

Birth Certificate Sex Designation: An Overview of the Issues

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New York City's current policy regarding changing sex designation on birth certificates resulted from the recommendations of a 1965 committee appointed by the Department of Health. At the time, the policy was likely consistent with contemporary understandings of transsexuality. However, since that time medical and legal approaches to transsexuality have changed significantly, and it makes sense to update the sex designation change procedure.

We recommend that the Bureau require individuals seeking change of sex designation to provide a letter from a medical doctor stating that appropriate medical treatment, as medically determined for the individual patient, has been undertaken to ensure that the transition is permanent.

Medical Treatment

- Misconceptions about sex reassignment abound. Perhaps the single most erroneous misconception is that sex reassignment consists of a single "sex-change operation." In fact, there are several different kinds of treatment that people seeking sex reassignment pursue, including bilateral mastectomy, orchiectomy, phalloplasty, hysterectomy, vaginoplasty, hormone therapy treatment, brow reduction, facial implants, vaginal closure, voice surgery, metaodioplasty, augmentation mamaplasty, tracheal shave, liposuction, hormone therapy, group or individual counseling, psychotherapy. Medical professionals determine what treatment is medically appropriate for each transsexual patient, taking into account pre-existing medical conditions, mental health status, and lived gender experience.
- There is no medical rationale for linking legal recognition of a transsexual person's new gender to genital reconstructive surgery or any other specific treatment that is not medically appropriate or possible for all transsexual people. For example, for female-to-male transsexuals (FTMs), the most common sex reassignment surgery is chest surgery. In contrast, fewer than 10% of FTMs undergo any reconstructive genital surgery, due to the severe limitations and medical risks associated with this surgery at this time.

Public Policy Considerations

- Given the contemporary understanding that transsexualism is a legitimate medical condition and that sex reassignment is the only effective treatment, it is cruel and senseless not to afford legal recognition of an individual's reassigned sex. The impact on transsexual people who are not able to obtain legal recognition of their new gender is devastating. From a practical perspective, this inability exposes the person to the constant threat of exposure and invasion of privacy, frequently prevents the person from obtaining employment or advancing in their career, and creates innumerable other

problems ranging from the inability to travel safely outside the country to the inability to purchase health or life insurance in the person's reassigned gender. From a psychological perspective, the impact is even more devastating and may effectively negate the therapeutic benefits of undergoing sex-reassignment, resulting in profound depression and dysfunction.

- Refusing to legally recognize a transsexual person's reassigned sex serves no purpose other than to impede their ability to live and work in their new gender, in accordance with their medically prescribed treatment. Being able to obtain correct identity documentation is the key to equal participation in employment and educational opportunities for a transsexual person. Rather than erecting additional barriers in the path of transsexual people, the law should encourage and support their successful adjustment by treating them with dignity and respect and providing them with the legal recognition necessary to be productive members of society.

Policies of other jurisdictions

- The vast majority of states permit transsexual people to be issued new birth certificates indicating their reassigned sex, either through statute or by administrative policy.¹ Only three states do not: Idaho, Ohio, and Tennessee. New York City is the only jurisdiction in the country that issues new birth certificates for some transsexual people, but leaves the gender designation blank.
- None of these statutes or administrative policies explicitly require genital reconstructive surgery (although most do mention surgery in more general terms). In practice, however, some courts and administrative agencies require proof of genital reconstructive surgery before ordering or issuing a new birth certificate. From a medical point of view, as explained above, there is no legitimate rationale for such an arbitrary requirement.
- Other states provide possible models for a revised New York City Bureau of Vital Statistics policy. For example, Iowa has a statute that is written to reflect the current medical understanding of transsexualism. The Iowa statute allows the state registrar to issue a new certificate of birth for a person born in this state, when the state registrar receives a "notarized affidavit by a licensed physician and surgeon or osteopathic physician and surgeon stating that by reason of surgery *or other treatment* by the licensee, the sex designation of the person has been changed."²

¹ See Lambda Legal "Amending Birth Certificates to Reflect Your Correct Sex," available on the internet at <http://www.lambdalegal.org/cgi-bin/iowa/documents/record?record=1162>.

² Iowa Code § 144.23 (2002) (emphasis added).