs Manual Volume 7
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- a. **Evidence of U.S. citizenship/non-citizen U.S. nationality.** The applicant must submit acceptable evidence of U.S. citizenship or non-citizen U.S. nationality. (see 7 FAM 1100 "Acquisition and Retention of U.S. Citizenship and Nationality"). The applicant is not required to obtain an amended birth record, amended Consular Report of Birth (CRBA), or to request that the U.S. Citizenship and Immigration Services (USCIS) issue a replacement Certificate of Naturalization/Citizenship reflecting the change of gender. State law in the United States and the laws of other countries vary on whether an amended birth certificate may be issued reflecting a gender change;

NOTE: An amended birth certificate in the new gender is not acceptable evidence of gender change (as opposed to amending a birth certificate to correct a typographical error--see 7 FAM 1370 Appendix M). See also 7 FAM 1350 Appendix M regarding Form FS-240, "Consular Report of Birth of a U.S. Citizen Abroad."

- b. **Evidence of identity.** As with all applications, the applicant must be asked to submit acceptable Identification Document(s) (IDs) in the new gender, and name, if applicable (see 7 FAM 1320 "Identity of the Passport Applicant"). However, state law and foreign laws vary as to whether a driver's license or other State or foreign government ID may be issued reflecting a gender change. So, the applicant may document her/his identity by submitting any of the following ID documents:
- (1) Primary ID in the new gender (see 7 FAM 1325.1 regarding identification using primary ID);
 - (2) Secondary ID in the new gender (see 7 FAM 1325.3 regarding identification using secondary ID); or
 - (3) Acceptable primary ID in the birth gender if it readily identifies the applicant.

NOTE: Some form of photographic ID must be presented; You cannot use the doctor's certification as the only evidence to identify an applicant.

- c. **Photograph.** A recent photograph that is a good likeness of the applicant, and satisfactorily identifies the applicant must be submitted. The photograph must agree with the submitted ID and reflect the applicant's current and true

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appearance (see also 7 FAM 1300 Appendix E "Passport Photographs");

- d. **Passport Fee.** All necessary passport fees must be submitted (see 7 FAM 1300 Appendix G "Passport Fees"); and
- e. **Name Change.** If the applicant's name has been changed, either by court order or by customary usage, she/he must present satisfactory evidence of the material name change (see 7 FAM 1300 Appendix C "Names and Name Usage"). Both names must be cleared (see 7 FAM 1334).

7 FAM 1322 Appendix M Medical Certification for Gender Change/Transition

(CT:CON-653; 03-31-2016)

- a. A full validity U.S. passport will be issued reflecting a new gender upon presentation of a signed, original certification or statement, **on office letterhead**, from a licensed physician who has treated the applicant for her/his gender-related care or reviewed and evaluated the gender-related medical history of the applicant.
- b. Licensed physicians include:
 - (1) A Doctor of Osteopathy (D.O.) (not to be confused with a Doctor of Optometry (O.D.), whose certification is not acceptable); or
 - (2) A Medical Doctor (M.D.). M.D.s may specialize in various medical fields including, but not limited to, internists, endocrinologists, gynecologists, urologists, surgeons, psychiatrists, pediatricians, and family practitioners.
- c. Medical certifications from persons who are not licensed physicians are **not** acceptable. They include, but are not limited to:
 - (1) Psychologists;
 - (2) Physician Assistants;
 - (3) Nurse practitioners;
 - (4) Health practitioners;
 - (5) Licensed vocational nurses;
 - (6) Registered nurses;
 - (7) Chiropractors; or
 - (8) Pharmacists.
- d. The medical certification **must** include the following information (see 7 FAM 1300 Appendix M Exhibit 1):
 - (1) Licensed physician's full name;
 - (2) Medical license or certificate number;

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- (a) Licensed physicians in foreign countries must have a comparable foreign license or certificate registration number.
 - (b) For all foreign licensed physician gender change requests, passport agencies/centers must scan copies of the Form DS-11 and attach all submitted documents to Passport Services' Adjudication Policy Division (CA/PPT/S/A/AP) at AskPPTAdjudication@state.gov. CA/PPT/S/A/AP works with the Overseas Citizens Services' Office of Legal Affairs (CA/OCS/L) to verify the bona fides of the foreign-based licensed physician with the applicable post abroad. CA/PPT/S/A/AP will advise the passport agency/center of the outcome of post's verification as soon as possible.
 - (c) Posts must verify their own foreign-based licensed physicians or, if the statement is from a physician in another country, contact the post which covers that country for verification.
- (3) Address and telephone number of the licensed physician;
 - (4) Language stating that she/he has treated the applicant or has reviewed and evaluated the medical history of the applicant and that she/he has a doctor/patient relationship with the applicant;
 - (5) Language stating the applicant has had appropriate clinical treatment for gender transition to the new gender of either male or female; and
 - (6) Language stating "I declare under penalty of perjury under the laws of the United States that the forgoing is true and correct."
- e. If the applicant has not submitted the requested medical certification, use the appropriate letter (or similar language for overseas posts) available in Information Request Letter (IRL) 706 in corresponding with the passport applicant. (See 7 FAM 1300 Appendix T "Information Request Letters and Information Notices.")
 - f. For applicants who have just begun and may be in the initial stages of the gender transition process, a two year limited validity passport using endorsement 46 (see 7 FAM 1320 Appendix B) reflecting the new gender will be issued upon presentation of a medical certification described in paragraph a above that includes the following:
 - (1) Information listed in paragraph 7 FAM 1300 Appendix M d(1)-(4) above;
 - (2) Language stating the applicant is in the process of gender transition to the new gender of either male or female; and
 - (3) Language stating "I declare under penalty of perjury under the laws of the United States that the forgoing is true and correct."
 - g. Faxed, e-mailed, or scanned photocopies of medical certifications are not acceptable for full validity U.S. passports. In emergency circumstances, you may issue a limited validity passport in the new gender using endorsement 46.

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7 FAM 1330 APPENDIX M ADJUDICATING GENDER CHANGE OR TRANSITION

7 FAM 1331 Appendix M Adjudicating Gender Change Cases

(CT:CON-653; 03-31-2016)

a. You must annotate the reason for issuing the full validity passport in the new gender in the "For Issuing Office Only" block of the Form DS-11:

Name as it appears on citizenship evidence _____		
<input type="checkbox"/> Birth Certificate SR CR City Filed:	Issued:	
<input type="checkbox"/> Nat. / Citiz. Cert. USCIS USDC Date/Place Acquired:	A#	
<input type="checkbox"/> Report of Birth Filed/Place:		
<input type="checkbox"/> Passport C/R S/R Per PIERS #/DOI:		
<input checked="" type="checkbox"/> Other: Gender Change		
<input type="checkbox"/> Attached:		
<input type="checkbox"/> P/C of ID <input type="checkbox"/> DS-3053 <input type="checkbox"/> DS-64 <input type="checkbox"/> DS-5520 <input type="checkbox"/> DS-5513 <input type="checkbox"/> Citiz W/S <input type="checkbox"/> P/C of Citiz <input type="checkbox"/> DS-10 <input type="checkbox"/> DS-86 <input type="checkbox"/> DS-71 <input type="checkbox"/> IRL <input type="checkbox"/> CIS Ver		

b. You must annotate and attach the medical certification to the Form DS-11:

Name as it appears on citizenship evidence _____		
<input type="checkbox"/> Birth Certificate SR CR City Filed:	Issued:	
<input type="checkbox"/> Nat. / Citiz. Cert. USCIS USDC Date/Place Acquired:	A#	
<input type="checkbox"/> Report of Birth Filed/Place:		
<input type="checkbox"/> Passport C/R S/R Per PIERS #/DOI:		
<input checked="" type="checkbox"/> Attached: MD Ltr re: Gender Change		
<input type="checkbox"/> Other:		
<input type="checkbox"/> P/C of ID <input type="checkbox"/> DS-3053 <input type="checkbox"/> DS-64 <input type="checkbox"/> DS-5520 <input type="checkbox"/> DS-5513 <input type="checkbox"/> Citiz W/S <input type="checkbox"/> P/C of Citiz <input type="checkbox"/> DS-10 <input type="checkbox"/> DS-86 <input type="checkbox"/> DS-71 <input type="checkbox"/> IRL <input type="checkbox"/> CIS Ver		

NOTE: You must not ask for additional specific clinical details regarding the gender change from the applicant.


NOTE: If the applicant requests that the original medical certification be returned, you may attach a clear photocopy of the medical certification, clearly annotate that the original medical certification was seen and returned, and return the original medical certification to the applicant.

7 FAM 1332 Appendix M Adjudicating Gender Transition Cases


(CT:CON-653; 03-31-2016)

a. You must annotate the reason for issuing the limited validity passport in the new gender in the "For Issuing Office Only" block of the Form DS-11:

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Name as it appears on citizenship evidence _____		 * DS 11 A 09 2013 2 *			
<input type="checkbox"/> Birth Certificate	SR CR City Filed: _____		Issued: _____		
<input type="checkbox"/> Nat. / Citiz. Cert.	USCIS USDC Date/Place Acquired: _____		A# _____		
<input type="checkbox"/> Report of Birth	Filed/Place: _____				
<input type="checkbox"/> Passport	C/R S/R Per PIERS #/DOI: _____				
<input checked="" type="checkbox"/> Other:	Gender Transition				
<input type="checkbox"/> Attached:					
<input type="checkbox"/> P/C of ID	<input type="checkbox"/> DS-3053	<input type="checkbox"/> DS-64	<input type="checkbox"/> DS-5520	<input type="checkbox"/> DS-5513	<input type="checkbox"/> Citiz W/S
<input type="checkbox"/> P/C of Citiz	<input type="checkbox"/> DS-10	<input type="checkbox"/> DS-86	<input type="checkbox"/> DS-71	<input type="checkbox"/> IRL	<input type="checkbox"/> CIS Ver

b. You must annotate and attach the medical certification to the Form DS-11:

Name as it appears on citizenship evidence _____		 * DS 11 A 09 2013 2 *			
<input type="checkbox"/> Birth Certificate	SR CR City Filed: _____		Issued: _____		
<input type="checkbox"/> Nat. / Citiz. Cert.	USCIS USDC Date/Place Acquired: _____		A# _____		
<input type="checkbox"/> Report of Birth	Filed/Place: _____				
<input type="checkbox"/> Passport	C/R S/R Per PIERS #/DOI: _____				
<input checked="" type="checkbox"/> Attached:	MD Ltr re: Gender Transition				
<input type="checkbox"/> P/C of ID					
<input type="checkbox"/> P/C of Citiz	<input type="checkbox"/> DS-10	<input type="checkbox"/> DS-86	<input type="checkbox"/> DS-71	<input type="checkbox"/> IRL	<input type="checkbox"/> CIS Ver

c. You must add an appropriate endorsement to limit the validity period of the passport:

- (1) Use endorsement code 46 domestically and for Overseas Photo-Digitized Passports (OPDPs) (see also 7 FAM 1365 regarding OPDPs and 7 FAM 1300 Appendix B, "Passport Endorsements").
- (2) Use endorsement code 109 in Emergency Photo-Digitized Passports (EPDPs) for urgent overseas cases where the applicant must travel immediately (see also 7 FAM 1300 Appendix B)

7 FAM 1333 Appendix M Replacement of Passport Limited Because of Gender Transition

(CT:CON-653; 03-31-2016)

- a. An applicant who received a limited passport book because of a gender transition will receive a replacement, fully-valid passport without further fee (except for expedited service, if requested), if she/he:
 - (1) Applies for the new passport within two years of issuance using Form DS-5504, "Application for a U.S. Passport: Name Change, Data Correction, and Limited Passport Book Replacement;"
 - (2) Meets the requirements of 7 FAM 1320 Appendix M; and
 - (3) Presents a new medical certification that meets the requirements for a fully-valid passport in 7 FAM 1322 Appendix M.
- b. If, after two years, the applicant applies for a new passport and her/his gender

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transition has not been completed, the applicant must submit a new physician's statement, following the same information and licensure requirements in 7 FAM 1320 Appendix M, reflecting that the applicant still is in the process of gender transition. The applicant must also submit a new Form DS-11, with appropriate identity, citizenship, and passport fees submitted (see 7 FAM 1321 Appendix M). Another two-year limited validity passport will be issued.

7 FAM 1334 Appendix M Resumption of the Birth Gender

(CT:CON-653; 03-31-2016)

If an applicant who already has been issued a passport in a new gender requests issuance of a passport in the birth gender, a medical certification of the transition back to the birth gender is required (see 7 FAM 1322 Appendix M regarding medical certifications). The same procedures for adjudication and issuance of full validity (gender change) or limited validity (gender transition) passports apply if the applicant is returning to the birth gender (see also 7 FAM 1331 Appendix M and 7 FAM 1332 Appendix M).

7 FAM 1340 APPENDIX M CONVERSATIONS WITH PASSPORT APPLICANTS SEEKING TO DOCUMENT GENDER CHANGE/TRANSITION

(CT:CON-653; 03-31-2016)

- a. As with all passport applicants, you must be sensitive and respectful at all times.
- b. Refer to the applicant by the pronoun appropriate to her/his new gender even if the transition is not complete.
- c. Ask only appropriate questions regarding information necessary to determine citizenship and identity of the applicant.

7 FAM 1350 APPENDIX M AMENDING GENDER IN CONSULAR REPORTS OF BIRTH ABROAD

(CT:CON-653; 03-31-2016)

- a. The Form FS-240, "Consular Report of Birth Abroad of Citizen of the United States of America," can be amended by Passport Services' Office of Technical Operations, Record Services division (CA/PPT/S/TO/RS) to reflect the change in gender. The documentary requirements specified in this Appendix for passport services are the same for amending gender on a Form FS-240. (See also 7

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FAM 1440, "Consular Report of Birth Abroad of a Citizen/Non-Citizen National of the United States of America.") See Bureau of Consular Affairs Internet Information on amending a Form FS-240. Inquirers are directed to contact Passport Services' Record Services Division, using the below dual addresses, both physical and P.O. box address, and the nine-digit zip code.

U.S. Department of State
Record Services Division
CA/PPT/S/TO/RS
44132 Mercure Cir
PO Box 1213
Sterling, VA 20166-1213
Telephone (public): 202-485-8300
Fax: 202-485-8302

- b. An amended Form FS-240 is acceptable evidence of a gender change for a subsequent passport application.

7 FAM 1360 APPENDIX M INTERSEX CONDITIONS (DISORDERS OF SEX DEVELOPMENT)

(CT:CON-653; 03-31-2016)

- a. "Intersex" is a condition in which a person is born with a reproductive or sexual anatomy and/or chromosomal pattern that does not fit typical definitions of male or female.
- b. Birth documentation is often not updated to reflect corrected gender. When the passport application indicates a sex different from the one reflected on the birth documentation, the applicant, or her/his applying parents in the case of a minor child, must provide medical certification that meets the requirements in 7 FAM 1322 Appendix M, adjusting the language to reflect the intersex condition and specify the gender correction to either male or female. In the case of a minor child, the applying parent(s) also must submit a signed statement confirming the gender correction to either male or female. These statements must be attached to the passport application.
- c. Unless the applicant, or her/his applying parent, provides the statements described above, the gender listed on her/his birth documentation will determine the gender to be listed in the passport.

7 FAM 1370 APPENDIX M GENDER ERRORS IN ORIGINAL BIRTH CERTIFICATE

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(CT:CON-653; 03-31-2016)

- a. If an applicant advises that the gender on her/his birth document mistakenly lists the wrong gender due to typographical error, and there is sufficient time before the listed departure date, refer the applicant to the appropriate issuing vital records office to have the error corrected (IRL 875-33).
- b. If the departure date is imminent, you may issue a limited one year validity passport, listing the applicant's requested gender, using endorsement code 46 (see 7 FAM 1300 Appendix B.) A corrected certified copy of the amended birth document will be required before issuance of a full validity passport in the requested gender.

7 FAM 1380 APPENDIX M QUESTIONS

(CT:CON-653; 03-31-2016)

- a. Passport agencies and centers must contact AskPPTAdjudication@state.gov for specific guidance.
- b. U.S. embassies and consulates must contact Ask-OCS-L@state.gov for specific guidance.

7 FAM 1390 APPENDIX M UNASSIGNED

7 FAM 1300 APPENDIX M EXHIBIT 1 MODEL LETTER FOR LICENSED PHYSICIAN CERTIFYING TO THE APPLICANT'S GENDER CHANGE/TRANSITION

(CT:CON-653; 03-31-2016)

Licensed Physician's Letterhead (Physician's Address and Telephone Number)

I, (physician's full name), (physician's medical license or certificate number), (issuing U.S. State/Foreign Country of medical license/certificate), am the physician of (name of patient), with whom I have a doctor/patient relationship and whom I have treated (or with whom I have a doctor/patient relationship and whose medical history I have reviewed and evaluated).

(Name of patient) has had appropriate clinical treatment for gender change to the new gender (specify new gender male or female).

Or

7 FAM 1300 Appendix M Page 9 of 10

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(Name of patient) is in the process of gender transition to the new gender (specify new gender male or female). (**NOTE TO PHYSICIAN ONLY:** Use this sentence **only** when the patient has just begun or is in the early stages of his or her gender transition.)

I declare under penalty of perjury under the laws of the United States that the forgoing is true and correct.

Signature of Physician

Typed Name of Physician

Date



United States Department of State

Washington, D.C. 20520

March 1, 2016

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MEMORANDUM

TO: CA/PPT – Regional Directors, Directors, Assistant Directors
THROUGH: CA/PPT/I – Florence G. Fultz
FROM: CA/PPT/S – Barry J. Conway *BJC*
SUBJECT: Court-Ordered Gender Change Not Acceptable

The Department's policy in 7 FAM 1300 Appendix M on adjudicating gender change cases provides specific guidance on exactly what must be submitted to document a gender change.

However, some states allow an individual to change her/his gender by order of the court. If an applicant submits a court-ordered gender change, you must require evidence that the applicant has changed her/his gender in accordance with 7 FAM 1300 Appendix M.

7 FAM 1300 Appendix M will be updated to clarify that such court orders are not acceptable.

The passport agency/center management team **must** meet to ensure that this policy is clearly understood and, subsequently, that the policy is discussed with the passport specialists at the next semi-monthly adjudication training to ensure the same. Any questions should be routed to CA/PPT/S/A at AskPPTAdjudication@state.gov as soon as they are identified.

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United States Department of State

Washington, D.C. 20520

May 1, 2017

Exhibit 38 – Male/Female Designation of Sex in U.S. Vital Records, such as Birth Certificates, Driver’s Licenses, and Identification Cards

In verifying a passport applicant’s identity, the Department matches the applicant’s stated biographical information, including sex, against numerous other documents and information sources – including birth records, driver’s licenses, court orders and law enforcement records – and a number of governmental and private data bases. The Department uses information derived from passport applications, databases, previous passports, government-issued identification, and other identifying evidence to adjudicate the identity and citizenship claims of an applicant. *See* 22 C.F.R. § 51.23. The rigorous process of adjudicating a passport applicant’s identity and citizenship is necessary to prevent identity theft and passport fraud, and to ensure the accuracy, integrity, and reliability of U.S. passports.

As the prevalence of birth certificates, driver’s licenses, and government-issued identification cards increased during in the twentieth century, these credentials evolved from documents possessed by a small percentage of the nation’s population, to documents that are now available to nearly all passport applicants, and which serve as primary proof of identity and/or evidence of citizenship. To the extent that such credentials include a holder’s sex, it is reflected as either male or female. To date, no applicant for a U.S. passport has submitted as evidence of their identity and citizenship an original (*i.e.*, un-amended) birth certificate, driver’s license, or non-driver identity card reflecting a sex other than male or female. Moreover, the Department is unaware of any vital record or motor vehicle authority in any domestic jurisdiction that has a policy providing for issuance of an original birth certificate, a driver’s license, or a non-driver identity card designating the sex of a person as “intersex,” “non-binary,” or any designation other than male or female.¹ Applicants generally submit birth certificates and government issued identification cards, such as driver’s licenses, to establish their identity and citizenship. The Department expects state and local governments to issue reliable documents, which the Department can use to adjudicate the citizenship and identity of passport applicants and to prevent identity theft and passport fraud. The Department cannot unilaterally adopt a new, third sex designation for use in U.S. passports that does not correspond to reliable, government-issued documentation, without compromising its established system for ensuring the integrity of U.S. passports as proof of identity and citizenship.

¹ A small number of jurisdictions are considering changes to their longstanding binary policy. In Oregon, the Department of Transportation, Driver and Motor Vehicle Services Division, filed a Notice of Proposed Rulemaking on March 15, 2017, to update that state’s DMV systems to permit an “X” to be used in the sex field of driver’s licenses and identification cards to indicate that sex is not specified or has been changed to “non-binary” by a court order. *See* Notice of Proposed Rulemaking Hearing, Mar. 15, 2017 (Exh. 39). In California, a bill has been introduced in the California Senate to eliminate the need for appropriate clinical treatment in order to change the sex listed on an amended birth certificate, driver’s license, or identification card, and to offer an option to list sex as “nonbinary” or “X” on such documents upon submission of an affidavit attesting that the requested change is to “conform the person’s legal gender to the person’s gender identity” *See* SB-179, introduced Jan. 24, 2017, as amended in the State Senate Apr. 17, 2017 (Exh. 40).

Birth Certificates

In addition to the 50 states, birth certificates are issued by the District of Columbia, New York City, American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, and the United States Virgin Islands. According to a September 2000 report by the Office of Inspector General of the U.S. Department of Health and Human Services, within these domestic jurisdictions a total of 6,422 different entities issue birth certificates, including states, counties, cities, townships, and other governmental entities. The Department is not aware of any domestic jurisdiction that issues, as a policy, original, un-amended birth certificates designating a person's sex with a designation other than male or female. *See, e.g., Birth Certificate Application, New York City Department of Health, Office of Vital Records, Form VR 67 (Rev. Oct. 2014) (Exh. 41).*²

The Department is aware that some individuals have obtained *amended* birth certificates listing their sex as something other than male or female. To date, two passport applicants have presented amended birth certificates in which the designation of their sex has been amended to read "unknown." The policy of the Department is to accept only un-amended birth certificates as evidence of the sex of the applicant. *See 7 FAM 1320 Appendix M a NOTE (Exh. 36).* Applicants who present an amended birth certificate in support of an application for a U.S. passport reflecting a *change of sex* must also submit medical certification that they have had appropriate treatment for transition to the requested sex, male or female. *See 7 FAM 1322 Appendix M (Exh. 36).* The reason for this policy is that the requirements for amending a birth certificate to reflect a change of sex vary significantly by jurisdiction. *See "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 (2013) (Exh. 42).*³ In light of the wide variation in the evidence required to obtain such government-issued documents, the Department is unable to determine from an amended identity document alone whether the applicant can meet its standard for documenting a change of sex, and so cannot rely on such documents as evidence of a new sex.

² Some jurisdictions allow birth attendants to indicate initially that a child's sex is "unspecified," "unknown," or "undetermined" in cases where it cannot be immediately ascertained, with the expectation that the sex will be updated once a determination is made. Also, many vital records authorities expressly distinguish between birth certificate that is corrected due to "gender error," in which a hospital or local registrar enters incorrect information on a birth certificate, and a birth certificate that is amended due to "gender reassignment," pursuant to applicable state law.

³ A number of states have statutes that follow the requirement for a "surgical procedure" as set out in Section 21(d) of the Model State Vital Statistics Act (1992 Rev.) or impose a requirement for surgery using other language. Other states have explicitly repudiated surgical or hormonal requirements, authorizing a change based on "other treatment." Some states require a court order indicating that an individual's sex has been changed; others do not. Some states authorize amendment of a birth certificate based upon a medical certification that would not satisfy the Department's requirements under 7 FAM 1322 Appendix M. *See "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 (2013) (Exh. 42), at 400-401 and 452-470 ("Appendix: Laws and Policies Regarding Gender Corrections for the 57 Jurisdictions that Administer Birth Certificates").*

Driver's Licenses and Non-Driver ID Cards

The REAL ID Act of 2005, Pub. L. 109-13, 119 Stat. 302, establishes specific federal requirements for state-issued driver's licenses and identity cards to be accepted for certain federal purposes, including boarding a domestic flight. A REAL ID-compliant form of identification is required to include the gender (sex) of the holder. No state currently issues driver's licenses or identification cards in a sex other than male or female. *See* Resource Guide on Gender Designation on Driver's Licenses and Identification Cards, American Association of Motor Vehicle Administrators (AAMVA) (Sept. 2016) (Exh. 43).⁴

Social Security

Applicants are required by law to provide their Social Security number, if they have one, when applying for a U.S. passport or for renewal of a U.S. passport, and the Department verifies this information as part of the adjudication of the applicant's identity. The Social Security Administration requires every applicant for a Social Security number to designate his/her sex as either male or female in his/her application. *See* Form SS-5, Application for a Social Security Card, U.S. Social Security Administration (Aug. 2011) (Exh. 44). In order to change the sex entered in his/her social security record ("numident"), an individual must submit a medical certification that complies with applicable Social Security Administration requirements, which are identical to the Department's requirements for issuance of a passport reflecting a change of sex. *See* "RM 10212.200 - Changing Numident Data for Reasons other than Name Change," U.S. Social Security Administration Program Operations Manual System (POMS) (June 2013) (Exh. 45). Unlike a U.S. passport, a Social Security card issued by the Social Security Administration does not depict the sex of the holder as recorded in his/her numident.

⁴ *But see* footnote 1, *supra*.

Secretary of State

NOTICE OF PROPOSED RULEMAKING HEARING*

A Statement of Need and Fiscal Impact accompanies this form

FILED

3-15-17 9:02 AM

ARCHIVES DIVISION
SECRETARY OF STATE

Department of Transportation, Driver and Motor Vehicle Services Division

735

Agency and Division

Administrative Rules Chapter Number

Lauri Kunze

(503) 986-3171

Rules Coordinator

Telephone

Department of Transportation, Driver and Motor Vehicle Services Division, 355 Capitol St. NE, MS 51, Salem, OR 97301

Address

RULE CAPTIONPhysical Description, Including Sex, on Driver License, Driver Permit or Identification Card

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

Hearing Date	Time	Location	Hearings Officer
5-2-17	6:00 p.m.	Eugene Public Library, Tykeson Rm, 100 W 10th Ave. , Eugene OR	Liz Woods
5-10-17	6:00 p.m.	Multnomah Bldg, Rm 315, 501 SE Hawthorne Blvd, Portland OR	Liz Woods

RULEMAKING ACTION

Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

ADOPT:

735-062-0013

AMEND:**REPEAL:****RENUMBER:** Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.**AMEND AND RENUMBER:** Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.**Statutory Authority:**

ORS 184.616, 184,619, 802.010 and 807.110

Other Authority:

None

Statutes Implemented:

ORS 802.200, 807.050, 807.110, 807.150, 807.160, 807.280 and 807.400

RULE SUMMARY

ORS 807.110 states that a driver license will contain a brief description of the person for purposes of identification. In accordance with national standards, Oregon's description has contained an indicator of the person's sex, "M" for male or "F" for female. Within the past year, an Oregon circuit court issued an order stating that a particular individual's sex is non-binary. By policy, DMV has accepted court orders as proof of sex-change to change the sex designation of a person on a driver license, driver permit, identification card and DMV record. However, DMV was unable to issue a card or capture in records an indicator that would signify non-binary as the computer system has no indicator for a third sex designation.

Therefore, DMV started this rule-making in conjunction with updating systems so that an "X" in the field for sex will indicate that the sex is not specified. DMV proposes to adopt OAR 735-062-0013 to explain what information is captured as a descriptor in DMV records, which of those descriptors appear on the front of the card, how that information is provided to DMV, and the process to change such information.

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

05-12-2017 4:00 p.m.

Lauri Kunze

lauri.g.kunze@odot.state.or.us

Last Day (m/d/yyyy) and Time

Rules Coordinator Name

Email Address

for public comment

*The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation.

Secretary of State
STATEMENT OF NEED AND FISCAL IMPACT
 A Notice of Proposed Rulemaking Hearing accompanies this form

FILED 3-15-17 9:02 AM ARCHIVES DIVISION SECRETARY OF STATE
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Department of Transportation, Driver and Motor Vehicle Services Division

735

Agency and Division

Administrative Rules Chapter Number

Physical Description, Including Sex, on Driver License, Driver Permit or Identification Card

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of:

the Adoption of 735-062-0013

Statutory Authority:

ORS 184.616, 184.619, 802.010 and 807.110

Other Authority:

None

Statutes Implemented:

ORS 802.200, 807.050, 807.110, 807.150, 807.160, 807.280 and 807.400

Need for the Rule(s):

ORS 807.110 states that a driver license will contain a brief description of the person for purposes of identification. In accordance with national standards, Oregon's description has contained an indicator of the person's sex, "M" for male or "F" for female. Within the past year, an Oregon circuit court issued an order stating that a particular individual's sex is non-binary. By policy, DMV has accepted court orders as proof of sex-change to change the sex designation of a person on a driver license, driver permit, identification card and DMV record. However, DMV was unable to issue a card or capture in records an indicator that would signify non-binary as the computer system has no indicator for a third sex designation.

Therefore, DMV started this rule-making in conjunction with updating systems so that an "X" in the field for sex will indicate that the sex is not specified. DMV proposes to adopt OAR 735-062-0013 to explain what information is captured as a descriptor in DMV records, which of those descriptors appear on the front of the card, how that information is provided to DMV, and the process to change such information.

Documents Relied Upon, and where they are available:

2016 AAMVA DL/ID Card Design Standard; available by contacting DMV Driver Programs Section, 1905 Lana Ave. NE, Salem, Oregon 97314

Fiscal and Economic Impact:

See statements below

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

DMV will incur approximately \$39,000 in costs to update computer systems, update application forms and other costs associated with the implementation of this rule. DMV does recognize that a change to the information contained on DMV records and on the face of a driver license, driver permit or identification card also impacts other agencies. DMV asked for input from a variety of state and local government agencies along with members of the public, and this is the input we received.

Oregon Judicial Department -- At this time, OJD was unable to quantify the feasibility, cost and time impact to change its vendor-provided programming to its existing Odyssey system. Information is shared between law enforcement and courts, and if date input by law enforcement does not map to an identified data element in the court system, the electronic transmission of data will not work. Currently, the system would reject a third data element in the field of information on sex. Therefore, there would need to be manual work arounds by law enforcement and court personnel if an individual with "X" on their driver license is subject to a traffic stop, until all systems were updated to work together in accepting an "X" in the sex data field. The system used by Oregon courts will be modified by the vendor to contain a third sex designation when it receives the software release, and will require funding for the vendor to modify the data integration to accommodate this additional data element. At this point, OJD anticipates being able to update the software with the new release -- assuming it is available timely -- between mid to late 2018.

Oregon State Police - \$100,000 minimum and one year to 18 months to update their systems

Department of Corrections - \$300,000 and 10 months to update their system

Fish and Wildlife - \$1000 and can meet July 1 deadline

Oregon Lottery - none

Secretary of State - none

AAMVA and other licensing jurisdictions - none

Salem-Keizer Coalition for Equality - none

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small business and types of businesses and industries with small businesses subject to the rule:

None

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

None

c. Equipment, supplies, labor and increased administration required for compliance:

None

How were small businesses involved in the development of this rule?

DMV sent information regarding this change to an extensive list of businesses that may use the information contained on a driver license, drive permit or identification. Only the Oregon Bankers Association responded saying that it was unclear about possible impact but likely would be minimal if any impact.

Administrative Rule Advisory Committee consulted?: Yes

If not, why?:

DMV formed a rule advisory group consisting of state agencies, advocate groups and private citizens.

05-12-2017 4:00 p.m.

Lauri Kunze

lauri.g.kunze@odot.state.or.us

Last Day (m/d/yyyy) and Time
for public comment

Printed Name

Email Address

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310.

ARC 925-2007

AMENDED IN SENATE APRIL 17, 2017

AMENDED IN SENATE MARCH 27, 2017

SENATE BILL

No. 179

Introduced by Senators Atkins and Wiener

(Principal coauthors: Senators ~~De León~~, *De León*, Galgiani, Lara, Mitchell, Monning, and Skinner)

(Principal coauthors: Assembly Members *Bocanegra*, Chiu, Eggman, Cristina Garcia, Gloria, Low, Mark Stone, and Ting)

January 24, 2017

An act to amend Sections 1277 and 1278 ~~of of~~, and to add Section 1277.5 to, the Code of Civil Procedure, to amend Sections 103425, 103426, 103430, ~~103435~~, and 103440 of, and to amend the heading of Article 7 (commencing with Section 103425) of Chapter 11 of Part 1 of Division 102 of, the Health and Safety Code, and to amend Sections 12811 and 13005 of the Vehicle Code, relating to gender identity.

LEGISLATIVE COUNSEL'S DIGEST

SB 179, as amended, Atkins. Gender identity: female, male, or nonbinary.

(1) Existing law authorizes a person who was born in this state and who has undergone clinically appropriate treatment for the purpose of gender transition to obtain a new birth certificate from the State Registrar.

This bill would *enact the Gender Recognition Act*, delete the requirement that an applicant have undergone any ~~treatment~~ *treatment*, and instead would authorize a person to submit to the State Registrar an application to change gender on the birth certificate and an affidavit attesting, under penalty of perjury, that the request for a change of gender is to conform the person's legal gender to the person's gender

SB 179

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identity and not for any fraudulent purpose. By requiring the affidavit to be attested to under penalty of perjury, the bill would create a crime, and thus impose a state-mandated local program. This bill would authorize the change of gender on the new birth certificate to be female, male, or nonbinary.

(2) Existing law authorizes a person who has undergone clinically appropriate treatment for the purpose of gender transition to seek a judgment from the superior court recognizing the change of gender, conforming the person's name to the person's gender identity, or for both, and provides specific procedures to seek these judgments.

This bill would delete the requirement that a person have undergone any treatment to seek a court judgment to recognize a change of gender and instead would authorize the petitioner to attest, under penalty of perjury, that the request is to conform the person's legal gender to the person's gender identity and not for any fraudulent purpose. By requiring the affidavit to be attested to under penalty of perjury, the bill would create a crime, and thus impose a state-mandated local program. The bill would authorize a change of gender in the court order to female, male, or nonbinary. ~~The bill would require the court to grant a judgment recognizing the change of gender within 28 days of the filing of the petition, unless an objection is filed. The bill would provide specific procedures to obtain a court order for a change of name to conform to the petitioner's gender identity, a court order to recognize a change in the petitioner's gender, or both.~~ The bill would ~~also specifically~~ authorize a *separate* procedure for a person under 18 years of age to petition for a change of gender.

(3) Existing law requires the Department of Motor Vehicles to issue a driver's license to an applicant when the department determines that the applicant is lawfully entitled to a license, and requires the license to contain, among other things, a brief description and engraved picture or photograph of the licensee for the purpose of identification. Existing law authorizes the department to issue identification cards and requires an identification card to adequately describe the applicant.

This bill would require the applicant for a driver's license or identification card to choose a gender category of female, male, or nonbinary to be included as part of the applicant's description. The bill would also require the department to adopt regulations for an expedient amendment of a gender category on a driver's license and identification card.

This bill would make legislative findings and declarations in support of its provisions.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. *This act shall be known and may be cited as the*
2 *Gender Recognition Act.*

3 SEC. 2. *The Legislature finds and declares all of the following:*

4 (a) *It is the policy of the State of California that every person*
5 *deserves full legal recognition and equal treatment under the law*
6 *and to ensure that intersex, transgender, and nonbinary people*
7 *have state-issued identification documents that provide full legal*
8 *recognition of their accurate gender identity.*

9 (b) *Gender identification is fundamentally personal, and the*
10 *state should endeavor to provide options on state-issued*
11 *identification documents that recognize a person's accurate gender*
12 *identification. It is the intent of the Legislature in enacting this*
13 *legislation to provide three equally recognized gender options on*
14 *state-issued identification documents—female, male, and*
15 *nonbinary—and an efficient and fair process for people to amend*
16 *their gender designation on state-issued identification documents*
17 *so that state-issued identification documents legally recognize a*
18 *person's accurate gender identification.*

19 (c) *“Intersex” is an umbrella term used to describe natural*
20 *bodily variations, which can include external genitalia, internal*
21 *sex organs, chromosomes, or hormonal differences that transcend*
22 *typical ideas of male and female. Upper estimates of the number*
23 *of intersex people are approximately 1.7% of the general*
24 *population. In the United States, some children born with intersex*
25 *traits have been subjected to involuntary and*
26 *medically-unnecessary surgical procedures in infancy in an attempt*
27 *to erase aspects of their natural bodies, causing significant physical*
28 *and psychological harm. Human rights authorities have condemned*

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1 *this practice as a form of torture and recognize that legal and*
2 *ethical frameworks require intersex people themselves to make*
3 *decisions concerning their own bodies. Thus, those human rights*
4 *authorities recommended that physicians assign a provisional*
5 *gender designation with the knowledge that the child may later*
6 *identify differently. An option of a nonbinary gender designation*
7 *on state-issued identification documents would allow intersex*
8 *people, like transgender and nonbinary people, to be able to use*
9 *state-issued identification documents that accurately recognize*
10 *their gender identification as female, male, or nonbinary.*

11 *(d) The binary gender designations of female and male fail to*
12 *adequately represent the diversity of human experience. Nonbinary*
13 *is an umbrella term for people with gender identities that fall*
14 *somewhere outside of the traditional conceptions of strictly either*
15 *female or male. People with nonbinary gender identities may or*
16 *may not identify as transgender, may or may not have been born*
17 *with intersex traits, may or may not use gender-neutral pronouns,*
18 *and may or may not use more specific terms to describe their*
19 *genders, such as agender, genderqueer, gender fluid, Two Spirit,*
20 *bigender, pangender, gender nonconforming, or gender variant.*
21 *Nonbinary gender identities have been recognized by cultures*
22 *throughout history and around the world, as well as by legal*
23 *systems in the United States and other countries, medical*
24 *authorities, and researchers. Studies show that nonbinary people*
25 *face frequent discrimination, harassment, and violence in areas*
26 *of life including education, employment, health care, and law*
27 *enforcement.*

28 *(e) Transgender is an umbrella term used to describe people*
29 *whose gender identity or gender expression do not match the*
30 *gender they were assigned at birth. Some transgender people have*
31 *medically transitioned, undergoing gender affirming surgeries*
32 *and hormonal treatments, while other transgender people do not*
33 *choose any form of medical transition. There is no uniform set of*
34 *procedures that are sought by transgender people that pursue*
35 *medical transition. Transgender people may identify as female,*
36 *male, or nonbinary, may or may not have been born with intersex*
37 *traits, may or may not use gender-neutral pronouns, and may or*
38 *may not use more specific terms to describe their genders, such*
39 *as agender, genderqueer, gender fluid, Two Spirit, bigender,*
40 *pangender, gender nonconforming, or gender variant. Studies*

1 *show that transgender people disproportionately face*
2 *discrimination, harassment, and violence in areas of life including*
3 *housing, education, employment, health care, and law enforcement.*

4 SECTION 1.

5 SEC. 3. Section 1277 of the Code of Civil Procedure is
6 amended to read:

7 1277. (a) (1) If a proceeding for a change of name is
8 commenced by the filing of a petition, except as provided in
9 subdivisions (b), (c), and (e), *or Section 1277.5*, the court shall
10 thereupon make an order reciting the filing of the petition, the
11 name of the person by whom it is filed, and the name proposed.
12 The order shall direct all persons interested in the matter to appear
13 before the court at a time and place specified, which shall be not
14 less than 6 weeks nor more than 12 weeks from the time of making
15 the order, unless the court orders a different time, to show cause
16 why the application for change of name should not be granted.
17 The order shall direct all persons interested in the matter to make
18 known any objection that they may have to the granting of the
19 petition for change of name by filing a written objection, which
20 includes the reasons for the objection, with the court at least two
21 court days before the matter is scheduled to be heard and by
22 appearing in court at the hearing to show cause why the petition
23 for change of name should not be granted. The order shall state
24 that, if no written objection is timely filed, the court may grant the
25 petition without a hearing. ~~If the petition seeks to conform the~~
26 ~~petitioner's name to the petitioner's gender identity and no~~
27 ~~objection is timely filed within 28 days of the filing of the petition,~~
28 ~~the court shall grant the petition without a hearing.~~

29 (2) A copy of the order to show cause shall be published
30 pursuant to Section 6064 of the Government Code in a newspaper
31 of general circulation to be designated in the order published in
32 the county. If a newspaper of general circulation is not published
33 in the county, a copy of the order to show cause shall be posted
34 by the clerk of the court in three of the most public places in the
35 county in which the court is located, for a like period. Proof shall
36 be made to the satisfaction of the court of this publication or
37 posting at the time of the hearing of the application.

38 (3) Four weekly publications shall be sufficient publication of
39 the order to show cause. If the order is published in a daily

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1 newspaper, publication once a week for four successive weeks
2 shall be sufficient.

3 (4) If a petition has been filed for a minor by a parent and the
4 other parent, if living, does not join in consenting thereto, the
5 petitioner shall cause, not less than 30 days before the hearing, to
6 be served notice of the time and place of the hearing or a copy of
7 the order to show cause on the other parent pursuant to Section
8 413.10, 414.10, 415.10, or 415.40. If notice of the hearing cannot
9 reasonably be accomplished pursuant to Section 415.10 or 415.40,
10 the court may order that notice be given in a manner that the court
11 determines is reasonably calculated to give actual notice to the
12 nonconsenting parent. In that case, if the court determines that
13 notice by publication is reasonably calculated to give actual notice
14 to the nonconsenting parent, the court may determine that
15 publication of the order to show cause pursuant to this subdivision
16 is sufficient notice to the nonconsenting parent.

17 ~~(5) If the petition for a change of name is sought in order to~~
18 ~~conform the petitioner's name to his or her gender identity, the~~
19 ~~action for a change of name is exempt from the requirement for~~
20 ~~publication of the order to show cause under this subdivision.~~

21 (b) (1) If the petition for a change of name alleges a reason or
22 circumstance described in paragraph (2), and the petitioner has
23 established that he or she is an active participant in the address
24 confidentiality program created pursuant to Chapter 3.1
25 (commencing with Section 6205) of Division 7 of Title 1 of the
26 Government Code, and that the name he or she is seeking to acquire
27 is on file with the Secretary of State, the action for a change of
28 name is exempt from the requirement for publication of the order
29 to show cause under subdivision (a), and the petition and the order
30 of the court shall, in lieu of reciting the proposed name, indicate
31 that the proposed name is confidential and is on file with the
32 Secretary of State pursuant to the provisions of the address
33 confidentiality program.

34 (2) The procedure described in paragraph (1) applies to petitions
35 alleging any of the following reasons or circumstances:

36 (A) To avoid domestic violence, as defined in Section 6211 of
37 the Family Code.

38 (B) To avoid stalking, as defined in Section 646.9 of the Penal
39 Code.

1 (C) The petitioner is, or is filing on behalf of, a victim of sexual
2 assault, as defined in Section 1036.2 of the Evidence Code.

3 (3) For any petition under this subdivision, the current legal
4 name of the petitioner shall be kept confidential by the court and
5 shall not be published or posted in the court's calendars, indexes,
6 or register of actions, as required by Article 7 (commencing with
7 Section 69840) of Chapter 5 of Title 8 of the Government Code,
8 or by any means or in any public forum, including a hardcopy or
9 an electronic copy, or any other type of public media or display.

10 (4) Notwithstanding paragraph (3), the court may, at the request
11 of the petitioner, issue an order reciting the name of the petitioner
12 at the time of the filing of the petition and the new legal name of
13 the petitioner as a result of the court's granting of the petition.

14 (5) A petitioner may request that the court file the petition and
15 any other papers associated with the proceeding under seal. The
16 court may consider the request at the same time as the petition for
17 name change, and may grant the request in any case in which the
18 court finds that all of the following factors apply:

19 (A) There exists an overriding interest that overcomes the right
20 of public access to the record.

21 (B) The overriding interest supports sealing the record.

22 (C) A substantial probability exists that the overriding interest
23 will be prejudiced if the record is not sealed.

24 (D) The proposed order to seal the records is narrowly tailored.

25 (E) No less restrictive means exist to achieve the overriding
26 interest.

27 (c) A proceeding for a change of name for a witness participating
28 in the state Witness Relocation and Assistance Program established
29 by Title 7.5 (commencing with Section 14020) of Part 4 of the
30 Penal Code who has been approved for the change of name by the
31 program is exempt from the requirement for publication of the
32 order to show cause under subdivision (a).

33 (d) If an application for change of name is brought as part of
34 an action under the Uniform Parentage Act (Part 3 (commencing
35 with Section 7600) of Division 12 of the Family Code), whether
36 as part of a petition or cross-complaint or as a separate order to
37 show cause in a pending action thereunder, service of the
38 application shall be made upon all other parties to the action in a
39 like manner as prescribed for the service of a summons, as set forth
40 in Article 3 (commencing with Section 415.10) of Chapter 4 of

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1 Title 5 of Part 2. Upon the setting of a hearing on the issue, notice
2 of the hearing shall be given to all parties in the action in a like
3 manner and within the time limits prescribed generally for the type
4 of hearing (whether trial or order to show cause) at which the issue
5 of the change of name is to be decided.

6 (e) If a guardian files a petition to change the name of his or her
7 minor ward pursuant to Section 1276:

8 (1) The guardian shall provide notice of the hearing to any living
9 parent of the minor by personal service at least 30 days before the
10 hearing.

11 (2) If either or both parents are deceased or cannot be located,
12 the guardian shall cause, not less than 30 days before the hearing,
13 to be served a notice of the time and place of the hearing or a copy
14 of the order to show cause on the child's grandparents, if living,
15 pursuant to Section 413.10, 414.10, 415.10, or 415.40.

16 (f) This section shall become operative on July 1, 2014.

17 SEC. 4. Section 1277.5 is added to the Code of Civil Procedure,
18 to read:

19 1277.5. (a) (1) *If a proceeding for a change of name to*
20 *conform the petitioner's name to the petitioner's gender identity*
21 *is commenced by the filing of a petition, the court shall thereupon*
22 *make an order reciting the filing of the petition, the name of the*
23 *person by whom it is filed, and the name proposed. The order shall*
24 *direct all persons interested in the matter to make known any*
25 *objection to the change of name by filing a written objection, which*
26 *includes any reasons for the objection, within six weeks of the*
27 *making of the order, and shall state that if no objection is timely*
28 *filed, the court shall, without hearing, enter the order that the*
29 *change of name is granted.*

30 (2) *The proceeding for a change of name to conform the*
31 *petitioner's name to the petitioner's gender identity is exempt from*
32 *any requirement for publication.*

33 (b) *A hearing date shall not be set in the proceeding unless an*
34 *objection is timely filed. If an objection is timely filed, the court*
35 *may set a hearing at a time designated by the court, only if*
36 *objections are filed by a person who can, in those objections, show*
37 *to the court good reason against the change of name. At the*
38 *hearing, the court may examine under oath any of the petitioners,*
39 *remonstrants, or other persons touching the petition or application,*

1 *and may make an order changing the name or dismissing the*
2 *petition or application as the court may deem right and proper.*

3 ~~SEC. 2.~~

4 *SEC. 5.* Section 1278 of the Code of Civil Procedure is
5 amended to read:

6 1278. (a) (1) Except as provided in subdivisions (c) and (d),
7 the petition or application shall be heard at the time designated by
8 the court, only if objections are filed by a person who can, in those
9 objections, show to the court good reason against the change of
10 name. At the hearing, the court may examine on oath any of the
11 petitioners, remonstrants, or other persons touching the petition
12 or application, and may make an order changing the name, or
13 dismissing the petition or application, as the court may ~~seem~~ *deem*
14 right and proper.

15 (2) If no objection is filed at least two court days before the date
16 set for hearing, the court may, without hearing, enter the order that
17 the change of name is granted. ~~If the petition seeks to conform the~~
18 ~~petitioner's name to the petitioner's gender identity and no~~
19 ~~objection is timely filed within 28 days of the filing of the petition;~~
20 ~~the court shall grant the petition without a hearing.~~

21 (b) If the provisions of subdivision (b) of Section 1277 apply,
22 the court shall not disclose the proposed name unless the court
23 finds by clear and convincing evidence that the allegations of
24 domestic violence, stalking, or sexual assault in the petition are
25 false.

26 (c) If the application for a change of name is brought as part of
27 an action under the Uniform Parentage Act (Part 3 (commencing
28 with Section 7600) of Division 12 of the Family Code), the hearing
29 on the issue of the change of name shall be conducted pursuant to
30 statutes and rules of court governing those proceedings, whether
31 the hearing is conducted upon an order to show cause or upon trial.

32 (d) If the petition for a change of name is filed by a guardian
33 on behalf of a minor ward, the court shall first find that the ward
34 is likely to remain in the guardian's care until the age of majority
35 and that the ward is not likely to be returned to the custody of his
36 or her parents. Upon making those findings, the court shall consider
37 the petition and may grant the petition only if it finds that the
38 proposed name change is in the best interest of the child.

39 (e) This section shall become operative on July 1, 2014.

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1 ~~SEC. 3.~~

2 *SEC. 6.* The heading of Article 7 (commencing with Section
3 103425) of Chapter 11 of Part 1 of Division 102 of the Health and
4 Safety Code is amended to read:

5

6 Article 7. Revision of Birth Records to Reflect Change of
7 Gender

8

9 ~~SEC. 4.~~

10 *SEC. 7.* Section 103425 of the Health and Safety Code is
11 amended to read:

12 103425. (a) A person may file a petition with the superior
13 court in any county seeking a judgment recognizing the change of
14 gender to female, male, or nonbinary.

15 (b) If requested, the judgment shall include an order that a new
16 birth certificate be prepared for the person reflecting the change
17 of gender and any change of name accomplished by an order of a
18 court of this state, another state, the District of Columbia, or any
19 territory of the United States.

20 ~~SEC. 5.~~

21 *SEC. 8.* Section 103426 of the Health and Safety Code is
22 amended to read:

23 103426. The State Registrar shall issue a new birth certificate
24 reflecting a change of gender to female, male, or nonbinary without
25 a court order for any person born in this state who submits directly
26 to the State Registrar an application to change the gender on the
27 birth certificate and an affidavit attesting under penalty of perjury
28 that the request for a change of gender to (female, male, or
29 nonbinary) is to conform the person's legal gender to the person's
30 gender identity and is not made for any fraudulent purpose. Upon
31 receipt of the documentation and the fee prescribed by Section
32 103725, the State Registrar shall establish a new birth certificate
33 reflecting the gender stated in the application and any change in
34 name, if accompanied by a court order for a change of name.

35 ~~SEC. 6.~~

36 *SEC. 9.* Section 103430 of the Health and Safety Code is
37 amended to read:

38 103430. (a) A petition for a court order to recognize a change
39 in the petitioner's gender as female, male, or nonbinary shall be
40 accompanied by an affidavit from the petitioner and a certified

1 copy of the court order changing the petitioner's name, if
2 applicable. The petitioner's affidavit shall be accepted as conclusive
3 proof of gender change if it contains substantially the following
4 language: "I, (petitioner's full name), hereby attest under penalty
5 of perjury that the request for a change in gender to (female, male,
6 or nonbinary) is to conform my legal gender to my gender identity
7 and is not for any fraudulent purpose."

8 ~~(b) The Except as provided in subdivision (e), the court shall~~
9 ~~grant the petition without a hearing within 28 days of the filing of~~
10 ~~the petition, unless an objection is timely filed. If an objection was~~
11 ~~timely filed, the petition shall be heard at the time appointed by~~
12 ~~the court. At the hearing, the court may examine on oath the~~
13 ~~petitioner, and any other person having knowledge of facts relevant~~
14 ~~to the petition. At the conclusion of the hearing the court shall~~
15 ~~grant the petition if the court determines that the petition is not~~
16 ~~made for any fraudulent purpose. hearing.~~

17 (c) If the judgment includes an order for a new birth certificate
18 and if the petitioner was born in this state, a certified copy of the
19 decree of the court ordering the new birth certificate, shall, within
20 30 days from the date of the decree, be filed with the State
21 Registrar. Upon receipt thereof together with the fee prescribed
22 by Section 103725, the State Registrar shall establish a new birth
23 certificate for the petitioner.

24 (d) The new birth certificate shall indicate the gender of the
25 petitioner, as specified in the judgment of the court, and shall
26 reflect any change of name specified in the court order, as
27 prescribed by Section 103425. No reference shall be made in the
28 new birth certificate, nor shall its form in any way indicate, that it
29 is not the original birth certificate of the petitioner.

30 (e) (1) *If a petitioner is under 18 years of age, the petition shall*
31 *be signed by either at least one of the petitioner's parents or any*
32 *legal guardian of the petitioner, or if both parents are deceased*
33 *and there is no legal guardian of the petitioner, by either a near*
34 *relative or friend of the petitioner or as provided in Section 7638*
35 *of the Family Code.*

36 (A) *If a petition filed by a petitioner who is under 18 years of*
37 *age does not include the signature of both living parents, the*
38 *petitioner shall serve the living parent who did not sign the petition*
39 *with notice and an order to show cause pursuant to Section 413.10,*
40 *414.10, 415.10, or 415.40 of the Code of Civil Procedure, not less*

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1 *than 30 days after the petition was filed. If service cannot*
2 *reasonably be accomplished pursuant to Section 415.10 or 415.40*
3 *of the Code of Civil Procedure, the court may order that service*
4 *be given in a manner that the court determines is reasonably*
5 *calculated to give actual notice to the living parent who did not*
6 *sign the petition.*

7 *(B) The order to show cause shall direct the living parent who*
8 *did not sign the petition to appear before the court at a time and*
9 *place specified, which shall be not less than 6 weeks nor more*
10 *than 12 weeks from the time of making the order to show cause,*
11 *unless the court orders a different time, to show cause why the*
12 *petition for a court order to recognize a change in the petitioner's*
13 *gender as female, male, or nonbinary should not be granted. The*
14 *order to show cause shall direct the living parent who did not sign*
15 *the petition to make known any objection to the granting of the*
16 *petition by filing a written objection that includes the reasons for*
17 *the objection with the court at least two court days before the*
18 *matter is scheduled to be heard and by appearing in court at the*
19 *hearing to show cause why the petition should not be granted. The*
20 *order to show cause shall state that if the living parent who did*
21 *not sign the petition does not timely file a written objection and*
22 *appear in the court hearing, the court shall grant the petition*
23 *without a hearing.*

24 *(2) (A) The court shall grant a petition for a court order to*
25 *recognize a change in the petitioner's gender as female, male, or*
26 *nonbinary filed by a petitioner who is under 18 years of age without*
27 *a hearing, unless a living parent who was required to be served*
28 *with notice and an order to show cause in compliance with*
29 *subparagraph (B) of paragraph (1) timely filed a written objection*
30 *and appear in the court hearing.*

31 *(B) The court may deny a petition for a court order to recognize*
32 *a change in the petitioner's gender as female, male, or nonbinary*
33 *filed by a petitioner who is under 18 years of age, if both parents,*
34 *if living, did not sign the petition, the living parent who did not*
35 *sign the petition timely filed a written objection and appear in the*
36 *court hearing, and the court, after holding a hearing on the matter,*
37 *finds that the change of gender is not in the best interest of the*
38 *petitioner.*

39 ~~SEC. 7. Section 103435 of the Health and Safety Code is~~
40 ~~amended to read:~~

1 103435. (a) In lieu of separate proceedings, a single petition
2 may be filed with the superior court to change the petitioner's
3 name and recognize the change to petitioner's gender and, if
4 requested, to order the issuance of a new birth certificate. With
5 respect to such a petition, the court shall follow the procedure set
6 forth in Title 8 (commencing with Section 1275) of Part III of the
7 Code of Civil Procedure; however, the order to show cause shall
8 not include the petition to recognize the change of gender. A
9 certified copy of the decree of the court issued pursuant to this
10 section shall, within 30 days, be filed with both the Secretary of
11 State and, if the judgment includes an order for a new birth
12 certificate and if the petitioner was born in this state, the State
13 Registrar. Upon its receipt, the State Registrar shall establish a
14 new birth certificate as provided in this article.

15 (b) If the person petitioning for a change of gender is under 18
16 years of age, the petition may be signed either by one of the
17 person's parents, or by any legal guardian of the person, or if both
18 parents are deceased and there is no guardian of the person, by a
19 near relative or friend of the person or as provided in Section 7638
20 of the Family Code.

21 (c) If a petition has been filed for a minor by a parent and the
22 other parent, if living, does not join in consenting thereto, the
23 petitioner shall cause, not less than 30 days after filing, to be served
24 notice of a copy of the order to show cause on the other parent
25 pursuant to Section 413.10, 414.10, 415.10, or 415.40 of the Code
26 of Civil Procedure. If notice of the hearing cannot reasonably be
27 accomplished pursuant to Section 415.10 or 415.40 of the Code
28 of Civil Procedure, the court may order that notice be given in a
29 manner that the court determines is reasonably calculated to give
30 actual notice to the nonconsenting parent.

31 ~~SEC. 8.~~

32 *SEC. 10.* Section 103440 of the Health and Safety Code is
33 amended to read:

34 103440. The new birth certificate established pursuant to this
35 article shall supplant any birth certificate previously registered for
36 the registrant and shall be the only birth certificate open to public
37 inspection. The application and supporting affidavit filed pursuant
38 to Section 103426 shall be filed with the original record of birth,
39 that shall remain as a part of the records of the State Registrar. All
40 records and information specified in this article, other than the

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1 newly issued birth certificate, shall be available only upon written
2 request of the registrant or an order of a court of record.

3 When a new birth certificate is established under this article, the
4 State Registrar shall transmit copies of the newly established birth
5 certificate for filing to the local registrar and the county recorder
6 whose records contain copies of the original certificate, who shall
7 forward the copies of the original certificate to the State Registrar
8 for filing with the original certificate, if it is practical for him or
9 her to do so. If it is impractical for him or her to forward the copy
10 to the State Registrar, he or she shall effectually seal a cover over
11 the copy of the original certificate in a manner as not to deface or
12 destroy the copy and forward a verified statement of his or her
13 action to the State Registrar. Thereafter the information contained
14 in the record shall be available only upon written request of the
15 registrant or on order of a court of record.

16 ~~SEC. 9.~~

17 *SEC. 11.* Section 12811 of the Vehicle Code is amended to
18 read:

19 12811. (a) (1) (A) When the department determines that the
20 applicant is lawfully entitled to a license, it shall issue to the person
21 a driver's license as applied for. The license shall state the class
22 of license for which the licensee has qualified and shall contain
23 the distinguishing number assigned to the applicant, the date of
24 expiration, the true full name, age, and mailing address of the
25 licensee, a brief description and engraved picture or photograph
26 of the licensee for the purpose of identification, and space for the
27 signature of the licensee. The applicant shall choose a gender
28 category of female, male, or nonbinary to be included as part of
29 the applicant's description on the driver's license. An applicant's
30 choice of gender category on an original, renewed, or amended
31 driver's license is not subject to review by the department. The
32 department shall promulgate regulations to provide a process for
33 an expedient amendment to a gender category and shall not require
34 an applicant to provide documentation other than the request from
35 the applicant.

36 (B) Each license shall also contain a space for the endorsement
37 of a record of each suspension or revocation of the license.

38 (C) The department shall use whatever process or processes, in
39 the issuance of engraved or colored licenses, that prohibit, as near
40 as possible, the ability to alter or reproduce the license, or prohibit

1 the ability to superimpose a picture or photograph on the license
2 without ready detection.

3 (2) In addition to the requirements of paragraph (1), a license
4 issued to a person under 18 years of age shall display the words
5 “provisional until age 18.”

6 (b) (1) On and after July 1, 2011, an application for an original
7 or renewal driver’s license or identification card shall contain a
8 space for the applicant to enroll in the Donate Life California Organ
9 and Tissue Donor Registry. The application shall include check
10 boxes for an applicant to mark either (A) Yes, add my name to the
11 donor registry or (B) I do not wish to register at this time.

12 (2) The department shall inquire verbally of an applicant
13 applying in person for an original or renewal driver’s license or
14 identification card at a department office as to whether the applicant
15 wishes to enroll in the Donate Life California Organ and Tissue
16 Donor Registry. Failure or refusal to answer this question or check
17 a box on the application form shall not be a basis for the department
18 to deny an applicant a driver’s license or identification card.

19 (3) The following language shall be included with the question
20 required by paragraph (1):

21
22 “Marking ‘Yes’ adds your name to the Donate Life California
23 Organ and Tissue Donor Registry and a pink ‘donor’ dot will
24 appear on your license. If you wish to remove your name from the
25 registry you must contact Donate Life California (see back); DMV
26 can remove the pink dot from your licenses but cannot remove
27 you from the registry.”

28
29 (4) The back of the application shall contain the following
30 statement:

31
32 “If, on the front of this form, you marked ‘Yes’ to register as an
33 organ and tissue donor you are legally authorizing the recovery of
34 organs and tissues in the event of your death. Registering as a
35 donor will not affect your medical treatment in any way. As
36 outlined in the California Anatomical Gift Act, your authorization
37 is legally binding and, unless the donor is under 18 years of age,
38 your decision does not require the consent of any other person.
39 For registered donors under 18 years of age, the legal guardian
40 shall make the final donation decision. You may limit your

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1 donation to specific organs or tissues, place usage restrictions, for
2 example transplantation or research, obtain more information about
3 donation, or remove your name from the registry on the Internet
4 Web site of Donate Life California: www.donatelifecalifornia.org.”
5

6 (5) Notwithstanding any other law, a person under 18 years of
7 age may register as a donor. However, the legal guardian of that
8 person shall make the final decision regarding the donation.

9 (6) The department shall collect donor designation information
10 on all applications for an original or renewal driver's license or
11 identification card.

12 (7) The department shall print the word “DONOR” or another
13 appropriate designation on the face of a driver's license or
14 identification card to a person who has indicated on the application
15 his or her intent to enroll in the organ donation program pursuant
16 to this section.

17 (8) On a weekly basis, the department shall electronically
18 transmit to Donate Life California, a nonprofit organization
19 established and designated as the California Organ and Tissue
20 Donor Registrar pursuant to Section 7150.90 of the Health and
21 Safety Code, all of the following information from every
22 application that indicates the applicant's decision to enroll in the
23 organ donation program:

24 (A) His or her true full name.

25 (B) His or her residence or mailing address.

26 (C) His or her year of birth.

27 (D) His or her California driver's license number or
28 identification card number.

29 (9) (A) A person who applies for an original or renewal driver's
30 license or identification card may designate a voluntary
31 contribution of two dollars (\$2) for the purpose of promoting and
32 supporting organ and tissue donation. This contribution shall be
33 collected by the department, and treated as a voluntary contribution
34 to Donate Life California and not as a fee for the issuance of a
35 driver's license or identification card.

36 (B) The department may use the donations collected pursuant
37 to this paragraph to cover its actual administrative costs incurred
38 pursuant to paragraphs (6) to (8), inclusive. The department shall
39 deposit all revenue derived pursuant to this paragraph and
40 remaining after the department's deduction for administrative costs

1 in the Donate Life California Trust Subaccount, that is hereby
2 created in the Motor Vehicle Account in the State Transportation
3 Fund. Notwithstanding Section 13340 of the Government Code,
4 all revenue in this subaccount is continuously appropriated, without
5 regard to fiscal years, to the Controller for allocation to Donate
6 Life California and shall be expended for the purpose of increasing
7 participation in organ donation programs.

8 (C) The department shall transmit to the Donate Life California
9 Organ and Tissue Donor Registry and the appropriate policy and
10 fiscal committees of the Legislature an annual report, and shall
11 make available quarterly updates, detailing funds collected through
12 voluntary contributions as well as a summary of applicants,
13 including all of the following nonidentifiable information:

14 (i) Date of application.

15 (ii) Method of application (field office, online, or mail).

16 (iii) Donor registration status.

17 (iv) ZIP Code.

18 (v) Gender.

19 (vi) Year of birth.

20 (D) (i) The annual report to be submitted to the appropriate
21 policy and fiscal committees of the Legislature pursuant to
22 subparagraph (C) shall be submitted in compliance with Section
23 9795 of the Government Code.

24 (ii) Pursuant to Section 10231.5 of the Government Code, the
25 requirement for submitting the annual report to the appropriate
26 policy and fiscal committees of the Legislature imposed under
27 subparagraph (C) is inoperative four years after the date the first
28 annual report is due.

29 (10) The enrollment form shall be posted on the Internet Web
30 sites for the department and the California Health and Human
31 Services Agency.

32 (11) The enrollment shall constitute a legal document pursuant
33 to the Uniform Anatomical Gift Act (Chapter 3.5 (commencing
34 with Section 7150) of Part 1 of Division 7 of the Health and Safety
35 Code) and shall remain binding after the donor's death despite any
36 express desires of next of kin opposed to the donation. Except as
37 provided in paragraph (5) of subdivision (b), the donation does
38 not require the consent of any other person.

39 (12) Donate Life California shall ensure that all additions and
40 deletions to the California Organ and Tissue Donor Registry,

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1 established pursuant to Section 7150.90 of the Health and Safety
2 Code, shall occur within 30 days of receipt.

3 (13) Information obtained by Donate Life California for the
4 purposes of this subdivision shall be used for these purposes only
5 and shall not be disseminated further by Donate Life California.

6 (c) (1) All applications for a driver's license or identification
7 card shall contain a space for an applicant to indicate whether he
8 or she has served in the Armed Forces of the United States and to
9 give his or her consent to be contacted regarding eligibility to
10 receive state or federal veterans benefits. The application shall
11 contain the following statement:

12
13 "By marking the veteran box on this application, I certify that I
14 am a veteran of the United States Armed Forces and that I want
15 to receive veterans benefits information from the California
16 Department of Veterans Affairs. By marking the veteran box on
17 this application, I also consent to DMV transmitting my name and
18 mailing address to the California Department of Veterans Affairs
19 for this purpose only, and I certify that I have been notified that
20 this transmittal will occur."

21
22 (2) The department shall collect the information obtained
23 pursuant to paragraph (1).

24 (3) As mutually agreed between the department and the
25 Department of Veterans Affairs, the department shall electronically
26 transmit to the Department of Veterans Affairs the following
27 information on each applicant who has identified that he or she
28 has served in the Armed Forces of the United States since the last
29 data transfer and has consented to be contacted about veterans
30 benefits:

31 (A) His or her true full name.

32 (B) His or her mailing address.

33 (4) Information obtained by the Department of Veterans Affairs
34 for the purposes of this subdivision shall be used for the purpose
35 of assisting individuals to access veterans benefits and shall not
36 be disseminated except as needed for this purpose.

37 (5) Commencing November 11, 2015, an in-person application
38 for a driver's license or identification card shall allow an applicant
39 to request the word "VETERAN" be printed on the face of the
40 driver's license or identification card. A verification form shall be

1 developed by the Department of Veterans Affairs in consultation
2 with the Department of Motor Vehicles and the California
3 Association of County Veterans Service Officers to acknowledge
4 verification of veteran status. A county veterans service office
5 shall verify the veteran's status as a veteran, sign the verification
6 form, and return it to the veteran. The Department of Motor
7 Vehicles shall accept the signed verification form as proof of
8 veteran status. Upon payment of the fee required pursuant to
9 Section 14901.1, the word "VETERAN" shall be printed on the
10 face of a driver's license or identification card, in a location
11 determined by the department, and issued to a person who makes
12 this request and presents the verification form to the department.

13 (d) A public entity or employee shall not be liable for loss,
14 detriment, or injury resulting directly or indirectly from false or
15 inaccurate information contained in the form provided pursuant
16 to subdivision (b).

17 (e) A contract shall not be awarded to a nongovernmental entity
18 for the processing of driver's licenses, unless the contract conforms
19 to all applicable state contracting laws and all applicable procedures
20 set forth in the State Contracting Manual.

21 ~~SEC. 10.~~

22 *SEC. 12.* Section 13005 of the Vehicle Code is amended to
23 read:

24 13005. (a) The identification card shall resemble in appearance,
25 so far as is practicable, a driver's license issued pursuant to this
26 code. It shall adequately describe the applicant, bear his or her
27 picture, and be produced in color or engraved by a process or
28 processes that prohibit, as near as possible, the ability to alter or
29 reproduce the identification card, or prohibit the ability to
30 superimpose a picture or photograph on the identification card
31 without ready detection. The applicant shall choose a gender
32 category of female, male, or nonbinary to be included as part of
33 the applicant's description on the identification card. An applicant's
34 choice of gender category on an original, renewed, or amended
35 identification card is not subject to review by the department. The
36 department shall adopt regulations to provide a process for an
37 expedient amendment to a gender category and shall not require
38 an applicant to provide documentation other than the request from
39 the applicant.

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1 (b) (1) Upon issuance of a new identification card, or renewal
2 of an identification card, the department shall provide information
3 on organ and tissue donation, including a standardized form to be
4 filled out by an individual who desires to enroll in the California
5 Organ and Tissue Donor Registry with instructions for mailing
6 the completed form to the California Organ and Tissue Donor
7 Registrar established pursuant to subdivision (a) of Section 7150.90
8 of the Health and Safety Code.

9 (2) The enrollment form shall be simple in design and shall be
10 produced by the department, in cooperation with the California
11 Organ and Tissue Donor Registrar, and shall require all of the
12 following information to be supplied by the enrollee:

13 (A) Date of birth, sex, full name, address, and home telephone
14 number.

15 (B) Consent for organs or tissues to be donated for transplant
16 after death.

17 (C) Any limitation of the donation to specific organs, tissues,
18 or research.

19 (3) The form shall also include a description of the process for
20 having a name removed from the registry, and the process for
21 donating money for the benefit of the registry.

22 (4) The registry enrollment form shall be posted on the Internet
23 Web sites for the department and the California Health and Human
24 Services Agency.

25 (5) The form shall constitute a legal document under the
26 Uniform Anatomical Gift Act (Chapter 3.5 (commencing with
27 Section 7150) of Part 1 of Division 7 of the Health and Safety
28 Code).

29 (6) The registrar shall ensure that all additions and deletions to
30 the registry shall occur within 30 days of receipt.

31 (7) Information obtained by the registrar for the purposes of
32 this subdivision shall be used for these purposes only and shall not
33 further be disseminated by the registrar.

34 (c) A contract shall not be awarded to a nongovernmental entity
35 for the processing of identification cards unless the contract
36 conforms to all applicable state contracting laws and all applicable
37 procedures set forth in the State Contracting Manual.

38 ~~SEC. 11.~~

39 *SEC. 13.* No reimbursement is required by this act pursuant to
40 Section 6 of Article XIII B of the California Constitution because

1 the only costs that may be incurred by a local agency or school
2 district will be incurred because this act creates a new crime or
3 infraction, eliminates a crime or infraction, or changes the penalty
4 for a crime or infraction, within the meaning of Section 17556 of
5 the Government Code, or changes the definition of a crime within
6 the meaning of Section 6 of Article XIII B of the California
7 Constitution.

O



Register to vote:

http://www.nycfb.info/public/VRC/registeringToVote.aspx?sm=public_rtv

Office of Vital Records
125 Worth Street, CN-4, Room 133
New York, N.Y. 10013-4090

SEE INSTRUCTIONS AND APPLICABLE FEES BELOW AND ON BACK

BIRTH CERTIFICATE APPLICATION

(Please Print Clearly)

1. LAST NAME ON BIRTH CERTIFICATE		2. FIRST NAME		3. <input type="checkbox"/> FEMALE <input type="checkbox"/> MALE	
4a. IF YOU KNOW THE EXACT DATE OF BIRTH MM DD YYYY		4b. IF YOU DON'T KNOW THE EXACT DATE OF BIRTH BEGIN SEARCH MM DD YYYY END SEARCH MM DD YYYY		<i>SEE BELOW FOR FEE INFORMATION</i>	
5. NAME OF HOSPITAL OR ADDRESS WHERE BORN			6. BOROUGH WHERE BORN MAN <input type="checkbox"/> BRONX <input type="checkbox"/> BKLYN <input type="checkbox"/> QUEENS <input type="checkbox"/> SI <input type="checkbox"/>		
7. MOTHER/PARENT'S NAME PRIOR TO FIRST MARRIAGE (MAIDEN NAME): FIRST LAST			8. BIRTH CERTIFICATE NUMBER (if known)		
9. FATHER/PARENT'S NAME PRIOR TO FIRST MARRIAGE FIRST LAST			10. WHY DO YOU NEED THIS BIRTH CERTIFICATE		
11. DO YOU NEED A LETTER OF EXEMPLIFICATION? <input type="checkbox"/> YES <input type="checkbox"/> NO	12. HOW MANY COPIES DO YOU NEED? 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/>	13. HOW ARE YOU RELATED TO THE PERSON ON THIS BIRTH CERTIFICATE? SELF/PARENT/OTHER (please explain)			
PLEASE PRINT YOUR MAILING AND CONTACT INFORMATION CLEARLY BELOW					
NAME		DAYTIME PHONE NUMBER <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> - <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> Area Code Telephone Number			
STREET ADDRESS		APT. NO.		E-MAIL ADDRESS <input type="text"/>	
CITY		STATE		ZIP CODE	
NOTE: Copy of a birth record can be issued only to persons to whom the record of birth relates, if of age, or to a parent or human service organizations. It is a violation of law to make a false, untrue or misleading statement or forge the signature of another on this application. Violations are a misdemeanor punishable by a fine of up to \$2,000.					
14. CUSTOMER SIGNATURE AND DATE SIGNATURE: _____ DATE: _____			15. CUSTOMER COMMENTS/ADDITIONAL INFORMATION		
FEES \$15 per copy x _____ copies \$ _____ Cost of certified copy includes a two consecutive year search \$3 for each extra year searched x _____ years \$ _____ Total Amount Enclosed: \$ _____		APPLICATIONS SUBMITTED BY MAIL MUST BE NOTARIZED STATE OF _____ COUNTY OF _____ SUBSCRIBED AND SWORN BEFORE ME: THIS _____ DAY OF _____, 20____ _____ NOTARY PUBLIC SIGNATURE		NOTARY PUBLIC SEAL	
IF RECORD IS NOT ON FILE, A CERTIFIED "NOT FOUND STATEMENT" WILL BE ISSUED. CASH IS NOT ACCEPTED BY MAIL OR IN PERSON.					
ORDER BIRTH CERTIFICATES QUICKLY AND SECURELY AT WWW.NYC.GOV/VITALRECORDS					

IMPORTANT BIRTH CERTIFICATE INFORMATION

- You can obtain a birth certificate for yourself if you are at least 18 years old, or for your child, with current identification. Detailed instructions for attorneys submitting requests on behalf of their clients are available online at www.nyc.gov/vitalrecords.
- Falsifying information, including forging a signature, to obtain a birth certificate is a misdemeanor and violators may also be subject to a fine of up to \$2,000 per violation.
- Credit cards are not accepted for mail-in orders. If from a foreign country, send an international money order.
- Please allow 10–15 days processing time for all long form/vault certificate orders submitted in person.
- Processing of mailed applications takes approximately 15 days. Check current times at www.nyc.gov/vitalrecords.

3 WAYS TO ORDER A NEW YORK CITY BIRTH CERTIFICATE

- **Online:** Visit www.nyc.gov/vitalrecords to order using a credit card, debit card, or electronic check. Online orders are processed within 24 hours on weekdays, and UPS express mail delivery is available.
- **Walk-In:** Go to 125 Worth Street in Lower Manhattan and use the Lafayette Street (handicapped accessible) or Centre Street entrances. We are open Monday through Friday 9:00AM – 3:30PM. Lines are shortest in the morning. Please see identification requirements below.
- **By Mail:** All mailed applications must be notarized. Mail your application to 125 Worth Street, CN-4, New York, NY 10013. Be sure to include a self-addressed, stamped, envelope with your check or money order payable to the NYC Department of Health and Mental Hygiene. You must provide a photocopy of Category 1 identification or original copies of identification from Category 2 (*see below*).

Identification (ID) Requirements to get a Birth Certificate for you or your child.

Category 1: Identity documents. If you order in person you can leave with your short form certificate in most cases, unless you require a long form certificate.

Provide any of the following, if it includes your photo, your signature and is unexpired:

- Driver's License or non-driver's ID from any state or U.S. territory
- Public benefit card
- U.S. or foreign passport
- U.S. certificate of naturalization
- Military ID card
- Employee ID with photo, verifiable employer and recent pay stub
- MTA reduced-fare Metro Card
- Student ID and current transcript from accredited and verifiable institution
- Inmate photo ID with release papers

Category 2: Proof of address. If you do not have any of the above, you may provide proof of address as described below. Your certificate will be mailed to address on documents provided.

Two different documents dated within the past 60 days, if they show your name and address

- Utility bills (online bills can be downloaded from your provider)
- Letter from a government agency

If you cannot provide Category 1 or 2 identification, please contact Vital Records at nycdohvr@health.nyc.gov.

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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

Lisa Mottet

National Gay and Lesbian Task Force

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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

*Lisa Motter**

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* Transgender Civil Rights Project Director at the National Gay and Lesbian Task Force. I would like to thank the National Gay and Lesbian Task Force for establishing and continuing to fund my work at the Transgender Civil Rights Project since 2001. I would also like to thank Equal Justice Works for funding the first two years of the project through an Equal Justice Works Fellowship. Although this article represents scholarship conducted in large part outside of my role at the Task Force, I am indebted to the many law students and legal volunteers of the Task Force who helped with doing much of the background research, specifically Thomas Bousnakis, Alex Garnick, Ashland Johnson, and Yam Menon. I am incredibly appreciative to Donald Johnson who served as one of my research assistants for much of this project. I am also especially grateful to Vikram Swaruup who assisted with this article first as a legal fellow at the Task Force, and later by reviewing drafts and serving as one of my research assistants for this project. I am especially indebted to Professor Dean Spade who encouraged me to write; over the years, his work and thoughts have influenced mine, and while we do not always agree, he has been a visionary for change for the transgender and social justice movements. I am grateful to Professor Shawn Crincoli, Professor Julie Greenberg, Sarah Josephson, Anya Lakner, Dylan Orr, Harper Jean Tobin, and Janson Wu who reviewed drafts and provided insight into the best analysis to make and Donna Cartwright for editing. I am also grateful for the encouragement and support of my spouse, AJ Pearlman.

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INTRODUCTION

Across the country, laws governing corrections to gender markers on birth certificates are relatively uniform, in large part because many states adopted the relevant provisions of the 1977 revision of the Model State Vital Statistics Act (MSVSA). The MSVSA, developed by the U.S. Department of Health and Human Services, guides states on the most efficient laws and procedures related to maintaining accurate birth, death, and other vital records at the state, local, and territorial level. At the time when the government promulgated the MSVSA provision related to gender corrections, it served as a forward-thinking model because it acknowledged that vital records should be corrected in the case of individuals who change their gender. Specifically, the 1977 MSVSA recommended that corrections to gender markers on birth certificates be granted after applicants change their

sex by “surgical procedure” and provide a court order to that effect.¹ Additionally, the MSVSA recommended that the correction be kept private.²

Over the past three decades, transgender legal rights have advanced and understanding of transgender medicine has evolved. Experts in transgender law and medicine entirely reject the idea that recognition of a person’s gender should come only after surgery. This notion has also been significantly eroded in law and policy. Yet, with the exception of new laws and/or policies in three states,³ birth certificate statutes and policies have yet to be modernized in this respect.

Other scholars have examined the harms to transgender people caused by medically out-of-date policies related to updating gender markers on identity documents and have suggested general frameworks for updating these policies.⁴ This Article focuses more specifically on birth certificates by providing a detailed analysis of the rules governing a change in gender markers for all United States jurisdictions that issue them. It also presents policymakers with model statutory and policy language and is the first to resolve this issue within the framework of good government practices in addition to transgender rights.

This Article explains why and how state, local, and territorial birth certificate laws and regulations ought to be revised based on changes in law and medicine. In addition, the Article discusses public policy factors that governments should consider when modernizing their policies, including the cost of various policies and the policies’ legal and practical effects on the lives of transgender people.

After providing important background information about gender transition and the state of the law in Section I, the Article discusses three aspects of birth certificate laws and policies. In Section II, it examines the standard of proof—the evidence a person must demonstrate to be eligible for the correction. In Section III, the Article considers the procedure by which the correction is authorized—primarily whether an individual must

1. MODEL STATE VITAL STATISTICS ACT AND REGULATIONS § 21(e) (Ctr. for Disease Control & Prevention 1992), available at <http://www.cdc.gov/nchs/data/misc/mv-sact92b.pdf>.

2. See *infra* notes 245–48 and accompanying text.

3. The exceptions are California, Washington, and Vermont, each of which has updated statutes or policies in the last several years. See *infra* Part II. A. 2.

4. See Dean Spade, *Documenting Gender*, 59 HAST. L.J. 731 (2008); Harper Jean Tobin, *Against the Surgical Requirement for Change of Legal Sex*, 38 CASE W. RES. J. INT’L L. 393 (2005) [hereinafter Tobin, *Against the Surgical Requirement*]; Harper Jean Tobin, *Fair and Accurate Identification for Transgender People*, HARV. KENNEDY SCH. LGBTQ POL’Y J. (2011), available at <http://isites.harvard.edu/icb/icb.do?keyword=k78405&pageid=icb.page414493> [hereinafter Tobin, *Fair and Accurate Identification*].

obtain a court order or whether that individual can go directly to the vital statistics agency for the correction. In Section IV, the Article analyzes privacy protections, or their lack thereof, that exist in these policies.

In each of these sections, the Article documents the state of the law, presents issues to consider when designing a new policy, including constitutional considerations, and provides detailed recommendations for a modernized statute. The Article reviews the relevant MSVSA provisions, provides an overview of birth certificate laws in the fifty-seven state, local, and territorial jurisdictions⁵ that administer birth certificates, and examines in greater detail the laws of states which have policies that might serve as models. Where relevant, the Article also describes the 2010 policy regarding federal birth certificate equivalents (known as “Consular Reports of Birth Abroad”) for U.S. citizens born outside of the country, as well as the approaches taken by the United Kingdom and Argentina.

Ultimately, in Section V, the Article delineates a model statute for the 21st century, recommending statutory language to be used by state, local, and territorial legislatures, vital statistics agencies, and the U.S. Department of Health and Human Services in future revisions of the MSVSA.⁶ Adoption of the language presented here will ensure implementation of a vital statistics system that meets four goals: (1) issuance of accurate birth certificates in accordance with contemporary medical standards, (2) efficient use of government resources, (3) respect for constitutional rights, and (4) proper consideration of both the human and legal effect of an accurate birth certifi-

-
5. The fifty-seven jurisdictions are the fifty states, Guam, Puerto Rico, United States Virgin Islands, American Samoa, Commonwealth of the Northern Mariana Islands, New York City, and the District of Columbia. *See infra* app. A.
 6. The U.S. Department of Health and Human Services is currently revising the Model State Vital Statistics Act. *See* Ctrs. For Disease Control & Prevention, *2011 – Model Law Revision*, http://www.cdc.gov/nchs/nvss/model_law_revision.htm (last updated Nov. 10, 2009). I am indebted to my colleagues Mara Keisling and Harper Jean Tobin of the National Center for Transgender Equality, Masen Davis and Kristina Wertz of the Transgender Law Center, Dean Spade of the Sylvia Rivera Law Project, Dru Levasseur of Lambda Legal, Shannon Minter of the National Center for Lesbian Rights, and Jennifer Levi and Janson Wu of the Gay & Lesbian Advocates & Defenders with whom I have discussed and debated extensively the best legislation and policy in this arena. My recommendations are sharper because of their insight. Furthermore, our organizations were, in 2009, able to make a collective recommendation to the Model State Vital Statistics Working Group of the National Center for Health Statistics of the U.S. Department of Health and Human Services, as it considers revisions to the MSVSA. *See* Harper Jean Tobin, Nat’l Ctr. Transgender Equality, Comments of Legal and Public Policy Organizations on Corrected Birth Certificates for Transgender People (Sept. 8, 2009) (on file with author). The recommended legislation in this Article deviates from that collective recommendation in some important respects and should not be taken as the recommendation of my colleagues.

cate. In certain states, this recommended statutory language could be adopted as regulations or written policy to the same positive effect.

While the changes discussed in this Article to vital statistics laws and policies can seem technical in nature, the effect of not having government documentation that matches one's gender identity is tremendous. Although for many, lack of accurate documentation may trigger smaller problems caused by undesired disclosure of their transgender status, for others, the lack of government documentation can have dire effects. Policies that provide transgender people with identity documents that match their gender identity give them a better chance to live life in their gender, and avoid bias, discrimination, and violence in the areas most critical to quality of life, such as employment, housing, and education.

Finally, there is another benefit—to governments and to transgender people—that may result from modernizing birth certificate statutes and policies. Currently, courts struggle to determine the appropriate assessment of legal gender, and often settle on finding physical attributes or presumed genetic traits of the body to be determinative.⁷ Transgender rights litigators, aware that relying upon bodily attributes to define legal gender leaves a large majority of transgender people without recognition, often with disastrous consequences, instead point to gender identity—a person's innate sense of themselves as male or female—as the relevant legal determinant.⁸ If birth certificate laws and policies were reformed in the manner described in this Article, both courts and litigators could find a mutually satisfactory path forward. Courts would be able to defer to a person's official gender marker on his or her birth certificate, and transgender rights litigators would be satisfied because the ability to change the gender marker on one's certificate would be accessible to all transgender people who undergo gender transition.

I. UNDERSTANDING THE PROBLEM

A. A Brief Overview of the Legal Landscape with Regard to Correcting Gender on Birth Certificates

For decades, various government agencies have recognized that those who transition gender should be able to correct the gender on their identity documents. The following section provides an overview of the legal and

7. See, e.g., *In re Estate of Gardiner*, 42 P.3d 120 (Kan. 2002); *Littleton v. Prange*, 9 S.W.3d 223 (Tex. Ct. App. 1999); *Kantaras v. Kantaras*, 884 So. 2d 155 (Fla. Dist. Ct. App. 2004).

8. Interview with Dru Levasseur, Transgender Rights Attorney, Lambda Legal in New York, N.Y. (October 12, 2012).

policy approaches taken in the United States related to correcting gender markers, as well as information about the approaches taken in the United Kingdom and Argentina for comparison.

1. The Model State Vital Statistics Act (MSVSA)

The first Model State Vital Statistics Act⁹ was issued in 1907 by the United States Census Bureau.¹⁰ The stated purpose of having an MSVSA is to “promote uniformity among States in definitions, registration practices, disclosure and issuance procedures, and in many other functions that comprise a State system of vital statistics.”¹¹

Since its inception, the MSVSA has been updated only five times, with the most recent version being released in 1992. The 1977 version of the MSVSA was the first to address corrections to gender markers. The 1992 revision did not alter the language regarding gender markers; thus, today, the MSVSA reflects the best thinking of 1977 on gender corrections. It is quite remarkable that the MSVSA included language regarding these corrections in 1977, as transgender people had only been in national public consciousness beginning in the 1950s.¹²

The MSVSA is currently under review for additional revisions, a multi-year process that started in 2009 and was expected to conclude in 2011, although it has not yet been completed.¹³ Organizations engaging in

-
9. Although I abbreviate the Model State Vital Statistics Act as MSVSA, the U.S. Department of Health and Human Services refers to it as the “Model Law” or “Model Law and Regulations.” See MODEL STATE VITAL STATISTICS ACT AND REGULATIONS (1992), available at <http://www.cdc.gov/nchs/data/misc/mvsact92b.pdf>. Because this Article sets out its own model law, I use the MSVSA abbreviation to avoid confusion for the reader.
 10. The 1942 version was also drafted by the Census Bureau. NAT’L CTR. FOR HEALTH STATISTICS, U.S. DEP’T OF HEALTH & HUMAN SERVS., U.S. VITAL STATISTICS SYSTEM: MAJOR ACTIVITIES AND DEVELOPMENTS, 1950–95 5 (1997), available at <http://www.cdc.gov/nchs/data/misc/usvss.pdf>. In 1946, the responsibility for the MSVSA was transferred to the U.S. Department of Health, Education and Welfare, which issued the 1959 version. *Id.* at 6. The Department of Health, Education and Welfare was split, and became the Department of Health and Human Services (HHS) and Department of Education. HHS now issues the MSVSA.
 11. CTR. FOR DISEASE CONTROL & PREVENTION, *Preface to MODEL STATE VITAL STATISTICS ACT AND REGULATIONS* (1992).
 12. In the early 1950s, Christine Jorgensen’s gender transition was well-documented by national media. See *Medicine: The Case of Christine*, TIME, Apr. 20, 1953, <http://www.time.com/time/magazine/article/0,9171,822780,00.html>.
 13. Cathy Molchan Donald, Karen Hampton & Linette Scott, Model Law Work Group Progress Report at The Joint Annual Conference of National Association for Public Health Statistics and Information Systems and the National Center for Health Statistics (June 7, 2010) (PowerPoint presentation available at <http://www.naphsis.org/mtg/Pages/2010AnnualMeetingPowerPointPresentationLibrary.aspx>).

advocacy for the lesbian, gay, bisexual, and transgender (LGBT) communities have submitted recommendations to the Department of Health and Human Services on this issue, but it is not yet clear to what extent these will be adopted.¹⁴

2. Current U.S. State Law and Policies Overview

In addition to the fifty states, birth certificates are issued by the District of Columbia, New York City, American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, and the United States Virgin Islands.

Twenty-nine of these fifty-seven jurisdictions¹⁵ explicitly allow for gender corrections on birth certificates in their statutory codes, potentially with accompanying policies or regulations to implement the statute. Nine more jurisdictions¹⁶ deal with gender corrections only in their regulations while two have written, sub-regulatory policies.¹⁷ Ten operate without a written policy, or at least not one available to the public, but will correct the birth certificate upon court order or doctor's affidavit, generally using the same procedure for other corrections.¹⁸

In total, forty-six states, the District of Columbia, New York City, Guam, and Northern Mariana Islands clearly allow people to correct their gender marker.¹⁹ Oklahoma, Texas, and American Samoa do not have clear policies on whether or not changes are actually allowed. Tennessee has the only explicit statutory ban on correcting gender markers;²⁰ for various reasons, Idaho, Ohio, and Puerto Rico also do not allow individuals to correct gender. Ohio does not correct gender markers as a result of a trial court decision that interpreted its ambiguous statute regarding birth certificate

14. Tobin, *supra* note 6.

15. The twenty-nine jurisdictions are Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Georgia, Hawaii, Illinois, Iowa, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Missouri, Nebraska, New Jersey, New Hampshire, New Mexico, North Carolina, Oregon, Utah, Vermont, Virginia, Wisconsin, the District of Columbia, Guam, and the Commonwealth of Northern Mariana Islands. For citations to the relevant laws in these jurisdictions, *see infra* app. A.

16. These are Delaware, Kansas, Maine, Mississippi, Montana, North Dakota, Nevada, Wyoming, and New York City. *See infra* app. A.

17. These are New York State and Washington. *See infra* app. A.

18. These are Alaska, Florida, Indiana, Minnesota, Pennsylvania, Rhode Island, South Carolina, South Dakota, West Virginia, and United States Virgin Islands. *See infra* app. A.

19. *See infra* app. A for a comprehensive listing of these statutes and regulations.

20. "The sex of an individual will not be changed on the original certificate of birth as a result of sex change surgery." TENN. CODE. ANN. § 68-3-203(d) (West 1997).

amendments to disallow gender marker corrections.²¹ Idaho's state vital statistics agency does not interpret its general authority to make corrections on certificates to include the authority to make corrections for gender markers.²² Puerto Rico does not make corrections based on a 2005 Puerto Rico Supreme Court decision.²³

Of the fifty-three jurisdictions that allow gender marker changes to birth certificates, twenty-five require a court order,²⁴ twenty-one utilize an administrative process,²⁵ and a handful allow either process²⁶ or have unclear procedures.²⁷ Most jurisdictions do not have clear policies carefully guarding the privacy of people who have corrected their gender. The poli-

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21. *In re Ladrach*, 513 N.E.2d 828 (Ohio Prob. Ct. 1987) (finding the statute only authorized corrections if there was an error at the time of birth, thus only permitting a probate court to correct a fact that was inaccurate at the time of birth in the court's view). However, since the case was decided, the statute related to corrections (now also called amendments) has changed. The current provision is now titled "Amended records" (changed from "[c]orrection of birth record") and refers to corrections and amendments, whereas the old statute referred only to facts that have "not been properly and accurately recorded." Compare OHIO REV. CODE ANN. § 3705.20 (Lexis-Nexis 1980) with OHIO REV. CODE ANN. § 3705.22 (West 2011). Therefore, there is a textual argument that the new text is not as limiting, and that the measure of accurateness could be taken as a contemporary measure, as opposed to one connected to a person's time of birth.
 22. The Idaho statute provides that "alterations" may be made to birth records in accordance with the statute or rules promulgated by the State Board of Health and Welfare. See IDAHO CODE ANN. § 39-250 (West 2010). Lambda Legal indicates that there is anecdotal evidence that the agency does not allow gender changes on birth certificates. *Sources of Authority to Amend Sex Designation on Birth Certificates*, LAMBDA LEGAL, <http://www.lambdalegal.org/publications/sources-of-authority-to-amend> (last updated Oct. 3, 2012). Idaho's statute also notes that an amendment denied by the Registrar may be appealed to a court of law. See IDAHO CODE ANN. § 39-250(5) (West 2010). However, there is no published case law of a person attempting to appeal a denial to a court; thus, there could be an opening for an individual to achieve gender change through a court appeal.
 23. *Ex Parte Alexis Delgado Hernandez*, 2005 TSPR 95 (P.R. 2005) (holding that a transgender person may not correct the gender on one's birth certificate).
 24. The twenty-five jurisdictions that require a court order are Alabama, Alaska, Arkansas, California, Colorado, Delaware, Georgia, Indiana, Louisiana, Maryland, Missouri, Mississippi, Montana, New Hampshire, Nevada, Oregon, South Dakota, Utah, the Virgin Islands, Virginia, Vermont, Wisconsin, Wyoming, the District of Columbia, and the Northern Mariana Islands. See *infra* app. A.
 25. The twenty-one jurisdictions that do not require a court order are Arizona, Connecticut, Florida, Hawaii, Iowa, Illinois, Kansas, Kentucky, Massachusetts, Maine, Michigan, Nebraska, New Jersey, New Mexico, New York, North Carolina, North Dakota, Rhode Island, Washington, New York City, and Guam. See *infra* app. A.
 26. Minnesota, Pennsylvania, and West Virginia allow individuals to use either a court order or an administrative process. See *infra* app. A.
 27. Four jurisdictions have unclear procedures: Oklahoma, South Carolina, Texas, and American Samoa. See *infra* app. A.

cies of all fifty-seven U.S. jurisdictions that administer birth certificates are summarized in a chart in Appendix A.

3. New Policy on Consular Reports of Birth Abroad and Passports

The U.S. Department of State, in June of 2010, updated its policy with regard to Consular Reports of Birth Abroad of U.S. Citizens (CRBAs) and passports.²⁸ CRBAs are provided to U.S. citizens who were born outside the U.S., where the fifty-seven birth certificate issuing agencies do not have jurisdiction. CRBAs are functionally equivalent to birth certificates for those born in the United States; they prove citizenship, identity, and other information about the person's circumstances of birth.

Since at least 1992, the Department of State has required proof of "sex reassignment surgery" to correct gender on passports, and the same policy was presumably applied to CRBAs.²⁹ In an effort to modernize its policy in accord with medical standards, the Department of State adopted a new policy simply requiring that an applicant's treating or evaluating physician write a letter certifying that a person "has had appropriate clinical treatment for gender transition to the new gender."³⁰

28. *New Policy on Gender Change in Passports Announced*, U.S. DEP'T OF STATE (June 9, 2010), <http://www.state.gov/r/pa/prs/ps/2010/06/142922.htm>. There were slight, but important, changes to the policy in January 2011. *VICTORY: State Department Makes Additional Changes*, *ADVANCING TRANSGENDER EQUALITY* (Jan. 28, 2011, 6:58 PM), <http://transgenderequality.wordpress.com/2011/01/28/victory-state-department-makes-additional-changes>.

29. The 1992 State Department policy regarding passports required "sex reassignment surgery" to permanently change the gender marker on one's passport and on its face did not deal with CRBAs. U.S. DEP'T OF STATE, *PASSPORT BULLETIN 92-22* (1992). However, in the new policy for passports, the Foreign Affairs Manual explains that: "The . . . Consular Report of Birth Abroad of Citizen of the United States of America, can be amended by the Vital Records Section of Passport Services . . . to reflect the change in gender. The same documentary requirements specified above for passport services would pertain to amending gender in a [CRBA]." U.S. DEP'T OF STATE, 7 *FOREIGN AFFAIRS MANUAL* 1340 app. M (2012), *available at* <http://www.state.gov/documents/organization/143160.pdf>. I have not located an old policy that specifically applies to CRBAs. It is also possible that: (1) gender corrections on CRBAs were denied entirely, (2) gender corrections were processed under an old policy that is not publicly available, or (3) gender corrections were processed utilizing no written policy and therefore were not standardized. Regardless, because the Passport Vital Records section processes the corrections, the standard of proof for CRBAs was likely the same as that for passports.

30. U.S. DEP'T OF STATE, 7 *FOREIGN AFFAIRS MANUAL* 1320 app. M(b)(1)(g) (2012), *available at* <http://www.state.gov/documents/organization/143160.pdf>.

4. The U.K. Approach: The Gender Recognition Act of 2004

The United Kingdom enacted a groundbreaking statute in 2004 when it passed the Gender Recognition Act. This statute is understood as the first national statute to recognize the gender of transgender people who transition without surgical procedures. Other countries have considered or adopted similar approaches, some being more or less restrictive.³¹

The Gender Recognition Act, passed in response to the 2002 decision in *Goodwin v. United Kingdom*, required the government to develop a system to recognize the post-transition gender of transgender people, finding that failure to provide such recognition was a human rights violation.³²

The Gender Recognition Act does not require any specific medical treatment; however, it requires: (1) a diagnosis of Gender Dysphoria,³³ (2)

31. The United Kingdom law is included here because it is the basis for many of the other laws, and full texts of other laws, other than Argentina's, are not available in English. In 2007, Spain passed a law similar to the Gender Recognition Act, although hormonal treatment is required unless advanced age or medical concerns exist. Marc-Roger Lloveras Ferrer, *A Spanish Law for Transsexual Citizens*, INDRET (2008), <http://ssrn.com/abstract=1371559>. In 2009, Uruguay passed a law that allows gender amendments after a showing the person has gender dysphoria, with no medical treatment required, but the diagnosis has to be persistent and stable for two years, and amendments are only available to those over eighteen. Derecho A La Identidad De Género Y Al Cambio De Nombre Y Sexo En Documentos Identificatorios (Parliament Law No. 18, 620/2009) (Uruguay), available at <http://www0.parlamento.gub.uy/leyes/ AccesoTextoLey.asp?Ley=18620&Anchor=>. In 2011, Portugal enacted a law, considered less restrictive than both the United Kingdom and Spanish laws, which replaced its law requiring a court order and sex reassignment surgery. The Portuguese law requires a report from medical professionals to be submitted to the Civil Registry, one being a psychiatrist and the other a psychologist, with no reported apparent time or age requirement. Cria o procedimento de mudança de sexo e de nome próprio no registo civil e procede à décima sétima alteração ao Código do Registo Civil (No. 7/2011) (Portugal), available at <http://dre.pt/pdf1sdip/2011/03/05200/0145001451.pdf>.

32. *Goodwin v. United Kingdom*, VI Eur. Ct. H.R. (2002).

33. "Gender dysphoria refers to discomfort or distress that is caused by a discrepancy between a person's gender identity and that person's sex assigned at birth (and the associated gender role and/or primary and secondary sex characteristics)." WORLD PROF'L ASS'N FOR TRANSGENDER HEALTH, STANDARDS OF CARE 5 (7th ed. 2011). Currently, the Diagnostic and Statistical Manual, published by the American Psychiatric Association, uses the slightly different diagnostic term, "Gender Identity Disorder," and the International Classification of Diseases uses the diagnostic term "transsexualism." AM. PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL 576 (4th ed., 2000); see also WORLD HEALTH ORG., INTERNATIONAL CLASSIFICATION OF DISEASES (10th ed. 2010), <http://apps.who.int/classifications/icd10/browse/2010/en#/F64>. The next version of the DSM, to be officially released in 2013, will use "Gender Dysphoria." See Rosie Mestel, *Changes to the Psychiatrists' Bible, DSM: Some Reactions*, L.A. TIMES, December 9, 2012, <http://www.latimes>.

that people live in their “acquired gender” for at least two years and intend to do so until death, and (3) documentation from two medical professionals.³⁴ Upon submitting satisfying evidence to the Gender Recognition Panel,³⁵ people receive a Gender Recognition Certificate, a new entry in the birth registry,³⁶ and general recognition that they are the new gender as a legal matter.³⁷ The law requires that information about the gender correction is kept confidential throughout the process.

5. Argentina’s New Law

In May of 2012, Argentina became the first country to allow transgender people to update the gender marker on their birth certificates with no requirement for them to show any medical condition or supervision.³⁸ People over eighteen have the right to update gender markers and first

com/health/boostershots/la-heb-dsm5-american-psychiatric-association-20121207,0,1392058.story. Despite the different terminology, these are roughly equivalent diagnoses. All of the diagnoses are controversial. *See, e.g.*, Kate Richmond & Kate Sheese, *Gender Interrupted: Controversy & Concerns about Gender Identity Disorder (GID)*, ASS’N FOR WOMEN IN PSYCHOLOGY, http://www.awpsych.org/index.php?option=com_content&view=article&id=96&catid=74&Itemid=126 (last visited Dec. 25, 2011).

34. Gender Recognition Act 2004, c. 7 § 2 (U.K.).

35. *Id.* at c. 7 § 1 (U.K.).

36. *Id.* at c. 7 § 10 sch. 3 (U.K.).

37. Generally, having a Gender Recognition Certificate entitles the holder to be legally recognized as that gender for the majority of purposes. *Id.* at c. 7 §§ 9–21 (U.K.). Exceptions include: religious officials do not need to perform marriages involving a holder of a Gender Recognition Certificate, sports organizations are exempt from recognizing the gender if it would affect “fair competition” or the “safety of competitors,” and, for crimes where gender is a relevant factor, the acquired gender will not be recognized. *Id.* at c. 7 § 11 sch. 4, c. 7 §§ 19–20 (U.K.). One very controversial part of the law is the provision of only Interim Recognition Certificates to transgender people who are married at the time of application. *Id.* at c. 7 § 4 (U.K.). The individual must either divorce or get an annulment in order to receive a full Gender Recognition Certificate. *Id.* Couples in this situation who desire to stay in a legally-recognized relationship must then receive a “Civil Partnership” which provides some, but not all, the rights and responsibilities of marriage to same-sex couples in the U.K. Civil Partnership Act 2004, ch. 33 (U.K.). This has been criticized by Press for Change, the U.K.’s transgender advocacy group, as requiring individuals to choose between “their marriage and another human right.” Camillo Fracassini, *Sex-Change Couple Seek Marriage Recognition*, THE SUNDAY TIMES, Oct. 30, 2005, <http://www.timesonline.co.uk/tol/news/uk/scotland/article584590.ece>.

38. The new law, Regime for Recognition and Respect for Gender Identity, also granted updated national identity cards as well as a right to medical treatment under all health care systems and plans in the country. Law No. 26.743, May 23, 2012, 32.404 B.O. 1, 2 (Arg.), available at <http://www1.hcdn.gov.ar/proyxml/expediente.asp?fundamentos=si&numexp=8126-D-2010>. An English translation is available at http://www.msngf.org/files/msngf/Advocacy/Argentina_GenderIdentity_Law.pdf.

names upon request. Those under eighteen must also have their legal representative (which will likely be their parent) or a judge agree to the correction. The law is explicit that no surgical, hormonal, or psychological treatment of any kind can be required.³⁹ The birth certificate and information about the corrections are kept confidential and are accessible only by court order.

Although this law is relatively new and has not yet been emulated by other countries, the explicit shift from any proof of gender identity, other than the person's statement, is enlightening and encouraging.⁴⁰

*B. An Overview of Gender Transition and its Relation to
Corrections on Birth Certificates*

A short review of terminology related to transgender people and gender transition is helpful before going any further.

Transgender is used generally as a broad term to refer to all of those whose gender identity⁴¹ or expression⁴² does not match the social attributes of the gender that they were assigned at birth.⁴³ While the term "transgender" is used appropriately to refer to a range of people, including transsexuals, cross-dressers, genderqueers, the androgynous, and many other identities, this Article only addresses one specific type of transgender per-

39. *Id.* at Art. 4.

40. While Argentina's new law should be considered for the basis of the recommendations made in this Article, I have chosen to factor in the political landscape of this country in shaping the more conservative recommendations found herein.

41. *Gender identity* is used to mean an individual's internal sense of being male, female, or another gender.

42. *Gender expression* is used to mean how individuals outwardly indicate their gender identity to others, often through behavior, clothing, hairstyle, voice or body characteristics.

43. National Center for Transgender Equality, *Transgender Terminology* (May 2009), http://transequality.org/Resources/NCTE_TransTerminology.pdf.

son—those who undergo gender transition to live their life as a gender different from their sex⁴⁴ assigned at birth.⁴⁵

Gender transition is the process of beginning to live and outwardly express a gender different from one's assigned gender at birth.⁴⁶ Gender transition is not undertaken casually, as it is often accompanied by a wide range of negative social consequences, including rejection by friends or family, losing one's job, or even being physically attacked. Gender transition is

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44. Throughout this article, the terms *sex* and *gender* are used interchangeably, with a tendency for *sex* to be used in contexts where a statute uses that term, and "gender" to be used otherwise. Some believe that the two terms have different meanings and should be used accordingly. *What Do We Mean by "Sex" and "Gender"?*, WORLD HEALTH ORGANIZATION, <http://www.who.int/gender/whatisgender/en/> (last visited Dec. 25, 2011). In that conception, *sex* refers to one's biological status and *gender* refers to the social identity and expression of being male and/or female. *Id.* However, the Supreme Court uses both terms in its jurisprudence relating to women's constitutional rights and Congress also has used both *sex* and *gender* in different civil rights statutes, while not intending a different meaning. See *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989) (collapsing the distinction between biological status and social expectations for the purposes of Title VII analysis); *Schwenk v. Hartford*, 204 F.3d 1187 (9th Cir. 2000) (using the framework of *sex* under Title VII to *gender* under the Gender Motivated Violence Act). This Article uses the terms interchangeably because interpreting them in a legal context to mean separate things would lead to absurd results. Furthermore, the conception of sex being biologically based tends to imply, incorrectly, that the biology of sex is clear cut and easy to measure, when in fact, much more diversity exists. See Erwin K. Koranyi, *Transsexuality Revisited*, 16 AUSTRL. J. OF FORENSIC SCI. 34, 37 (1983) available at <http://www.tandfonline.com/doi/abs/10.1080/00450618309410678> ("Sex of a person—a simple 'yes' or 'no' before—was broken down by Science to chromosomal sex, nuclear sex, hormonal sex, gonadal sex, and gender sex- to the dismay of courts, finding scientists in argument over as 'simple' a question as whether the subject is male or female.").
45. This subset of the transgender community are sometimes called *transsexuals* to distinguish them from others covered by the broad term *transgender*. However, many transsexual people, as well as advocates for equality, disfavor the term *transsexual* as overly medical, scientific, and technical, or because the word's integration of the term *sex* could be taken to sexualize the person. In addition, *transsexual* is often used by those who oppose equal rights as an inflammatory and disrespectful term. See, e.g., *'Speechless' awaits March premiere*, AM. FAMILY ASS'N J., Feb. 2008, http://www.afajournal.org/0208afa_insp.asp (referring to homosexuals and transsexuals with regard to federal legislation); *Transgendered Confu-: Homosexual movement takes U.S. into bizarre world*, AM. FAMILY ASS'N, Oct. 2000, <http://www.afajournal.org/2000/102000AFAJ.pdf> (using the term transsexual repeatedly to refer to transgender people). This phenomenon is similar to how many gay and lesbian people prefer these identity terms over the more scientific and sexualizing term "homosexual." GLAAD, MEDIA REFERENCE GUIDE 6, 8 (8th ed. 2010) (noting that many transgender people prefer "transgender" to "transsexual"). In respect for the generally favored terminology preferences of the community, this article uses the term "transgender" throughout, unless describing case law that uses other terminology.
46. Gender transition may happen, or appear to happen, over a short period of time or a long period of time, depending on the individual.

often mistaken as referring only to the process of altering one's hormonal makeup and other bodily characteristics to match one's gender identity. However, gender transition actually refers primarily to the *social process* of transition, and includes the process of changing one's name (if needed or desired), updating identity documents and records (if able to do so), in addition to taking medical steps, depending on the individual.

The medical processes, for those who undergo them, are incredibly important. The American Medical Association has recognized that treatment is effective and medically necessary and has recommended that public and private health insurance systems cover care related to gender transition.⁴⁷ According to the expert medical consensus,⁴⁸ treatment can consist of four therapeutic options: 1) changes in gender expression or role, 2) hormone therapy, 3) various surgeries,⁴⁹ and 4) psychotherapy.⁵⁰ Whether a person should undergo all four or just one of the options is determined based on the needs of the individual. It is important to realize that those who undergo only changes in their gender expression or role (the first option) are still considered to have made a *medical* transition.⁵¹

Name and gender are the two pieces of information that transgender people typically seek to correct on their birth certificates. Although the process and accessibility of *name* changes are not going to be addressed by this Article,⁵² the Article will address the privacy concerns regarding name

47. AM. MED. ASS'N HOUSE OF DELEGATES, RESOLUTION 122 (2008).

48. See WORLD PROF'L ASS'N FOR TRANSGENDER HEALTH, *supra* note 33; *infra* Section II.B.1.

49. Despite the popular conception of one surgery that completely transforms a person's gender, in reality, there are many different surgical options. For example, breast or chest surgery, metoidioplasty, phalloplasty, penectomy, orchiectomy, vaginoplasty, clitoroplasty, vulvoplasty, hysterectomy/ovariectomy, facial feminization surgery, voice surgery, thyroid cartilage reduction, vaginectomy, scrotoplasty, and implantation of erection and/or testicular prostheses are some of the primary surgical options, although others exist. See WORLD PROF'L ASS'N FOR TRANSGENDER HEALTH, *supra* note 33, at 57–58, 62–64.

50. Psychotherapy may be important for: “exploring gender identity, role, and expression; addressing the negative impact of gender dysphoria and stigma on mental health; alleviating internalized transphobia; enhancing social and peer support; improving body image; or promoting resilience.” *Id.* at 10.

51. The medical seriousness of changing gender role is apparent throughout the WPATH Standards of Care. For example, changes in gender role are supposed to be recorded in a person's medical chart and changes in gender role are required for 12 months before genital surgeries. *Id.* at 61.

52. To receive a name change, one typically has to receive a court order and go through a publication process, although sometimes courts allow the publication requirement to be waived due to privacy concerns. See, e.g., TRANSGENDER LAW CENTER, ID PLEASE. . . 9–22, 31–32 (2010) available at <http://transgenderlawcenter.org/issues/id/id-please>.

changes related to gender transition. Importantly, not all transgender people choose to change their names. Some may have a gender-neutral name and keep it, or may initially keep it and decide to change it later. Others may choose to keep what others consider a gender-specific⁵³ name for personal reasons, despite the fact that it does not “match” their gender identity. Regardless, not all transgender people change their name and name changes will not necessarily occur before or simultaneously with the request to correct their gender marker.

C. Data on the Ability to Correct Gender Markers on Birth Certificates

In order to understand the impact of birth certificate laws and policies, newly available data describing the ability of transgender people to correct gender on their birth certificates in the United States should be examined. Specifically, reporting on only those individuals who are already living full-time as a gender different from the gender that they were assigned at birth, the National Transgender Discrimination Survey⁵⁴ found:

- 24% were able to correct the gender marker on their birth certificates;
- 18% were denied the correction, and;
- 53% had not attempted to correct their birth certificate.⁵⁵

Many of the 53% who did not attempt to correct their birth certificates likely chose not to try because they knew they would not meet the requirements of the established policies; for example, they may not have had a required surgery. The data appear to confirm this, with higher rates of attempting to change one’s gender marker among those who have had surgery:

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53. Gender associations of first names are somewhat arbitrary and have a tendency to change over time. *See, e.g.*, Stanley Lieberman, Susan Dumais & Shyon Baumann, *The Instability of Androgynous Names: The Symbolic Maintenance of Gender Boundaries*, 105 AM. J. SOC. 1249 (2000) (describing 80 years of naming practices in Ohio and noting how names changed with regard to being considered feminine or masculine).
54. The National Transgender Discrimination Survey, conducted in 2008–09 both in paper and online, had 6,456 respondents from all fifty states, D.C., the U.S. Virgin Islands, Puerto Rico, and Guam. For a detailed description of the methodology, see JAIME M. GRANT ET. AL., *INJUSTICE AT EVERY TURN: A REPORT OF THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY 12–15* (2011).
55. *Id.* at 143. Five percent of the respondents selected “not applicable” in response to the birth certificate question. These individuals likely either “did not have a birth certificate or they did not desire to change it.” *Id.*

Description of Respondents ⁵⁶	% Who Attempted to Correct Birth Certificate ⁵⁷
Transgender Women with Some Type of Surgery	65%
Transgender Men with Some Type of Surgery	56%
Transgender Women with No Surgery	28%
Transgender Men with No Surgery	12%

In addition, those who have had some type of surgery were more than six times as likely to have been able to correct their gender marker than those who have not had any surgery (39% compared to 6%).⁵⁸ Yet, notably, even surgery does not guarantee the approval of a gender marker correction. Twenty percent (20%) of people who had some surgery were still denied the correction.⁵⁹ Some courts and state agencies also appear to consider the *type* of surgery undergone, summarized in the following chart.⁶⁰

Description of Respondent	% Who Received a Corrected Birth Certificate
Transgender Women with Any Surgery	43%
Transgender Women with Breast Surgery	32%
Transgender Women with Orchiectomy ⁶¹ or Vaginoplasty ⁶²	74%
Transgender Men with Any Surgery	37%
Transgender Men with Chest Surgery	56%
Transgender Men with Metoidioplasty ⁶³	82%
Transgender Men with Phalloplasty ⁶⁴	78% ⁶⁵

56. Transgender woman refers to a person who was assigned male at birth and now lives as a woman. Transgender man refers to a person who was assigned female at birth and now lives as a man.

57. GRANT ET AL., *supra* note 54, at 143–44.

58. *Id.* at 144.

59. *Id.*

60. *Id.* at 143–44.

61. Orchiectomy refers to the “surgical removal of the testes (the scrotum and testicles).” *Id.* at 181.

62. Vaginoplasty refers to the “surgical creation of a vagina.” *Id.*

63. Metoidioplasty is a “surgical procedure to create a neopenis by releasing and extending the clitoris, often combined with surgery to allow for urination through the penis.” *Id.* at 181.

64. Phalloplasty refers to the “surgical creation of a penis.” *Id.* at 181.

65. Note that the different rates of ability to change their birth certificates between metoidioplasty (82%) and phalloplasty (78%) may not be meaningful because of the

These data show that courts and agencies are looking at the specific types of surgeries⁶⁶ individuals undergo and are making the determination that many do not meet the standard in their current law or policy to receive a gender marker correction.

D. The Importance of an Accurate Birth Certificate

1. Purpose of a Birth Certificate

According to the Office of Inspector General at the Department of Health and Human Services, birth certificates provide “vital information about the person whose name appears on the certificate (e.g., legal proof of parentage, citizenship, date, place, and time of birth).”⁶⁷ While originally intended as a record of the existence and circumstances of birth, the birth certificate is now used widely in determining eligibility for employment, obtaining other documents (e.g., driver’s licenses, Social Security cards, passports, and other state identification documents), establishing school records, proving age, and enrolling in government programs.⁶⁸ Thus, the birth certificate is currently used as an identity document⁶⁹ and has evolved away from being a simple historical or statistical record.

2. Legal and Practical Implications of an Inaccurate Gender Designation

There are many practical, legal, and social realities that result from having an inaccurate gender marker, some of them with potentially fatal consequences. Although the gender recorded on a person’s birth certificate may not be considered legally binding,⁷⁰ in many circumstances, it is an

low numbers of transgender men who have had these surgeries in the survey sample.
Id.

66. See *infra* note 114 and accompanying text.

67. OFFICE OF INSPECTOR GEN., U.S. DEP’T OF HEALTH AND HUMAN SERVICES, OEI-07-99-00570, BIRTH CERTIFICATE FRAUD at 2 (2000), available at <http://oig.hhs.gov/oei/reports/oei-07-99-00570.pdf>.

68. “[Birth certificates] are also used extensively for employment purposes, to obtain benefits or other documents (e.g., driver’s licenses, Social Security cards, and passports), to assist in determining eligibility for public assistance and other benefits, to enroll children in school, and as proof of age eligibility for sports and other age restricted activities.” *Id.* at 6.

69. Federal experts caution that a birth certificate should not be used alone as an identity document because it is impossible be sure that the holder of the certificate is the person appearing before the agency. See *id.* at 20.

70. Because of this, some have pursued gender change orders that declare a person’s legal gender (unrelated to birth certificate corrections). Interview with Janson Wu, Staff Attorney, Gay & Lesbian Advocates & Defenders (confirmed Feb. 11, 2012). Gender change orders can be particularly helpful for people who are at higher risk of

important factor in determining whether or how an individual's gender is recognized as a practical matter. In addition, transgender people holding birth certificates that are not corrected following gender transition risk having their transgender histories revealed, which can lead to a number of serious harms. This is not an abstract issue; inspection of one's birth certificate (or documents it generates) can lead directly to discrimination and even violence, especially when a situation involves interactions with security officers, employment, or access to sex-segregated facilities. The following subsections describe areas in which an incorrect gender designation and one's transgender status, as revealed by the gender on one's birth certificate, can be especially consequential in the United States, either because of the meaning attached to the gender designation, or because the disclosure of one's transgender status may lead to harm.

a. Initial Gender Designation on Governmental Identity Documents and Those Governmental and Non-Governmental Documents Derived Therefrom

Birth certificates establish the initial gender designation for other governmental identity documents, such as driver's licenses, passports and Social Security records.⁷¹ The birth certificate, as well as these other government documents, in turn breed⁷² many other identity documents, such as school records, college ID cards, work identification, and commercial licenses.

having their gender challenged by interested third parties, such as parents or children who would gain a right to inherit if their transgender relative's marriage is held invalid.

71. Although generally not written formally in policy, a person's initial gender on a driver's license/state ID will match that on one's birth certificate. Although it is less common, at least two state Departments of Motor Vehicles require a corrected gender on one's birth certificate before updating the gender on one's driver's license (Montana and Kentucky). See *Driver's License Policy by State*, NAT'L CTR. FOR TRANSGENDER EQUAL., http://transequality.org/Resources/DL/DL_policies.html (last visited Sept. 20, 2012). Similarly, to establish a person's initial gender on a passport, the birth certificate gender (or gender on other citizenship/identity evidence) is generally used. See 7 DEPT. OF STATE FOREIGN AFF. MANUAL 1310 app. M (2011) ("This appendix provides policy and procedures that passport specialists and consular officers must follow in cases in which an applicant requests a gender on the passport application different from the one reflected on some or all of the submitted citizenship and/or identity evidence, including a prior passport.").
72. In fact, birth certificates and driver's licenses are both referred to as "breeder" documents because once a person had these forms of identification, other identity documents can be created, with birth certificates being the primary breeder document. See John Mercer, *Breeder Documents: The Keys to Identity*, 29 KEESING J. OF DOCUMENTS & IDENTITY 14, 14 (2009), available at http://www.naphsis.org/NAPHSIS/files/ccLibraryFiles/Filename/000000001179/breeder_documents_the_keys_to_identity.pdf.

Regulations under the REAL ID Act, which has been partially implemented in the U.S.,⁷³ require persons to show they are a U.S. citizens or are in the U.S. lawfully, as well as “establish their identity” to obtain a driver’s license.⁷⁴ Accepted documents include birth certificates and passports (as well as various immigration documents).⁷⁵ Among U.S. citizens, birth certificates are more commonly used because only 28% of the U.S. population have passports.⁷⁶

b. Discrimination in Employment

Some employers may discriminate against a transgender person, especially in the hiring process, when the employer inspects identity documents that do not match a person’s gender presentation. In much of the United States, this discrimination may be viewed as legal.⁷⁷ For example, U.S. employers are required to fill out the I-9 Employment Eligibility Verification Form for each employee at the time of hire. Although various documents can be used to show eligibility for work, if a U.S. citizen does not have a passport or a Social Security card, he or she must show a birth certificate to

73. *Real ID Deadlines Looms*, HOMELAND SECURITY NEWS WIRE (Jan. 31, 2012), <http://www.homelandsecuritynewswire.com/dr20120131-real-id-deadlines-looms>.

74. Real ID Act, Pub. L. No. 109-13 § 202(c)(2)(b) (2005). Because the Real ID Act also required gender to appear on the license, some state motor vehicle agencies were concerned that it would curtail their authority to set policies on gender corrections. However, the regulations issued by the Department of Homeland Security in 2008 indicated the opposite. *See* 6 C.F.R. § 37.17 (2008).

75. 6 C.F.R. § 37.11 (2011) (listing acceptable documents as a U.S. passport, a birth certificate, a Consular Report of Birth Abroad, a Permanent Resident Card, a U.S. visa, Certificate of Naturalization or Citizenship, a REAL ID-compliant driver’s license or identification card).

76. U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-08-891, STATE DEPARTMENT: COMPREHENSIVE STRATEGY NEEDED TO IMPROVE PASSPORT OPERATIONS 11 (2008), *available at* <http://www.gao.gov/new.items/d08891.pdf>.

77. Although “sex” in Title VII of the Civil Rights Act of 1964 should be interpreted to prohibit employment discrimination against transgender people, not all federal courts have agreed with this proposition. *Compare* *Schroer v. Billington*, 577 F. Supp. 2d 293, 300 (D.D.C. 2008) (holding that “sex” in Title VII protects the transgender plaintiff), *and* *Glenn v. Brumby*, 663 F.3d 1312, 1320 (11th Cir. 2011) (holding that plaintiff’s termination due to transgender status was sex discrimination in violation of the Equal Protection Clause), *with* *Etsitty v. Utah Transit Authority*, 502 F.3d 1215, 1221 (10th Cir. 2007) (holding that the sex discrimination prohibition does not protect a transgender plaintiff). Therefore, discrimination is only clearly illegal in the 16 states and over 150 local jurisdictions that have gender identity/expression protections explicit in the law, which cover 45% of the US’s population. NAT’L GAY & LESBIAN TASK FORCE, JURISDICTIONS WITH EXPLICITLY-TRANSGENDER INCLUSIVE NONDISCRIMINATION LAWS (2012), *available at* http://www.thetaskforce.org/downloads/reports/fact_sheets/all_jurisdictions_w_pop_6_12.pdf.

satisfy this requirement. If a person does have a Social Security card and therefore can avoid showing a birth certificate, the person must also show an identity document like a driver's license or school identity card. However, these documents may also have an inaccurate gender marker on them if they were derived from an inaccurate birth certificate. Employers may also learn of a person's transgender status if a background check reveals the gender assigned at birth, based on documents derived from a birth certificate.

The National Transgender Discrimination Survey found that 90% of transgender people had experienced mistreatment or discrimination at work or took actions to avoid such discrimination.⁷⁸ Nearly 47% of those surveyed lost their jobs, were denied a promotion, or were denied a job as a direct result of being transgender.⁷⁹ Hiring discrimination was also rampant, and rates of discrimination were higher for those whose driver's license gender marker did not match their gender identity.⁸⁰ The percentages of those experiencing hiring discrimination rose from 52% of those with corrected driver's licenses to 64% for those without corrected driver's licenses.⁸¹ For understandable reasons, many transgender people desire to keep their transgender identity private from employers at the time of hiring, yet may be unable to do so because of birth certificate policies in their jurisdiction of birth.

Other discrimination can arise when a person goes through gender transition while remaining in the same workplace. One of the primary issues that can arise is which bathroom a person should use. Many employers think a fair policy is to have persons switch bathrooms when they have corrected the gender on their driver's licenses, state identification documents, or less commonly, their birth certificates. Because the gender on a driver's license often is generated by the gender on a person's birth certificate, the state's failure to correct gender on birth certificates can prevent a transgender person from being able to access the appropriate gender-specific restroom facility at the workplace.

78. GRANT ET AL., *supra* note 54, at 51.

79. *Id.*

80. *Id.* at 139.

81. *Id.* at 154.

c. Police, Security Personnel, and Others who Inspect Identification During Daily Life and Travel

Unfortunately, it is not uncommon for police, security personnel, and others to respond in violent or discriminatory ways when they discover a person is transgender.⁸²

In addition, a police or security officer, or any other person who inspects ID (such as a store clerk) may share information about a transgender person's status with others in the community, who in turn may cause the person harm. For example, consider the case of a person who lives in a small community who presents identification with an inaccurate gender marker to a Transportation Security Officer at the local airport, or a store clerk to verify identity when using a credit card at the local market. When the clerk or officer discusses this information with others in the community, the transgender individual could be fired from his or her job or become the victim of a bias-motivated assault.

The National Transgender Discrimination Survey found that 40% of people who presented identification that did not match their gender presentation were harassed at some point due to the mismatch, 15% were asked to leave an establishment, and 3% were assaulted.⁸³ Higher numbers of people of color were assaulted, with 9% of African Americans and Latino/Latinas and 6% of multiracial respondents reporting assault when presenting ID that did not match their gender presentation.⁸⁴

The data is supported by published reports of violence and discrimination that have occurred after a person is outed as transgender. For example, in an incident brought to public consciousness by an award-winning movie, Brandon Teena was sexually assaulted and later murdered by those who knew him as a man when they discovered, due to a printed police report in the newspaper, that his legal name was "Teena Brandon."⁸⁵ In a less violent case, a transgender woman was sent a threatening letter and DVD saying that homosexuals should be put to death by the DMV clerk who had processed her gender correction.⁸⁶

82. 22% of respondents reported harassment, 6% reported physical assault, and 2% reported sexual assault by police officers due to being transgender. GRANT ET AL., *supra* note 54, at 160.

83. *Id.* at 153.

84. *Id.*

85. THE BRANDON TEENA STORY (Bless Bless Productions 1998); BOYS DON'T CRY (Fox Searchlight Pictures 1999).

86. Bob Egelko, *Transgender Woman Settles DMV Suit*, S.F. CHRONICLE (Aug. 16, 2011, 5:01 PM), http://articles.sfgate.com/2011-08-16/bay-area/29891260_1_transgender-woman-amber-yust-dmv; http://www.huffingtonpost.com/2011/08/16/amber-yust-settlement_n_928285.html.

The actual discrimination, disclosure, and violence, as well as the fear of it, can cause transgender people to limit interactions where their identity documents will be inspected, especially travel. Furthermore, as proving one's lawful presence in the U.S. becomes more important as a political and/or criminal matter, showing one's actual birth certificate—not just documents derived from it—may become a more common practice. Already several states have passed laws that allow police to require people to show proof of citizenship.⁸⁷ The Supreme Court approved the part of the Arizona law that allows officers to ask for documentation of citizenship of those that they suspect may be undocumented.⁸⁸

d. Marriage Recognition

Transgender people should also be able to marry, and be recognized as legally married to their partners. Because forty-one states restrict marriage to different-sex couples,⁸⁹ a transgender person's gender is of great legal significance in those states. Being legally married, or not, is of great legal consequence to whether or not a person has rights to child custody and visitation. Additionally, marital status is important for intestate inheritance,⁹⁰ ability to sue for wrongful death,⁹¹ spousal support after marriage, eligibility for Social Security benefits after death of a spouse, and potentially, the ability to be granted a divorce and have marital property divided. For bi-national couples, marriage recognition is critically important for the ability to reside legally in the United States. During the marriage, being recognized as a spouse by third parties can be important to determine eligibility for a host of benefits, including health insurance, ability to make medical decisions for

87. *Anti-Immigrant Arizona Copy Cat Laws*, ACLU, <http://www.aclu.org/arizonasb-1070-and-copycat-laws> (last visited Dec. 10, 2012) (stating that five states - Alabama, Georgia, Indiana, South Carolina and Utah - have passed laws similar to that in Arizona that allow police to ask documentation of a person's citizenship).

88. *Arizona v. United States*, 567 U.S. ____ (2012).

89. As of November 2012, Connecticut, Iowa, Maine, Maryland, Massachusetts, New Hampshire, New York, Vermont, Washington and the District of Columbia are the only U.S. jurisdictions that perform and recognize same-sex marriage. See Teresa Walsh, *Will the Gay Marriage Election Results Have a National Impact?*, U.S. NEWS & WORLD REPORT, November 8, 2012, <http://www.usnews.com/opinion/articles/2012/11/08/will-the-gay-marriage-election-results-have-a-national-impact>.

90. J'Noel Gardiner lost her inheritance, due to her as a wife, when her husband died intestate and the Kansas Supreme Court decided that she was legally male and thus, not married to her husband. *In re Estate of Gardiner*, 42 P.3d 120, 121-122 (Kan. 2002).

91. Christie Lee Littleton's wrongful death case relating to medical malpractice committed against her husband was dismissed by Texas courts, which declared her a legal male and as such did not have standing as a spouse. *Littleton v. Prange*, 9 S.W.3d 223 (Tex. Ct. App. 1999).

each other, tax filing status, and numerous others. Transgender people in different-sex marriages often worry their marriage will be nullified by a judge's decision that they have not validly and legally changed their gender. Although there is no single place where one's "legal gender" is recorded, the gender on a person's birth certificate is sometimes given at least some legal deference by courts.⁹²

Because most of the marriage cases involving a transgender spouse indicate that having a corrected gender marker on one's birth certificate is not a controlling factor, the *practical* effect, in the form of discouraging third parties from challenging the legality of a marriage, is likely more important than the actual *legal* effect during a challenge.

The story of a New Jersey couple—a non-transgender woman and a transgender man who had problems getting a marriage license—is illustrative. Because the transgender man's birth certificate still designated him as female, the local clerk refused to issue a marriage license and instead said she could only issue them a civil union license. This issue was resolved only after they consulted with an attorney, who helped the man get his birth certificate amended. This process took several months, delaying many of the couple's life plans, as well as requiring a significant financial outlay.⁹³

e. Health and Health Insurance Records

Birth certificates and the documents they influence can also affect what gender people are considered to be by their health insurance providers, their health systems, their state's medical assistance program, or Medicare. Depending on what gender is recorded in these records, certain treatments, screenings and procedures may be disallowed, despite the fact that the best practice is to screen and treat all of a person's bodily organs, regardless of a person's gender identity and regardless of whether or not the treatment relates to gender transition. For example, a transgender man might be denied hormone therapy on the basis that he should not be receiving testosterone when his records indicate *female*. Or a transgender woman may be denied needed gynecological services because they are only covered for females.⁹⁴

92. See *Kantaras v. Kantaras*, 884 So. 2d 155, 161 (Fla. Dist. Ct. App. 2004); *In re Lovo-Lara*, 23 I. & N. Dec. 746, 753 (B.I.A. 2005).

93. Email from Angie Gambone, attorney, to author (Feb. 13, 2012, 9:08 EST) (on file with author).

94. AM. C. OF OBSTETRICIANS AND GYNECOLOGISTS, COMMITTEE OPINION NUMBER 512: HEALTH CARE FOR TRANSGENDER INDIVIDUALS (December, 2011) http://www.acog.org/Resources_And_Publications/Committee_Opinions/Committee_on_Health_Care_for_Underserved_Women/Health_Care_for_Transgender_Individuals.

f. Access to, and Treatment in, Sex-Segregated Facilities

A small but important number of facilities are sex-segregated. These range from those needed on a daily basis—such as bathrooms—to those in otherwise non-segregated spaces—such as locker rooms in gyms. Further, there are a number of gender-segregated residential or quasi-residential facilities, programs or services that can be critically important and life-sustaining, such as homeless shelters, group foster homes, substance abuse facilities (including court-mandated drug programs), and domestic violence shelters. In these places, transgender people can be kept out of the correct facility, or forced into the wrong facility, because of the gender on their identity documents, and violence can sometimes result. For example, although it is contrary to best practices developed nationally,⁹⁵ in homeless shelters, transgender people are typically housed with others of their sex assigned at birth, which can create dangerous conditions.⁹⁶ According to the National Transgender Discrimination Survey, 55 percent of transgender people who stayed at a shelter were harassed there and 22 percent were sexually assaulted there.⁹⁷ In addition, 29 percent who sought shelter were denied outright.⁹⁸ In many emergency housing facilities, transgender people are processed by low-level intake staff who make on-the-spot decisions about where to place a person. Therefore, the gender markers on a person's identification documents take on heightened importance.⁹⁹

Although there is no case law on the question of how relevant a person's gender marker on his or her birth certificate is when it comes to having a legal right to access these sex-segregated facilities, certainly one can imagine that disputes with regard to access to any of these facilities could in part hinge on gender markers on birth certificates.

g. College Admissions

In 2011, the "Common Application," a standardized college application for admission used by over 400 colleges, included new instructions which state: "Federal guidelines mandate that we collect data on the legal sex of all applicants. Please report the sex currently listed on your birth certificate."¹⁰⁰ Given the highly burdensome medical requirements and procedures for changing birth certificates, most transgender college-age youth

95. See *infra* notes 169–170 and accompanying text.

96. *Housing and Homelessness*, NAT'L CTR. FOR TRANSGENDER EQUAL., <http://transequality.org/Issues/homelessness.html> (last visited Sept. 26, 2012).

97. GRANT ET AL., *supra* note 54, at 106.

98. *Id.*

99. See Spade, *supra* note 4, at 775.

100. *How Should I Answer the Sex Question?*, COMMONAPP.ORG, <https://www.commonapp.org/commonapp/helpinline.aspx?src=sexHelp> (last visited Sept. 26, 2012).

do not have a corrected birth certificate. Even those with supportive parents and financial ability to pay are unlikely to have had any surgery, given that surgery is disfavored by the WPATH Standards of Care for those under 18.¹⁰¹ The new Common Application policy is especially devastating for those who have been living in their gender since a very young age¹⁰² and who may not be “out” to anyone other than family members. For these young people, the application would require them to “out” themselves or otherwise be at risk for accusations of fraud on their application. For this reason alone, some transgender students may decide not to apply through the Common Application, therefore limiting their access to higher education. Similarly, potential students may worry that if they write their birth certificate gender on the Common Application, as they are required to do, they will be assigned to gendered dormitories on that basis.

Women’s colleges may also look to the gender designation on a potential student’s birth certificate or school records or other government documentation derived from the birth certificate to determine whether a student is eligible to attend.¹⁰³

h. International Adoption

Given that international adoptions generally require prospective parents to show their birth certificates during the adoption process, international adoption agencies and/or the country of the child may learn about the transgender history of the applicant, and take adverse actions.¹⁰⁴ Thus, lack of a new birth certificate with a corrected gender marker could put international adoptions at risk.

II. MODERNIZING THE LEGAL STANDARD FOR CORRECTING GENDER MARKERS

The first area of law and policy that needs to be examined is the legal standard—what a person has to show—to qualify for the correction of their gender marker. When determining the legal standard, policymakers should

101. See WORLD PROF. ASS’N FOR TRANSGENDER HEALTH, *supra* note 33, at 21 (stating that surgery should not be allowed until a youth reaches the age of legal majority in their country).

102. Alan B. Goldberg & Joneil Adriano, *I’m a Girl’—Understanding Transgender Children*, ABC 2020, Apr. 27, 2007, <http://abcnews.go.com/2020/story?id=3088298&page=1#.UGI8MtCXRUM>.

103. Allie Grasgreen, *Women’s Colleges Examine Transgender Policies*, USA TODAY, Aug. 2, 2011, 6:09 PM, http://www.usatoday.com/news/education/2011-08-01-womens-college-transgender_n.htm.

104. *Dossier*, ADOPTION.COM, <http://international.adoption.com/foreign/dossier.html> (last visited Sept. 26, 2012).

consider contemporary medical standards, legal and constitutional concerns, as well as other public policy issues, including how the standard affects the ability of those who seek the correction to receive it.

A. Overview of Existing Legal Standards

1. Standard from the MSVSA, State, and Local Jurisdictions

The 1977 MSVSA requires that a person seeking a correction to the gender on his or her birth certificate show that “the sex of an individual born in this State has been changed by *surgical procedure*”¹⁰⁵ (terms not defined in the model statute).¹⁰⁶ Thirteen jurisdictions use the exact language from the MSVSA in their statutes.¹⁰⁷ Another nine states¹⁰⁸ and Guam have a surgery standard in their statute, not using the language of the MSVSA. Several more states refer to gender corrections in statutes but do not specify that surgery must take place: Mississippi (“gender reassignment”), New Hampshire (“has had a sex change”), Utah (“has had a sex change”), and Virginia (“medical procedure”). In three states, legislatures have explicitly repudiated surgical or hormonal requirements, with language noting that “surgery or other treatment” (Iowa¹⁰⁹), “clinically appropriate treatment” (California) or “surgical, hormonal, or other treatment” (Vermont) will suffice.¹¹⁰

Some states do not address gender corrections in statute, but deal with them in official regulations or written, sub-regulatory policy. Connecticut,

105. MODEL STATE VITAL STATISTICS ACT AND REGULATIONS § 21(d) (Ctr. for Disease Control & Prevention 1992) (emphasis added).

106. There is no published case law interpreting the term “surgical procedure.”

107. Alabama, Arkansas, Colorado, Commonwealth of the Northern Mariana Islands, Delaware, District of Columbia, Georgia, Kentucky, Maryland, Missouri, New Jersey, New Mexico, and Oregon. (Montana integrates the language from the MSVSA into its regulations, not statute). *See infra* app. A.

108. Arizona, Hawaii, Illinois, Louisiana, Massachusetts, Michigan, Nebraska, North Carolina, and Wisconsin. *See infra* app. A.

109. Iowa has statutory language making it clear that surgery is not required. The code requires a “notarized affidavit by a licensed physician and surgeon or osteopathic physician and surgeon stating that by reason of *surgery or other treatment* by the licensee, the sex designation of the person has been changed.” IOWA CODE ANN. § 144.23 (West 2009) (emphasis added). However, the fact that the law twice says “and surgeon” in referring to the physician that must provide the letter seems to imply, for those unfamiliar with Iowa’s medical code, that a surgeon is involved in the person’s care. In fact, all physicians in Iowa are referred to, throughout Iowa code, as “physician and surgeon.” *See, e.g.*, IOWA CODE ANN. § 147.139 (West 2011). In practice, despite the statutory rejection of a surgery requirement, the Iowa Department of Public Health does require proof of surgical treatment. *See Spade, supra* note 4, at 768.

110. *See infra* app. A.

Maine, Montana, New York City, and North Dakota each have surgical requirements in official regulations, although their statutes are silent.¹¹¹ In New York State, a written policy requires surgery even where the regulations and statutes do not. In Virginia, even though the statute specifies only a “medical procedure,” the regulations require surgery.¹¹²

In Kansas, Mississippi, Nevada, and Wyoming, there is no statutory language related to gender corrections, and the official regulations are ambiguous with regard to whether surgery is required.¹¹³ In two more states, Florida and Rhode Island, there is no official written policy but surgery is essentially required in practice.¹¹⁴

Regardless of the exact language used relating to surgery, medical treatment, or gender corrections more generally, there are a wide variety of surgeries deemed sufficient to be eligible for the correction of a gender marker. For example, as a practical matter, sometimes any surgery will qualify an individual for correction, but other times an agency will have strict (generally unwritten) rules that a particular surgery must be shown.¹¹⁵

In nine jurisdictions, *the judge determines the standard* because there is no statutory or regulatory language, or the language is too vague.¹¹⁶ An additional three states let people choose to get a court order.¹¹⁷ While a court order requirement does not explicitly mean proof of surgery is necessary, generally advocates have found this to be the case in practice.¹¹⁸ Although there has been at least one instance where a person has successfully received a court-ordered correction to her birth certificate without surgery,

111. *Id.*

112. *Id.*

113. *Id.*

114. *Id.*

115. Interview with Janson Wu, *supra* note 70; Interview with Kristina Wertz, Director of Policy and Programs, Transgender Law Center (Feb. 14, 2012, 10:55 AM); Interview with Dru Levasseur, Transgender Rights Attorney, Lambda Legal (Feb. 10, 2012).

116. These are Alaska, Indiana, Mississippi, New Hampshire, Nevada, South Dakota, Utah, Wyoming, and the United States Virgin Islands. *See infra* app. A. Several more jurisdictions are not clear what the process even is—whether it requires going to the agency or to a court—for gender correction: Kansas, Oklahoma, South Carolina, Texas, and American Samoa. Thus, in those jurisdictions, a judge may be the one determining the standard. *See infra* app. A.

117. In three of these states—Minnesota, Pennsylvania, and West Virginia—a person can go directly to the agency, but must show surgery, or the person can choose to seek an order from a judge, who can use whatever standard he or she judges appropriate. *See infra* app. A.

118. *See infra* Section III.B.3.

this case involved an individual who was able to demonstrate that surgery was not medically feasible for her given her health conditions.¹¹⁹

2. Modernized Laws and Policies

Although it has been decades since most state's legislatures or policy-makers have examined their policies regarding gender corrections, Washington, Vermont, and California have done so in the last few years. As a result, these three states have the laws or policies that most closely comport with contemporary medical and legal standards and warrant closer examination. In addition, the standard from the U.S. Department of State with regard to Consular Reports of Birth Abroad, updated in 2010, and the U.K. Gender Recognition Act from 2004 are also helpful.

a. Washington

The Washington statute governing birth certificates gives the Secretary of Health broad authority to administer birth certificates.¹²⁰ Because the statute does not mention gender corrections specifically, the Secretary of Health has empowered the Director of the Center for Health Statistics to develop the policy. The policy currently in effect¹²¹ has been in place since July 1, 2008 and, according to staff at the agency, is a codification of the unwritten policy that was in effect for many years.¹²² The policy requires a registrant to submit a written request and to include a "letter, on applicable letterhead, from the requestor's medical or osteopathic physician stating that the requestor has had the *appropriate clinical treatment*."¹²³

b. Vermont

Vermont's updated statute was originally part of an overall modernization effort of the vital statistics law in 2011.¹²⁴ However, the overall modernization effort was stalled due to its length and complexity, and the

119. Interview with Kristina Wertz, *supra* note 114.

120. WASH. REV. CODE ANN. §43.70.150 (West 2009).

121. WASH. DEPT. OF HEALTH, CTR. FOR HEALTH STATS., PROC. NO. CHS-B5, CHANGING GENDER ON BIRTH CERTIFICATES (2008) (on file with author).

122. Email from Spencer Bergstedt to author (October 2, 2012, 20:01 EST) (noting that their previous unwritten policy was not very clear, but that gender marker corrections were approved under the old policy with very little information submitted with the request).

123. WASH. DEPT. OF HEALTH, *supra* note 120 (emphasis added). Washington is the first jurisdiction to use the term "appropriate."

124. H. 99, 2011–12 Leg. (Vt. 2011).

Commissioner on Health asked the legislature to add this provision to a bill related to midwifery so that these provisions could become law in 2011.¹²⁵

Before this law passed, Vermont's statutes did not explicitly provide for gender corrections, so they were processed as any other amendment after an individual received a court order ordering the vital statistics agency to amend the gender marker.¹²⁶ Anecdotal evidence indicates that only a limited number of judges were willing to make a gender correction using this provision and did so only upon proof of completed surgery.¹²⁷

The new language in Vermont requires that "the individual has undergone surgical, hormonal, or other treatment appropriate for that individual for the purpose of gender transition."¹²⁸ This language accurately reflects the contemporary medical understanding of transgender people because it explicitly considers that an individual may not undergo hormonal or surgical treatment as part of their transition. Treatment "appropriate" to an individual may be limited to living full-time in one's new gender role.

However, the statute also requires a person to have "completed" sexual reassignment.¹²⁹ While this should not cause significant confusion, using the term "completed" may unduly exclude some people who have fully transitioned but hope or plan for additional medical treatment later in life. Furthermore, since many individuals receive hormonal treatment indefinitely, they may be seen as never having "completed" treatment.

c. California

In 2011, the California legislature enacted a law that modernized and simplified the state's existing statute in various ways. The law replaced the requirement for "surgical treatment"¹³⁰ with a requirement that the individ-

125. Interview with Bill Lippert, Vermont Representative (Feb. 10, 2012); S. 15, 211-12 Leg. (2011), available at <http://www.leg.state.vt.us/docs/2012/Acts/ACT035.pdf>.

126. VT. STAT. ANN. tit. 18, § 5075 (West 2011).

127. Interview with Jes Kraus, Vermont Attorney (Feb. 13, 2012).

128. VT. STAT. ANN. tit. 18, § 5112(b) (West 2011).

129. *Id.* ("An affidavit by a licensed physician who has treated or evaluated the individual stating that the individual has undergone surgical, hormonal, or other treatment appropriate for that individual for the purpose of gender transition shall constitute sufficient evidence for the court to issue an order that sexual reassignment has been completed.")

130. CAL. HEALTH & SAFETY CODE § 103425 (West 2009) ("Whenever a person born in this state has undergone surgical treatment for the purpose of altering his or her sexual characteristics to those of the opposite sex . . . A petition for the issuance of a new birth certificate in those cases shall be filed with the superior court of the county where the petitioner resides.")

ual “has undergone clinically appropriate treatment for the purpose of gender transition, based on contemporary medical standards.”¹³¹

d. Standard from Consular Reports of Birth Abroad

As described earlier, the 2010 U.S. Department of State policy for Consular Reports of Birth Abroad requires simply that a person’s treating or evaluating physician write a letter certifying that a person “has had appropriate clinical treatment for gender transition to the new gender.”¹³² To be clear, the policy makes explicit that surgery is not required.¹³³

e. Standard from the United Kingdom’s Gender Recognition Act

The United Kingdom’s Gender Recognition Act of 2004 requires that individuals live in their “acquired gender” for at least two years and have a diagnosis of gender dysphoria.¹³⁴ An individual must submit reports by two medical professionals, one of whom must be an expert in the field of gender dysphoria, detailing any medical treatment that the person has had. The individual must also affirm that he or she intends to continue to live in their acquired gender until death.¹³⁵

Although this policy has the advantage of not requiring surgery or any specific medical treatment, the requirement of living in the “acquired gender” for two years is both arbitrary and burdensome, heightening one’s risk of violence, discrimination, and harassment for that two-year period. Similarly, the fact that one of the medical professionals submitting their evaluation must be practicing in the field of gender dysphoria is unduly limiting for those who live in rural or other areas that do not have access to these professionals. Lastly, the requirement that there be a diagnosis is similarly arbitrary and is not particularly useful for potential inclusion in U.S. policy

131. CAL. HEALTH & SAFETY CODE § 1004430 (West 2012) (“The petition shall be accompanied by an affidavit of a physician attesting that the person has undergone clinically appropriate treatment for the purpose of gender transition, based on contemporary medical standards, and a certified copy of the court order changing the applicant’s name, if applicable. The physician’s affidavit shall be accepted as conclusive proof of gender change if it contains substantially the following language: ‘I, (physician’s full name), (physician’s medical license or certificate number), am a licensed physician in (jurisdiction). I attest that (name of petitioner) has undergone clinically appropriate treatment for the purpose of gender transition to (male or female).’”).

132. See U.S. DEP’T ST., 7 FOREIGN AFF. MANUAL 1320 app. M(b) (2011) *available at* <http://www.state.gov/documents/organization/143160.pdf>.

133. “Sexual reassignment surgery is not a prerequisite for passport issuance.” *Id.*

134. Gender Recognition Act, 2004, c. 7 § 2 (U.K.).

135. *Id.*

because many people do not receive the diagnosis of gender dysphoria in the United States.¹³⁶

B. Issues to Consider When Modernizing the Legal Standard

When considering how to update the legal standard, policymakers should look to the modern medical understanding of transgender people, the effect of the surgical standard on transgender people, how other areas of the law have acknowledged transgender people, the constitutional impact of these policies, and the public policy justifications and implications.

1. A Surgical Requirement Contradicts Current Medical Understanding

Current medical thinking has rejected the one-size-fits-all mentality that was common in early treatment of transgender people. In the middle of the twentieth century, the medical community's viewpoint, developed by a small set of early practitioners, was that genital surgery was the successful culmination of a person's treatment and gender transition. Although the lived reality of transgender people never uniformly reflected this understanding, it was widely believed then and continues to persist today among the general population.¹³⁷ As more providers began treating transgender people and contributed to medical literature and practice over the past several decades, the view of transgender medicine greatly evolved and expanded.

The World Professional Association for Transgender Health (WPATH), established in 1979, is the international medical association devoted to understanding and properly treating transgender people. WPATH develops and publishes the collective understanding of the best treatment for transgender people based on "the best available science and expert professional consensus," known now as the "Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People."¹³⁸ WPATH has altered its Standards of Care six times since 1979 to reflect the continually evolving medical understanding of transgender people and the efficacy of various treatment protocols.¹³⁹

136. For various reasons, requiring people in the U.S. to get a diagnosis would be ill advised. First, some people cannot get a diagnosis because of limited access to doctors or counselors (less of an issue in the U.K. where socialized medicine is in place). Second, people who are deemed not "clinically distressed" enough may not receive the diagnosis. Third, some doctors and counselors have a limited viewpoint about who should receive the diagnosis. See *infra* note 153 and accompanying text.

137. Spade, *supra* note 4, at 755.

138. WORLD PROF. ASS'N FOR TRANSGENDER HEALTH, *supra* note 33.

139. *Id.*

Over this time period, WPATH increasingly encouraged and required individualized evaluation and individualized treatment, reflecting both its increasingly multi-disciplinary membership and the best available science. The Standards of Care refer to themselves as “flexible clinical guidelines”¹⁴⁰ and state that treatment is to be individualized.¹⁴¹ As discussed earlier, the current Standards of Care are clear that changes in gender role alone may be sufficient treatment for some transgender people.¹⁴²

Recognizing that surgery is not necessary for many transgender people, as well as the fact that many of these procedures result in sterilization, WPATH issued a statement condemning surgical requirements in 2010, stating, “[n]o person should have to undergo surgery or accept sterilization as a condition of identity recognition” The WPATH Board of Directors urges governments and other authoritative bodies to move to eliminate requirements for identity recognition that require surgical procedures.¹⁴³

In addition to WPATH, other experts have recommended de-linking social and legal recognition of gender from specific medical treatments. The foremost organization for psychologists in the United States, the American Psychological Association, released a statement with its medical, social, and legal recommendations related to transgender people in August of 2008, which stated:

THEREFORE, BE IT FURTHER RESOLVED THAT APA encourages legal and social recognition of transgender individuals consistent with their gender identity and expression, including access to identity documents consistent with their gender identity and expression which do not involuntarily disclose their

140. *Id.*, at 2.

141. “Treatment is individualized: What helps one person alleviate gender dysphoria might be very different from what helps another person. This process may or may not involve a change in gender expression or body modifications.” *Id.*, at 5.

142. “As the field matured, health professionals recognized that while many individuals need both hormone therapy and surgery to alleviate their gender dysphoria, others need only one of these treatment options and some need neither. Often with the help of psychotherapy, some individuals integrate their trans- or cross-gender feelings into the gender role they were assigned at birth and do not feel the need to feminize or masculinize their body. For others, changes in gender role and expression are sufficient to alleviate gender dysphoria. Some patients may need hormones, a possible change in gender role, but not surgery; others may need a change in gender role along with surgery, but not hormones. In other words, treatment for gender dysphoria has become more individualized.” *Id.*, at 2 (citations omitted).

143. Press Release, World Prof. Ass’n for Transgender Health (June 16, 2010), *available at* <http://www.wpath.org/documents/Identity%20Recognition%20Statement%206-10%20on%20letterhead.pdf>.

status as transgender for transgender people who permanently socially transition to another gender role . . .¹⁴⁴

Note that the basis for changing the gender markers on identity documents according to the APA is a person's "social transition," not a specific other medical event, such as hormones or surgery.

In sum, the professional medical associations that have looked at the question of gender transition and how it relates to identity documents like birth certificates have all come to the same conclusion: it is social transition, not surgery, that is medically relevant.

2. Surgery is Not Common and is Often Unattainable

Sex reassignment surgeries are significantly less common than is popularly believed. Transgender people have a variety of medical, personal, and practical reasons for not seeking or being able to acquire surgery. Here are common barriers and considerations:

- (1) Some individuals cannot afford the surgery they desire, especially given that a large majority of private and public health insurance plans do not currently¹⁴⁵ cover sex reassignment surgeries.¹⁴⁶
- (2) Many people have medical conditions that make surgery risky or contraindicated.¹⁴⁷

144. Policy Statement, Am. Psychological Ass'n, *Transgender, Gender Identity, & Gender Expression Non-Discrimination* (Aug. 2008), <http://www.apa.org/about/governance/council/policy/transgender.aspx>.

145. Increasingly, companies are ensuring that transgender employees do receive transition-related care through their insurance policies, and a number of colleges and universities have also ended these discriminatory exclusions. Human Rights Campaign Foundation, *Corporate Equality Index 2012 27-28* (2011); Karen Aquino, *U. Adds Transgender Insurance*, THE DAILY PENNSYLVANIAN (Apr. 14, 2010), available at http://thedp.com/index.php/article/2010/04/u._adds_transgender_insurance.

146. Kari E. Hong, *Categorical Exclusions: Exploring Legal Responses to Health Care Discrimination Against Transsexuals*, 11 COLUM. J. GENDER & L. 88, 96-98 (2002); see also Jamison Green, *Introduction to Transgender Issues* in TRANSGENER EQUALITY: A HANDBOOK FOR ACTIVISTS AND POLICY MAKERS 12 (Paisley Currah & Shannon Minter eds., 2001).

147. Editorial, *Looking Past Transgender*, THE DAILY FREE PRESS, Nov. 8, 2006, <http://dailyfreepress.com/2006/11/08/editorial-looking-past-transgender/> (quoting Lorna Thorpe, Deputy Commissioner of New York's Department of Health and Human Hygiene as saying, "A smaller number undergo surgery - in part because not everyone is medically capable of undergoing the procedure."); see also Susan Donaldson James, *Transgender Sue Over Surgery Requirement to Alter Gender on Birth Certificate*, ABCNEWS, Mar. 24, 2011, <http://abcnews.go.com/Health/transgender-yorkers-sue->

- (3) Many people who want and can afford surgery do not pursue it because they fear complications.¹⁴⁸
- (4) Many individuals are unsure whether the surgery will provide the desired physical or aesthetic result, especially given individual variation and the chance of achieving an optimal result.¹⁴⁹
- (5) Some are prevented by practical considerations involved in undergoing major surgery, including having difficulty in taking several weeks off from work or school, having caregiving responsibilities for family members, or lacking caregivers for themselves following surgery.¹⁵⁰
- (6) Some hold sincere religious beliefs, or personal beliefs, against surgical body modification.¹⁵¹
- (7) Some have family members or other loved ones who would be upset if they had the surgery, and thus forgo surgeries to maintain these relationships.¹⁵²
- (8) For some, maintaining reproductive capacity is important and many surgeries eliminate this possibility.¹⁵³

birth-certificates-genital-surgery-requirement/story?id=13204628 (“Prinzivalli is morbidly obese and has type 2 diabetes, high cholesterol and a blood disorder that would make surgery dangerous”); *Western Australia Gender Project*, CHANGELING ASPECTS, <http://www.changelingaspects.com/Advocacy/WA%20Gender%20Project.htm> (last updated Jan. 22, 2008) (“Common medical contraindications for sex reassignment surgeries include: . . . mental illness, poorly controlled diabetes, hemophilia, severe hypertension and deep vein thrombosis”).

148. Cameron Bowman & Joshua M. Goldberg, *Care of the Patient Undergoing Sex Reassignment Surgery*, 9 INT’L J. OF TRANSGENDERISM 135 (2006) (noting the risks of complications that may arise from various gender reassignment surgeries).
149. The aesthetic and functional results of surgeries cannot be guaranteed. Furthermore, for transgender men, there exists no surgery that will create an adult-sized erectile phallus without the assistance of an insert device.
150. BOWMAN & GOLDBERG, *supra* note 148; *FTM Genital Reconstruction Surgery (GRS)*, HUDSON’S FTM RESOURCE GUIDE, <http://www.ftmguide.org/grs.html> (last visited Dec. 27, 2011) (discussing the months-long recovery process for many surgeries).
151. See Tobin, *Against the Surgical Requirement*, *supra* note 4, at 400–01 (discussing religious factors as rationale for low rates of sex-reassignment surgery in some communities).
152. Joanne Herman, *Transgender Issues: The Additional Challenges of LBGT Aging*, HUFFINGTON POST, Nov. 4, 2010, http://www.huffingtonpost.com/joanne-herman/shining-the-spotlight-on-_b_777551.html (noting “opposition by family members” as one of the reasons transgender people may not have surgery).
153. Madeline H. Wyndzen, *MtF Transsexual Reproductive Option Preservation*, ALL MIXED UP, <http://www.genderpsychology.org/reproduction/index.html> (last visited June 27, 2011) (discussing the costs associated with attempting to maintain post-operative reproductive abilities).

- (9) Some are denied access to needed approval or diagnosis “letters” from psychologists when their life experiences do not neatly fit the “transsexual” pattern, when they do not match closely enough the stereotypes of man or woman, or when they are not sufficiently “clinically distressed.”¹⁵⁴
- (10) A significant percentage of transgender people have determined that surgery is not necessary for them to be comfortable living in their new gender.¹⁵⁵ Many transgender people determine that the alterations they make to their gendered appearance, names, and pronouns give them the well-being they need without further medical treatment.¹⁵⁶

Ultimately, according to the National Transgender Discrimination Survey, less than 4% of transgender men and only 23% of transgender women have what are popularly understood as genital surgeries.¹⁵⁷ Given these facts, any policy that requires surgery will block the vast majority of transgender people from being able to have an accurate birth certificate.

Given the multitude and severity of the previously discussed practical and legal harms caused by an inaccurate birth certificate, combined with the statistics on the frequency that transgender people receive surgeries, the collective harm to transgender people caused by a surgical requirement must be

154. Dean Spade, *Resisting Medicine, Remodeling Gender*, 18 BERKELEY WOMEN'S L. J. 15, 24–29 (2003). Because many health care professionals voluntarily follow WPATH's Standards of Care, transgender individuals need one or two letters from mental health professionals before they can have surgery, depending on the type of surgery. WORLD PROF'L ASS'N FOR TRANSGENDER HEALTH, *supra* note 33, at 27; see also *Choosing a Therapist*, TRANSEXUAL ROAD MAP, <http://www.tsroadmap.com/mental/therapy.html> (last visited June 27, 2011) (“Some therapists require more than others before they'll recommend hormones or surgery. Some use a kind of weeding-out policy, trying to test your conviction. Some feel they are gatekeepers who must keep people from making mistakes, and require a lot of sessions. Others are much more open or easy-going.”).

155. Tobin, *Against the Surgical Requirement*, *supra* note 4, at 401 n. 39; see also Gabriel Arkles, *Prisons as a Tool for Reproductive Oppression: Cross-Movement Strategies for Gender Justice*, SYLVIA RIVERA LAW PROJECT (Sept. 27, 2008), <http://srlp.org/prisons/reproductiveoppression> (noting the individualized needs of transgender people when it comes to health care); Damien Cave, *New York Plans to Make Gender Personal Choice*, N.Y. TIMES, Nov. 7, 2006, <http://www.nytimes.com/2006/11/07/nyregion/07gender.html?pagewanted=all>.

156. Tobin, *Against the Surgical Requirement*, *supra* note 4, at 401.

157. GRANT ET AL., *supra* note 54, at 79. What is considered genital surgery by the transgender community is more expansive than what is often considered genital surgery by government staff and others. Here, the Article refers to phalloplasty or metoidioplasty for men and vaginoplasty for women as those surgeries popularly understood as genital surgeries.

recognized for its severity, and should be taken into account when making policy.

In addition, there may be a public health harm caused by policies that require people to undergo unnecessary and unwanted surgeries. When a person undergoes surgical treatment, his or her time and resources, as well as those of others, would be spent securing and recovering from this treatment. Complications may also occur, adding new health problems. A cascade of unnecessary expenditures result from surgeries, including depleting one's personal financial resources, causing an interruption in one's school or work, being unable to complete family care-giving duties, and relying on financial or care-giving resources from family members or others.¹⁵⁸

3. A Surgical Requirement is Inconsistent with Other Public Policies Related to Transgender People

As legal rights and recognition of transgender people have rapidly increased in the past two decades in the United States, there has been a clear trend that such rights *do not depend on whether a person has had specific medical treatments*.¹⁵⁹ Most pertinently, non-discrimination laws that cover transgender people prohibit discrimination on the basis of "gender identity or expression," or similar language, regardless of whether a person has had or is seeking medical treatment.¹⁶⁰ This implies that transgender people should have the freedom to live their daily lives consistent with their gender identities without facing discrimination or restrictions. In 2011, legislators in Maine considered a bill that would have narrowed the existing non-discrimination protections for transgender people in that state by granting the authority to businesses to limit access to sex-segregated facilities based on "biological sex." This bill was handily defeated (61-81 in the House, 11-23

158. All of these have potential public health consequences in direct or indirect ways, ranging from a person not having resources to be treated for other medical conditions and causing medical issues where none existed before to not being able to care for another family member because of having to recover from surgery. The collective effect has an impact on public health.

159. Interview with Mara Keisling, Executive Director, National Center for Transgender Equality, Washington D.C. (Feb. 10, 2012).

160. Of the 150 local non-discrimination laws in the U.S., only three currently have any references to surgery. Passed in 1999 and 2000, laws in Boulder and Denver in Colorado, and Lexington-Fayette Urban County in Kentucky have references to surgery (although their coverage is not limited to only those who had surgery). BOULDER ORD. No. 7040, Title 12 Human Rights, Section 12-1-1 Definitions (2000), DENVER ORD. No. 934-01, Article IV, Section 28-92 Definitions (2001); LEXINGTON-FAYETTE URBAN COUNTY ORD. No. 201-99, Article II, Chapter 2, Section 2-33 (1999).

in the Senate) by the majority Republican Legislature.¹⁶¹ As a result, there are no surgical or hormonal lines drawn by any of the 16 state laws that currently protect transgender people from discrimination.¹⁶² As a further example, in proposed federal non-discrimination legislation such as the Employment Non-Discrimination Act even the provision related to sex-segregated shower facilities does not include language requiring surgery as a prerequisite for admittance, but instead speaks of “gender transition.”¹⁶³

In fact, many of these laws have already been explicitly interpreted to require access to sex-segregated facilities such as restrooms based on a person’s gender identity without regard to medical treatment.¹⁶⁴

Driver’s license policies related to corrections of gender markers, which vary by state, have also moved away from surgery requirements.¹⁶⁵ Although the events of September 11, 2001 and the resulting enactment of

161. L.D. 1046, 2011 Leg., 125th Sess. (Me. 2011), available at http://www.mainelegislature.org/legis/bills/bills_125th/billtexts/HP078101.asp (“It is not unlawful public accommodations discrimination, in violation of this Act, for a public or private entity to restrict rest room or shower facilities that are part of a public accommodation to the use of single-sex facilities to members of a biological sex regardless of sexual orientation. Unless otherwise indicated, a rest room or shower facility designated for one biological sex is presumed to be restricted to that biological sex.”).

162. See CAL. GOV’T CODE § 12926(q) (West 2011); COLO. REV. STAT. § 24-34-401(7.5) (2011); CONN. GEN. STAT. § 46A-51(21) (West 2011); HAW. REV. STAT. §§ 515-2, 489-2 (West 2011); 775 ILL. COMP. STAT. 5/1-102 (West 2011); IOWA CODE § 216.2(9A) (2011); ME. REV. STAT. ANN. tit. 5, § 4553(9-C) (2011); MINN. STAT. ANN. § 363A.03(44) (West 2011); N.J. REV. STAT. § 10:5-5(rr) (2011); N.M. STAT. ANN. § 28-1-2(Q) (West 2011); OR. REV. STAT. § 174.100(6) (2011); R.I. GEN. LAWS § 11-24-2.1(l) (2011); VT. STAT. ANN. tit. 1 § 144 (West 2011); WASH. REV. CODE § 49.60.040 (15) (2011); A.B. 211, 2011 Leg., 76 Sess. (Nev. 2011); H.B. 502, 2011 Leg., 187 Sess. (Ma. 2011).

163. Employment Non-Discrimination Act, H.R. 1397, 112th Cong. § 8(a)(3) (2011) (“Nothing in this Act shall be construed to establish an unlawful employment practice based on actual or perceived gender identity due to the denial of access to shared shower or dressing facilities in which being seen unclothed is unavoidable, provided that the employer provides reasonable access to adequate facilities that are not inconsistent with the employee’s gender identity as established with the employer at the time of employment or upon notification to the employer that the employee has undergone or is undergoing gender transition, whichever is later.”).

164. See, e.g., COLO. CODE REGS. § 708-1 Rule 81.11 (2011); WASH. STATE HUMAN RIGHTS COMM’N, GUIDE TO SEXUAL ORIENTATION, GENDER IDENTITY, DISCRIMINATION AND WASHINGTON STATE LAWS: SELF-ASSESSMENT CHECKLIST FOR COMPLIANCE AND SUGGESTED BEST PRACTICES FOR EMPLOYMENT 6, available at <http://www.hum.wa.gov/Documents/Publications/SelfAssessments/Self-Assessment-Employment2ndEdition.pdf>; IOWA CIVIL RIGHTS COMMISSION, SEXUAL ORIENTATION AND GENDER IDENTITY: AN EMPLOYER’S GUIDE TO IOWA LAW COMPLIANCE, available at <http://www.state.ia.us/government/crc/docs/SOGIEmpl.pdf>; D.C. MUN. REGS. tit. 4 § 802 (2006).

165. Tobin, *Fair and Accurate Identification*, *supra* note 4.

the Real ID Act initially caused some state agencies to be concerned about any changes to driver's license data, stricter, surgery-based policies on gender markers were not promulgated.¹⁶⁶ Despite the terrorism scare, the trend in the last decade has been away from surgery-based policies and toward gender identity-based policies.¹⁶⁷ The District of Columbia currently has a model policy because it provides a corrected gender marker upon (1) signed documentation from the license holder that they are seeking to have the gender on their license corrected to reflect their gender identity, and (2) the signature of a health or social service professional who attests, in their professional opinion, that the person's gender is as stated.¹⁶⁸ Slightly modified versions of D.C.'s policy have been adopted in New Jersey, Maine, Massachusetts, Pennsylvania, Rhode Island, and Virginia. Although not modeled on the D.C. policy, new policies that eliminated surgery requirements have also been adopted in Colorado, Florida, Nevada, New Mexico, and Ohio. Many other states have long maintained non-surgery based policies.¹⁶⁹

Furthermore, although not yet adopted nationally, the trend with regard to homeless shelter policies is increasingly to house people based on their self-identified gender, regardless of whether a person has had any medical treatments. Because most homeless shelters are segregated by gender and

166. One state to roll its policy back was Michigan, which had a policy of self-identification a decade ago. Under the old policy, a person only had to sign a generic form (used for many purposes), writing a sentence that stated that he or she wished the gender on his or her license changed, and the correction was granted, with questions by the staff prohibited. The policy stated: "DO NOT ASK THE APPLICANT TO SPECIFY THE REASON FOR THE REQUEST." MICH. DEP'T OF STATE, TR-34, CHANGING GENDER (1995) (on file with author). The policy was ended in 2003 and changed to a surgery-based policy, due to a change in Secretary of State—not due to any problem caused by the policy, according to state advocates. The policy has changed two more times at least. Dawn Wolfe Gutterman, *Secretary of State Reverses Pro-Trans Policy*, PRIDE SOURCE, May 12, 2005, <http://www.pridesource.com/article.html?article=14010>; Interview with Jay Kaplan, Attorney, ACLU of Michigan, Detroit, MI (Oct. 2, 2012).

167. Tobin, *Fair and Accurate Identification*, *supra* note 4.

168. The D.C. DMV has an easy-to-use and easy-to-process form developed specifically for gender marker corrections. Gender Designation on a License or Identification Card (D.C. Dep't of Motor Vehicles, 2006), available at http://dmv.dc.gov/info/forms/gcp-app_pdf.shtm; see also Tobin, *Fair and Accurate Identification*, *supra* note 4; Mara Keisling et. al., *Gender Identity and the Driver Licensing Process*, AM. ASS'N OF MOTOR VEHICLE ADM'RS, Aug. 3, 2011, available at http://www.aamva.org/largefiles/webinars/GenderIdentityAndDLProcess_08032011.wmv; Tom Manuel, *Transgender Drivers: New Norms in Customer Service*, MOVE MAG., Spring–Summer 2011, at 29.

169. See, e.g., Memorandum from Patricia D. Aducci, Comm'r N.Y. Dep't Motor Vehicles b(April 29, 1987), available at <http://rnytg.org/DMVGenderChangeMemo.pdf> (noting that "[p]roof that an operation occurred is no longer necessary."); see also *Driver's License Policy By State*, *supra* note 71.

many do not have private areas for changing or bathing, historically there had been a policy of housing people according to their genitals. In 2003, the National Coalition for the Homeless adopted a resolution urging shelters to house people according to their “self-identified gender.”¹⁷⁰ Shelter systems, such as those in Boston, New York City, San Francisco, and Washington, D.C., have had formal policies to this effect for years and the implementation has not caused any problems.¹⁷¹

In sum, legislatures and policymakers in a variety of arenas have determined that surgical treatment is immaterial to whether a person should be recognized in accord with the person’s gender identity.

4. Reasons Given for a Surgical Requirement are Not Valid

Originally, recognizing that surgery changed a person’s gender was a progressive idea—it provided a way for transgender people to correct their gender markers on official government documents whereas before, there was no option to correct the gender marker at all. Generally, courts and agencies have not articulated a state interest in a surgery requirement, presumably because the choice of surgery was so obvious as the dividing line between male and female that the reason it had been used was not seen as necessary to articulate. Thus, it is difficult to locate arguments in favor of a surgery requirement. The few examined below are taken mostly from driver’s license and marriage recognition contexts, and one policy debate on birth certificates in New York City. The arguments can be understood best as three separate concerns; as such, they are each explained and analyzed in turn.

a. Fraud or Security

On the rare occasions when a court or agency tries to justify a surgical standard, the government sometimes articulates an interest in “fraud pre-

170. Broader best practices were described in a joint publication of the National Coalition for the Homeless and the National Gay and Lesbian Task Force, which also includes the National Coalition for the Homeless resolution in its Appendix. LISA MOTTET & JOHN M. OHLE, *TRANSITIONING OUR SHELTERS: A GUIDE TO MAKING HOMELESS SHELTERS SAFE FOR TRANSGENDER PEOPLE*, app. A (2003).

171. Interview with Mara Keisling, *supra* note 158.

vention.¹⁷² This issue often arises in reference to same-sex marriage,¹⁷³ and sometimes is presented more generally and vaguely as a potential security problem. For example, there has been the suggestion that terrorists¹⁷⁴ could take advantage of the ability to alter gender markers on birth certificates.

With regard to marriage, most states do not require a person to show a birth certificate when applying for a marriage license; instead, they typically require a driver's license,¹⁷⁵ which, as discussed above, often allow people to change their gender markers without proof of surgery. There have been no reported cases of same-sex couples made up of two non-transgender people where one person changes the gender marker on a driver's license for the purpose of receiving a marriage license.¹⁷⁶

With regard to the claim that people may disguise their gender to be better able to commit crimes or terrorist acts, one prominent transgender advocate has commented that the last thing a person who is trying to blend in and escape notice should do is dress in the opposite gender.¹⁷⁷ Furthermore, federal policy implicitly indicates that gender marker changes do not impair national security interests. For example, in implementing the Real ID Act, the Department of Homeland Security decided to "leave the deter-

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172. Daniel Trotta, *Being Transgender No Longer About Surgery in N.Y.*, REUTERS, Nov. 22, 2006, <http://uk.reuters.com/article/2006/11/23/lifestyle-life-transgender-dc-id-UKN2020431620061123> ("Opponents are concerned about the possibilities for fraud."). Kenji Yoshino, notes a potential objection: "[P]revention of fraud: Lowering the barriers to sex reassignment increases the incentive for individuals who have no sincere desire to change their sex to do so for opportunistic reasons." Kenji Yoshino, *Sex and the City: New York City Bungles Transgender Equality*, SLATE, Dec. 11, 2006, http://www.slate.com/articles/news_and_politics/jurisprudence/2006/12/sex_and_the_city.html.
173. Interview with Reverend Moonhawk River Stone, M.S., LMHC, to author (confirmed Feb. 11, 2012).
174. Yoshino, *supra* note 172 ("[N]ational security: Permitting individuals to make any alterations to their birth certificates makes those records less useful to Homeland Security.").
175. This determination was made after a review of requirements for the 50 states and DC listed on *Marriage License Requirements By States*, USMARRIAGELAWS.COM, <http://usmariagelaws.com/> (last visited Dec. 28, 2011).
176. The implausibility that non-transgender people would fraudulently seek a gender correction on their birth certificate in order to receive a marriage license is easily rebutted when analogized to different situations. For example, typically people understand that fraudulent manipulations, such as a 13 year-old pretending to be 18, would not require the government to recognize a marriage involving a 13 year old. Similarly, non-transgender gay and lesbian people generally understand that they will not receive a legally valid marriage by fraudulently changing the gender marker on their government identity documents.
177. Interview with Mara Keisling, *supra* note 158; GRANT ET AL., *supra* note 54, at 163 (noting that seven percent of participants "reported being arrested or held in a cell strictly due to bias of police officers on the basis of gender identity/expression").

mination of gender up to the States.”¹⁷⁸ Further, the State Department allows individuals to update gender markers on their passports without surgery.¹⁷⁹ These should be taken as indications that gender was not an important classification related to prevention of terrorism in the federal government’s view.

In fact, there are particularly strong arguments that security and law enforcement agencies’ ability to protect the public is *enhanced* by having gender marker policies that are not based on surgeries, but are instead based upon the gender to which a person has transitioned. Transgender people often report being delayed, detained, or otherwise harassed by law enforcement officers because the gender marker on their ID does not match their external gender expression.¹⁸⁰ Sometimes officers are concerned the ID is fraudulent and take various steps to determine the legitimacy of the document. This extra scrutiny consumes law enforcement resources that are better spent identifying truly counterfeit identity documents or dealing with other law enforcement duties.

A second advantage for law enforcement of accurate, up-to-date gender markers involves situations in which police officers respond to crimes, identify witnesses, or attempt to locate persons of interest. The officer attempting to locate someone is better served by knowing the gender that the person is known as by friends and acquaintances, who may be confused or unhelpful when the officer asks about the “woman” or “man” who lives next door. Similarly, when the officers interact with a victim or a witness, they are more likely to alienate a transgender man, with a female designation on his license, by using the terms “ma’am” and “Ms.,” or by using “sir” or “Mr.” for a transgender woman. This alienation could make the transgender person, or others aware of the disrespect shown, less likely to trust, inform, and work with police in the instant case or in future situations.

In conclusion, there are no realistic fraud or security concerns that are addressed by maintaining a surgery requirement. On the contrary, federal

178. 6 C.F.R. § 37.17 (2008) (“Requirements for the surface of the driver’s license or identification card. To be accepted by a Federal agency for official purposes, REAL ID driver’s licenses and identification cards must include on the front of the card (unless otherwise specified below) the following information: . . . (c) Gender, as determined by the State.”). In the explanatory notes that accompany the rule, DHS explains that it “will leave the determination of gender up to the States since different States have different requirements concerning when, and under what circumstances, a transgendered [sic] individual should be identified as another gender.” Minimum Standards for Driver’s Licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes, 73 Fed. Reg. 5272, 5301 (Jan. 29, 2008) (to be codified at 6 C.F.R. pt. 37).

179. See *supra* notes 132–133 and accompanying text.

180. Interview with Mara Keisling, *supra* note 159.

security experts at the U.S. Department of Homeland Security and U.S. Department of State have instead established or changed policies to allow gender markers to be updated without surgery.

b. Permanence of the Correction

Occasionally, an administrator or judge will state the desire for permanence or irreversibility as a requirement for granting a correction of gender.¹⁸¹ Presumably, the concern is that someone could “switch back” after changing their gender. The harm to society if a person undergoes a gender correction more than once is never explicitly identified.¹⁸²

A policymaker misses the mark if he or she focuses on avoiding multiple corrections. The proper agency aim should be to maintain *accurate* records. A record should be updated to maintain accuracy as often as there is a change to relevant data. For example, if a person changes his or her name four times over their life due for various reasons, and seeks to amend their birth certificate each time, updating the birth certificate several times maintains an accurate record for them throughout his or her entire life.

In addition, research proves that a concern about impermanence is unsupported by the evidence. Data show that a return to previous gender happens extremely rarely and is generally a result of discrimination and rejection from family, friends, and colleagues.¹⁸³ A person is no less likely to transition back to the originally assigned gender after surgery as opposed to before surgery.¹⁸⁴

There is another reliable way in which people can indicate to the agency that they have undergone medically-recognized gender change: namely, an evaluation by a medical professional. An evaluation from a medical professional should be sufficient to determine if an individual has un-

181. *Cave*, *supra* note 155 (quoting the city’s health commissioner as saying “[s]urgery versus nonsurgery can be arbitrary[.] . . . Somebody with a beard may have had breast-implant surgery. It’s the permanence of the transition that matters most.”). Maryland’s highest court, in considering whether the judicial system has authority to grant a legal order of gender change, decided that the court’s equitable jurisdiction did cover such orders, and remanded for the courts below to determine whether the petitioner had “completed a permanent and irreversible change from male to female.” *In re R.W. Heilig*, 816 A.2d 68, 87 (Md. 2003).

182. Although the administrative burden of having to process multiple changes may be a cause for concern, this could be addressed by charging fees for corrections. It is difficult to imagine what other harms may exist without resorting to concerns about maintaining sex stereotypes or differences between the sexes.

183. See M. Landen et al., *Factors Predictive of Regret in Sex Reassignment*, 97 ACTA PSYCHIATRICA SCANDINAVICA 284 (1998).

184. Even a surgical requirement does not eliminate the possibility of a person changing gender a second time. Relevant surgical procedures could be reversed or undertaken to change a person’s body again.

dergone a gender transition and that the gender marker should be changed. Because no method can guarantee that a person may not elect to transition their gender a second time, the method of deferring to a medical professional should be sufficient.

A policy allowing a larger majority of people to have accurate birth certificates should not be dismissed due to conjecture concerning outliers who may change their gender more than once, especially because there is no articulation of the harm to society caused by multiple gender corrections. Instead, the focus should remain on maintaining accurate records.

c. Concerns About Sex-Specific Facilities and Situations

Sometimes government actors, or others who favor surgical requirements, claim that sex-segregated institutions need to know people's anatomical structure, either to ensure bodily privacy or for the prevention of assault.¹⁸⁵ Or, they may assert that for sex-specific jobs or job duties, such as those that might exist in a nursing or medical facility (although increasingly rare), bodily privacy of clients would be violated if a staff member of one anatomical structure observes or treats an unclothed client of another anatomical structure.¹⁸⁶ Yet, on a daily basis and in almost all social situations, a

185. Yoshino, *supra* note 171 (describing reservations "voiced by institutions like hospitals, jails, and schools, which routinely segregate according to sex" and explaining others' potential objections). Yoshino also notes that:

"Another moment of reflection suggests at least four interests that a person or the state might have in another person's gender. First, personal safety: Many communal spaces, like prison cells and public bathrooms, are segregated by sex to protect women, who are generally physically weaker than men, from assault or rape. Second, privacy: As employment-discrimination law recognizes, individuals have an interest in ensuring that their sexual privacy is not invaded by members of the opposite sex in contexts like nursing or medical care. . . . There is little evidence that transgender individuals present a security risk to women, while there is a great deal of evidence that transgender individuals themselves are at immense risk if they are not given accommodations. To the extent that privacy concerns rest on a fear of sexual objectification, they rely on a specious assumption of universal heterosexuality." *See also* Daniel Trotta, *New York Rejects Transgender Birth Certificate Law*, REUTERS, Dec. 5, 2006 (quoting a health department official as saying "how can you send a person with a penis to a women's prison?").

186. "As employment-discrimination law recognizes, individuals have an interest in ensuring that their sexual privacy is not invaded by members of the opposite sex in contexts like nursing or medical care." Yoshino, *supra* note 171. However, it should be noted that the case law on this question is quite old and modern nursing practices, for example, do not include dividing tasks by sex. *See, e.g.*, *Backus v. Baptist Med. Ctr.*, 510 F. Supp. 1191, 1193 (E.D. Ark. 1981), *vacated as moot*, 671 F.2d 1100 (8th Cir. 1982). Telephone Interview with Allyson Pearlman, 2010 graduate from the Simmons College of Nursing (July 30, 2011) (noting that in her recent education and previous multi-year experience as a volunteer at UCLA Jonsson Cancer Center, she has never seen jobs or job duties divided by gender, and the only instruc-

person's genitals remain entirely private, even inside sex-segregated facilities or in work situations where a person is performing gender-specific duties.¹⁸⁷

Increasingly, it is rare that people find themselves in environments that involve potential observation of another person's genitals (such as in a shared showering facility inside an institution, like a homeless shelter or prison). Within these contexts, before or at the relevant moment, a person will generally disclose to the authorities that he or she has a different anatomical structure than is typical for that facility. As a general rule, transgender people who have not had genital surgery are very likely to go to great lengths to avoid having other people observe their unclothed bodies. If they are able to do so, their bodily characteristics should not be considered relevant. If one is not able to keep their body private, the facility will learn of the person's bodily anatomy as a practical matter, typically through voluntary verbal disclosure.¹⁸⁸

Individuals who believe that transgender people should complete surgery before being allowed to change their birth certificates often cite the protection of women as their main goal. More specifically, these individuals feel that transgender women who have not undergone surgery will enter women's bathrooms and locker rooms to sexually assault non-transgender women who also frequent those facilities. However, this concern is based on several incorrect assumptions, including that access to these facilities is currently based on the gender marker listed on a person's birth certificate.

tion that she received related to this was during cultural competence training, where she was instructed that some Muslim patients may request nurses of the same gender). Also relevant to the issue of gender-specific tasks related to bodily privacy are studies done on whether women prefer male or female gynecologists. Data suggest that gender is not particularly important when women choose gynecologists. See Michael Zuckerman et al., *Determinants of Women's Choice of Obstetrician/Gynecologist*, 11 J. WOMEN'S HEALTH & GENDER-BASED MED. 175, 175-76 (2002) (finding that 62% of women did not feel strongly about the gender of their provider and that "almost as many women with a female provider indicated a preference for a male provider (46%) as women with male providers indicated a preference for a female provider (54%)"); Amy M. Johnson, et. al., *Do Women Prefer Care From Female or Male Obstetrician-Gynecologists? A Study of Patient Gender Preference*, 105 J. AM. OSTEOPATHIC ASS'N 369, 369 (2005) ("[t]he majority of patients (66.6%) had no gender bias when selecting an obstetrician-gynecologist, and an even larger majority (198, 80.8%) felt that physician gender does not influence quality of care. There was no statistical difference in patient satisfaction based on physician sex.").

187. "[P]reoccupation with the appearance of body parts that are already hidden from public view has no justification." Tobin, *Against the Surgical Requirement*, *supra* note 4, at 420.

188. It is difficult to imagine an instance where a transgender woman, who still has male genitalia and who has struggled all her life to be seen as a woman by others, would walk into an open women's shower without attempting to conceal that area of her body.

In fact, the large majority of sex-segregated facilities do not maintain written policies with regard to restroom access. Although this is changing, the default rule is essentially a social one: if you look like a man, you can use the men's room and if you look like a woman, you can use the women's room.

When a person's gender is challenged, a person is likely to receive access only if they can present identification with a matching gender marker. An entity will sometimes ask for additional information, such as surgical status, before allowing access. Those who do not have the correct gender on their ID (which is more likely for those whose birth certificates are inaccurate) may be asked to show documentation of their surgical status, a letter from their health care provider, or other official documentation.

The stated concerns are further undermined by the fact that a wide range of companies, organizations, and public places *already* have in place best practices dictating use of facilities by transgender people. These policies explain that transgender people may and should use the restroom and/or locker rooms according to their *gender identity*, not their anatomical structure.¹⁸⁹ As explained above, non-discrimination laws, which cover 45 percent of the U.S. population,¹⁹⁰ are regularly interpreted to ensure that transgender people can access restroom and shower facilities based on their gender identity, regardless of their anatomical status. Moreover, there are no reported cases of these laws being used to gain improper access to a facility for criminal purposes.

Thus, allowing transgender individuals to correct the gender marker on their birth certificates would not markedly alter the existing trend to base access to facilities on self-identity.

The alleged importance of a surgical standard is also sometimes asserted when discussing placement of individuals who are incarcerated. The fear is that non-transgender women in jail, prison, or juvenile justice facilities will be sexually assaulted by transgender women who have not yet had surgery. First, it is important to understand that gender markers on birth certificates have almost no influence on where people are placed in prison, juvenile justice facilities, and longer-term jail stays.¹⁹¹ The only cognizable

189. Mottet & Ohle, *supra* note 169; see also ERNST & YOUNG, WORKPLACE GENDER TRANSITION GUIDELINES (2006) available at http://www.hrc.org/files/assets/resources/ErnstYoung_TransitionGuidelines_2006.pdf; Peter Likins, *Statement on Restroom Access*, UNIV. OF ARIZ. (June 26, 2006), http://equity.arizona.edu/restroom_access.

190. NAT'L GAY & LESBIAN TASK FORCE, *supra* note 77.

191. In addition to the strip search conducted to identify contraband that often precedes incarceration, prisons and juvenile justice facilities generally do medical exams of incoming prisoners. Transgender individuals are then classified/housed by their ex-

situation in which a birth certificate gender marker could become relevant would be for the initial twenty-four to seventy-two hours after arrest while in a jail or holding cell. Second, for a variety of reasons,¹⁹² police are likely to know that the person they arrested is transgender. Thus, even if a person's birth certificate had been altered to reflect their identified gender prior to surgery, the police are unlikely to make housing decisions based on the certificate. As a result, birth certificate policies could only potentially affect an extremely small percentage of transgender women's placement.¹⁹³

Furthermore, just as in homeless shelters and sex-segregated spaces generally, there is a new standard related to the placement of transgender people in jails and prisons. This standard makes a transgender person's physical anatomy only one consideration in housing determinations. The recently promulgated Prison Rape Elimination Act regulations which apply to all prisons, jails, and lockups in the U.S., set forth exactly this policy: that housing classification, including whether a person is to be housed in the male or female facility, be made on a case-by-case basis.¹⁹⁴ Notably, gender

ternal genitalia, regardless of documentation. *See Farmer v. Haas*, 990 F.2d 319, 320 (7th Cir. 1993) ("The practice of the federal prison authorities . . . is to incarcerate persons who have completed sexual reassignment with prisoners of the transsexual's new gender, but to incarcerate persons who have not completed it with prisoners of the transsexual's original gender.").

192. Strip searches when being placed in a cell or holding area with others are common for those who are arrested for violent crimes or drug-related activity so that police can look for weapons, drugs, or other contraband. *See* Brief of the A.B.A. as Amicus Curiae in Support of Petitioner, *Florence v. Board of Chosen Freeholders of the County of Burlington* (June 27, 2011) (No. 10-945), 2011 WL 2578557, at *8, *12-14. Furthermore, if people have been arrested before, their arrest or criminal record should disclose their transgender status to arresting police. Finally, police, depending on what is available to them from the driver's license database, are likely to be able to quickly determine whether the arrestee has undergone a name change by examining their driving record, so unless the person had a gender-neutral name at birth, the name change would likely disclose to officers that the arrestee is transgender.
193. In order for the police not to determine that a transgender woman arrestee is transgender, she would have to (1) be arrested for the first time, (2) be arrested for a non-violent crime not involving drugs, (3) not be visibly transgender, and (4) have a driver's license record that does not indicate that a gender or name change occurred.
194. National Standards to Prevent, Detect, and Respond to Prison Rape, 77 Fed. Reg. 37106 (June 20, 2012) (to be codified at 28 C.F.R. pt. 115) (mandating that transgender and intersex inmates, who may be especially vulnerable, receive an individualized assessment on whether the inmate should be housed in a male or female facility). In making the assessment, the agency shall consider on a case-by-case basis whether a placement would ensure the inmate's health and safety, and whether the placement would present management or security problems. *Id.*; *see* WASHINGTON D.C. DEP'T OF CORRECTIONS, INMATE MANAGEMENT RULE 4020.3C, PROGRAM STATEMENT: GENDER CLASSIFICATION AND HOUSING (2011) (explaining that for inmate housing classification, the Transgender Committee makes the assessment and

markers on birth certificates are not considered in placing inmates. These new policies are being established because of the very real levels of sexual violence transgender women face when housed in male areas of jails, prisons, and juvenile justice facilities. According to a University of California-Irvine study in 2007, transgender women in male units experience thirteen times more sexual assault than non-transgender men in the unit.¹⁹⁵

Last, it is also important to note that one court has found that a female inmate had no right to a different cellmate after she had been placed with a transgender woman who had not had genital surgery. In this case, the court considered whether the inmate possessed a clear constitutional right to be housed with someone having the same anatomical structure and concluded that they did not.¹⁹⁶ Thus, the only court to consider whether there was a right for an inmate to be housed with an anatomically similar inmate has concluded that no such right exists.

Ultimately, transgender women using or living in sex-segregated facilities do not create or increase threats to non-transgender women, regardless of whether those facilities are bathrooms, jails, prisons, homeless shelters, foster care group homes, or college dormitories. In fact, many of these facilities long ago voluntarily abandoned surgical or anatomy-based requirements, recognizing that safety and fairness dictate that transgender people be provided access to the facility that matches their gender identity. Thus, while updating the legal standard for correcting birth certificates will have some positive effects for some transgender people who are currently denied access to sex-segregated facilities because of their lack of government identity documents, overall, there will be little to no noticeable effect on the

recommendation after interviewing the transgender inmate based on safety/security needs, housing availability, gender identity, and genitalia); KING COUNTY, WASHINGTON DEP'T OF ADULT AND JUVENILE DETENTION, ADULT DIVISIONS, GENERAL POLICY MANUAL 6.03.007 TRANSGENDER INMATES (2006) (assigning inmates' housing based on their safety/security needs, housing availability, gender identity, and genitalia).

195. VALERIE JENNESS ET AL., VIOLENCE IN CALIFORNIA CORRECTIONAL FACILITIES: AN EMPIRICAL EXAMINATION OF SEXUAL ASSAULT, UNIV. OF CALIFORNIA-IRVINE 3 (2007), *available* at http://ucicorrections.seweb.uci.edu/pdf/FINAL_PREA_REPORT.pdf.
196. "Expert medical opinion informed Jail officials that housing Lamson [a transgender woman] with the female population would best satisfy Lamson's unique psychological needs and that there was *no risk to the female inmates*. . . . Although it is clear that there is a constitutional right to privacy, I conclude that the contours of that right are not clear when it comes to the determination of where to house transsexuals. Such a constitutional right was not 'clearly established in its more particularized sense' under these circumstances." *Crosby v. Reynolds*, 763 F. Supp. 666, 669–70 (D. Me. 1991) (emphasis added).

safety of sex-segregated facilities for non-transgender people if birth certificate laws and policies are modernized to eliminate the surgical standard.

5. Surgical Requirements Raise Serious Constitutional Concerns

The surgical requirement for gender correction raises both Equal Protection and Substantive Due Process concerns.

There is a well-founded Equal Protection Clause argument to be made that a surgical requirement discriminates against the class of transgender people—who all must have surgery or else be denied an accurate birth certificate—compared to non-transgender people who have accurate birth certificates without being required to undergo surgery.¹⁹⁷ Depending on which level of scrutiny the court would apply to the class of transgender people, at minimum, there would have to be a legitimate state interest that the surgical policy was rationally related to advancing. None of the policy reasons related to fraud, permanence, and sex-segregated facilities, which were articulated and dismissed in this Section, should be considered rationally related to a legitimate¹⁹⁸ state interest.¹⁹⁹

197. A second approach under the Equal Protection Clause would be to compare transgender people who have had surgery versus those who have not had surgery. This type of distinction, based on surgical status, is more likely to receive rational basis review.

198. Interests of prevention of fraud and security, and safety, may all be legitimate, however, the surgical rule fails because it is not *rationally related* to advancing these interests.

199. Presumably, the government might also make an argument that a surgical standard is simply easier to administrate than other options. Given the multitude of different surgeries that a person may receive, as well as the fact that the way most agencies determine that surgery has been undergone is through a letter or other document from a health care provider, it should not be *more* difficult to process a letter or other document from a provider stating that the person has had appropriate treatment for the purpose of gender transition. Thus, the argument that surgery is an easier standard to administrate is faulty.

Moreover, there is a sound argument that transgender people deserve either heightened²⁰⁰ or strict scrutiny²⁰¹ in Equal Protection analysis. If the former, the reasons for the policy would need to be “important” and the policy would need to be “substantially related” to forwarding that interest. If the latter, the policy reasons would need to be “compelling” and the policy would need to be “narrowly-tailored” to advancing that interest. Even if a court was to declare that the state interests were “legitimate” and the classification was rationally related to meeting that interest, which would enable it to pass rational basis review, these policy justifications should certainly fail under heightened review or strict scrutiny.

There are also a series of rights implicated by surgical requirements that could be protected by the Substantive Due Process protections of the

200. Heightened or “intermediate” scrutiny is provided for all classifications based on gender. *See* *United States v. Virginia*, 518 U.S. 515 (1996). A good argument can be made that this issue qualifies for heightened scrutiny because at its most basic level, the government is making a classification based on gender when it is determining which gender marker is appropriate and it is potentially judging or classifying a person based on their sexual characteristics, which may be related to sex stereotypes about what makes a man and a woman. *See* *Glenn v. Brumby*, 663 F.3d 1312, 1316 (11th Cir. 2011) (reasoning that a “person is defined as transgender precisely because of the perception that his or her behavior transgresses gender stereotypes” and therefore that discrimination against transgender individuals on the basis of their gender non-conformity constitutes sex-based discrimination under the Equal Protection Clause, which receives heightened scrutiny). In addition, the Department of Justice released a report saying that all LGBT people should receive heightened scrutiny. U.S. DEP’T OF JUSTICE, CIVIL RIGHTS DIV., INVESTIGATION OF THE NEW ORLEANS POLICE DEPARTMENT 33 (2011) *available at*, http://www.justice.gov/crt/about/spl/nopd_report.pdf (“[W]e note that a number of factors weigh in favor of applying heightened scrutiny in the context of discrimination by law enforcement on the basis of sexual orientation and gender identity, including a long history of animus and deeply-rooted stereotypes about lesbian, gay, bisexual, and transgender (“LGBT”) individuals.”).

201. In determining whether to apply a heightened level of scrutiny, the Supreme Court has set forth two requirements: (1) that the group affected have been historically victims of discrimination by the government, and (2) that the characteristics that differentiate the group bear “no relation” to the ability of members of that group to contribute to society. *See* *Mass. Bd. of Retirement v. Murgia*, 427 U.S. 307, 313 (1976); *Frontiero v. Richardson*, 411 U.S. 677, 686 (1973). In addition, courts have sometimes considered whether the characteristics that define the group are immutable and whether the group is politically powerless. *See* *Nyquist v. Mauclet*, 432 U.S. 1, 9 n.11 (1977) (demonstrating the flexibility of immutability by holding that classifications based on alienage warrant heightened scrutiny even though they can naturalize); *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 28 (1973) (finding that poor families are not politically powerless). Transgender people should be able to meet the two required factors and also satisfy the two other characteristics that courts have considered. Therefore, they should be deemed a “suspect class” for purposes of applying Equal Protection analysis.

Constitution. First, there is a long-established right to be free of unwanted medical treatment.²⁰² Second, there is a long line of cases establishing the right to choose parenthood and control one's reproductive capacity.²⁰³ Third, there is a right to be free of sterilization.²⁰⁴ The latter two rights are restricted by surgical requirements because sterilization and other effects on one's reproductive capacity are inherent in many sex reassignment surgeries. In addition, a good argument can be made for a previously unrecognized right to gender self-determination.²⁰⁵ Thus, if the government desires to limit any of these rights—which a surgical requirement does²⁰⁶—the government action would need to be justified by a compelling state interest, with the policy narrowly tailored to forwarding that interest.²⁰⁷ As previously discussed, however, the articulated policy reasons for a surgical requirement do not meet that standard.

All of the Substantive Due Process arguments should also be considered valid public policy concerns, even if a court would not accept them as constitutionally guaranteed freedoms. For example, some would argue that the highly personal and private nature of a person's decisions regarding surgical options should not be interfered with by the government, that an individual's bodily integrity should be protected against government intrusion, and finally, that sterilization should not be required of any citizen without a serious public policy justification.

202. See, e.g., *Cruzan v. Dir., Mo. Dep't of Health*, 497 U.S. 261 (1990).

203. See, e.g., *Griswold v. Connecticut*, 381 U.S. 479 (1965); *Roe v. Wade* 410 U.S. 113 (1973); *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833 (1992).

204. See, e.g., *Skinner v. Oklahoma*, 316 U.S. 535 (1942).

205. This argument would be based on *Lawrence* and, more generally, existing Substantive Due Process jurisprudence that recognizes a person's intimate and personal decisions should be respected absent government need to the contrary. *Lawrence v. Texas*, 510 U.S. 538 (2003). There is also international support for the existence of this right. See *Goodwin v. United Kingdom*, Eur. Ct. H.R. 1 (2002).

206. A surgical requirement can interfere with these rights for several reasons. First, for many, surgery is unwanted medical treatment. Second, a side effect of surgery is often sterilization, which would interfere with one's ability to parent and control one's reproductive capacity. Third, a person's right to gender self-determination is interfered with when the government insists upon providing official government documents that contradict one's self-determination and disclosing this information to third parties.

207. The rights listed are typically referred to as *fundamental* rights, although the Court may be shifting to a "liberty interest" frame, where the requirement that rights be connected to or established by our nation's history is no longer present. In addition, the test for the restriction of fundamental rights may be becoming less rigid. For a discussion of the evolution of substantive due process analysis, see Laurence H. Tribe, *Lawrence v. Texas: The "Fundamental Right" That Dare Not Speak Its Name*, 117 HARV. L. REV. 1893, 1897–98 (2004).

Regardless of the strength of these arguments, state governments should be concerned that they will be subject to litigation, potentially based on state or federal constitutional provisions. Two lawsuits were filed in 2011 challenging surgical requirements for updating birth certificates and driver's licenses.²⁰⁸

C. Specific Recommendation for Legal Standard for Gender Correction

Individuals should be permitted to correct the gender marker on their birth certificates if they make a gender transition that is medically recognized, using a modern medical understanding of transgender people. As official government records, birth certificates must remain reliable documents; therefore, it is important to establish a process to ensure that the amendments are reliable. Usually, agencies require external verification when individuals wish to make other corrections to their birth certificates (e.g. name, paternity, etc.). In order to put forth a statute that will be acceptable by government agencies, some compromise²⁰⁹ in the form of external verifica-

208. In Alaska, the state ACLU challenged the driver's license / state identification card policy of requiring surgery on the grounds that it violated substantive/fundamental rights protected by the Alaska Constitution. *See* Brief of Appellant, *K.L. v. Alaska, Dep't of Admin., Div. of Motor Vehicles*, No. 3AN-11-05431 (Alaska Super. Ct. July 18, 2011), *available at* <http://www.akclu.org/InTheCourts/KLvAlaska.AppellantsBrief.pdf>. In a Memorandum of Decision, the judge determined that the surgery-based policy was not enacted with appropriate procedure, thus struck it down, not reaching the larger constitutional claims brought by the plaintiffs. However, the judge did determine that the agency not having a gender correction policy at all constituted a breach of the right to privacy of the transgender licensee. *K.L. v. Alaska, Dep't of Admin., Div. of Motor Vehicles*, No. 3AN-11-05431, 2012 WL 2685183 (Alaska Super. Ct. Mar. 12, 2012) (memorandum decision). In New York, the New York City birth certificate policy of requiring proof of surgical treatment was challenged on the basis that it violated the city's Administrative Procedure Act, was an arbitrary and capricious agency action, and was a violation of numerous provisions of the New York City Human Rights Law. *See* Press Release, Transgender Legal Defense and Education Fund, Transgender Rights Group Files Lawsuit Against New York City Over Refusal to Correct Transgender Birth Certificates (March 22, 2011), *available at* http://tldef.org/press_show.php?id=327.

209. Some may favor a self-identity based policy. *See, e.g.*, TRANSGENDER EQUAL NETWORK IR., A TIME FOR RECOGNITION: RESPECT, RECOGNITION AND EQUALITY FOR TRANSGENDER PEOPLE 9, *available at* <http://www.teni.ie/attachments/714a4ffb-3240-496b-8905-06002a24d6c7.pdf> ("TENI would propose that a statutory declaration rather than an affidavit would be appropriate for gender recognition and that the person swear that they have given the matter careful consideration and declare their wish to change their gender and have this recognized legally."). In Argentina, a self-identity based policy, with no external verification, is now national law. *See supra* notes 38–40 and accompanying text. Yet, given the lack of even any U.S. driver's license policies, seen as less legally meaningful, being based entirely on self-identity with no external verification, it seems unlikely that a jurisdiction would

tion is necessary. However, it can be done without obstructing a person's constitutional rights and can be done in a way that comports with contemporary medical understanding.

Although the complete model law is presented in Part V.,²¹⁰ the relevant portion regarding the standard of proof is the following:

A notarized statement from the registrant's licensed treating or evaluating physician or health care provider stating that the registrant *has undergone surgical, hormonal, or other treatment appropriate for that individual for the purpose of gender transition, based on contemporary medical standards*, or stating that the registrant has an intersex condition, and that in the *provider's professional opinion* the registrant's gender designation should be changed accordingly.

There are seven important features to this model language:

- (1) First, the language uses the term "licensed physician or health care provider" because, as the Standards of Care recognize, a number of physicians and non-physician health care providers can be appropriately involved in a person's gender transition and have the requisite knowledge to make a competent evaluation. This language is broad enough to include therapists, psychologists, psychiatrists, social workers, as well as other physicians who are licensed to provide health care.
- (2) Second, there is no requirement that the provider personally conducted or supervised the person's treatment—a provider

agree to a solely self-identity based policy for birth certificates. In addition, there are some that want gender removed entirely from the birth certificate. See Spade, *supra* note 4, at 805–08. This is more feasible than one might think because the government health statisticians who want gender data can get it on the more detailed health questionnaire that is filled out at the same time with the birth certificate. For example, the health questionnaire typically asks race, whether or not pre-natal care was received, and the health of the baby as delivered. While I am sympathetic to this way of thinking, at this point it is not politically realistic to suggest to state legislatures to remove gender entirely. Also, as discussed in *supra* Part I.D.2., there are important practical and legal reasons that a person may need to have some official record of gender to present to authorities. A gender-less birth certificate cannot meet that need.

210. See *infra* Part V.

who has completed an evaluation should be considered qualified.²¹¹

- (3) Third, the language uses the phrase “has undergone” as opposed to “complete,” which is sometimes found in existing statutes and implies that the treatment has ended.
- (4) Fourth, the language is clear that it is an *individual* standard and no specific medical treatment is required. This is due to the use of the conjunctive in “surgical, hormonal, *or* other treatment” as well as the important phrase “appropriate for that individual.”
- (5) Fifth, the reference to “contemporary medical standards” in the statute is included to help ensure that as medicine evolves, so does the statute.²¹²
- (6) Sixth, the language ensures that providers are exercising their professional judgment, based on the treatment they provided or based on their evaluation, with the phrase “in the provider’s professional opinion.”
- (7) Seventh, the language has an alternative standard for those with intersex conditions so that they do not have to demonstrate treatment of gender transition. For people with intersex conditions, it is sufficient to only require that their provider deem it appropriate for the gender marker on their birth certificate to be corrected.²¹³

III. DEVELOPING AN ACCESSIBLE AND EFFICIENT PROCEDURE FOR GENDER MARKER CORRECTIONS

The procedure for correcting gender markers on birth certificates must be examined in light of two primary goals. First, the process for gender

211. This is in large part about convenience and practicality. Some people receive treatment from doctors in other countries. Also, occasionally, the specific provider who treated a person retires, dies, or is otherwise not easily locatable. Thus, any doctor who can evaluate the person should be eligible to provide the information about the person’s treatment.

212. The inclusion of this “contemporary medical standards” phrase should also help legislators support the measure because they know that what they are endorsing is supported by modern medicine, which otherwise may not be obvious.

213. This is similar to the U.S. Department of State policy related to Consular Reports of Birth Abroad and Passports, which requires only the provider review the gender-related history of the applicant to determine which gender marker should be male or female. U.S. Dep’t of St., 7 FOREIGN AFFAIRS MANUAL 1300, App. M, *Intersex Conditions* (2011) available at <http://www.state.gov/documents/organization/143160.pdf>.

correction should be as accessible as possible so that transgender people who warrant the correction can access it, regardless of their income or other personal factors. Relevant to this inquiry is primarily whether a court order process is used or whether a person can go directly to the agency with a provider's statement. Second, the process should be as efficient as possible to conserve government resources.

A. Existing Laws and Policies Related to Process

While the MSVSA requires a court order, only twenty-two states, the Commonwealth of Northern Mariana Islands, District of Columbia, and U.S. Virgin Islands require court orders.²¹⁴ In nineteen states, New York City, and Guam, a doctor's affidavit or other documentation submitted directly to the vital statistics agency is sufficient evidence of a gender transition.²¹⁵ Three states allow a person to use either process.²¹⁶ Procedures are unclear in several other jurisdictions.²¹⁷

One of the consequences of using a court order system, especially when the statutory standard is nonexistent or vague, is that individual judges are likely to establish or apply their own standards of eligibility for a gender correction based on their individual knowledge. Even if the word "surgery" is used in the statute, some judges may distinguish between the types of surgery they deem would make a petitioner eligible for the correction. This problem is exacerbated in states where people are required to go to court in their county of birth or residence, and thus are not able to go to an area of the state where judges might be more familiar with, and less biased against, transgender people and gender transition.²¹⁸ Similarly, if

214. The states are Alabama, Alaska, Arkansas, California, Colorado, Delaware, Georgia, Indiana, Louisiana, Maryland, Missouri, Mississippi, Montana, Nevada, New Hampshire, Oregon, South Dakota, Utah, Virginia, Vermont, Wisconsin, and Wyoming. *See infra* app. A.

215. The nineteen states are Arizona, Connecticut, Florida, Hawaii, Iowa, Illinois, Kansas, Kentucky, Massachusetts, Maine, Michigan, North Carolina, North Dakota, Nebraska, New Jersey, New Mexico, New York, Rhode Island, and Washington. *See infra* app. A.

216. These are Minnesota, Pennsylvania, and West Virginia. *See infra* app. A.

217. These are Oklahoma, South Carolina, Texas, and American Samoa. *See infra* app. A.

218. For example, in Vermont, people have to go to the probate judge in their county of birth. VT. STAT. ANN. tit. 18, § 5075 (West 2011). Each county has one elected probate judge. Although Vermont's probate judicial system is relatively easy to access and can be utilized without an attorney, this system remains highly restrictive because it increases the potential for someone having to appeal (and hire an attorney) if the elected judge in the county of birth denies the correction. Anecdotally, we know that the ability to go to certain judges or to the courts in a large geographic area, where most judges are more educated about and less biased toward transgender people, is an important survival technique. A system that forces a person to go to a

judges are attempting to determine what treatment is “appropriate” for the individual, one can imagine that different judges will come to different conclusions.

In an attempt to mitigate the problems of judicial inexperience, both California²¹⁹ and Vermont adopted statutory language to limit judges’ ability to determine what qualifies as appropriate medical treatment. In Vermont, the statute says that the documentation from the medical provider is “sufficient evidence,”²²⁰ and in California, the documentation should be considered “conclusive proof” of the change in gender.²²¹ Furthermore, in California, the gender change process is already facilitated by a series of court-created, consumer-friendly forms that reduce the need for an attorney.²²²

In the twenty-four states without requirements for a court order, typically a doctor’s statement (nine states), certificate (two states), letter (two states), or affidavit (nine states) must be provided directly to the vital statistics agency. Two jurisdictions require that the documentation be “sworn”²²³ and seven require that the documentation be notarized.²²⁴ Nine states require that the physician signing the letter or statement is the actual surgeon who performed the surgery.²²⁵ Two states have more burdensome require-

specific judge or area of the state makes it more likely a person will be unable to steer away from discrimination. Interview with Kristina Wertz, *supra* note 114 (noting variation on outcome based on judge when California had a surgical requirement).

219. The new law could still be improved by eliminating the requirement of receiving a court order entirely. Conversations with transgender advocates in California indicate that they decided to address primarily the surgical requirement with this legislation. Additionally, they have already attempted to minimize the burden of needing to go to court by creating a combined process for name and gender corrections and easy-to-use forms. Interview with Kristina Wertz, *supra* note 115.
220. VT. STAT. ANN. tit. 18, § 5112(b) (West 2011).
221. CA. HEALTH & SAFETY CODE § 103430 (West 2012). However, the strength of the “conclusive proof” statement is somewhat tempered by a later statement that “[a]t the conclusion of the hearing the court shall grant the petition if the court determines that the physician’s affidavit shows that the person has undergone clinically appropriate treatment for the purpose of gender transition.” *Id.*
222. The Judicial Council of California promulgates a variety of forms, including forms for the applicant, medical affidavits, and judicial orders and decrees. See *Browse All Forms*, CALIFORNIA COURTS, <http://www.courts.ca.gov/forms.htm?filter=NC> (last visited Dec. 27, 2011) (including relevant forms for name and gender changes: NC-200, NC-210, NC-220, NC-230, NC-300, NC-310, NC-320, and NC-330).
223. These are Kentucky and Guam. See *infra* app. A.
224. These are Iowa, Massachusetts, Maine, Nebraska, North Carolina, Rhode Island, and West Virginia. See *infra* app. A.
225. These are Connecticut, Illinois, Maine, North Dakota, Nebraska, New Mexico, Pennsylvania, Virginia, and West Virginia. See *infra* app. A.

ments for post-surgical reports or descriptions of procedures.²²⁶ For Consular Reports of Birth Abroad, a letter on letterhead is required to be given directly to the State Department.²²⁷

Although it is not found as a written part of these policies, presumably these documents are examined for authenticity by agency staff. Requiring only a letter or notarized statement, as opposed to an “affidavit,” should be easier for a non-lawyer to understand how to produce.²²⁸ In addition, both the Consular Reports of Birth Abroad policy and the new California statute provide suggested language for the medical provider to include in a letter or statement. This also can be helpful for a non-lawyer to navigate the system.

Another important feature, which currently only exists in Connecticut, is a provision relating to the jurisdiction of judges to issue court orders to correct a current resident’s gender on his/her birth certificate when they were born in a different state that requires a court order. Because of the time, money, travel, and other costs associated with traveling to the place of birth to hire an attorney and appear in court, it is significantly easier for individuals to file for a court order from their current state of residence. Connecticut’s statute provides:

In the case of a person who is a resident of this state and was born in another state or in a foreign jurisdiction, if such other state or foreign jurisdiction requires a court decree in order to amend a birth certificate to reflect a change in gender, the probate courts in this state shall have jurisdiction to issue such a decree.²²⁹

226. For New York, this involves “a letter from the surgeon specifying date, place, and type of sex reassignment surgery performed; an operative report from the sex reassignment surgery; and some additional medical documentation.” For Virginia, the applicant needs a “preoperative diagnosis, postoperative diagnosis and description of procedure.” *See infra* app. A.

227. U.S. Dep’t of St., 7 FOREIGN AFFAIRS MANUAL, *supra* note 29, at 1320 app. M(b).

228. Affidavits, depending on the state law, can require additional formatting or other requirements that a lay person would have to research in order to complete properly. However, most non-lawyers know what a “notarized” statement is; thus, this is more accessible.

229. CONN. GEN. STAT. ANN. § 19a-42b(1) (West 2011).

This clarification is important because it reduces the likelihood that courts²³⁰ will express concern about lack of jurisdiction over an executive agency in another state or country.²³¹

B. Issues to Consider When Designing a Correction Process

Approximately half of jurisdictions currently have a court order process instead of a direct-to-agency process. These jurisdictions need to consider the various consequences of this policy. For many, the court order process can be an insurmountable practical or financial barrier to obtain a corrected birth certificate. It also compromises privacy, leads to problems caused by lack of judicial inexperience and bias, as well as raises serious constitutional questions.

1. Practical Concerns with the Court Order Process

Administrative processes are a critical feature of government record keeping and daily life. The government keeps records on our lives in many ways. If people had to hire attorneys or visit judges for all of the government record-keeping features of their lives, the cost of running the government would exponentially increase. Imagine if everyone had to hire an attorney and go to court for every interaction they had with the government, such as having a child and needing to establish a birth record, getting a driver's license, registering the ownership of a car, getting married, recording a death, etc. Because of their easy accessibility, efficiency, and lower cost, administrative processes are often used in lieu of judicial action for record-keeping functions. The judicial process is utilized when there is a need for judicial oversight to prevent fraud or for an investigation where facts are contested.

Requiring people to get court orders to correct the gender markers on their birth certificates is typically a significant burden. There are many expenses associated with it: hiring an attorney competent in the matter, taking time off work or school to meet with an attorney and appear in court, traveling to the courtroom and attorney's office (the cost of which, especially for non-residents of the state, may be significant and time consum-

230. *In re Heilig*, 816 A.2d 68, 84 (Md. 2003) (noting that a lower court in Maryland had held that it did not have power over the Secretary of State of Pennsylvania to order a change in the individual's birth certificate and, in dicta, stating "[o]bviously, the Legislature cannot direct officials in other States to change birth certificates issued in those States but may deal only with birth certificates issued or issuable in Maryland . . .").

231. Of course, the receptive state or country may not accept the order, but many states are known to do so as a practical matter.

ing), and court fees. Although court forms may be created to simplify the process somewhat and court fee waivers may be available to those with low incomes, in general, a court order process is significantly more burdensome than an administrative process.

Thus, to reduce costs to both the government and the individual, states should provide an administrative process for birth certificate gender corrections.

2. Privacy Concerns with the Court Order Process

There 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. Privacy of the details of one's sex, gender identity, and medical treatment, or the facts surrounding one's gender transition or transgender status, should not depend on the happenstance of who is in the courtroom²³² or whether the judge agrees to seal or redact the judicial records.

Furthermore, depending on the system, the very instigation of the court proceeding can create permanent court records that document the proceeding in some way regardless of attempted confidentiality.²³³ The future availability of court records to members of the public can also cause psychological distress.

As will be discussed fully in Part IV-B, the mere disclosure of a person's transgender status, or his or her medical treatment related to being transgender, is likely to be a constitutional privacy violation. One effective

232. This concern may be mitigated in systems in which the person only appears before the judge, not in open court. However, at the minimum, the judge and potentially a clerk will be listening to these intimate details. In a direct-to-agency procedure, less private and intimate details are disclosed by the medical provider's statement, and there may be only one person who examines the provider's statement. In California, the Transgender Law Center has recommended to people worried about disclosures in open court that they ask to go last or ask to speak with the judge in closed court if questions come up that they would prefer not to answer in open court. TRANS-GENDER LAW CENTER, *ID PLEASE*. . . 9–22, 31–32 (2010) *available at* <http://transgenderlawcenter.org/issues/id/id-please>.

233. This concern may be mitigated if the record is sealed by the judge, which, depending on the system, may only be allowed at the judge's discretion. However, in some states even a sealed record will be available in the court index. See, e.g. LEGAL VOICE, *FAMILY LAW COURT RECORDS AND YOUR PRIVACY* 5 (2008) *available at* http://www.legalvoice.org/pdf/self_help/Family_Law_Court_Records_%20and_Your_Privacy.pdf (“When the court seals a file or a document, the court means to protect it from examination by the public. The existence of the sealed file can be found on a court index with the case number and the names of the parties and the notation ‘case sealed’. However, the contents of the case will not be available to the public.”).

way to deal with this potential privacy violation is to avoid it by not going through the court system in the first place.²³⁴

3. Concerns about Lack of Judicial Education and Bias Toward Surgery

Judges are often called upon to make a factual determination with regard to medical facts, including in the most complicated cases of medical malpractice, and they do so competently. However, to do so, they rely in large part on medical and scientific experts. When it comes to transgender medicine, judges' views may be similar to those of the general public. Absent testimony from medical experts, judges may not be aware of the current well-accepted Standards of Care or how inaccessible surgical treatment can be. There is a greater risk that a judge will misapply the standard "appropriate treatment . . . based on contemporary medical standards" than there is in having a medical professional apply the standard.

That judges are not fully educated on transgender medical issues has been documented in other areas of the law. Judges often have required surgery as a condition for gender recognition, especially in cases related to marriage, even when there is no medical or legal basis for that requirement.²³⁵ Moreover, certain judges have required proof of surgery for *name* changes for transgender people, which according to longstanding common law principles are to be granted except in the narrowest circumstances. The fact that many judges have applied a surgical standard where none exists indicates that many share the belief that anatomical presentation is what determines gender. Battles over proof of surgery in the name change context have bubbled up to appellate courts in New Jersey, Pennsylvania, and New York,²³⁶

234. Another alternative would be to require in the statute that the court proceeding be conducted in private and to be sealed afterwards. This lessens some of the confidentiality concerns but does not entirely eradicate them.

235. See Tobin, *Against the Surgical Requirement*, *supra* note 4, at 413–17.

236. Longstanding common law principles establish a person's right to change their name, with an affirmative right to do so absent harm to another person, fraud, or other public policy interest. Judges may consider whether the name would create other fraudulent issues, such as someone adopting the name of a well-respected professional in order to get business fraudulently, whether or not the name is overly long or ridiculous, or profane. *In re Falcucci*, 50 A.2d 200, 202–03 (Pa. 1947). Some judges in New York required documentation of sex reassignment surgery before granting a simple name change from a traditionally male name to a female name. This happened throughout New York until a series of appellate decisions appear to have definitively declared that proof of medical treatment was not required. *In re Winn-Ritzenberg*, 891 N.Y.S.2d 220, 221 (N.Y. App. Term 2009) (per curiam) ("There is no sound basis in law or policy to engraft upon the statutory provisions an additional requirement that a transgendered-petitioner present medical substantiation for the desired name change."); see also *In re Guido*, 771 N.Y.S.2d 789 (N.Y. Civ. Ct. 2003) (reversing the court's own decision after initially requiring medical

and include a case where a judge denied a transgender woman a name change from “Brian” to “Lisa” who had been living as Lisa for 22 years.²³⁷ In other areas of the country, denials of name changes based on lack of medical evidence still happen on a regular basis.²³⁸ That this continues to be a problem, despite clear case law that surgery should not be required, demonstrates the persistence of the judges’ views that surgery is properly required before recognizing a person’s gender.

In order to remedy a judge’s possible lack of education about transgender medicine, an applicant would potentially need to hire a medical expert, or experts, to provide this expertise to the judge.²³⁹ This is a costly burden. In the alternative, the judge could defer to the physician who provides a statement that the person in question has undergone appropriate medical treatment, in the way suggested by California and Vermont’s statutes. In that scenario, the judge is not performing any fact-finding beyond determining that the physician is a real person who signed the paper. The role that judges play in these places could be filled as competently, or more competently, by an official in the vital records office who regularly inspects documents for authenticity.

It is helpful to analogize this situation to one where a person with epilepsy had to obtain a court order to drive. Certainly a judge is capable of determining that the person has been adequately medicated by examining the testimony of experts or that person’s doctor. However, a more efficient system is one that allows the DMV to process the provided medical infor-

evidence). Appellate courts in Pennsylvania and New Jersey have also overruled lower judges on this question. See *In re McIntyre*, 715 A.2d 400, 402–03 (Pa. 1998) (“Here, it was undisputed that Appellant was judgment free and was not seeking a name change to avoid any financial obligations or commit fraud. The fact that he is a transsexual seeking a feminine name should not affect the disposition of his request.”); *In re Eck*, 584 A.2d 859, 860–61 (N.J. Super. Ct. App. Div. 1991) (“Absent fraud or other improper purpose a person has a right to a name change whether he or she has undergone or intends to undergo a sex change through surgery, has received hormonal injections to induce physical change, is a transvestite, or simply wants to change from a traditional “male” first name to one traditionally “female,” or vice versa.”).

237. *In re Harris*, 707 A.2d 225 (Pa. Super. Ct. 1997).

238. Interview with Dru Levasseur, *supra* note 115.

239. The highest court in Maryland appeared to realize its limitations in knowledge of transgender medical issues in *In re Heilig*, 816 A.2d 68, 72 (Md. 2003). The court asserted it is not qualified to write a medical text on the subject of transgender medicine and noting that it is unable to evaluate that field “unguided by expert testimony.” *Id.* Despite this statement, the court then wrote ten pages summarizing medical research into transsexualism and intersex conditions, presumably showing willingness to venture into areas of scientific knowledge despite being unguided by expert testimony. *Id.* at 71–79.

mation; in fact, this is generally how this issue is handled.²⁴⁰ It is simply inefficient—a waste of judicial resources—and prone to error to have a judge make or supervise the medical determination instead of a person’s doctor.

4. Constitutional Problems with a Court Order Process

There is a novel argument that requiring a court order is a substantial, and therefore invalid, burden upon a person’s right to determine his or her gender. First, the court would need to recognize that there is a right to self-determination of gender, discussed previously in Section II.B.5.

Once the right is established, the burden of going to court must be analyzed. Certainly, as previously discussed, the process of getting a court order typically requires money for court fees, hiring an attorney, time to prepare for and make a court appearance, and potentially travel to one’s state or county of birth. Furthermore, it may compromise the privacy of one’s transgender or medical status. Thus, going through the court process is legitimately considered a real burden for those attempting to update the gender on their birth certificate. If the burden is considered significant or substantial,²⁴¹ the court order process is unconstitutional, unless it is justified by sufficiently important government interests and closely tailored to meet them.²⁴²

C. *Specific Recommendation for the Gender Correction Process*

In order to maximize both the accessibility of the gender marker change and the efficiency of the government in making the change, an administrative process in which an individual goes directly to the agency with the relevant documentation should be the standard method for gender

240. DMVs have slightly different rules on how to determine when a person with epilepsy should be cleared to drive, but none of the states have any judicial involvement. See Robert S. Fisher, *Driving and Epilepsy*, EPILEPSY THERAPY PROJECT, (Mar. 2009) http://www.epilepsy.com/epilepsy/newsletter/mar09_driving.

241. See *Zablocki v. Redhail*, 434 U.S. 374 (1978).

242. See *Zablocki*, 434 U.S. at 388 (“When a statutory classification significantly interferes with the exercise of a fundamental right, it cannot be upheld unless it is supported by sufficiently important state interests and is closely tailored to effectuate only those interests.”); See also *Bullock v. Carter*, 405 U.S. 134, 144 (1972) (finding that a law infringing on a constitutional right “must be ‘closely scrutinized’ and found reasonably necessary to the accomplishment of legitimate state objectives in order to pass constitutional muster”). I plan to explore this argument further in a future article.

marker corrections on birth certificates.²⁴³ A notarized statement from a doctor, with the relevant information, should be sufficient documentation to ensure that the applicant has a bona fide need for a corrected gender marker. Using the term “notarized statement” is more desirable than “affidavit” because the general public is more aware of how to get a statement notarized than how to write an affidavit, the format of which may be highly technical and differs from state-to-state.

In the case of bias or misapplication of the relevant standard by the agency official, the statute should make clear that there is an appeals process through the courts that an individual may pursue if denied a gender marker correction. The MSVSA has such language relating to all potential corrections, and a number of states have also adopted it.²⁴⁴

In addition, the statute should give courts of that state clear authority to provide court orders that residents can use in their state or country of birth where court orders are still required. This is relatively straightforward and should be included as a matter of course until there are no longer states or countries that require court orders. If this provision is not included, judges may be concerned that they lack authority to issue such an order.²⁴⁵

243. My proposed statute dictates that the administrative process is the only process. In joint recommendations to the U.S. Department of Health and Human Services, organizations have recommended that the statute allow that an individual can either submit a court order to the agency or submit a statement from the physician. *See* Harper Jean Tobin, Nat'l Ctr. for Transgender Equality, Comments of Legal and Public Policy Organizations on Corrected Birth Certificates for Transgender People (Sept. 8, 2009) (on file with author). I have omitted the court order option from this proposed statute in large part to avoid suggesting that states should choose which option to include in their statute. In reality, including both court order and administrative processes as options for an individual to use in the state's statute or policy, is also an acceptable outcome. In that case, a person who finds that the court order process is a burden can use the administrative process. The benefit of also including a court order option is that people who need a court order declaring their legal gender for other reasons may potentially be able to avoid the difficulties of acquiring statements from their health provider.

244. MODEL STATE VITAL STATISTICS ACT § 21(e) (Ctr. for Disease Control & Prevention 1992). *See* ARK. CODE ANN. § 20-18-307 (West 2005) (“When an applicant does not submit the minimum documentation required in the regulations for amending a vital record or when the state registrar has cause to question the validity or adequacy of the applicant's sworn statements or the documentary evidence and if the deficiencies are not corrected, the state registrar shall not amend the vital record and shall advise the applicant of the reason for this action. The state registrar shall advise the applicant of his or her right of appeal to a court of competent jurisdiction.”); COLO. REV. STAT. ANN. §25-2-115 (West 2010); IDAHO CODE ANN. § 39-250 (2010); OR. REV. STAT. § 432.235 (2007).

245. *See In re Heilig*, 816 A.2d 68.

IV. ESTABLISHING COMPREHENSIVE PRIVACY PROTECTIONS

The state may be violating an individual's right to privacy if it reveals information regarding a person's gender assigned at birth, gender transition, or transgender status. In creating a policy related to privacy, policymakers should consider the impact of government disclosure on transgender people as well as constitutional privacy rights that may be implicated.

The transgender person's right to privacy can be implicated by a birth certificate policy in three ways. First, if the agency refuses to provide a transgender person an updated gender marker, then the individual is "outed" as transgender to all who inspect the certificate. Second, in the process of pursuing and executing the gender correction, there are records created and altered that may leave a publicly available paper trail, including a visibly amended birth certificate. Here, how the gender marker correction is dealt with is only part of the issue, since policies related to how a change of name is recorded also matter. Third, the government staff involved in the process may learn of and disclose a person's transgender status to others. This Section deals primarily with the latter two issues—i.e. how to avoid privacy violations in the process and recording of gender correction as well as the role that government officials play. The first was fully addressed by recommendations in Sections II and III.

A. Existing Privacy Protections

1. Privacy Protections in the MSVSA

a. New Versus Amended Certificates

The MSVSA provides a general rule for any kind of amendment: it should be shown on the face of the document unless otherwise provided for by regulation.²⁴⁶ Thus, unless a state adopts a regulation setting forth a different policy, the fact that an amendment has been made will be plain *on the face* of the certificate in some way.

The Model Regulations that accompany the MSVSA list the various ways in which a birth certificate can be amended so that the amendment, or the fact that an item was amended, is visible (or not) to those who inspect it: (1) by preparing a new certificate with a note that the item number was amended and on what date; (2) by drawing a single line through the incorrect information (without obliterating the underlying entry) and writing the

246. "A certificate or report that is amended under this section shall indicate that it has been amended, except as otherwise provided in this section or by regulation." MODEL STATE VITAL STATISTICS ACT § 21(e) (Ctr. for Disease Control & Prevention 1992).

correct data above or to the side; (3) by creating a special amendment form that includes the correct information and is attached to the original, unaltered certificate; and, (4) for electronic records, by changing the item, noting the date, and retaining the original information. The MSVSA Model Regulation provides these in brackets, indicating that they are all “optional,”²⁴⁷ with the implication that states choose the provision(s) that they prefer. At the end of the list of options, there is a provision that specifically applies to gender correction, which is indicated through cross-referencing Section 21(d), the gender correction provision:

(f) A certificate of birth amended pursuant to the provisions of (Section 21(d) of the Model Act) shall be amended by preparing a *new* certificate. *The item numbers of the entries that were amended shall not, however, be identified on the new certificate or on any certified copies that may be issued of that certificate.*²⁴⁸

Thus, the MSVSA Model Regulations treat gender correction as an amendment that *should* be kept private from those who are permitted to inspect the certificate. However, the provision could go unnoticed as an option to be used, or alternatively, policymakers could assume that it is one option of many when viewed in conjunction with the other options listed in this section. This is compounded by the fact that this optional provision’s application to gender markers was only indicated through cross-referencing.

In fact, presumably because of the lack of clarity caused by the cross-referencing used in subsection (f), or otherwise lack of attention to detail by state policymakers, some states have adopted the MSVSA statutory language related to gender corrections *without* adopting the accompanying regulation in (f). Of course, some states may have also intentionally not adopted the provision because they wanted gender marker corrections to be visible. Yet, remarkably, some jurisdictions (such as Alabama, the Commonwealth of the Northern Mariana Islands, Kentucky, and Oregon)²⁴⁹ have the exact MSVSA language that directs gender on one’s birth certificate to be “amended as provided by regulation” but do not have *any* regulation instructing how amendments are to be made. Thus, in many states following part of the MSVSA, gender corrections are processed and marked as amended in the same way that other amendments are processed and marked, whether through a single-line cross out or another method.

247. “In cases where recommendations were considered optional, brackets, ‘[],’ have been placed around the word or phrase.” *Id.* at 1.

248. *Id.* at §11.8(f) (emphasis added).

249. For citations of these statutes, see *infra* app. A.

b. Treatment of Name Changes in the MSVSA

How a policy treats name changes is an important part of privacy analysis since the revelation of a name change has the potential to disclose that someone is transgender, even if the gender marker correction is kept private. The MSVSA requires a court-ordered name change to amend a name on the birth certificate.²⁵⁰ Except in cases of adoption, or for name changes before the age of one, names will be amended visibly on the face of the document itself, following whichever amendment process the state chooses.²⁵¹

However, the MSVSA's gender correction provision, Section 21(d), also refers to name changes that occur due to a change in gender. Accordingly, the fact and details of a transgender person's name change presumably should remain confidential on the certificate if the MSVSA Model Regulation's provision related to privacy is adopted.²⁵² However, the MSVSA's lack of clarity on this point renders it insufficient to ensure adequate privacy protections.

c. Records Storage and Accessibility in the MSVSA

The MSVSA generally limits access to copies of birth certificates to registrants; the registrant's spouses, children, parents or guardians; the legal representatives of any of them; or a person who is able to show that the certificate is necessary to determine or protect a property interest.²⁵³

250. "Upon receipt of a certified copy of an order of (a court of competent jurisdiction) changing the name of a person born in this State and upon request of such person or his or her parents, guardian, or legal representative, the State Registrar shall amend the certificate of birth to show the new name." MODEL VITAL STATISTICS ACT, *supra* note 1, § 21(c), at 10.

251. The Model State Vital Statistics Act's Regulations list possible options states could choose. *Id.* at §11.8.

252. *Id.* at Reg. 11.8(f) ("A certificate of birth amended pursuant to the provisions of (Section 21(d) of the Model Act) shall be amended by preparing a new certificate. The item numbers of the entries that were amended shall not, however, be identified on the new certificate or on any certified copies that may be issued of that certificate.").

253. *Id.* at § 24(a) ("The State Registrar [and other custodian(s) of vital records authorized by the State Registrar to issue certified copies] shall, upon receipt of an application, issue a certified copy of a vital record in his or her custody or a part thereof to the registrant, his or her spouse, children, parents, or guardian, or their respective authorized representative. Others may be authorized to obtain certified copies when they demonstrate that the record is needed for the determination or protection of his or her personal or property right. The State Agency may adopt regulations to further define those who may obtain copies of vital records filed under this Act.") (emphasis added).

The MSVSA also ensures that the documents used to justify an amendment, including the correction of gender or name, must be kept by the vital statistics agency:

A record shall be maintained which identifies the evidence upon which the amendment was based, the date of the amendment, and the identity of the person making the amendment.²⁵⁴

There is some ambiguity with regard to the documentation that must be preserved. It could be argued that, at a minimum, the official must make a note identifying the type of documentation received (physician's letter, court order, etc.). However, this language may also be read to mean that the documents themselves must be preserved as well.

Whether these records are sealed or available to those authorized to receive a copy of the certificate is not clear because the topic is not explicitly addressed by the MSVSA or Model Regulation. If a state also adopts the Model Regulation provision related to privacy,²⁵⁵ which states that individuals requesting a copy of a birth certificate should only be given the *new* birth certificate, then that state has at least demonstrated evidence of the intent to protect privacy in the context of gender corrections. Potentially, then, all of the retained records should be kept confidential as well.²⁵⁶

2. State Laws and Policies Related to Privacy

Of the fifty-three jurisdictions that allow gender marker corrections to documentation, seventeen states,²⁵⁷ the District of Columbia, and Guam have procedures that allow for amending the original birth certificate but do

254. *Id.* at Reg. 21(b).

255. *Id.* at Reg. 11.8(f) (“A certificate of birth amended pursuant to the provisions of (Section 21(d) of the Model Act) shall be amended by preparing a new certificate. The item numbers of the entries that were amended shall not, however, be identified on the new certificate or on any certified copies that may be issued of that certificate.”).

256. Although the regulations do not specify that these records will be sealed, other provisions regarding instances where “new” birth certificates are issued very clearly indicate that the old certificate and its information will be sealed and not available to anyone without a court order. MODEL STATE VITAL STATISTICS ACT § 12(g) (Ctr. for Disease Control & Prevention 1992) (“When a new certificate of birth is established by the State Registrar, all copies of the original certificate of birth in the custody of any other custodian of vital records in this State shall be sealed from inspection or forwarded to the State Registrar, as he or she shall direct.”).

257. These are Alaska, Alabama, Arkansas, Arizona, Colorado, Kansas, Kentucky, Massachusetts, Maryland, Missouri, North Dakota, New Mexico, Oregon, South Carolina, Utah, and West Virginia. *See infra* app. A.

not allow issuance of a new birth certificate. Sixteen states²⁵⁸ and New York City issue a new certificate. In seventeen jurisdictions, it is unclear what is done or it depends on instructions in the court order.²⁵⁹ Only eighteen jurisdictions clearly seal their records, blocking access to the original certificate and ensuring the privacy of the medical records related to the gender correction.²⁶⁰

Name changes are generally allowed on birth certificates when an individual produces a court-ordered²⁶¹ name change directly to the state vital statistics agency. For name changes unrelated to gender transition, often the previous and new names both appear on the certificate. In thirteen jurisdictions, there is a clear statute or policy that a name change related to a gender correction should not appear on the face of the certificate.²⁶² In addition, at least one jurisdiction appears to *require* that people change their name when changing gender.²⁶³

States vary in their policies regarding access to birth certificates and other records. Most states have a policy similar to the MSVSA, which restricts access to immediate family members, their legal representatives, and those that have a proven property interest.²⁶⁴ However, at least ten states allow either certified or informational copies of birth certificates to be provided to members of the public.²⁶⁵

258. These are California, Connecticut, Georgia, Hawaii, Iowa, Illinois, Louisiana, Maine, Michigan, Minnesota, North Carolina, Nebraska, New Hampshire, New Jersey, Nevada, and Vermont. *See infra* app. A.

259. These are Delaware, Florida, Indiana, New York, Pennsylvania, Rhode Island, South Dakota, Texas, Virginia, Washington, American Samoa, the Northern Mariana Islands, and the U.S. Virgin Islands. *See infra* app. A. In Montana, Oregon, Wisconsin, and Wyoming, it depends on the order. *See id.*

260. These are Arizona, California, Connecticut, Hawaii, Illinois, Iowa, Louisiana, Maine, Michigan, Minnesota, Nebraska, New Jersey, New York City, North Carolina, North Dakota, South Dakota, Vermont, and Wisconsin. *See infra* app. A.

261. In Hawaii, official name changes are processed by the office of Lieutenant Governor, not the judicial system. *Name Changes*, HAW. OFFICE OF THE LIEUTENANT GOVERNOR, <http://hawaii.gov/lrgov/office/name> (last visited Dec. 28, 2011).

262. These are Arkansas, California, Connecticut, Delaware, Georgia, Kansas, Maine, Minnesota, Nebraska, New Jersey, New York, State, Vermont, and New York City. *See infra* app. A.

263. D.C. CODE § 7-217(d) (2011) (“Upon receipt of a certified copy of an order of the Court indicating that the sex of an individual born in the District has changed by surgical procedure and that such individual’s name has been changed, the certificate of birth of such individual shall be amended as prescribed by regulation.”).

264. MODEL STATE VITAL STATISTICS ACT § 24 (Ctr. for Disease Control & Prevention 1992).

265. The public can receive certified copies in Kentucky, Ohio, Massachusetts, Vermont, and Washington. *See Kentucky Birth Certificates*, KY. CABINET FOR HEALTH & FAMILY SERVS., <http://chfs.ky.gov/dph/vital/birthcert.htm> (last visited June 24, 2011); *Obtaining Certified Copies of Vital Records*, MASS. DEP’T OF HEALTH & HUMAN

One of the states with the strongest policy of protecting privacy is Nebraska. Although other features of Nebraska's policy are in need of updating, the privacy protections are comprehensive.²⁶⁶ The statute states that:

[T]he department shall prepare a new certificate of birth in the new name and sex of such person in substantially the same form as that used for other live births. The evidence from which the new certificate is prepared and the original certificate of birth shall be available for inspection only upon the order of a court of competent jurisdiction.²⁶⁷

There are three important features of this policy. First, a new, not amended, certificate is prepared. Second, only the new certificate, not the former one, is available for viewing. Third, the documentation that the registrant provided, as well as the old certificate, are both confidential and only available by a court order. These privacy protections could be marginally improved if the word "sealed"²⁶⁸ was used; however, the meaning is clear in the statute.

SERVS., <http://www.mass.gov/eohhs/consumer/basic-needs/vitals/obtaining-certified-copies-of-vital-records.html> (last visited Feb. 3, 2011); OHIO DEP'T OF HEALTH, FREQUENTLY ASKED QUESTIONS CONCERNING VITAL RECORDS, *available at* <http://www.odh.ohio.gov/-/media/ODH/ASSETS/Files/vs/general/frequentlyaskedquestionsonvitalrecords.ashx> (last updated Sept. 29, 2010); VT. DEP'T OF HUMAN SERVS., ACCESS TO BIRTH AND DEATH CERTIFICATES: RECOMMENDATIONS FOR LEGISLATIVE CHANGES 9 (2010), *available at* http://healthvermont.gov/admin/legislature/documents/VitalRecords_legislative_recommendations_091310.pdf; WASH. DEP'T OF HEALTH, Center for Health Statistics Mail-In Request Form, *available at* <http://www.doh.wa.gov/Portals/1/Documents/Pubs/422-044-MailinRequestForm.pdf> (last visited Dec. 4, 2012). The public can receive "informational" or "uncertified" copies in California, New Jersey (unclear if it includes gender), North Carolina, South Dakota, and Wisconsin (except in limited cases). *See* CAL. HEALTH & SAFETY CODE § 103526 (West 2011); *Frequently Asked Questions*, N.J. DEP'T OF HEALTH & SENIOR SERVS., <http://www.state.nj.us/health/vital/faq.shtml#BIR> (last visited June 24, 2011); N.C. GEN. STAT. § 130A-93(c) (2011); *Data, Statistics and Vital Records*, S.D. DEP'T OF HEALTH, <http://doh.sd.gov/vitalrecords/order.aspx#Eligibility> (last visited June 24, 2011); WISC. STAT. § 69.21 (2011).

266. Nebraska requires sex reassignment surgery and a court order. NEB. REV. STAT. § 71-604.01 (2011). Also, the fact that the physician signing the affidavit has to be the surgeon that "performed" the surgery is unduly limiting.

267. *Id.*

268. I use, as is custom, "sealed" to refer to the process of blocking from public view unless a party has a court order to open the record. Depending on the state, "confidential" may have the same implication and "sealed" may not. *Compare* BLACK'S LAW DICTIONARY 1467 (9th ed. 2009) (defining sealing of records as "[t]he act or practice of officially preventing access to particular . . . records, in the absence of a court order.") *with id.* at 339 (defining confidential as "meant to be kept secret").

Similarly, under the policy in Washington State, a new birth certificate is prepared, rather than amending the original.²⁶⁹ The policy further stipulates that the medical documentation submitted by the individual in support of the gender marker correction, including the doctor's letter, will be sealed.²⁷⁰ However, the policy does not specify that the original birth certificate must be kept confidential, nor does it explain how name changes would or would not show on the face of the new certificate.

In Vermont, a new certificate is also prepared, with a requirement that the information about the correction be kept "confidential."²⁷¹ In California, the new statute retained the existing privacy protections, ensuring that the new certificate does not show the previous gender or name and that records related to the correction are "sealed."²⁷²

3. Privacy for Consular Reports of Birth Abroad

With regard to Consular Reports of Birth Abroad, the serial number is slightly modified to indicate that it is an amended document, but it does not indicate the previous gender or name of the registrant.²⁷³ The documents that are submitted to the agency and retained by the agency are considered confidential, covered by the Privacy Act.²⁷⁴

4. Privacy Protections in the U.K. and Argentina

The Gender Recognition Act in the United Kingdom also ensures privacy, as does the recently-passed law in Argentina. The U.K. disallows disclosure of the information presented in the application for a Gender Recognition Certificate.²⁷⁵ In Argentina, original birth certificates are un-

269. WASH. DEP'T OF HEALTH, *supra* note 121.

270. "The department retains documentation from the physician or hospital in a sealed file." *Id.*

271. VT. STAT. ANN. tit. 18, § 5112(c) (2011).

272. CAL. HEALTH & SAFETY CODE § 103430 (West 2012) .

273. U.S. Dep't of St., 7 FOREIGN AFFAIRS MANUAL, *supra* note 29 at 1447.4 ("The serial number assigned to an amended Form FS-240, Consular Report of Birth Abroad of a Citizen of the United States of America, will be the same as the number on the original, but will be followed by a dash and a number indicating it is not the original issuance (e.g., -1 for the first amendment).").

274. *Id.* at 1449.3-1 ("Information contained in the Form FS-240, Consular Report of Birth Abroad of a Citizen of the United States of America, including Form DS-2029, Application for Consular Report of Birth Abroad of a Citizen of the United States of America, the Form FS-240, as well as data in the ACS System, is subject to the Privacy Act."). The Privacy Act is a federal statute that protects against the disclosure of records without the consent of the "individual to whom the record pertains." Privacy Act of 1974, 5 U.S.C. § 552a (2006).

275. Gender Recognition Act, 2004, c. 7, § 22 (U.K.).

available except by court order.²⁷⁶ The Gender Recognition Act specifically notes that with regard to birth certificates, the new birth certificate is the only version available to the public. There is also no note or other information indicating that the person has a previous version of the certificate or went through the gender recognition process.²⁷⁷

B. Issues to Consider When Developing Privacy Policies

1. The Individual Importance of Privacy

Given the risk of violence and discrimination that comes with being known as transgender, it is understandable that some people desire to keep information about their transgender status limited to only those whom they choose to tell. Of course not all transgender people want to be “closeted” all of the time, but generally, people do want to have control over how they present and manage information related to being transgender. Even if the risk of violence is not present, being able to decide with whom and when to have a “coming out” conversation should be a matter of individual choice. The harms discussed above from having an incorrect gender marker can also result from being “outed” by an insufficiently private procedure for correcting gender. The person whose gender transition is revealed may be subject to increased scrutiny because of the possibility of fraudulent documents, often being subjected to questioning about his or her body and identity.²⁷⁸

2. Constitutional Right to Privacy

If a governmental entity does not protect the privacy of a transgender person and reveals his or her status—either through issuing visibly amended birth certificates or by providing access to records that indicate a person is transgender—it may be in violation of the right to privacy guaranteed by the U.S. Constitution.²⁷⁹ Whether the U.S. Supreme Court has officially recognized a constitutionally derived right to privacy that guarantees people to be free of governmental “disclosure of personal matters” is not entirely

276. Regime for Recognition and Respect for Gender Identity (File 8126-D-2010) (Argentina), *available at* <http://www1.hcdn.gov.ar/proyxml/expediente.asp?fundamentos=si&numexp=8126-D-2010>. (An English translation is available at http://www.msngf.org/files/msmgf//Advocacy/Argentina_GenderIdentity_Law.pdf).

277. Gender Recognition Act, 2004, c. 7 § 10 sch. 3 (U.K.).

278. Spade, *supra* note 4, at 738.

279. This right to privacy should not be confused with the other well-established right to privacy, generally understood as the right to make decisions about intimate details of one’s life. “[T]his right to privacy can be characterized as a right to ‘confidentiality,’ to distinguish it from the right to autonomy and independence in decision-making for personal matters.” *Doe v. City of New York*, 15 F.3d 264, 267 (2d Cir. 1994).

clear.²⁸⁰ While the Court has considered the issue, and has “assumed without deciding” that such a right exists, it has only done so in limited contexts that are not directly applicable to privacy claims related to birth certificate records.²⁸¹

However, while the Supreme Court has not yet definitively ruled on the existence of this privacy right and certainly has not made a decision regarding disclosure of transgender status by a government actor, the Second Circuit has done so. In *Powell v. Shriver*,²⁸² the Court of Appeals held that the constitutional right to privacy protects transgender people from unnecessary government disclosure of their transgender status.²⁸³ The appellate court concluded that, “[t]he excruciatingly private and intimate nature of transsexualism, for persons who wish to preserve privacy in the matter, is really beyond debate.”²⁸⁴

Thus, the only court to rule on this question has decided that there clearly is a privacy right to protect information regarding transgender status, and other judges have cited this decision with approval.²⁸⁵ In addition, although less dispositive on a federal constitutional right to privacy claim, a judge in Alaska determined it was a violation of a transgender person’s right to privacy under the Alaska Constitution to not be able to update the gender on one’s driver’s license.²⁸⁶ Accordingly, policymakers should recognize

280. *Whalen v. Roe*, 429 U.S. 589, 599 (1976) (describing one type of privacy protection apparently protected by the Constitution as “the individual interest in avoiding disclosure of personal matters”).

281. In a recent case, the Court assumed that there was such a privacy right. *NASA v. Nelson*, 131 S. Ct. 746, 751 (2011) (“We assume, without deciding, that the Constitution protects a privacy right of the sort mentioned in *Whalen* and *Nixon*.”); *see also Whalen*, 429 U.S. 589 (1976) (relating to a state statutory scheme mandating confidential reporting of prescriptions of certain controlled substances to the state department of health, which was monitoring for fraud and abuse); *Nixon v. Adm’r of Gen. Services*, 433 U.S. 425, 457 (1977) (“We may agree with appellant that, at least when Government intervention is at stake, public officials, including the President, are not wholly without constitutionally protected privacy rights in matters of personal life unrelated to any acts done by them in their public capacity. . . . In sum, appellant has a legitimate expectation of privacy in his personal communications.”).

282. 175 F.3d 107 (2d Cir. 1999) (finding a violation of a constitutional right to confidentiality when corrections officers revealed an inmate’s transgender identity and HIV status to other inmates).

283. The court determined that there was no “legitimate penological interest” in disclosing this information to fellow inmates as well as staff members. *Powell*, 175 F.3d at 113.

284. *Powell*, 175 F.3d at 111.

285. *See, e.g., Franklin v. McCaughtry*, 110 F. App’x 715, 719 (7th Cir. 2004); *Moore v. Prevo*, 379 F. App’x 425, 428 (6th Cir. 2010).

286. *K.L. v. Alaska, Dep’t of Admin., Div. of Motor Vehicles*, No. 3AN-11-05431, 2012 WL 2685183 (Alaska Super. Ct. Mar. 12, 2012) (memorandum decision).

the potential legitimacy of this constitutional right on the federal level and develop privacy policies to protect it.

C. Specific Recommendations Related to Privacy Protections

In order to protect a person's privacy, a new birth certificate should be issued with no markings of any kind indicating that it was amended.²⁸⁷

Both the original birth certificate and the documents related to the gender marker correction should be sealed and only made available upon court order or upon request of the individual. The original birth certificate and the documents related to the gender marker correction should be available to the individual because the person may need to establish continuous identity.²⁸⁸

The statute should provide privacy protections for related name changes, regardless of whether the name change is acquired simultaneously, before, or after the gender correction. If the agency's policy is to make visible amendments for name changes, an exception should be made for name changes related to gender corrections. Thus, although a change of name that precedes a gender correction will be visible, at the time of gender correction, the name change should become confidential. Similarly, a gender-related name change occurring after the gender correction should also be made confidential. The statute needs to explicitly discuss each of these situations so the determination is made correctly regardless of timing.

The statute should also prohibit further inquiry into medical information. To respect the individual's medical privacy, staff should not either officially or casually ask the applicant for additional medical or other information beyond what is required by the statute. In addition to protecting privacy concerns, this also streamlines the administrative process and ensures that staff will treat applicants respectfully and consistently with how other applicants for documentation corrections are treated. Furthermore, any information received about a gender correction should be kept confidential, unless disclosure is necessary in the course of conducting official business.

287. Spade, *supra* note 4, at 770 (discussing the importance of having a "clean" birth certificate).

288. Name change orders may also be helpful to show continuous identity, but not everyone changes names or has those records easily available. Where exactly one might need the original copy of one's birth certificate is not entirely clear, but it does appear to be in rare situations where multiple forms of proof are required. For example, a bank may request multiple forms of identification from a customer who seeks to use his or her funds, to ensure that the person is the same customer with a different name. Interview with Alison Gill, D.C. Trans Coalition, in Washington, D.C. (Confirmed Oct. 12, 2012).

Lastly, the statute should ensure that those who hold an amended certificate that was acquired *before* the new statute came into effect are able to receive a new certificate with the same privacy protections (i.e. sealing of the original certificate and the associated documents from public inspection). In states that have had a policy of issuing “amended” certificates and/or not sealing the records related to correction of gender in the past, this provision is necessary to afford these individuals the same privacy protections that are afforded to individuals who process their gender correction under the new statute. Thus, upon application and payment of appropriate fees,²⁸⁹ a person who previously received an amended certificate should be able to receive a new certificate.

Ideally, the vital statistics agency should go through old records and seal those related to all of the previously executed gender corrections as well, regardless of whether the person has asked for sealing of records; however, as a practical matter, this may not be feasible. Therefore, at the minimum, the sealing of old records related to gender correction should be completed at the request of the applicant.

V. RECOMMENDED LANGUAGE AND POLICY

A. *The Model Provision*

This Section proposes new language that should be easy to insert into any vital statistics code to comprehensively address gender marker corrections.²⁹⁰ For the new version of the MSVSA, this would be its own section and Section 21(d) would need to be deleted. This model statutory provision incorporates all of the features needed in a statute to have a clear, comprehensive policy with regard to gender corrections and associated name changes. It would be based on current medical consensus, sound policy considerations, and in compliance with applicable constitutional requirements. This model language is based on, and borrows heavily from, the statutory language in Vermont and California, as well as the policy of both Washington and the U.S. Department of State relating to Consular Reports of Birth Abroad.

Although it is drafted in the style of statutory language, this language can instead be adopted by the vital statistics agency, in whole or in part, as regulations or as written policy. This would be most applicable in jurisdic-

289. Throughout this article, no recommendation is made with regard to the appropriate amount of fees. As guidance, fees should not be prohibitively costly and should be waivable, without significant delay, with a showing of indigence.

290. Of course, any such legislation should delete the existing language related to gender corrections, if it exists.

tions with no statute on the issue of gender correction or a gender correction statute that would not conflict with such regulations. Here is the recommended text:

Section X. Changes to Birth Certificate Related to a Change of Gender

(a) The State Registrar shall issue a new birth certificate to a person who was born in [this state] and who has a gender different from the gender denoted on that person's birth certificate when the State Registrar receives:

1) A written request by the registrant, his or her parents, guardian, or legal representative signed under penalty of law, that the State Registrar issue a birth certificate with a gender designation that differs from the gender designated on the registrant's original birth certificate;

2) A notarized statement from the registrant's licensed treating or evaluating physician or health care provider stating that the registrant has undergone surgical, hormonal, or other treatment appropriate for that individual for the purpose of gender transition, based on contemporary medical standards, or stating that the registrant has an intersex condition, and that in the provider's professional opinion the registrant's gender designation should be changed accordingly; and

3) If the registrant or his or her legal representative is also requesting a name change on the certificate, an original or certified copy of a name change order issued by a court of competent jurisdiction.

(b) The State Registrar shall not request any additional information or records other than those required by subsection (a)(2). The State Registrar shall not disclose information relating to a gender correction, including to other government employees, unless required in order to conduct official business.

(c) When the State Registrar receives the documentation described in subsection (a) of this Section, the State Registrar shall issue a new birth certificate reflecting the new gender designation and, if applicable, new name of the registrant. The new birth certificate supersedes the original as the official public record. The new certificate shall not be marked as amended and shall in no way disclose the original information. When such a birth certificate is issued, the State Registrar shall cause the registrant's original birth certificate and all documentation received pursuant to subsection (a) of this Section to be placed under seal and kept in a confidential file. The State Registrar shall provide access to the

original birth certificate and/or documentation received pursuant to subsection (a) of this Section only upon order of a court of competent jurisdiction or written request of the registrant.

(d) The State Registrar shall issue, upon request, a new birth certificate reflecting the new gender designation or new name (or as previously amended), and shall seal relevant records, as described in subsection (c) in these additional circumstances:

(1) when a birth certificate is amended to reflect a change in gender designation at any point in time after that birth certificate has been amended to reflect a name change

(2) when a birth certificate is amended to reflect a name change at any point in time after the birth certificate has been amended to reflect a change in gender designation, or

(3) if a person holds an amended birth certificate related to change of gender and/or name issued under [a previous version of this Section].

(e) The State Registrar shall not amend the vital record if: (1) an applicant does not submit the minimum documentation required in this Section for amending a vital record; or (2) when the Registrar has reasonable cause to question the validity or adequacy of the applicant's sworn statements or the documentary evidence, and the deficiencies are not corrected. The State Registrar shall state in writing the reason for this action. Upon the State Registrar's refusal to amend the vital record, the applicant shall have a cause of action in court to amend the vital record. The Registrar shall give the applicant written notice of this right.

(f) In the case of a person who is a resident of this state and was born in another state or in a foreign jurisdiction, if such other state or foreign jurisdiction requires a court decree in order to amend a birth certificate to reflect a change in gender, the [courts/probate courts] in this state shall have jurisdiction to issue such a decree.

Legislative drafters from a state considering adopting this language should also contemplate how these new provisions related to privacy and procedures for gender marker corrections would affect the meaning of any other existing provisions related to privacy or procedures for to other corrections.²⁹¹ While subsequently amended or adopted statutes would not nor-

291. For example, the precision and specificity in a new gender correction provision may cause a question about how an existing privacy provision regarding other corrections or amendments should be interpreted. For example, if the adoption provision refers to records being "confidential," and the gender correction provision refers to records being "sealed," the agency or courts may think that different meaning was intended, when in actuality, the same meaning was likely intended. In this case, the adoption provision's language should also be changed to "sealed" to avoid this confusion.

mally be read to create confusion with prior provisions, the legislative drafter ought to review carefully the structure and text of the entire existing statute to avoid future confusion or unintended consequences from the potentially different wording introduced into the statute by this provision. Also, if not already clear from the existing statute, it should be made clear that “State Registrar” refers to relevant staff of the vital records agency that have been authorized by the Registrar to execute these corrections.

B. Implementation

This model statute was designed to avoid the need for additional clarification in the form of regulations or written policies. Eliminating vagueness in statutory language increases the efficiency of the process by not requiring deliberation and determination of what processes need to be established and followed by the state agency. However, there are also important implementation items that would greatly increase the efficiency and success of the new statute.

First, it would streamline the process for staff, as well as the holder of the birth certificate, if there were a form promulgated by the vital statistics agency for gender corrections. The use of forms for updating gender on driver’s licenses has become a best practice.²⁹² In what is considered the model policy and has been adopted for use in several states, the Washington, D.C. Department of Motor Vehicles has a one-page form where the applicant fills out the top part (which requests the correction) and the medical or social service authority fills out and signs the bottom part (which indicates their professional opinion).²⁹³ A similar form could be used by vital statistics agencies.

Second, providing staff with training for implementation is an essential part of successfully effectuating any policy change. Staff training should include not only the policies and procedures to process the correction of gender and/or name on birth certificates, but should also provide basic cultural competency so that transgender people interacting with staff are treated respectfully throughout the process.

Third, the practical instructions of how old records are removed from the files and new ones inserted, as well as how to seal the documents used in updating gender may need to be developed. Furthermore, the issue of whether the agency has the ability to go back to previous gender corrections and seal the records without a request by each individual needs to be ex-

292. Tobin, *Fair and Accurate Identification*, *supra* note 4.

293. District of Columbia Dept. of Motor Vehicles, *Gender Designation on a Driver’s License or Identification Card (2006)*, available at http://dmv.dc.gov/pdf/Gender_Change_Policies.pdf.

amined. Whether these privacy concerns will need to be dealt with by new regulations or written policy will depend on the state's existing policies and practices. Accordingly, there could be a need to update existing regulations or policies to ensure that confidentiality is maintained.

CONCLUSION

Laws and policies related to birth certificates need to be updated to keep up with advances in the medical, legal, and public policy fields. By recognizing the needs of its citizens, responding in a low-cost, efficient manner, and making policies based on careful legal and scientific analysis, the government can improve transgender people's access to vital services and take steps toward eliminating discrimination, harassment, and violence. The statute recommended by this Article results in four significant goals: 1) that vital records will be accurate and in accord with contemporary medical standards, 2) that government resources are used efficiently, 3) that constitutional rights are respected, and 4) that proper consideration was given to the human and legal impacts of having an inaccurate birth certificate.

Any state, local, or territorial government that adopts the recommended statutory language (via statute, regulation, or written policy) can be sure that it has improved its own functioning and has enabled transgender people to live their lives with one less burden imposed on them by the government.

As birth certificate statutes and policies are modernized, the birth certificate's legal relevance should increase because judges will be better able to defer to those documents when they have been corrected. However, until then, their legal weight in cases where a person has been unable to receive a corrected certificate should not be controlling. Eventually, the hope is that both executive agencies and the judicial system will be able to rely on birth certificates as an accurate indicator of gender.

While these changes in vital statistics laws may seem technical in nature, modernizing these laws will have important and positive human impact, and should not be avoided or delayed any longer. Given the solid legal and medical foundation for updating these laws discussed in the Article, these changes should be viewed as cost-neutral or cost-saving, based on the best science available, and rooted in the constitution. Policymakers interested in good government should take these developments seriously and make the necessary amendments immediately. †

APPENDIX: LAWS AND POLICIES REGARDING GENDER CORRECTIONS FOR THE 57 U.S. JURISDICTIONS THAT ADMINISTER BIRTH CERTIFICATES

Jurisdiction / Citation	Statute, Regulation or Public Policy Available Relating to Gender Corrections?	Similar to MSVSA?	Legal Standard	Process	New or Amended	Method of Gender Amendment	Method of Name Amendment	Sealed?	Relevant Excerpt or Note
Alabama ALA. Code §§ 22-9A-19, 22-9A-21	Gender Correction in Statute	Exact Standard But Absent Privacy Protections	"sex . . . has been changed by surgical procedure"	Court	Amended	Unclear	Unclear	No	
Alaska Alaska Stat. § 18.50.290	No Specific Gender Correction Provision and No Publicly Available Policy	No	None (Judge Determines)	In practice, Court orders are accepted	Amended	Single-Line Cross Out. Alaska Administrative Code 7 AAC 05.895.	Single-Line Cross Out. See Alaska Administrative Code 7 AAC 05.895	No.	See Sources of Authority to Amend Sex Designation on Birth Certificates, Lambda Legal, http://www.lambdalegal.org/publications/sources-of-authority-to-amend (last updated Oct. 3, 2012) (hereinafter, Lambda, Sources of Authority).
American Samoa Am. Samoa Code Ann. Ch. 5 § 13.0530	No Specific Gender Correction Provision and No Publicly Available Policy	No	Unclear	Unclear	Unclear	Unclear	Unclear	Unclear	A call to the Registrar of Vital Records office indicated that they do not have a policy with regard to gender corrections. The clerk suggested a court order would likely be sufficient. Telephone interview with the American Samoa Governor's Office Registrar of Vital Records, Pago Pago, AS (December 20, 2011).

293. Gender is used here interchangeably with sex, as explained in note 44 *supra*.

294. This indicates whether the exact language of the MSVSA is used, with regard to three aspects: procedure, standard, and privacy, measured by the issuance of a new certificate.

295. Unless the statute or policy refers to "sealing" the old certificate or says it is available only by court order, it is presumed that the certificate is not sealed.

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Jurisdiction / Citation	Statute, Regulation or Policy Available Policy Relating to Gender Corrections?	Similar to MSVSA?	Legal Standard	Process	New or Amended	Method of Gender Amendment	Method of Name Amendment	Scaled?	Relevant Excerpt or Note
Arizona Ariz. Rev. Stat. §§ 36-337, 36-323, 36-322	Gender Correction in Statute	No	"a person who has undergone a sex change operation or has a chromosomal count that establishes the sex of the person as different [than on original certificate] must provide a written statement by a physician that verifies the sex change operation or chromosomal count"	Administrative	Amended	Unclear	Unclear	Yes	"For a person who has undergone a sex change operation or has a chromosomal count that establishes the sex of the person as different than in the registered birth certificate, both of the following: a) A written request for an amended birth certificate from the person or, if the person is a child, from the child's parent or legal guardian; b) a written statement by a physician that verifies the sex change operation or chromosomal count." Ariz. Rev. Stat. §§ 36-337.
Arkansas Ark. Code Ann. §§ 20-18-307, 20-18-304, 20-18-305	Gender Correction in Statute	Standard and Procedure Exact, Privacy Similar	"sex . . . has been changed by surgical procedure"	Court	Amended	Kept Private	Kept Private	Unclear	"The original certificate shall be removed to a special file" Department of Health Regulation for Registration of Vital Statistics 14.7(d).
California Cal. Health & Safety Code §§ 103425-103445	Gender Correction in Statute	No	"has undergone clinically appropriate treatment for the purpose of gender transition, based on contemporary medical standards"	Court	New	Kept Private	Kept Private	Yes	
Colorado Colo. Rev. Stat. § 25-2-115, 25-2-117	Gender Correction in Statute	Exact	"sex . . . has been changed by surgical procedure"	Court	Amended	Kept Private	Unclear	Unclear	

Jurisdiction / Citation	Statute, Regulation or Publicly Available Policy Relating to Gender Corrections?	Similar to MSYSA?	Legal Standard	Process	New or Amended	Method of Gender Amendment	Method of Name Amendment	Sealed?	Relevant Excerpt or Note
Connecticut Conn. Gen. Stat. §§ 7-51, 19a-42, Reg. 19a-41-9(e)	Gender Correction in Both Statute and Regulations	No	From Regulations: (1) Affidavit from a licensed psychiatrist, psychologist, or clinical social worker performing a psycho-social evaluation, attesting to the fact that the registrant is socially, psychologically and mentally the designated sex; (2) Affidavit from the surgeon performing the sex change operation, attesting to the fact that the surgery was performed	Administrative	New	Kept Private	Kept Private	Yes	Standard appears in regulations, statute only refers to "gender change"
Delaware Del. Vital Statistical Regulation 10.9.4	Gender Correction Provision in Regulation only	Exact for Standard and Procedure, Differs for Privacy	"sex . . . has been changed by surgical procedure"	Court	Unclear	Kept Private	Kept Private	Unclear	
District of Columbia D.C. Code §§ 7-217, 7-219	Gender Correction in Statute	Exact for Standard and Procedure, Differs for Privacy	"sex . . . has been changed by surgical procedure"	Court	Amended	Unclear	Unclear	No	

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Jurisdiction / Citation	Statute, Regulation or Publicly Available Policy Relating to Gender Corrections ^{7m}	Similar to MS/SA? ^{7m}	Legal Standard	Process	New or Amended	Method of Gender Amendment	Method of Name Amendment	Sealed? ^{7m}	Relevant Excerpt or Note
Florida Fla. Stat. Ann. §§ 382.016, 382.025	No Specific Gender Correction Provision and No Publicly Available Policy	No	"sex reassignment surgery" See Lambda, Sources of Authority.	Administrative ("sworn affidavit of the physician")	Unclear	Unclear	Unclear	Unclear	"Florida: Office of Vital Statistics policy allows for the change of sex designation on birth certificates upon the provision of a completed Application for Amended Birth Certificate and notarized Affidavit of Amendment to Certificate of Live Birth; a certified copy of a court order of name change, a sworn affidavit from the physician who performed sex reassignment surgery, containing the medical license number, stating that you have completed sex reassignment in accordance with appropriate medical procedures and that you are now considered to be a member of the reassigned gender, and the required fee." Lambda, Sources of Authority.
Georgia Ga. Code Ann. §§ 31-10-23, 31-10-25	Gender Correction in Statute	Exact for Standard and Procedure, Minor Differences for Privacy	"sex . . . has been changed by surgical procedure"	Court	New	Kept Private	Kept Private	Unclear	"A certificate of birth amended pursuant to the provisions of Section 31-10-23(e) of the Official Code of Georgia Annotated shall be amended by preparing a new certificate. The item numbers of the entries that were amended shall not, however, be identified on the new certificate or on any certified copies that may be issued of that certificate. A new State file number shall be assigned to the new certificate. The original certificate shall be removed from the active files and placed with the order in the confidential files." Ga. Comp. R. & Regs. 290-1-3-.31.
Guam Guam Code Ann. tit. 10, § 3222	Gender Correction in Statute	No	"a sworn statement from the physician performing the surgery certifying the sex of an individual has been changed by surgical procedure"	Administrative	Amended	Single Line Cross Out. See 26 Guam Admin. R. & Regs. § 2111 (i) (3).	Unclear	No	

Jurisdiction / Citation	Statute, Regulation or Public Policy Available Relating to Gender Corrections?	Similar to MSVSA?	Legal Standard	Process	New or Amended	Method of Gender Amendment	Method of Name Amendment	Sealed?	Relevant Excerpt or Note
Hawaii Haw. Rev. Stat. §§ 338-17.7, 338-18	Gender Correction in Statute	No	"affidavit of a physician" that the person "had a sex change operation and the sex designation on the birth registrant's birth certificate is no longer correct"	Administrative	New	Kept Private	Unclear	Yes	"Upon receipt of an affidavit of a physician that the physician has examined the birth registrant and has determined the following: . . . The birth registrant has had a sex change operation and the sex designation on the birth registrant's birth certificate is no longer correct; provided that the director of health may further investigate and require additional information that the director deems necessary" Haw. Rev. Stat. § 338-17.7(4).
Idaho Idaho Code Ann. §§ 39-250, 39-270	No	No	n/a	n/a	n/a	n/a	No	n/a	Idaho does not permit gender corrections
Illinois 410 Ill. Comp. Stat. Ann. 535/17	Gender Correction in Statute	No	"affidavit by a physician that he has performed an operation on a person, and that by operation the sex designation on such person's birth record should be changed"	Administrative	New	Kept Private	Unclear	Yes	
Indiana Ind. Code Ann. §§ 34-28-2, 16-37-2-10, 16-37-1-10	No Specific Gender Correction Provision and No Publicly Available Policy	No	In Practice: Judge Determines. See Lambda, Sources of Authority.	In Practice: Court. See Lambda, Sources of Authority.	Unclear	Unclear	Unclear	Unclear	Lambda Legal indicates that a court order is required. See Lambda, Sources of Authority.

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Jurisdiction / Citation	Statute, Regulation or Public Policy Available to Gender Corrections?	Similar to MSVSA?	Legal Standard	Process	New or Amended	Method of Gender Amendment	Method of Name Amendment	Sealed?	Relevant Excerpt or Note
Iowa Iowa Code §§ 144.23, 144.39, 144.24	Gender Correction in Statute	No	"notarized affidavit by a licensed physician and surgeon or osteopathic physician and surgeon stating that by reason of surgery or other treatment by the licensee, the sex designation of the person has been changed"	Administrative	New	Kept Private. See also, IA Admin. Code 641-100.7	Unclear. See IA Admin. Code 641-100.7	Yes: IA Admin. Code 641-100.7	"The original certificate and the evidence upon which it was based are to be sealed and placed in a special file. The state registrar may inspect such sealed information for purposes of properly administering the vital statistics program. IA Admin. Code 641-100.7. Note that information provided over the phone indicates that surgery is required, despite the broader statutory language. See also, Iowa Code 144.24; Iowa Admin. Code r. 641-100.7.
Kansas Kan. Stat. Ann. §§ 65-2422a, 65-2422d; Kan. Admin. Regs. § 28-17-20(b)(1)(A)(i)	Gender Correction in Regulation only	No	Regulation: "with a medical certificate substantiating that a physiological or anatomical change occurred"	Administrative	Amended	Unclear	Kept Private	Unclear	
Kentucky Ky. Rev. Stat. Ann. §§ 213.121, 213.136	Gender Correction in Statute	Standard Exact, Process Different, No Privacy Provision	"sworn statement by a licensed physician indicating that the gender of an individual... has been changed by surgical procedure"	Administrative	Amended	Unclear	Unclear	Unclear	

Jurisdiction / Citation	Statute, Regulation or Public Policy Available Policy Relating to Gender Corrections ²³	Similar to MS/VA ²⁴	Legal Standard	Process	New or Amended	Method of Gender Amendment	Method of Name Amendment	Sealed? ²⁵	Relevant Except or Note
Louisiana La. Rev. Stat. Ann. §§ 40:41, 40:80, 40:82	Gender Correction in Statute	No	*such proof as [the court] deems necessary to be convinced that the petitioner was properly diagnosed as a transsexual or pseudo-hermaphrodite, that sex reassignment or corrective surgery has been properly performed upon the petitioner, and that as a result of such surgery and subsequent medical treatment the anatomical structure of the sex of the petitioner has been changed" La. Rev. Stat. Ann. §§ 40:82.	Court	New	Kept Private	Unclear	Yes	

Jurisdiction / Citation	Statute, Regulation or Policy Available Relating to Gender Corrections?	Similar to MSVSA?	Legal Standard	Process	New or Amended	Method of Gender Amendment	Method of Name Amendment	Sealed?	Relevant Excerpt or Note
<p>Maine Me. Rev. Stat. Ann. §§ 2705, 2706, 10.146.2 Me. Code R. § 6-11</p>	<p>Gender Correction in Regulation only</p>	<p>No</p>	<p>"sex has been changed by surgical procedure" and "a notarized affidavit by the physician who performed the surgical procedure"</p>	<p>Administrative</p>	<p>New</p>	<p>Kept Private</p>	<p>Kept Private</p>	<p>Yes</p>	<p>"1. A new birth certificate showing only the new information shall be prepared when a legal change of sex has been established in accordance with section 11 of this chapter. [...] 3. When a new certificate is prepared pursuant to this subsection, the original certificate shall be held confidential and only the registrant or his or her other legal representative shall have access to the original record, except by court order. [...] Certificates established under this section shall not be regarded as amended." 10.146.2 Me. Code R. § 6-11.</p>
<p>Maryland Md. Code Ann., Health-Gen. §§ 4-214, 4-217, 4-224</p>	<p>Gender Correction in Statute</p>	<p>Exact for Standard and Procedure, Differs for Privacy</p>	<p>"the sex . . . has been changed by surgical procedure"</p>	<p>Court</p>	<p>Amended</p>	<p>Single-line cross out</p>	<p>Single-line cross out</p>	<p>No</p>	<p>"D. (1) To amend or correct data other than the name on a birth certificate, the following documents and information shall be submitted: [...] (d) For sex changed by surgery, a court order shall be submitted specifying that the sex of the individual has been changed and directing the Secretary to change the data concerning the sex of the individual, and any other relevant data. E. (1) Amendments and corrections under this regulation shall be made by: (a) Placing a line through the original data and entering new data in black ink, or (b) Entering the amendment or correction on electronic media." Md. Code Regs. 10.03.01.02</p>

Jurisdiction / Citation	Statute, Regulation or Publicly Available Policy Relating to Gender Corrections?	Similar to MSYSA?	Legal Standard	Process	New or Amended	Method of Gender Amendment	Method of Name Amendment	Sealed?	Relevant Excerpt or Note
Massachusetts Mass. Gen. Laws Ch. 46, §§ 13, 17C	Gender Correction in Statute	No	"has completed sex reassignment surgery, so-called," and "a physician's notarized statement that the person named on the birth record has completed sex reassignment surgery"	Administrative	Amended	Unclear	Unclear	Unclear	
Michigan Mich Comp. Laws §§ 333.2831, 333.2882, 333.2872	Gender Correction in Statute	No	"an affidavit of a physician certifying that sex-reassignment surgery has been performed"	Administrative	New	Kept Private	Unclear	Yes	
Minnesota Minn. Stat. §§ 144.218, 144.225	No Specific Gender Correction Provision and No Publicly Available Policy	No	Judge determines for Court order. Agency requires surgery if no court order	Either	New	Kept Private	Kept Private	Yes	Changing Gender on a Minnesota Birth Record, Minnesota Dept of Health (on file with author).
Mississippi Miss. Code Ann. §§ 41-57-21, 41-57-2; 15-4 Miss. Code R. §1:106	Gender Correction in Regulation only	No	"Gender reassignment"	Court	Amended	Not Private	Not Private	No	"Gender reassignment shall be added to the birth certificate as a marginal notation, upon receipt of a certified court order, a medical statement that attests to the reassignment." 15-4 Miss. Code R. §1:106.

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Jurisdiction / Citation	Statute, Regulation or Publicly Available Policy Relating to Gender Corrections?	Similar to MSVSA?	Legal Standard	Process	New or Amended	Method of Gender Amendment	Method of Name Amendment	Sealed?	Relevant Excerpt or Note
Missouri Mo. Rev. Stat. § 193.215	Gender Correction in Statute.	Exact for Standard and Differs for Privacy	*sex . . . has been changed by surgical procedure*	Court	Amended	Single-Line Cross Out	Single Line Cross Out	No	*The original certificate/office working copy of the birth, death or fetal death shall have the correction entered on its face by interlineation with a line drawn through the incorrect entries. It shall be marked amended. The date of amendment and a summary description of the evidence submitted in support of the amendment shall be endorsed on or made part of the record.* 19 Mo. Code Regs. 10-10.110.
Montana Mont. Code Ann. §§ 50-15-204; Mont. Admin. R. 37.8.11(5)	Gender Correction in Regulation only	Exact for Standard and Differs for Privacy	*sex of an individual born in Montana has been changed by surgical procedure*	Court	Depends on Instructions in Court Order	Depends on Instructions	Depends on Instructions	Unclear	*15) The sex of a registrant as cited on a certificate may be amended only if the department receives a certified copy of an order from a court with appropriate jurisdiction indicating that the sex of an individual born in Montana has been changed by surgical procedure. The order must contain sufficient information for the department to locate the record. If the registrant's name is also to be changed, the court order must indicate the full name of the registrant as it appears on the original birth certificate and the full name to which it is to be altered. If the order from the court directs the issuance of a new certificate that does not show amendments, the new certificate will not indicate on its face that it was altered. If the sex of an individual was listed incorrectly on the original certificate, refer to APIM 37.8.108.* Mont. Admin R. 37.8.311.

Jurisdiction / Citation	Statute, Regulation or Publicly Available Policy Relating to Gender Corrections?	Similar to MS/SA?	Legal Standard	Process	New or Amended	Method of Gender Amendment	Method of Name Amendment	Sealed?	Relevant Excerpt or Note
Nebraska Neb. Rev. Stat. §§ 71-604.01, 71-602	Gender Correction in Statute	No	"a notarized affidavit from the physician that performed sex reassignment surgery"	Administrative	New	Kept Private	Kept Private	Yes	"Upon receipt of a notarized affidavit from the physician that performed sex reassignment surgery on an individual born in this state and a certified copy of an order of a court of competent jurisdiction changing the name of such person, the department shall prepare a new certificate of birth in the new name and sex of such person in substantially the same form as that used for other live births. The evidence from which the new certificate is prepared and the original certificate of birth shall be available for inspection only upon the order of a court of competent jurisdiction." Neb. Rev. Stat. § 71-604.01.
Nevada Nev. Admin. Code § 440.130	Gender Correction in Regulation only	No	"having a sexual transformation"	Court	New	Depends on Instructions in Court Order	Depends on Instructions	Unclear	"1. The State Registrar may prepare a new certificate of birth for a person having a sexual transformation only upon order of a court of competent jurisdiction. 2. The court order must specify those facts to be changed on the new certificate. All other items must remain as on the original certificate."
New Hampshire N.H. Rev. Stat. Ann. §§ 5-C:87, 5-C:88, 5-C:9	Gender Correction in Statute	No	"such individual . . . has had a sex change"	Court	New (in effect)	Kept Private	Unclear	Likely, in effect	"I. The clerk of the town or city shall: replace the original record with the amended birth record; retain the originally assigned file number; retain the original record attached to the amended record; prepare an amended birth record using the form appropriate for the year of birth; and forward the amended birth record to the division. III. The clerk of the town or city shall use the amended record for all future inquiries to the record." N.H. Rev. Stat. Ann. § 5-C:88.

Jurisdiction / Citation	Statute, Regulation or Public Policy Relating to Gender Corrections? ²⁰	Similar to MS/SA? ²¹	Legal Standard	Process	New or Amended (in effect)	Method of Gender Amendment	Method of Name Amendment	Sealed? ²²	Relevant Excerpt or Note
New Jersey N.J. Stat. Ann. §§ 26:8-40.12, 26:8-40.23	Gender Correction in Statute	Exact in Standard, Different in Procedure, Similar in Privacy	"a medical certificate from the person's licensed physician which indicates the sex of the person has been changed by surgical procedure"	Administrative	New (in effect)	Kept Private	Kept Private	Yes	"The State registrar shall issue an amended certificate of birth to a person born in this State who undergoes sex reassignment surgery and requests an amended certificate of birth which shows the sex and name of the person as it has been changed. The State registrar shall place the original certificate of birth and all papers pertaining to the amended certificate of birth under seal. The seal shall not be broken except by order of a court of competent jurisdiction. Thereafter, whenever a certified copy of the certificate of birth is prepared, it shall be made from the amended certificate of birth, except when an order of a court of competent jurisdiction requires that a certified copy be made of the original certificate of birth." N.J. Stat. Ann. §§ 26:8-40.12.
New Mexico N.M. Stat. Ann. §§ 24-14-25, 24-14-27	Gender Correction in Statute	Exact for Standard Differs for Process, Absent Regulations on Privacy	"a statement signed under penalty of perjury by the person in charge of an institution or from the attending physician indicating that the sex of an individual born in this state has been changed by surgical procedure"	Administrative	Amended	Unclear	Unclear	No	"A certificate or report that is amended under this section shall be marked 'amended', except as otherwise provided in Subsection C of this section. The date of the amendment and a summary description of the evidence submitted in support of the amendment shall be endorsed on or made a part of the record. The department shall prescribe by regulation the conditions under which additions or minor corrections may be made to certificates or records within one year after the date of the event without the certificate or record being marked 'amended'." N.M. Stat. Ann. § 24-14-25.

Jurisdiction / Citation	Statute, Regulation or Policy Available Relating to Gender Corrections?	Similar to MSYSA?	Legal Standard	Process	New or Amended	Method of Gender Amendment	Method of Name Amendment	Sealed?	Relevant Excerpt or Note
New York N.Y. Pub. Health Law § 4138	Gender Correction in Written Policy	No	"sex reassignment surgery"	Administrative	Unclear	Unclear	Kept Private	Unclear	"The New York State Department of Health, Vital Records Division has a policy providing for the change of sex designation on birth certificates upon the receipt of a completed application; a letter from the surgeon specifying date, place, and type of sex reassignment surgery performed; an operative report from the sex reassignment surgery; and some additional medical documentation." Lambda, Sources of Authority.
New York City 24 RCNY Hth. Code § 207.05(a)(5)	Gender Correction in Regulations only	No	"proof satisfactory to the Department has been submitted that such person has undergone convertive surgery"	Administrative	New	Kept Private	Kept Private	Yes	
North Carolina N.C. Gen. Stat. §§ 101-2, 130A-118, 130A-93	Gender Correction in Statute	No	"a notarized statement from the physician who performed the sex reassignment surgery or from a physician licensed to practice medicine who has examined the individual and can certify that the person has undergone sex reassignment surgery"	Administrative	New	Kept Private	Unclear	Yes	

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Jurisdiction / Citation	Statute, Regulation or Publicly Available Policy Relating to Gender Corrections?	Similar to MSVA?	Legal Standard	Process	New or Amended	Method of Gender Amendment	Method of Name Amendment	Sealed?	Relevant Excerpt or Note
North Dakota N.D. Cent. Code §§ 23-02.1-25; 23-02.1-27; N.D. Admin. Code 33-04-12-02(1)	Gender Correction in Regulation only	No	"has undergone a sex conversion operation" and "an affidavit by a physician that the physician has performed an operation on the person, and that by reason of the operation, the sex designation of such person's birth record should be changed"	Administrative	Amended	Unclear	Unclear	Yes	
Northern Mariana Islands 2006 N. Mar. I. Pub. L. 15-50	Gender Correction in Statute	Exact for Standard and Unclear for Privacy	"sex... has been changed by surgical procedure"	Court	Amended	Unclear	Unclear	Unclear	Northern Mariana Islands adopted much of the MSVA in whole in 2006, including the gender correction provisions, but not the Moral Regulations, which would specify how the amendments are executed and whether they are kept private. Telephone Interview with Northern Mariana Islands Dept of Public Health in Saipan, MP. (Dec. 20, 2011). Ohio does not permit gender corrections on certificates. Lambda, Sources of Authority.
Ohio Ohio Rev. Code Ann. §§ 3705.13, 3705.22, 3705.23	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	
Oklahoma Okla. Stat. Ann. §§ 1-321, 1-323	No Specific Gender Correction Provision and No Publicly Available Policy	No	Unclear	Unclear	Unclear	Unclear	Unclear	Unclear	

Jurisdiction / Citation	Statute, Regulation or Publicly Available Policy Relating to Gender Corrections? ^{7m}	Similar to MSYSA? ^{7m}	Legal Standard	Process	New or Amended?	Method of Gender Amendment	Method of Name Amendment	Sealed? ^{7m}	Relevant Excerpt or Note
Oregon Or. Rev. Stat. §§ 432.235, 432.121	Gender Correction in Statute	Exact for Standard and Process, Absent Regulations on Privacy	"sex... has been changed by surgical procedure"	Court	Amended or New, in Discretion of Agency	Unclear	Unclear	Unclear	
Pennsylvania 35 Pa. Cons. Stat. §§ 450.603, 450.801, 450.804	No Specific Gender Correction Publicly Available Policy	No	In practice, surgery if going to the agency directly, and for a court order, the judge determines	Either	Unclear	Unclear	Unclear	Unclear	*Although not specifically mentioned in the statute, the Division of Vital Records will issue a revised birth certificate upon court order or submission of a letter from the treating physician stating that reassignment surgery has been performed." Lambda, Sources of Authority.
Puerto Rico P.R. Laws. Ann. tit. 3 § 177	No	n/a	n/a	n/a	n/a	n/a	n/a	n/a	Puerto Rico does not permit gender corrections. See <i>Ex Parte Alexis Delgado</i> , 2005 TSPR 095, in which the Puerto Rico Supreme Court denied a corrected gender marker.
Rhode Island R.I. Gen. Laws §§ 23-3-21, 23-3-23	No Specific Gender Correction Publicly Available Policy	No	In practice, surgery	Administrative	Unclear	Unclear	Will be marked Amended, but old name will not appear	Unclear	"For changes to the sex designation on birth certificates, the Office of Vital Records has a policy requiring a notarized statement from the hospital or clinic where surgery was performed, signed by the physician in charge of the surgery. The amended certificate will state only that the name has been amended; it will not show the former name." Lambda, Sources of Authority.
South Carolina S.C. Code Ann. §§ 44-63-150, 44-63-60	No Specific Gender Correction Publicly Available Policy	No	Unclear	Unclear	Amended by Attaching a Special Form	Not Private	Not Private	No	*South Carolina will issue an amendment as an attachment to the original birth certificate." Lambda, Sources of Authority.

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Jurisdiction / Citation	Statute, Regulation or Publicly Available Policy Relating to Gender Corrections?	Similar to MSVA1?	Legal Standard	Process	New or Amended	Method of Gender Amendment	Method of Name Amendment	Sealed?	Relevant Excerpt or Note
South Dakota S.D. Codified Laws §§ 34-25-51, 34-25-16.5, 34-25-52, 34-25-52.6	No Specific Gender Correction Provision and NO Publicly Available Policy	No	None (In practice, judge determines)	In Practice, Court	In practice, generally new	In practice, generally kept private	In practice, generally kept private	Yes	*South Dakota's Registrar will follow any instructions in a court order. The general practice of the registrar is to issue a new certificate with no indication of amendment." Lambda, Sources of Authority.
Tennessee Tenn. Code Ann. § 68-3-203(d)	Gender Correction Prohibited in Statute	n/a	n/a	n/a	n/a	n/a	n/a	n/a	"The sex of an individual shall not be changed on the original certificate of birth as a result of sex change surgery."
Texas Texas Health & Safety Code Ann. §§ 192.010, 192.011	No Specific Gender Correction Provision and No Publicly Available Policy	No	Unclear	Unclear	Unclear	Unclear	Unclear	Unclear	*Anecdotal reports now indicate that some officials refuse to correct the sex designation on transgender people's birth certificates, although judges may order such a change." Lambda, Sources of Authority.
U.S. Virgin Islands V.I. Code Ann. tit. 19 § 806	No Specific Gender Correction Provision and No Publicly Available Policy	No	Judge Determines	Court	Unclear	Unclear	Unclear	Unclear	Telephone interview with US Virgin Islands Department of Health in Christiansted, VI. (Dec. 21, 2011).
Utah Utah Code Ann. § 26-2-11, 26-2-22	Gender Correction in Statute	No	"has a . . . sex change approved by an order of a Utah district court or a court of competent jurisdiction"	Court	Amended	Unclear	Unclear	No	"the state registrar shall review the application, and if complete, register it and note the fact of the amendment on the otherwise unaltered original certificate" Utah Code Ann. § 26-2-11.

Jurisdiction / Citation	Statute, Regulation or Publicly Available Policy Relating to Gender Corrections? SM	Similar to MSUSA? SM	Legal Standard	Process	New or Amended	Method of Gender Amendment	Method of Name Amendment	Scaled? SM	Relevant Excerpt or Note
Vermont Vt. Stat. Ann. tit. 18 § 5112	Gender Correction in Statute	No	"the individual has undergone surgical, hormonal, or other treatment appropriate for that individual for the purpose of gender transition"	Court	New	Kept Private	Kept Private	Yes	

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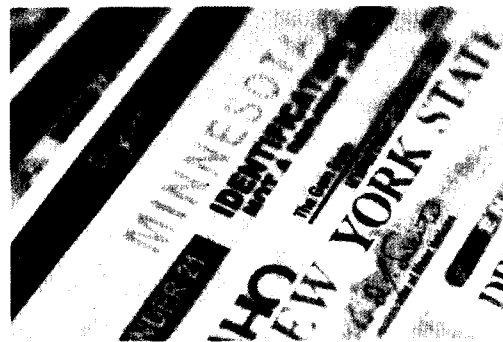
Jurisdiction / Citation	Statute, Regulation or Publicly Available Policy Relating to Gender Corrections?	Similar to MSVSA?	Legal Standard	Process	New or Amended	Method of Gender Amendment	Method of Name Amendment	Select?	Relevant Excerpt or Note
Virginia Va. Code Ann. §§ 32.1-269, 32.1-271; 12 Va. Admin. Code § 5-550-320	Gender Correction in Statute and Regulations	No	Statute: "sex . . . has been changed by medical procedure." Regulations: "upon presentation of acceptable evidence (preoperative diagnosis, postoperative diagnosis and description of procedure) and a notarized affidavit from the physician performing the surgery, a new certificate of birth may be prepared by the State Registrar for a person born in this Commonwealth whose sex has been changed by surgical gender reassignment procedure" as well as "A certified copy of the court order changing the name of the registrant as well as designating the sex of the registrant"	Court with additional reqs. from the Registrar	Amended according to Statute, although Regulation indicates that a New certificate will be issued	Unclear	Unclear	Unclear	

Jurisdiction / Citation	Statute, Regulation or Publicly Available Policy Relating to Gender Corrections?	Similar to MSVSA?	Legal Standard	Process	New or Amended	Method of Gender Amendment	Method of Name Amendment	Sealed?	Relevant Excerpt or Note
Washington State Dept of Health, Center for Health Statistics Procedure CHS-B5, pursuant to Wash. Rev. Code § 43.70.150	Gender Correction in Written Policy	No	Policy: "a letter, on letterhead, from the requestor's medical or osteopathic physician stating that the requestor has had the appropriate clinical treatment"	Administrative	Unclear	Unclear	Unclear	Medical letter is sealed, unsure regarding original certificate	This procedure was developed by the Washington Secretary of Health pursuant to Wash. Rev. Code § 43.70.150.
West Virginia W. Va. Code §§ 16-5-25, 16-5-27	No Specific Gender Correction Provision and No Publicly Available Policy	No	In practice, surgery is required if going directly to the agency, and the judge determines in the case of a court order	Either	Amended	Unclear	Unclear	Unclear	"The practice of the State Registrar is to issue an amended birth certificate upon submission of either a court order or a notarized statement from the treating physician that reassignment surgery has been completed." Lambda, Sources of Authority.
Wisconsin Wis. Stat. Ann. §§ 69.15, 69.20, 69.21	Gender Correction in Statute	No	"a surgical sex-change procedure"	Court	Depends on Instructions in Court Order	Depends on Court Order	Depends on Court Order	Yes, if new certificate issued	
Wyoming Wyo. Stat. Ann. §§ 35-1-424, 35-1-426; 10 Wyo. Code R. § 4(e)(iii)	Gender Correction in Regulation only	No	"when the sex of an individual has been changed"	Court	Amended (Unless Court Specifies Otherwise)	Not Private (Unless Court Order Specifies Otherwise)	Not Private (Unless Court Order Specifies Otherwise)	No	"Unless other specified by court order, the amended certificate will show all changes that have been made." Lambda, Sources of Authority.



American Association of
Motor Vehicle Administrators

Documentation *Guide* Gender ID Card Designation



Resource Guide on Gender Designation on Driver's Licenses and Identification Cards

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Chapter One Introduction

Jurisdictions across the United States and Canada have a range of policies and procedures for serving customers who seek to change the gender designation on a driver's license or identification card (DL/ID). The policies vary in the language used, the documentation required, and the procedure for requesting a change. In recent years, member jurisdictions have contacted the American Association

of Motor Vehicle Administrators (AAMVA) to gain insight into how other jurisdictions handle this service. Thus, the concept of creating a resource guide on gender designation changes on DL/ID was formed, and the Gender Designation Working Group (GDWG) was created. What follows is a resource guide summarizing jurisdictions' policies and procedures.

Chapter Two Trends of Driver's License Gender Change Policies

The general trend in recent years is jurisdictions replacing requirements to submit proof of surgical treatment with standards that focus on the gender in which individuals live in their daily lives, as affirmed by a medical provider, mental health provider, or social worker. A second modernization trend is

simplified forms applicants must complete in lieu of a letter from a provider. The form approach streamlines the process for both applicants and State Driver License Agency (SDLA) staff, saving time and money, and reduces the jurisdiction's liability in holding customers' private medical information.

Chapter Three Key Features of Jurisdictional Gender Designation Change Policies

Key features of gender change procedures in jurisdictions that have recently updated their approach to permit changing the gender designation on a government-issued DL/ID include the following:

1. An easy-to-understand gender designation change form submitted by the applicant
2. No requirement of surgery or other specified treatment
3. No requirement of a court order or amended birth certificate
4. Attestation of the gender identity of the applicant which can be signed by one of a variety of licensed providers
5. Acceptance of an updated passport, birth certificate, or identification card issued by another government agency as an alternative to the provider certification
6. Guidance and sensitivity training for agency personnel on protecting private information relating to gender changes

It is useful to note that there are many types of licensed providers who are qualified to provide treatment to, and are in a position to evaluate the

gender identity of, transgender individuals. The expansion of this field of expertise has offered jurisdictions a broader range of licensed health care providers who may certify an applicant's gender designation. The licensing of each type of provider ensures the integrity of provider certifications of gender change and ensures all certifying providers are professionally and legally accountable for the information they submit. Jurisdictions considering changes to their guidance, materials, or training have found it helpful to meet with their medical advisory boards and outside interest groups for additional insight. Types of medical providers that have been recognized in this field include:



- Physician
- Physician assistant
- Psychologist
- Nurse practitioner
- Clinical social worker
- Marriage family therapist
- Psychiatric social worker
- Social worker

Chapter Four Conclusion

The working group has recommended providing this resource guide on the range of approaches jurisdictions use when serving customers who apply to make a gender designation change on government-issued DL/IDs. The reference table is followed by examples of policies that have been modified in recent years.

Examples of simplified gender designation change forms are included as an appendix to the resource guide. The use of the provider certification form assures validity because it documents the provider's license, streamlines the process, and reduces the risk of disclosure of personal information and medical records.

Appendix A Examples of Jurisdictional Gender Designation Change Forms

	<h2>Gender Designation Form</h2>		
PART ONE: TO BE COMPLETED BY APPLICANT			
Last Name	First Name	Middle Name	Social Security Number
Street Address	City/State	Zip Code	License/Identification Number
Washington, D.C.			
<p>I, _____ wish to designation the gender on my <small>(print name)</small></p> <p>driver's license or identification card to read: circle one: Male Female</p> <p>I hereby certify under penalty of law that this request for gender designation is for the purpose of ensuring my driver's license / identification card accurately reflects my gender identity and is not for any fraudulent or other unlawful purpose.</p> <p>Signature: _____ Date: _____</p>			
PART TWO: TO BE COMPLETED BY MEDICAL OR SOCIAL SERVICE AUTHORITY			
Provider Last Name	Provider First Name	Provider Title	
Provider Organization Name (if applicable)			
Provider Street Address	City	State	Zip Code
Provider Phone	Provider E-mail	Provider Organization or Professional License Number	
<p>I am a:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Physician <input type="checkbox"/> Licensed therapist or counselor <input type="checkbox"/> Case worker or social worker <input type="checkbox"/> Other. Please specify: <p>In my professional opinion, the applicant's gender identity is (circle one): Male Female and can reasonably be expected to continue as such in the foreseeable future.</p> <p>I hereby certify under penalty of law the foregoing information is true and correct.</p> <p>Signature: _____ Date: _____</p>			
<p>Any person using a fictitious name or address and/or knowingly making any false statement on this application is in violation of D.C. Law and subject to a fine of not more than \$1,000 or 180 days imprisonment or both. (D>C. Official Code §22-2405).</p> <p><i>To report waste, fraud and abuse by any DC Government agency or official, call the DC Inspector General at 1-800-521-1639 Ver. 11/2006</i></p>			



GENDER DESIGNATION ON A LICENSE OR IDENTIFICATION CARD

PROCEDURE FOR CHANGING GENDER DESIGNATION ON DRIVER'S LICENSE OR IDENTIFICATION CARD

Applicants requesting a change of the gender designation on their driver's license or identification card from that showing on their identity proof documents must:

- o Surrender any current state-issued license or identification card;
- o Submit a completed Gender Designation form; and
- o Pay applicable fees for new or amended license. The applicant shall have a new photograph taken.

Employees shall not request additional gender-related information beyond that required on the applicable forms or otherwise inquire about the applicant's private medical history or records.

Until the Department of Motor Vehicles is able to provide all employees comprehensive training on this procedure, gender designation applications should be directed to DMV service center managers.

PRIVACY OF INFORMATION RELATING TO GENDER DESIGNATION

The Gender Designation form contains private medical information and will be kept confidential and protected under the provisions of the Driver Privacy Protection Act.

MATCHING GENDER DATA FROM OTHER SOURCES

DMV will change the gender designation on an applicant's license or identification card contingent on the submission of the fully and accurately completed Gender Designation form. The applicant is not required to have changed his or her gender designation on other forms of identification.

CHANGE OF NAME

Name changes related to gender are completed via submission of appropriate court documents and must also be reflected on the Social Security card.

DMV, Ver. 11/2006

STATE OF ALASKA
DIVISION OF MOTOR VEHICLES

CERTIFICATION FOR CHANGE OF SEX DESIGNATOR ON DRIVER LICENSE OR IDENTIFICATION CARD

This certification must be accompanied by one of the following:

- Application for a Non-Commercial Alaska Driver License, Permit or Identification Card (Form 478) or
- Application for a Commercial Driver License (Form 415) and Commercial Driver Medical and Self Certifying Verification (Form 413)

If one of the following documents can be provided section B and C of this form are not required.

- Amended Birth Certificate
- Valid US Passport
- Court Order issued by a court in the United States granting change of sex or gender

THIS FORM MUST BE COMPLETED IN FULL AND MUST BE COMPLETED IN BLACK OR BLUE INK.

A APPLICANT INFORMATION AND SEX DESIGNATION STATEMENT			
FULL LEGAL NAME:	First	Middle	Last Suffix
ALASKA DL or ID number	Date of Birth	I wish the sex designation on my Driver License/ID Card to read: <input type="checkbox"/> Male <input type="checkbox"/> Female _____ Signature	
B PATIENT MEDICAL RELEASE AUTHORIZATION			
I _____, authorize the licensed provider listed in section C to release information related to this request. I hereby certify under penalty of unsworn falsification that this request for the selected sex designation to appear on my driver's license/ID Card accurately reflects my gender identity and is not for any fraudulent or other unlawful purpose.			
X _____ Signature		_____ Date	
C LICENSED PROVIDER CERTIFICATION			
This section must be completed in full by a licensed physician in medicine or osteopathy, social worker, psychologist, professional counselor, physician assistant or advanced nurse practitioner.			
Patient Name		Provider Full Name	
Provider Address		Telephone Number	
Professional License Number		License-Issuing Jurisdiction	
I am a licensed <input type="checkbox"/> physician in medicine or osteopathy <input type="checkbox"/> social worker <input type="checkbox"/> psychologist <input type="checkbox"/> professional counselor <input type="checkbox"/> physician assistant <input type="checkbox"/> advanced nurse practitioner			
I hereby certify under penalty of unsworn falsification that I am a licensed provider in the field checked above. I have treated the applicant or reviewed and evaluated the medical history of the applicant with regard to the condition necessitating the requested change of sex designator on the driver license or ID card. The applicant has had appropriate clinical treatment for the condition necessitating the change and the change is expected to be permanent. The applicant's gender identification is <input type="checkbox"/> Male <input type="checkbox"/> Female.			
X _____ Provider Signature		X _____ Provider Printed Name and Title _____ Date	
THE PROVIDER SIGNATURE MUST BE ORIGINAL AND MAY NOT BE STAMPED OR IN AN ELECTRONIC FORMAT.			
DMV Use Only	• Amended Birth Certificate Jurisdiction: _____	• Valid US Passport Number: _____	• US Court Order Jurisdiction: _____

For questions or information on changing the sex designator on a license please contact:

Anchorage Driver Licensing
1300 W. Benson Blvd, Suite 100
Anchorage, Alaska 99503
(907) 269-3770 Phone
(907) 269-3774 Fax

Form 427 (Rev. 08/12)

Alaska.gov/dmv

DR 2083 (04/15/15)
Colorado Department of Revenue
 PO Box 173350
 Denver CO 80217-3350

Medical Information Authorization (Change of Sex Identification)

Name	DL/ID Number	Date
Address	City	ZIP
Previous Name (if name change is concurrent)		
To Be Completed By Licensed Colorado Physician		
Physician (Please print)		Colorado Medical License Number
Based on the patient's gender identity and full time gender role expression, or on prior completion of medical sex reassignment, my professional opinion is that the person's gender is:		
<input type="checkbox"/> Male <input type="checkbox"/> Female		
A complete examination form for this person is on file in my office at:		
Address	City	ZIP
Signature of Physician		Date
Attention Physician: please return this form to the subject for inclusion with their driver's license or identification card application.		
To Be Completed by Applicant		
I hereby authorize my physician to answer the above questions and submit information to the Division of Motor Vehicles, relating to my gender identification, for the purpose of obtaining a driver's licence or identification card under my preferred gender.		
I understand that information received by the Division will be held in strict confidence per Colorado Revised Statute 42-2-121 and the federal Driver's Privacy Protection Act, Section 2721.		
By signing below, I hereby affirm under the penalty of second degree perjury CRS 18-8-503(1) that the information provided above is my own and the above statements are true. I understand that it is a criminal offense to knowingly submit false information to the Colorado Department of Revenue, punishable by fines, incarceration, and/or loss of driving privileges or identification card.		
Signed		Date

**GENDER DESIGNATION
CHANGE FORM**
B-372 New 10-2013

STATE OF CONNECTICUT
DEPARTMENT OF MOTOR VEHICLES
On The Web At ct.gov/dmv



The DMV can only accept original forms with original signatures. Photocopies and faxes are not acceptable. You must surrender the existing driver's license or ID Card that is to be amended.

PART 1: TO BE COMPLETED BY APPLICANT (Name on current Driver's License/ID or Identity documents)

LAST NAME	FIRST NAME	MIDDLE	SOCIAL SECURITY NUMBER
STREET ADDRESS			CITY/TOWN
		ZIP CODE	DRIVER'S LICENSE/ID NUMBER

Gender Designation Statement:

I, _____ wish the gender designation on my
(print name from above)

Driver's License/ID Card to read (circle one): **MALE** **FEMALE**

I hereby swear, under the penalty of perjury, that this request for the selected gender designation to appear on my Driver's License/ID Card is for the purpose of ensuring that my Driver's License/ID Card accurately reflects my gender identity and is not for any fraudulent or other unlawful purpose.

SIGNATURE	DATE
X	

The information provided to the Commissioner of Motor Vehicles herein is subscribed by me, under penalty of false statement, in accordance with the provisions of Section 14-110 and 53a-157b of the Connecticut General Statutes.

PART 2: TO BE COMPLETED BY MEDICAL OR SOCIAL SERVICE PROVIDER

LAST NAME	FIRST NAME	TITLE
PROVIDER'S ORGANIZATIONAL NAME (If applicable)		
PROVIDER'S STREET ADDRESS	CITY	STATE
		ZIP CODE
PROVIDER'S TELEPHONE NUMBER	PROVIDER'S E-MAIL	PROVIDER'S PROFESSIONAL LICENSE NUMBER AND STATE

I am licensed as a: **PHYSICIAN** **THERAPIST OR COUNSELOR** **PSYCHIATRIC SOCIAL WORKER**

My practice includes the treatment and counseling of persons with gender identity issues, including the applicant named herein, and in my professional opinion, the applicant's gender identity is (circle one):

MALE **FEMALE** and can reasonably be expected to continue as such for the foreseeable future.

I hereby certify, under the penalty of perjury, that the foregoing information is true and correct.

SIGNATURE	DATE
X	

The information provided to the Commissioner of Motor Vehicles herein is subscribed by me, under penalty of false statement, in accordance with the provisions of Section 14-110 and 53a-157b of the Connecticut General Statutes.

REQUEST FOR GENDER CHANGE ON DRIVER LICENSE/IDENTIFICATION CARD



PLEASE TYPE OR PRINT ALL INFORMATION IN BLUE OR BLACK INK

Customer: Please complete Sections A, B, C, and D.

A - DRIVER INFORMATION

DRIVER LICENSE NUMBER		LAST NAME(S)		SUFFIX
FIRST NAME		MIDDLE NAME		
DATE OF BIRTH	DAYTIME TELEPHONE NUMBER		E-MAIL ADDRESS (if applicable)	
MONTH	DAY	YEAR		

Please check the product(s) you currently have:

- Class D Driver License
 Commercial Driver License
 Identification Card

B - GENDER DESIGNATION STATEMENT

I, _____, wish the gender designation on my driver license/ID card to read:

(Applicant's Full Name)

- MALE
 FEMALE

C - TO BE COMPLETED BY MEDICAL OR SOCIAL SERVICE PROVIDER LICENSED IN THE UNITED STATES

PROVIDER'S LAST NAME	PROVIDER'S FIRST NAME	PROVIDER'S TITLE
PROVIDER'S ORGANIZATION	STATE MEDICAL LICENSE #	STATE LICENSED IN
PROVIDER'S STREET ADDRESS		
CITY	STATE	ZIP

I am a licensed: Physician Therapist/Counselor Social Worker

My practice includes assisting, counseling or treating persons with gender identity issues, including the applicant named herein, and in my professional opinion, the applicant's gender identity is _____ Male Female and can reasonably be expected to continue as such for the foreseeable future.

I certify, under the penalty of perjury, that the foregoing medical or social service provider information on this application is true and correct.

PROVIDER'S SIGNATURE: _____ DATE: _____

D - AUTHORIZATION AND CERTIFICATION

I certify, under the penalty of perjury, that the information on this application is true and correct to the best of my knowledge, that this request for the selected gender designation to appear on my driver license/ID card accurately reflects my gender identity and is not for any fraudulent or other unlawful purpose, and that I am a bona fide resident of Delaware.

APPLICANT'S SIGNATURE: _____ DATE: _____

E - TO BE COMPLETED BY THE DIVISION OF MOTOR VEHICLES

APPROVING SUPERVISOR/SENIOR NAME: _____

APPROVING SUPERVISOR/SENIOR SIGNATURE: _____ DATE: _____

MV2020
08/11



GENDER DESIGNATION FORM

The Maine Bureau of Motor Vehicles can only accept original forms with original signatures.
Photocopies and faxes are not acceptable.

You must surrender the existing license or ID card that is to be amended.

Part I: TO BE COMPLETED BY APPLICANT (Name on current license or ID)			
<input type="radio"/> Last Name	First Name	Middle	Social Security #
<input type="radio"/> Street Address	City/Town	Zip Code	License/ID #
<u>Gender Designation Statement</u>			
I _____ request the gender designation on my (print name from above)			
Driver's License/ID Card to read (circle one): Male Female			
I hereby swear, under the penalty of perjury, that this request for the selected gender designation to appear on my Driver's License/ID Card is for the purpose of ensuring that my Driver's License/ID Card accurately reflects my gender identity and is not for any fraudulent or other unlawful purpose.			
Signature: _____		Date: _____	
<i>(False statements may be punishable by fine, imprisonment, or both)</i>			

Part II: TO BE COMPLETED BY MEDICAL OR SOCIAL SERVICE PROVIDER			
<input type="radio"/> Provider's Last Name	Provider's First Name	Title	
<input type="radio"/> Provider's Organizational Name (if applicable)			
<input type="radio"/> Provider's Street Address	City	State	Zip
<input type="radio"/> Provider's Tel.#	Provider's E-mail	Provider's Professional License # and State	
I am licensed as a: <input type="checkbox"/> Physician <input type="checkbox"/> Therapist or Counselor <input type="checkbox"/> Social Worker			
<input type="checkbox"/> Other (Qualified Professional – please specify) _____			
In my professional opinion, the applicant's gender identity is (circle one): Male Female and can reasonably be expected to continue as such in the foreseeable future.			
I hereby certify, under the penalty of perjury that the foregoing information is true and correct.			
Signature: _____		Date: _____	
<i>(False statements may be punishable by fine, imprisonment, or both)</i>			

Bureau of Motor Vehicles, License Services Division
29 State House Station, Augusta, ME 04333-0029
Telephone: (207)624-9000 ext. 52114 TTY Users call Maine relay 711

Updated 01/2013



MASSACHUSETTS GENDER DESIGNATION CHANGE FORM

Registry of Motor Vehicles
P.O. Box 55889
Boston, MA 02205-5889

The RMV can only accept original forms with original signatures. Photocopies and faxes are not acceptable.
You must surrender the existing license or ID Card that is to be amended

PART 1: TO BE COMPLETED BY APPLICANT (Name on current License/ID or Identity documents)			
<input type="checkbox"/> Last Name	First Name	Middle	Social Security #
<input type="checkbox"/> Street Address	City/Town	Zip Code	License/ID #
<u>Gender Designation Statement:</u>			
I, _____ wish the gender designation on my (print name from above)			
Driver's License/ID Card to read (circle one): Male Female			
I hereby swear, under the penalty of perjury, that this request for the selected gender designation to appear on my Driver's License/ID Card is for the purpose of ensuring that my Driver's License/ID Card accurately reflects my gender identity and is not for any fraudulent or other unlawful purpose.			
Signature _____		Date: _____	
(False statements are punishable by fine, imprisonment, or both. (MGL Chapter 90, Section 24))			

PART 2: TO BE COMPLETED BY MEDICAL OR SOCIAL SERVICE PROVIDER			
<input type="checkbox"/> Last Name	First Name	Title	
<input type="checkbox"/> Provider's Organizational Name (if applicable)			
<input type="checkbox"/> Provider's Street Address	City	State	Zip
<input type="checkbox"/> Provider's Tel. #	Provider's E-mail	Provider's Professional License # and State	
I am licensed as a: <input type="checkbox"/> Physician <input type="checkbox"/> Therapist or Counselor <input type="checkbox"/> Psychiatric Social Worker			
<input type="checkbox"/> Other (please describe) _____			
My practice includes the treatment and counseling of persons with gender identity issues, including the applicant named herein, and in my professional opinion, the applicant's gender identity is (circle one):			
Male Female and can reasonably be expected to continue as such for the foreseeable future.			
I hereby certify, under the penalty of perjury, that the foregoing information is true and correct.			
Signature: _____		Date: _____	
(False statements are punishable by fine, imprisonment, or both. (MGL Chapter 90, Section 24))			

RMV Use Only:		
ALARS ID #: _____	Batch #: _____	Date: _____

T21816-0308



New Jersey Motor Vehicle Commission

Declaration of Gender Designation Change for New Jersey Motor Vehicle Commission (MVC) Driver License or Identification Card			
PART ONE: TO BE COMPLETED BY APPLICANT			
Name: Last	First	M I	Date of Birth
Street Address	City/State	Zip Code	License/ Identification Number
<p>I _____ (print name) wish to change the gender designation on my driver license/identification card to read: M or F (circle one).</p> <p>I hereby certify, under penalty of law, that this request for change of sex designation is for the purpose of making my driver license/identification card reflect my gender identity, and is not for fraudulent or other unlawful purposes.</p> <p>Signature: _____ Date: _____</p> <p>Note: You must surrender your current driver's license or identification card and obtain a duplicate for the standard fee of \$11.00. In order to change a name on a driver license or identification card, you will need to follow MVC procedures, available at any motor vehicle agency/regional service center or online at www.njmvc.gov.</p>			
PART TWO: TO BE COMPLETED BY LICENSED MEDICAL OR SOCIAL SERVICE PROVIDER			
Provider Last Name	Provider First Name	Provider Title	
Provider Organization Name (if applicable)			
Provider Street Address	City	State	Zip Code
Provider Phone	Provider Email	Provider Organization or Professional License Number	
<p>I am a licensed</p> <p><input type="checkbox"/> Physician</p> <p><input type="checkbox"/> Therapist or Counselor</p> <p><input type="checkbox"/> Social Worker</p> <p><input type="checkbox"/> Other (please describe) _____</p> <p>My practice includes assisting, counseling or treating persons with gender identity issues, including the applicant named herein, and in my professional opinion, the applicant's gender identity is (circle one) Male Female and can reasonably be expected to continue as such for the foreseeable future</p> <p>I hereby certify, under penalty of law, that the foregoing information is true and correct</p> <p>Signature: _____ Date: _____</p> <p style="text-align: center;">(A misstatement of fact or false statement made in this or any application is punishable by fine and/or imprisonment and may result in the suspension of driving privileges. (N.J.S.A. 39:3-37))</p>			



John J. Barthelmes
Commissioner of Safety

NH DEPARTMENT OF SAFETY
Division of Motor Vehicles
Stephen E. Merrill Building
23 Hazen Drive, Concord, NH 03305
Tele: (603) 227-4020



Richard C. Bailey, Jr.
Director of Motor Vehicles

Change of Gender Designation

Please note: This form may not be used for name or address changes. Please fill out a "Record Change Request" form (DSMV 30) for any name and/or address changes. Name changes will require authorized supporting documentation.

Name on Current NH Driver License or Non-Driver ID: _____

Date of Birth: _____ DL or NDID # _____

Address: _____
Street Name or PO Box No. Town or City State Zip Code

I, _____ wish to change the gender designation on my NH Driver License
or Non-Driver Identification card to read (please check one): Male Female

I hereby certify under penalty of unsworn falsification that this request for change of gender is for the purpose of ensuring my driver license/identification card accurately reflects my gender identity and is not for any fraudulent or other unlawful purpose:

Signature of Applicant: _____ Date: _____
Signed under penalty of unsworn falsification (RSA 641:3)

The below certification must be completed by a licensed and qualified Health Care Provider

In my professional opinion, the applicant's gender identity is (please check one): Male Female
and can reasonably be expected to continue as such in the foreseeable future.

Name of Health Care Provider (please print): _____

Please check one:

Physician APRN Clinical Social Worker Clinical Mental Health Counselor

Name of Practice: _____

Address: _____
Street Town or City State Zip Code

Telephone Number: _____

I certify, under the penalty of unsworn falsification pursuant to RSA 641:3, that the person whose name appears above is under my treatment and care for the change of gender identity as indicated above by the applicant.

Signature of Health Care Provider: _____ Date: _____

DSMV 626 (12/2014)

MVD - 10237
INT. 07/10



New Mexico Taxation & Revenue Department, Motor Vehicle Division

GENDER DESIGNATION CHANGE REQUEST



Use this form to request a change to the gender designation on your New Mexico Driver's License (DL) or Identification Card (ID), or if you are applying for a first-time New Mexico DL or ID and are requesting a change of gender designation from that shown on your current identification documents. If you are also changing your name, please provide both current/prior and new name with appropriate original documentation (court order, marriage certificate or divorce decree). This form must be completed in full by you and your medical or social service provider.

Applicant Information and Request for Change of Gender Designation				
Applicant's current/prior full legal name:				
Last name	First name	Middle name(s)		
If changing name, Applicant's new full legal name:				
Last name	First name	Middle name(s)		
Residence street address	City	State	ZIP code	
Driver's license or ID number	Telephone number	Email address		
Gender Designation Statement:				
I, _____, wish the gender designation on my Driver's License/ID Card to designate my gender as (circle one): Male (M) Female (F).				
I hereby swear, under the penalty of perjury, that this request for the selected gender designation to appear on my Driver's License/ID Card is for the purpose of ensuring that my Driver's License/ID Card accurately reflects my gender identity and is not for any fraudulent or other unlawful purpose.				
Signature _____ Date _____				
Medical or Social Service Provider Information and Certification				
Last name	First name	Title		
Provider's organizational name (if applicable)				
Provider's street address	City	State	ZIP code	
Telephone number	Email address	Professional license number and state		
I am licensed as a: <input type="checkbox"/> Physician <input type="checkbox"/> Therapist or Counselor <input type="checkbox"/> Psychiatric Social Worker				
<input type="checkbox"/> Other (please describe) _____				
My practice includes the treatment and counseling of persons with gender identity issues, including the Applicant named herein, and in my professional opinion the applicant's gender identity is (circle one): Male Female and can reasonably be expected to continue as such for the foreseeable future.				
I hereby certify, under the penalty of perjury, that the foregoing information is true and correct.				
Signature _____ Date _____				



CHANGE OF GENDER DESIGNATION FORM

PART ONE: TO BE COMPLETED BY APPLICANT

LAST NAME (please print)	FIRST NAME	MIDDLE NAME	ODL/ID CUSTOMER #
STREET ADDRESS		CITY	STATE ZIP CODE

I, _____ wish to change the gender designation on my driver license or identification card to read (check one): **Male** **Female**

I hereby certify under penalty of law that this request for gender designation change is for the purpose of ensuring my driver license / identification card accurately reflects my gender identity and is not for any fraudulent or other unlawful purpose.

APPLICANT SIGNATURE X	DATE SIGNED
---------------------------------	-------------

PART TWO: TO BE COMPLETED BY A LICENSED HEALTH CARE PROVIDER or SOCIAL SERVICE AUTHORITY

PROVIDER LAST NAME (please print)	PROVIDER FIRST NAME	PROVIDER TITLE
PROVIDER ORGANIZATION NAME (if applicable)		
PROVIDER STREET ADDRESS		CITY STATE ZIP CODE
PROVIDER PHONE NUMBER	PROVIDER E-MAIL	PROVIDER ORGANIZATION or PROFESSIONAL LICENSE NUMBER

I am a:

- Primary Care Provider (PCP) (Physician, Nurse Practitioner (NP) or Physician Assistant (PA))
- Clinical Social Worker, Surgeon, or a Doctor of Naturopathic Medicine
- Licensed Professional Counselor or Therapist
- Licensed Psychologist
- Social Service Case Specialist, Worker, or other Social Service Authority

In my professional opinion, the applicant's gender identity is (check one): **Male** **Female**
and can reasonably be expected to continue as such in the foreseeable future.

I hereby certify under penalty of law the foregoing information is true and correct.

SIGNATURE OF HEALTH CARE PROVIDER or SOCIAL SERVICE AUTHORITY X	DATE SIGNED
---	-------------

735-7401 (10-15)

DL-32 (7-14)



REQUEST FOR GENDER CHANGE ON DRIVER'S LICENSE/IDENTIFICATION CARD

ALL SECTIONS MUST BE COMPLETED

A APPLICANT INFORMATION					
DRIVER'S LICENSE/ID NUMBER		LAST NAME(S)			JR/ETC
FIRST NAME			MIDDLE NAME		
DATE OF BIRTH		TELEPHONE NUMBER (8:00 a.m. to 4:30 p.m.)		E-MAIL ADDRESS (if applicable)	
MONTH	DAY	YEAR			
Please check the product(s) you currently have:					
<input type="checkbox"/> Non-Commercial Driver's License		<input type="checkbox"/> Commercial Driver's License		<input type="checkbox"/> Identification Card	
B GENDER DESIGNATION STATEMENT					
I, _____ wish the gender designation on my Driver's License/ ID Card to read					
PRINT NAME <input type="checkbox"/> MALE <input type="checkbox"/> FEMALE					
I hereby certify under penalty of law that this request for the selected gender designation to appear on my Driver's License/ ID Card accurately reflects my gender identity and is not for any fraudulent or other unlawful purpose.					
C TO BE COMPLETED BY MEDICAL OR SOCIAL SERVICE PROVIDER LICENSED IN THE UNITED STATES					
LAST NAME		FIRST NAME		TITLE	
PROVIDER'S ORGANIZATION			STATE MEDICAL LICENSE #	STATE LICENSED IN	
PROVIDER'S STREET ADDRESS					
CITY			STATE	ZIP	
I am a licensed: <input type="checkbox"/> Physician <input type="checkbox"/> Therapist/Counselor <input type="checkbox"/> Social Worker					
My practice includes assisting, counseling or treating persons with gender identity conditions, including the applicant named herein, and in my professional opinion, the applicant's gender identity <input type="checkbox"/> Male <input type="checkbox"/> Female and can reasonably be expected to continue as such for the foreseeable future.					
I hereby certify, under penalty of law, that the foregoing information is true and correct					
PROVIDER'S SIGNATURE: _____			DATE: _____		
<i>WARNING: Misstatement of fact is a misdemeanor of the third degree punishable by a fine of up to \$2,500 and/or imprisonment up to 1 year (18 Pa. C.S. Section 4904(b)).</i>					
D AUTHORIZATION AND CERTIFICATION					
<input type="checkbox"/> Veterans Designation: I certify under penalty of law that I am a qualified applicant and hereby request it be added to my product. I understand that misrepresentation will result in the cancellation of my driver's license and/or identification card.					
I certify under penalty of law that all information given on this application is true and correct. I hereby authorize the Social Security Administration to release to the Department of Transportation information concerning my Social Security Identification Number for the purpose of identification. I hereby acknowledge this day that I have received notice of the provisions of Section 3709 of the Vehicle Code.					
<input type="checkbox"/> I wish to contribute \$1.00 to the Organ Donation Awareness Trust Fund (see reverse)					
<input type="checkbox"/> I wish to contribute \$3.00 to the Veterans' Trust Fund (see reverse)					
SIGN HERE		DATE			
(APPLICANT'S SIGNATURE IN INK)		DATE			
<i>WARNING: Misstatement of fact is a misdemeanor of the third degree punishable by a fine of up to \$2,500 and/or imprisonment up to 1 year (18 Pa. C.S. Section 4904(b)).</i>					

FEE PAID In This Amount	
SEE REVERSE FOR FEES	



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

**DIVISION OF MOTOR VEHICLES
LICENSE AND REGISTRATION OFFICE**

600 New London Avenue
Cranston, RI 02920-3024
Phone: 401-462-4368 Fax: 401-462-5785/5786
www.dmv.ri.gov

GENDER DESIGNATION ON A LICENSE OR IDENTIFICATION CARD

Procedure for Changing Designation on Driver's License or Identification Card

Applicants requesting a change of the gender designation on their driver's license or identification card from that showing on their identity proof documents must:

- Surrender any current state-issued license or identification card;
- Submit a completed Gender Designation form; and
- Pay applicable fees for new or updated license or identification card. The applicant shall have a new photograph taken.

Employees shall not request additional gender-related information beyond that required on the applicable forms or otherwise inquire about the applicant's private medical history or records.

The Gender Designation Form contains private medical information and will be kept confidential and protected under the provisions of the Driver Privacy and Protection Act.

Name Change

Name changes related to gender are completed via submission of appropriate court documents and also must be reflected on the Social Security card. Please refer to the RI DMV Document Checklist - License and ID Cards.

PART ONE: TO BE COMPLETED BY APPLICANT

Last Name	First Name	Middle Initial	Social Security Number	
Street Address	City/Town	State	Zip Code	License/Identification Number

I, _____, wish the designation of gender on my driver's license or identification card to read (please check one): Male Female

I, the undersigned, hereby make application for either license, state identification card or permit and declare under penalty of perjury that all statements made on this application are true and complete to the best of my knowledge and belief.

Signature: _____ Date: _____

PART TWO: TO BE COMPLETED BY MEDICAL OR SOCIAL SERVICE AUTHORITY

Provider Last Name	Provider First Name	Provider Title	
Provider Organization Name (if applicable)			
Provider Street Address	City/Town	State	Zip Code
Provider E-Mail		Provider Organization or Professional License Number	

I am a: Physician Licensed therapist or counselor Case worker or social worker

In my professional opinion, the applicant's gender identity is (please check one): Male Female and can reasonably be expected to continue as such in the foreseeable future.

I, the undersigned, hereby declare under penalty of perjury that all statements made in this section, "Part Two," by me, are true and complete to the best of my knowledge and belief.

Signature: _____ Date: _____

rev. 05/12



Change of Gender Designation Request

You can use this form to request a gender designation change on your Washington driver license, instruction permit, identification (ID) card, enhanced driver license, or enhanced identification card. This form must be completed by you and a licensed health care provider (as noted in the Physician section below) familiar with your treatment. Send this completed form and a photocopy of your valid Washington driver license, instruction permit, identification card, enhanced driver license, or enhanced identification card to:

Programs and Services, Driver Records
 Department of Licensing
 PO Box 9030
 Olympia WA 98507-9030

You will be notified in writing when your request has been processed. Incomplete applications will not be processed.

Applicant

TYPE or PRINT Name as it appears on your current license or ID card (Last First Middle)		License or ID card number
(Area code) Daytime telephone number	Email (in case we need to contact you)	
Answer the following		
What gender designation would you like on your license or ID card?		<input type="checkbox"/> Male <input type="checkbox"/> Female
I authorize the licensed health care provider listed in the physician section to release information related to this request. I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.		
Date and place signed _____		X Signature

Physician

This section must be completed by a licensed medical physician, internist, endocrinologist, gynecologist, urologist, osteopathic physician, psychiatrist, psychologist, or a Washington State licensed naturopathic physician, advanced registered nurse practitioner, physician assistant, or certified osteopathic physician assistant familiar with your treatment.

TYPE or PRINT Name of patient			
Your name as it appears on your license			
License number	Expiration date	Issuing state/jurisdiction	DEA registration number
Hospital or medical clinic name			(Area code) Telephone number
Physical address (Address, City, State, ZIP code, County)			
Mailing address, if different (Address, City, State, ZIP code, County)			
Answer the following			
1. I am the attending health care provider with a doctor/patient relationship with the applicant.			<input type="checkbox"/> Yes <input type="checkbox"/> No
2. I have reviewed and evaluated the applicant's medical history.			<input type="checkbox"/> Yes <input type="checkbox"/> No
3. The applicant has undergone the appropriate gender transition clinical treatment.			<input type="checkbox"/> Yes <input type="checkbox"/> No
4. What is the gender identification of this applicant?			<input type="checkbox"/> Male <input type="checkbox"/> Female
I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.			
Date and place signed _____			X Physician signature

DR 620-943 (06/13/08)

We are committed to providing equal access to our services. If you need accommodation, please call (360) 902-3900 or TTY (360) 664-0195.

DMV-66-70
REV 06/15

West Virginia Department of Transportation
Division of Motor Vehicles
Gender Designation Form



1-800-642-9666
dmv.wv.gov

Procedure for changing your gender designation on your driver's license or identification card:

The DMV will change the gender designation on the applicant's driver's license or ID card contingent on the submission of this fully and accurately completed form. The applicant is not required to have changed his or her gender designation on the birth certificate or other forms of identification. DMV Employees shall not request additional gender-related information beyond that required on the applicable form or otherwise inquire about the applicant's private medical history or records.

Any name changes require submission of appropriate documentation of the name change and must also be reflected in the Social Security record. Name changes can be processed at any time regardless of gender designation.

Applicants requesting to change the gender designation on their driver's license or identification (ID) card must:

- Surrender any current state-issued license or identification card (if applicable).
- Submit this Gender Designation Form when it has been accurately completed.
- Submit the correct driver's license or ID card application and pay the correct fees as outlined on the application. For standard driver's licenses and ID cards use the application DMV-DS-23P or for a commercial driver's license use the application DMV-CDL-1.
- Have a new photograph taken for the driver's license or ID card.

1 TO BE COMPLETED BY THE APPLICANT	
APPLICANT NAME (LAST, FIRST, MIDDLE)	SOCIAL SECURITY NUMBER
STREET ADDRESS	DRIVER'S LICENSE OR ID CARD NUMBER
CITY, STATE, AND ZIP CODE	
I, _____, wish to change the gender on my West Virginia driver's license or identification card to read the gender <input type="checkbox"/> male <input type="checkbox"/> female.	
(X) _____ SIGNATURE OF APPLICANT	_____/_____/_____ DATE

2 TO BE COMPLETED BY THE LICENSED PHYSICIAN		
PHYSICIAN NAME (LAST, FIRST, MIDDLE)	PHYSICIAN TITLE	MEDICAL LICENSE NUMBER
PHYSICIAN ORGANIZATION NAME (IF APPLICABLE)	PHYSICIAN PHONE NUMBER	
PHYSICIAN ADDRESS		
In my professional opinion, the applicant's gender identity is: <input type="checkbox"/> male <input type="checkbox"/> female		I hereby certify under penalty of perjury/law that the information contained herein is true and correct.
(X) _____ SIGNATURE OF LICENSED PHYSICIAN		_____ DATE

This form is fillable. To begin, click in the Surname field

Print Clear form



Physician's or Psychologist's Confirmation of Change of Gender Designation

FOR OFFICE USE ONLY

Physician's or Psychologist's Information

SURNAME FOLLOWED BY GIVEN NAME(S)	
MAILING ADDRESS	POSTAL CODE
TITLE (if any)	TELEPHONE NUMBER, INCLUDING AREA CODE ()

Declaration of Physician or Psychologist

The physician's or psychologist's declaration is in support of the request to change the applicant's "Sex" designation on his/her provincially issued identification by witnessing or certifying that the person identifies him/herself as a particular gender.

1. I hereby certify that I am:

- a practising registrant of the College of Physicians and Surgeons of British Columbia. BC MSP # _____
- a practising registrant of the College of Psychologists of British Columbia. Registrant # _____
- a practising registrant, authorised in another province or territory, to practise a health profession equivalent to that practised by a person referred to above.
Your profession and registration # _____ (Please provide copy of licence.)

2. I support the application of _____ (_____)
applicant's name applicant's personal health #
 and (_____) who is requesting the change in gender designation from **F to M** or **M to F**
BC driver's licence # or BC identification #

3. I confirm that the applicant's gender identity does not align with the "Sex" designation on the applicant's provincial government-issued identification.

4. I understand the consequences of making a false declaration.

SIGNATURE OF PHYSICIAN OR PSYCHOLOGIST DATE (dd/mm/yyyy)

Making a false or misleading statement on this form may result in prosecution under section 69 of the *Motor Vehicle Act*. A person who contravenes section 69 is liable to a fine of up to \$20,000 and/or to imprisonment.

Provincial Government-Issued Identification

This form may be used to support changes to the "Sex" field on all of the following provincial government-issued identification held by the applicant:

- BC Birth Certificate
- BC Driver's Licence
- BC Identification Card
- Combined BC Driver's Licence and Services Card
- Enhanced Driver's Licence
- Enhanced Identification Card
- Photo BC Services Card
- Non-Photo BC Services Card

Resources for Physicians or Psychologists

For additional resources, professionals may refer to the guidelines established by the World Professional Association for Transgender Health (WPATH), Standards of Care at www.wpath.org.

VSA 510p_fill 04/09/2014

Print Clear form

page 1 of 2



**DRIVER LICENCE/GENERAL IDENTIFICATION CARD (GIC)
CHANGE OF GENDER DESIGNATION
CHANGEMENT DE LA MENTION DU SEXE SUR LE PERMIS
DE CONDUIRE OU LA CARTE D'IDENTITÉ GÉNÉRALE (CIG)**

APPLICANT DEMANDEUR ¹	
I, Je, _____ FULL LEGAL NAME-PLEASE PRINT NOM LÉGAL COMPLET EN LETTRES DÉTACHÉES	Date of birth: Date de naissance : _____ YYYY-MM-DD AAAA-MM-JJ
Address: Adresse : _____ MAILING ADDRESS ADRESSE POSTALE	Postal Code: Code postal : _____
Yukon driver licence/GIC no. : _____, wish the designation of gender on my driver licence Permis de conduire/CIG n° : _____, souhaite que la mention du sexe sur mon permis de and/or general identification card to read (please check one): <input type="checkbox"/> Female <input type="checkbox"/> Male conduire ou sur ma CIG indique (cochez une case) : Femme Homme	
_____ SIGNATURE OF APPLICANT SIGNATURE DU DEMANDEUR	_____ DATE (YYYY-MM-DD) DATE (AAAA-MM-JJ)

Your personal information contained here is collected under Yukon's *Motor Vehicles Act*, RSY 2002, c.153 (as amended) ("MVA") in accordance with Yukon's *Access to Information and Protection of Privacy Act* RSY 2002, c. 1. (as amended). By providing the personal information contained herein you fully consent to such information being collected, used, stored, and disclosed for the purposes of: administering and enforcing the MVA; law enforcement purposes, including the investigation and enforcement of laws by other governments or law enforcement agencies; research and statistical analysis and policy planning and program activities by Government of Yukon. If you have any questions about the collection, use or disclosure of your personal information, please contact the Registrar of Motor Vehicles at Unit A, 2251 2nd Avenue Whitehorse, YT Y1A 5W1 or phone: (867) 667-5313, toll free within Yukon, 1-800-661-0408 ext. 5313.

Les renseignements personnels fournis dans les présentes sont recueillis en vertu de la Loi sur les véhicules automobiles du Yukon, L.R.Y. 2002, ch. 153 (dans sa version modifiée), et en conformité avec la Loi sur l'accès à l'information et la protection de la vie privée du Yukon, L.R.Y. 2002, ch. 1 (dans sa version modifiée). En fournissant lesdits renseignements, vous consentez pleinement à leur collecte, utilisation, conservation et communication aux fins suivantes : application de la Loi sur les véhicules automobiles; exécution de la loi, y compris la tenue d'enquête et la mise en œuvre de lois par d'autres gouvernements ou organismes d'application de la loi; recherches et analyses statistiques ainsi que planification des politiques et des programmes et services par le gouvernement du Yukon. Veuillez adresser toute demande relative à la collecte, à l'utilisation ou à la communication de vos renseignements personnels au registraire des véhicules automobiles, au 2251, 2^e Avenue, porte A, Whitehorse (Yukon) Y1A 5W1, ou par téléphone, au 867-667-5313 ou (sans frais au Yukon) au 1-800-661-0408, poste 5313.

SERVICE PROVIDER FOURNISSEUR DE SERVICES	
Name: Nom : _____ FULL LEGAL NAME-PLEASE PRINT NOM LÉGAL COMPLET EN LETTRES DÉTACHÉES	
Address: Adresse : _____ MAILING ADDRESS ADRESSE POSTALE	Postal Code: Code postal : _____
I am a <input type="checkbox"/> Physician <input type="checkbox"/> Psychiatrist <input type="checkbox"/> Psychologist <input type="checkbox"/> Therapist/Counsellor <input type="checkbox"/> Nurse Practitioner Je suis <i>médecin</i> <i>psychiatre</i> <i>psychologue</i> <i>thérapeute/consellier</i> <i>infirmière praticienne</i>	
Licence or professional certification #: Permis d'exercice ou agrément professionnel n° : _____	
In my professional opinion, the applicant's gender identity is (please check one): <input type="checkbox"/> Female <input type="checkbox"/> Male Selon mon avis professionnel, l'identité de genre du demandeur est (cochez une case) : Femme Homme and can reasonably be expected to continue as such in the foreseeable future. Il est par ailleurs raisonnable de s'attendre à ce que cette situation reste inchangée dans un avenir prévisible.	
_____ SIGNATURE OF SERVICE PROVIDER SIGNATURE DU FOURNISSEUR DE SERVICES	_____ DATE (YYYY-MM-DD) DATE (AAAA-MM-JJ)

YG(6305Q)F1 04/2016

¹ Dans le présent document, les expressions désignant des personnes visent à la fois les hommes et les femmes.

Appendix B U.S. Driver's License Policies*

U.S. Jurisdiction Driver's License and ID Card Policies

<p>Simplified form. Certification accepted from a range of licensed professionals, no medical details required.</p> <p>18 states, the District of Columbia, and Puerto Rico</p>	<p>Alaska (2012) Colorado (2006) Connecticut Delaware (2011) District of Columbia (2007) Hawaii (2012) Indiana</p>	<p>Maine (2013) Massachusetts (2008) New Jersey (2009) New Hampshire New Mexico (2010) Ohio (2009) Oregon (1998)</p>	<p>Pennsylvania (2010) Puerto Rico (2016) Rhode Island (2012) Virginia (2012) Washington (2009) West Virginia (2015)</p>
<p>No form. Certification accepted from medical or mental health providers. Proof of surgery or court order are not required.</p> <p>7 states</p>	<p>Arizona (1995) Florida (2011) Idaho (2013) Illinois (2013)</p>	<p>New York (1987) Vermont Wisconsin</p>	
<p>Simplified form. Certification only accepted from a limited range of health care providers. Proof of surgery or court order are not required.</p> <p>3 states</p>	<p>California (2008) Nebraska Nevada (2010)</p>		
<p>No form. Certification only accepted from limited range of healthcare providers. No requirement of proof of surgery or court order.</p> <p>1 state</p>	<p>Minnesota (2013)</p>		
<p>No form. No requirement of proof of surgery, court order, or amended birth certificate.</p> <p>2 states</p>	<p>Maryland (medical approval process involving several steps) Utah (must provide other updated ID, such as a passport)</p>		
<p>Unknown</p> <p>5 states and 4 territories</p>	<p>Arkansas Mississippi North Carolina North Dakota South Dakota</p>	<p>American Samoa Guam Northern Marianas Island U.S. Virgin Islands</p>	
<p>Proof of surgery, court order, or amended birth certificate required.</p> <p>14 states – 9 surgery, 3 court order, 2 other</p>	<p>Alabama (surgery) Georgia (surgery) Iowa (court order and amended birth certificate) Kansas</p>	<p>Kentucky (surgery) Louisiana (surgery) Michigan (surgery) Missouri Montana (surgery) Oklahoma</p>	<p>South Carolina (court order) Tennessee (surgery) Texas (court order) Wyoming (surgery)</p>

Total jurisdictions in which individuals can reliably change their gender designation without proof of surgery, court order, or amended birth certificate: **31 states + District of Columbia and Puerto Rico**

* Verified via AAMVA email, website search.

Appendix C Canadian Driver's License Policies*

Canadian Jurisdiction Driver's License and ID Card Policies

Simplified form, certification accepted from a range of licensed professionals; no medical details required.

Alberta
British Columbia
Manitoba
Yukon

No form. Certification from medical or mental health provider is sufficient.

Proof of surgery or court order is not required.

Simplified form. Certification only accepted from a limited range of health care providers.

Proof of surgery or court order are not required.

No form but no requirement of proof of surgery or court order; certification from limited range of health care providers.

Ontario
Quebec
Saskatchewan

Unknown policy

New Brunswick
Newfoundland & Labrador
Nova Scotia
Northwest Territories
Nunavut

Total provinces in which individuals can reliably change their gender designation without proof of surgery, court order, or amended birth certificate: *7 provinces*

* Provided by the AAMVA Survey. Content current as of June 2015.

Appendix D U.S. Department of State Policy for Changing the Gender Designation on a U.S. Passport

The United States Department of State (DOS) has adopted a policy that explains the need for medical certification from a licensed physician regarding the change in gender, as well as the need for accurate identification and a photograph reflecting the applicant's current appearance. To obtain a passport, sexual reassignment surgery is not a prerequisite, and such documentation is not requested. The DOS requires medical certification of gender transition from a licensed physician as the only documentation of gender change required. Other medical records are not requested. The applicant must submit acceptable evidence of identity in the new gender, if available, and must submit evidence of the new name, if changed. The DOS may accept documentation from the SDLA if available as evidence of identity, but because of the variety and inconsistencies with state license requirements, evidence of change of gender in these identity documents may not be obtainable. However, the passport can be issued in the new gender based on the medical certification. Importantly, the U.S. Passport is an acceptable document used by SDLAs to validate a person's identity for the DL/ID. States with policies that require changes to birth certificates, court orders, or surgical reassignment to validate gender change will be in conflict if an individual provides a passport reflecting a change in gender. A modernized gender designation process eliminates this conflict.

U.S. Department of State Foreign Affairs Manual – Volume 7

Consular Affairs

7 FAM 1300 Appendix M GENDER CHANGE

(CT:CON-576; 05-05-2015)

(Office of Origin: CA/OCS/L)

7 FAM 1310 APPENDIX M SUMMARY

(CT:CON-653; 03-31-2016)

- a. This appendix provides policy and procedures that passport specialists and consular officers (“you”) must follow when an applicant indicates a gender on the “sex” line on the passport application with information different from the one reflected on some or all of the submitted citizenship and/or identity evidence, including a prior passport.
- b. This policy explains the need for medical certification from a licensed physician who has treated the applicant or reviewed and evaluated the medical history of the applicant regarding the change in gender, as well as the need for accurate identification and a photograph reflecting the applicant's current appearance. It is based on standards and recommendations of the World Professional Association for Transgender Health (WPATH), recognized as the authority in this field by the American Medical Association (AMA).
- c. A passport is defined by INA 101(a)(30) (Immigration and Nationality Act) (8 U.S.C. 1101(a)(30)) as “any travel document issued by competent authority showing the bearer's origin,

identity, and nationality if any, which is valid for the entry of the bearer into a foreign country.”

An individual’s gender is an integral part of that person’s identity.

- d. Sex reassignment surgery is not a prerequisite for passport issuance based on gender change.
- e. Medical certification of gender transition from a licensed physician as described in 7 FAM 1320 Appendix M is the **only** documentation of gender change required. Other medical records must not be requested.
- f. A Form DS-11 “Application for U.S. Passport” must be used the first time an applicant applies for a passport in reassigned gender, as personal appearance for execution is required, even if the applicant has a previous passport. A change in gender is a change in the identity of the applicant, and evidence of identity in the new name (if applicable) and gender must be presented. Subsequent applications in the same gender may be submitted on a Form DS-82 if the applicant is eligible (see 7 FAM 1345.4 regarding eligibility to apply on a Form DS-82 and 7 FAM 1334 Appendix M regarding resumption of the birth gender).

7 FAM 1320 APPENDIX M DOCUMENTATION REQUIREMENTS

7 FAM 1321 Appendix M Documents to be Submitted with the Form DS-11

(*CT:CON-653; 03-31-2016*)

- a. **Evidence of U.S. citizenship/non-citizen U.S. nationality.** The applicant must submit acceptable evidence of U.S. citizenship or non-citizen U.S. nationality. (see 7 FAM 1100 “Acquisition and Retention of U.S. Citizenship and Nationality”). The applicant is not required to obtain an amended birth record, amended Consular Report of Birth (CRBA), or to request that the U.S. Citizenship and Immigration Services (USCIS) issue a replacement

Certificate of Naturalization/Citizenship reflecting the change of gender. State law in the United States and the laws of other countries vary on whether an amended birth certificate may be issued reflecting a gender change;

NOTE: An amended birth certificate in the new gender is not acceptable evidence of gender change (as opposed to amending a birth certificate to correct a typographical error—see 7 FAM 1370 Appendix M). See also 7 FAM 1350 Appendix M regarding Form FS-240, “Consular Report of Birth of a U.S. Citizen Abroad.”

- b. **Evidence of identity.** As with all applications, the applicant must be asked to submit acceptable Identification Document(s) (IDs) in the new gender, and name, if applicable (see 7 FAM 1320 “Identity of the Passport Applicant”). However, state law and foreign laws vary as to whether a driver’s license or other State or foreign government ID may be issued reflecting a gender change. So, the applicant may document her/his identity by submitting any of the following ID documents:
 - (1) Primary ID in the new gender (see 7 FAM 1325.1 regarding identification using primary ID);
 - (2) Secondary ID in the new gender (see 7 FAM 1325.3 regarding identification using secondary ID); or
 - (3) Acceptable primary ID in the birth gender if it readily identifies the applicant.

NOTE: Some form of photographic ID must be presented; You cannot use the doctor’s certification as the only evidence to identify an applicant.

- c. **Photograph.** A recent photograph that is a good likeness of the applicant, and satisfactorily identifies the applicant must be submitted. The photograph must agree with the submitted ID and reflect the applicant’s current and true appearance (see also 7 FAM 1300 Appendix E “Passport Photographs”);

- d. **Passport Fee.** All necessary passport fees must be submitted (see 7 FAM 1300 Appendix G “Passport Fees”); and
- e. **Name Change.** If the applicant’s name has been changed, either by court order or by customary usage, she/he must present satisfactory evidence of the material name change (see 7 FAM 1300 Appendix C “Names and Name Usage”). Both names must be cleared (see 7 FAM 1334).

7 FAM 1322 Appendix M Medical Certification for Gender Change/Transition

(CT:CON-653; 03-31-2016)

- a. A full validity U.S. passport will be issued reflecting a new gender upon presentation of a signed, original certification or statement, **on office letterhead**, from a licensed physician who has treated the applicant for her/his gender-related care or reviewed and evaluated the gender-related medical history of the applicant.
- b. Licensed physicians include:
- (1) A Doctor of Osteopathy (D.O.) (not to be confused with a Doctor of Optometry (O.D.), whose certification is not acceptable); or
 - (2) A Medical Doctor (M.D.). M.D.s may specialize in various medical fields including, but not limited to, internists, endocrinologists, gynecologists, urologists, surgeons, psychiatrists, pediatricians, and family practitioners.
- c. Medical certifications from persons who are not licensed physicians are not acceptable. They include, but are not limited to:
- (1) Psychologists;
 - (2) Physician Assistants;
 - (3) Nurse practitioners;
 - (4) Health practitioners;
 - (5) Licensed vocational nurses;
 - (6) Registered nurses;
 - (7) Chiropractors; or
 - (8) Pharmacists.
- d. The medical certification **must** include the following information (see 7 FAM 1300 Appendix M Exhibit 1):
- (1) Licensed physician’s full name;
 - (2) Medical license or certificate number;
 - (a) Licensed physicians in foreign countries must have a comparable foreign license or certificate registration number.
 - (b) For all foreign licensed physician gender change requests, passport agencies/centers must scan copies of the Form DS-11 and attach all submitted documents to Passport Services’ Adjudication Policy Division (CA/PPT/S/A/AP) at AskPPTAdjudication@state.gov. CA/PPT/S/A/AP works with the Overseas Citizens Services’ Office of Legal Affairs (CA/OCS/L) to verify the bona fides of the foreign-based licensed physician with the applicable post abroad. CA/PPT/S/A/AP will advise the passport agency/center of the outcome of post’s verification as soon as possible.
 - (c) Posts must verify their own foreign-based licensed physicians or, if the statement is from a physician in another country, contact the post which covers that country for verification.
 - (3) Address and telephone number of the licensed physician;
 - (4) Language stating that she/he has treated the applicant or has reviewed and evaluated the medical history of the applicant and that she/he has a doctor/patient relationship with the applicant;
 - (5) Language stating the applicant has had appropriate clinical treatment for gender transition to the new gender of either male or female; and

(6) Language stating “I declare under penalty of perjury under the laws of the United States that the forgoing is true and correct.”

e. If the applicant has not submitted the requested medical certification, use the appropriate letter (or similar language for overseas posts) available in Information Request Letter (IRL) 706 in corresponding with the passport applicant. (See 7 FAM 1300 Appendix T “Information Request Letters and Information Notices.”)

f. For applicants who have just begun and may be in the initial stages of the gender transition process, a two year limited validity passport using endorsement 46 (see 7 FAM 1320 Appendix B) reflecting the new gender will be issued upon presentation of a medical certification described in paragraph a above that includes the following:

- (1) Information listed in paragraph 7 FAM 1300 Appendix M d(1)-(4) above;
- (2) Language stating the applicant is in the process of gender transition to the new gender of either male or female; and
- (3) Language stating “I declare under penalty of perjury under the laws of the United States that the forgoing is true and correct.”

g. Faxed, e-mailed, or scanned photocopies of medical certifications are not acceptable for full validity U.S. passports. In emergency circumstances, you may issue a limited validity passport in the new gender using endorsement 46.

7 FAM 1330 APPENDIX M ADJUDICATING GENDER CHANGE OR TRANSITION

7 FAM 1331 Appendix M Adjudicating Gender Change Cases

(*CT:CON-653; 03-31-2016*)

a. You must annotate the reason for issuing the full validity passport in the new gender in the “For Issuing Office Only” block of the Form DS-11:

The image shows a portion of a Form DS-11, specifically the 'For Issuing Office Only' section. It contains several checkboxes for reasons for issuing a passport. The checkbox for 'Gender Change' is checked. Other options include 'New Gender', 'New Name', 'New Sex', 'New Race', 'New Religion', 'New Marital Status', and 'New Address'. A date stamp '08 11 A 09 2013 2' is visible in the bottom right corner.

b. You must annotate and attach the medical certification to the Form DS-11:

The image shows a portion of a Form DS-11, specifically the 'For Issuing Office Only' section. It contains several checkboxes for reasons for issuing a passport. The checkbox for 'MD Ltr re: Gender Change' is checked. Other options include 'New Gender', 'New Name', 'New Sex', 'New Race', 'New Religion', 'New Marital Status', and 'New Address'. A date stamp '08 11 A 09 2013 2' is visible in the bottom right corner.

NOTE: You must not ask for additional specific clinical details regarding the gender change from the applicant.

NOTE: If the applicant requests that the original medical certification be returned, you may attach a clear photocopy of the medical certification, clearly annotate that the original medical certification was seen and returned, and return the original medical certification to the applicant

7 FAM 1332 Appendix M Adjudicating Gender Transition Cases

(*CT:CON-653; 03-31-2016*)

a. You must annotate the reason for issuing the limited validity passport in the new gender in the “For Issuing Office Only” block of the Form DS-11:

The image shows a portion of a Form DS-11, specifically the 'For Issuing Office Only' section. It contains several checkboxes for reasons for issuing a passport. The checkbox for 'Gender Transition' is checked. Other options include 'New Gender', 'New Name', 'New Sex', 'New Race', 'New Religion', 'New Marital Status', and 'New Address'. A date stamp '08 11 A 09 2013 2' is visible in the bottom right corner.

- b. You must annotate and attach the medical certification to the Form DS-11:

- c. You must add an appropriate endorsement to limit the validity period of the passport:

- (1) Use endorsement code 46 domestically and for Overseas Photo-Digitized Passports (OPDPs) (see also [7 FAM 1365](#) regarding OPDPs and [7 FAM 1300 Appendix B](#), “Passport Endorsements”).
- (2) Use endorsement code 109 in Emergency Photo-Digitized Passports (EPDPs) for urgent overseas cases where the applicant must travel immediately (see also [7 FAM 1300 Appendix B](#)).

7 FAM 1333 Appendix M Replacement of Passport Limited Because of Gender Transition

(CT:CON-653; 03-31-2016)

- a. An applicant who received a limited passport book because of a gender transition will receive a replacement, fully-valid passport without further fee (except for expedited service, if requested), if she/he:

- (1) Applies for the new passport within two years of issuance using Form DS-5504, “Application for a U.S. Passport: Name Change, Data Correction, and Limited Passport Book Replacement;”
- (2) Meets the requirements of [7 FAM 1320 Appendix M](#); and
- (3) Presents a new medical certification that meets the requirements for a fully-valid passport in [7 FAM 1322 Appendix M](#).

- b. If, after two years, the applicant applies for a new passport and her/his gender transition has

not been completed, the applicant must submit a new physician’s statement, following the same information and licensure requirements in [7 FAM 1320 Appendix M](#), reflecting that the applicant still is in the process of gender transition. The applicant must also submit a new Form DS-11, with appropriate identity, citizenship, and passport fees submitted (see [7 FAM 1321 Appendix M](#)). Another two-year limited validity passport will be issued.

7 FAM 1334 Appendix M Resumption of the Birth Gender

(CT:CON-653; 03-31-2016)

If an applicant who already has been issued a passport in a new gender requests issuance of a passport in the birth gender, a medical certification of the transition back to the birth gender is required (see [7 FAM 1322 Appendix M](#) regarding medical certifications). The same procedures for adjudication and issuance of full validity (gender change) or limited validity (gender transition) passports apply if the applicant is returning to the birth gender (see also [7 FAM 1331 Appendix M](#) and [7 FAM 1332 Appendix M](#)).

7 FAM 1340 APPENDIX M CONVERSATIONS WITH PASSPORT APPLICANTS SEEKING TO DOCUMENT GENDER CHANGE/TRANSITION

(CT:CON-653; 03-31-2016)

- a. As with all passport applicants, you must be sensitive and respectful at all times.
- b. Refer to the applicant by the pronoun appropriate to her/his new gender even if the transition is not complete.
- c. Ask only appropriate questions regarding information necessary to determine citizenship and identity of the applicant.

7 FAM 1350 APPENDIX M AMENDING GENDER IN CONSULAR REPORTS OF BIRTH ABROAD

(CT:CON-653; 03-31-2016)

The Form FS-240, “Consular Report of Birth Abroad of Citizen of the United States of America,” can be amended by Passport Services’ Office of Technical Operations, Record Services division (CA/PPT/S/TO/RS) to reflect the change in gender. The documentary requirements specified in this Appendix for passport services are the same for amending gender on a Form FS-240. (See also 7 FAM 1440, “Consular Report of Birth Abroad of a Citizen/Non-Citizen National of the United States of America.”) See Bureau of Consular Affairs Internet Information on amending a Form FS-240. Inquirers are directed to contact Passport Services’ Record Services Division, using the below dual addresses, both physical and P.O. box address, and the nine-digit zip code.

U.S. Department of State
Record Services Division
CA/PPT/S/TO/RS
44132 Mercure Cir
PO Box 1213
Sterling, VA 20166-1213

Telephone (public): 202-485-8300

Fax: 202-485-8302

- d. An amended Form FS-240 is acceptable evidence of a gender change for a subsequent passport application.

7 FAM 1360 APPENDIX M INTERSEX CONDITIONS (DISORDERS OF SEX DEVELOPMENT)

(CT:CON-653; 03-31-2016)

- a. “Intersex” is a condition in which a person is born with a reproductive or sexual anatomy and/or chromosomal pattern that does not fit typical definitions of male or female.
- b. Birth documentation is often not updated to reflect corrected gender. When the passport application indicates a sex different from the one reflected on the birth documentation, the applicant, or her/

his applying parents in the case of a minor child, must provide medical certification that meets the requirements in 7 FAM 1322 Appendix M, adjusting the language to reflect the intersex condition and specify the gender correction to either male or female. In the case of a minor child, the applying parent(s) also must submit a signed statement confirming the gender correction to either male or female. These statements must be attached to the passport application.

- c. Unless the applicant, or her/his applying parent, provides the statements described above, the gender listed on her/his birth documentation will determine the gender to be listed in the passport.

7 FAM 1370 APPENDIX M GENDER ERRORS IN ORIGINAL BIRTH CERTIFICATE

(CT:CON-653; 03-31-2016)

- a. If an applicant advises that the gender on her/his birth document mistakenly lists the wrong gender due to typographical error, and there is sufficient time before the listed departure date, refer the applicant to the appropriate issuing vital records office to have the error corrected (IRL 875-33).
- b. If the departure date is imminent, you may issue a limited one year validity passport, listing the applicant’s requested gender, using endorsement code 46 (see 7 FAM 1300 Appendix B.) A corrected certified copy of the amended birth document will be required before issuance of a full validity passport in the requested gender.

7 FAM 1380 APPENDIX M QUESTIONS

(CT:CON-653; 03-31-2016)

- a. Passport agencies and centers must contact AskPPTAdjudication@state.gov for specific guidance.
- b. U.S. embassies and consulates must contact Ask-OCS-L@state.gov for specific guidance.

7 FAM 1390 APPENDIX M UNASSIGNED

**7 FAM 1300 APPENDIX M EXHIBIT 1
MODEL LETTER FOR LICENSED PHYSICIAN
CERTIFYING TO THE APPLICANT’S GENDER
CHANGE/TRANSITION**

(CT:CON-653; 03-31-2016)

Licensed Physician’s Letterhead

(Physician’s Address and Telephone Number)

I, (physician’s full name), (physician’s medical license or certificate number), (issuing U.S. State/Foreign Country of medical license/certificate), am the physician of (name of patient), with whom I have a

doctor/patient relationship and whom I have treated (or with whom I have a doctor/patient relationship and whose medical history I have reviewed and evaluated).

(Name of patient) has had appropriate clinical treatment for gender change to the new gender (specify new gender male or female).

Or

(Name of patient) is in the process of gender transition to the new gender (specify new gender male or female).

(NOTE TO PHYSICIAN ONLY: Use this sentence only when the patient has just begun or is in the early stages of his or her gender transition.)

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Signature of Physician

Typed Name of Physician

Date

Appendix E Real ID and the State's Authority to Change the Gender Designation on a Driver's License or Identification Card

SDLAs in the United States often have questions about their legal authority to set an appropriate policy for changing gender designations. This became evident with the passage of the REAL ID Act and subsequent publication of implementing regulations (federal) published by the Department of Homeland Security (DHS) in 2008.

Jurisdictional concerns were addressed by DHS during the public comment period for the rule when DHS explicitly stated in response to comments from concerned states that, "DHS will leave the determination of gender up to the States since different States have different requirements concerning when, and under what circumstances, a transgendered [sic] individual should be identified as another gender." Additionally, in listing what needs to be on the face of the license, the regulations state that the "Gender (as determined by the State) must be displayed."

Thus, although the REAL ID Act requires states to continue listing "gender" on licenses, states are free to continue to set their own regulations and procedures in this area.

(FINAL RULE)

§ 37.17 Requirements for the surface of the driver's license or identification card.

To be accepted by a Federal agency for official purposes, REAL ID driver's licenses and identification cards must include on the front of the card (unless otherwise specified below) the following information:

- a. Full legal name. Except as permitted in § 37.11(c) (2), the name on the face of the license or card must

be the same as the name on the source document presented by the applicant to establish identity. Where the individual has only one name, that name should be entered in the last name or family name field, and the first and middle name fields should be left blank. Place holders such as NFN, NMN, and NA should not be used.

- b. Date of birth.
- c. Gender, as determined by the State.
- d. Unique Driver's license or identification card number. This cannot be the individual's SSN, and must be unique across driver's license or identification cards within the State.
- e. Full facial digital photograph. A full facial photograph must be taken pursuant to the standards set forth below:
 - (1) States shall follow specifically ISO/IEC 19794-5:2005(E) Information technology—Biometric Data Interchange Formats—Part 5: Face Image Data. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of these incorporated standards from <http://www.ansi.org>, or by contacting ANSI at ANSI, 25 West 43rd Street, 4th Floor, New York, New York 10036. You may inspect a copy of the incorporated standard at the Department of Homeland Security, 1621 Kent Street, 9th Floor, Rosslyn, VA (please call 703-235-0709 to make an appointment) or at the National Archives and Records

Administration (NARA). For information on the availability of material at NARA, call 202-741-6030. These standards include:

- (i) Lighting shall be equally distributed on the face.
- (ii) The face from crown to the base of the chin, and from ear-to-ear, shall be clearly visible and free of shadows.
- (iii) Veils, scarves or headdresses must not obscure any facial features and not generate shadow. The person may not wear eyewear that obstructs the iris or pupil of the eyes and must not take any action to obstruct a photograph of their facial features.
- (iv) Where possible, there must be no dark shadows in the eye-sockets due to the brow. The iris and pupil of the eyes shall be clearly visible.
- (v) Care shall be taken to avoid “hot spots” (bright areas of light shining on the face).

(2) Photographs may be in black and white or color.

EXCERPTS FROM THE FINAL RULE

IV. Discussion of Comments

1. Minimum Driver’s License or Identification Card Data Element Requirements*

2. Gender

Comment: Two States raised issues about how gender is determined for transgender individuals and whether gender will be included as a verifiable identifier through EVVE.

Response: DHS will leave the determination of gender up to the States since different States have different requirements concerning when, and under what circumstances, a transgendered individual should be identified as another gender. Data fields in EVVE are outside the scope of this rulemaking.

* Federal Register Volume 73, Number 19 (Tuesday, January 29, 2008)
[Rules and Regulations]
[Pages 5272-5340]
From the Federal Register Online via the Government Printing Office
(www.gpo.gov)
[FR Doc No: 08-140]

Appendix F Canadian Passport Order SI/81-86: Schedule Additional Information

Sex *

- 4 (1) Where the sex indicated in an application for a passport is not the same as that set out in that applicant's birth certificate, the applicant may be requested to provide an explanation.
- (2) Where an application for a passport indicates that a change of sex of the applicant has taken place, the applicant may be requested to submit a certificate from a medical practitioner to substantiate the statement.

Identity Management: Change of sex designation for reasons other than a clerical or administrative error †

Historical records, such as an immigration record of landing or a Confirmation of Permanent Residence, will not be amended unless a clerical or administrative error was made by Immigration, Refugees and Citizenship Canada (IRCC). In such instances, the officer should follow the instructions in *Change of sex designation due to a clerical or administrative error*.

For other records, below are the general documents that can be submitted to support a request to change the sex designation on IRCC documents.

* "Canadian Passport Order SI/81-86" (February 3, 2016), <http://laws-loisjusticegccca/PDF/SI-81-86pdf>, <http://laws-lois.justice.gc.ca>, Schedule, Section 8 Additional Information: Sex 4(1)(2)

† "Identity Management: Change of sex designation for reasons other than a clerical or administrative error" (March 23, 2016), *Government of Canada, Citizenship and Immigration Canada, Communications Branch*, <http://www.cic.gc.ca/english/resources/tools/id/designation/request.asp>

In addition to the documentary evidence listed below, the applicant must still provide any documents requested as part of the application instruction guide and document checklist to establish identity.

Additional documentation may be requested during the processing of the application. If anything further is required, the officer should contact the applicant.

Acceptable documents

The following are the three options for documents that can be submitted in order to request a change of sex designation on IRCC documents.

Documents issued by Canadian provinces or territories

- * Legal document issued by provincial or territorial vital statistics organizations indicating a change in sex designation
- * Court order
- * Amended birth certificate indicating a change in sex designation

If the applicant appears to be eligible for the listed documents issued by Canadian provinces or territories and has not provided adequate reasoning for why a provincial or territorial document was not submitted in their statutory declaration, the application should be returned as incomplete and the applicant should be advised to reapply with the required documentation. See the section on the statutory declaration to request a change of sex designation for acceptable reasons.

Proof of sex reassignment surgery

IRCC does not require proof of any sex reassignment surgery in order to amend the sex designation on documents. However, an applicant can, in order to support their request to change their sex designation, submit proof of sex reassignment surgery (partial or full) from a medical practitioner in good standing with the regulatory body under which they practise.

Applicants unable to obtain documents issued by Canadian provinces or territories

If the applicant is unable to obtain or is ineligible for the provincial or territorial documents listed, they must submit the following two documents in English or French:

- ✳ a statutory declaration stating that the applicant's gender identity corresponds with the requested change in sex designation and that they are living full time in the gender corresponding to the sex designation requested to appear on the IRCC document, along with a reason why a provincial or territorial document was not issued; and
- ✳ a letter from an authorized physician or psychologist following the template provided by IRCC stating that they
 - are a practising member in good standing with the appropriate regulatory body,
 - have treated or evaluated the applicant, and
 - confirm that the applicant's gender identity does not correspond with the sex designation on their IRCC document.

Additional requirements

Complete statutory declaration

On the statutory declaration, applicants are required to provide reasons why they are not providing an amended birth certificate or legal order issued by a provincial or territorial vital statistics organization indicating a change in sex designation.

If the applicant has not provided a reason, the officer should return the entire application as incomplete.

Witnesses

In Canada, a statutory declaration attesting to the applicant's gender identity must be sworn in the presence of one of the following:

- ✳ a notary public;
- ✳ a commissioner of taking oaths; or
- ✳ a commissioner of taking affidavits.

Outside Canada, it must be sworn in the presence of a notary public.

Signature of a parent or legal guardian for minors

If a change of sex designation is being requested on an application for proof of citizenship, a grant of citizenship, permanent residency or a permanent resident card for an individual under 18 years of age, both the applicant and their parent or legal guardian will need to sign and provide proof of parentage or legal guardianship, as stipulated within the appropriate jurisdiction.

Letter from a medical professional

The requirement that a medical professional in Canada be a practising member in good standing with the respective regulatory body should be verified, where possible, on provincial or territorial regulatory bodies' public websites.

- ✧ Ontario
 - College of Physicians and Surgeons of Ontario
 - College of Psychologists of Ontario
- ✧ Quebec
 - Collège des médecins du Québec
 - Ordre des psychologues du Québec
- ✧ Nova Scotia
 - College of Physicians and Surgeons of Nova Scotia
 - The Nova Scotia Board of Examiners in Psychology
- ✧ Newfoundland and Labrador
 - College of Physicians and Surgeons of Newfoundland and Labrador
 - Newfoundland and Labrador Psychology Board
- ✧ Prince Edward Island
 - College of Physicians and Surgeons of Prince Edward Island
 - PEI Psychologists Registration Board
- ✧ New Brunswick
 - College of Physicians and Surgeons of New Brunswick
 - College of Psychologists of New Brunswick
- ✧ Manitoba
 - College of Physicians and Surgeons of Manitoba
 - Psychological Association of Manitoba
- ✧ Saskatchewan
 - College of Physicians and Surgeons of Saskatchewan
 - Saskatchewan College of Psychologists
- ✧ Alberta
 - College of Physicians and Surgeons of Alberta
 - College of Alberta Psychologists
- ✧ British Columbia
 - College of Physicians and Surgeons of British Columbia
 - College of Psychologists of British Columbia
- ✧ Yukon
 - Yukon Medical Council
 - No association for psychologists
- ✧ Northwest Territories
 - The Northwest Territories does not have a college of physicians and surgeons. Practitioners within the territory must be eligible to practise in their own home province or territory and can therefore be verified on the appropriate provincial or territorial college's website.
 - Registrar of Psychologists, Department of Health and Social Services
8th Floor, Centre Square Tower
Government of the Northwest Territories,
Box 1320
Yellowknife, Northwest Territories X1A 2L9
Telephone: 867-920-8058
- ✧ Nunavut
 - Nunavut does not have a college of physicians and surgeons. Practitioners within the territory must be eligible to practise in their own home province and can therefore be verified on the appropriate provincial or territorial college's website.
 - Registrar, Professional Licensing, Nunavut Health and Social Services
Government of Nunavut, Box 390
Kugluktuk, Nunavut X0B 0E0
Telephone: 867-982-7668

Further documentary evidence required by line of business

Applicants may be required to submit further documentary evidence, according to the line of business and where the documentation originated.

Where documentary evidence originates in Canada

Citizenship and permanent residence

For the citizenship and permanent residence lines of business, if the documentary evidence provided by the applicant originates in Canada, the applicant must submit

- ✳ a document issued by a Canadian province or territory indicating the change of sex designation, or a statutory declaration and a letter from a medical professional if they are unable to obtain a document issued by a Canadian province or territory; and
- ✳ a signed copy of a *Request for permanent resident card indicating sex different from foreign travel document* if they are applying for changes to a permanent resident card but have not amended their foreign passport or travel document. It should be noted that this document need only be signed by the applicant and does not need to be co-signed by a witness.

See *Change of sex designation for reasons other than clerical or administrative error* for more information.

Temporary residence

For the temporary residence line of business, the sex designation indicated on the IRCC document must reflect what is indicated on the foreign passport.

If an applicant with a valid temporary resident document (such as a work permit, study permit, temporary resident permit, temporary resident visa or visitor record) has their foreign passport amended to reflect a change in sex designation, they will need to apply for a new document, along with all relevant application-related supporting documents, including a linking document for a change of sex designation.

Where documentary evidence originates outside Canada

Citizenship

For the citizenship line of business, if the documentary evidence provided originates outside Canada, the applicant must submit

- ✳ a document indicating a change of sex designation, such as a legal order, court order or amended birth certificate, or a statutory declaration and accompanying letter from a medical professional; and
- ✳ photo identification issued by the national, state or provincial (or equivalent) authority where they reside that indicates the amended sex designation.

If the applicant is unable to obtain the supplementary photo identification in the requested sex designation, they must provide a reason (such as fear of persecution or inability to amend foreign documents prior to amending Canadian documents). If photo identification is not provided and the applicant fails to provide an adequate reason, the application must be returned as incomplete.

For applicants residing in Canada, supplementary photo identification can include the following documents issued by a Canadian province or territory:

- ✳ a driver's license;
- ✳ a health card;
- ✳ an age of majority card;
- ✳ a social services card; or
- ✳ a senior citizen identification card.

For applicants residing outside Canada, supplementary photo identification can include

- ✳ an amended foreign passport, for dual Canadian citizens; or
- ✳ a national or state identification card.

Note: Any copy of a foreign passport or national authoritative document should show the document type and number, issuance date and expiry date and the applicant's full name, photo and date of birth.

Permanent residence and temporary residence

For permanent residence and temporary residence, if the documentary evidence provided originates outside Canada, the applicant's foreign passport must first be amended to indicate the amended sex designation.

The applicant must provide a linking document used as evidence of a change of sex designation that will be copied or scanned and kept in the applicant's file.

For permanent residence and temporary residence lines of business, if the foreign passport has been amended to indicate the requested sex designation, the applicant must submit

- ✦ a copy of their foreign passport or other national authoritative document amended to reflect the requested sex designation; **and**
- ✦ a document indicating a change of sex designation, such as a legal order, court order or amended birth certificate, or a statutory declaration and accompanying letter from a medical professional, with an official translation if not in English or French; **and**
- ✦ photo identification issued by the national, state or provincial (or equivalent) authority where they reside that indicates the amended sex designation.

For applicants residing in Canada, supplementary photo identification can include the following documents issued by a Canadian province or territory:

- ✦ a driver's license;
- ✦ a health card;
- ✦ an age of majority card;
- ✦ a social services card; or
- ✦ a senior citizen identification card.

For applicants residing outside Canada, supplementary photo identification can include the following documents (with an official translation):

- ✦ a national or state identification card; or
- ✦ a foreign passport (in addition to the primary one being used for the application), if the applicant is a dual citizen.

Note: Any copy of a foreign passport or national authoritative document should show the document type and number, issuance and expiry dates and the applicant's full name, photo and date of birth.

Recording information regarding change of sex designation requests in GCMS

In all cases, a client note must be recorded to the applicant's unique client identifier (UCI) in GCMS, and the applicant must be notified of the decision to grant or deny the change. If the applicant's request to change the sex designation on their document is granted, the amended sex designation will be recorded in the appropriate field for sex designation (typically Sex or Gender). Once the amended sex designation is recorded, the officer should ensure that the previous sex designation is indicated as the former sex designation.

If the applicant's request to change the sex designation on their document is denied, the officer should ensure that notes on the applicant's record indicate that a request was made as well as the reasons for denying it.

Date Modified: 2016-03-23

**safe drivers
safe vehicles
secure identities
saving lives!**



American Association of Motor Vehicle Administrators
4401 Wilson Boulevard, Suite 700
Arlington, Virginia 22203
703.522.4200 | aamva.org

SOCIAL SECURITY ADMINISTRATION

Application for a Social Security Card

Applying for a Social Security Card is free!

USE THIS APPLICATION TO:

- Apply for an original Social Security card
- Apply for a replacement Social Security card
- Change or correct information on your Social Security number record

IMPORTANT: You **MUST** provide a properly completed application and the required evidence before we can process your application. We can only accept original documents or documents certified by the custodian of the original record. Notarized copies or photocopies which have not been certified by the custodian of the record are not acceptable. We will return any documents submitted with your application. For assistance call us at 1-800-772-1213 or visit our website at www.socialsecurity.gov.

Original Social Security Card

To apply for an original card, you must provide at least two documents to prove age, identity, and U.S. citizenship or current lawful, work-authorized immigration status. If you are not a U.S. citizen and do not have DHS work authorization, you must prove that you have a valid non-work reason for requesting a card. See page 2 for an explanation of acceptable documents.

NOTE: If you are age 12 or older and have never received a Social Security number, you must apply in person.

Replacement Social Security Card

To apply for a replacement card, you must provide one document to prove your identity. If you were born outside the U.S., you must also provide documents to prove your U.S. citizenship or current, lawful, work-authorized status. See page 2 for an explanation of acceptable documents.

Changing Information on Your Social Security Record

To change the information on your Social Security number record (i.e., a name or citizenship change, or corrected date of birth) you must provide documents to prove your identity, support the requested change, and establish the reason for the change. For example, you may provide a birth certificate to show your correct date of birth. A document supporting a name change must be recent and identify you by both your old and new names. If the name change event occurred over two years ago or if the name change document does not have enough information to prove your identity, you must also provide documents to prove your identity in your prior name and/or in some cases your new legal name. If you were born outside the U.S. you must provide a document to prove your U.S. citizenship or current lawful, work-authorized status. See page 2 for an explanation of acceptable documents.

LIMITS ON REPLACEMENT SOCIAL SECURITY CARDS

Public Law 108-458 limits the number of replacement Social Security cards you may receive to 3 per calendar year and 10 in a lifetime. Cards issued to reflect changes to your legal name or changes to a work authorization legend do not count toward these limits. We may also grant exceptions to these limits if you provide evidence from an official source to establish that a Social Security card is required.

IF YOU HAVE ANY QUESTIONS

If you have any questions about this form or about the evidence documents you must provide, please visit our website at www.socialsecurity.gov for additional information as well as locations of our offices and Social Security Card Centers. You may also call Social Security at 1-800-772-1213. You can also find your nearest office or Card Center in your local phone book.

EVIDENCE DOCUMENTS

The following lists are examples of the types of documents you must provide with your application and are not all inclusive. Call us at 1-800-772-1213 if you cannot provide these documents.

IMPORTANT : If you are completing this application on behalf of someone else, you must provide evidence that shows your authority to sign the application as well as documents to prove your identity and the identity of the person for whom you are filing the application. We can only accept original documents or documents certified by the custodian of the original record. Notarized copies or photocopies which have not been certified by the custodian of the record are not acceptable.

Evidence of Age

In general, you must provide your birth certificate. In some situations, we may accept another document that shows your age. Some of the other documents we may accept are:

- U.S. hospital record of your birth (created at the time of birth)
- Religious record established before age five showing your age or date of birth
- Passport
- Final Adoption Decree (the adoption decree must show that the birth information was taken from the original birth certificate)

Evidence of Identity

You must provide current, unexpired evidence of identity in your legal name. Your legal name will be shown on the Social Security card. Generally, we prefer to see documents issued in the U.S. Documents you submit to establish identity must show your legal name AND provide biographical information (your date of birth, age, or parents' names) **and/or** physical information (photograph, or physical description - height, eye and hair color, etc.). If you send a photo identity document but do not appear in person, the document must show your biographical information (e.g., your date of birth, age, or parents' names). Generally, documents without an expiration date should have been issued within the past two years for adults and within the past four years for children.

As proof of your identity, you must provide a:

- U.S. driver's license; or
- U.S. State-issued non-driver identity card; or
- U.S. passport

If you do not have one of the documents above or cannot get a replacement within 10 work days, we may accept other documents that show your legal name and biographical information, such as a U.S. military identity card, Certificate of Naturalization, employee identity card, certified copy of medical record (clinic, doctor or hospital), health insurance card, Medicaid card, or school identity card/record. For young children, we may accept medical records (clinic, doctor, or hospital) maintained by the medical provider. We may also accept a final adoption decree, or a school identity card, or other school record maintained by the school.

If you are not a U.S. citizen, we must see your current U.S. immigration document(s) and your foreign passport with biographical information or photograph.

WE CANNOT ACCEPT A BIRTH CERTIFICATE, HOSPITAL SOUVENIR BIRTH CERTIFICATE, SOCIAL SECURITY CARD STUB OR A SOCIAL SECURITY RECORD as evidence of identity.

Evidence of U.S. Citizenship

In general, you must provide your U.S. birth certificate or U.S. Passport. Other documents you may provide are a Consular Report of Birth, Certificate of Citizenship, or Certificate of Naturalization.

Evidence of Immigration Status

You must provide a current unexpired document issued to you by the Department of Homeland Security (DHS) showing your immigration status, such as Form I-551, I-94, or I-766. If you are an international student or exchange visitor, you may need to provide additional documents, such as Form I-20, DS-2019, or a letter authorizing employment from your school and employer (F-1) or sponsor (J-1). We CANNOT accept a receipt showing you applied for the document. If you are not authorized to work in the U.S., we can issue you a Social Security card only if you need the number for a valid non-work reason. Your card will be marked to show you cannot work and if you do work, we will notify DHS. See page 3, item 5 for more information.

HOW TO COMPLETE THIS APPLICATION

Complete and sign this application LEGIBLY using ONLY black or blue ink on the attached or downloaded form using only 8 ½" x 11" (or A4 8.25" x 11.7") paper.

GENERAL: Items on the form are self-explanatory or are discussed below. The numbers match the numbered items on the form. If you are completing this form for someone else, please complete the items as they apply to that person.

4. Show the month, day, and full (4 digit) year of birth; for example, "1998" for year of birth.
5. If you check "Legal Alien Not Allowed to Work" or "Other," you must provide a document from a U.S. Federal, State, or local government agency that explains why you need a Social Security number and that you meet all the requirements for the government benefit. NOTE: Most agencies do not require that you have a Social Security number. Contact us to see if your reason qualifies for a Social Security number.
- 6., 7. Providing race and ethnicity information is voluntary and is requested for informational and statistical purposes only. Your choice whether to answer or not does not affect decisions we make on your application. If you do provide this information, we will treat it very carefully.
- 9.B., 10.B. If you are applying for an original Social Security card for a child under age 18, you **MUST** show the parents' Social Security numbers unless the parent was never assigned a Social Security number. If the number is not known and you cannot obtain it, check the "unknown" box.
13. If the date of birth you show in item 4 is different from the date of birth currently shown on your Social Security record, show the date of birth currently shown on your record in item 13 and provide evidence to support the date of birth shown in item 4.
16. Show an address where you can receive your card 7 to 14 days from now.
17. **WHO CAN SIGN THE APPLICATION?** If you are age 18 or older and are physically and mentally capable of reading and completing the application, you must sign in item 17. If you are under age 18, you may either sign yourself, or a parent or legal guardian may sign for you. If you are over age 18 and cannot sign on your own behalf, a legal guardian, parent, or close relative may generally sign for you. If you cannot sign your name, you should sign with an "X" mark and have two people sign as witnesses in the space beside the mark. Please do not alter your signature by including additional information on the signature line as this may invalidate your application. Call us if you have questions about who may sign your application.

HOW TO SUBMIT THIS APPLICATION

In most cases, you can take or mail this signed application with your documents to any Social Security office. Any documents you mail to us will be returned to you. Go to <https://secure.ssa.gov/apps6z/FOLO/fo001.jsp> to find the Social Security office or Social Security Card Center that serves your area.

PROTECT YOUR SOCIAL SECURITY NUMBER AND CARD

Protect your SSN card and number from loss and identity theft. DO NOT carry your SSN card with you. Keep it in a secure location and only take it with you when you must show the card; e.g., to obtain a new job, open a new bank account, or to obtain benefits from certain U.S. agencies. Use caution in giving out your Social Security number to others, particularly during phone, mail, email and Internet requests you did not initiate.

PRIVACY ACT STATEMENT

Collection and Use of Personal Information

Sections 205(c) and 702 of the Social Security Act, as amended, authorize us to collect this information. The information you provide will be used to assign you a Social Security number and issue a Social Security card.

The information you furnish on this form is voluntary. However, failure to provide the requested information may prevent us from issuing you a Social Security number and card.

We rarely use the information you supply for any purpose other than for issuing a Social Security number and card. However, we may use it for the administration and integrity of Social Security programs. We may also disclose information to another person or to another agency in accordance with approved routine uses, which include but are not limited to the following:

1. To enable a third party or an agency to assist Social Security in establishing rights to Social Security benefits and/or coverage;
2. To comply with Federal laws requiring the release of information from Social Security records (e.g., to the Government Accountability Office and Department of Veterans' Affairs);
3. To make determinations for eligibility in similar health and income maintenance programs at the Federal, State, and local level; and
4. To facilitate statistical research, audit or investigative activities necessary to assure the integrity of Social Security programs.

We may also use the information you provide in computer matching programs. Matching programs compare our records with records kept by other Federal, State, or local government agencies. Information from these matching programs can be used to establish or verify a person's eligibility for Federally-funded or administered benefit programs and for repayment of payments or delinquent debts under these programs.

Complete lists of routine uses for this information are available in System of Records Notice 60-0058 (Master Files of Social Security Number (SSN) Holders and SSN Applications). The Notice, additional information regarding this form, and information regarding our systems and programs, are available on-line at www.socialsecurity.gov or at any local Social Security office.

This information collection meets the requirements of 44 U.S.C. §3507, as amended by Section 2 of the Paperwork Reduction Act of 1995. You do not need to answer these questions unless we display a valid Office of Management and Budget control number. We estimate that it will take about 8.5 to 9.5 minutes to read the instructions, gather the facts, and answer the questions. You may send comments on our time estimate to: SSA, 6401 Security Blvd., Baltimore, MD 21235-6401. **Send only comments relating to our time estimate to this address, not the completed form.**

SOCIAL SECURITY ADMINISTRATION

Application for a Social Security Card

Form Approved
OMB No. 0960-0066

1	NAME TO BE SHOWN ON CARD		First	Full Middle Name	Last										
	FULL NAME AT BIRTH IF OTHER THAN ABOVE		First	Full Middle Name	Last										
	OTHER NAMES USED														
2	Social Security number previously assigned to the person listed in item 1			<table border="1" style="display:inline-table; border-collapse: collapse;"> <tr> <td style="width:20px; height:20px;"></td> <td style="width:20px; height:20px;"></td> <td style="width:20px; height:20px;"></td> <td style="width:20px; height:20px;"></td> <td style="width:20px; height:20px;"></td> <td style="width:20px; height:20px;"></td> <td style="width:20px; height:20px;"></td> <td style="width:20px; height:20px;"></td> <td style="width:20px; height:20px;"></td> <td style="width:20px; height:20px;"></td> </tr> </table>											
3	PLACE OF BIRTH (Do Not Abbreviate)			4	DATE OF BIRTH										
			City	State or Foreign Country	MM/DD/YYYY										
			Office Use Only	FCI											
5	CITIZENSHIP (Check One)		<input type="checkbox"/> U.S. Citizen	<input type="checkbox"/> Legal Alien Allowed To Work	<input type="checkbox"/> Legal Alien Not Allowed To Work(See Instructions On Page 3)										
			<input type="checkbox"/> Other (See Instructions On Page 3)												
6	ETHNICITY Are You Hispanic or Latino? (Your Response is Voluntary)		7	RACE Select One or More (Your Response is Voluntary)											
		<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Native Hawaiian <input type="checkbox"/> American Indian <input type="checkbox"/> Other Pacific Islander <input type="checkbox"/> Alaska Native <input type="checkbox"/> Black/African American <input type="checkbox"/> White <input type="checkbox"/> Asian												
8	SEX		<input type="checkbox"/> Male <input type="checkbox"/> Female												
9	A. PARENT/ MOTHER'S NAME AT HER BIRTH		First	Full Middle Name	Last										
	B. PARENT/ MOTHER'S SOCIAL SECURITY NUMBER (See instructions for 9 B on Page 3)		<table border="1" style="display:inline-table; border-collapse: collapse;"> <tr> <td style="width:20px; height:20px;"></td> <td style="width:20px; height:20px;"></td> <td style="width:20px; height:20px;"></td> <td style="width:20px; height:20px;"></td> <td style="width:20px; height:20px;"></td> <td style="width:20px; height:20px;"></td> <td style="width:20px; height:20px;"></td> <td style="width:20px; height:20px;"></td> <td style="width:20px; height:20px;"></td> <td style="width:20px; height:20px;"></td> </tr> </table> <input type="checkbox"/> Unknown												
10	A. PARENT/ FATHER'S NAME		First	Full Middle Name	Last										
	B. PARENT/ FATHER'S SOCIAL SECURITY NUMBER (See instructions for 10B on Page 3)		<table border="1" style="display:inline-table; border-collapse: collapse;"> <tr> <td style="width:20px; height:20px;"></td> <td style="width:20px; height:20px;"></td> <td style="width:20px; height:20px;"></td> <td style="width:20px; height:20px;"></td> <td style="width:20px; height:20px;"></td> <td style="width:20px; height:20px;"></td> <td style="width:20px; height:20px;"></td> <td style="width:20px; height:20px;"></td> <td style="width:20px; height:20px;"></td> <td style="width:20px; height:20px;"></td> </tr> </table> <input type="checkbox"/> Unknown												
11	Has the person listed in item 1 or anyone acting on his/her behalf ever filed for or received a Social Security number card before?														
<input type="checkbox"/> Yes (If "yes" answer questions 12-13) <input type="checkbox"/> No <input type="checkbox"/> Don't Know (If "don't know," skip to question 14.)															
12	Name shown on the most recent Social Security card issued for the person listed in item 1		First	Full Middle Name	Last										
13	Enter any different date of birth if used on an earlier application for a card			<table border="1" style="display:inline-table; border-collapse: collapse;"> <tr> <td style="width:20px; height:20px;"></td> <td style="width:20px; height:20px;"></td> <td style="width:20px; height:20px;"></td> <td style="width:20px; height:20px;"></td> <td style="width:20px; height:20px;"></td> <td style="width:20px; height:20px;"></td> </tr> </table> MM/DD/YYYY											
14	TODAY'S DATE		15		DAYTIME PHONE NUMBER										
		MM/DD/YYYY			Area Code Number										
16	MAILING ADDRESS (Do Not Abbreviate)		Street Address, Apt. No., PO Box, Rural Route No.												
			City	State/Foreign Country	ZIP Code										
17	I declare under penalty of perjury that I have examined all the information on this form, and on any accompanying statements or forms, and it is true and correct to the best to my knowledge.														
	YOUR SIGNATURE		18												
		YOUR RELATIONSHIP TO THE PERSON IN ITEM 1 IS:													
		<input type="checkbox"/> Self <input type="checkbox"/> Natural Or Adoptive Parent <input type="checkbox"/> Legal Guardian <input type="checkbox"/> Other Specify													
DO NOT WRITE BELOW THIS LINE (FOR SSA USE ONLY)															
NPN		DOC	NTI	CAN	ITV										
PBC	EVI	EVA	EVC	PRA	NWR										
					DNR										
					UNIT										
EVIDENCE SUBMITTED				SIGNATURE AND TITLE OF EMPLOYEE(S) REVIEWING EVIDENCE AND/OR CONDUCTING INTERVIEW											
				DATE											
				DATE											

Social Security

Program Operations Manual System (POMS)

TN 5 (06-13)

RM 10212.200 Changing Numident Data for Reasons other than Name Change

A. How we change Numident data

We only “correct” or “change” information that is on a prior Numident record when there is a documented keying error.

In cases of a keying error, you must review the prior Social Security number (SSN) application; however, do not presume there was a keying error. If you cannot review the prior application, obtain a new application with proper evidence. The individual must submit evidence showing the correct data or information (e.g., a BC to correct an individual’s sex field information) with evidence established before the cycle date on the Numident entry where the keying error was made.

If an individual wishes to update information previously submitted to us, the individual must complete and submit an SSN replacement application with evidence supporting the update, and we will create a new record showing the new data and append it to the prior record(s) on the Numident.

Keying Errors: See Details

- For instructions on date of birth (DOB) changes on the Numident, see RM 10210.295.
- For instructions on correcting a coding error that resulted in an incorrect employment legend on the SSN card, see RM 10215.055.

B. How do you create a new Numident entry to update data on the Numident

1. Request evidence

Each individual requesting an update of information on a current Numident record must submit:

- an SSN application for a replacement SSN or card;
- evidence of identity to establish that he or she is the person on the record to whom SSA assigned the SSN; and

- evidence to support the update per the chart in RM 10212.200B.2 in this section.

2. Obtain documentation

Use this table to determine the supporting documentation required for requested updates to the Numident and any additional actions needed.

NOTE: These procedures apply to updates only. In cases of keying errors, see the instructions in RM 10212.200A in this section.

For this update	Obtain this supporting documentation and follow any additional instructions
Sex field	<p>Accept any of the following:</p> <ul style="list-style-type: none"> • full-validity, 10-year U.S. passport with the new sex <p>NOTE: Do not accept passports with less than ten years of validity.;</p> <ul style="list-style-type: none"> • State-issued amended BC with the new sex; • court order directing legal recognition of change of sex; • medical certification of appropriate clinical treatment for gender transition in the form of an original signed statement from a licensed physician (i.e., a Doctor of Medicine (M.D.) or Doctor of Osteopathy (D.O.)). The statement must include the following: <ul style="list-style-type: none"> ◦ physician’s full name; ◦ medical license or certificate number; ◦ issuing state, country, or other jurisdiction of medical license or certificate; ◦ address and telephone number of the physician; ◦ language stating that the individual has had appropriate clinical treatment for gender transition to the new gender (male or female); ◦ language stating the physician has either treated the individual in relation to the individual’s change in gender or has reviewed and evaluated the medical history of the individual in relation to the individual’s change in gender and that the physician has a doctor/patient relationship with the individual; ◦ language stating “I declare under penalty of perjury under the laws of the United States that the forgoing is true and correct.”

	<p>NOTE: See RM 10212.200C in this section for a sample letter from a licensed physician that includes all required information to certify to the individual's gender change.</p> <p>IMPORTANT: Surgery is no longer required to change the sex field on the Numident. However, if an individual presents an original or certified letter from a physician stating the individual has undergone sexual reassignment surgery, accept it as evidence to change the sex field when it meets the requirements in GN 00301.030 and contains sufficient biographical data (e.g., name, date of birth) to clearly identify the individual.</p> <p>NOTE: In some cases an individual's sex may impact eligibility for benefits dependent upon spousal relationships. To make title II entitlement or title XVI eligibility determinations dependent upon marriage, follow the instructions in GN 00305.005B. Do not use sex field data on SSA records to make marital status determinations.</p>
Date of birth field	See Date of Birth Change on the Numident, in RM 10210.295.
Place of birth (PLB) field	<ul style="list-style-type: none"> • U.S. born: a BC • foreign born: an acceptable document such as a BC or an acceptable proof of age document listed in kinds of documents that establish age for an SSN card in RM 10210.265, provided the document also list the individual's PLB.

Citizenship field	<p>Evidence of U.S. citizenship:</p> <ul style="list-style-type: none"> • U.S. public birth record showing birth in one of the 50 U.S. states, the District of Columbia, American Samoa, Puerto Rico, Guam, the Virgin Islands of the U.S. (on or after 01/17/1917), or the Northern Mariana Islands (on or after 11/04/1986 (NMI Local time), • U.S. passport, • Certificate of Naturalization, • Certificate of Citizenship, or • Other documents listed in RM 10210.505, RM 10210.510, RM 10210.520, and RM 10210.525. <p>Interviewers should request and obtain from the individual, the U.S. citizenship document with the highest evidence level available (i.e., the document exists or the individual can obtain the U.S. document within 10 working days) before accepting a document of a lower level. You may use primary, secondary, third-level, or fourth-level evidence to change the citizenship data on a Numident record.</p> <p>EXAMPLE: If primary evidence of U.S. citizenship is not available (does not exist or the individual cannot obtain the primary evidence in 10 working days), then the interviewer may accept secondary evidence to change the citizenship data on the Numident record.</p>
Parent's name field	<ul style="list-style-type: none"> • original or amended BC, or • final adoption decree issue by the court or court determination of paternity

3. Process the request

If you change the sex code on the Numident, and the individual is:

- receiving Social Security benefits,
- receiving Supplemental Security Income (SSI) payments, or
- a representative payee for his or her child,

change the sex immediately if it is different on the Master Benefit Record (MBR), the Supplemental Security Record (SSR), or in the Representative Payee System (RPS) to agree with the Numident. List all documents or evidence submitted to change the individual's sex code on the Social Security Number Application Process (SSNAP) Summary screen.

NOTE: For instructions on determining whether a valid marital relationship exists, see GN 00305.005B.

When changing a parent's name on a child's Numident record, ask the parent if he or she is a title II beneficiary, an SSI recipient, or a representative payee. If so, review the MBR, SSR, or RPS record and initiate or complete actions necessary to update the record (e.g., correcting a parent's name on the SSR record or ensuring that actions are taken to complete a new representative payee application). In the "Remarks" block on the SSNAP Summary screen, list any evidence or documents the individual submitted to change the following fields on the Numident, if not previously captured in SSNAP:

- sex field, or
- PLB field, or
- parent's name field.

4. When to suppress an SSN card

Process the requested change but **suppress** the issuance of a replacement SSN card when the correction will not affect any data on the face of the SSN card (i.e., changes to the sex, DOB, PLB, or parent's name fields on the Numident) **and** the individual is still in possession of the SSN card showing the correct information.

5. When to send written notice

Send a written notice if you are unable to provide an individual with an original or replacement SSN or card. Follow the appropriate instructions in:

- RM 00299.020 Form SSA-L676 – Refusal to Process SSN Application, or
- RM 10205.090 Form SS-5 Received and Additional Documentation is Needed, or
- RM 10215.110 Policy on Providing Written Notice and Second Review When SSN or Card May Not Be Issued, or
- RM 10215.115 Procedures for Providing Written Notice to an SSN Applicant.

See Details:

- RM 10210.265 Kinds of Documents that Establish Age for an SSN Card
- RM 10210.295 Date of Birth Change on the Numident
- RM 10210.505 Primary Level Evidence of U.S. Citizenship
- RM 10210.510 Secondary Level Evidence of U.S. Citizenship for a U.S. Born Applicant
- RM 10210.520 Third Level Evidence of U.S. Citizenship for a U.S. Born Applicant
- RM 10210.525 Fourth Level Evidence of U.S. Citizenship for a U.S. Born Applicant

- RM 10215.055 Correct a Coding Error that Resulted in an Incorrect Employment Legend on the SSN Card
- RM 10220.210 Evidence Requirements for Documentation of Harassment, Abuse, or Life Endangerment (HALE)
- GN 00301.030 Acceptability of Documentary Evidence
- GN 00301.080 Certification by Custodian of the Record
- GN 00301.045 Validity of Documents

C. Exhibit – Sample Letter from Licensed Physician Certifying to the Individual’s Gender Change

(Physician’s Address and Telephone Number)

I, (physician’s full name), (physician’s medical license or certificate number), (issuing U.S. State/Foreign Country of medical license/certificate), am the physician of (name of patient), with whom I have a doctor/patient relationship and whom I have treated (or with whom I have a doctor/patient relationship and whose medical history I have reviewed and evaluated).

(Name of patient) has had appropriate clinical treatment for gender transition to the new gender (specify new gender, male or female).

I declare under penalty of perjury under the laws of the United States that the forgoing is true and correct.

Signature of Physician

Typed Name of Physician

Date

To Link to this section - Use this URL:

<http://policy.ssa.gov/poms.nsf/lnx/0110212200>

RM 10212.200 - Changing Numident Data for Reasons other than Name Change -

09/30/2013

Batch run: 09/30/2013

Rev:09/30/2013



United States Department of State

Washington, D.C. 20520

May 1, 2017

Exhibit 46 – Use of a Third Sex Marker by Contracting States as Permitted by ICAO

The International Civil Aviation Organization (ICAO) is a specialized agency of the United Nations created in 1947 by the Convention on International Civil Aviation (the “Chicago Convention”). ICAO was created for the purpose of reaching consensus on international civil aviation practices and policies in support of a safe, efficient, secure, economically sustainable, and environmentally responsible civil aviation sector. Under Article 37 of the Chicago Convention, Contracting States undertook to collaborate in securing the highest practicable degree of uniformity in those regulations, standards, procedure and organization required for efficient and orderly civil aviation operations. Under this and other mandates, ICAO has developed and maintained international standards in Annex 9 to the Chicago Convention, “Facilitation.”

ICAO’s work on machine readable travel documents (MRTDs) began in 1968 with the establishment of a panel of passport experts charged with developing recommendations for a standardized passport book or card that would be machine readable, in the interest of accelerating the clearance of passengers through passport controls. In November 1980, ICAO published its initial guidance and recommendations for machine-readable travel documents (MRTDs), “A Passport with Machine Readable Capability” (ICAO Document 9303, now known as the First Edition of ICAO Doc 9303) (Exh. 48), which became the basis for the introduction of such passports by Australia, Canada, and the United States. ICAO’s production of standardized technical specifications for travel documents, and for the data contained in such documents, was aimed at building the level of confidence in the reliability of travel documents and in the effectiveness of procedures for inspection of air travelers. *See* ICAO Doc 9303, “Machine Readable Travel Documents,” 7th Edition, Part 1, “Introduction” (2015) (Exh. 50), at 2 (§ 3.1).

The European Community adopted resolutions in 1981 and 1982 calling for its contracting states to follow the specifications of Doc 9303 in a uniform European passport by January 1, 1985. In 2005, the then-188 Member States of ICAO approved a “Standard” – Standard 3.10 – requiring all Member States to begin issuing only machine-readable passports in accordance with Doc 9303 no later than 2010. ICAO’s most recent specifications for passports are published in the Seventh Edition of Doc 9303, published in 2015. *See id.*; ICAO Doc 9303, “Machine Readable Travel Documents,” 7th Edition, Part 4, “Specifications for Machine Readable Passports (MRPs) and other TD3 Size MRTDs” (2015) (Exh. 51).

Doc 9303 specifies the size and format of MRTDs to be issued by ICAO Member States, as well as the arrangement and content of the data contained in such documents. ICAO’s issuance of uniform standards assists ICAO Member States in issuing MRTDs that are compatible with the computerized systems used by other ICAO Member States. Since the First Edition of Doc 9303, ICAO has required detailed biodata such as the bearer’s sex to be included on travel documents in order to reduce the risk of such documents being issued to the wrong identity or multiple documents being issued to one identity. *See* “A Review of the Requirement to Display the Holder’s Gender on Travel Documents,” ICAO Technical Advisory Group on

Machine Readable Travel Documents Information Paper TAG/MRTD/21-IP/4 (Nov. 20, 2012) (Exh. 52), at 6. ICAO also considered the requirement for a sex marker to be valuable in assisting border officials in verifying a traveler's identity by performing a quick visual check of the sex indicated on the passport compared to the traveler. *See id.*

Each edition of Doc 9303 has specified that MRTDs, including passports, include a data field identifying the sex of the holder in both the printed and machine-readable zones. In specifying the permissible characters to be used to designate a holder's sex in both zones, Doc 9303 initially recognized only two designations, one for the sex of female and one for the sex of male. By 1999, a third permissible sex designation, "unspecified," had been added to both zones, to accommodate a person who did not wish their sex to be identified or where a Member State did not want to show this data. *See* ICAO Doc 9303, "Machine Readable Travel Documents," Part 1 – Machine Readable Passports, 4th Edition (1999) (Exh. 49). In the printed zone, Doc 9303 now provides that sex is shown as a personal data element in Field 11 (Zone II), as a single initial commonly used by the issuing country and, if applicable, followed by an oblique (/) and the capital letter "F" for female, "M" for male, or "X" for unspecified. *See* ICAO Doc 9303, "Machine Readable Travel Documents," 7th Edition, Part 4, "Specifications for Machine Readable Passports (MRPs) and other TD3 Size MRTDs" (2015) (Exh. 51), at 6 (§ 3.2 Fig. 4), 7 (§ 3.2 Fig. 6), and 14 (§ 4.1.1.1). In the machine-readable zone, sex is indicated in position 21 in the lower machine-readable line by "F" for female, "M" for male, or "<" (referred to by ICAO as the "filler character") for "unspecified." *Id.* at 19 (§ 4.2.2.2).

In Doc 9303, ICAO encouraged international interoperability by adopting a technical specification permitting, but not requiring, the use of "X" as an allowable designation of a passport holder's sex, for cases in which the sex of the individual issued a travel document was unspecified. Most countries, including the United States, do not issue passports or visas with the "unspecified" designation. *See* "Gender and Sex Designations for Identification Purposes: A Discussion on Inclusive Documentation for a Less Assimilationist Society," 3 *Wisc. J. Law, Gender & Society* 131 (2015) (Exh. 53); "Third Gender: A Short History," *Foreign Policy* (June 30, 2014) (Exh. 54). A small number of countries, applying varying standards, permit their citizens to qualify for an "X" sex marker in their passport not to indicate that their sex is unspecified or undetermined, but instead to designate a sex other than male or female. Australia, Bangladesh, Denmark, Malta, and New Zealand fall into this category. Also, India and Nepal have issued passports using sex markers in the printed zone other than "F," "M," or "X" to indicate a sex other than male or female. To ensure machine-readability of such passports at foreign borders, in the machine-readable zone these countries use the filler character ("<") specified by ICAO for use when sex is unspecified or undetermined.

Because the U.S. does not issue visas or other travel documents with the "unspecified" designation, a holder of a foreign passport bearing an "X" in the printed zone and "<" in the machine-readable zone who wishes to travel to the United States is required to select a sex of "F" for female or "M" for male on their U.S. visa application submitted to the Department or, for nationals of visa waiver program countries who issue such passports, on their ESTA application submitted to U.S. Customs and Border Protection.



AT-WP/1183
13/9/74

INTERNATIONAL CIVIL AVIATION ORGANIZATION

83RD SESSION OF THE COUNCIL

AIR TRANSPORT COMMITTEE

Subject No. 15.4: Facilitation

FOURTH REPORT OF THE PANEL ON PASSPORT CARDS

(Presented by the Acting Director, Air Transport Bureau)

References: Report of the 8th FAL Division, Doc 9055-FAL/8 (1973)
Annex 9, Seventh Edition

Introduction

1. It will be recalled that the Eighth Session of the FAL Division reviewed the work of the Panel on Passport Cards and, as a result, adopted Recommendation No. B-5 (cf. page 3-17 of Doc 9055). The Council subsequently approved this recommendation and directed, inter alia, that the Panel should continue its work with the aim of concluding it through a final meeting by mid-1974 and that the results of the Panel's study should be published for the information of Contracting States (cf. "yellow-paged" Supplement 1 to the Division's Report).
2. Accordingly, the Panel held its Fourth Meeting from 2-11 July 1974 at ICAO Headquarters. The Report of the meeting (ICAO/PPC - FOURTH REPORT) is attached hereto for the Committee's consideration. It consists of three parts:
 - Part I (pp. 3 to 5 of the Report) dealing with the organization of the meeting;
 - Part II (pp. 7 to 19) reflecting the discussions which took place on the various issues; and
 - Part III (pp. 21 to 62) containing a draft document for publication, after ATC consideration, as per Rec. No. B-5 of FAL/8 and Council's action thereon.
3. The Panel's terms of reference as approved by the Air Transport Committee during the 65th Session in 1968 are shown on pp. 25 and 26 of the attached Report. A Summary of the draft document in Part III appears on pp. 28 and 29. It will be noted that the Panel made five recommendations which have been included in the appropriate places in Part III, dealing with (1) issuance and acceptance of Passport Cards, (2) standard format and layout of the Passport Card, (3) data to be included in the magnetic tape, (4) certain guidelines for producing the Passport Card and (5) certain properties of materials for use in producing the Passport Card.

(66 pages)
E.F.S.

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- 2 -

4. In addition to the summary on pp. 28 and 29, the following highlights are offered in an attempt to assist the Committee in its consideration of the Panel's Report.

Definition of the Term Passport Card

5. During earlier stages of the Panel's work, it was recognized that the establishment of an appropriate document with electronically or mechanically readable inscriptions (apart from being visually readable), as called for by the terms of reference, could be accomplished only through the creation of a card-type passport. Since the state of technology at that time ruled out the possibility of incorporating machine-readable data in a conventional-type passport, the Panel concentrated its efforts on the design of a machine (and visually) readable Passport Card as reflected in its first three reports.

6. More recently, however, technological developments made the insertion of machine-readable data in conventional-type passports possible, as reported in a comprehensive study presented by one of the Panel Members. This study which the Panel considered, resulted in a proposal for an improved passport of the same size as previously agreed upon for the Passport Card, the inner front cover containing the bearer's personal data in the standard layout as on the Card, pages for visas and entry/exit stamps and a machine-readable zone on the inside back cover.

7. The five recommendations, referred to above, give States the option of issuing the new document in book form and/or in card form. At the same time, the Panel agreed to maintain the term Passport Card for the new document when issued in either form, implying that it considered the Passport Card, when issued by a State in book form, as a substantial improvement over the existing conventional passport and as a stepping stone toward eventual issuance by that State of the document in card form. An appropriate definition of the term Passport Card covering issuance in either form has therefore been developed and included in the Report as shown at the bottom of page 7 and on page 22.

8. It should be emphasized here that the Panel viewed the technical advances referred to above as a major breakthrough in this sphere and was convinced that the options now afforded to States would have the effect of more rapid and widespread introduction of machine-readable passport documents with the numerous advantages this may have.

Embossing of personal data on the Passport Card

9. Another decision the Panel took at its Fourth Meeting concerned the "embossed zone". The possible inclusion of embossed data on the Passport Card had been a controversial subject from the outset of the Panel's work. The merits and demerits of such a zone are discussed on pp. 11-13 of the Report and the Panel's decision to refrain from recommending the inclusion of embossed data on the Card came after long discussions on this subject. It might be added here that, with the state of today's technology, embossing could not be accomplished in the case where the new document was issued in book form and that new techniques would have to be awaited, had the Panel recommended otherwise.

The machine-readable zone of the Passport Card

10. It is this area that provided the Panel with the most difficult choices to be made. The different systems are outlined on pp. 13 to 16 of the Report and the Panel's preference for the magnetic track is recorded in paragraph 40. The question of protecting the holder's privacy, i.e. enabling him to verify the information included in the magnetic zone, and excluding the possibility of recording unauthorized data in any unused space within that zone, was considered technically feasible. However, for the reasons mentioned in para. 12 below, the most effective method of accomplishing this will need to be examined further by the Technical Advisers.

Cost estimates

11. Earlier cost estimates presented at previous Panel meetings were up-dated and included in Part III of the Report for the guidance of States which are planning to issue the Passport Card. The conclusion which the Panel drew from those estimated figures was that the cost of producing the Passport Card is not significantly different from that of producing the conventional passport (cf. p. 49, para. 87). As far as acceptance of the Passport Card for the purpose of temporary entry is concerned, the admitting State is not, of course, involved in any extra expenses whatsoever if it does not wish to use automatic readers (cf. p. 28, para. 15).

Other Business

12. It will be seen from the Report that there are some aspects of a technical nature which could not be resolved during the short period of the meeting and which need some further consideration. They include, e.g. the development of an encoding system for the recording of magnetic data, referred to in para. 43, p. 16, of the Report, with the resultant completion of Appendix 'E' on p. 56, the exact length of the magnetic track(s), determination of the recording density of magnetically encoded data, and prevention of recording unauthorized data. It is for this reason that the Panel has suggested, in para. 55 on p. 18, that continuing liaison be maintained between the Members' Technical Advisers under the co-ordination of the Panel Member of France to study those outstanding issues and advise ICAO of the results.

13. Meanwhile, the Committee may wish to proceed with the consideration of the Panel's Fourth Report, with the understanding that the outstanding technical details be included at the appropriate places in the document to be published as soon as they have been worked out by the technical advisers and cleared, through correspondence, with all Panel Members.

14. As far as the recommended action under clause 2 (ii) of Rec. No. B-5 of FAL/8 is concerned, i.e. the desirability of placing the matter under the auspices of some other appropriate international organization, the Council when approving this recommendation decided to consider this question "when the results have been published" (cf. Supplement 1 to Doc 9055-FAL/8 (1973)). This point will therefore be brought to the Committee's attention at a later session.

AT-WP/1183

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Action by the Air Transport Committee

15. The Air Transport Committee is invited to:
- a) note the Report of the Fourth Meeting of the Panel on Passport Cards, and
 - b) authorize the Secretary General, after receiving Panel Members' clearance of the outstanding technical specifications cited in para. 12 above, to publish Part III of the Panel's Fourth Report as an ICAO document in accordance with Council's action on clause 2 (1) of Rec. No. B-5 of FAL/8.

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ICAO/PPC - FOURTH REPORT
11/7/74

LETTER OF TRANSMITTAL

To: The Chairman, Air Transport Committee

From: The Chairman, Panel on Passport Cards

I have the honour to submit the Report of the Fourth Meeting of the ICAO Panel on Passport Cards, which was held in Montreal from 2 to 11 July 1974.



C.F. Woodiss
Chairman

Montreal, 11 July 1974

(62 pages)

PANEL ON PASSPORT CARDS
REPORT OF THE FOURTH MEETING
(Montreal, 2-11 July 1974)

PART I - ORGANIZATION OF THE MEETING

Duration

1. The Fourth Meeting of the Panel on Passport Cards was opened by Mr. B.J. Elle, Acting Director of the Air Transport Bureau, at 1030 hours on 2 July 1974. The meeting adjourned on 11 July 1974.

Attendance

2. The following Panel Members and Advisers were in attendance:

<u>Members</u>	<u>Advisers</u>	<u>Designated by</u>
Mr. T.A. Smith	Mr. G.H. Sturgess	Australia
Mr. R.J. Sutherland	Mr. A.J. Findlay Mr. W.C. Brown Mr. C. Châtillon Miss M. Greenwood Mr. G. Hutton	Canada
Mr. J. Maily	Mr. A.P. Voegtlin	France
Mr. S. Singh		India
Mr. J.K. Mutua		Kenya
Mr. B. Rydén	Mr. K.-E. Svensson	Sweden
Mr. C.F. Woodiss	Mr. F.R. Hayhurst	United Kingdom
Miss Frances G. Knight	Mr. J.F. Brooks Mr. F.T. Kubic	United States

Dr. Hertel, nominated by the Federal Republic of Germany, and Mr. Reznichenko, nominated by the USSR, were unable to attend the meeting.

The following Observers were in attendance:

<u>Observers</u>	<u>Designated by</u>
Mr. J. Brière	ICPO
Mr. C.W.R. Vallance	IATA

A complete list containing the names and addresses of all Panel Members and Observers is shown further below.

Officers and Secretariat

- The Chairman of the meeting was Mr. C.F. Woodiss.
- Mr. H.A. Seidelmann, Technical Officer, Facilitation and Joint Financing Branch, acted as Secretary of the meeting.

Languages

- The discussions were conducted in English and French and documentation was issued in those two languages.

Agenda

- The Agenda of the meeting, as approved by the President of the Council, was as follows:

- Agenda Item 1: General Observations concerning the Use of the Passport Card
- Agenda Item 2: Format and Layout of the Passport Card
- Agenda Item 3: Minimum Security Requirements for the Passport Card
- Agenda Item 4: Procedures and Systems for Use in connexion with the Passport Card
- Agenda Item 5: Estimated Cost Figures in connexion with the Production and Use of the Passport Card
- Agenda Item 6: Any Other Business

Documentation

- The following working papers were taken into consideration by the Panel in its discussions:

PPC/4-WP/1	PPC/4-WP/5	PPC/4-WP/9
PPC/4-WP/2	PPC/4-WP/6	
PPC/4-WP/3	PPC/4-WP/7	
PPC/4-WP/4	PPC/4-WP/8	

Working Arrangements

8. On several occasions the Panel established small Drafting Groups and Technical Working Groups for the purpose of developing proposals for inclusion in the appropriate sections of the Report. Otherwise the Panel met as a single body.

List of Members and Observers on the Panel on Passport Cards

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PART II - SUMMARY OF DISCUSSIONS

Agenda Item 1: General Observations concerning the Use of the Passport Card*

Studies presented to the Meeting

9. The Panel had before it for its consideration comprehensive studies undertaken by three Panel Members more recently: The Panel Member of France, Mr. Mally, had submitted material outlining the methods of production of the magnetic track passport card, reflected in PPC/4-WP's/4, 5 and 7. The Panel Member of the USA, Ms. Knight, had presented a study on the subject of passport travel document which was reproduced in PPC/4-WP/6 and the Panel Member of Germany, Dr. Hertel, had forwarded a study concerning the use of electronically readable passport cards, excerpts of which were included in PPC/4-WP/8. In addition, the Panel Member of Sweden, Mr. Rydén, submitted a paper on the subject of a new travel document for consideration by the Panel, i.e. PPC/4-WP/9.

10. The meeting had also before it a paper (PPC/4-WP/2) in which the results of the Panel's work to-date had been compiled, drafted by the Secretary in a form suitable for later publication as an ICAO document as requested in Recommendation No. B-5 of the 8th FAL Division and now awaiting the Panel's approval. The meeting agreed at the outset to use this working paper as a basis for its discussions, to attach the approved text as Part III to this Report and to consider the various points raised in the above-mentioned studies as they arose in relation to PPC/4-WP/2.

11. The meeting was also given a video demonstration, highlighting certain aspects of the study carried out in the USA as reflected in PPC/4-WP/6, followed by a question and answer period. Basically the US study was aimed at an improved travel document in book form incorporating machine readability. Some of the features of this document included a flexible vinyl cover; an insert containing personal information and "stick-on" photograph in type and layout as agreed upon by the Panel at its Third Meeting, security lamination covering the insert and stitched through the binding; visa pages with entry/exit stamp grid (4 or 6 grid design) and magnetic recording zone on inside rear cover.

*The term Passport Card as used throughout this Report includes a passport in card format as well as an improved conventional passport, both possessing machine-readable characteristics.

The study was based on extensive research undertaken over a two-year period and contained a large amount of technical details concerning the production and use of the travel document. In a question period which followed the demonstration, most of the queries raised were in connexion with the machine-readable part.

12. This presentation was followed by one of the Swedish Panel Member, who introduced a passport card model containing an optical encoding referred to in his PPC/4-WP/9 and demonstrated to the meeting the optical reading capability of this technique*.

13. The Member expressed the belief, inter alia, that this technique presented a substantially higher degree of security than the embossed characters if the Panel decided to substitute the latter by the optical encoding, that the costs of reader facilities for such a technique compared favourably with those for magnetic readers, that the cardholder would be able to verify the coded information by way of a code key to be issued to him and that no patents, royalties, etc. stood in the way of adopting this system worldwide.

14. A number of questions were raised and answered thereafter mainly in connexion with costs of production of a card with optical code, optical reading equipment, etc., but a decision concerning a possible recommendation for the use of that technique on Passport Cards was postponed until such time that the meeting reached the point on its agenda where it would discuss the machine readability of the Card.

Introductory Part and General Observations concerning the Use of the Passport Card

15. In keeping with its terms of reference, the Panel carefully considered the question of passport cards and came to the conclusion that a universal process of change from the conventional passport to a simplified machine-readable Card would be through a gradual process of evolution. The Panel was aware that some countries may be unable to make this change for some time to come for reasons such as financial, security and technological constraints.

16. Faced with the task of devising a suitable machine-readable Card for ultimate and universal adoption, the Panel devoted a great deal of time and effort in that direction. Considering, however, that such a Card could not be introduced universally in the near future, the Panel agreed that a viable interim measure might be an improved conventional passport with machine-readable characteristics. This improved

* Known as OPR = Optical Pattern Reading system.

conventional passport could include the format and information recommended for the Card as an integral part of the conventional passport. The Card could also be a separate document, being added to the conventional passport, for use at the same time as the passport for control purposes.

17. Therefore, as indicated in the footnote on page 7, the term Passport Card as used throughout this Report includes a passport in card format as well as an improved conventional passport, both possessing machine-readable characteristics.

18. On another point under this heading of general observations, the Panel noted that exit/entry stamps were frequently placed in passports without any chronological order, creating difficulties for immigration services, and felt that random placement of such stamps in passports could be avoided by utilizing a grid system as described in PPC/4-WP/6. The Panel also believed that in the case where stamping of passports on arrival and departure continues to be practiced, the State concerned should use exit/entry stamps of the smallest size possible, consistent with legibility. Stamps of different shapes for exit and entry would be desirable. In respect of visas, the Panel emphasized that they should be issued according to the specifications laid down in paras. 3.8.4 to 3.8.6 of Annex 9, 7th Edition and that it would be advantageous if the size of the visa could be kept to the minimum, again consistent with legibility.

19. It was also suggested that all forms of travel documentation used for the crossing of international frontiers should be standardized in format and content similar to what is being recommended in this Report for the Passport Card.

20. In proceeding with the consideration of PPC/4-WP/2 the Panel approved, with some amendments, the introductory part (cf. paras. 1 - 8 in Part III of this Report) and the section entitled "General observations concerning the use of the Passport Card" (cf. paras. 19 - 34 in Part III of this Report), including Recommendation No. 1.

Agenda Item 2: Format and Layout of the Passport Card
Dimensions of the Card, its Various Zones, etc.

21. Some discussions ensued on the overall size of the Card which had been agreed upon at the Third Meeting as being 88 mm (3.5") by 125 mm (4.9"). Proposals had been made for changes in this size, one by ISO as documented in PPC/4-WP/3 (for a format