

Bill as
Introduced

HB 446 - AS AMENDED BY THE HOUSE

14Mar2019... 0801h

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

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.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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2 RSA 5-C:87, V is repealed and reenacted to read as follows: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 record reflecting a sex designation other than that
4 which was assigned at birth, a new birth record shall be prepared to reflect a change in the
5 individual's sex upon receipt of a notarized certification affirming the individual's sex designation
6 by a licensed and qualified health care provider.

7 (a) The notarized 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 sex is (1) male, (2) female, or
11 (3) neither male nor female, 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 sex
15 is for the purpose of ensuring that the applicant's birth record accurately reflects the applicant's
16 sex, and that the request is not for any fraudulent or unlawful purpose.

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

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

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

29 2 Effective Date. This act shall take effect 60 days after its passage.

HB 446 - AS AMENDED BY THE SENATE

14Mar2019... 0801h
05/15/2019 1854s

2019 SESSION

19-0762
05/01

HOUSE BILL **446**

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

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COMMITTEE: Health, Human Services and Elderly Affairs

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Nineteen

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

7 (a) The notarized certification shall be signed by a licensed and qualified health care
8 provider under the penalty of RSA 5-C:14. It shall provide that the named individual is currently or
9 was previously under the signing health care provider's care, and that in the health care provider's
10 professional opinion the individual's gender is (1) male, (2) female, or (3) neither male nor female,
11 and can be reasonably expected to continue as such for the foreseeable future.

12 (b) The application shall be signed by the applicant under the penalty of RSA 5-C:14.
13 This signature shall certify that the request for change of gender is for the purpose of ensuring that
14 the applicant's birth record accurately reflects the applicant's gender, and that the request is not for
15 any fraudulent or unlawful purpose. If the applicant is a minor who is at least 14 years of age but
16 less than 18 years of age, the application shall be signed by the applicant and by each parent listed
17 on the minor's birth certificate or the minor's legal guardian. If a parent listed on the birth
18 certificate cannot be found, the applicant also shall submit a certified copy of a court order stating
19 that the consent of only one parent is required. If a parent is deceased, a certified copy of the death
20 certificate shall be submitted with the application.

21 (c) The individual shall surrender any prior birth record issued by the state of New
22 Hampshire in the individual's possession. The original birth record shall be retained by the city or
23 town of birth. The city or town clerk shall submit the individual's application, the health care
24 provider's certification, and a certified copy of the original birth record to the state registrar for
25 review. Upon approval by the state registrar, the city or town clerk shall issue a new birth record
26 with a marginal note indicating that the record has been amended in accordance with this
27 paragraph. The birth records shall reflect the gender as male, female, or neither.

28 (d) The fee to amend a birth record pursuant to this paragraph shall be the same as the
29 fee to amend a birth record pursuant to RSA 5-C:10, III. Any subsequent amendment to the birth
30 record regarding gender designation shall require a court order.

HB 446 - AS AMENDED BY THE SENATE

- Page 2 -

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

4 2 Effective Date. This act shall take effect January 1, 2020.

HB 446- FISCAL NOTE
 AS AMENDED BY THE SENATE (AMENDMENT #2019-1854s)

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

FISCAL IMPACT: State County Local None

STATE:	Estimated Increase / (Decrease)			
	FY 2020	FY 2021	FY 2022	FY 2023
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	\$0	\$0	\$0
Expenditures	\$100,000	\$0	\$0	\$0
Funding Source:	<input type="checkbox"/> General <input type="checkbox"/> Education <input type="checkbox"/> Highway <input checked="" type="checkbox"/> Other - Vital Records Improvement Fund (RSA 5-C:15)			

LOCAL:

	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Revenue				
Expenditures	\$0	\$0	\$0	\$0

METHODOLOGY:

This bill allows an individual to request a birth certificate reflecting a sex designation other than that which was assigned at birth. The fee to amend a birth certificate would be the same as the existing fee to correct or amend a birth certificate, or \$10, kept by the municipality pursuant to RSA 5-C:10, III. The New Hampshire Municipal Association does not know how many applications are likely to be submitted in any municipality in a given year due to this legislation and is unable to estimate if there would be any additional total revenue. The Secretary of State's Office indicates there would be a one-time cost for the Division of Vital Records for modification of forms and associated programming for data exchange with the Department of Health and Human Services.

AGENCIES CONTACTED:

New Hampshire Municipal Association and Department of State

LBAO
 19-0762
 Amended 6/7/19

**HB 446 FISCAL NOTE
 AS AMENDED BY THE SENATE (AMENDMENT #2019-1854s)**

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AGENCIES CONTACTED:

New Hampshire Municipal Association and Department of State

HB 446 - FINAL VERSION

14Mar2019... 0801h
05/15/2019 1854s

2019 SESSION

19-0762
05/01

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

7 (a) The notarized certification shall be signed by a licensed and qualified health care
8 provider under the penalty of RSA 5-C:14. It shall provide that the named individual is currently or
9 was previously under the signing health care provider's care, and that in the health care provider's
10 professional opinion the individual's gender is (1) male, (2) female, or (3) neither male nor female,
11 and can be reasonably expected to continue as such for the foreseeable future.

12 (b) The application shall be signed by the applicant under the penalty of RSA 5-C:14.
13 This signature shall certify that the request for change of gender is for the purpose of ensuring that
14 the applicant's birth record accurately reflects the applicant's gender, and that the request is not for
15 any fraudulent or unlawful purpose. If the applicant is a minor who is at least 14 years of age but
16 less than 18 years of age, the application shall be signed by the applicant and by each parent listed
17 on the minor's birth certificate or the minor's legal guardian. If a parent listed on the birth
18 certificate cannot be found, the applicant also shall submit a certified copy of a court order stating
19 that the consent of only one parent is required. If a parent is deceased, a certified copy of the death
20 certificate shall be submitted with the application.

21 (c) The individual shall surrender any prior birth record issued by the state of New
22 Hampshire in the individual's possession. The original birth record shall be retained by the city or
23 town of birth. The city or town clerk shall submit the individual's application, the health care
24 provider's certification, and a certified copy of the original birth record to the state registrar for
25 review. Upon approval by the state registrar, the city or town clerk shall issue a new birth record
26 with a marginal note indicating that the record has been amended in accordance with this
27 paragraph. The birth records shall reflect the gender as male, female, or neither.

28 (d) The fee to amend a birth record pursuant to this paragraph shall be the same as the
29 fee to amend a birth record pursuant to RSA 5-C:10, III. Any subsequent amendment to the birth
30 record regarding gender designation shall require a court order.

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

4 2 Effective Date. This act shall take effect January 1, 2020.

5

6 VETOED July 19, 2019

7 Veto Sustained September 18, 2019

8

HB 446- FISCAL NOTE
 AS AMENDED BY THE SENATE (AMENDMENT #2019-1854s)

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

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STATE:	Estimated Increase / (Decrease)			
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<i>Funding Source:</i>	<input type="checkbox"/> General <input type="checkbox"/> Education <input type="checkbox"/> Highway <input checked="" type="checkbox"/> Other - Vital Records Improvement Fund (RSA 5-C:15)			

LOCAL:

	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
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METHODOLOGY:

This bill allows an individual to request a birth certificate reflecting a sex designation other than that which was assigned at birth. The fee to amend a birth certificate would be the same as the existing fee to correct or amend a birth certificate, or \$10, kept by the municipality pursuant to RSA 5-C:10, III. The New Hampshire Municipal Association does not know how many applications are likely to be submitted in any municipality in a given year due to this legislation and is unable to estimate if there would be any additional total revenue. The Secretary of State's Office indicates there would be a one-time cost for the Division of Vital Records for modification of forms and associated programming for data exchange with the Department of Health and Human Services.

AGENCIES CONTACTED:

New Hampshire Municipal Association and Department of State

Amendments

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 gender 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 gender upon receipt of a notarized certification affirming the individual's gender
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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 gender is (1) male, (2) female,
13 or (3) neither male nor female, and can be reasonably expected to continue as such for the
14 foreseeable 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
17 gender is for the purpose of ensuring that the applicant's birth record accurately reflects the
18 applicant's gender, 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 care
22 provider's certification, and a copy of the original birth record to the state registrar for review and
23 issuance of a new birth record. Upon issuance of the new birth record, the clerk of the city or town
24 shall indicate on the original birth record that it has been revised in accordance with this paragraph.

25 (d) The fee to amend a birth record pursuant to this paragraph shall be the same as the
26 fee to amend a birth record pursuant to RSA 5-C:10, III.

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

2019-1389h

AMENDED ANALYSIS

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

UNAPPROVED

Amendment to HB 446

1 Amend the bill by replacing all after the enacting clause 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 gender 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 gender upon receipt of a notarized certification affirming the individual's gender
8 designation by a licensed and qualified health care provider.

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10 provider under the penalty of RSA 5-C:14. It shall provide that the named individual is currently or
11 was previously under the signing health care provider's care, and that in the health care provider's
12 professional opinion the individual's gender is (1) male, (2) female, or (3) neither male nor female,
13 and can be reasonably expected to continue as such for the foreseeable future.

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17 any fraudulent or unlawful purpose. If the applicant is a minor who is at least 14 years of age but
18 less than 18 years of age, the application shall be signed by the applicant and by each parent listed
19 on the minor's birth certificate or the minor's legal guardian. If a parent listed on the birth
20 certificate cannot be found, the applicant also shall submit a certified copy of a court order stating
21 that the consent of only one parent is required. If a parent is deceased, a certified copy of the death
22 certificate shall be submitted with the application.

23 (c) The individual shall surrender any prior birth record issued by the state of New
24 Hampshire in the individual's possession. The original birth record shall be retained by the city or
25 town of birth. The city or town clerk shall submit the individual's application, the health care
26 provider's certification, and a certified copy of the original birth record to the state registrar for
27 review. Upon approval by the state registrar, the city or town clerk shall issue a new birth record
28 with a marginal note indicating that the record has been amended in accordance with this
29 paragraph. The birth records shall reflect the gender as male, female, or neither. Additionally, the
30 state shall add to the marriage, divorce, and death records an expanded gender designation
31 indicating male, female, or neither.

32 (d) The fee to amend a birth record pursuant to this paragraph shall be the same as the

1 fee to amend a birth record pursuant to RSA 5-C:10, III. Any subsequent amendment to the birth
2 record regarding gender designation shall require a court order.

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

6 2 Effective Date. This act shall take effect January 1, 2020.

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27 review. Upon approval by the state registrar, the city or town clerk shall issue a new birth record
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29 paragraph. The birth records shall reflect the gender as male, female, or neither.

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Amendment to HB 446

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2 and licensed physician, physician assistant, psychologist, advanced practice registered nurse,
3 clinical social worker, or clinical mental health counselor.

4 2 Effective Date. This act shall take effect January 1, 2020.

Committee Minutes

**AMENDED TIME CHANGE
SENATE CALENDAR NOTICE
Health and Human Services**

Sen Tom Sherman, Chair
Sen Martha Fuller Clark, Vice Chair
Sen Shannon Chandley, Member
Sen Jeb Bradley, Member
Sen James Gray, Member

Date: March 28, 2019

HEARINGS

Tuesday	04/02/2019
(Day)	(Date)
Health and Human Services	LOB 101 1:00 p.m.
(Name of Committee)	(Place) (Time)
1:00 p.m. HB 446	relative to initiating amendments and corrections to birth records.
1:30 p.m. HB 237	establishing the New Hampshire rare disease advisory council.
1:45 p.m. HB 736	reestablishing the commission to study environmentally-triggered chronic illness.
2:00 p.m. HB 490	establishing a commission to study the role of clinical diagnosis and the limitations of serological diagnostic tests in determining the presence or absence of Lyme and other tick-borne diseases and available treatment protocols, and appropriate methods for educating physicians and the public about the inconclusive nature of prevailing test methods and available treatment alternatives.
2:30 p.m. HB 692-FN	relative to dental care for Medicaid recipients.

EXECUTIVE SESSION MAY FOLLOW

Sponsors:

HB 446

Rep. Cannon
Rep. Le

Rep. Cushing
Rep. MacKay

Rep. Butler
Rep. Muscatel

Rep. Bunker
Sen. Watters

HB 237

Rep. Marsh
Rep. Fothergill
Sen. Chandley

Rep. Guthrie
Rep. Salloway

Rep. Knirk
Sen. Bradley

Rep. Kotowski
Sen. Rosenwald

HB 736

Rep. Murphy
Rep. Knirk
Sen. Sherman

Rep. Stack
Rep. Salloway
Sen. Fuller Clark

Rep. W. Thomas
Rep. Guthrie

Rep. Cushing
Rep. Edgar

HB 490

Rep. Moffett

Rep. McMahon

Rep. Saunderson

Rep. Karrick

HB 692-FN

Rep. Bernet
Rep. Von Plinsky

Rep. Thompson
Sen. Chandley

Rep. Schapiro
Sen. Feltes

Rep. Swinburne

Doug Marino 271-8631

Tom Sherman
Chairman

Senate Health and Human Services Committee

Doug Marino 271-8631

HB 446, relative to initiating amendments and corrections to birth records.

Hearing Date: April 2, 2019

Time Opened: 1:01 p.m.

Time Closed: 1:59 p.m.

Members of the Committee Present: Senators Sherman, Chandley, Bradley and Gray

Members of the Committee Absent : Senator Fuller Clark

Bill 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.

Sponsors:

Rep. Cannon

Rep. Cushing

Rep. Butler

Rep. Bunker

Rep. Le

Rep. MacKay

Rep. Muscatel

Sen. Watters

Who supports the bill: Representative Nancy Murphy (Hillsborough District 21), Jeanne Hruska (ACLU), Palana Belken (ACLU), Representative Gerri Cannon (Strafford District 18), Chris Urchull (GLAD), Marcia Garber, Representative Lisa Bunker (Rockingham District 18), Alex McEntee, Ruth Church, Liz-Anne Platt, Maura Willing, MK Kilcoyne (NH Youth Movement), Elizabeth Corell, Emily Kilheaney, Representative Polly Champion (Grafton District 12), Timothy McKernan (Granite State Progress), Louise Spencer, Melissa Hinebauch, Kathy Cahill, Mike Padmore (NH Medical Society), Representative Wendy Thomas (Hillsborough District 21), Representative Joe Schapiro (Cheshire District 16)

Who opposes the bill: Christopher Jay (Cornerstone Action NH)

Who is neutral on the bill: Stephen Wurtz (State Registrar), Patricia Piecuch (Nashua City Clerk)

Summary of testimony presented:

Representative Gerri Cannon, Strafford District 18 (Provided written testimony)

- Many states have begun to allow transgender and gender non-binary citizens to update their birth information, including Massachusetts.
- Over the past 20 years, many transgender citizens have come out and shared their stories.

- Currently, transgender and gender non-binary people may use a physician's letter to update their passport and their drivers' license. HB 446 will introduce the same procedure for updating one's birth records.
- Too often, transgender and gender non-binary people must hide their identity.
- Rep. Cannon was able to update some of her legal documents in the Commonwealth of Massachusetts.
- The transgender community has the highest suicide rates of the entire LGBTQ+ community. This is a devastating result of the discrimination that they face.
- To update their birth information, an applicant would need a signed document from a physician.
- This reform would make a big difference in the lives of transgender and gender non-binary people.
- Rep. Cannon is bringing forward an amendment to change the use of the word "sex" to "gender." The amendment also includes physician assistants as licensed professionals who can sign the letter.

Representative Lisa Bunker, Rockingham District 18

- Rep. Bunker is a cosponsor of HB 446
- Rep. Bunker is a transgender person, and the parent of a gender variant child.
- Rep. Bunker was able to update her birth records in New Mexico with a letter from her physician. Her original birth records were preserved by the state.
- When Rep. Bunker wanted to change her name, she had to make an appeal to a judge, which was a very nerve-wracking experience.
- HB 446 would eliminate some of this anxiety for transgender and gender non-binary people.
- Rep. Bunker's child does not identify as male or female. They would be very validated if they had the option to specify that on their birth records that they do not identify as male or female.
- Gender dysphoria is not a "feeling." It is a legitimate diagnosis that is recognized by the mainstream medical community. Gender transition is an appropriate treatment for gender dysphoria.

Jeannie Hruska and Palana Belken, ACLU (Provided written testimony)

- The current law in NH misunderstands what it means to be transgender and gender non-binary.
- The current law forces transgender and gender non-binary people to go before a judge, this statute is very outdated.
- Your ID should be consistent with your gender identity, as well as your birth record.
- HB 446 would allow transgender citizens to amend their birth record so that it is consistent with their gender identity as well as their driver's license.
- There is another bill that will allow a third gender option on driver's licenses. The ACLU supports that bill as well.
- This is also a first amendment issue. Transgender people should not be forced to carry a birth record that perpetuates a gender that is not consistent with their identity.
- Palana is presenting testimony from stakeholders who are interested in this legislation.
- Many doctors have expressed frustration that they are unable to certify their New Hampshire patients who wish to have their birth records updated to reflect their identity.
- Senator Bradley asked Mrs. Hruska if this bill stands on its own, independent of the driver's license bill. She indicated that it does.
- Senator Bradley asked Mrs. Hruska how many other states have a program like this. She indicated that she will get back to the committee with the exact numbers, but a number of other states have aligned their policy on birth records with driver's licenses. The same standard is applied at the federal level for passports.

Christopher Jay, Cornerstone Action

- Society has a compelling interest in accurate, verifiable records.
- Those records are used for public health and law enforcement purposes.
- Mr. Jay does not believe that the current law is discriminatory.

- Senator Sherman asked Mr. Jay if he thinks it is more helpful to have a complete and updated record. Mr. Jay would agree that it is more helpful to have a complete record, but he disagrees with updating gender information.
- Senator Sherman noted that the original birth records will not be destroyed. Mr. Jay acknowledged that that is accurate, but he still believes that this bill should be defeated.

Chris Urchull, GLBTQ Legal Advocates and Defenders (GLAD) (Provided written testimony)

- It is very important that people do not walk around with inconsistent documents.
- The process of obtaining a corrected birth record in New Hampshire is currently discriminatory. The outcome often depends on the judge presiding over the hearing.
- Gender dysphoria is a recognized condition by the medical community. Gender transition is an appropriate treatment for gender dysphoria.
- A judge is not the appropriate arbiter of somebody's gender. Medical professionals who work directly with the patient are a much more appropriate arbiter.
- This legislation will not allow people to change their birth records for fraudulent purposes, doing so would still be unlawful.

Alex McEntee (Provided written testimony)

- Alex was born in Nashua, NH. The doctor declared that Alex was a girl and the birth record reflects that declaration.
- As Alex got older, they realized that the gender they were assigned at birth is not consistent with their true gender identity.
- It would be very beneficial for Alex to have the option to choose a third gender for their birth record. Having such an option would allow Alex to have documents that truly reflect their identity.
- People have the ability to update documents in other contexts, such as DMV records. Society has not observed any of the issues that opponents of this bill are claiming might happen.

Steve Wurtz, Division of Vital Records

- Mr. Wurtz is neutral on this legislation.
- Mr. Wurtz is concerned about the bill from an administrative standpoint. He believes that administrative guidance would be helpful.
- He is concerned about the bill going into effect in 60 days.
- Mr. Wurtz believes that there are several considerations that should be taken into account as the committee discusses this bill, including the age that a person needs to be before making this determination.
- Other amendments that are made to vital records show a history of changes that are made to the record.
- Senator Bradley asked Mr. Wurtz if he offered this testimony in the House and worked with the sponsors to address his concerns. Mr. Wurtz indicated that he had offered the testimony but did not work with the sponsors.
- Senator Bradley asked if the effective date should be pushed out. Mr. Wurtz indicated that January 1st would be more appropriate in his opinion.
- Senator Bradley and Senator Sherman indicated that they would like Mr. Wurtz to work with the sponsors to work on some of these issues.

MK Kilcoyne, New Hampshire Youth Movement

- MK is a genderfluid person who would benefit greatly from having the option to update their birth records.
- When a child is born, the parent's priority is whether the baby is healthy, not their gender.

Patricia Piecuch, Nashua City Clerk

- Mrs. Piecuch in neutral on this legislation.
- There are some areas of the language that need to be clarified, Mr. Wurtz touched on many of them, such as the how old an applicant needs to be.
- The City Clerk's office is paperless for birth certificates.
- The bill should include a reference to the RSA which defines who is a licensed medical professional.
- Senator Sherman indicated that he would like Mrs. Piecuch to work with the sponsors on these issues. Mrs. Piecuch indicated that she will do that.
- Senator Sherman asked about Mrs. Piecuch's comments concerning licensed medical professionals. Mrs. Piecuch clarified that she would like to see a reference in the bill for any RSA that defines who is a licensed medical professional.

DLM

Date Hearing Report completed: April 3, 2019

Speakers

SENATE HEALTH AND HUMAN SERVICES COMMITTEE

Date: April 2, 2019

Time: 1:00PM Public Hearing on HB 446

HB 446 -

Please check box(es) that apply:

SPEAKING FAVOR	OPPOSED	NAME (Please print)	REPRESENTING
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Rep. Nancy Murphy - Hillsborough 21	(Member)
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Jeanne Huska + Palana Belken	ACLU-NH
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	REP. GERRI CANNON	PRIME SPONSOR
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Christopher Jay	Cornerstone NH
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Chris Erchull	GLAD
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Marissa Garber	self
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Rep. Lisa Baker (co-sponsor)	self
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Alex McEntee	Self
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Ruth Perencovich	self
<input type="checkbox"/>	<input checked="" type="checkbox"/>	LZ-Anne Platt	Concord Self
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Maara willing	Concord self
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Stephen Wurtz	State Registrar + Director ^{with Rep.}
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Patricia Picard	City Clerk - Nashua
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	MK Kilcoyne	NH YM / self
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Elizabeth Lovell	Concord self
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Emily Kilheaney	Manchester self
<input type="checkbox"/>	<input type="checkbox"/>		
<input type="checkbox"/>	<input type="checkbox"/>		
<input type="checkbox"/>	<input type="checkbox"/>		

Testimony

HB446: relative to initiating amendments and corrections to birth records

- Senate Public Hearing: Tuesday, April 2nd @ 1:00 pm. NH LOB Room 101

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

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 you with a letter from Karen Thomas sharing 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



Statement by Jeanne Hruska, Political Director ACLU-NH
Senate Health and Human Services Committee
House Bill 446
April 2, 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.

Current law fundamentally misunderstands what it means to be transgender or non-binary.

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

New Hampshire’s requirements for correcting various forms of government-issued identification are inconsistent, resulting in people carrying around conflicting IDs.

The Department of Motor Vehicles (DMV) recently changed their own process for correcting drivers’ licenses to allow for the process that would be provided by this bill, namely a signed affidavit by a health care provider. By having inconsistent processes for correcting government-issued identification, as we currently have, we risk people having conflicting identification documents. It helps no one for a person to carry a driver’s license that says one gender and a birth certificate that says another. Such documentation becomes vehicles for discrimination, as the inconsistency will inevitably raise questions.

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

Moreover, the DMV's rightful decision to require only a signed affidavit by a health care provider demonstrates that the government does understand what it means to be transgender and that there is no surgical requirement. If the DMV understands this, the Department of Vital Records can too.

Inaccurate identification can result in discrimination, harassment, and exclusion.

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 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

² <http://www.ustranssurvey.org/>

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.”

By providing for only an “M” or an “F” gender marker, New Hampshire law currently forces gender non-binary Granite Staters to speak the government’s message about gender in violation of the First Amendment. A gender non-binary person is someone who identifies as neither male nor female. For people who are non-binary, this forced speech currently occurs in two ways. Non-binary Granite Staters are forced to hold a birth certificate that does not accurately reflect whom they know themselves to be, and they are forced to carry a document that perpetuates the gender dichotomy. Several states have moved to rectify this by adding a third gender marker to birth records. Providing for an “X,” as an alternative to an “M” or an “F,” ensures accurate and affirming identification for gender non-binary individuals.³

Forcing transgender people to disclose their transgender status and be outed by inaccurate identification violates their constitutional right to privacy. 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, and violate the constitution. For these reasons, the ACLU of New Hampshire urges this committee to vote HB446 *ought to pass*.

³ There is a separate bill (HB669) that would provide for a third gender marker on drivers’ licenses in 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

I am writing you in regards to HB446 as a practicing therapist with a private practice in Rochester, NH.

I find it imperative to the mental health of my patients to be able to obtain correct documentation that is fairly easy to obtain. This is not the case as it stands now. My patients are often turned away at the clerk of courts and told that there are no forms for a name or gender change on birth certificates.

Additionally, I have patients who neither identify as female or male which makes it necessary for a gender marker of X. The non-binary preference is recognized by the medical community as a legitimate "gender".

The difficulties that my patients are experiencing for changing a name or gender marker for a birth certificate is unacceptable, so I urge you to vote Ought To Pass on HB 446.

Thank you for your time and consideration.

Sincerely,
Deborah Emery-Gigliotti, MS, LCMHC
Mindful Healing Counseling Services, LLC
One Old Dover Road, Suite #6
PO Box 7404
Rochester, NH 03839
Tel: 603-433-3070
degmindfulhealing@gmail.com
www.nhcounselor.com

Sunday, March 31, 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

4/1/2019

Dear Senate Health and Human Services Committee,

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 mis-gendered 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. Changing my documents would give me 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.

I urge you to vote OTP on HB446.

Thanks,

Linds Jakows
Manchester NH
ljjakows@gmail.com



April 2, 2019

RE: New Hampshire HB446 – SUPPORT

Intersex & Genderqueer Recognition Project (IGRP) is pleased to support HB446 which will enable nonbinary, intersex, and transgender people born in New Hampshire to obtain a birth certificate that accurately reflect their gender.

IGRP is the first, and leading, organization in the United States to address the rights of people to identify as nonbinary on government issued documents.

We at IGRP support HB446 because binary gender designations fail to adequately represent the diversity of human experience. Nonbinary people have gender identities that fall outside the traditional conceptions of strictly either female or male. People with nonbinary gender identities may or may not identify as transgender, may or may not have been born with intersex traits, may or may not use gender-neutral pronouns, and may or may not use more specific terms to describe their genders, such as agender, genderqueer, gender fluid, Two Spirit, bigender, pangender, gender nonconforming, or gender variant.

Jurisdictions throughout the U.S. now offer gender neutral designations on birth certificates, driver's licenses, and state IDs. California, Connecticut, Colorado, New Jersey, New York City, Nevada, Oregon, Utah, and Washington have already provided gender neutral designations on birth certificates. Arkansas, California, Washington D.C., Indiana, Maine, Minnesota, and Oregon all offer an "X" gender marker on state ID and driver's licenses. Other states including Arizona, Massachusetts, New York, and Vermont seem poised to follow soon. (See <https://www.intersexrecognition.org/resources> for up-to-date status of nonbinary gender laws.) Over one-third of all transgender people in the US identify as nonbinary according to the 2015 U.S. Transgender Survey. A gender-neutral option on birth certificates allows people whose gender is not male or female to display an accurate gender marker.

IGRP supports the Amendment to HB446 changing the word "sex" to "gender" in the following phrase "... that in the health care provider's professional opinion the individual's sex is (1) male, (2) female, or (3) neither male nor female..." The language must be clear that providers are attesting to the gender identity of the individual.



IGRP represents the needs of both intersex people and people whose gender is nonbinary. These are two very separate and distinct categories. “Intersex” people are those born with natural bodily variations, which can include external genitalia, internal sex organs, chromosomes, or hormonal differences that transcend typical ideas of male and female. Intersex rights organizations generally recommend that infants be assigned an “M” or “F” marker at birth without performing any treatment or intervention into their sex characteristics, and be given the ability to amend the birth record later if needed to accurately reflect their gender. Most intersex people end up having a gender identity of male or female, but some identify as nonbinary. “Nonbinary” is an umbrella term for people with gender identities that are neither entirely male nor entirely female. It is important to understand the difference. **It is gender identity that determines what a person's legal sex is.**

As well as supporting the addition of the third gender marker, IGRP supports HB446 allowing for a variety of medical professionals, including therapists, to certify proof of gender on birth certificates, rather than requiring a court ordered sex change. **IGRP supports the Amendment to HB446 adding “physician’s assistant” to the accepted list of medical professionals.**

IGRP strongly supports House Bill 446 because it will significantly improve the lives of nonbinary, intersex, and transgender people born in New Hampshire. Please feel free to contact us with any questions.

Sincerely,

Toby Adams, Attorney at Law / *pronouns: she, her*
Executive Director, Intersex & Genderqueer Recognition Project (IGRP)
Toby@IntersexRecognition.org
(530) 863-7153



Statement in Support of HB 446

The National Center for Transgender Equality (NCTE) submits this statement in support of House Bill 446, which modernizes the process for updating the gender marker on New Hampshire birth certificates. NCTE suggests one small but important amendment to the bill language and urges the legislature to pass this bill to ensure that the people of New Hampshire have access to accurate birth certificates that enable them to go about their lives free from discrimination and harassment.

Why New Hampshire Needs to Modernize its Birth Certificate Gender Change Policy

Birth certificates are a critical identity document used in many settings to verify an individual's identity, and having an accurate gender marker is important for many practical reasons. Birth certificates are often requested for purposes related to employment, education, and family law, to verify an individual's identity, and to verify citizenship. In order to avoid discrimination in these situations, transgender individuals need access to birth certificates that accurately reflect their gender.

There is a significant need among transgender people in New Hampshire for access to accurate IDs. According to the 2015 U.S. Transgender Survey, almost two-thirds (60%) of transgender respondents living in New Hampshire reported they do not have any government-issued ID that matches their name and gender.¹ A driver's license or birth certificate that has an incorrect gender marker "outs" a transgender person in any situation where they need to show that identification, such as travelling, applying for jobs or schools, entering any public establishments that require ID, or obtaining any other benefits that require proof of identity. Nearly one-fourth (23%) of transgender people in New Hampshire who showed an ID that did not match their gender presentation reported at least one experience of being verbally harassed, denied benefits or service, asked to leave a place of business, or assaulted.²

Medical and mental health professionals have long recognized the importance of updated identity documents as an intrinsic part of gender transition. The American Medical Association "opposes any efforts to deny an individual's right to determine their stated sex marker or gender identity."³ The American Psychological Association encourages "legal and social recognition of transgender individuals consistent with their gender identity and expression, including access to identity documents consistent with their gender identity and expression which do not involuntarily disclose their status as transgender for transgender people who permanently socially transition to another gender role."⁴

¹ Sandy E. James et al., 2015 U.S. Transgender Survey: New Hampshire State Report (2017), <http://www.transequality.org/sites/default/files/docs/usts/USTSNHStateReport%281017%29.pdf>.

² *Id.*

³ American Medical Association, *Press Release on Affirming the Medical Spectrum of Gender* (2018), <https://www.ama-assn.org/press-center/press-releases/ama-adopts-new-policies-2018-interim-meeting>.

⁴ Am. Psychological Ass'n., *Transgender, Gender Identity, & Gender Expression Non-Discrimination* (2008), <http://www.apa.org/about/policy/transgender.aspx>.

Court Orders for Gender Change are an Unnecessary and Unpredictable Burden on Applicants

Requiring applicants to be granted a court order recognizing their gender is an unnecessary burden that prevents many people from obtaining accurate birth certificates. Court petitions are expensive and complicated, and not all individuals can access the court process. Moreover, not all courts and judges are willing to issue court orders for gender change, and when they do the standards vary greatly among judges. The majority of courts do not have a clear process or standard for issuing court orders for gender change. Some people are granted a petition for gender change while others are denied, often depending on that particular judge's level of education and understanding of transgender issues. Transgender individuals applying for a court order are left to determine how to submit a petition, what documentation a judge will request, what personal medical information they will have to divulge in the courtroom, and whether the judge will treat them with respect. Many transgender people navigate the process without access to legal assistance or financial support.

The court order process also poses many privacy issues. It requires transgender individuals to publicly reveal private medical information. Forcing people to discuss their gender identity and medical treatment they have undergone in open court can cause significant discomfort and psychological trauma. Even if the hearing is done in judge's chambers, and does not require an attorney, the hearing can be extremely intimidating. Additionally, public records of the proceeding can make the person more vulnerable to discrimination, and could expose transgender individuals to physical harm in some communities.

Because of the lack of guidelines and lack of knowledge on the issue, many judges request proof of surgical procedures in order to grant a court order for gender change. A surgical requirement does not comport with current understandings in transgender health care, which recognize that gender transition is an individualized process that is not the same for all transgender people.⁵ Many transgender people cannot undergo surgery for a number of reasons, including fear of complications, the cost of surgery,⁶ inability to take time off school or work for the recovery period, and medical conditions that make surgery impossible. Furthermore, some people choose not to have surgery because they simply do not require it to feel comfortable in their gender.

Due to these barriers, allowing an applicant to go directly to the state registrar to request an updated gender marker on their birth certificate is a more efficient and reliable process. The administrative option allows individuals to bypass the expensive and complicated process of obtaining a court order. An administrative procedure also streamlines the application process and ensures uniform access to updated birth certificates.

Gender Neutral Designation

Vital records departments and motor vehicle agencies across the country are beginning to offer gender neutral designations on birth certificates, driver's licenses, and state IDs across the country. A gender

⁵ WORLD PROF'L ASSN. FOR TRANSGENDER HEALTH, STANDARDS OF CARE (7th ed. 2011)

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

neutral designation provides a more accurate description for people who do not neatly fit into the categories of male or female. In the 2015 U.S. Transgender Survey, which included nearly 28,000 transgender people across the United States, over one-third (35%) of the sample identified as non-binary, one of the terms used to describe people whose gender does not fit into the categories of “man” or “woman.”⁷ A gender-neutral option on birth certificates allows people whose gender is not male or female to display a more accurate gender marker. At least six states plus New York City already issue gender neutral designations on birth certificates: California,⁸ Connecticut,⁹ Oregon,¹⁰ Washington,¹¹ New Jersey,¹² Nevada,¹³ and New York City.¹⁴

Amendment to HB 446

The following small amendment should be made to HB 446:

“The notarized certification ... shall provide that the named individual is currently or was previously under the signing health care provider's care, and that in the health care provider's professional opinion the individual's sex gender is (1) male, (2) female, or (3) neither male nor female, and can be reasonably expected to continue as such for the foreseeable future.”

This amendment is small but critical because it is the language the state registrar will take from this bill to create a form for signature by a health care provider. The language must be clear that providers are attesting to the gender identity of the individual.

NCTE strongly supports House Bill 446 because it will significantly improve the lives of transgender people born in New Hampshire. We hope you take the above factors into consideration and pass this important bill into law. Please do not hesitate to contact us if you have any further questions.

Sincerely,

Arli Christian

Arli Christian, State Policy Director, National Center for Transgender Equality
202-804-6044
achristian@transequality.org

⁷ James, S. E., Herman, J. L., Rankin, S., Keisling, M., Mottet, L., & Anafi, M. (2016). The Report of the 2015 U.S. Transgender Survey. Washington, DC: National Center for Transgender Equality at 45.

⁸ California Gender Recognition Act, SB 179,

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

⁹ See CT Department of Public Health Statement, <https://www.cga.ct.gov/2019/PHdata/Tmy/2019SB-00388-R000225-Department%20of%20Public%20Health-TMY.PDF>.

¹⁰ See Oregon Health Authority House Bill 2673 Information Sheet,

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

¹¹ Washington WAC 246-490-075, Changing sex designation on a birth certificate,

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

¹² New Jersey Babs Siperstein Law, https://www.njleg.state.nj.us/2018/Bills/A2000/1718_R2.PDF.

¹³ Nevada Administrative Code 440.030, [https://www.leg.state.nv.us/Register/RegsReviewed/\\$R066-16A.pdf](https://www.leg.state.nv.us/Register/RegsReviewed/$R066-16A.pdf).

¹⁴ New York City Health Code Article 207, <https://www1.nyc.gov/assets/doh/downloads/pdf/notice/2018/noa-amend-article207-section207-05.pdf>.

WHY ARE GENDER-NEUTRAL MARKERS IMPORTANT?

- A gender-neutral marker allows people whose gender is not male or female to display a more accurate gender marker on their IDs and records.
- A gender-neutral ID allows people of any sex or gender to have increased privacy around gender.

WHAT MARKER SHOULD BE USED?

- X has emerged as the standard gender-neutral designation on state IDs and records, and is available in at least six states on driver's licenses and at least four states on birth certificates.
- An X gender marker is consistent with sex designation standards for internationally recognized IDs and passports as set by the International Civil Aviation Association.

WHAT DOES THE "X" DESIGNATION STAND FOR?

- There are many different terms that people use to describe their gender, therefore no one term should be used to define X. X may indicate any gender other than male or female or an undesignated sex or gender.
- A broad definition of X moves us closer to a world where the government does not define or track sex or gender, rather than simply adding another gender category.

SHOULD GENDER DESIGNATION CHANGES REQUIRE A PROVIDER SIGNATURE?

- A person's own report of their gender is the most accurate means of ascertaining the appropriate sex designation for their documents.
- Removing the need for a medical provider to confirm a person's gender alleviates unnecessary, invasive, and expensive burdens to accessing accurate IDs.

IS A GENDER NEUTRAL MARKER ALLOWED UNDER THE REAL ID ACT?

- Yes. The REAL ID Act requires states to list a gender on licenses, but the Department of Homeland Security explicitly states that they "leave the determination of gender up to the States [...]."

WHAT IF SOMEONE'S GENDER-NEUTRAL ID DOES NOT MATCH OTHER FORMS OF ID?

- While gender-neutral IDs and gender marker discrepancies may cause confusion when interacting with officials, legally speaking, it is not an issue to have records with different gender markers, and already occurs with frequency due to inconsistency of gender change policies across the country.

IS AN "X" DESIGNATION COMPLIANT WHEN TRAVELLING THROUGH AIRPORTS AND WITH TSA?

- Yes. An ID with an X designation is compliant when passing through airport security. Gender markers on IDs are not one of the data points that TSA agents are instructed to check at security checkpoints, they are typically checking that the legal name and date of birth match their system.

WHERE ARE PEOPLE WITH GENDER NEUTRAL MARKERS PLACED IN GENDER-SPECIFIC FACILITIES?

- Transgender people, including non-binary people, have the right to equal access to gender-specific facilities according to their gender identity, regardless of the gender marker on their ID. Non-binary people should be able to determine what facilities are most consistent with their gender and their needs.

DOES A GENDER MARKER CHANGE AFFECT SOMEONE'S LEGAL RIGHTS AND PROTECTIONS?

- No. Legal protection of gender is based on a person's gender identity, as expressed by the person, and applies equally regardless of the gender that is listed on their license or ID. Having an appropriate designation simply helps ensure that the person is respected in accordance with their gender.



**Statement by Chris Erchull,
Staff Attorney, GLBTQ Legal Advocates & Defenders (GLAD),
before the Senate Committee on Health & Human Services,
in Support of House Bill 466,
An Act Relative to Initiating Amendments and Corrections to Birth Records**

Honorable Chairperson Sherman, Vice Chairperson Fuller Clark, and Members of the Committee:

I am grateful for the opportunity to testify in support of House Bill 466, entitled An Act Relative to Initiating Amendments and Corrections to Birth Records. This legislation would allow individuals born in New Hampshire to obtain birth records that correctly reflect their gender identity without the anachronistic and incorrect requirement of first obtaining a court order, including those who identify as neither exclusively male nor exclusively female. It is a logical extension of past updates already made to allow transgender people to obtain accurate gender markers on their drivers' licenses, and it will make everyone safer and more secure.

As an attorney with GLBTQ Legal Advocates & Defenders (GLAD), New England's leading legal rights organization dedicated to ensuring legal equality for LGBTQ people and people living with HIV, I can attest to the importance of treating all people in New Hampshire with dignity and respect in all aspects of civic life. For many Granite Staters, the opportunity to obtain a birth certificate accurately reflecting their gender is a critical move in the direction toward full equality.

In January of 2015, the Division of Motor Vehicles amended its regulations to implement a process by which people can change the gender designation on their drivers' licenses or nondrivers' identification cards.¹ This update to the regulations, which brought New Hampshire in line with the current medical understanding of gender transition and with common trends in identification documents, allowed transgender individuals a way to obtain correct identification after transitioning without the need for a court order. By going a step further, the Legislature can provide appropriate access to consistent and accurate birth records for all individuals born in New Hampshire.

Gender transition, the standard treatment for the medical condition known as gender dysphoria, often involves updating legal identification documents to reflect a patient's correct gender identity.² Any decisions about whether and when it is appropriate to obtain a corrected birth record should be between the individual and the individual's health care providers; a

¹ See Saf-C 1011.03 (as amended by #10775), http://www.gencourt.state.nh.us/rules/state_agencies/saf-c1000.html.

² See *Glossary of Gender and Transgender Terms*, Fenway Health (Jan. 2010), [https://fenwayhealth.org/documents/the-fenway-institute/handouts/Handout_7-](https://fenwayhealth.org/documents/the-fenway-institute/handouts/Handout_7-C_Glossary_of_Gender_and_Transgender_Terms_.fi.pdf)

[C_Glossary_of_Gender_and_Transgender_Terms_.fi.pdf](https://fenwayhealth.org/documents/the-fenway-institute/handouts/Handout_7-C_Glossary_of_Gender_and_Transgender_Terms_.fi.pdf); see also World Professional Association for Transgender Health, *Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People 10* (2012) ("options . . . to help alleviate gender dysphoria" include "[c]hanges in name and gender marker on identity documents"), available at https://www.wpath.org/media/cms/Documents/SOC%20v7/Standards%20of%20Care_V7%20Full%20Book_English.pdf.

court order unnecessarily burdens both the individual and the court system. Under the current outdated legislation, a judge must decide whether an individual has undergone a "sex change,"³ a standard that has been interpreted inconsistently by courts, underscoring that there is no public benefit to judicial, as opposed to medical, determinations of sex or gender identity.

It also benefits the public interest for individuals to have access to state-issued identification documents that are consistent with one another. Inconsistencies in identification documents can create difficulties in public administration and law enforcement.

Currently, individuals born in four states (California, Oregon, Washington, and New Jersey) are able to obtain corrected birth records indicating a gender that is neither male nor female. As the National Center for Transgender Equality explains: "People whose gender is not male or female use many different terms to describe themselves, with non-binary being one of the most common. Other terms include genderqueer, agender, bi-gender, and more."⁴ Nonbinary individuals who suffer from gender dysphoria experience a deep persistent, insistent, and consistent incongruence with the sex assigned to them at birth.

Additionally, the broad category of people who identify as neither exclusively male nor exclusively female also includes some individuals who are intersex,⁵ which the World Health Organization describes as people "born with physical or biological sex characteristics (including sexual anatomy, reproductive organs and/or chromosomal patterns) that do not fit the traditional definitions of male or female."⁶ An estimated 0.05% to 1.7% of people are intersex.⁷ While the gender identity of many intersex individuals is male or female, for others it is neither.

Nonbinary gender markers are now increasingly being used in commercial settings because, according to an airline industry statement: "U.S. airlines value a culture of diversity and inclusion, both in the workplace and for our passengers, and we work hard each day to accommodate the needs of all travelers, while delivering a safe, secure and enjoyable flight experience."⁸

By streamlining the process for correcting birth records and introducing a gender marker representing gender identities that are neither male nor female, this bill operates to allow Granite Staters a standardized and consistent manner by which to obtain correct identification documents.

³ RSA 5-C:87, V.

⁴ See *Understanding Non-Binary People: How to Be Respectful and Supportive*, National Center for Transgender Equality (Oct. 5, 2018), <https://transequality.org/issues/resources/understanding-non-binary-people-how-to-be-respectful-and-supportive>.

⁵ While many intersex individuals identify as male or female, others hold a nonbinary identity.

⁶ See World Health Organization, *FAQ on Health and Sexual Diversity* (2016), available at <http://origin.who.int/gender-equity-rights/news/20170227-health-and-sexual-diversity-faq.pdf>.


⁷ See United Nations Free & Equal, *Fact Sheet Intersex*, available at <https://www.unfe.org/wp-content/uploads/2017/05/UNFE-Intersex.pdf>.

⁸ See Amanda Jackson, *Airlines will add new gender options for non-binary passengers*, CNN, Feb. 18, 2019, <https://www.cnn.com/travel/article/gender-options-airline-passengers-trnd/index.html>.

I urge you to support HB 446 to fulfill the promise of HB 1319 in 2018, which recognized the right of transgender residents to be free from discrimination in New Hampshire. Thank you for your consideration, and I hope you will further the promise of fairness and freedom for all Granite Staters by supporting House Bill 446.

April 2, 2019

Submitted by:



Chris Erchull
Staff Attorney
GLBTQ Legal Advocates & Defenders
cerchull@glad.org
617-426-1350

April 2nd, 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 New Hampshire's 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. This not possible now because of the restrictive court order procedure, and that there is no option representing my non-binary gender identity. 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. Birth records are the legal basis of our existence and belonging in the world. A birth record is required to enroll in school, begin driving, and to enroll both in essential government programs like Medicaid and Social Security. HB446 would make such changes less complicated and quicker for folks like me and would include the addition of an X to gender options.

Members of the committee, please vote Ought To Pass on HB446. These update to birth record amendments would help many of us correct the incorrect gender assignments we were given at birth. Thank You.

Alex Brendan McEntee
51 Storrs Ave^{Sk.}, Concord, NH
alexmcentee71@gmail.com

ADA
407

Voting Sheets

Senate Health and Human Services Committee
EXECUTIVE SESSION RECORD
 2018-2019 Session

Bill # **AB446**

Hearing date: **5/7/19**

Executive Session date: March 26, 2019

Motion of: **Amdt 1534h (Subtract 29-31)** Vote: **5-0**

Committee Member	Present	Made by	Second	Yes	No
Sen. Sherman, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Fuller Clark, Vice Chair	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Chandley	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Bradley	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Gray	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Motion of: **OTP/A** Vote: **5-0**

Committee Member	Present	Made by	Second	Yes	No
Sen. Sherman, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Fuller Clark, Vice Chair	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Chandley	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Bradley	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Gray	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Motion of: _____ Vote: _____

Committee Member	Present	Made by	Second	Yes	No
Sen. Sherman, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Fuller Clark, Vice Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Chandley	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Bradley	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Gray	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Reported out by: **Fuller Clark**



Notes: _____

Committee Report

STATE OF NEW HAMPSHIRE
SENATE
REPORT OF THE COMMITTEE

Tuesday, May 7, 2019

THE COMMITTEE ON Health and Human Services

to which was referred **HB 446**

AN ACT

relative to initiating amendments and corrections
to birth records.

Having considered the same, the committee recommends that the Bill

OUGHT TO PASS WITH AMENDMENT

BY A VOTE OF: 5-0

AMENDMENT # 2019-1854s

Senator Martha Fuller Clark
For the Committee

Doug Marino 271-8631

HEALTH AND HUMAN SERVICES

HB 446, relative to initiating amendments and corrections to birth records.

Ought to Pass with Amendment, Vote 5-0.

Senator Martha Fuller Clark for the committee.

Docket of HB446

Docket Abbreviations

Bill Title: relative to initiating amendments and corrections to birth records.*Official Docket of HB446.:*

Date	Body	Description
1/8/2019	H	Introduced 01/03/2019 and referred to Health, Human Services and Elderly Affairs HJ 3 P. 14
1/9/2019	H	Public Hearing: 01/17/2019 02:00 pm Reps Hall
2/27/2019	H	Division II Subcommittee Work Session: 03/05/2019 10:00 am LOB 205
2/27/2019	H	Executive Session: 03/05/2019 01:00 pm LOB 205
3/6/2019	H	Committee Report: Ought to Pass with Amendment #2019-0801h for 03/14/2019 (Vote 16-3; RC) HC 15 P. 7
3/14/2019	H	Amendment #2019-0801h : AA VV 03/14/2019 HJ 9 P. 11
3/14/2019	H	Ought to Pass with Amendment 2019-0801h: MA RC 224-125 03/14/2019 HJ 9 P. 11
3/25/2019	S	Introduced 03/21/2019 and Referred to Health and Human Services; SJ 10
3/28/2019	S	Hearing: 04/02/2019, Room 101, LOB, 01:00 pm; SC 16
5/8/2019	S	Committee Report: Ought to Pass with Amendment #2019-1854s , 05/15/2019; SC 22
5/15/2019	S	Committee Amendment #2019-1854s , AA, VV; 05/15/2019; SJ 16
5/15/2019	S	Ought to Pass with Amendment 2019-1854s, MA, VV; OT3rdg; 05/15/2019; SJ 16
6/13/2019	H	House Concurs with Senate Amendment 1854s (Rep. Weber): MA VV 06/13/2019 HJ 19 P. 9
6/27/2019	S	Enrolled (In recess 06/27/2019); SJ 21
6/27/2019	H	Enrolled 06/27/2019 HJ 20 P. 53
7/24/2019	H	Vetoed by Governor Sununu 07/19/2019
9/18/2019	H	Veto Sustained 09/18/2019: RC 230-148 Lacking Necessary Two-Thirds Vote HJ 21 P. 33

NH House

NH Senate

Other Referrals

Senate Inventory Checklist for Archives

Bill Number: HB 446

Senate Committee: HHS

Please include all documents in the order listed below and indicate the documents which have been included with an "X" beside

Final docket found on Bill Status

Bill Hearing Documents: {Legislative Aides}

Bill version as it came to the committee

All Calendar Notices

Hearing Sign-up sheet(s)

Prepared testimony, presentations, & other submissions handed in at the public hearing

Hearing Report

Revised/Amended Fiscal Notes provided by the Senate Clerk's Office

Committee Action Documents: {Legislative Aides}

All amendments considered in committee (including those not adopted):

- amendment # 1389h - amendment # 1543h

- amendment # 1854 _____ - amendment # _____

Executive Session Sheet

Committee Report

Floor Action Documents: {Clerk's Office}

All floor amendments considered by the body during session (only if they are offered to the senate):

_____ - amendment # _____ _____ - amendment # _____

_____ - amendment # _____ _____ - amendment # _____

Post Floor Action: (if applicable) {Clerk's Office}

_____ Committee of Conference Report (if signed off by all members. Include any new language proposed by the committee of conference):

_____ Enrolled Bill Amendment(s)

_____ Governor's Veto Message

All available versions of the bill: {Clerk's Office}

as amended by the senate _____ as amended by the house

final version

Completed Committee Report File Delivered to the Senate Clerk's Office By:

Committee Aide

Date

Senate Clerk's Office JM