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Minnesota (Trans)Gender Markers: State Statutes and Policies on Amending Identity Documents

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**MINNESOTA (TRANS)GENDER MARKERS: STATE
STATUTES AND POLICIES ON AMENDING IDENTITY
DOCUMENTS**

Jenna Johnson[†]

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I. INTRODUCTION

The inability to obtain legal recognition of one’s gender is a pervasive problem for transgender¹ individuals and one with far-

[†] JD candidate, William Mitchell College of Law, 2015. The author would like to thank Professor Mary Pat Byrn, Owen Davis, and the staff of Volume 41 for their help during the editing process, as well as Nic Puechner for the opportunity and advice. She would also like to acknowledge Lisa Mottet of the National Center for Transgender Equality, whose tireless advocacy was the inspiration for this note.

1. The term “transgender” is commonly used to describe individuals “whose gender identity, expression or behavior is different from those typically associated with their assigned sex at birth.” NAT’L CTR. FOR TRANSGENDER EQUAL., TRANSGENDER TERMINOLOGY (2014), *available at* http://transequality.org/Resources/NCTE_TransTerminology.pdf. “Gender identity” is “[a]n individual’s

reaching consequences. Identification documents are relied on today more than ever. These documents are needed to travel, start new jobs, open bank accounts, apply to colleges, acquire funding for education or housing, rent a car, or to purchase alcohol and even certain cold medicines. Some state legislatures have also made it challenging to vote without an accurate ID.² For transgender people, accurate identity documents may be extremely difficult or even impossible to obtain.

Historically, state and federal governments, and their agencies, have made the acquisition of consistent and accurate identity documents a difficult and lengthy process for transgender individuals. These individuals have been subjected to burdensome and invasive requirements, such as court orders and proof of surgery, and often struggle with numerous financial barriers. As a result, many transgender people have been unable to update some or all of their identity documents to accurately reflect their gender. The results of the 2011 National Transgender Discrimination Survey (NTDS) showed that only 21% of transgender people who have transitioned have been able to update all of their IDs and records with their new gender, and that 33% had not updated any of their IDs or records.³ At the time of the survey, only 59% of

internal sense of being male, female, or something else.” *Id.* “Gender expression” is “[h]ow a person represents or expresses one’s gender identity to others, often through behavior, clothing, hairstyles, voice or body characteristics.” *Id.*

2. “Currently, thirty-two states have passed voter identification laws (voter ID laws), which vary by state in what forms of identification voters are required to provide at the polls.” JODY L. HERMAN, WILLIAMS INST., THE POTENTIAL IMPACT OF VOTER IDENTIFICATION LAWS ON TRANSGENDER VOTERS 3 (2012), available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/voter-id-laws-september-2014.pdf>. Current information on the status of voter identification laws and legislation in all U.S. states, as well as a description of identification requirements and statutory citations for each state, can be found on the website of the National Conference of State Legislatures. *Elections and Campaigns*, NAT’L CONF. ST. LEGISLATURES, <http://www.ncsl.org/legislatures-elections/elections/voter-id-state-requirements.aspx> (last visited Nov. 5, 2014). See generally KEESHA GASKINS & SUNDEEP IYER, BRENNAN CTR. FOR JUSTICE, THE CHALLENGE OF OBTAINING VOTER IDENTIFICATION (2012) (assessing the difficulties that eligible voters face in obtaining free photo IDs).

3. JAIME M. GRANT ET AL., NAT’L CTR. FOR TRANSGENDER EQUAL. & NAT’L GAY AND LESBIAN TASK FORCE, INJUSTICE AT EVERY TURN: A REPORT OF THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY 139 (2011), available at http://www.thetaskforce.org/downloads/reports/reports/ntds_full.pdf. The National Transgender Discrimination Survey (NTDS), conducted both in paper and online

respondents had been able to update their gender on their driver's license or state ID; 49% had updated their social security record, 26% their passport, and just 24% their birth certificate.⁴ "The survey results also confirmed what most transgender people already knew—that gender incongruent identification exposes people to a range of negative outcomes, from denial of employment, housing, and public benefits to harassment and physical violence."⁵

In 2013, the *Michigan Journal of Gender & Law* published an article titled *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*.⁶ The article is expansive, examining the statutes and policies of the fifty states, Guam, and the Virgin Islands, as well as birth certificate amendment policies in the United Kingdom and Argentina. Authored by attorney and activist Lisa Mottet,⁷ the article is the result of years of work and research at the National Gay and Lesbian Task Force. In her article, Mottet gives an overview of the current legal landscape regarding vital statistics statutes, identifies patterns and trends among current state approaches, and discusses the legal and practical difficulties caused by various policies. She then identifies areas where policy and statutory language could be crafted or amended to provide greater protection and privacy for transgender individuals and concludes by providing recommended

in 2008–09, had 6456 respondents from all fifty states, Washington, D.C., the Virgin Islands, Puerto Rico, and Guam. *Id.* at 12. For a detailed description of the methodology, see *id.* at 12–15.

4. *Id.* at 139.

5. *ID Documents and Privacy*, NAT'L CTR. FOR TRANSGENDER EQUAL., http://transequality.org/Issues/federal_documents.html (last visited Nov. 5, 2014).

6. Lisa Mottet, *Modernizing State Vital Statistics Statutes and Policies to Ensure Accurate Gender Markers on Birth Certificates: A Good Government Approach to Recognizing the Lives of Transgender People*, 19 MICH. J. GENDER & L. 373 (2013).

7. Lisa Mottet currently holds the position of Deputy Executive Director of the National Center for Transgender Equality (NCTE). *Staff*, NAT'L CTR. FOR TRANSGENDER EQUAL., <http://www.transequality.org/About/staff.html> (last visited Nov. 5, 2014). Prior to her role at NCTE, Ms. Mottet served as the Transgender Civil Rights Project Director at the National Gay and Lesbian Task Force, with a focus on passing antidiscrimination laws that prohibit discrimination based on gender identity and expression at the local, state, and federal levels. Her writing and advocacy have earned her top recognitions from the National LGBT Bar Association and from numerous state and local transgender advocacy groups. For more information, see *id.*

language in a Model Provision that can be used by states to update their own vital statistics statutes.

Rather than recreating the extensive work done by Mottet and the Task Force, the focus of this note is on the statutes and policies in Minnesota; in particular, identifying areas where the state's framework is not in line with current best practices and using Mottet's recommendations as a guide to develop clear, comprehensive provisions based on current medical consensus. Part II provides an overview of the problems caused by medically out-of-date policies relating to the process of updating gender markers on identity documents and summarizes the key points and concerns identified in Mottet's article. Part III then chronicles current practices and procedures for amending gender markers on state and federal identity documents that are likely to be held by transgender Minnesotans. It considers areas where the state's policies fall below suggested best practice standards and addresses specific changes that should be made to improve access to accurate documentation for Minnesota's transgender population.

As Mottet points out, changes to policies regarding identity documents can seem technical in nature and distant from the immediate concerns facing transgender individuals. However:

[T]he 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 life⁸

II. UNDERSTANDING THE PROBLEM

A. *An Overview of the Issues*

After the Illinois Department of Vital Records refused to amend Karissa Rothkopf's birth certificate, she and co-plaintiff

8. Mottet, *supra* note 6, at 379.

Victoria Kirk brought a charge of discrimination against the department.⁹ “I’ve faced a lifetime of incongruence and there’s this piece of paper that is wrong. It says I’m someone I’m not. And for all the problems I’ve faced in the past, because I still can’t get that one piece of paper changed, there’s a chance I could face these same problems in the future.”¹⁰ While not a Minnesota example, Ms. Rothkopf’s undertaking is not unique to the state of Illinois—transgender individuals across the country struggle to have their genders recognized on their identity documents, including in Minnesota.

A birth certificate is one of the most important documents on which many people want their correct sex reflected. Amending the sex designation on a birth certificate so that the legal document accurately reflects the sex with which the individual identifies may be an extremely important step for a transgender person.¹¹ Along with personal reasons for wanting to update one’s birth certificate, updating this document is also crucial for the creation of future consistent identification with consistent, accurate gender markers. This is because a birth certificate operates as one form of “breeder” document, an ID from which other identity documents are created.¹² Birth certificates serve as the foundation for gender markers on other identity documents such as licenses, passports, school records, college ID cards, and social security records, among others.¹³

Inaccurate gender markers not only create difficulties by reinforcing the gender marker problem on additional future documents—they also create a multitude of problems and difficulties in the lives of transgender individuals. A combined study from the National Center for Transgender Equality and the

9. See *Kirk v. Arnold - Case Profile*, ACLU (Nov. 16, 2009), https://www.aclu.org/lgbt-rights_hiv-aids/kirk-v-arnold-case-profile.

10. ACLU LGBT Project, *Transgender Rights: Illinois Birth Certificates*, YOUTUBE, at 1:24 (Jan. 27, 2009), <https://www.youtube.com/watch?v=uZzv5k5NkH0> (statement of Karissa Rothkopf); see also *Kirk v. Arnold - Case Profile*, *supra* note 9 (video embedded).

11. While there is no single document on which one’s “legal gender” is recorded, courts have, at least in some instances, given legal deference to the gender marked on an individual’s birth certificate. See Mottet, *supra* note 6, at 397.

12. Driver’s licenses are also a common form of “breeder” documents. See John Mercer, *Breeder Documents: The Keys to Identity*, 29 KEESING J. DOCUMENTS & IDENTITY 14, 14 (2009).

13. Mottet, *supra* note 6, at 392.

National Gay and Lesbian Task Force found that transgender individuals face disproportionately high rates of discrimination in areas of employment, housing, police interactions, and health care, and are consistently abused, harassed, and assaulted.¹⁴ Additionally, the heightened risk of violence in the daily lives of transgender individuals is widespread and well documented.¹⁵ A 2011 report by the National Coalition of Anti-Violence Programs found that 40% of all hate-violence murder victims in 2011 were transgender women.¹⁶ This is true even though transgender women make up only 10% of overall hate-violence survivors.¹⁷

Given the pervasive presence of violence in their everyday lives, it is understandable that some transgender individuals choose to downplay their gender identity in order to fit into mainstream society, an assimilation practice commonly referred to as “passing” or “covering.”¹⁸ However, even where a transgender identity is not apparent from an individual’s physical appearance, that identity becomes visible whenever identification bearing an incorrect gender marker is required.¹⁹ This effectively “outs” the individual,

14. GRANT ET AL., *supra* note 3, at 2–8; *see also* Emilia L. Lombardi et al., *Gender Violence: Transgender Experiences with Violence and Discrimination*, 42 J. HOMOSEXUALITY 89 (2001); Rebecca L. Stotzer, *Violence Against Transgender People: A Review of United States Data*, 14 AGGRESSION & VIOLENT BEHAV. 170 (2009).

15. *See, e.g.*, EJERIS DIXON ET AL., NAT’L COAL. OF ANTI-VIOLENCE PROGRAMS, HATE VIOLENCE AGAINST LESBIAN, GAY, BISEXUAL, TRANSGENDER, QUEER AND HIV-AFFECTED COMMUNITIES IN THE U.S. IN 2011, at 9 (2012), *available at* http://www.cuav.org/wp-content/uploads/2012/08/4379_NCAVPHVReport2011Final_Updated.pdf; GRANT ET AL., *supra* note 3; Lombardi et al., *supra* note 14, at 89; Stotzer, *supra* note 14, at 170.

16. DIXON ET AL., *supra* note 15, at 9.

17. *Id.*

18. Although often used interchangeably, the two forms of assimilation have distinct meanings. Law professor and author Kenji Yoshino describes them as follows:

Passing means the underlying identity is not altered, but hidden. Passing occurs when a lesbian presents herself to the world as straight. Covering means the underlying identity is neither altered nor hidden, but is downplayed. Covering occurs when a lesbian both is, and says she is, a lesbian, but otherwise makes it easy for others to disattend her orientation.

Kenji Yoshino, *Covering*, 111 Yale L.J. 769, 772 (2002). For a more in depth examination of the subject, *see generally* KENJI YOSHINO, *COVERING: THE HIDDEN ASSAULT ON OUR CIVIL RIGHTS* (2006).

19. *See, e.g.*, Mottet, *supra* note 6.

putting him or her at risk for possible confusion and intrusive questions, at best, or violent confrontation, at worst.²⁰ Research suggests that individuals who hold identity documents with inaccurate gender markers may face the same disproportionate rates of discrimination and violence as described above and additionally may have

- difficulty accessing appropriate healthcare or experiencing denial of insurance coverage;²¹
- obstructed “[a]ccess to, and [n]egative [t]reatment in, [s]ex-segregated [f]acilities”;²²
- hurdles with marriage recognition;²³ and
- complications with college admissions and housing.²⁴

In the largest study to date of transgender discrimination, the National Gay & Lesbian Task Force Foundation found results showing that courts and agencies look for specific surgeries when making determinations that particular transgender individuals do or do not meet statutory requirements for gender marker amendments.²⁵ Individuals who have had some type of surgery are more than six times as likely to display the correct gender marker on their birth certificates than those who have not had any surgery (39% compared to 6%).²⁶

Much has been written on the senselessness of surgical requirements for the correction of legal documents and the harms caused to transgender people by these medically out-of-date

20. *Id.*

21. *Id.* at 397.

22. *Id.* at 398.

23. *Id.* at 396–97.

24. *Id.* at 398–99.

25. *Id.* at 390–91; GRANT ET AL., *supra* note 3, at 140–47. With over 6000 respondents, the NTDS is the largest survey of transgender and gender nonconforming adults to date. *Id.* at 12. In January 2014, the Williams Institute and the American Foundation for Suicide Prevention released a new report analyzing the data reported in the NTDS, seeking to increase understanding of the disproportionately high numbers and identify key characteristics and experiences associated with lifetime suicide attempts in the NTDS sample as a whole. See ANN P. HAAS ET AL., AM. FOUND. FOR SUICIDE PREVENTION & WILLIAMS INST., SUICIDE ATTEMPTS AMONG TRANSGENDER AND GENDER NON-CONFORMING ADULTS: FINDINGS OF THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY 2 (2014), available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/AFSP-Williams-Suicide-Report-Final.pdf>.

26. GRANT ET AL., *supra* note 3, at 143.

policies.²⁷ In short, while some transgender individuals may choose to undergo any number of surgeries as part of a gender transition, there are a large number of transgender people who feel comfortable in their bodies without surgery, or who choose not to undergo surgery for financial, health, or personal reasons. Additionally, far from having a discrete set of procedures that constitute a “sex change” or “sex reassignment surgery,”²⁸ there are numerous treatments that may be pursued as part of a transition, such as “bilateral mastectomy, orchiectomy, phalloplasty, hysterectomy, vaginoplasty, hormone therapy treatment, brow reduction, facial implants, vaginal closure, voice surgery, metaodioplasty, augmentation mamaplasty, tracheal shave, liposuction, hormone therapy, group or individual counseling, [and/or] psychotherapy.”²⁹

Although courts have historically treated the surgical requirement as an obvious and reasonable one, a growing trend shows that an increasing number of agencies are moving away from surgical requirements, recognizing them as “[a] [b]right-[l]ine

27. See, e.g., Dean Spade, *Documenting Gender*, 59 HASTINGS L.J. 731, 754 (2008); Anne E. Silver, Note, *An Offer You Can't Refuse: Coercing Consent to Surgery Through the Medicalization of Gender Identity*, 26 COLUM. J. GENDER & L. 488, 489 (2014); *Policy Brief: Birth Certificate Gender Markers*, NAT'L CTR. FOR TRANSGENDER EQUAL. (June 22, 2011, 10:07 PM), <http://transgenderequality.wordpress.com/2011/06/22/policy-brief-birth-certificate-gender-markers/>. See generally Harper Jean Tobin, *Against the Surgical Requirement for Change of Legal Sex*, 38 CASE W. RES. J. INT'L L. 393, 424–29 (2007) (analyzing in detail the harms caused by surgical requirements); Kristin Wenstrom, Comment, “*What the Birth Certificate Shows*”: *An Argument to Remove Surgical Requirements from Birth Certificate Amendment Policies*, 17 LAW & SEXUALITY 131, 132–34 (2008) (arguing that the inclusion of surgical requirements in birth certificate amendment policies is exclusionary and that such policies should be revised).

28. “Sex reassignment surgery” (SRS) is still the most commonly used term to describe the genital surgeries that some transgender individuals may undergo, but is increasingly falling into disuse as some people find the term offensive. See FENWAY HEALTH, GLOSSARY OF GENDER AND TRANSGENDER TERMS 12 (2010), http://www.fenwayhealth.org/site/DocServer/Handout_7-C_Glossary_of_Gender_and_Transgender_Terms__fi.pdf. Preferred terms may include “gender affirmation surgery” (GAS), or variations thereof, recognizing the surgery as part of an individual’s process of aligning their physical sex with their innate sex rather than their first assigned legal sex. See *id.*

29. *Birth Certificate Sex Designation: An Overview of the Issues*, SYLVIA RIVERA L. PROJECT, <http://archive.srlp.org/birth-certificate-sex-designation-overview-issues> (last visited Nov. 5, 2014).

[r]ule [t]hat [i]sn't."³⁰ In June 2014, the American Medical Association (AMA) released a statement recommending that states not require sex-reassignment surgery in order for a person to change the gender designation on their birth certificate.³¹

For many transgender people, a needless operation should not be a government requirement to amend a sex designation on a birth certificate. . . . State laws must acknowledge that the correct course of treatment for any given individual is a decision that rests with the patient and the treating physicians.³²

Just days prior to the AMA's statement, New York State amended its vital statistics policy "[b]y allowing transgender New Yorkers to change the gender marker on their birth certificate without undergoing surgery."³³ The state's previous policy, which had been in effect since the 1970s, required transgender individuals "[t]o provide extensive proof of genital surgery in order to receive a new birth certificate" reflecting their corrected gender.³⁴ The state's policy change also highlights the arbitrary nature of surgical requirements; although the majority of transgender individuals born in New York can now apply for a corrected birth certificate by providing a notarized affidavit from a physician,³⁵ because of New York City's local laws, those born in the

30. Tobin, *supra* note 27, at 415.

31. Press Release, Am. Med. Ass'n, *AMA Calls for Modernizing Birth Certificate Policies* (June 9, 2014).

32. Mary Emily O'Hara, *AMA Says Transgender People Shouldn't Require Surgery to Change Their Birth Certificate*, VICE NEWS (June 11, 2014, 3:30 PM), <https://news.vice.com/article/ama-says-transgender-people-shouldnt-require-surgery-to-change-their-birth-certificate>; *see also* Press Release, Am. Med. Ass'n, *supra* note 31.

33. Avi Cummings, *BREAKING: New York State Updates Birth Certificate Policy, Removing Surgical Requirement*, SYLVIA RIVERA L. PROJECT (June 5, 2014) [hereinafter *BREAKING*], <http://srlp.org/breaking-new-york-state-updates-birth-certificate-policy-removing-surgical-requirement>.

34. Elana Redfield, *The Fight for Fair Access to Birth Certificates Continues . . .*, SYLVIA RIVERA L. PROJECT (Dec. 5, 2006) [hereinafter *The Fight for Fair Access*], <http://srlp.org/the-fight-for-fair-access-to-birth-certificates-continues>; *see also* Press Release # 115-06, N.Y.C. Bd. of Health, Board of Health Makes NYC Consistent with New York State and Most of the United States by Allowing Sex-Specific Transgender Birth Certificates (Dec. 5, 2006); *BREAKING*, *supra* note 33.

35. For a list of the full requirements, see *How to Change the Gender Marker on Your Birth Certificate in New York State*, SYLVIA RIVERA L. PROJECT, <http://srlp.org/resources/birthcertificate> (last visited Nov. 5, 2014).

city must still provide proof of “vaginoplasty (the creation of a vagina) or phalloplasty (the creation of a penis).”³⁶ The Sylvia Rivera Law Project notes that the rate of phalloplasty among transgender men is estimated to be less than 10%³⁷—meaning that under New York City’s Health Code provision approximately only one out of every ten transgender men would be eligible for an amended³⁸ birth certificate.

B. The Model State Vital Statistics Act and Regulations

Many states model their policies for amending birth certificates on the Model State Vital Statistics Act (MSVSA), which was originally issued in 1907 by the U.S. Census Bureau.³⁹ As Lisa Mottet notes,

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.⁴⁰

The 1992 MSVSA indicates that a person wanting to change the gender marker on their birth certificate should present the appropriate state agency with a court order certifying that their sex “has been changed by surgical procedure,”⁴¹ which creates the same problems with surgical requirements as noted above. Additionally,

36. *The Fight for Fair Access*, *supra* note 34; Elisabeth Ryden Benjamin, N.Y. Civil Liberties Union, Testimony Before the New York City Department of Health and Mental Hygiene Regarding Proposed Birth Certificate Requirements for Transgender Persons (Oct. 30, 2006), *available at* <http://www.nyclu.org/content/regarding-proposed-birth-certificate-requirements-transgender-persons>.

37. *The Fight for Fair Access*, *supra* note 34.

38. Amended, but not corrected. Even after providing proof of having had vaginoplasty or phalloplasty, transgender individuals born in New York City cannot get birth certificates reflecting their correct gender. *See FAQ For New Transgender Birth Certificate Regulations Proposed In New York City*, SYLVIA RIVERA L. PROJECT, <http://archive.srlp.org/faq-new-transgender-birth-certificate-regulations-proposed-new-york-city> (last visited Nov. 5, 2014). Instead, the amended birth certificate shows no gender at all. *Id.*

39. Mottet, *supra* note 6, at 380.

40. *Id.*

41. MODEL STATE VITAL STATISTICS ACT AND REGULATIONS 10 (Ctr. for Disease Control and Prevention & Nat’l Ctr. for Health Stat. 1992).

the 1992 MSVSA fails to specify how the state agency should make the change to birth certificates, leading to inconsistencies among the states following the provision.⁴² Some states issue a new certificate showing only the corrected gender, but others simply amend the preexisting certificate in such a way that shows the previously listed gender or indicates that the gender has been changed, effectively outing transgender individuals even after they have had their documents corrected.⁴³

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. Organizations engaging in 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.⁴⁴

C. *The Model Provision*

After analyzing the privacy concerns posed by various state policies, Mottet closes with a proposed Model Provision that provides prototypical statutory language that (she suggests) could be easily inserted into any state's vital statistics code.⁴⁵ The language "borrows heavily from" the vital statistics laws of Vermont and California, both of which amended their vital statistics statutes in 2011 to more closely align with contemporary medical and legal standards.⁴⁶ Throughout this note, relevant sections of Mottet's Model Provision are addressed along with their Minnesota counterparts in order to compare the proposed "best practices" language to the language currently in effect in the state.⁴⁷

42. *See id.*

43. *Policy Brief: Birth Certificate Gender Markers, supra* note 27.

44. Mottet, *supra* note 6, at 380–81.

45. *Id.* at 447–48.

46. *See id.* at 402–03, 447.

47. The Model Provision is reproduced in full in the Appendix.

III. IDENTITY DOCUMENTS IN MINNESOTA: CURRENT POLICIES & PRACTICES

In 1975, the city of Minneapolis passed “the first known statute prohibiting discrimination against transgender people.”⁴⁸ In 1993, Minnesota became the first state in the country to include express protection for transgender individuals in its Human Rights Act.⁴⁹ The state’s antidiscrimination laws were the first to include express protections for transgender and gender variant people in employment, housing, education, and public accommodations, as well as to provide enhanced penalties for hate crimes committed against transgender and gender variant people.⁵⁰

It can be difficult to gauge the direct impact of policy work on the transgender community, in part because there is a lack of statistical data on transgender populations, both nationally and at the state level. One of the reasons for this is that the U.S. Census Bureau does not inquire as to the gender identity of respondents, aside from the option to mark oneself as either “male” or “female.”⁵¹ However, a 2011 study conducted by the Williams Institute at UCLA estimated that 0.3% of the general population—

48. PAISLEY CURRAH ET AL., POLICY INST. OF THE NAT’L GAY AND LESBIAN TASK FORCE & NAT’L CTR. FOR LESBIAN RIGHTS, TRANSGENDER EQUALITY: A HANDBOOK FOR ACTIVISTS AND POLICYMAKERS 15 (2000).

49. See Human Rights Act, ch. 22, 1993 Minn. Laws 121, 122 (codified as amended at MINN. STAT. § 363A.03, subd. 44 (2002 & Supp. 2003)); John Milton, *Afterword* to ALLAN H. SPEAR, CROSSING THE BARRIERS: THE AUTOBIOGRAPHY OF ALLAN H. SPEAR 411, 418–19 (2010). The state did this in a somewhat unconventional way by adding “sexual orientation” as a protected class and then defining “sexual orientation” to include “having or being perceived as having a self-image or identity not traditionally associated with one’s biological maleness or femaleness.” *Id.*

50. See Human Rights Act, ch. 22; Jenifer M. Ross-Amato, *Transgender Employees & Restroom Designation-Goins v. West Group, Inc.*, 29 WM. MITCHELL L. REV. 569, 570 (2002); Donna Halvorsen, *They Know Whereof They Legislate*, STAR TRIB. (Minneapolis), Apr. 2, 1993, at 1B–5B (interviewing Senator Allan Spear and Representative Karen Clark on the significance of the passage of the “gay-rights bill”).

51. The National Gay and Lesbian Task Force launched its Queer the Census campaign in 2009, petitioning the U.S. Census Bureau to count individuals identifying as lesbian, gay, bisexual, and transgender in its official statistics. For more on Queer the Census and the work being done in preparation for the 2020 Census, see National LGBTQ Task Force, *Why Queer the Census*, QUEERTHECENSUS.ORG, www.queerthecensus.org (last visited Nov. 5, 2014).

roughly 950,000 individuals in the United States—are transgender, including thousands of people living in Minnesota.⁵²

With that framework in place, this note now turns to current policies regulating the amendment of identity documents for transgender Minnesotans. The identity documents addressed are as follows: name change paperwork, Minnesota birth certificates, Minnesota driver's licenses, and, on the national level, U.S. passports, and social security cards and records.

A. *Legal Name Changes in Minnesota*

The requirements for changing one's name in Minnesota are fairly simple: (1) the applicant must have lived in Minnesota for at least six months, and (2) the applicant must be a resident of the county in which they are applying.⁵³ After filing the name change application, a hearing is scheduled before a judge.⁵⁴ There must be two adult witnesses at the name change hearing who can testify as to the applicant's identity; these witnesses need not be related to the applicant, but if relatives are available, it may be more persuasive to the judge. There is a filing fee associated with the name change process, but if the applicant has very limited income, he or she can apply to have the name change fee waived.⁵⁵ Generally, the judge must grant the name change request unless the court believes that the applicant's motive is to mislead or defraud others.⁵⁶

Under Minnesota law, people changing their name by court order are entitled to an amended birth record showing their new name and a certified copy of the order upon request.⁵⁷ For minors

52. GARY J. GATES, THE WILLIAMS INST., HOW MANY PEOPLE ARE LESBIAN, GAY, BISEXUAL, AND TRANSGENDER? I (2011), available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Gates-How-Many-People-LGBT-Apr-2011.pdf>; see also *Population Clock*, U.S. CENSUS BUREAU, www.census.gov (last visited Nov. 5, 2014) (estimating the U.S. population for 2014 to be approximately three hundred and nineteen million and rising).

53. MINN. STAT. § 259.10, subdiv. 1 (2012); see also MINN. JUDICIAL BRANCH, APPLICATION FOR NAME CHANGE AND OTHER RELIEF INSTRUCTIONS 1 (2014).

54. See MINN. JUDICIAL BRANCH, *supra* note 53, at 2.

55. See *id.*; *Basics on Fee Waivers*, MINN. JUD. BRANCH SELF HELP CENTER, <http://www.mncourts.gov/district/50/?page=1982> (last visited Nov. 5, 2014).

56. See MINN. STAT. § 259.11, subdiv. a (noting that if the statutory requirements are met, "the court shall grant the application unless . . . it finds that there is an intent to defraud or mislead" (emphasis added)).

57. MINN. STAT. § 144.2181, subdiv. c (2012 & Supp. 2013).

whose names have been changed, this request may be made by a parent or guardian.⁵⁸

It is important to be aware that a name change is not a legal change of sex. “A name change order, by itself, will probably not authorize amendment of sex-designations on other documents, such as a driver’s license or birth certificate, unless the judge specifically orders that this happen.”⁵⁹

B. *Amending a Minnesota Birth Certificate*

The following options are “available to anyone with a Minnesota birth record, regardless of where they currently live.”⁶⁰ Transgender Minnesotans who were born in states other than Minnesota must consult the requirements of the state in which they were born.⁶¹ “If a person’s state of birth requires a court order, the

58. *Id.*

59. *Changing Your Name In Minnesota*, OUTFRONT MINN., <https://www.outfront.org/library/changename> (last visited Nov. 5, 2014). At least one Minnesota name change applicant has used her name change petition to simultaneously petition the judge for an amendment to her birth certificate:

A lot of people here don’t know this, but you can add additional things to your name change petition in the “Other” space provided. I added: “I also petition the Court to order the Department of Health to ammend my birth records by changing my sex designation from ‘Male’ to ‘Female.’”

. . . .

. . . The Judge then said “If there are no objections, then, I see no reason not to grant the petition as requested.” He specifically wrote on the order “The Minnesota Department of Health shall change birth record to show new name and designate sex as ‘female.’”

Minnesota Name Change For Transgender People, TRANSSEXUAL ROAD MAP: NAME CHANGE PROJECT, <http://www.tsroadmap.com/reality/name/minnesota.html> (last visited Nov. 5, 2014); *see also Document Requirements to Amend a Birth Record*, MINN. DEP’T HEALTH, <http://www.health.state.mn.us/divs/chs/osr/reqdocs.html> (last visited Nov. 5, 2014) (stating that a court order specifically directing the birth record to be amended may be the only document required if the court order “specifically direct[s] the birth record to be amended in the ‘It Is Ordered’ section of the court order” and “clearly identif[ies] which items are to be amended on the birth record”).

60. *Amending Minnesota Birth Certificates*, OUTFRONT MINN., <https://www.outfront.org/library/certificates> (last visited Nov. 5, 2014).

61. *Id.* For a state-by-state summary of laws addressing birth certificate changes, see *Changing Birth Certificate Sex Designations: State-By-State Guidelines*, LAMBDA LEGAL, <http://www.lambdalegal.org/publications/changing-birth-certificate-sex-designations-state-by-state-guidelines> (last updated July 14, 2014).

person may petition the court in their county of residence in Minnesota for an order directing the amendment of out-of-state records.”⁶²

With respect to changing the name on one’s birth record, under Minnesota law, a person who has changed his or her name by court order is entitled to an amended birth record showing the new name by enclosing a certified copy of the court order and sending it to the state registrar.⁶³ Requests to amend a minor’s birth records (including amendments such as a name change or gender marker correction) may be made by a parent or legal guardian.⁶⁴

Transgender Minnesotans seeking to correct the sex information listed on their birth records may do so by submitting a notarized Birth Record Amendment Application to the Minnesota Department of Health, Office of Vital Records, along with supporting documents and the administrative fee.⁶⁵ The “supporting documents” may consist of a court order directing the birth record to be amended, or a combination of other supporting documents,⁶⁶ most commonly including a physician’s letter of appropriate clinical treatment.

1. *Amendment by Court Order*

State district court judges in Minnesota have the authority to amend birth records if the judge finds that the information on the old record is “incomplete, inaccurate, or false.”⁶⁷ However, not all judges interpret this statute in the same way,⁶⁸ leaving ambiguous

62. *Changing Your Name In Minnesota*, *supra* note 59.

63. MINN. STAT. § 144.2181, subdiv. c.

64. *Id.*; MINN. DEP’T OF HEALTH, BIRTH RECORD AMENDMENT APPLICATION, available at <http://www.health.state.mn.us/divs/chs/osr/birmendia.pdf>.

65. *Document Requirements to Amend a Birth Record*, *supra* note 59.

66. *Id.*

67. MINN. STAT. § 144.218, subdiv. 4 (2012) (“If a court finds that a birth record is incomplete, inaccurate, or false . . . the court may order the registration of a replacement vital record, and . . . set forth the correct information in the order. Upon receipt of the order, the registrar shall register a replacement vital record containing the findings of the court. The prior vital record shall be confidential . . . and shall not be disclosed except pursuant to court order.”).

68. Minnesota statutes instruct that “[t]he object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature.” *Id.* § 645.16. However, “[w]hen the words of a law are not explicit,” judges may consider the following to guide them in their interpretation of the law: “(1) the occasion and necessity for the law; (2) the circumstances under which it was

exactly what is required to prove that the information on the birth certificate is incorrect. The order is entirely at the discretion of the judge, who may find that, without proof of surgery, an applicant's supporting documents are insufficient to warrant an order requiring that the applicant's birth certificate be amended.⁶⁹ It is not unusual for a judge to require surgery as a condition for gender recognition, even when there is no medical or legal basis for that requirement.⁷⁰

2. Amendment by Physician's Letter (ACT Letter)

The most comprehensive—and thereby generally most effective—supporting document is a letter from a physician attesting to appropriate clinical treatment (ACT) for gender dysphoria. Gender dysphoria is a medical condition referring to “the distress that may accompany the incongruence between one's experienced or expressed gender and one's assigned gender.”⁷¹ The ACT letter approach is “based on standards and recommendations of the World Professional Association for Transgender Health (WPATH).”⁷² The ACT letter approach is also

enacted; (3) the mischief to be remedied; (4) the object to be attained; (5) the former law, if any, including other laws upon the same or similar subjects; (6) the consequences of a particular interpretation; (7) the contemporaneous legislative history; and (8) legislative and administrative interpretations of the statute.” *Id.*

69. Mottet, *supra* note 6, at 433–34.

70. *Id.*; see Tobin, *supra* note 27, at 413–17.

71. AM. PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTIC MANUAL OF MENTAL DISORDERS 451 (5th ed. 2013) (“The current term [gender dysphoria] is more descriptive than the previous DSM-IV term *gender identity disorder* and focuses on dysphoria as the clinical problem, not identity per se.”).

72. U.S. DEP'T OF STATE, 7 FOREIGN AFFAIRS MANUAL 1310 app. M, *available at* <http://www.state.gov/documents/organization/143160.pdf>.

No person should have to undergo surgery or accept sterilization as a condition of identity recognition. If a sex marker is required on an identity document, that marker could recognize the person's lived gender, regardless of reproductive capacity. The WPATH Board of Directors urges governments and other authoritative bodies to move to eliminate requirements for identity recognition that require surgical procedures.

Policy Statement, World Prof'l Ass'n for Transgender Health, Inc., WPATH Identity Recognition Statement (June 16, 2010), *available at* http://www.wpath.org/uploaded_files/140/files/Identity%20Recognition%20Statement%206-10%20on%20letterhead.pdf.

in line with the Model Provision proposed by Lisa Mottet, which states in relevant part:

(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 accordingly⁷³

In June 2010, the State Department announced a new policy regarding gender changes on U.S. passports.⁷⁴ This policy also follows the ACT letter approach and details what should be included in such a letter.⁷⁵ Although not strictly required by the state of Minnesota, the guidelines laid out by the department are undoubtedly of assistance in creating an ACT letter, and for that purpose, they are included here.

As described by the U.S. Department of State, a physician's statement of medical certification related to gender transition—or for Minnesota's purpose, an ACT letter—should include the following information:

- Physician's full name;
- Medical license or certificate number;

73. Mottet, *supra* note 6, at 448 (emphasis added).

74. *See infra* Part III.D.

75. *See* U.S. DEP'T OF STATE, *supra* note 72, at 3.

- Issuing state, country, or other jurisdiction of medical license/certificate;
- Drug Enforcement Administration (DEA) registration number assigned to the doctor or comparable foreign registration number, if applicable;
- Address and telephone number of the physician;
- Language stating that the physician has either (1) treated the applicant in relation to the applicant's change in gender or (2) has reviewed and evaluated the medical history of the applicant in relation to the applicant's change in gender, and that the physician has a doctor/patient relationship with the applicant;
- Language stating that the individual has had appropriate clinical treatment for gender transition to the new gender (either male or female);
- Physician's signature and date of signature.⁷⁶

For the purposes of medical certification letters supporting gender transition, Medical Doctors (MDs) and Doctors of Osteopathy (DOs) qualify as licensed physicians.⁷⁷ These physicians may be general practitioners or specialists "in various medical fields, including, but not limited to, internists, endocrinologists, gynecologists, urologists, surgeons, psychiatrists, pediatricians, and family practitioners."⁷⁸ Statements from persons who are not licensed physicians, such as psychologists, nurse practitioners, social workers, health practitioners, chiropractors, or pharmacists, are not accepted.⁷⁹

Minnesota is one of only three states allowing applicants to use *either* a court order or physician's letter when applying to the vital statistics agency for an amended birth certificate.⁸⁰ Other states either specify which of the two must be used or are unclear.⁸¹ Neither option (court order or physician's letter) explicitly requires that a Minnesota applicant have proof of surgery, and the ACT letter specifically allows an applicant's physician to make statements in support of a gender marker change by certifying that

76. *Id.* app. M(b)(1)(a)–(h).

77. *Id.*

78. *Id.*

79. *Id.*

80. Mottet, *supra* note 6, at 428.

81. *Id.*

the applicant has had “appropriate clinical treatment” rather than a particular surgery.⁸²

Mottet does not include a court order option in her Model Provision, expressing multiple concerns about the court order process.⁸³ These include practical concerns (the court order costs more, may require an attorney, and may require the applicant to take time off work), privacy concerns (the court proceeding may create permanent records that lack confidentiality protections), and concerns about judicial bias and lack of education.⁸⁴ The court order process gives great discretion to the individual judge involved. This is troubling, as some judges may have a particular bias or may simply lack knowledge regarding transgender medical issues. As a result, they may require surgery as a condition for gender recognition.⁸⁵ These concerns are echoed in a 2011 policy brief issued by the National Center for Transgender Equality:

First, the requirement of a court order can create a barrier to those transgender people who don’t have enough money to hire a lawyer or who don’t have enough knowledge to navigate the legal system on their own. Also, some courts are hesitant to issue orders amending birth certificates that were issued by another state, creating problems for transgender people who want to change their birth certificate after they move away from the state where they were born.⁸⁶

As Mottet notes, however, there are organizations that recommend that individuals seeking to legally change their sex be permitted to submit to the agency either a court order or a statement from a physician. She explains that her concerns with the court order process are largely relegated to instances where that process is the only option available, and elaborates:

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

82. See *Amending Minnesota Birth Certificates*, *supra* note 60.

83. See Mottet, *supra* note 6, at 431.

84. *Id.* at 431–35.

85. *Id.*

86. *Policy Brief: Birth Certificate Gender Markers*, *supra* note 27.

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.⁸⁷

By allowing individuals to utilize either the court order or agency option, Minnesota provides transgender men and women with the ability to select the process that works best for them.

Regarding corrected gender markers and privacy concerns, Minnesota is one of only sixteen states that issues an entirely new birth certificate rather than merely amending the old one.⁸⁸ This is fully in line with current best practices, as this policy helps prevent transgender individuals from being inadvertently “outed” by a certificate indicating that a change has been made. Minnesota is also one of only eighteen states that clearly seals its records following a gender marker correction, “blocking access to the original certificate and ensuring” the confidentiality of “medical records related to the gender correction.”⁸⁹

C. *Changing the Sex Marker on a Minnesota Driver’s License*

To change the sex marker on a Minnesota driver’s license, instruction permit, or identification card, applicants must provide one of the following documents: (1) a court order that changes their gender; (2) a court order that changes their gender and name; or (3) an original letter from a licensed physician certifying the applicant’s participation in appropriate clinical treatment for gender transition (an ACT letter).⁹⁰ If providing a medical certification, the document must have enough biographical data to clearly identify the applicant; the Department of Vehicle Services suggests that name and date of birth are sufficient.⁹¹

87. Mottet, *supra* note 6, at 436 n.243.

88. *Id.* at 441 n.258.

89. *Id.* at 441 n.260.

90. Driver and Vehicle Servs., *Gender Change Policy*, MINN. DEP’T OF PUB. SAFETY, <https://dps.mn.gov/divisions/dvs/Pages/gender-change-policy.aspx> (last visited Nov. 5, 2014).

91. *Id.*

If the applicant is unable to provide documentation to meet the requirements, he or she may submit a Petition for Variance, along with a ten-dollar fee.⁹² A variance request provides an exception for those individuals who do not have, or are unable to obtain, the required identification and residency documents.⁹³

D. Changing the Gender on a U.S. Passport

As mentioned briefly in Part III.B of this note, the State Department revised its passport policy in 2010, allowing applicants to receive a passport reflecting their current gender, even “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.”⁹⁴ Under the new policy, a transgender person can obtain a passport reflecting his or her current gender by submitting a certification from a physician confirming that he or she has had “appropriate clinical treatment for gender transition.”⁹⁵ The department provides a model letter for the physicians:

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).

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

Date⁹⁶

92. *Id.*

93. *See* MINN. DEP’T OF PUB. SAFETY, DRIVER AND VEHICLE SERVS., PETITION FOR A VARIANCE OF MINNESOTA RULES, PART 7410.0600 (2013).

94. U.S. DEP’T OF STATE, *supra* note 72, at 1.

95. *Id.* at 4.

96. *Id.* at 8; NAT’L CTR. FOR TRANSGENDER EQUAL., UNDERSTANDING THE NEW

This ACT policy replaces the department's old policy, which required documentation of sex reassignment surgery. In contrast, the new policy explicitly states that "[s]exual reassignment surgery is not a prerequisite for passport issuance based on gender change"⁹⁷ and that the appropriate clinical treatment certification "is the *only* documentation of gender change required. Other medical records are not to be requested."⁹⁸

E. *Updating Social Security Records*

Although social security cards list only an individual's name and social security number, the gender information in the individual's record may occasionally cause problems with that person's coverage by Medicare, Medicaid, or Supplemental Security Income benefits. Specifically, transgender individuals may be subjected to "automatic refusals for coverage of services that appear inconsistent with [the] gender marker in [their] Social Security records,"⁹⁹ such as OB-GYN services for a transgender woman whose social security records list her as male. The Social Security Administration (SSA) announced a new policy in 2013, allowing a transgender person to change the gender on their social security records by submitting either government-issued documentation reflecting a change (such as a passport, birth certificate, or court order) or a certification from a physician confirming that the individual has had appropriate clinical treatment for gender transition.¹⁰⁰ Like the Department of State,

PASSPORT GENDER CHANGE POLICY (2011), *available at* http://transequality.org/Resources/passports_2012.pdf.

97. U.S. DEP'T OF STATE, *supra* note 72, at 1.

98. *Id.*

99. See NAT'L CTR. FOR TRANSGENDER EQUAL., TRANSGENDER PEOPLE AND THE SOCIAL SECURITY ADMINISTRATION (2013) [hereinafter TRANSGENDER PEOPLE AND THE SSA], *available at* http://transequality.org/Resources/SSAResource_June2013.pdf.

100. Program Operations Manual System, *RM 10212.200 Changing Numident Data for Reasons Other than Name Change*, U.S. SOC. SECURITY ADMIN. (Sept. 30, 2013) [hereinafter POMS], <http://policy.ssa.gov/poms.nsf/lnx/0110212200> ("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 [of acceptable documentary evidence] and contains sufficient biographical data (e.g., name, date of birth) to clearly identify the individual."); TRANSGENDER PEOPLE AND

the SSA provides a model ACT letter on its website.¹⁰¹ This policy replaced the SSA's previous policy, which required documentation of "sex reassignment surgery" in order to change an individual's gender in their records.¹⁰²

To receive a new social security card after a legal name change, an individual must complete a new application and provide documents proving his or her identity and supporting the requested change.¹⁰³

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.¹⁰⁴

IV. CONCLUSION

Refusing to legally recognize a transgender person's gender identity serves no legitimate purpose. Instead, it causes active harm to the affected individuals, who, without correct identity documents, are more at risk for discrimination in numerous areas of everyday life. The ability to obtain accurate identity documents is crucial to extending equal opportunities to transgender individuals in the areas of employment, housing, and education. Just as troubling as the practical difficulties posed by the lack of inaccurate identity documents is the corresponding physiological trauma that may accompany this lack of societal recognition. Rather than constructing stumbling blocks and legal hurdles, states should support transgender men and women throughout their transitions. By providing clear and accessible means of updating identity documents, Minnesota is providing legal and societal recognition that is a key element of successful gender transition.

THE SSA, *supra* note 99.

101. See POMS, *supra* note 100. This model letter uses identical language to that provided by the U.S. Department of State. See U.S. DEP'T OF STATE, *supra* note 72 and accompanying text.

102. TRANSGENDER PEOPLE AND THE SSA, *supra* note 99.

103. See SOC. SEC. ADMIN., FORM SS-5: APPLICATION FOR A SOCIAL SECURITY CARD (2011).

104. *Id.*

V. APPENDIX

Mottet's Model Provision reads in full as follows:

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.¹⁰⁵

105. Mottet, *supra* note 6, at 447–49.