



March 9, 2020

Department of Health and Human Services
Maine Center for Disease Control and Prevention
286 Water Street
State House Station 11
Augusta, Maine 04333-0011

Re: *GLAD Comments on Changes to 10-146 CODE OF MAINE RULES CHAPTER 16, "Gender Marker on Birth Record Rule"*

Dear Maine DHHS and Maine CDC,

My name is Mary Bonauto. I am an attorney with GLBTQ Legal Advocates & Defenders (GLAD), a New England-wide public interest legal organization, and I work from our Portland office. I apologize I could not be here in person today, and my colleagues are presenting GLAD's testimony.

Through strategic litigation, public policy advocacy, and education, GLAD works in New England and nationally to create a just society free of discrimination based on gender identity and expression, HIV status, and sexual orientation. Part of this work necessarily extends to advocacy for legal recognition of the gender identity and expression of every individual, just as GLAD and so many others have done with respect to building knowledge of, familiarity with, and respect for the existence of LGB people.

GLAD enthusiastically supports the proposed rule to expand gender markers on vital records to include an "X" designation. We greatly appreciate this work by DHHS and the CDC. We suggest certain modifications in the draft rule for your consideration, as explained below in Part IV.

I. Overview of Gender Identities

As you know, gender identity refers to one's inherent sense of being male, female, a blend of both, or neither.¹ Gender identity is distinct from sex assigned at birth, which is

¹ See, e.g., World Prof. Ass'n for Transgender Health, *Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People* 96 (7th ed. 2011), https://www.wpath.org/media/cms/Documents/SOC%20v7/SOC%20V7_English.pdf. Many transgender people experience gender dysphoria, which refers to clinically significant distress resulting from the incongruity between a person's gender identity and sex assigned at birth. This resolves when people are able to live as who they are.

typically based on the appearance of external genitalia.²

Although most individuals' gender identities correspond to the sex they were assigned at birth, transgender people have a gender identity that does not correspond to the sex they were assigned at birth. In addition, some people who may or may not be transgender have a gender identity that does not correspond to the traditional gender dichotomy of male and female and instead include both, and are sometimes referred to as nonbinary, gender expansive, or other terms.³ Further, about 1 in every 2000 births results in an intersex condition. These are unique variations in reproductive or sexual anatomy or a chromosomal pattern that does not follow a male or female pattern.⁴

As the medical profession has learned more in this area, prominent medical organizations have concluded that gender identity exists on a spectrum and that diverse gender expressions and identities, as described above, are normal and positive variations of the human experience.⁵

II. The Need for Accurate Identity Documents and An Accessible Process

All people – regardless of gender identity – need accurate and consistent identity documents and records to open bank accounts, start new jobs, enroll in schools, obtain health care, travel, and more.⁵ While many people have no need to think about these issues because their assigned sex at birth and their internal sense of who they are both align, for others, navigating in a world where their identity documents do not match up with who they are, or who they seem to be to others, creates enormous difficulties and discrimination. One recent U.S. survey found that incongruent gender identification documents expose people to a range of negative outcomes, from denial of employment, housing, and public benefits to harassment and physical violence.⁶

² See, e.g., Am. Med. Ass'n, *Health insurance coverage for gender-affirming care of transgender patients* 1 (2019), <https://www.ama-assn.org/system/files/2019-03/transgender-coverage-issue-brief.pdf>.

³ *Id.*

⁴ See InterAct, FAQ, <https://interactadvocates.org/faq/>.

Am. Psychol. Ass'n, *Resolution on Gender and Sexual Orientation Diversity in Children and Adolescents in Schools* (Feb. 2015), <https://www.apa.org/about/policy/orientation-diversity>. See also *What is Gender Dysphoria*, Am. Psychiatric Ass'n, <https://www.psychiatry.org/patients-families/gender-dysphoria/what-is-gender-dysphoria>.

⁵ World Prof. Ass'n for Transgender Health, *WPATH Identity Recognition Statement* (2017), <https://www.wpath.org/media/cms/Documents/Web%20Transfer/Policies/WPATH%20Identity%20Recognition%20Statement%2011.15.17.pdf>; see also Am. Psychiatric Ass'n, *Position Statement on Discrimination Against Transgender and Gender Diverse Individuals* (July 2018), <https://www.psychiatry.org/File%20Library/About-APA/Organization-Documents-Policies/Policies/Position-2018-Discrimination-Against-Transgender-and-Gender-Diverse-Individuals.pdf>.

⁶ Nat'l Ctr. for Transgender Eq., *The Report of the 2015 U.S. Transgender Survey* 89-90 (2016), <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>. World Prof. Ass'n for Transgender Health, *supra* note 1, at 9-10. See also Am. Psychol. Ass'n, *Transgender, Gender Identity, and Gender Expression Non-Discrimination* 26 (2008), <https://www.apa.org/about/policy/transgender.pdf>.

Leading medical organizations recommend that States create straightforward administrative procedures so that individuals can update the gender markers on their ID documents and records, without need for a court order or medical verification.⁷ For example, the American Medical Association (AMA) has formally expressed support for “every individual’s right to determine their gender identity and sex designation on government documents and other forms of government identification” and for “policies that allow for a sex designation or change of designation on all government IDs to reflect an individual’s gender identity, as reported by the individual and without need for verification by a medical professional.”⁸

Likewise, organizations (and States, as discussed below) have endorsed policies providing for a gender option beyond the male/female dichotomy on government-issued records and identification. For example, the AMA policy on conforming sex and gender designation on government IDs and other documents expressed unambiguous support for “policies that include ... [a] gender option for government records and forms of government-issued identification, which would be in addition to ‘male’ and ‘female.’”⁹ Similarly, the National Association for Public Health Statistics and Information Systems (NAPHSIS) has expressed its support for the inclusion of a non-binary gender marker on legal birth records.¹⁰

III. States Allowing Self-attestation of Gender to Amend a Birth Certificate

Maine already allows gender marker amendments on driver’s licenses to be made via self-attestation of gender. Indeed, as the required form to make such a change explains, an applicant requesting a change of the gender designation on their driver’s license or identification card 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.

Maine Bureau of Motor Vehicles, Gender Designation on a License or Identification Card (2019),

<https://www.maine.gov/sos/bmv/forms/GENDER%20DESIGNATION%20FORM.pdf>.

⁷ See, e.g., Am. Med. Ass’n, *Conforming Sex and Gender Designation on Government IDs and Other Documents* H-65.967 (2019), <https://policysearch.ama-assn.org/policyfinder/detail/transgender?uri=%2FAMADoc%2FHOD.xml-0-5096.xml>; World Prof. Ass’n for Transgender Health, *WPATH Identity Recognition Statement* (2017), <https://www.wpath.org/media/cms/Documents/Web%20Transfer/Policies/WPATH%20Identity%20Recognition%20Statement%2011.15.17.pdf>; Am. Psychol. Ass’n, *Transgender, Gender Identity, and Gender Expression Non-Discrimination* 26 (2008), <https://www.apa.org/about/policy/transgender.pdf>.

⁸ Am. Med. Ass’n, *Conforming Sex and Gender Designation on Government IDs and Other Documents* H-65.967 (2019), <https://policysearch.ama-assn.org/policyfinder/detail/transgender?uri=%2FAMADoc%2FHOD.xml-0-5096.xml>.

⁹ See, e.g., Am. Med. Ass’n, *Conforming Sex and Gender Designation on Government IDs and Other Documents* H-65.967 (2019), <https://policysearch.ama-assn.org/policyfinder/detail/transgender?uri=%2FAMADoc%2FHOD.xml-0-5096.xml>.

¹⁰ Nat’l Ass’n for Pub. Health Stat. & Info. Sys., *A Report of the NAPHSIS Registration Committee on Social Issues Affecting Vital Records Registration* (2019).

According to the Human Rights Campaign, as of January 2, 2020, 35 States and the District of Columbia facilitated gender marker updates on driver's licenses.¹¹ Twenty-eight of these states did so with easy-to-understand forms, and either relied on self-attestation (14 States) or required certification from a range of professionals (14 States).¹²

Many States have also moved toward a self-attestation, administrative process for birth certificate amendments as well. For these crucial identity documents, the Movement Advancement Project reports that 22 States and the District of Columbia issue new birth certificates changing gender markers without requiring either gender reassignment surgery or a court order, and that 10 of those States allow residents to mark M, F, or X on their birth certificates.¹³ As with driver's licenses, the movement toward easing the means of updating gender markers, including with an "X" designation, will continue.

IV. Recommended Changes to Draft Regulation

To further the policy in this proposed Rule, GLAD respectfully requests consideration of the following changes to this regulation.

SECTION 1.

Definitions

A. **Definitions.** For purposes of this rule, the following terms shall have the meanings set forth below:

1. **Applicant** means a person seeking the issuance or amendment of a vital record.
2. **Gender marker** means the designation of the registrant's sex on a vital record, indicated as male, female, ~~undetermined, or nonbinary~~ or X.

Comment: We suggest only three options, M, F, and X. We would remove "undetermined or nonbinary" for two reasons.

First, "nonbinary" is not all encompassing as X is and it may not be used at some point in the foreseeable future as language changes quickly. Second, GLAD opposes the inclusion of "undetermined" as a gender marker. The use of "undetermined" as a freestanding category is concerning for intersex people. From what we understand from colleagues with an intersex condition, there is stigma surrounding a birth certificate designation of "undetermined," which parents seek to avoid. As a result, parents are often pressured to put their children through unnecessary and harmful genital and gonadal surgery. The limited designations available on a birth certificate to "M" and "F" should not be any part of the impetus for such a profound decision, and the X clearly provides a more palatable alternative. See INTERACT, A CHANGING PARADIGM: US MEDICAL PROVIDER DISCOMFORT WITH

¹¹ Human Rights Campaign, "Gender marker Updates on Identification Documents," available at: <https://www.hrc.org/state-maps/gender-marker-updates>. See Appendix A.

¹² Movement Advancement Project, "Equality Maps: Identity Document Laws and Policies," available at: https://www.lgbtmap.org/equality-maps/identity_document_laws. See Appendix B.

¹³ *Id.* For more detail, see Nat'l Ctr. for Transgender Eq., *Summary of State Birth Certificate Gender Change Laws* (2020), <https://transequality.org/sites/default/files/docs/resources/Summary%20of%20State%20Birth%20Certificate%20Laws%20Jan%202020.pdf>

INTERSEX CARE PRACTICES, <https://live-interact-advocates.pantheonsite.io/wp-content/uploads/2017/10/REPORT-HRW-interACT-US-Medical-Provider-Discomfort-with-Intersex-Care-Practices.pdf> (last visited Mar. 5, 2020). Importantly, the practice of conducting genital/gonadal surgery on infants and toddlers is not one supported by intersex adults; rather, the “majority [do] not think genital surgery should be done in infancy or toddlerhood.” Letter from Kimberly Zieselman, Executive Director of Advocates for Informed Choice, to the National Institute of Health (Nov. 2, 2015) <https://live-interact-advocates.pantheonsite.io/intersex-medical-policy-and-research/> (last visited Mar. 5, 2020). Further, medical professionals are becoming increasingly reluctant to conduct genital surgery on infants and toddlers and increasingly condemn the practice. *Id.* This Rule should therefore refrain from using “undetermined” as an available designation for gender markers on vital records, although the X could be used to indicate “undesigned,” among other things, as discussed below.

3. ~~Nonbinary or X~~ means a gender marker on a vital record that ~~is not exclusively male or female.~~ indicates any gender other than exclusively male or exclusively female, undesigned sex or gender, or unspecified gender.

Comment: We recommend use of “undesigned” rather than “undetermined” here in order to allow time for consideration of issues that arise, such as when a child is born with an intersex condition.

We suggest this change because X is the broadest designation possible. In addition to the States described in III above that already use “X”, the International Civil Aviation Organization, the United Nations agency that sets forth passport specifications, uses “X” in addition to “M” or “F”. See ICAO Document 9303, Machine Readable Travel Documents, at IV-14 (7th ed. 2015), available at https://www.icao.int/publications/Documents/9303_p4_cons_en.pdf. By using “X” instead of “Nonbinary or X”, the Rule expands the applicability of the category without forcing a specific label on individuals.

We also recommend use of M, F, and X when the rule is finally implemented in order to create parity among gender identities for birth certificate purposes. No one will be confused about the meaning of M and F in any event.

4. **Registrant** means the individual(s) to whom the vital record pertains.
5. **State registrar** means the State Registrar, Deputy Registrar, or other designee of the State Registrar.

SECTION 2. Gender Markers on Birth Records

- A. **Assigning ~~nonbinary~~ X at time of birth.** At the time the birth record is created, when a child has one legal parent, that parents may designate nonbinary (X) as the gender marker on the birth certificate. When two Pparents are listed on the birth certificate, they must demonstrate mutual consent by signing the birth worksheet. The requirement that both parents sign the birth

worksheet may be waived upon a showing of good cause made to the State Registrar in writing. Good cause may be established by demonstrating that the other parent is deceased, cannot readily be located, has engaged in conduct showing an intent to forego parental duties, has failed to communicate meaningfully with the child for 6 months, has failed to maintain regular visitation with the child for 6 months, or is otherwise unable to provide a signature. If the State Registrar is satisfied that good cause has been shown, then the birth record may reflect nonbinary as the gender marker without that parent's signature.

Comment: We hope this language clarifies that a sole legal parent – namely the person giving birth who is not married – may effectuate this change. The proposed Rule should not assume, as it appears to, that a child will always have two legal parents at birth. In addition, as the proposed Rule already provided, we agree that when a child does have two legal parents, those parents can agree to effectuate the gender marker designation by signing the birth worksheet. As to good cause, we suggest other measures of disinterest in the child's welfare and an ongoing parent-child relationship, such as failure to visit or communicate for 6 months, as good cause. Note that 22 MRSA § 4002 (1-A) uses these factors for "abandonment."

B. Issuance of new birth record to align gender marker with gender identity. Requests for a new birth record reflecting the appropriate gender marker must be submitted on forms prescribed by the Department. When the State Registrar grants the request, a replacement record will be established. When a new birth record is established pursuant to this rule, all copies of the original certificate shall be held confidential and only the registrant or the registrant's legal representative shall have access to the original record, except by court order.

1. Adult or emancipated registrants. Registrants age 18 and older or an emancipated minor may submit an individual notarized attestation on the form prescribed by the State Registrar to request a new birth record reflecting the appropriate gender marker without court order, if the application is for the purpose of affirming gender identity.
2. Registrants Under the Age of 18. The parent(s) recorded on the effective birth certificate or the legal guardian(s) or legal parent(s) must submit a notarized attestation on the form prescribed by the State Registrar to request a new birth record reflecting the appropriate gender marker without court order. ~~The application prescribed by the Department for this request requires the signature of a licensed physician or licensed mental health care provider who, within the scope of their license and through a bona fide patient-provider relationship, affirms that the requested gender marker is consistent with the minor's gender identity.~~

Comment: Note that we suggest adding "effective" because sometimes people use outdated records and we recommend "legal parents" be added as persons who can initiate a petition because sometimes individuals are added to a birth certificate after birth because they are established as parents later. The certification is addressed further below.

- a. All parents listed on the birth certificate must consent and sign the application. The signature or ~~Both~~ signatures must be notarized. The requirement

that both parents listed on the birth certificate sign the application may be waived upon a showing of good cause made to the State Registrar in writing. Good cause may be established by demonstrating that the other parent is deceased, cannot be located, has engaged in conduct showing an intent to forego parental duties, has failed to communicate meaningfully with the child for 6 months, has failed to maintain regular visitation with the child for 6 months, or is otherwise unable to provide a signature. If the State Registrar is satisfied that good cause has been shown, then the new birth record will be issued without that parent's signature.

Comment: A child may have only one legal parent at the time of birth, so the more accurate reference is to "parent or parents." The second proposed change is for clarity. The "good cause" suggestions are restated here.

b. In instances where the two legal parents do not consent to the application to change a child's gender marker, the application prescribed by the Department for this request requires the signature of a licensed physician or licensed mental health care provider who, within the scope of their license and through a bona fide patient-provider relationship, affirms that the requested gender marker is consistent with the minor's gender identity.

Comment: We recommend the provider certification requirement should not apply when a sole parent decides, or all legal parents agree, to amend the child's gender marker. Parents are presumed to act in the best interests of their children, so an agreement should seem to end the matter. On the other hand, if there are two parents and one does not consent, and the good cause exception is inapplicable, then competing parental rights suggest a stalemate, to the detriment of the child. In such instances, a third-party professional who knows the child could clarify that the requested gender marker change is or is not consistent with the child's gender identity and in that way, help the Registrar to resolve the issue.

We also appreciate the breadth of the professionals qualified to provide certification as a means to eliminate barriers to access, e.g. by being allowed to rely on a school nurse or social worker as the certifying professional.

c. Legal guardians or legal parents other than parents named on the original birth certificate acting on behalf of the minor must attach a certified court order as proof of legal guardianship to any request pursuant to this section.

Comment: We suggest adding “legal parents” because an adjudicated de facto parent or an unmarried partner who meets the holding out requirements (and who then establishes their rights) should also be included as persons with a right to petition. Parents, eg. defacto, may not have updated the child’s birth certificate.

C. Issuance of new birth record to align given names with gender identity. A registrant who is 18 years of age and older or an emancipated minor, or a parent or parents acting on behalf of a minor child, may submit an individual notarized attestation on the form prescribed by the State Registrar to request that a new birth record issued pursuant to Section 2(B) reflect the first name and middle name of the registrant’s or applicant’s choosing, if such a request is made for the purpose of aligning the record with the registrant’s gender identity. When such a request is made, the new birth record issued pursuant to Section 2(B) will reflect the given names requested by the registrant or applicant(s). Alternatively, a name change may be completed in accordance with the Correction and Completion of Vital Records Rule, at 10-146 CMR chapter 2.

Comment: This change is simply to acknowledge that some children have one legal parent at birth.

SECTION 3. Amending the Gender Marker on an Existing Vital Record to Align with Gender Identity

- A. Marriage record.** Requests to change the registrant’s gender marker on an existing marriage certificate must be made pursuant to 10-146 CMR chapter 2.
- B. Death record.** Requests to change the registrant’s gender marker on an existing death certificate must be made pursuant to 10-146 CMR chapter 2. ~~The gender marker on an existing death certificate may be changed only if the registrant’s gender marker has been changed with the United States Social Security Administration.~~

Comment: We recommend eliminating the second sentence, which conditions approval of a gender marker change request for an existing death certificate on whether the registrant’s gender marker was changed with the US Social Security Administration (SSA).

First, death certificates are official Maine records that are prepared in Maine for Maine residents. It is important to respect in death the lived experiences of the individual. Therefore, the gender marker on a death certificate should be accurately recorded upon the issuance of the death certificate. If an individual has “X” as their gender marker on their state identification, driver’s license, or birth certificate, an “X” should be indicated on all other vital records, including death certificates.

Second, the relevance, let alone the controlling force, given to updating SSA documents, creates a substantial, or even insurmountable barrier to preparation of an accurate death record in Maine for some individuals. By way of background, to change one’s gender on Social Security records, the SSA requires one of the following records showing an individual’s new gender: a U.S. passport, a state-issued birth certificate, a court order

directing legal recognition of the new gender, or a medical certification of appropriate clinical treatment for gender transition in the form of an original letter from a licensed physician. SSA, SSA FAQ on How to Change Gender on Social Security Record (Jan. 31, 2019) <https://faq.ssa.gov/en-us/Topic/article/KA-01453>. Additionally, an individual must complete an application for a Social Security Card. Id. The application for a Social Security Card, however, only has two gender marker designations: male and female. See SSA, Form SS-5 (11-2019) UF (2019), <https://www.ssa.gov/forms/ss-5.pdf>. With only the binary gender marker designations available, the SSA does not allow for the use of “X” as a designation. Because “X” is unavailable with the SSA and because the Proposed Rule requires a change with the SSA prior to an amendment to a death certificate, the amendment of a death certificate to a gender marker of “X” is impossible.

Also related to SSA, to the extent this requirement is about avoiding duplicate payments etc. after a death, SSA can identify an individual who is deceased without regard to gender markers, such as by Social Security number and date of birth.

Finally, the failure to correct death certificates with important personal information can create profound dismay in the deceased’s survivors. This requirement appears to create a substantial barrier or even an insurmountable one. The consequences are personally profound. Jim Obergefell, a man who was not listed on his husband’s death certificate in Ohio because their marriage was disrespected by the State, took his case to the U.S. Supreme Court and won. Obergefell v. Hodges, 526 U.S. ___, (2015), [available at: https://www.supremecourt.gov/opinions/14pdf/14-556_3204.pdf](https://www.supremecourt.gov/opinions/14pdf/14-556_3204.pdf). The failure to amend the record created an injury through time and erased their nearly two decade together. Similar harms could well be experienced by survivors who believe a loved one’s lived experience in their gender has been erased.

SECTION 4. Amendment of the Same Item More than Once

Consistent with other amendment types, and, as stated in 10-146 CMR, chapter 2, once an amendment is made to an item on a vital record, a court order is required for any subsequent change to the same item.

SECTION 5. Replacement of Former Rules and Appeals.

This rule replaces all former rules regarding “change of sex” or updating of gender markers for purposes of birth registration, which are no longer effective. The Department will update its forms accordingly.

Appeals from agency action may be taken pursuant to Me. Rules of Civil Procedure 80C.

Comment: We recommend clarity and consistency on these two points.

First, it is essential to clarify that the old rules applicable to gender marker changes are no longer operative, even as they remain in circulation in print sources and on the internet. In particular, 10-146 CMR ch. 2, § 11 provides that a legal change of sex to a vital record requires (1) a name change through notification form VS-14, (2) a notarized affidavit by the

physician who performed the “surgical procedure,” and (3) a form VS-7. The notarized affidavit and any regulations or forms to it should be rescinded or revised in accord with this new Rule. Clarifying that the physician affidavit is no longer required is also consistent with procedure for updating gender markers on driver’s licenses, which requires only the Gender Designation Form previously referenced.

Second, when the State Registrar denies a request to amend vital records under the governing rule, 10-145 CMR, ch. 2, applications/petitioners must be advised of their right to appeal. Id., at § 2.A.6.

Thank you for your excellent work on this proposed Rule, which will bring peace of mind to adults, children, and families. Please do not hesitate to contact me with any questions, including more detail about State laws, policies, and regulations.

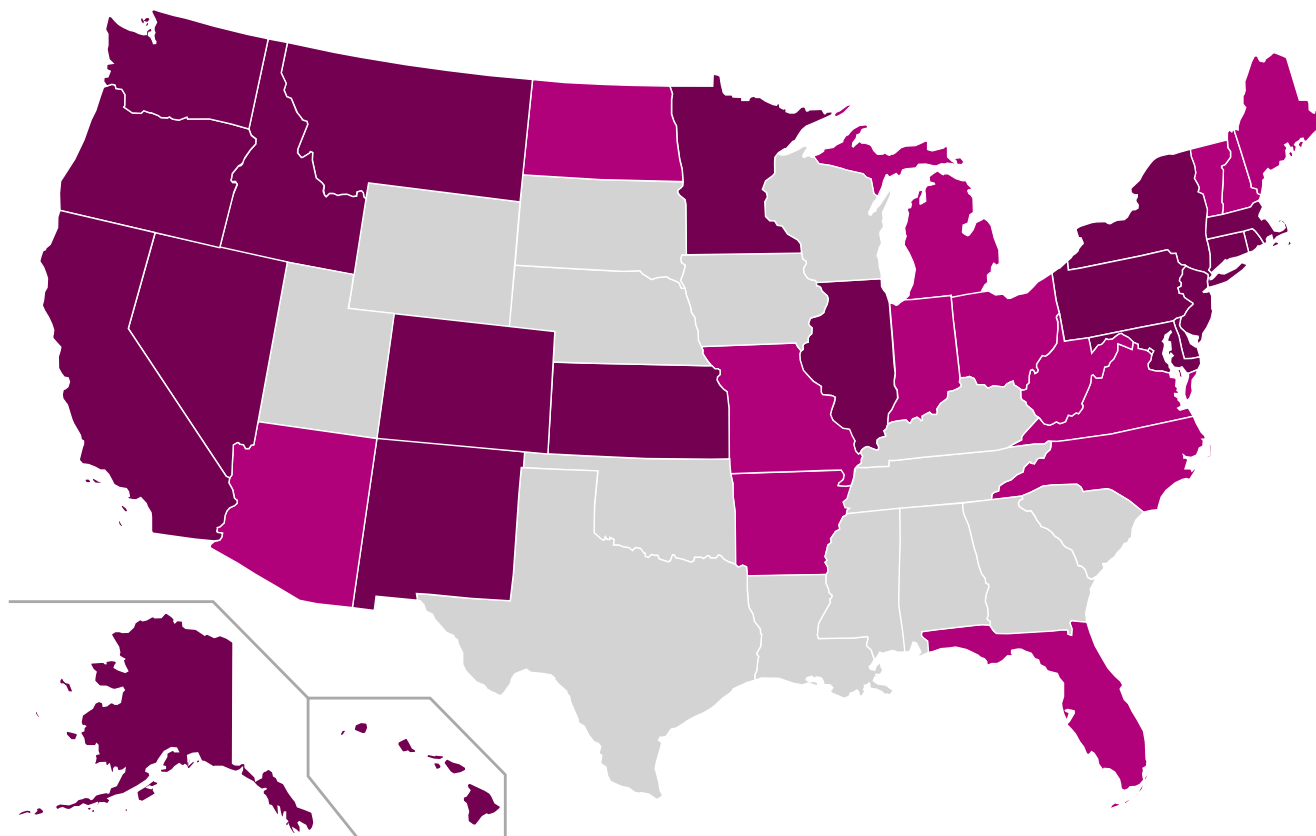
Sincerely yours,

A handwritten signature in blue ink that reads "Mary L. Bonauto". The signature is written in a cursive, flowing style.

Mary L. Bonauto
GLAD Civil Rights Project Director
mbonauto@glad.org




GENDER MARKER UPDATES ON IDENTIFICATION DOCUMENTS



Updated January 02, 2020

 **Facilitate gender marker update on driver's licenses only** (14 states): Arizona, Arkansas, Florida, Indiana, Maine, Michigan, Missouri, New Hampshire, North Carolina, North Dakota, Ohio, Vermont, Virginia, West Virginia

 **Facilitate gender marker update on birth certificates only**

 **Facilitate gender marker update on both birth certificates and driver's licenses** (21 states & D.C.): Alaska, California, Colorado, Connecticut, Delaware, District of Columbia, Hawaii, Idaho, Illinois, Kansas, Maryland, Massachusetts, Minnesota, Montana, Nevada, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Washington

IDENTITY DOCUMENT LAWS AND POLICIES

DRIVER'S LICENSE

BIRTH CERTIFICATE

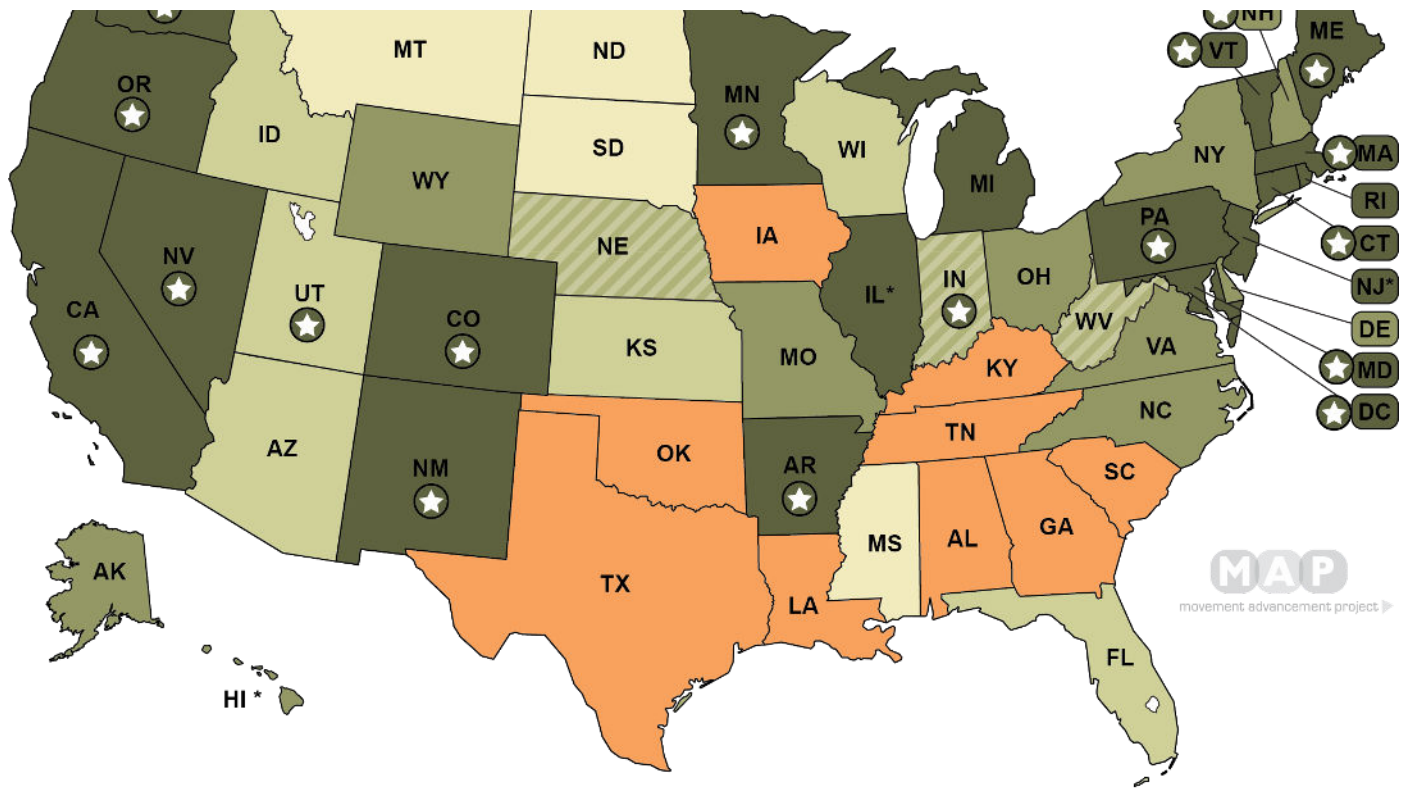
NAME CHANGE

TABLE FORMAT

Driver's license policies govern the process by which a person can change the gender marker on their driver's license. Many transgender people choose to update the gender marker on their identity documents so that it matches their gender identity. Accurate and consistent gender markers on identity documents helps transgender people gain access to public spaces and resources, as well as dramatically reducing the risk they will face violence, discrimination, or harassment. Additionally, states may allow individuals to identify as something other than male or female on their driver's licenses. The ease of the process to change gender markers is independent of how many gender options (i.e., male, female, nonbinary) are available.

However, many states have not yet modernized their policy or process, making it significantly challenging for transgender people to access identification that matches their gender identity and protects their safety. This map examines the variation in state policies regarding both the process of changing one's gender marker, as well as the gender marker options available in a given state. This map's categories were developed in conversation with the National Center for Transgender Equality (NCTE) and based on their driver's license process grading system, available here (<https://transequality.org/documents>).

DONATE (/DONATE)



U.S. Territories



State allows residents to mark M, F, or X on their driver's license (17 states, 0 territories + D.C.)

State uses easy to understand form and does not require provider certification (18 states, 0 territories + D.C.)

State uses easy to understand form and requires provider certification (accepted from wide range of professionals) (10 states, 1 territory)

State uses easy to understand form and requires provider certification (accepted from limited range of professionals) (3 states, 0 territories)

State has no form. No court order or proof of surgery required, but burdensome process requirements and/or provider certification required from limited range of professionals (6 states, 0 territories)

State has unclear, unknown or unwritten policy regarding gender marker changes (4 states, 2 territories)

DONATE (/DONATE)

 [Read the State-by-State Statutes \(/img/maps/citations-id-drivers-license.pdf\)](/img/maps/citations-id-drivers-license.pdf)

*NOTE: Hawai'i, Illinois, and New Jersey have all passed legislation or announced they will implement gender neutral markers. Once these changes are implemented and individuals in these states are able to access gender neutral markers on their driver's licenses, this map will be updated to reflect that.

- New Jersey (<https://www.state.nj.us/mvc/press/archives/2020/021220.htm>)'s gender neutral markers are expected to be available in early 2020, to conform with the Babs Siperstein law. See the current form [here](https://www.state.nj.us/mvc/pdf/license/genderchange.pdf) (<https://www.state.nj.us/mvc/pdf/license/genderchange.pdf>).
- Hawai'i (https://www.huffpost.com/entry/hawaii-adds-third-gender-option_n_5d15240fe4b03d611638c748)'s gender neutral markers will be available July 1, 2020.
- Illinois (<http://www.newnownext.com/illinois-non-binary-license-id/08/2019/>) may not implement gender neutral markers until 2024. See the current form [here](https://www.cyberdriveillinois.com/publications/pdf_publications/dsd_a329.pdf) (https://www.cyberdriveillinois.com/publications/pdf_publications/dsd_a329.pdf).

The processes by which an individual can change the gender marker on their driver's license and/or birth certificate to accurately reflect their gender identity are governed by state laws and administrative policies and often include intrusive and outdated requirements, such as proof of sex reassignment surgery and court orders. According to the National Center for Transgender Equality (<http://transequality.org/issues/national-transgender-discrimination-survey>), burdensome requirements and prohibitive costs prevent the majority of transgender individuals from obtaining accurate identity documents.

For more information, please see the National Center for Transgender Equality's Identity Documents Center (<http://transequality.org/documents>).

Recommended citation:

Movement Advancement Project. "Equality Maps: Identity Document Laws and Policies." (https://www.lgbtmap.org/equality-maps/identity_document_laws)https://www.lgbtmap.org/equality-maps/identity_document_laws (https://www.lgbtmap.org/equality-maps/identity_document_laws). Accessed [date of access].

Percent of Adult LGBTQ Population Covered by Laws

*Note: These percentages reflect estimates of the LGBTQ adult population living in the 50 states and the District of Columbia. Estimates of the LGBTQ adult population in the five inhabited U.S. territories are not available, and so cannot be reflected here.

DONATE (/DONATE)

39 % of the LGBTQ population lives in states that allow residents to mark M, F, or X on their driver's license

45%

45 % of LGBTQ population lives in states with easy to understand form and no provider certification required

19%

19 % of LGBTQ population lives in states with easy to understand form and provider certification requirements (accepted from wide range of professionals)

3%

3 % of LGBTQ population lives in states with easy to understand form and provider certification requirements (accepted from limited range of professionals)

13%

13 % of LGBTQ population lives in states with no form; no court order or proof of surgery required, but burdensome process requirements and/or provider

1%

1 % of LGBTQ population lives in states with unclear, unknown, or unwritten policy regarding the process of gender marker changes

19%

19 % of LGBTQ population lives in states that require proof of surgery, court order, and/or amended birth certificate to change gender marker

Data current as of 03/05/2020

THIS MAP IS POWERED BY



([HTTPS://WWW.LGBTMAP.ORG](https://www.lgbtmap.org))

movement advancement project ►