

Committee Report

REGULAR CALENDAR

March 5, 2019

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

**The Committee on Health, Human Services and Elderly
Affairs to which was referred HB 446,**

**AN ACT relative to initiating amendments and
corrections to birth records. Having considered the
same, report the same with the following amendment,
and the recommendation that the bill OUGHT TO PASS
WITH AMENDMENT.**

Rep. Gerri Cannon

FOR THE COMMITTEE

COMMITTEE REPORT

Committee:	Health, Human Services and Elderly Affairs
Bill Number:	HB 446
Title:	relative to initiating amendments and corrections to birth records.
Date:	March 5, 2019
Consent Calendar:	REGULAR
Recommendation:	OUGHT TO PASS WITH AMENDMENT 2019-0801 h

STATEMENT OF INTENT

Currently, NH birth certificates can be changed by court order for a variety of reasons, including changing gender and name information for people who have had a sex change operation. The current policy does not consider situations where the applicant may not have had, or completed, expensive and risky surgical procedures, but has been determined to be the sex they identify as by their medical professionals. As amended, HB 446 allows transgender men, women and people who don't identify as either male or female to change their name and sex information on their birth certificate. The applicant must secure a notarized statement from their licensed healthcare provider, stating that the applicant has been under their care and that in the health care provider's opinion the individual is (1) male, (2) female or (3) neither male nor female and is reasonably expected to continue as such for the foreseeable future. This document would be submitted directly to a City or Town clerk for processing as defined in RSA 5-C:85, by the same procedure used for other amendments to a birth certificate. A new birth certificate will be issued, but the original birth certificate will be retained as a permanent record of the amendment.

Vote 16-3.

Rep. Gerri Cannon
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

Health, Human Services and Elderly Affairs

HB 446, relative to initiating amendments and corrections to birth records. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Gerri Cannon for Health, Human Services and Elderly Affairs. Currently, NH birth certificates can be changed by court order for a variety of reasons, including changing gender and name information for people who have had a sex change operation. The current policy does not consider situations where the applicant may not have had, or completed, expensive and risky surgical procedures, but has been determined to be the sex they identify as by their medical professionals. As amended, HB 446 allows transgender men, women and people who don't identify as either male or female to change their name and sex information on their birth certificate. The applicant must secure a notarized statement from their licensed healthcare provider, stating that the applicant has been under their care and that in the health care provider's opinion the individual is (1) male, (2) female or (3) neither male nor female and is reasonably expected to continue as such for the foreseeable future. This document would be submitted directly to a City or Town clerk for processing as defined in RSA 5-C:85, by the same procedure used for other amendments to a birth certificate. A new birth certificate will be issued, but the original birth certificate will be retained as a permanent record of the amendment. **Vote 16-3.**

Original: House Clerk

Cc: Committee Bill File

Forcier, Lindsay

From: Lucy McVitty Weber <lwmcv@comcast.net>
Sent: Tuesday, March 05, 2019 10:50 PM
To: Forcier, Lindsay
Cc: Gerri Cannon
Subject: FW: Committee Report HB446

Good morning, Lindsay.

Below is the committee report from Rep. Cannon on HB 446. I have approved the language as good to go, so you can send it on when you have it prepared. I believe the committee vote on OTP/A was 16-3, but please check the voting sheet or Rep. Campion's notes to be sure.

Thanks,

Lucy

Rep. Lucy McVitty Weber
217 Old Keene Road
Walpole NH 03608
Home: 603-756-4338
Cell: 603-499-0282
lwmcv@comcast.net

Committee Report - HB 446 Relative to initiating and corrections to birth records OTP/A 2019-0801h Regular Calendar 16-3

Currently NH birth certificates can be changed by court order for a variety of reasons, including changing gender and name information for people who have had a sex change operation. The current policy does not consider situations where the applicant may not have had or completed expensive and risky surgical procedures, but has been determined to be the sex they identify as by their medical professionals.

As amended, HB 446 allows transgender men, women and people who don't identify as either male or female to change their name and sex information on their birth certificate. The applicant must secure a notarized statement from their licensed healthcare provider, stating that the applicant has been under their care and that in the health care provider's opinion the individual is (1) male, (2) female or (3) neither male nor female and is reasonably expected to continue as such for the foreseeable future. This document would be submitted directly to a City or Town clerk for processing as defined in RSA 5-C:85, by the same procedure used for other amendments to a birth

certificate. A new birth certificate will be issued, but the original birth certificate will be retained as a permanent record of the amendment.

Rep. Gerri Cannon for the committee

Amendment to HB 446

1 Amend the bill by replacing section 1 with the following:

2

3 1 Vital Records; Initiating Amendments and Corrections to Birth Records; Gender Identity.
4 RSA 5-C:87, V is repealed and reenacted to read as follows:

5 V. If an individual requests a birth record reflecting a sex designation other than that
6 which was assigned at birth, a new birth record shall be prepared to reflect a change in the
7 individual's sex upon receipt of a notarized certification affirming the individual's sex designation
8 by a licensed and qualified health care provider.

9 (a) The notarized certification shall be signed by a licensed and qualified health care
10 provider under the penalty of unsworn falsification pursuant to RSA 641:3. It shall provide that the
11 named individual is currently or was previously under the signing health care provider's care, and
12 that in the health care provider's professional opinion the individual's sex is (1) male, (2) female, or
13 (3) neither male nor female, and can be reasonably expected to continue as such for the foreseeable
14 future.

15 (b) The application shall be signed by the applicant under the penalty of unsworn
16 falsification pursuant to RSA 641:3. This signature shall certify that the request for change of sex
17 is for the purpose of ensuring that the applicant's birth record accurately reflects the applicant's
18 sex, and that the request is not for any fraudulent or unlawful purpose.

19 (c) The individual shall surrender any prior birth record issued by the state of New
20 Hampshire in the individual's possession. The original birth record shall be retained by the city or
21 town of birth. The clerk of the city or town shall submit the individual's application, the health
22 care provider's certification, and a copy of the original birth record to the state registrar for review
23 and issuance of a new birth record. Upon issuance of the new birth record, the clerk of the city or
24 town shall indicate on the original birth record that it has been revised in accordance with this
25 paragraph.

26 (d) The town or city clerk may charge a \$50 fee for updating a birth record pursuant to
27 this paragraph.

28 (e) In this paragraph, "licensed and qualified health care provider" means a treating
29 and licensed physician, psychologist, advanced practice registered nurse, clinical social worker, or
30 clinical mental health counselor.

Amendment to HB 446
- Page 2 -

2019-0801h

AMENDED ANALYSIS

This bill provides a procedure for an individual to obtain a new birth certificate to reflect a sex designation other than that which was assigned at birth.

Voting Sheets

HOUSE COMMITTEE ON
EXECUTIVE SESSION on HB 446

BILL TITLE: relative to initiating amendments and corrections to birth records.

DATE: March 5, 2019

LOB ROOM: 205

MOTIONS: OUGHT TO PASS WITH AMENDMENT

Moved by Rep. Cannon Seconded by Rep. Freitas AM Vote: 19-0

Amendment # 2019-0801 h

Moved by Rep. Cannon Seconded by Rep. Freitas Vote: 16-3

CONSENT CALENDAR: NO

Statement of Intent: Refer to Committee Report

Respectfully submitted,



Rep Susan Ticehurst, Clerk

HOUSE COMMITTEE ON HEALTH, HUMAN SERVICES AND ELDERLY AFFAIRS

EXECUTIVE SESSION on HB 446

BILL TITLE: relative to initiating amendments and corrections to birth records.

DATE: 3/5/19

LOB ROOM: 205

MOTION: (Please check one box)

- OTP
- ITL
- Retain (1st year)
- Adoption of Amendment # 0801h
(if offered)
- Interim Study (2nd year)

Moved by Rep. Cannon Seconded by Rep. Freitas Vote: 19-0

MOTION: (Please check one box)

- OTP
- OTP/A
- ITL
- Retain (1st year)
- Adoption of Amendment # _____
(if offered)
- Interim Study (2nd year)

Moved by Rep. Cannon Seconded by Rep. Freitas Vote: 16-3

MOTION: (Please check one box)

- OTP
- OTP/A
- ITL
- Retain (1st year)
- Adoption of Amendment # _____
(if offered)
- Interim Study (2nd year)

Moved by Rep. _____ Seconded by Rep. _____ Vote: _____

MOTION: (Please check one box)

- OTP
- OTP/A
- ITL
- Retain (1st year)
- Adoption of Amendment # _____
(if offered)
- Interim Study (2nd year)

Moved by Rep. _____ Seconded by Rep. _____ Vote: _____

CONSENT CALENDAR: _____ YES NO

Minority Report? _____ Yes No If yes, author, Rep: _____ Motion _____

Respectfully submitted: Susan Ticehurst
Rep Susan Ticehurst, Clerk



STATE OF NEW HAMPSHIRE
OFFICE OF THE HOUSE CLERK

2/7/2019 12:10:51 PM
Roll Call Committee Registers
Report

2019 SESSION

Health, Human Services and Elderly Affairs

Bill #: HB 446 Motion: Adopt Amend AM #: 0801h Exec Session Date: 3-5-19

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Weber, Lucy M. Chairman	✓		
Campion, Polly Kent Vice Chairman	✓		
MacKay, James R.	✓		
Snow, Kendall A.	✓		
Freitas, Mary C.	✓		
Ticehurst, Susan J. Clerk	✓		
Knirk, Jerry L.	✓		
Salloway, Jeffrey C.	✓		
Cannon, Gerri D.	✓		
Nutter-Upham, Frances E.	✓		
Osborne, Richard G.	✓		
Schapiro, Joe	✓		
Woods, Gary L.	✓		
McMahon, Charles E.			
Nelson, Bill G.	✓		
Guthrie, Joseph A.	✓		
Fothergill, John J.	✓		
Marsh, William M.			
Pearson, Mark A.	✓		
Acton, Dennis F.	✓		
DeClercq, Edward			
Stapleton, Walter A.	✓		
TOTAL VOTE:	19	0	



STATE OF NEW HAMPSHIRE
OFFICE OF THE HOUSE CLERK

2/7/2019 12:10:51 PM
Roll Call Committee Registers
Report

2019 SESSION

Health, Human Services and Elderly Affairs

HB
Bill #: 446 Motion: OTPA AM #: 08016 Exec Session Date: 2-5-19

Members	YEAS	Nays	NV
Weber, Lucy M. Chairman	✓		
Campion, Polly Kent Vice Chairman	✓		
MacKay, James R.	✓		
Snow, Kendall A.	✓		
Freitas, Mary C.	✓		
Ticehurst, Susan J. Clerk	✓		
Knirk, Jerry L.	✓		
Salloway, Jeffrey C.	✓		
Cannon, Gerri D.	✓		
Nutter-Upham, Frances E.	✓		
Osborne, Richard G.	✓		
Schapiro, Joe	✓		
Woods, Gary L.	✓		
McMahon, Charles E.			
Nelson, Bill G.		✓	
Guthrie, Joseph A.	✓		
Fothergill, John J.	✓		
Marsh, William M.			
Pearson, Mark A.		✓	
Acton, Dennis F.	✓		
DeClercq, Edward			
Stapleton, Walter A.		✓	
TOTAL VOTE:	16	3	

Rep. Weber, Ches. 1
March 5, 2019
2019-0801h
05/04

Amendment to HB 446

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Amendment to HB 446

- Page 2 -

2019-0801h

AMENDED ANALYSIS

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Sub-
Committee
Actions

HOUSE COMMITTEE ON HEALTH, HUMAN SERVICES AND ELDERLY AFFAIRS

SUBCOMMITTEE WORK SESSION on HB ~~736~~ ⁴⁴⁶

BILL TITLE: reestablishing the commission to study environmentally-triggered chronic illness.

DATE:

Subcommittee Members: Reps. Weber, Campion, McMahon, Nelson, M. Pearson, Freitas, Knirk, R. Osborne, Woods, DeClercq, Stapleton and Salloway

Comments and Recommendations:

Subcommittee reconvened at 12:50
Reconvened @ 12:55 without Rep McMahon

MOTIONS: OTP, OTP/A, ITL, Retained (1st Yr), Interim Study (2nd Yr)
(Please circle one)

Moved by Rep. Woods Seconded by Rep. Campion AM Vote: 6-3

Adoption of Amendment # ~~0801~~ 0801

Moved by Rep. _____ Seconded by Rep. _____ Vote: 6-3

Amendment Adopted Amendment Failed

MOTIONS: OTP, OTP/A, ITL, Retained (1st Yr), Interim Study (2nd Yr)
(Please circle one)

Moved by Rep. _____ Seconded by Rep. _____ AM Vote: _____

Adoption of Amendment # _____

Moved by Rep. _____ Seconded by Rep. _____ Vote: _____

Amendment Adopted Amendment Failed

Respectfully submitted,

Rep. L Weber
Subcommittee Chairman/Clerk

Amendment to HB 446

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Amendment to HB 446
- Page 2 -

2019-0801h

AMENDED ANALYSIS

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Hearing Minutes

HOUSE COMMITTEE ON HEALTH, HUMAN SERVICES AND ELDERLY AFFAIRS

PUBLIC HEARING ON HB 446

BILL TITLE: relative to initiating amendments and corrections to birth records.

DATE: January 17, 2019

LOB ROOM: Reps Hall **Time Public Hearing Called to Order:** 3:10 PM

Time Adjourned: 4:45 PM

Committee Members: Reps. Weber, Campion, Ticehurst, MacKay, Snow, Freitas, Knirk, Cannon, Nutter-Upham, R. Osborne, Schapiro, Woods, McMahon, Nelson, Guthrie, Fothergill, Marsh, M. Pearson, Acton, DeClercq and Stapleton

Bill Sponsors:

Rep. Cannon

Rep. Cushing

Rep. Butler

Rep. Bunker

Rep. Le

Rep. MacKay

Rep. Muscatel

Sen. Watters

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

*** 1,2, 3 Sponsor/Introduced By: Gerri Cannon –**

Offered amendment 2019-0037h; (Attachment 1) and Attachment #2: Written testimony. Intent is to allow people to change the gender on their NH birth records once their medical professionals agree on what that gender role is and that they have medically transitioned to their proper gender. Currently information on birth certificates can be changed only through a court order. Would agree with inclusion of physician assistants to the list of licensed and qualified health care provider. Provided Attachment #3: Letter from Karen Thomas.

Sen. Waters –

Supports the bill. Because it will bring NH in line with current medical, social and other understandings. There have been no issues with making changes on driver licenses.

*** 4 Rep. Lisa Butler, Co-sponsor -**

Attachment #4: Partial list of medical organizations that recognize the medical necessity of treatments for gender dysphoria and endorse such treatments. Also includes a state by state overview of rules for changing gender markers on birth certificates.

*** 5 Jess Edwards –**

Supports the bill. Asks what we are going to do with medical and other records that are kept by the state. Suggests an amendment to correct the title of the bill. Nowhere in the bill do they talk about amending or correcting. The old document is not destroyed. The record should not be called a birth certificate. It is a new medical event that should be documented. Should make sure the process is resilient since a small number of people revert back to their original assignment. Suggests consulting with medical records experts to get the appropriate language and format. Should extend the effective date since it will take some time to prepare clerks.

Cynthia Maillot –

Science supports the belief that gender is decided at the moment of birth and does not change. She has many friends who have transitioned to another gender and either regret it or have committed suicide. Objects to our country functioning from feelings rather than facts.

*** 6 Linds Jakows – Supports the bill -**

Identifies as non-binary. See written testimony.

Ben Olsen – Opposes the bill -

Masua Gerber –

Son amended his birth certificate in Massachusetts. Science is more current on understanding the difference between gender and sex.

Russ Payne –

Opposes on religious grounds.

*** 7 Alex McEntee –**

Identifies as non-binary. Sees amending a birth certificate as making a correction. “X” would signify both male and female.

*** 8 Liam Magan –**

Supports. If the bill passes he will be able to update all of his documents.

*** 9 Jamie Cox –**

Supports.

*** 10 Palana Belken – Supports the bill -**

Registering to vote was more difficult since identification had different names and images.

*** 11 Shannon McGinley, Executive Director Cornerstone Action –**

Opposes the bill. Society has an important interest in maintaining accurate vital records, especially birth records. Given their importance, vital records should not be altered based upon a person’s subjective feelings or experiences. Maintaining accurate birth records is not discriminatory. Maintaining accurate birth records does not violate federal or state law. The proposed revisions are an effort to erase male and female sex from state law, as well as to dramatically lessen the requirements to change the birth certificate identification. Suggests there should be a fiscal note attached.

Rep. Steve Pearson –

Questions what this will lead to if people make a series of multiple changes.

Stephen Wurtz, State Registrar, NH Dept. of State, Division of Vital Records -

Birth certificates are created at the time of birth and reflect the situation at that time. Birth certificates are never destroyed. Any modification is “layered” to that document. Perhaps it should be another document that is altered. If a gender marker is changed on birth certificate, will changes then be allowed on all other records, such as marriage certificates?

*** 12 Jeanne Hruska, American Civil Liberties Union –**

Supports the bill as well as the amendment that was offered. Concerned over the language as it can be read as having a surgical requirement. Believes current law raises serious constitutional concerns.

Patricia Piaech, Town Clerk, City of Nashua – Opposes the bill -

An individual may get multiple copies of a birth certificate, so the clerk may not be able to determine if all are surrendered. Currently a fee is charged for any amendment to a document after a certain point in time. The process of making changes is time consuming. Will have a greater impact on towns with hospitals since change must be made in the town the original birth certificate was issued in.

*** 13 Emmett LeBlanc –**

Written testimony submitted: Attachment #12.

Respectfully submitted,



Rep. Susan Ticehurst, Clerk

House Committee on Health, Human Services & Elderly Affairs
Public Hearing on HB 446

Bill Title:	Relative to initiating amendments and corrections to birth records		
Date:	1/17/19		
Room:	Reps Hall	Time Public Hearing Called to Order:	3:10
		Time Adjourned:	4:45

Committee Members Present:

X	Shapiro
X	Cannon
X	Stapleton
X	Nutter-Upham
X	Marsh
	Salloway
X	Fothergill
X	Freitas
X	MacKay
X	Ticehurst
X	Weber

X	DeClerq
X	Osborne
X	Acton
X	Woods
X	Pearson
X	Knirk
X	Guthrie
X	Snow
X	McMahon
X	Campion

Testimony

* Use asterisk if written testimony and/or amendments are submitted.

*	Attch #	Name	Testimony:
*	1,2, 3	Sponsor/Introduced By: Gerri Cannon	Offered amendment 2019-0037h; (Attachment 1) and Attachment #2: Written testimony. Intent is to allow people to change the gender on their NH birth records once their medical professionals agree on what that gender role is and that they have medically transitioned to their proper gender. Currently information on birth certificates can be changed only through a court order. Would agree with

			inclusion of physician assistants to the list of licensed and qualified health care provider". Provided Attachment #3: Letter from Karen Thomas.
		Sen. Waters	Supports because it will bring NH in line with current medical, social and other understandings. There have been no issues with making changes on driver licenses.
*	4	Rep. Lisa Butler, Cosponsor	Attachment #4, a partial list of medical organizations that recognize the medical necessity of treatments for gender dysphoria and endorse such treatments. Also includes a state by state overview of rules for changing gender markers on birth certificates.
*	5	Jess Edwards	Supports; asks what are we going to do with medical and other records that are kept by the state. Suggests an amendment to correct the title of the bill. No where in the bill do they talk about amending or correcting. The old document is not destroyed. The record should not be called a birth certificate. It is a new medical event that should be documented. Should make sure the process is resilient since a small number of people revert back to their original assignment. Suggests consulting with medical records experts to get the appropriate language and format. Should extend the effective date since it will take some time to prepare clerks.
		Cynthia Maillot	Science supports the belief that gender is decided at the moment of birth and does not change. She has many friends who have transitioned to another gender and either regret it or have committed suicide. Objects to our country functioning from feelings rather than facts.
*	6	Linds Jakows	Supports the bill. Identifies as non-binary. See written testimony.
		Ben Olsen	Opposes he bill.
		Masua Gerber	Son amended his birth certificate in Massachusetts. Science is more current on understanding the difference between

			gender and sex.
		Russ Payne	Opposes on religious grounds.
*	7	Alex McEntee	Identifies as non-binary. Sees amending a birth certificate as making a correction. "X" would signify both male and female.
*	8	Liam Magan	Supports. If the bill passes he will be able to update all of his documents.
*	9	Jamie Cox	Supports.
*	10	Palana Belken	Supports. Registering to vote was more difficult since identification had different names and images.
*	11	Shannon McGinley, Executive Director Cornerstone Action	Opposes. Society has an important interest in maintaining accurate vital records, especially birth records. Given their importance, vital records should not be altered based upon a person's subjective feelings or experiences. Maintaining accurate birth records is not discriminatory. Maintaining accurate birth records does not violate federal or state law. The proposed revisions are an effort to erase male and female sex from state law, as well as to dramatically lessen the requirements to change the birth certificate identification. Suggests there should be a fiscal note attached.
		Rep. Steve Pearson	Questions what this will lead to if people make a series of multiple changes.
		Stephen Wurtz, State Registrar, NH Dept. of State, Division of Vital Records	Birth certificates are created at the time of birth and reflect the situation at that time. Birth certificates are never destroyed. Any modification is "layered" to that document. Perhaps it should be another document that is altered. If a gender marker is changed on birth certificate, will changes then be allowed on all other records, such as marriage certificates?
*	12	Jeanne Hruska, American Civil Liberties Union	Supports the bill as well as the amendment that was offered. Concerned over the language as it can be read as having a surgical requirement. Believes current law raises serious constitutional concerns.
		Patricia Piaech, Town Clerk, City of Nashua	Opposes the bill. An individual may get multiple copies of a birth certificate, so the clerk may not be able to determine if all

			are surrendered. Currently a fee is charged for any amendment to a document after a certain point in time. The process of making changes is time consuming. Will have a greater impact on towns with hospitals since change must be made in the town the original birth certificate was issued in.
*	13	Emmett LeBlanc	Written testimony submitted: Attachment #12.

Respectfully submitted,

Rep. Susan Ticehurst, Clerk

SIGN UP SHEET

To Register Opinion If Not Speaking

Bill # HB 446 Date 1/17/19

Committee Health

** Please Print All Information **

Name	Address	Phone	Representing	(check one)	
				Pro	Con
Rep. Steve Pearson			Rock 6		✓
Rep. Dick Kinch			House Republican		✓
REP. IAN BELANGER			HILLS # 27		X
CYNTHIA MAICHOT					✓
Rep. Garrett Moscatel	Grafton 12			X	
REP. GREG INDRUK	HILLS. 34			X	
Rep. Laura Telefski	Hills. 35			X	
Nancy Brennan	Weare			✓	
Jennifer J Smith	Pembroke		Self	✓	
Michael Padmore			NH Medical Society	✓	
NEIL HUBACKER	CIRCLIFSTONE				✓
Sara Smith	Pembroke NH			✓	
Jamie Cox	Manchester		self	✓	
Wendy Cho					
Marcia Garber	5 HILLS END WAY MANCHESTER		self	✓	
Amelia Krane	Nashua	6033209890	self	✓	
Linds Jakows	Manch Ward 3	602-989-3283	self	✓	
Rep. Wendy Cho				✓	
Chloe LaCasse				✓	

Testimony

Rep. Cannon, Straf. 18
Rep. Cushing, Rock. 21
Rep. Butler, Carr. 7
Rep. Bunker, Rock. 18
Rep. Le, Rock. 31
Rep. MacKay, Merr. 14
Rep. Muscatel, Graf. 12
January 16, 2019
2019-0037h
05/04

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4 RSA 5-C:87, V is repealed and reenacted to read as follows:

5 V. If an individual requests a birth record reflecting a sex designation other than that
6 which was assigned at birth, a new birth record shall be prepared to reflect a change in the
7 individual's sex upon receipt of a certification affirming the individual's sex designation by a
8 licensed and qualified health care provider.

9 (a) The written certification shall be signed by a licensed and qualified health care
10 provider under the penalty of unsworn falsification pursuant to RSA 641:3. It shall provide that the
11 named individual is currently or was previously under the signing health care provider's care, and
12 that in the health care provider's professional opinion the individual's sex is (1) male, (2) female, or
13 (3) neither male nor female, and can be reasonably expected to continue as such for the foreseeable
14 future.

15 (b) The application shall be signed by the applicant under the penalty of unsworn
16 falsification pursuant to RSA 641:3. This signature shall certify that the request for change of sex
17 is for the purpose of ensuring that the applicant's birth record accurately reflects the applicant's
18 sex, and that the request is not for any fraudulent or unlawful purpose.

19 (c) The individual shall surrender any prior birth record issued by the state of New
20 Hampshire in the individual's possession.

21 (d) The department of health and human services and the town or city clerk shall not
22 charge a fee for updating a birth record pursuant to this paragraph.

23 (e) In this paragraph, "licensed and qualified health care provider" means a treating
24 and licensed physician, psychologist, advanced practice registered nurse, clinical social worker, or
25 clinical mental health counselor.

2019-0037h

AMENDED ANALYSIS

This bill provides a procedure for an individual to obtain a new birth certificate to reflect a sex designation other than that which was assigned at birth.

UNAPPROVED

HB446: relative to initiating amendments and corrections to birth records

- Public Hearing: Thursday, January 17 @ 2pm. NH LOB Room 205

Madame Chair and fellow Representatives, thank you for the opportunity to share this bill with you.

Most of us have grown up in a world where gender or sex is simple. It is male or female. The reality is that many cultures have recognized many forms of gender for thousands of years. Our own American Indians recognized as many as five gender roles: Female, male, Two Spirit female, Two Spirit male and transgendered.

Over the past 20 years we have seen hundreds of thousands of Transgender people come forward to let our society know that they/we exist. We have also seen many people that we used to call androgynous or queer start to use the term "Non-Binary" more often as an Identifier. Another group that has also been hidden from society are Intersexed (Previously known as hermaphrodites). All of these groups have something in common. A birth certificate that doesn't accurately represent their gender.

The intent of this legislation is to allow people to change the gender on their NH Birth records once their Medical professionals agree on what that gender role is and if that they have medically transitioned to their proper gender. The physical transition process may include Hormonal therapy and surgical procedures.

The reality is that transgender, intersex and non-binary gender people exist. And the gender designation written on our birth certificates may not match how we identify ourselves.

Currently Gender and names can be changed on driver's licenses, Passports and Social security cards with a Court ordered name change and a Doctor's sworn affidavit attesting to their patient's gender status. Our courts are the only way a person born in NH can change information on birth certificates. I have provided a letter from Karen Thomas from her recent experiences with our court system to change Gender information for her transgender son.

Our Courts ask for the same information that is requested on the driver's license and passport forms. The court process takes time. Forms need to be filled out and filed, A court date needs to be determined. Doctors and witnesses may be called upon. This process is cumbersome and only serves to waste the court and petitioner's time.

What is being proposed in HB 446 is to have the petitioner collect the appropriate information, sworn documents and signatures and then contact the City or Town Clerk to have them issue a new birth certificate.

We also need to keep this process in perspective. What do we use our Birth Certificates for? Some of us rarely use our birth certificates for anything and we have trouble finding a copy when we need them. A birth certificate is not a widely circulated document for public usage. It is a private document that a person uses for Medical care information, a document to be used with health and life Insurance companies. It may be used for security situations as well.

To a transgender person, it is a milestone in their lives when they can declare that the information on their Birth Certificate matches who they really are.

Thank you for your attention.
Please vote Ought to Pass on this bill.

Rep. Gerri Cannon
Strafford District 18
Somersworth, NH

January 12, 2019

State of NH

Health and Human Services and Elderly Affairs Committee

RE: HB 446

To legally change the gender marker on our son's birth certificate, we were required to go before a judge in the Hillsborough County Courthouse on January 2, 2019. With supporting documentation including a sworn affidavit from our son's pediatrician, we were able to successfully change the gender marker on all other legal documents (including passport, drivers license and social security card) without going before a judge. Please consider passing HB446 allowing gender marker changes to one's NH birth certificate without going before a judge. Below is my recount of our STRESSFUL day in court. In addition to being stressful, both my husband and I had to take the day off from work and our son had to miss a good portion of the school day, all to be present in the courthouse.

Our day in court

We had our day in court to change the gender marker on our son's birth certificate and boy, what a day it was. The folks from Glad Answers Pop Up ID project guided us through the process of making necessary changes to ALL of our son's legal documents, including driver's license, passport, social security and now his birth certificate and they were spot on. They outlined everything that needed to be done, every step of the way, including providing us with specific verbiage required when filing petitions with the court as well as necessary documents.

For the gender marker change on our son's birth certificate we needed a certified copy of his current birth certificate, a copy of the court order granting our son's name change, a notarized affidavit (with the verbiage provided by Glad Answers) from our pediatrician along with the filing petition signed by both my husband and I (signed and notarized). We filed the petition to our county court house in early November. A few weeks later we receive the court date of January 2 @ 9am.

We (my husband, son and I) arrived a few minutes early and were the only case scheduled for that time. While we had all the right documents, the judge wanted to TALK to our pediatrician during the hearing. **The JUDGE NEVER ASKED MY SON (who is 17), MY HUSBAND OR ME** any questions just that she wanted to talk to our pediatrician. Because our pediatrician was not there or on the phone, the judge rescheduled our appt. to 11am that same day. Thankfully we were able to connect with our pediatrician and when we went back to court @ 11am, our pediatrician was on the phone with us (I just LOVE our pediatrician). I was surprised with all the questions the judge asked our pediatrician. The judge wanted to know her educational background, where she did her residencies, fellowships, etc. how long she had been practicing in NH. The judge asked questions about "sex change" and the American Academy of Pediatrics position on this. The judge was surprised to have a pediatrician on record stating our son received appropriate medical care to transition from female to male. She even said so...she was expecting this doctor to be an endocrinologist or perhaps a surgeon. The judge said she had never had a pediatrician testify on a client's behalf. Once pediatrician then stated that she was over-seeing ALL of our son's care, including care received at the GeMS clinic @ Children's Hospital in Boston, the judge

"got it" as to why a pediatrician would be the doctor on record. She even asked a few clarifying questions about current language when talking about gender (sex change vs gender affirmation). The judge granted our request and we now have the court order to amend his birth certificate with the correct gender marker.

While we had some legal guidance through Glad Answers, navigating the courts is extremely overwhelming. We do have a signed order by the judge, but when we went to the city clerk's office to file the documents, the clerk told we should not use the clause the judge added to the order. The city clerk recommended I go back to the courthouse and see if the judge would amend the document (the city clerk crossed out what should not have been there). Back to the court I went. The clerk at the courthouse brought the recommended change from the city clerk to the judge. The judge said she wanted it on record. Now I feel caught between the courthouse and city clerk. Thankfully the folks @ Glad Answers are doing the behind the scenes legwork for me, ensuring we have complete and accurate information on our son's birth certificate.

Respectfully submitted,

Karen Thomas

7 Roseann Circle

Nashua, NH 03062

Ward 5

Hillsborough County

603-891-5710

KThomasRN@gmail.com

Resources related to testimony by Rep. Lisa Bunker, Exeter, in support of HB 446.

Health, Human Services, and Elderly Affairs, Thu. Jan. 17th, 2019

Here is a list of medical organizations that recognize the medical necessity of treatments for gender dysphoria and endorse such treatments. (Source: <https://transcendlegal.org/medical-organization-statements>)

- | | |
|---|---|
| American Academy of Child and Adolescent Psychiatry | American Medical Association |
| American Academy of Family Physicians | American Osteopathic Association |
| American Academy of Nursing | American Psychiatric Association |
| American Academy of Pediatrics | American Psychological Association |
| American College of Nurse-Midwives | American Public Health Association |
| American College of Obstetricians and Gynecologists | Endocrine Society |
| American College of Physicians | National Association of Social Workers |
| American Counseling Association | National Commission on Correctional Health Care |
| | World Medical Association |

State by state overview of rules for changing gender markers on birth certificates: (Source: <https://transgenderlawcenter.org/>, updated April 2017)

- Yes, with court order: 20
- Yes, with physician letter: 22
- Dept. willingness w/out explicit law: 5
- Law provides, but dept. refuses: 2
- Possible but historically difficult: 1
- Specifically forbidden by state law: 1

From Wikipedia, "Legal recognition of non-binary gender:"

Multiple countries legally recognize non-binary or third gender classifications. In some countries, such classifications may only be available to intersex people, born with sex characteristics that "do not fit the typical definitions for male or female bodies".^{[1][2]} In other countries, they may only (or also) be available to people with gender identities that differ from their sex assigned at birth.^[3]

Among Western nations, Australia may have been the first to recognize a third classification, following recognition of Alex MacFarlane as having indeterminate sex, reported in 2003. Transgender advocate Norrie May-Welby was recognized as having unspecified status in 2014.^{[5][6]} In the United States, an Oregon circuit court ruled in 2016 that Jamie Shupe could legally change gender to non-binary.^[7]

Testimony HB466, an act relative to initiating amendments and corrections to birth certificates
Rep Jess Edwards, Rockingham 4
17 January 2019

Overview:

There are good public policy reasons to have medical records created pursuant to a change in an individual's gender.

HB446 is a way to go about the creation of a document and this attempt. However, the current bill is not ready to accept. There are principles and details which need to be evaluated and appropriately included within an amendment or a future bill.

The major principle that needs addressing is the concept that medical records should not be deleted for the purpose of replacement. For example, in Radiology it is common for a resident to do an initial read of an exam and to render a diagnostic report. When a faculty radiologist reviews the exams and reports with the resident, there are times in which the original report was incomplete or in error. Rather than destroying the original report, an addendum is created and associated with the original to provide a chronological record of changes. A couple of the many reasons this is done is to facilitate longitudinal care based on the full medical record. Another reason is to support a legal process of discovery.

There are federal and state laws that deal with the retention and destruction of medical record. There are also industry standards for the creation, utilization, maintenance, and destruction of medical records by professional societies such as the American Health Information Management Association (AHIMA). Further, given that the Live Birth Certificate ("birth certificate") is also a Vital Record, there are additional records laws and standards to consider.

As just one example of an RSA that would need updating, we can look at NH VITAL RECORDS ADMINISTRATION:

Section 5-C:13

5-C:13 Record as Evidence. – A certified copy issued by a town clerk of a record of a birth, marriage, or death, on file with the town clerk or division, shall be prima facie evidence of the fact, in any judicial proceeding.

Improper Bill Title:

The Office of Legislative Services entitled this bill incorrectly. It's called "An act relative to initiating amendments and corrections to birth records". Other than in the title, the word "Amendment" does not appear. The bill implies that the original live birth certificate be destroyed and replaced with a new document also referred to as a "birth certificate".

Similarly, the word "Corrections" is not mentioned anywhere in the bill other than in the title. One should logically argue that the new document is not a "correction" of the birth certificate, it is an update. Historically the sex at birth is still the sex at birth. What has happened is that the sex has been changed through medical intervention. That medical intervention should be fully and correctly

documented in the medical records. The addendum could be called a "gender assignment certificate" or a "birth certificate addendum". In no case should the original birth certificate be purged.

Process Resiliency:

The HHSEA committee received testimony that some individuals who obtain a change in gender assignment subsequently change their gender a second time. Whatever law and processes are established must be designed to maintain the integrity of the medical record over time so that the medical community has the information needed to provide safe and effective care.

Proposed amendment to HB446:

Line 3: Insert the phrase, "addendum to a" between the words "requests a" and "birth certificate"

Line 4: Fix typo of the word "a" to the word "at" to read "assigned at birth"

Line 4: Replace the term "a new birth record" with "an addendum medical record"

Line 15: Replace "birth" with "gender assignment"

Line 17: Delete "The applicant shall surrender his, her, or their birth certificate" and replace with a sentence that directs the applicant to share the gender assignment certificate in legal settings or optionally in employment or other civil settings.

Line 19: Delete "updating a birth certificate" and replace with "appending an addendum certificate".

Line 23: The rule making in Vital Records and the education of medical records handlers in towns and medical facilities will take time. An effective date of 60 days after passage is vastly too aggressive. There should be a future date included to set the "go live" date and that should be at least a year out.

Additional testimony and subcommittee:

If the testimony does not include both a medical records and Bureau of Vital Records subject matter expert, then it would be appropriate to form a subcommittee and solicit essential professional input.

My name is Linds Jakows and I live in Manchester Ward 3. I served as the campaign manager of the Freedom New Hampshire campaign that passed transgender non-discrimination protections from early 2017 to mid-2018. I am 28 years old, and I am currently taking a break from full-time, paid political organizing and working at the McAuliffe-Shepard Discovery Center.

I am a non-binary person, which means that I do not identify as either male or female. I grew up as a girl, and started feeling uncomfortable with growing breasts when I started puberty around age 11. I also felt uncomfortable being called a woman or girl, miss, or ma'am - those words did not reflect who I know myself to be.

Four years ago, I began meeting other people who identified as non-binary. Many of them introduced themselves as such, and asked me to use they/them pronouns, and it finally clicked into place for me: This was what I needed too.

I asked my friends and family to start using gender-neutral language for me, and although it took some of them some practice, once they did, it made all the difference. You may be familiar with the term "gender dysphoria"- which describes the uncomfortable feeling of conflict between a person's gender assignment (how the world has treated them based on their birth certificate) and the gender they know themselves to be. I'd like to talk about "gender euphoria" - the opposite of gender dysphoria.

When I know someone sees me as I truly am, I feel whole. I am able to be my most authentic self with that person because I don't have the constant anxiety about waiting to be misgendered at the back of my brain. It feels like taking off the weight of a backpack filled with rocks compiled from the dozens of little times I am not treated as the person that I am. It feels like being free. Everyone deserves to have this experience.

I am so proud of the work that our trans community has done to pass the non-discrimination bill. When I was reaching out to community members about what they wanted to see next, this bill was at the top of the list. I also want to emphasize another reason that this bill is so important: currently, the meaning of the phrase 'sex change' is up to the interpretation of judges. They are not medical professionals or otherwise experts on transgender identity, but they have the power to decide whether it is surgical or social. And if they decide that it is based on surgical standards, that is placing a burden on many transgender people who do not want or cannot afford surgery, which can range from thousands to hundreds of thousands of dollars out of pocket. This bill rightly aligns the process w/ DMV standards, as well as adding the non-binary option that is so important to me.

Again, changing my documents would give me immense gender euphoria. I hope to someday soon be able to hand over identity documents that truly reflect who I am, and that pave the way for an easier conversation about how I want to be seen in the world.

January 16, 2019

Good afternoon Chair Person and Committee members,

Thank you for this opportunity to share my testimony with you today. My name is Alex Brendan McEntee and I was born in Nashua New Hampshire in 1971. When I was born the doctor declared "It's a girl" and my parents agreed, then named me Amy Elizabeth McEntee. They then filled in the gender part of my birth certificate with FEMALE. I lived my first 45 years believing that to be correct. During my 46th year (2017) I had an epiphany and realized I wasn't female. My gender is NOT within the confines of a Binary (2 options). I am NON-Binary. My gender lies between Male and Female. In the 60's I may have been referred to as Androgynous.

I have changed my legal name within the court system here in New Hampshire. My name on my NH driver's license and my social security card both read Alex Brendan McEntee. I would like my birth certificate to be corrected, both with my new legal name and also my correct gender marker. An X in the gender box would be the closest option. This would signify that I am Neither Only Male nor Only Female.

Gender recognition is important. Imagine, every time you filled out a job application or filled out a form for an airline, you had to put a gender marker that didn't match the gender you identify with. You get the job or go to board the flight and your application says Female and you have a full beard and go by the name Donald. I think you would feel uncomfortable to say the very least. HB446 would make such changes less complicated and quicker for folks like me and would include the addition of an X to gender options.

Please vote ^{Ought} Expedient to Pass on HB446. This amendment would help many of us correct the incorrect gender assignments we were given at birth. Thank You.

Alex Brendan McEntee
51 Storrs Ave, Concord, NH
alexmcentee71@gmail.com

Thursday, January 17th 2019

Hello, my name is Liam Magan, I live in Keene, NH, and I am a transgender male. I was born at Concord Hospital on January 23, 1994 and assigned female at birth. I realized my transgender identity in 2016 and have been transitioning since then. I have started hormones, had top surgery, and changed my name legally. But I have yet to change my name and gender marker on my birth certificate because of the current process and its requirements.

I am happy in my body the way that it is and I do not feel that I need to pursue further surgery, such as Gender Reassignment Surgery. Requiring proof of this surgery in order to change my birth certificate is limiting and excludes the many transgender people, like myself, who do not wish to have surgery. There are many transgender individuals who do not even wish to pursue hormone replacement therapy. Requiring proof of physical transition is limiting and exclusionary.

Simplifying the process by allowing a primary care physician or licensed therapist to sign off on the gender marker change would be life changing for me. I have been putting off updating my records because I didn't know what to do when faced with the current requirements. If this bill passed, I could finally have all the remaining records with my birth name – birth certificate and passport – updated to the correct name and gender.

One day I would like to get married and having a birth certificate that properly reflects my name and gender will take away the anxiety of being outed while simply filling out a marriage license form.

I urge you to vote OTP on HB 446 and continue to show your support for the transgender citizens of NH.

Thank you.

Liam Magan
Keene, NH
liamdman@outlook.com
603-848-2019

1/16/2019

My name is Jamie Cox, I live in Manchester, and I am a nonbinary transgender person.

The word "nonbinary" may seem new to some of you, but when I first heard it roughly a decade ago, I was fairly certain that it was the answer to a question I'd had for most of my life. Growing up, I never quite fit in with the boys or the girls. I didn't have a word for the feeling of being neither. I had signs of gender dysphoria, but I felt like I couldn't talk about these thoughts. The experience was confusing and isolating. But then I found other nonbinary people, and I felt like I finally understood this important part of who I am, who I've always been, even if it wasn't apparent at birth. I was born this way, and I believe that my official documents should reflect that.

There are potentially hundreds of thousands of nonbinary people in the US. We are a substantial fraction of transgender people. This bill would be an important step toward documents that accurately reflect our gender identities.

When HB 1319 became law last year, covering gender identity under state laws against discrimination, I was proud to call New Hampshire home. This is another opportunity to do the right thing for those of us who are transgender and/or nonbinary. Nonbinary gender is already legally recognized in this way in several US states and foreign countries, and I hope we join them.

Please support this bill. Thank you.

Jamie Cox
Manchester, NH
jamie.day.cox@gmail.com

Hello Health and Human Services Committee,

My name is Palana Belken, an organizer with the ACLU of New Hampshire.

I became active politically last year through the Freedom New Hampshire campaign, where the state overwhelmingly agreed to protect it's transgender residents from discrimination. The act of passing these protections was a step in the right direction, but only one step on the path to lived equality.

For me, a lived equality does not look like being outed – or exposed to be a transgender person – by a mismatch of legal documents. In many situations, including completing my civic duty voting this past Fall, I had to explain my entire past to a registrant slightly confused by the conflicting names, gender markers, and two very similar looking people. I'm used to this at this point, but this is an unnecessary experience for people to be going through because standards for identification across multiple state documents are not the same.

The state DMV allows for a variety of medical professionals to attest to the gender marker change. Birth records currently only say 'had a sex change', allowing for judges, people with no medical background, to assess what sex change really means. In my experience with the New Hampshire transgender community, some people have no issue changing their gender marker, and some are giving surgical requirements.

I have just purchased a home in New Hampshire. I think this means that I plan to live here for the next 20 or 30 years, and I hope that the state I call home does not continue to subject transgender individuals to differing standards.

Submitted respectfully,

Palana Belken

4 Old Dover Rd

Rochester NH

508 815 7076

palanaaaaa@gmail.com

TO: House Health, Human Services and Elderly Affairs Committee

FROM: Shannon McGinley, Executive Director
Cornerstone Action

DATE: Thursday, January 17, 2019

RE: Please vote ITL on HB 446, relative to initiating amendments and corrections to birth records

I am Shannon McGinley, volunteer executive director for Cornerstone Action. Cornerstone is dedicated to a New Hampshire where God is honored, religious freedom flourishes, families thrive, and life is cherished.

Please vote "inexpedient to legislate" on HB 446, relative to initiating amendments and corrections to birth certificates.

Upon the introduction of the LSR that led to HB 446, Cornerstone Action consulted with civil rights attorneys with Alliance Defending Freedom, since ADF has already examined similar measures in other states with an eye to legal precedents and practice. In light of what we have learned, Cornerstone recommends that you vote "inexpedient to legislate" on HB 446 in order to protect the integrity of vital records. That goal in no way undermines the dignity of any New Hampshire resident. In fact, all of us have a common interest in maintaining accurate, fact-based records as they relate to public health.

I. Society has an important interest in maintaining accurate vital records, especially birth records.

As early as 1632, government officials began tracking vital statistics, specifically births, deaths, and marriages. Today, state and local vital records offices record over 11 million "vital events" annually in the U.S. These statistics include the date of birth, the individual's sex, the location of birth, the parent's identities, and the date of death. Why does the government maintain such detailed records of these events? Because this information is necessary to help the government fulfill one of its most basic duties: protecting the health and safety of its citizens.

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For example, information obtained from vital records is used to help diagnose and solve problems that impact national health, including:

- tracking and diagnosing disparities in mortality rates based on age and sex;
- identifying factors that account for the significant differences in life expectancy between males and females;
- measuring and seeking solutions to socioeconomic inequalities in health based on sex and age; and
- studying infant death rates based on sex, location, birth weight, and other information collected from vital records.¹

See also Oklahoma Aid Ass'n v. Thomas, 125 Okla. 190 (1927) (“It is our opinion that the Legislature provided for the keeping of vital statistics in the exercise of its police power for the purpose of keeping an accurate record of births and deaths and of the diseases causing death, and so that the health authorities may be better enabled to combat diseases.”).

Information from vital records is also necessary for national security. It is used to:

- identify potential disease epidemics, such as the zika virus, that may disproportionately impact one sex over the other;
- expose covert bioterrorist attacks, such as determining whether a sudden increase in certain symptoms in a population is due to random chance or should be further investigated; and
- identify criminals and terrorists, where vital records can be used to uncover fraudulently obtained drivers licenses or passports.²

These are just a few of the important state and national interest served by the government having accurate vital records for its citizens, including information on sex.

II. **Given their importance, vital records should not be altered based upon a person’s subjective feelings or experiences.**

Imagine a zika-like virus or chemical pollutant that caused higher mortality rates for men. In order for government officials to identify localities that are being impacted and direct their aid accordingly, the government would need accurate vital records to know the sex of individuals in the vicinity who had recently died. A sudden uptick in male deaths in a certain region would provide evidence that the virus or pollutant is present in that area.

¹ National Research Council (US) Committee on National Statistics, VITAL STATISTICS: SUMMARY OF A WORKSHOP, National Academies Press (US), 2009, available at <https://www.ncbi.nlm.nih.gov/books/NBK219874/>.

² *Id.*

Allowing individuals to alter their vital records, including birth certificates, based upon subjective feelings or experiences undermines the government's interest in having accurate vital records. The purpose of vital records is not to affirm a person's inner feelings or beliefs regarding their age, sex, or location of birth. As numerous courts have recognized, the purpose of vital records is to maintain an accurate database of factual information regarding births, deaths, and other vital events in a given jurisdiction. *Sea v. U.S. Citizenship & Immigration Servs.*, 2015 WL 5092509, at *4 (D. Minn. Aug. 28, 2015) ("The public does have an interest in having accurate records on vital statistics..."); *Ampadu v. U.S. Citizenship & Immigration Servs.*, Dist. Dir., 944 F. Supp. 2d 648, 655 (C.D. Ill. 2013) (acknowledging "the public's interest in having accurate records on vital statistics"); *Boiko v. Holder*, 2013 WL 709047, at *2 (D. Colo. Feb. 26, 2013) ("[T]he government, and the public at large, would appear to benefit from having the most accurate vital statistics records possible."); *J.R. v. Utah*, 261 F. Supp. 2d 1268, 1294 (D. Utah 2002) ("The State also has a significant interest in the accuracy of the records it keeps, particularly vital records like birth certificates.").

Factual information should not be subject to arbitrary revision. For example, imagine a gentleman in his 70s who undergoes extensive cosmetic surgery. He removes wrinkles and excess skin, dyes his hair, and takes other steps to obtain the appearance of a 40-year old man. The state would not allow him to retroactively change his date of birth by thirty years in order to conform to how he now looks or feels. The same would be true of a person who was born in New Mexico, but was raised and lived their entire life in Iowa. While that person may personally identify as an Iowan, it does not change the fact that he was born in New Mexico.

These individuals could make passionate pleas that their birth certificates should be changed to allow them to fully live as a younger person or as a true Iowan. But that is not the purpose served by vital records. Birth records are not reflections of what we want to be or what we feel we are. They are a recording of factual information at a specific moment in time—i.e., the moment of birth.

The same is true of a person's sex. Sex is binary (male or female), fixed, and objectively verifiable. One's sex is genetically established at conception, ascertained at or (via sonogram or genetic testing) before birth, and may be verified by objective factors such as chromosomes, gonads, hormones, and genitalia. *See, e.g., Am. Psychological Ass'n, Answers to Your Questions About Transgender People, Gender Identity and Gender Expression* at 1, <http://www.apa.org/topics/lgbt/transgender.pdf>. ("Sex is assigned at birth, refers to one's biological status as either male or female, and is associated primarily with physical attributes such as chromosomes, hormone prevalence, and external and internal anatomy.").

Just as a person's date of birth or location of birth is unchangeable, so too is a person's sex. While cosmetic surgery may alter some of the outward indications of sex, nothing changes the chromosomes, naturally occurring hormones, or other indicia of sex. And

because having accurate information regarding a person's sex helps the government fulfill its duty of protecting the health and safety of its citizens, it is imperative that vital records accurately reflect a person's sex—not their gender identity.

III. Maintaining accurate birth records is not discriminatory.

Some argue that it is necessary for individuals to be allowed to alter their vital records in order to avoid discrimination based upon their gender identity—such as when an individual's outward appearance as a female does not align with the male sex listed on a birth certificate. But there are several flaws with this argument.

First, facts are not and can never be discriminatory. Birth certificates, death certificates, and other vital records are intended to document facts. Efforts to attribute any further purposes to them (such as affirming a person's internal sense of age, sex, or locality of birth) are irrelevant to the government's vital interest in having accurate factual information.

Second, similar arguments could be made by the person who wants to change their date of birth to be younger or alter the location of their birth. But we do not allow individuals to arbitrarily change facts on their vital records out of unfounded fears that they may be treated differently as a result of those facts.

Finally, America is more tolerant and accepting of individuals who identify as transgender than ever before. They are not being denied access to employment, housing, or goods and services. Treating them with the dignity and respect that all persons are entitled to receive does not mean that we erase certain factual information; especially when that information helps the government better protect all citizens' health and safety.

IV. Maintaining accurate birth records does not violate federal or state law.

There is no federal law that requires states to amend vital records, including birth certificates, to reflect a person's gender identity rather than his or her biological sex. Some mistakenly claim that the Patient Protection and Affordable Care Act requires states (which are covered entities) to treat a person consistent with his or her gender identity. However, this section of the ACA was struck down by a federal court in December 2016 and is currently subject to a **nationwide injunction** against its enforcement. As the U.S. Department of Health and Human Services acknowledges, "[p]ursuant to court order, [the Office of Civil Rights] is enjoined from enforcing the Section 1557 regulation's prohibitions against discrimination on the basis of gender identity ... on a nationwide basis." Section 1557: Frequently Asked Questions, *available at* <https://www.hhs.gov/civil-rights/for-individuals/section-1557/1557faqs/index.html>.

Even in states or localities that ban discrimination based on gender identity (a policy which itself creates problems related to bodily privacy, safety, and competitive fairness in sports), government officials are not required to allow vital records to be amended to reflect a person's gender identity. As discussed above, maintaining accurate factual information regarding a person's birth is not discrimination.

For example, since 1967, the United States has protected individuals over the age of 40 against discrimination in employment based upon their age. Yet no court has ever ruled that a person must be permitted to alter the date of birth on their birth certificate in order to prevent them from being discriminated based on their age. We don't change facts; instead, we ensure that no one is subject to invidious discrimination based on those facts.

V. The proposed revisions to RSA5-C:87,V are an effort to erase male and female "sex" from state law, as well as dramatically lessen the requirements to change the birth certificate identification.

Under New Hampshire law, a birth certificate is required to include the sex of the individual. *See, e.g.,* RSA5-C,19(II)(a)(1) (requiring a hospital to file a birth recording including "Information regarding the child, including name, date and time of birth, and sex.").

Factual information regarding a person's sex is among the vital statistics that New Hampshire law requires to be maintained. Yet HB 446's proposed revisions to RSA5-C:87,V attempt to erase any mention to "sex" and replace it with the vague term "gender identity." "Gender identity" is defined in RSA354-A:2, XIV-e as "a person's gender-related identity, appearance, or behavior, whether or not that gender-related identity, appearance, or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth. Gender-related identity may be shown by providing evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity, or any other evidence that the gender-related identity is sincerely held as part of a person's core identity provided, however, that gender-related identity shall not be asserted for any improper purpose."

As referenced above, sex is a person's biological status as male or female, based upon immutable attribute. In contrast, "gender identity" can be asserted by anything ranging from medical history to a "sincerely held" declaration.

New Hampshire's vital records data should not be based upon subjective beliefs or feelings, however sincerely held. Rather, they should be based upon facts, including the factual information regarding a person's biological sex at birth.

Conclusion

For hundreds of years, our society has deemed it important to collect accurate factual information regarding certain vital statistics of its citizenry. Among these facts are locations of birth, dates of birth and death, and sex. The current effort to rewrite our laws to replace sex with gender identity does not change the government's need for accurate information. We can show tolerance and respect for those identify as a different gender while still maintaining factual data that helps our government identify and solve health and safety threats.



New Hampshire

Statement by Jeanne Hruska, Political Director ACLU-NH
House Health, Human Services, and Elderly Affairs Committee
House Bill 446
January 17, 2019

I submit this testimony on behalf of the American Civil Liberties Union of New Hampshire (ACLU)—a non-partisan, non-profit organization working to protect civil liberties throughout New Hampshire for over 50 year. I appreciate the opportunity to testify today in support of HB446, as transgender people and non-binary people, like all people, need accurate and consistent identification documents to affirm their gender and often to support medically indicated social transition.

Current NH law requires that someone undergo a “sex change” before being able to change the gender marker on their birth certificate. The term “sex change” is not defined by statute, which creates problems of its own. It could be read to require proof that the person has undergone genital surgery. Any surgical requirement fundamentally misunderstands what it means to be transgender or gender non-binary.

A transgender person is someone whose sex as designated at birth is different from who they know they are on the inside. So, for example, a transgender girl is a girl who was designated a boy at birth but is a girl. A transgender person does not undergo a “sex change” whether by surgical or other means. Transgender people bring their outward expression of their gender into alignment with who they have always been, but that does not itself reflect a “change of sex” by medical procedure.

Indeed, there is no surgical requirement to being transgender and no set of bodily changes that turns one into a man or a woman. To impose such a requirement is completely out of step with medical standards and forces many transgender and gender non-binary individuals to live with documentation that does not reflect who they are. The American Medical Association, recognizing the importance of identification documents, has adopted a policy urging states to eliminate any requirement that transgender people have surgery in order to amend their birth certificates.¹

Accurate identification is necessary in many areas of everyday life, including to begin a new job, enroll in school, travel on airplanes, check into a hotel, open a bank account, obtain a credit card, go to a bar, and to engage with law enforcement, among many other basic life activities. And yet, current law too often forces transgender people to use government-issued identification documents that do not match their gender identity, or forces them to go without identification documents, whether because of burdensome requirements or because New Hampshire currently provides for only male or female gender markers.

When transgender and gender non-binary people do not have accurate identification, they can be excluded from participation in major life activities. For example, a woman who is transgender

¹ *Conforming Birth Certificate Policies to Current Medical Standards for Transgender Patients* H-65.967, Am. Med. Ass’n (2014), <http://bit.ly/2EhkCQy>.

and lives her life as a woman in every respect could be outed as transgender if her identification documents list her as male. This is not only humiliating, but can also invite discrimination and in some cases, violence. Managing this risk can lead many transgender people to avoid public activities altogether.

According to 2015 research² from the National Center for Transgender Equality, around a third of transgender people have experienced mistreatment after showing an ID that did not match their gender identity, most commonly verbal harassment or denial of services.

For people who are non-binary, meaning they do not identify as either male or female, not having identification that affirms who they are can trigger the distress of gender dysphoria and contribute to widespread discrimination. The notion that a person's identity is not real because it is not binary animates much of the discrimination that non-binary people face. Providing affirming identification is critical to reducing such discrimination.

Policies that restrict the ability of transgender and non-binary people to accurately update identification also violate the U.S. Constitution. See, e.g., *Arroyo Gonzalez v. Rossello Nevares*, 305 F. Supp. 3d 327 (D.P.R. 2018)(striking down Puerto Rico's restriction on gender changes on birth certificates); *F.V. v. Barron*, 286 F. Supp. 3d 1131 (D. Idaho 2018)(striking down Idaho restrictions on birth certificate updates as violating Equal Protection and finding that transgender status constitutes a suspect class triggering heightened equal protection scrutiny); *Love v. Johnson*, 146 F. Supp. 3d 848, 852 (E.D. Mich. 2015)(denying government motion to dismiss lawsuit challenging Michigan surgical requirements for update to gender on state driver's license and identification).

As the U.S. District Judge in *Gonzalez v. Nevares* wrote, "The right to identify our own existence lies at the heart of one's humanity. And so, we must heed their voices: "the woman that I am," "the man that I am." Plaintiffs know they are not fodder for memoranda legalese. They have stepped up for those whose voices, debilitated by raw discrimination, have been hushed into silence. They cannot wait for another generation, hoping for a lawmaker to act. They, like Linda Brown, took the steps to the courthouse to demand what is due: their right to exist, to live more and die less."

Forcing transgender people to disclose their transgender status and be outed by inaccurate identification violates their constitutional right to privacy. It also compels them to speak the government's message about their gender in violation of the First Amendment. Policies that overly burden the ability of transgender and non-binary people to obtain accurate identification also raise medical decision-making and equal protection concerns. Reducing the burden on transgender people born in New Hampshire will thus also save taxpayers the public expense of costly litigation.

In sum, the current requirements to correct the gender marker on one's birth certificate do not reflect what it means to be transgender, force individuals into a gender binary that may not reflect who they are, violate the constitution, and expose New Hampshire to costly litigation. For these reasons, the ACLU of New Hampshire urges this committee to vote HB446 *ought to pass*.

² <http://www.ustranssurvey.org/>

Thursday, January 17th 2019

Dear Committee Members,

I was born and raised in Massachusetts, but now call Concord my home. My birth record used to say F but now after having it amended it, lists me as male. This has changed my entire life. All future employers and any legal situation requiring my birth record is made so much easier because all of my documentation matches. I do not risk outing myself as a transgender person with amended records.

Emmett LeBlanc
Concord, NH

Bill as
Introduced

HB 446 - AS INTRODUCED

2019 SESSION

19-0762
05/01

HOUSE BILL **446**

AN ACT relative to initiating amendments and corrections to birth records.

SPONSORS: Rep. Cannon, Straf. 18; Rep. Cushing, Rock. 21; Rep. Butler, Carr. 7; Rep. Bunker, Rock. 18; Rep. Le, Rock. 31; Rep. MacKay, Merr. 14; Rep. Muscatel, Graf. 12; Sen. Watters, Dist 4

COMMITTEE: Health, Human Services and Elderly Affairs

ANALYSIS

This bill provides a procedure for an individual to obtain a new birth certificate based on a change of gender identity.

.....

Explanation: Matter added to current law appears in *bold italics*.
 Matter removed from current law appears [~~in brackets and struck through.~~]
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Nineteen

AN ACT relative to initiating amendments and corrections to birth records.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Vital Records; Initiating Amendments and Corrections to Birth Records; Gender Identity.
2 RSA 5-C:87, V is repealed and reenacted to read as follows:

3 V. If an individual requests a birth certificate reflecting a gender identity other than that
4 which was assigned a birth, a new birth record shall be prepared to reflect a change in the
5 individual's gender identity upon receipt of a certification affirming the individual's gender identity
6 by a licensed and qualified health care provider.

7 (a) The written certification shall be signed by a licensed and qualified health care
8 provider under the penalty of unsworn falsification pursuant to RSA 641:3. It shall provide that the
9 named individual is currently or was previously under the signing health care provider's care, and
10 that in the health care provider's professional opinion the individual's gender identity is (1) male,
11 (2) female, or (3) nonbinary, and can be reasonably expected to continue as such for the foreseeable
12 future.

13 (b) The application shall be signed by the applicant under the penalty of unsworn
14 falsification pursuant to RSA 641:3. This signature shall certify that the request for change of
15 gender is for the purpose of ensuring that the applicant's birth certificate accurately reflects his,
16 her, or their gender identity, and that the request is not for any fraudulent or unlawful purpose.

17 (c) The applicant shall surrender his, her, or their birth certificate.

18 (d) The department of health and human services and the town or city clerk shall not
19 charge a fee for updating a birth certificate pursuant to this paragraph.

20 (e) In this paragraph, "licensed and qualified health care provider" means a treating
21 and licensed physician, psychologist, advanced practice registered nurse, clinical social worker, or
22 clinical mental health counselor.

23 2 Effective Date. This act shall take effect 60 days after its passage.