

Comments in Support of Proposed Amendments to 7.2.2 NMAC Vital Records and Statistics

The National Center for Transgender Equality expresses full support for New Mexico’s proposed regulations to 7.2.2 NMAC “Vital Records and Statistics”, implementing SB 20 passed and signed by the governor in March 2019 on correction of the sex designation on vital records. The proposed regulations follow the statute and promote accuracy, accessibility, and privacy for tens of thousands of New Mexicans who may need to correct the sex designation on their birth certificates. The below testimony provides background information about why this new policy is so important and answers to common questions and concerns.

After these regulations are approved, we encourage the agency to implement this new policy using a form to ensure it is standardized and accessible to all applicants. Attached to these comments are a model Gender Designation Form as well as a few sample forms from other state vital records offices.

Transgender people may need to correct the sex designation on their birth certificates for practical, personal, and safety reasons

Birth certificates are a critical identity document used in many settings to verify an individual’s identity, and having an accurate gender marker is important for many practical reasons, in addition to validating a person’s intrinsic dignity. Birth certificates are often requested for purposes related to employment, education, and family law, to verify an individual’s identity, and specifically to verify their citizenship. Even in settings where birth certificates themselves are not required, other identity documents based on birth certificates are often required. In order to avoid discrimination in these situations, transgender individuals need access to birth certificates that accurately reflect their gender.

Medical professionals have long recognized the importance of updated identity documents as an intrinsic part of gender transition. The American Psychological Association 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 status as transgender for transgender people who permanently socially transition to another gender role.”¹

Correcting the sex designation on a birth certificates is important to help avoid discrimination and bias against transgender people. Data from the 2015 U.S. Transgender Survey—a national survey of nearly 28,000 transgender adults, including 213 New Mexico residents—shows that a lack of proper identification greatly contributes to discrimination. Over half (58 percent) of transgender respondents living in New Mexico did not have an ID with the name and gender they prefer. Over one third (37 percent) of transgender New Mexicans who showed ID that did not match their gender presentation were verbally harassed, denied benefits or services, asked to

¹ Am. Psychological Ass’n., *Transgender, Gender Identity, & Gender Expression Non-Discrimination* (2008), <http://www.apa.org/about/policy/transgender.aspx>.

leave, or assaulted.² As a result, it is critically important that transgender people be able to provide official documents to agencies, employers, schools, and more that correspond to their gender identity.

Requiring proof of surgery or any other specific medical treatment is outdated and discriminatory

A surgical requirement does not comport with current understandings in transgender health care, which recognize that gender transition is an individualized process that is not the same for all transgender people.³ The World Professional Association for Transgender Health (WPATH), an international medical society devoted to understanding and properly treating transgender people, released a statement in 2010 that urged “governments and other authoritative bodies to move to eliminate requirements for identity recognition that require surgical procedures.”⁴ The American Medical Association supports “elimination of any requirement that individuals undergo gender affirmation surgery in order to change their sex designation on birth certificates and supports modernizing state vital statistics statutes to ensure accurate gender markers on birth certificates.”⁵

Many transgender people cannot undergo surgery for a number of reasons, including fear of complications, the cost of surgery,⁶ inability to take time off school or work for the recovery period, and medical conditions that make surgery impossible. Furthermore, some people choose not to have surgery because they simply do not require it to feel comfortable in their gender. Removing the surgery requirement would allow transgender people and their healthcare providers to choose the correct course of treatment for each individual without compelling people to undergo surgery or other treatment that is unnecessary, inappropriate, or simply not possible.

Self-attestation reflects the most accurate information about a person’s gender identity

Self-attestation is when an individual reports, under penalty of perjury, information on an application that does not need to be verified by any secondary source. A person’s own report of their gender is the most accurate means of ascertaining the appropriate sex designation for their documents. Removing the need for a medical provider to confirm a person’s gender alleviates unnecessary, invasive, and often expensive burdens placed on transgender people seeking

² Sandy E. James et al., *2015 U.S. Transgender Survey: New Mexico State Report 3* (2017), <http://www.transequality.org/sites/default/files/docs/usts/USTSNMStateReport%281017%29.pdf>.

³ WORLD PROF'L ASSN. FOR TRANSGENDER HEALTH, *STANDARDS OF CARE* (7th ed. 2011)

⁴ Press Release, World Prof'l Assn. for Transgender Health (June 16, 2010), <http://www.wpath.org/documents/Identity%20Recognition%20Statement%206-6-10%20on%20letterhead.pdf>.

⁵ American Medical Association Policy Statement H-65.967: Conforming Birth Certificate Policies To Current Medical Standards For Transgender Patients, available at <https://policysearch.ama-assn.org/policyfinder/detail/transgender?uri=%2famadoc%2fhod.xml-0-5096.xml>, 2014.

⁶ Surgical treatments are often denied for coverage by public or private health insurance, which, combined with the fact that transgender people face nearly twice the rate of unemployment, makes the costs insurmountable for many. See *The U.S. Transgender Survey*, www.ustransurvey.org.

corrected birth certificates. The 2015 U.S. Transgender Survey reports that nearly 34 percent of transgender people living in New Mexico did not visit a doctor when they needed to in that year due to fear of mistreatment, and 35 percent did not seek medical help because of the cost.⁷ Those who did see a doctor often faced barriers to nondiscriminatory and culturally competent care, reflecting the challenges that many transgender people encounter when seeking medical provider certification for ID changes: 44 percent of transgender New Mexicans who saw a health care provider in the past year experienced some form of mistreatment, including being denied treatment due to being transgender, being harassed or assaulted, or having to teach providers about transgender people in order to get appropriate care.⁸ Removing medical attestation removes a huge barrier for many transgender people to access accurate IDs.

Additionally, removing the medical attestation requirement for updating the gender marker on a birth certificate is important for many individuals born with intersex conditions. Intersex refers to the almost 2% of the population born with combinations of chromosomes, hormones, secondary traits, or genitalia that transcend an outdated understanding of sex as a male/female binary.⁹ Many intersex individuals may have been assigned a sex designation at birth that does not align with who they are, and they may not require or desire clinical treatment, but may need to correct the sex designation on their birth certificate.

Many other state agencies have modernized or are in the process of updating their policies to recognize that self-attestation is the most accurate way to reflect an individual's sex designation on documents. Eight states plus New York City already issue updated sex designations on birth certificates without requiring documentation from a medical provider: California,¹⁰ Colorado¹¹, Oregon,¹² Washington,¹³ New Jersey,¹⁴ Idaho,¹⁵ Montana,¹⁶ Nevada,¹⁷ and New York City.¹⁸

In this regulation, the requirement for proof of surgical procedure is replaced by an affidavit by the applicant attesting that they are accurately representing their own gender. This attestation

⁷ *Supra note 2.*

⁸ *Id.*

⁹ InterACT definition, <https://interactadvocates.org/intersex-definitions/>.

¹⁰ California Gender Recognition Act, SB 179,

https://leginfo.legislature.ca.gov/faces/billCompareClient.xhtml?bill_id=201720180SB179.

¹¹ See Colorado Vital Statistics Rule 5 CCR 1006-1, *available at*

<https://drive.google.com/file/d/1BLMVFGIZziRMK0XIDUqPFh7L9Vq5yL5y/view>

¹² See Oregon Health Authority House Bill 2673 Information Sheet,

<https://www.oregon.gov/oha/PH/BIRTHDEATHCERTIFICATES/CHANGEVITALRECORDS/Documents/OHA-2673.pdf>.

¹³ Washington WAC 246-490-075, Changing sex designation on a birth certificate,

<http://app.leg.wa.gov/WAC/default.aspx?cite=246-490-075>.

¹⁴ New Jersey Babs Siperstein Law, https://www.njleg.state.nj.us/2018/Bills/A2000/1718_R2.PDF.

¹⁵ See Idaho Division of Public Health Instructions to Change the Indicator of Sex on an Idaho Birth Certificate to Reflect Gender Identity,

https://healthandwelfare.idaho.gov/Portals/0/Health/Vital%20Records/GenderChangePacket_4-18.pdf.

¹⁶ Montana Rule 37.8.311, Adoptions, Name Changes, and Gender Changes,

<http://www.mtrules.org/gateway/RuleNo.asp?RN=37.8.311>.

¹⁷ Nevada Administrative Code 440.030, [https://www.leg.state.nv.us/Register/RegsReviewed/\\$R066-16A.pdf](https://www.leg.state.nv.us/Register/RegsReviewed/$R066-16A.pdf).

¹⁸ New York City Health Code Article 207, <https://www1.nyc.gov/assets/doh/downloads/pdf/notice/2018/noa-amend-article207-section207-05.pdf>.

requirement removes unnecessary and expensive hurdles, and makes accurate, updated sex designations accessible for many more transgender and intersex people.

A gender neutral sex designation is important to ensure accuracy and privacy on vital records

Vital records departments and motor vehicle agencies across the country are beginning to offer gender neutral designations on birth certificates, driver's licenses, and state IDs across the country. The designation "X" has emerged as the standard gender neutral designation that allows documents and records to indicate a gender other than male or female. A gender-neutral option on birth certificates allows people whose gender is not male or female to display a more accurate gender marker. Many people have a gender identity that is not male or female.¹⁹ According to the 2015 U.S. Transgender Survey, more than one third (35 percent) of respondents nationally indicated that their gender identity was best described as non-binary or genderqueer.²⁰ Some people may use terms like "non-binary" to describe their gender identity, and others use a variety of other terms to describe their gender identity. A gender-neutral marker also allows people of any gender to have increased privacy around gender on their documents.

An "X" gender marker aligns with the sex designation standards of the International Civil Aviation Association (ICAO), an agency of the United Nations that sets standards for recognition of identity documents internationally. At least nine other states allow for an X designation on a birth certificate, and twelve states plus the District of Columbia allow an X designation on driver's licenses. It is not necessary to define the designation of "X" in the statute, and there should be no requirement regarding the bodily traits of an individual receiving the "X" designation; the regulation can simply allow for the option of "X" indicating a non-binary, undesignated, or other gender.

Conclusion: We Applaud and Support this Regulation

We support and approve of this regulation implementing the new bill and modernizing New Mexico's process for correction of sex designation on vital records. These proposed suggestions align with transgender people's needs to update the sex designation on their birth certificates, reaffirm contemporary healthcare standards, and would make the sex designation correction process accessible and practical for registrants. We encourage the vital records office to develop a streamlined form to implement this new policy and have attached a model forms and samples from other states. Do not hesitate to contact us if you have any additional questions.

Sincerely,

Arli Christian

Arli Christian
State Policy Director

¹⁹ See Nat'l Ctr. for Transgender Equality, *Understanding Non-Binary People: How to Be Respectful and Supportive* (2016), http://www.transequality.org/sites/default/files/docs/resources/Understanding-Non-Binary-July-2016_1.pdf.

²⁰ Sandy E. James et al., *The Report of the 2015 U.S. Transgender Survey* 45 (2016), www.ustranssurvey.org/report.

AFFIRMATION OF GENDER IDENTITY

In compliance with Section 24-14-25 NMSA, upon receipt of a statement signed under penalty of perjury by an individual born in this state, or the individual's parent, guardian or legal representative, indicating the gender identity of the individual, together with a certified copy of an order changing the name of the individual, if applicable, the certificate of birth of the individual shall be reissued to reflect a designation of male, female or X. The certificate of birth shall not be marked "amended."

INFORMATION ON BIRTH CERTIFICATE	
Name Listed on Birth Certificate (<i>Print</i>)	Date of Birth (<i>Month/Day/Year</i>)
REQUESTED AMENDMENTS	
New Name to be on Birth Certificate (if applicable) (<i>Print</i>) _____	
<input type="checkbox"/> Attached is documentation of legal name change	
Sex designation to be on Birth Certificate <input type="checkbox"/> Female <input type="checkbox"/> Male <input type="checkbox"/> X (undesigned/other)	
REQUESTOR INFORMATION	
<input type="checkbox"/> Individual listed on birth certificate <input type="checkbox"/> Parent, Guardian, or Legal Representative	
Current Full Name	
Mailing Address (to send amended birth certificate)	
City, State, Zip Code	
AFFIRMATION – of Individual OR Guardian	
Affirmation of Gender Identity	
I, _____, hereby attest under penalty of perjury that the gender identity of the above named individual listed on the birth certificate is:	
<input type="checkbox"/> Female <input type="checkbox"/> Male <input type="checkbox"/> X (undesigned/other)	
Signature _____ Date _____	

State of New Jersey Department of Health
Office of Vital Statistics and Registry
Request Form and Attestation (REG-L2)
to Amend Sex Designation
to Reflect Gender Identity on a Birth Certificate - Adult

In compliance with N.J.S.A. 26:8-40.12, the State Registrar shall issue an amended certificate of birth to a person born in the State of New Jersey who requests an amended certificate of birth which shows the gender and, if applicable, the new name of the person if it has been changed. Specifically, "The State Registrar shall issue the amended certificate of birth upon receipt of: (1) a certified copy of an order from a court of competent jurisdiction which indicates that the name of the person has been changed, if the person has changed his or her name; and (2) a form provided by the State Registrar and completed by the person, [...]which affirms the following language: 'I, (petitioner's current full name), hereby attest under penalty of perjury that the request for a change in gender to (female, male, or undesignated/non-binary) is to conform my legal gender to my gender identity and is not for any fraudulent purpose.'"

QUESTION 1. PETITIONER'S INFORMATION				
1A. Petitioner's Name (as it appears on your current Birth Certificate)				
First	Middle	Last		
1B. Petitioner's Current Legal Name *Required attachment: Proof of identity showing your full legal name.				
First	Middle	Last		
1C. Is your current legal name different from that which appears on your current Birth Certificate?				
<input type="checkbox"/> Yes <input type="checkbox"/> No				
*If yes, required attachment: A certified copy of the legal name change court order, or Marriage Certificate.				
1D. Date of Birth <small>(MM/DD/YYYY)</small>	1E. Place of Birth			
	<small>City</small>	<small>County</small>		
1F. Mother/Parent A Name (as it appears on your current Birth Certificate)				
First	Middle	Last		
1G. Father/Parent B Name (as it appears on your current Birth Certificate)				
First	Middle	Last		
1H. Petitioner's Mailing Address				
Street Address	City	State	Zip Code	Country
1I. Petitioner's Phone Number ()	1J. Petitioner's Email Address			

QUESTION 2. INFORMATION REQUIRED FOR AMENDMENT OF YOUR BIRTH CERTIFICATE				
2A. Which sex designation is <u>currently</u> shown on your Birth Certificate?				
<input type="checkbox"/> Female <input type="checkbox"/> Male <input type="checkbox"/> Not Yet Determined				
2B. Which sex designation/gender identity are you requesting to be shown on your amended Birth Certificate?				
<input type="checkbox"/> Female <input type="checkbox"/> Male <input type="checkbox"/> Undesignated/Non-binary				
<i>"Undesignated/Non-binary" encompasses all gender identities that are not exclusively male or female.</i>				
2C. Are you requesting a name change on the amended Birth Certificate?				
<input type="checkbox"/> Yes (\$2 fee) <input type="checkbox"/> No - If no, skip to Question 3.				
2D. If requesting a name change, have you obtained a court order for a name change?				
<input type="checkbox"/> Yes <input type="checkbox"/> No - If no, name change will not be processed. Skip to Question 3.				
*If yes, required attachment: A certified copy of the legal name change court order.				
2E. If requesting a name change with court order, what is the current full legal name indicated on the court order?				
<i>This is the full legal name that will appear on the amended Birth Certificate.</i>				
First	Middle	Last		

State of New Jersey Department of Health
Office of Vital Statistics and Registry
Request Form and Attestation (REG-L2)
to Amend Sex Designation
to Reflect Gender Identity on a Birth Certificate - Adult

QUESTION 3. ORDER CERTIFIED COPIES OF AMENDED BIRTH CERTIFICATE

3A. Do you want certified copies of the amended Birth Certificate at this time?

- Yes - 3B. How many copies? _____
($\$6$ for first copy; $\$2$ for each additional copy ordered at the same time as the first request.) See fees section below.
- No

ATTESTATION

Attestation and signature are required to process request.

I, _____ (*petitioner's current full name*), hereby attest under penalty of perjury that my request for a change in gender to Female Male Undesignated/Non-binary is to conform my legal gender to my gender identity and is not for any fraudulent purpose.

Petitioner's Signature _____ Date _____

FEES, IF APPLICABLE

Please calculate fees owed below. Make check or money order payable to "Treasurer, State of New Jersey." Do not send cash.

_____ $\$6.00$ one-time fee for the first requested certified copy of the amended birth certificate.

_____ $\$2.00$ X _____ (for each additional certified copy of the amended birth certificate ordered at the same time as the first request).

_____ $\$2.00$ one-time fee to register a court ordered legal name change with the State of New Jersey, Department of Health, Office of Vital Statistics and Registry. Only submit this fee if requesting a name change on the amended Birth Certificate (and submitting court order for name change with this request).

_____ **$\$$ TOTAL Submitted** *Make check or money order payable to "Treasurer, State of New Jersey." Do not send cash.*

Note: For copies of certified birth certificates requested at any later date, the fee is $\$25.00$ for the first copy and $\$2.00$ for each additional copy.

SUBMISSION BY MAIL WITH REQUIRED ATTACHMENTS AND FEES, IF APPLICABLE

Office of Vital Statistics & Registry – Records Modification Unit
NJ Department of Health
P.O. Box 370
Trenton, NJ 08625-0370

Amendment requests are not accepted in-person.

Questions? Please see related "Frequently Asked Questions" available on the NJ Department of Health - Office of Vital Statistics and Registry website.

Change of Gender Affidavit

State of California

County of _____

I, _____ residing at _____, do hereby attest that:
(your name) *(your address)*

1. The request for a change of gender from _____ to _____ is to
(male/female/nonbinary/(-)) (male/female/nonbinary/(-))
conform my legal gender to my gender identity; and

2. The request is not made for any fraudulent purposes.

I declare under penalty of perjury under the laws of the State of California that the forgoing is true and correct.

Executed this _____ day of _____, 20____.

(Your signature)