

ing), and court fees. Although court forms may be created to simplify the process somewhat and court fee waivers may be available to those with low incomes, in general, a court order process is significantly more burdensome than an administrative process.

Thus, to reduce costs to both the government and the individual, states should provide an administrative process for birth certificate gender corrections.

2. Privacy Concerns with the Court Order Process

There is no public policy reason to require a person to discuss their intimate feelings regarding their birth sex, gender identity, or the medical treatments they have received in open court. Privacy of the details of one's sex, gender identity, and medical treatment, or the facts surrounding one's gender transition or transgender status, should not depend on the happenstance of who is in the courtroom²³² or whether the judge agrees to seal or redact the judicial records.

Furthermore, depending on the system, the very instigation of the court proceeding can create permanent court records that document the proceeding in some way regardless of attempted confidentiality.²³³ The future availability of court records to members of the public can also cause psychological distress.

As will be discussed fully in Part IV-B, the mere disclosure of a person's transgender status, or his or her medical treatment related to being transgender, is likely to be a constitutional privacy violation. One effective

232. This concern may be mitigated in systems in which the person only appears before the judge, not in open court. However, at the minimum, the judge and potentially a clerk will be listening to these intimate details. In a direct-to-agency procedure, less private and intimate details are disclosed by the medical provider's statement, and there may be only one person who examines the provider's statement. In California, the Transgender Law Center has recommended to people worried about disclosures in open court that they ask to go last or ask to speak with the judge in closed court if questions come up that they would prefer not to answer in open court. TRANS-GENDER LAW CENTER, *ID PLEASE*. . . 9–22, 31–32 (2010) available at <http://transgenderlawcenter.org/issues/id/id-please>.

233. This concern may be mitigated if the record is sealed by the judge, which, depending on the system, may only be allowed at the judge's discretion. However, in some states even a sealed record will be available in the court index. See, e.g. LEGAL VOICE, *FAMILY LAW COURT RECORDS AND YOUR PRIVACY 5* (2008) available at http://www.legalvoice.org/pdf/self_help/Family_Law_Court_Records_%20and_Your_Privacy.pdf (“When the court seals a file or a document, the court means to protect it from examination by the public. The existence of the sealed file can be found on a court index with the case number and the names of the parties and the notation ‘case sealed’. However, the contents of the case will not be available to the public.”).

way to deal with this potential privacy violation is to avoid it by not going through the court system in the first place.²³⁴

3. Concerns about Lack of Judicial Education and Bias Toward Surgery

Judges are often called upon to make a factual determination with regard to medical facts, including in the most complicated cases of medical malpractice, and they do so competently. However, to do so, they rely in large part on medical and scientific experts. When it comes to transgender medicine, judges' views may be similar to those of the general public. Absent testimony from medical experts, judges may not be aware of the current well-accepted Standards of Care or how inaccessible surgical treatment can be. There is a greater risk that a judge will misapply the standard "appropriate treatment . . . based on contemporary medical standards" than there is in having a medical professional apply the standard.

That judges are not fully educated on transgender medical issues has been documented in other areas of the law. Judges often have required surgery as a condition for gender recognition, especially in cases related to marriage, even when there is no medical or legal basis for that requirement.²³⁵ Moreover, certain judges have required proof of surgery for *name* changes for transgender people, which according to longstanding common law principles are to be granted except in the narrowest circumstances. The fact that many judges have applied a surgical standard where none exists indicates that many share the belief that anatomical presentation is what determines gender. Battles over proof of surgery in the name change context have bubbled up to appellate courts in New Jersey, Pennsylvania, and New York,²³⁶

234. Another alternative would be to require in the statute that the court proceeding be conducted in private and to be sealed afterwards. This lessens some of the confidentiality concerns but does not entirely eradicate them.

235. See Tobin, *Against the Surgical Requirement*, *supra* note 4, at 413–17.

236. Longstanding common law principles establish a person's right to change their name, with an affirmative right to do so absent harm to another person, fraud, or other public policy interest. Judges may consider whether the name would create other fraudulent issues, such as someone adopting the name of a well-respected professional in order to get business fraudulently, whether or not the name is overly long or ridiculous, or profane. *In re Falcucci*, 50 A.2d 200, 202–03 (Pa. 1947). Some judges in New York required documentation of sex reassignment surgery before granting a simple name change from a traditionally male name to a female name. This happened throughout New York until a series of appellate decisions appear to have definitively declared that proof of medical treatment was not required. *In re Winn-Ritzenberg*, 891 N.Y.S.2d 220, 221 (N.Y. App. Term 2009) (*per curiam*) ("There is no sound basis in law or policy to engraft upon the statutory provisions an additional requirement that a transgendered-petitioner present medical substantiation for the desired name change."); *see also In re Guido*, 771 N.Y.S.2d 789 (N.Y. Civ. Ct. 2003) (reversing the court's own decision after initially requiring medical

and include a case where a judge denied a transgender woman a name change from “Brian” to “Lisa” who had been living as Lisa for 22 years.²³⁷ In other areas of the country, denials of name changes based on lack of medical evidence still happen on a regular basis.²³⁸ That this continues to be a problem, despite clear case law that surgery should not be required, demonstrates the persistence of the judges’ views that surgery is properly required before recognizing a person’s gender.

In order to remedy a judge’s possible lack of education about transgender medicine, an applicant would potentially need to hire a medical expert, or experts, to provide this expertise to the judge.²³⁹ This is a costly burden. In the alternative, the judge could defer to the physician who provides a statement that the person in question has undergone appropriate medical treatment, in the way suggested by California and Vermont’s statutes. In that scenario, the judge is not performing any fact-finding beyond determining that the physician is a real person who signed the paper. The role that judges play in these places could be filled as competently, or more competently, by an official in the vital records office who regularly inspects documents for authenticity.

It is helpful to analogize this situation to one where a person with epilepsy had to obtain a court order to drive. Certainly a judge is capable of determining that the person has been adequately medicated by examining the testimony of experts or that person’s doctor. However, a more efficient system is one that allows the DMV to process the provided medical infor-

evidence). Appellate courts in Pennsylvania and New Jersey have also overruled lower judges on this question. See *In re McIntyre*, 715 A.2d 400, 402–03 (Pa. 1998) (“Here, it was undisputed that Appellant was judgment free and was not seeking a name change to avoid any financial obligations or commit fraud. The fact that he is a transsexual seeking a feminine name should not affect the disposition of his request.”); *In re Eck*, 584 A.2d 859, 860–61 (N.J. Super. Ct. App. Div. 1991) (“Absent fraud or other improper purpose a person has a right to a name change whether he or she has undergone or intends to undergo a sex change through surgery, has received hormonal injections to induce physical change, is a transvestite, or simply wants to change from a traditional “male” first name to one traditionally “female,” or vice versa.”).

237. *In re Harris*, 707 A.2d 225 (Pa. Super. Ct. 1997).

238. Interview with Dru Levasseur, *supra* note 115.

239. The highest court in Maryland appeared to realize its limitations in knowledge of transgender medical issues in *In re Heilig*, 816 A.2d 68, 72 (Md. 2003). The court asserted it is not qualified to write a medical text on the subject of transgender medicine and noting that it is unable to evaluate that field “unguided by expert testimony.” *Id.* Despite this statement, the court then wrote ten pages summarizing medical research into transsexualism and intersex conditions, presumably showing willingness to venture into areas of scientific knowledge despite being unguided by expert testimony. *Id.* at 71–79.

mation; in fact, this is generally how this issue is handled.²⁴⁰ It is simply inefficient—a waste of judicial resources—and prone to error to have a judge make or supervise the medical determination instead of a person’s doctor.

4. Constitutional Problems with a Court Order Process

There is a novel argument that requiring a court order is a substantial, and therefore invalid, burden upon a person’s right to determine his or her gender. First, the court would need to recognize that there is a right to self-determination of gender, discussed previously in Section II.B.5.

Once the right is established, the burden of going to court must be analyzed. Certainly, as previously discussed, the process of getting a court order typically requires money for court fees, hiring an attorney, time to prepare for and make a court appearance, and potentially travel to one’s state or county of birth. Furthermore, it may compromise the privacy of one’s transgender or medical status. Thus, going through the court process is legitimately considered a real burden for those attempting to update the gender on their birth certificate. If the burden is considered significant or substantial,²⁴¹ the court order process is unconstitutional, unless it is justified by sufficiently important government interests and closely tailored to meet them.²⁴²

C. *Specific Recommendation for the Gender Correction Process*

In order to maximize both the accessibility of the gender marker change and the efficiency of the government in making the change, an administrative process in which an individual goes directly to the agency with the relevant documentation should be the standard method for gender

240. DMVs have slightly different rules on how to determine when a person with epilepsy should be cleared to drive, but none of the states have any judicial involvement. See Robert S. Fisher, *Driving and Epilepsy*, EPILEPSY THERAPY PROJECT, (Mar. 2009) http://www.epilepsy.com/epilepsy/newsletter/mar09_driving.

241. See *Zablocki v. Redhail*, 434 U.S. 374 (1978).

242. See *Zablocki*, 434 U.S. at 388 (“When a statutory classification significantly interferes with the exercise of a fundamental right, it cannot be upheld unless it is supported by sufficiently important state interests and is closely tailored to effectuate only those interests.”); See also *Bullock v. Carter*, 405 U.S. 134, 144 (1972) (finding that a law infringing on a constitutional right “must be ‘closely scrutinized’ and found reasonably necessary to the accomplishment of legitimate state objectives in order to pass constitutional muster”). I plan to explore this argument further in a future article.

marker corrections on birth certificates.²⁴³ A notarized statement from a doctor, with the relevant information, should be sufficient documentation to ensure that the applicant has a bona fide need for a corrected gender marker. Using the term “notarized statement” is more desirable than “affidavit” because the general public is more aware of how to get a statement notarized than how to write an affidavit, the format of which may be highly technical and differs from state-to-state.

In the case of bias or misapplication of the relevant standard by the agency official, the statute should make clear that there is an appeals process through the courts that an individual may pursue if denied a gender marker correction. The MSVSA has such language relating to all potential corrections, and a number of states have also adopted it.²⁴⁴

In addition, the statute should give courts of that state clear authority to provide court orders that residents can use in their state or country of birth where court orders are still required. This is relatively straightforward and should be included as a matter of course until there are no longer states or countries that require court orders. If this provision is not included, judges may be concerned that they lack authority to issue such an order.²⁴⁵

243. My proposed statute dictates that the administrative process is the only process. In joint recommendations to the U.S. Department of Health and Human Services, organizations have recommended that the statute allow that an individual can either submit a court order to the agency or submit a statement from the physician. See Harper Jean Tobin, Nat'l Ctr. for Transgender Equality, Comments of Legal and Public Policy Organizations on Corrected Birth Certificates for Transgender People (Sept. 8, 2009) (on file with author). I have omitted the court order option from this proposed statute in large part to avoid suggesting that states should choose which option to include in their statute. In reality, including both court order and administrative processes as options for an individual to use in the state's statute or policy, is also an acceptable outcome. In that case, a person who finds that the court order process is a burden can use the administrative process. The benefit of also including a court order option is that people who need a court order declaring their legal gender for other reasons may potentially be able to avoid the difficulties of acquiring statements from their health provider.

244. MODEL STATE VITAL STATISTICS ACT § 21(e) (Ctr. for Disease Control & Prevention 1992). See ARK. CODE ANN. § 20-18-307 (West 2005) (“When an applicant does not submit the minimum documentation required in the regulations for amending a vital record or when the state registrar has cause to question the validity or adequacy of the applicant's sworn statements or the documentary evidence and if the deficiencies are not corrected, the state registrar shall not amend the vital record and shall advise the applicant of the reason for this action. The state registrar shall advise the applicant of his or her right of appeal to a court of competent jurisdiction.”); COLO. REV. STAT. ANN. §25-2-115 (West 2010); IDAHO CODE ANN. § 39-250 (2010); OR. REV. STAT. § 432.235 (2007).

245. See *In re Heilig*, 816 A.2d 68.

IV. ESTABLISHING COMPREHENSIVE PRIVACY PROTECTIONS

The state may be violating an individual's right to privacy if it reveals information regarding a person's gender assigned at birth, gender transition, or transgender status. In creating a policy related to privacy, policymakers should consider the impact of government disclosure on transgender people as well as constitutional privacy rights that may be implicated.

The transgender person's right to privacy can be implicated by a birth certificate policy in three ways. First, if the agency refuses to provide a transgender person an updated gender marker, then the individual is "outed" as transgender to all who inspect the certificate. Second, in the process of pursuing and executing the gender correction, there are records created and altered that may leave a publicly available paper trail, including a visibly amended birth certificate. Here, how the gender marker correction is dealt with is only part of the issue, since policies related to how a change of name is recorded also matter. Third, the government staff involved in the process may learn of and disclose a person's transgender status to others. This Section deals primarily with the latter two issues—i.e. how to avoid privacy violations in the process and recording of gender correction as well as the role that government officials play. The first was fully addressed by recommendations in Sections II and III.

A. Existing Privacy Protections

1. Privacy Protections in the MSVSA

a. New Versus Amended Certificates

The MSVSA provides a general rule for any kind of amendment: it should be shown on the face of the document unless otherwise provided for by regulation.²⁴⁶ Thus, unless a state adopts a regulation setting forth a different policy, the fact that an amendment has been made will be plain *on the face* of the certificate in some way.

The Model Regulations that accompany the MSVSA list the various ways in which a birth certificate can be amended so that the amendment, or the fact that an item was amended, is visible (or not) to those who inspect it: (1) by preparing a new certificate with a note that the item number was amended and on what date; (2) by drawing a single line through the incorrect information (without obliterating the underlying entry) and writing the

246. "A certificate or report that is amended under this section shall indicate that it has been amended, except as otherwise provided in this section or by regulation." MODEL STATE VITAL STATISTICS ACT § 21(e) (Ctr. for Disease Control & Prevention 1992).

correct data above or to the side; (3) by creating a special amendment form that includes the correct information and is attached to the original, unaltered certificate; and, (4) for electronic records, by changing the item, noting the date, and retaining the original information. The MSVSA Model Regulation provides these in brackets, indicating that they are all “optional,”²⁴⁷ with the implication that states choose the provision(s) that they prefer. At the end of the list of options, there is a provision that specifically applies to gender correction, which is indicated through cross-referencing Section 21(d), the gender correction provision:

(f) A certificate of birth amended pursuant to the provisions of (Section 21(d) of the Model Act) shall be amended by preparing a new certificate. *The item numbers of the entries that were amended shall not, however, be identified on the new certificate or on any certified copies that may be issued of that certificate.*²⁴⁸

Thus, the MSVSA Model Regulations treat gender correction as an amendment that *should* be kept private from those who are permitted to inspect the certificate. However, the provision could go unnoticed as an option to be used, or alternatively, policymakers could assume that it is one option of many when viewed in conjunction with the other options listed in this section. This is compounded by the fact that this optional provision’s application to gender markers was only indicated through cross-referencing.

In fact, presumably because of the lack of clarity caused by the cross-referencing used in subsection (f), or otherwise lack of attention to detail by state policymakers, some states have adopted the MSVSA statutory language related to gender corrections *without* adopting the accompanying regulation in (f). Of course, some states may have also intentionally not adopted the provision because they wanted gender marker corrections to be visible. Yet, remarkably, some jurisdictions (such as Alabama, the Commonwealth of the Northern Mariana Islands, Kentucky, and Oregon)²⁴⁹ have the exact MSVSA language that directs gender on one’s birth certificate to be “amended as provided by regulation” but do not have *any* regulation instructing how amendments are to be made. Thus, in many states following part of the MSVSA, gender corrections are processed and marked as amended in the same way that other amendments are processed and marked, whether through a single-line cross out or another method.

247. “In cases where recommendations were considered optional, brackets, ‘[],’ have been placed around the word or phrase.” *Id.* at 1.

248. *Id.* at §11.8(f) (emphasis added).

249. For citations of these statutes, see *infra* app. A.

b. Treatment of Name Changes in the MSVSA

How a policy treats name changes is an important part of privacy analysis since the revelation of a name change has the potential to disclose that someone is transgender, even if the gender marker correction is kept private. The MSVSA requires a court-ordered name change to amend a name on the birth certificate.²⁵⁰ Except in cases of adoption, or for name changes before the age of one, names will be amended visibly on the face of the document itself, following whichever amendment process the state chooses.²⁵¹

However, the MSVSA's gender correction provision, Section 21(d), also refers to name changes that occur due to a change in gender. Accordingly, the fact and details of a transgender person's name change presumably should remain confidential on the certificate if the MSVSA Model Regulation's provision related to privacy is adopted.²⁵² However, the MSVSA's lack of clarity on this point renders it insufficient to ensure adequate privacy protections.

c. Records Storage and Accessibility in the MSVSA

The MSVSA generally limits access to copies of birth certificates to registrants; the registrant's spouses, children, parents or guardians; the legal representatives of any of them; or a person who is able to show that the certificate is necessary to determine or protect a property interest.²⁵³

250. "Upon receipt of a certified copy of an order of (a court of competent jurisdiction) changing the name of a person born in this State and upon request of such person or his or her parents, guardian, or legal representative, the State Registrar shall amend the certificate of birth to show the new name." MODEL VITAL STATISTICS ACT, *supra* note 1, § 21(c), at 10.

251. The Model State Vital Statistics Act's Regulations list possible options states could choose. *Id.* at §11.8.

252. *Id.* at Reg. 11.8(f) ("A certificate of birth amended pursuant to the provisions of (Section 21(d) of the Model Act) shall be amended by preparing a new certificate. The item numbers of the entries that were amended shall not, however, be identified on the new certificate or on any certified copies that may be issued of that certificate.")

253. *Id.* at § 24(a) ("The State Registrar [and other custodian(s) of vital records authorized by the State Registrar to issue certified copies] shall, upon receipt of an application, issue a certified copy of a vital record in his or her custody or a part thereof *to the registrant, his or her spouse, children, parents, or guardian, or their respective authorized representative. Others may be authorized to obtain certified copies when they demonstrate that the record is needed for the determination or protection of his or her personal or property right.* The State Agency may adopt regulations to further define those who may obtain copies of vital records filed under this Act.") (emphasis added).

The MSVSA also ensures that the documents used to justify an amendment, including the correction of gender or name, must be kept by the vital statistics agency:

A record shall be maintained which identifies the evidence upon which the amendment was based, the date of the amendment, and the identity of the person making the amendment.²⁵⁴

There is some ambiguity with regard to the documentation that must be preserved. It could be argued that, at a minimum, the official must make a note identifying the type of documentation received (physician's letter, court order, etc.). However, this language may also be read to mean that the documents themselves must be preserved as well.

Whether these records are sealed or available to those authorized to receive a copy of the certificate is not clear because the topic is not explicitly addressed by the MSVSA or Model Regulation. If a state also adopts the Model Regulation provision related to privacy,²⁵⁵ which states that individuals requesting a copy of a birth certificate should only be given the *new* birth certificate, then that state has at least demonstrated evidence of the intent to protect privacy in the context of gender corrections. Potentially, then, all of the retained records should be kept confidential as well.²⁵⁶

2. State Laws and Policies Related to Privacy

Of the fifty-three jurisdictions that allow gender marker corrections to documentation, seventeen states,²⁵⁷ the District of Columbia, and Guam have procedures that allow for amending the original birth certificate but do

254. *Id.* at Reg. 21(b).

255. *Id.* at Reg. 11.8(f) ("A certificate of birth amended pursuant to the provisions of (Section 21(d) of the Model Act) shall be amended by preparing a new certificate. The item numbers of the entries that were amended shall not, however, be identified on the new certificate or on any certified copies that may be issued of that certificate.").

256. Although the regulations do not specify that these records will be sealed, other provisions regarding instances where "new" birth certificates are issued very clearly indicate that the old certificate and its information will be sealed and not available to anyone without a court order. MODEL STATE VITAL STATISTICS ACT § 12(g) (Ctr. for Disease Control & Prevention 1992) ("When a new certificate of birth is established by the State Registrar, all copies of the original certificate of birth in the custody of any other custodian of vital records in this State shall be sealed from inspection or forwarded to the State Registrar, as he or she shall direct.").

257. These are Alaska, Alabama, Arkansas, Arizona, Colorado, Kansas, Kentucky, Massachusetts, Maryland, Missouri, North Dakota, New Mexico, Oregon, South Carolina, Utah, and West Virginia. *See infra* app. A.

not allow issuance of a new birth certificate. Sixteen states²⁵⁸ and New York City issue a new certificate. In seventeen jurisdictions, it is unclear what is done or it depends on instructions in the court order.²⁵⁹ Only eighteen jurisdictions clearly seal their records, blocking access to the original certificate and ensuring the privacy of the medical records related to the gender correction.²⁶⁰

Name changes are generally allowed on birth certificates when an individual produces a court-ordered²⁶¹ name change directly to the state vital statistics agency. For name changes unrelated to gender transition, often the previous and new names both appear on the certificate. In thirteen jurisdictions, there is a clear statute or policy that a name change related to a gender correction should not appear on the face of the certificate.²⁶² In addition, at least one jurisdiction appears to *require* that people change their name when changing gender.²⁶³

States vary in their policies regarding access to birth certificates and other records. Most states have a policy similar to the MSVSA, which restricts access to immediate family members, their legal representatives, and those that have a proven property interest.²⁶⁴ However, at least ten states allow either certified or informational copies of birth certificates to be provided to members of the public.²⁶⁵

258. These are California, Connecticut, Georgia, Hawaii, Iowa, Illinois, Louisiana, Maine, Michigan, Minnesota, North Carolina, Nebraska, New Hampshire, New Jersey, Nevada, and Vermont. *See infra* app. A.

259. These are Delaware, Florida, Indiana, New York, Pennsylvania, Rhode Island, South Dakota, Texas, Virginia, Washington, American Samoa, the Northern Mariana Islands, and the U.S. Virgin Islands. *See infra* app. A. In Montana, Oregon, Wisconsin, and Wyoming, it depends on the order. *See id.*

260. These are Arizona, California, Connecticut, Hawaii, Illinois, Iowa, Louisiana, Maine, Michigan, Minnesota, Nebraska, New Jersey, New York City, North Carolina, North Dakota, South Dakota, Vermont, and Wisconsin. *See infra* app. A.

261. In Hawaii, official name changes are processed by the office of Lieutenant Governor, not the judicial system. *Name Changes*, HAW. OFFICE OF THE LIEUTENANT GOVERNOR, <http://hawaii.gov/litgov/office/name> (last visited Dec. 28, 2011).

262. These are Arkansas, California, Connecticut, Delaware, Georgia, Kansas, Maine, Minnesota, Nebraska, New Jersey, New York, State, Vermont, and New York City. *See infra* app. A.

263. D.C. CODE § 7-217(d) (2011) (“Upon receipt of a certified copy of an order of the Court indicating that the sex of an individual born in the District has changed by surgical procedure and that such individual’s name has been changed, the certificate of birth of such individual shall be amended as prescribed by regulation.”).

264. MODEL STATE VITAL STATISTICS ACT § 24 (Ctr. for Disease Control & Prevention 1992).

265. The public can receive certified copies in Kentucky, Ohio, Massachusetts, Vermont, and Washington. *See Kentucky Birth Certificates*, KY. CABINET FOR HEALTH & FAMILY SERVS., <http://chfs.ky.gov/dph/vital/birthcert.htm> (last visited June 24, 2011); *Obtaining Certified Copies of Vital Records*, MASS. DEP’T OF HEALTH & HUMAN

One of the states with the strongest policy of protecting privacy is Nebraska. Although other features of Nebraska's policy are in need of updating, the privacy protections are comprehensive.²⁶⁶ The statute states that:

[T]he department shall prepare a new certificate of birth in the new name and sex of such person in substantially the same form as that used for other live births. The evidence from which the new certificate is prepared and the original certificate of birth shall be available for inspection only upon the order of a court of competent jurisdiction.²⁶⁷

There are three important features of this policy. First, a new, not amended, certificate is prepared. Second, only the new certificate, not the former one, is available for viewing. Third, the documentation that the registrant provided, as well as the old certificate, are both confidential and only available by a court order. These privacy protections could be marginally improved if the word "sealed"²⁶⁸ was used; however, the meaning is clear in the statute.

SERVS., <http://www.mass.gov/eohhs/consumer/basic-needs/vitals/obtaining-certified-copies-of-vital-records.html> (last visited Feb. 3, 2011); OHIO DEP'T OF HEALTH, FREQUENTLY ASKED QUESTIONS CONCERNING VITAL RECORDS, *available at* <http://www.odh.ohio.gov/-/media/ODH/ASSETS/Files/vs/general/frequentlyaskedquestionsonvitalrecords.ashx> (last updated Sept. 29, 2010); VT. DEP'T OF HUMAN SERVS., ACCESS TO BIRTH AND DEATH CERTIFICATES: RECOMMENDATIONS FOR LEGISLATIVE CHANGES 9 (2010), *available at* http://healthvermont.gov/admin/legislature/documents/VitalRecords_legislative_recommendations_091310.pdf; WASH. DEP'T OF HEALTH, Center for Health Statistics Mail-In Request Form, *available at* <http://www.doh.wa.gov/Portals/1/Documents/Pubs/422-044-MailinRequestForm.pdf> (last visited Dec. 4, 2012). The public can receive "informational" or "uncertified" copies in California, New Jersey (unclear if it includes gender), North Carolina, South Dakota, and Wisconsin (except in limited cases). *See* CAL. HEALTH & SAFETY CODE § 103526 (West 2011); *Frequently Asked Questions*, N.J. DEP'T OF HEALTH & SENIOR SERVS., <http://www.state.nj.us/health/vital/faq.shtml#BIR> (last visited June 24, 2011); N.C. GEN. STAT. § 130A-93(c) (2011); *Data, Statistics and Vital Records*, S.D. DEP'T OF HEALTH, <http://doh.sd.gov/vitalrecords/order.aspx#Eligibility> (last visited June 24, 2011); WISC. STAT. § 69.21 (2011).

266. Nebraska requires sex reassignment surgery and a court order. NEB. REV. STAT. § 71-604.01 (2011). Also, the fact that the physician signing the affidavit has to be the surgeon that "performed" the surgery is unduly limiting.

267. *Id.*

268. I use, as is custom, "sealed" to refer to the process of blocking from public view unless a party has a court order to open the record. Depending on the state, "confidential" may have the same implication and "sealed" may not. *Compare* BLACK'S LAW DICTIONARY 1467 (9th ed. 2009) (defining sealing of records as "[t]he act or practice of officially preventing access to particular . . . records, in the absence of a court order.") *with id.* at 339 (defining confidential as "meant to be kept secret").

Similarly, under the policy in Washington State, a new birth certificate is prepared, rather than amending the original.²⁶⁹ The policy further stipulates that the medical documentation submitted by the individual in support of the gender marker correction, including the doctor's letter, will be sealed.²⁷⁰ However, the policy does not specify that the original birth certificate must be kept confidential, nor does it explain how name changes would or would not show on the face of the new certificate.

In Vermont, a new certificate is also prepared, with a requirement that the information about the correction be kept "confidential."²⁷¹ In California, the new statute retained the existing privacy protections, ensuring that the new certificate does not show the previous gender or name and that records related to the correction are "sealed."²⁷²

3. Privacy for Consular Reports of Birth Abroad

With regard to Consular Reports of Birth Abroad, the serial number is slightly modified to indicate that it is an amended document, but it does not indicate the previous gender or name of the registrant.²⁷³ The documents that are submitted to the agency and retained by the agency are considered confidential, covered by the Privacy Act.²⁷⁴

4. Privacy Protections in the U.K. and Argentina

The Gender Recognition Act in the United Kingdom also ensures privacy, as does the recently-passed law in Argentina. The U.K. disallows disclosure of the information presented in the application for a Gender Recognition Certificate.²⁷⁵ In Argentina, original birth certificates are un-

269. WASH. DEP'T OF HEALTH, *supra* note 121.

270. "The department retains documentation from the physician or hospital in a sealed file." *Id.*

271. VT. STAT. ANN. tit. 18, § 5112(c) (2011).

272. CAL. HEALTH & SAFETY CODE § 103430 (West 2012).

273. U.S. Dep't of St., 7 FOREIGN AFFAIRS MANUAL, *supra* note 29 at 1447.4 ("The serial number assigned to an amended Form FS-240, Consular Report of Birth Abroad of a Citizen of the United States of America, will be the same as the number on the original, but will be followed by a dash and a number indicating it is not the original issuance (e.g., -1 for the first amendment).").

274. *Id.* at 1449.3-1 ("Information contained in the Form FS-240, Consular Report of Birth Abroad of a Citizen of the United States of America, including Form DS-2029, Application for Consular Report of Birth Abroad of a Citizen of the United States of America, the Form FS-240, as well as data in the ACS System, is subject to the Privacy Act."). The Privacy Act is a federal statute that protects against the disclosure of records without the consent of the "individual to whom the record pertains." Privacy Act of 1974, 5 U.S.C. § 552a (2006).

275. Gender Recognition Act, 2004, c. 7, § 22 (U.K.).

available except by court order.²⁷⁶ The Gender Recognition Act specifically notes that with regard to birth certificates, the new birth certificate is the only version available to the public. There is also no note or other information indicating that the person has a previous version of the certificate or went through the gender recognition process.²⁷⁷

B. Issues to Consider When Developing Privacy Policies

1. The Individual Importance of Privacy

Given the risk of violence and discrimination that comes with being known as transgender, it is understandable that some people desire to keep information about their transgender status limited to only those whom they choose to tell. Of course not all transgender people want to be “closeted” all of the time, but generally, people do want to have control over how they present and manage information related to being transgender. Even if the risk of violence is not present, being able to decide with whom and when to have a “coming out” conversation should be a matter of individual choice. The harms discussed above from having an incorrect gender marker can also result from being “outed” by an insufficiently private procedure for correcting gender. The person whose gender transition is revealed may be subject to increased scrutiny because of the possibility of fraudulent documents, often being subjected to questioning about his or her body and identity.²⁷⁸

2. Constitutional Right to Privacy

If a governmental entity does not protect the privacy of a transgender person and reveals his or her status—either through issuing visibly amended birth certificates or by providing access to records that indicate a person is transgender—it may be in violation of the right to privacy guaranteed by the U.S. Constitution.²⁷⁹ Whether the U.S. Supreme Court has officially recognized a constitutionally derived right to privacy that guarantees people to be free of governmental “disclosure of personal matters” is not entirely

276. Regime for Recognition and Respect for Gender Identity (File 8126-D-2010) (Argentina), available at <http://www1.hcdn.gov.ar/proyxml/expediente.asp?fundamentos=si&numexp=8126-D-2010>. (An English translation is available at http://www.msngf.org/files/msngf//Advocacy/Argentina_GenderIdentity_Law.pdf).

277. Gender Recognition Act, 2004, c. 7 § 10 sch. 3 (U.K.).

278. Spade, *supra* note 4, at 738.

279. This right to privacy should not be confused with the other well-established right to privacy, generally understood as the right to make decisions about intimate details of one’s life. “[T]his right to privacy can be characterized as a right to ‘confidentiality,’ to distinguish it from the right to autonomy and independence in decision-making for personal matters.” *Doe v. City of New York*, 15 F.3d 264, 267 (2d Cir. 1994).

clear.²⁸⁰ While the Court has considered the issue, and has “assumed without deciding” that such a right exists, it has only done so in limited contexts that are not directly applicable to privacy claims related to birth certificate records.²⁸¹

However, while the Supreme Court has not yet definitively ruled on the existence of this privacy right and certainly has not made a decision regarding disclosure of transgender status by a government actor, the Second Circuit has done so. In *Powell v. Shriver*,²⁸² the Court of Appeals held that the constitutional right to privacy protects transgender people from unnecessary government disclosure of their transgender status.²⁸³ The appellate court concluded that, “[t]he excruciatingly private and intimate nature of transsexualism, for persons who wish to preserve privacy in the matter, is really beyond debate.”²⁸⁴

Thus, the only court to rule on this question has decided that there clearly is a privacy right to protect information regarding transgender status, and other judges have cited this decision with approval.²⁸⁵ In addition, although less dispositive on a federal constitutional right to privacy claim, a judge in Alaska determined it was a violation of a transgender person’s right to privacy under the Alaska Constitution to not be able to update the gender on one’s driver’s license.²⁸⁶ Accordingly, policymakers should recognize

280. *Whalen v. Roe*, 429 U.S. 589, 599 (1976) (describing one type of privacy protection apparently protected by the Constitution as “the individual interest in avoiding disclosure of personal matters”).

281. In a recent case, the Court assumed that there was such a privacy right. *NASA v. Nelson*, 131 S. Ct. 746, 751 (2011) (“We assume, without deciding, that the Constitution protects a privacy right of the sort mentioned in *Whalen* and *Nixon*.”); *see also Whalen*, 429 U.S. 589 (1976) (relating to a state statutory scheme mandating confidential reporting of prescriptions of certain controlled substances to the state department of health, which was monitoring for fraud and abuse); *Nixon v. Adm’r of Gen. Services*, 433 U.S. 425, 457 (1977) (“We may agree with appellant that, at least when Government intervention is at stake, public officials, including the President, are not wholly without constitutionally protected privacy rights in matters of personal life unrelated to any acts done by them in their public capacity. . . . In sum, appellant has a legitimate expectation of privacy in his personal communications.”).

282. 175 F.3d 107 (2d Cir. 1999) (finding a violation of a constitutional right to confidentiality when corrections officers revealed an inmate’s transgender identity and HIV status to other inmates).

283. The court determined that there was no “legitimate penological interest” in disclosing this information to fellow inmates as well as staff members. *Powell*, 175 F.3d at 113.

284. *Powell*, 175 F.3d at 111.

285. *See, e.g., Franklin v. McCaughtry*, 110 F. App’x 715, 719 (7th Cir. 2004); *Moore v. Prevo*, 379 F. App’x 425, 428 (6th Cir. 2010).

286. *K.L. v. Alaska, Dep’t of Admin., Div. of Motor Vehicles*, No. 3AN-11-05431, 2012 WL 2685183 (Alaska Super. Ct. Mar. 12, 2012) (memorandum decision).

the potential legitimacy of this constitutional right on the federal level and develop privacy policies to protect it.

C. Specific Recommendations Related to Privacy Protections

In order to protect a person's privacy, a new birth certificate should be issued with no markings of any kind indicating that it was amended.²⁸⁷

Both the original birth certificate and the documents related to the gender marker correction should be sealed and only made available upon court order or upon request of the individual. The original birth certificate and the documents related to the gender marker correction should be available to the individual because the person may need to establish continuous identity.²⁸⁸

The statute should provide privacy protections for related name changes, regardless of whether the name change is acquired simultaneously, before, or after the gender correction. If the agency's policy is to make visible amendments for name changes, an exception should be made for name changes related to gender corrections. Thus, although a change of name that precedes a gender correction will be visible, at the time of gender correction, the name change should become confidential. Similarly, a gender-related name change occurring after the gender correction should also be made confidential. The statute needs to explicitly discuss each of these situations so the determination is made correctly regardless of timing.

The statute should also prohibit further inquiry into medical information. To respect the individual's medical privacy, staff should not either officially or casually ask the applicant for additional medical or other information beyond what is required by the statute. In addition to protecting privacy concerns, this also streamlines the administrative process and ensures that staff will treat applicants respectfully and consistently with how other applicants for documentation corrections are treated. Furthermore, any information received about a gender correction should be kept confidential, unless disclosure is necessary in the course of conducting official business.

287. Spade, *supra* note 4, at 770 (discussing the importance of having a "clean" birth certificate).

288. Name change orders may also be helpful to show continuous identity, but not everyone changes names or has those records easily available. Where exactly one might need the original copy of one's birth certificate is not entirely clear, but it does appear to be in rare situations where multiple forms of proof are required. For example, a bank may request multiple forms of identification from a customer who seeks to use his or her funds, to ensure that the person is the same customer with a different name. Interview with Alison Gill, D.C. Trans Coalition, in Washington, D.C. (Confirmed Oct. 12, 2012).

Lastly, the statute should ensure that those who hold an amended certificate that was acquired *before* the new statute came into effect are able to receive a new certificate with the same privacy protections (i.e. sealing of the original certificate and the associated documents from public inspection). In states that have had a policy of issuing “amended” certificates and/or not sealing the records related to correction of gender in the past, this provision is necessary to afford these individuals the same privacy protections that are afforded to individuals who process their gender correction under the new statute. Thus, upon application and payment of appropriate fees,²⁸⁹ a person who previously received an amended certificate should be able to receive a new certificate.

Ideally, the vital statistics agency should go through old records and seal those related to all of the previously executed gender corrections as well, regardless of whether the person has asked for sealing of records; however, as a practical matter, this may not be feasible. Therefore, at the minimum, the sealing of old records related to gender correction should be completed at the request of the applicant.

V. RECOMMENDED LANGUAGE AND POLICY

A. *The Model Provision*

This Section proposes new language that should be easy to insert into any vital statistics code to comprehensively address gender marker corrections.²⁹⁰ For the new version of the MSVSA, this would be its own section and Section 21(d) would need to be deleted. This model statutory provision incorporates all of the features needed in a statute to have a clear, comprehensive policy with regard to gender corrections and associated name changes. It would be based on current medical consensus, sound policy considerations, and in compliance with applicable constitutional requirements. This model language is based on, and borrows heavily from, the statutory language in Vermont and California, as well as the policy of both Washington and the U.S. Department of State relating to Consular Reports of Birth Abroad.

Although it is drafted in the style of statutory language, this language can instead be adopted by the vital statistics agency, in whole or in part, as regulations or as written policy. This would be most applicable in jurisdic-

289. Throughout this article, no recommendation is made with regard to the appropriate amount of fees. As guidance, fees should not be prohibitively costly and should be waivable, without significant delay, with a showing of indigence.

290. Of course, any such legislation should delete the existing language related to gender corrections, if it exists.

tions with no statute on the issue of gender correction or a gender correction statute that would not conflict with such regulations. Here is the recommended text:

Section X. Changes to Birth Certificate Related to a Change of Gender

(a) The State Registrar shall issue a new birth certificate to a person who was born in [this state] and who has a gender different from the gender denoted on that person's birth certificate when the State Registrar receives:

1) A written request by the registrant, his or her parents, guardian, or legal representative signed under penalty of law, that the State Registrar issue a birth certificate with a gender designation that differs from the gender designated on the registrant's original birth certificate;

2) A notarized statement from the registrant's licensed treating or evaluating physician or health care provider stating that the registrant has undergone surgical, hormonal, or other treatment appropriate for that individual for the purpose of gender transition, based on contemporary medical standards, or stating that the registrant has an intersex condition, and that in the provider's professional opinion the registrant's gender designation should be changed accordingly; and

3) If the registrant or his or her legal representative is also requesting a name change on the certificate, an original or certified copy of a name change order issued by a court of competent jurisdiction.

(b) The State Registrar shall not request any additional information or records other than those required by subsection (a)(2). The State Registrar shall not disclose information relating to a gender correction, including to other government employees, unless required in order to conduct official business.

(c) When the State Registrar receives the documentation described in subsection (a) of this Section, the State Registrar shall issue a new birth certificate reflecting the new gender designation and, if applicable, new name of the registrant. The new birth certificate supersedes the original as the official public record. The new certificate shall not be marked as amended and shall in no way disclose the original information. When such a birth certificate is issued, the State Registrar shall cause the registrant's original birth certificate and all documentation received pursuant to subsection (a) of this Section to be placed under seal and kept in a confidential file. The State Registrar shall provide access to the

original birth certificate and/or documentation received pursuant to subsection (a) of this Section only upon order of a court of competent jurisdiction or written request of the registrant.

(d) The State Registrar shall issue, upon request, a new birth certificate reflecting the new gender designation or new name (or as previously amended), and shall seal relevant records, as described in subsection (c) in these additional circumstances:

(1) when a birth certificate is amended to reflect a change in gender designation at any point in time after that birth certificate has been amended to reflect a name change

(2) when a birth certificate is amended to reflect a name change at any point in time after the birth certificate has been amended to reflect a change in gender designation, or

(3) if a person holds an amended birth certificate related to change of gender and/or name issued under [a previous version of this Section].

(e) The State Registrar shall not amend the vital record if: (1) an applicant does not submit the minimum documentation required in this Section for amending a vital record; or (2) when the Registrar has reasonable cause to question the validity or adequacy of the applicant's sworn statements or the documentary evidence, and the deficiencies are not corrected. The State Registrar shall state in writing the reason for this action. Upon the State Registrar's refusal to amend the vital record, the applicant shall have a cause of action in court to amend the vital record. The Registrar shall give the applicant written notice of this right.

(f) In the case of a person who is a resident of this state and was born in another state or in a foreign jurisdiction, if such other state or foreign jurisdiction requires a court decree in order to amend a birth certificate to reflect a change in gender, the [courts/probate courts] in this state shall have jurisdiction to issue such a decree.

Legislative drafters from a state considering adopting this language should also contemplate how these new provisions related to privacy and procedures for gender marker corrections would affect the meaning of any other existing provisions related to privacy or procedures for to other corrections.²⁹¹ While subsequently amended or adopted statutes would not nor-

291. For example, the precision and specificity in a new gender correction provision may cause a question about how an existing privacy provision regarding other corrections or amendments should be interpreted. For example, if the adoption provision refers to records being "confidential," and the gender correction provision refers to records being "sealed," the agency or courts may think that different meaning was intended, when in actuality, the same meaning was likely intended. In this case, the adoption provision's language should also be changed to "sealed" to avoid this confusion.

mally be read to create confusion with prior provisions, the legislative drafter ought to review carefully the structure and text of the entire existing statute to avoid future confusion or unintended consequences from the potentially different wording introduced into the statute by this provision. Also, if not already clear from the existing statute, it should be made clear that “State Registrar” refers to relevant staff of the vital records agency that have been authorized by the Registrar to execute these corrections.

B. Implementation

This model statute was designed to avoid the need for additional clarification in the form of regulations or written policies. Eliminating vagueness in statutory language increases the efficiency of the process by not requiring deliberation and determination of what processes need to be established and followed by the state agency. However, there are also important implementation items that would greatly increase the efficiency and success of the new statute.

First, it would streamline the process for staff, as well as the holder of the birth certificate, if there were a form promulgated by the vital statistics agency for gender corrections. The use of forms for updating gender on driver’s licenses has become a best practice.²⁹² In what is considered the model policy and has been adopted for use in several states, the Washington, D.C. Department of Motor Vehicles has a one-page form where the applicant fills out the top part (which requests the correction) and the medical or social service authority fills out and signs the bottom part (which indicates their professional opinion).²⁹³ A similar form could be used by vital statistics agencies.

Second, providing staff with training for implementation is an essential part of successfully effectuating any policy change. Staff training should include not only the policies and procedures to process the correction of gender and/or name on birth certificates, but should also provide basic cultural competency so that transgender people interacting with staff are treated respectfully throughout the process.

Third, the practical instructions of how old records are removed from the files and new ones inserted, as well as how to seal the documents used in updating gender may need to be developed. Furthermore, the issue of whether the agency has the ability to go back to previous gender corrections and seal the records without a request by each individual needs to be ex-

292. Tobin, *Fair and Accurate Identification*, *supra* note 4.

293. District of Columbia Dept. of Motor Vehicles, *Gender Designation on a Driver’s License or Identification Card (2006)*, available at http://dmv.dc.gov/pdf/Gender_Change_Policies.pdf.

amined. Whether these privacy concerns will need to be dealt with by new regulations or written policy will depend on the state's existing policies and practices. Accordingly, there could be a need to update existing regulations or policies to ensure that confidentiality is maintained.

CONCLUSION

Laws and policies related to birth certificates need to be updated to keep up with advances in the medical, legal, and public policy fields. By recognizing the needs of its citizens, responding in a low-cost, efficient manner, and making policies based on careful legal and scientific analysis, the government can improve transgender people's access to vital services and take steps toward eliminating discrimination, harassment, and violence. The statute recommended by this Article results in four significant goals: 1) that vital records will be accurate and in accord with contemporary medical standards, 2) that government resources are used efficiently, 3) that constitutional rights are respected, and 4) that proper consideration was given to the human and legal impacts of having an inaccurate birth certificate.

Any state, local, or territorial government that adopts the recommended statutory language (via statute, regulation, or written policy) can be sure that it has improved its own functioning and has enabled transgender people to live their lives with one less burden imposed on them by the government.

As birth certificate statutes and policies are modernized, the birth certificate's legal relevance should increase because judges will be better able to defer to those documents when they have been corrected. However, until then, their legal weight in cases where a person has been unable to receive a corrected certificate should not be controlling. Eventually, the hope is that both executive agencies and the judicial system will be able to rely on birth certificates as an accurate indicator of gender.

While these changes in vital statistics laws may seem technical in nature, modernizing these laws will have important and positive human impact, and should not be avoided or delayed any longer. Given the solid legal and medical foundation for updating these laws discussed in the Article, these changes should be viewed as cost-neutral or cost-saving, based on the best science available, and rooted in the constitution. Policymakers interested in good government should take these developments seriously and make the necessary amendments immediately. ♣

APPENDIX: LAWS AND POLICIES REGARDING GENDER CORRECTIONS FOR THE 57 U.S. JURISDICTIONS THAT ADMINISTER BIRTH CERTIFICATES

Jurisdiction / Citation	Statute, Regulation or Publicly Available Policy Relating to Gender Corrections ²⁹³	Similar to MSVSA ²⁹⁴ But Absent Privacy Protections	Legal Standard	Process	New or Amended	Method of Gender Amendment	Method of Name Amendment	Sealed? ²⁹⁵	Relevant Except or Note
Alabama ALA. Code §§ 22-9A-19, 22-9A-21	Gender Correction in Statute	Exact Standard	"sex . . . has been changed by surgical procedure"	Court	Amended	Unclear	Unclear	No	
Alaska Alaska Stat. § 18.50.290	No Specific Gender Correction Publicly Available Policy	No	None (Judge Determines)	In practice, Court orders are accepted	Amended	Single-Line Cross Out. Alaska Administrative Code 7 AAC 05.895.	Single Line Cross Out. See Alaska Administrative Code 7 AAC 05.895	No.	See Sources of Authority to Amend Sex Designation on Birth Certificates, Lambda Legal, http://www.lambdalegal.org/publications/sources-of-authority-to-amend (last updated Oct. 3, 2012) (hereinafter, Lambda, Sources of Authority).
American Samoa Am. Samoa Code Ann. Ch. 5 § 13.0530	No Specific Gender Correction Provision and No Publicly Available Policy	No	Unclear	Unclear	Unclear	Unclear	Unclear	Unclear	A call to the Registrar of Vital Records office indicated that they do not have a policy with regard to gender corrections. The clerk suggested a court order would likely be sufficient. Telephone interview with the American Samoa Governor's Office Registrar of Vital Records, Pago Pago, AS (December 20, 2011).

293. Gender is used here interchangeably with sex, as explained in note 44 *supra*.

294. This indicates whether the exact language of the MSVSA is used, with regard to three aspects: procedure, standard, and privacy, measured by the issuance of a new certificate.

295. Unless the statute or policy refers to "sealing" the old certificate or says it is available only by court order, it is presumed that the certificate is not sealed.

Jurisdiction / Citation	Statute, Regulation or Publicly Available Policy Relating to Gender Corrections ²³⁸	Similar to MSVSA ²³⁸	Legal Standard	Process	New or Amended	Method of Gender Amendment	Method of Name Amendment	Sealed ²³⁸	Relevant Excerpt or Note
Arizona Ariz. Rev. Stat. §§ 36-337, 36-323, 36-322	Gender Correction in Statute	No	"a person who has undergone a sex change operation or has a chromosomal count that establishes the sex of the person as different [than on original certificate]" must provide "a written statement by a physician that verifies the sex change operation or chromosomal count"	Administrative	Amended	Unclear	Unclear	Yes	"For a person who has undergone a sex change operation or has a chromosomal count that establishes the sex of the person as different than in the registered birth certificate, both of the following: a) A written request for an amended birth certificate from the person or, if the person is a child, from the child's parent or legal guardian; b) a written statement by a physician that verifies the sex change operation or chromosomal count." Ariz. Rev. Stat. §§ 36-337.
Arkansas Ark. Code Ann. §§ 20-18-307, 20-18-304, 20-18-305	Gender Correction in Statute	Standard and Procedure Exact, Privacy Similar	"sex . . . has been changed by surgical procedure"	Court	Amended	Kept Private	Kept Private	Unclear	"The original certificate shall be removed to a special file" Department of Health Regulation for Registration of Vital Statistics 14.7(d).
California Cal. Health & Safety Code §§ 103425-103445	Gender Correction in Statute	No	"has undergone clinically appropriate treatment for the purpose of gender transition, based on contemporary medical standards"	Court	New	Kept Private	Kept Private	Yes	
Colorado Colo. Rev. Stat. § 25-2-115, 25-2-117	Gender Correction in Statute	Exact	"sex . . . has been changed by surgical procedure"	Court	Amended	Kept Private	Unclear	Unclear	

Jurisdiction / Citation	Statute, Regulation or Publicly Available Policy Relating to Gender Corrections? ²⁴	Similar to MSVSA? ²⁵	Legal Standard	Process	New or Amended	Method of Gender Amendment	Method of Name Amendment	Sealed? ²⁶	Relevant Except or Note
Connecticut Conn. Gen. Stat. §§ 7-51, 19a-42, Reg. 19a-41-9(e)	Gender Correction in Both Statute and Regulations	No	From Regulations: (1) Affidavit from a licensed psychiatrist, psychologist, or clinical social worker performing a psycho-social evaluation, attesting to the fact that the registrant is socially, psychologically and mentally the designated sex; (2) Affidavit from the surgeon performing the sex change operation, attesting to the fact that the surgery was performed	Administrative	New	Kept Private	Kept Private	Yes	Standard appears in regulations, statute only refers to "gender change"
Delaware Del. Vital Statistical Regulation 10.9.4	Gender Correction Provision in Regulation only	Exact for Standard and Differs for Privacy	"sex . . . has been changed by surgical procedure"	Court	Unclear	Kept Private	Kept Private	Unclear	
District of Columbia D.C. Code §§ 7-217, 7-219	Gender Correction in Statute	Exact for Standard and Differs for Privacy	"sex . . . has been changed by surgical procedure"	Court	Amended	Unclear	Unclear	No	

Jurisdiction / Citation	Statute, Regulation or Publicly Available Policy Relating to Gender Corrections? ²⁶	Similar to MSVSA? ²⁶	Legal Standard	Process	New or Amended	Method of Gender Amendment	Method of Name Amendment	Sealed? ²⁶	Relevant Excerpt or Note
Florida Fl. Stat. Ann. §§ 382.016, 382.025	No Specific Gender Correction Provision and No Publicly Available Policy	No	"sex reassignment surgery" See Lambda, Sources of Authority.	Administrative ("sworn affidavit of the physician")	Unclear	Unclear	Unclear	Unclear	"Florida Office of Vital Statistics policy allows for the change of sex designation on birth certificates upon the provision of: a completed Application for Amended Birth Certificate and notarized Affidavit of Amendment to Certificate of Live Birth; a certified copy of a court order of name change; a sworn affidavit from the physician who performed sex reassignment surgery, containing the medical license number, stating that you have completed sex reassignment in accordance with appropriate medical procedures and that you are now considered to be a member of the reassigned gender, and the required fee." Lambda, Sources of Authority.
Georgia Ga. Code Ann. §§ 31-10-23, 31-10-25	Gender Correction in Statute	Exact for Procedure, Minor Differences for Privacy	"sex . . . has been changed by surgical procedure"	Court	New	Kept Private	Kept Private	Unclear	"A certificate of birth amended pursuant to the provisions of Section 31-10-23(e) of the Official Code of Georgia Annotated shall be amended by preparing a new certificate. The item numbers of the entries that were amended shall not, however, be identified on the new certificate or on any certified copies that may be issued of that certificate. A new State file number shall be assigned to the new certificate. The original certificate shall be removed from the active files and placed with the order in the confidential files." Ga. Comp. R. & Regs. 290-1-3-.31.
Guam Guam Code Ann. tit. 10, § 3222	Gender Correction in Statute	No	"a sworn statement from the physician performing the surgery certifying the sex of an individual has been changed by surgical procedure"	Administrative	Amended	Single Line Cross Out. See 26 Guam Admin. R. & Regs. § 2111 (i) (3).	Unclear	No	

Jurisdiction / Citation	Statute, Regulation or Policy Available to Gender Corrections? ²⁸	Similar to MS/VA? ²⁹	Legal Standard	Process	New or Amended	Method of Gender Amendment	Method of Name Amendment	Sealed? ²⁸	Relevant Excerpt or Note
Hawaii Haw. Rev. Stat. §§ 338-17.7, 338-18	Gender Correction in Statute	No	"affidavit of a physician" that the person "had a sex change operation and the sex designation on the birth registrant's birth certificate is no longer correct"	Administrative	New	Kept Private	Unclear	Yes	"Upon receipt of an affidavit of a physician that the physician has examined the birth registrant and has determined the following. . . . The birth registrant has had a sex change operation and the sex designation on the birth registrant's birth certificate is no longer correct; provided that the director of health may further investigate and require additional information that the director deems necessary" Haw. Rev. Stat. § 338-17.7(4).
Idaho Idaho Code Ann. §§ 39-250, 39-270	No	No	n/a	n/a	n/a	n/a	No	n/a	Idaho does not permit gender corrections
Illinois 410 Ill. Comp. Stat. Ann. 535/17	Gender Correction in Statute	No	"affidavit by a physician that he has performed an operation on a person, and that by reason of the operation the sex designation on such person's birth record should be changed"	Administrative	New	Kept Private	Unclear	Yes	
Indiana Ind. Code Ann. §§ 34-28-2, 16-37-2-10, 16-37-1-10	No Specific Gender Correction Provision and No Publicly Available Policy	No	In Practice: Judge Determines See Lambda, Sources of Authority.	In Practice: Court. See Lambda, Sources of Authority.	Unclear	Unclear	Unclear	Unclear	Lambda Legal indicates that a court order is required. See Lambda, Sources of Authority.

Jurisdiction / Citation	Statute, Regulation or Publicly Available Policy Relating to Gender Corrections?	Similar to MS/SA?	Legal Standard	Process	New or Amended	Method of Gender Amendment	Method of Name Amendment	Sealer?	Relevant Excerpt or Note
Iowa Iowa Code §§ 144.23, 144.39, 144.24	Gender Correction in Statute	No	"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"	Administrative	New	Kept Private. See also, IA Admin. Code 641-100.7.	Likely Private but Unclear. See IA Admin. Code 641-100.7	Yes: IA Admin. Code 641-100.7	*The original certificate and the evidence upon which it was based are to be sealed and placed in a special file. The state registrar may inspect such sealed information for purposes of properly administering the vital statistics program. IA Admin. Code 641—100.7. Note that information provided over the phone indicates that surgery is required, despite the broader statutory language. See also, Iowa Code 144.24; Iowa Admin. Code r. 641-100.7.
Kansas Kan. Stat. Ann. §§ 65-2422a, 65-2422c; Kan. Admin. Regs. § 28-17-20(b)(1)(A)(i)	Gender Correction in Regulation only	No	Regulation: "with a medical certificate substantiating that a physiological or anatomical change occurred"	Administrative	Amended	Unclear	Kept Private	Unclear	
Kentucky Ky. Rev. Stat. Ann. §§ 213.121, 213.136	Gender Correction in Statute	Standard Exact, Different, No Privacy Provision	"sworn statement by a licensed physician indicating that the gender of an individual . . . has been changed by surgical procedure"	Administrative	Amended	Unclear	Unclear	Unclear	

Jurisdiction / Citation	Statute, Regulation or Policy Available Relating to Gender Corrections?	Similar to MSVSA?	Legal Standard	Process	New or Amended	Method of Gender Amendment	Method of Name Amendment	Sealed?	Relevant Excerpt or Note
Louisiana La. Rev. Stat. Ann. §§ 40:41, 40:60, 40:62	Gender Correction in Statute	No	"such proof as the court] deems necessary to be convinced that the petitioner was properly diagnosed as a transsexual or pseudo-hermaphrodite, that sex reassignment or corrective surgery has been properly performed upon the petitioner, and that as a result of such surgery and subsequent medical treatment the anatomical structure of the sex of the petitioner has been changed" La. Rev. Stat. Ann. §§ 40:62.	Court	New	Kept Private	Unclear	Yes	

Jurisdiction / Citation	Statute, Regulation or Publicly Available Policy Relating to Gender Corrections ²³⁷	Similar to MSYSA ²³⁸	Legal Standard	Process	New or Amended	Method of Gender Amendment	Method of Name Amendment	Sealed? ²³⁹	Relevant Excerpt or Note
Maine Me. Rev. Stat. Ann. §§ 2705, 2706, 10.146.2 Me. Code R. § 6-11	Gender Correction in Regulation only	No	"sex has been changed by surgical procedure" and "a notarized affidavit by the physician who performed the surgical procedure"	Administrative	New	Kept Private	Kept Private	Yes	"1. A new birth certificate showing only the new information shall be prepared when a legal change of sex has been established in accordance with section 11 of this chapter. [...] 3. When a new certificate is prepared pursuant to this subsection, the original certificate shall be held confidential and only the registrant or his or her other legal representative shall have access to the original record, except by court order. [...] Certificates established under this section shall not be regarded as amended." 10.146.2 Me. Code R. § 6-11.
Maryland Md. Code Ann., Health- Gen. §§ 4-214, 4-217, 4-224	Gender Correction in Statute	Exact for Standard and Procedure, Differs for Privacy	"the sex . . . has been changed by surgical procedure"	Court	Amended	Single-line cross out	Single-line cross out	No	"D. (1) To amend or correct data other than the name on a birth certificate, the following documents and information shall be submitted: [...] (d) For sex changed by surgery, a court order shall be submitted specifying that the sex of the individual has been changed and directing the Secretary to change the data concerning the sex of the individual, and any other relevant data. E. (1) Amendments and corrections under this regulation shall be made by: (a) Placing a line through the original data and entering new data in black ink; or (b) Entering the amendment or correction on electronic media." Md. Code Regs. 10.03.01.02

Jurisdiction / Citation	Statute, Regulation or Publicly Available Policy Relating to Gender Corrections? ²⁰⁸	Similar to MSVSA? ²⁰⁹	Legal Standard	Process	New or Amended	Method of Gender Amendment	Method of Name Amendment	Sealed? ²¹⁰	Relevant Excerpt or Note
Massachusetts Mass. Gen. Laws Ch. 46, §§ 13, 17C	Gender Correction in Statute	No	"has completed sex reassignment surgery, so-called," and "a physician's notarized statement that the person named on the birth record has completed sex reassignment surgery"	Administrative	Amended	Unclear	Unclear	Unclear	
Michigan Mich Comp. Laws §§ 333.2831, 333.2882, 333.2872	Gender Correction in Statute	No	"an affidavit of a physician certifying that sex-reassignment surgery has been performed"	Administrative	New	Kept Private	Unclear	Yes	
Minnesota Minn. Stat. §§ 144.218, 144.225	No Specific Gender Correction Provision and No Publicly Available Policy	No	Judge determines for Court order, Agency requires surgery if no court order	Either	New	Kept Private	Kept Private	Yes	Changing Gender on a Minnesota Birth Record, Minnesota Dept of Health (on file with author).
Mississippi Miss. Code Ann. §§ 41-57-21, 41-57-2; 15-4 Miss. Code R. §1:106.	Gender Correction in Regulation only	No	"Gender reassignment"	Court	Amended	Not Private	Not Private	No	"Gender reassignment shall be added to the birth certificate as a marginal notation, upon receipt of a certified court order, a medical statement that attests to the reassignment." 15-4 Miss. Code R. §1:106.

Jurisdiction / Citation	Statute, Regulation or Publicly Available Policy Relating to Gender Corrections?	Similar to MSVSA?	Legal Standard	Process	New or Amended	Method of Gender Amendment	Method of Name Amendment	Sealed?	Relevant Excerpt or Note
Missouri Mo. Rev. Stat. § 193.215	Gender Correction in Statute.	Exact for Standard and Procedure, Differs for Privacy	"sex . . . has been changed by surgical procedure"	Court	Amended	Single-Line Cross Out	Single-Line Cross Out	No	"The original certificate/office working copy of the birth, death or fetal death shall have the correction entered on its face by interlineation with a line drawn through the incorrect entries. It shall be marked amended. The date of amendment and a summary description of the evidence submitted in support of the amendment shall be endorsed on or made part of the record." 19 Mo. Code Regs. 10-10.110.
Montana Mont. Code Ann. §§ 50-15-204; Mont. Admin. R. 37.8.111(5)	Gender Correction in Regulation only	Exact for Standard and Procedure, Differs for Privacy	"sex of an individual born in Montana has been changed by surgical procedure"	Court	Depends on Instructions in Court Order	Depends on Instructions	Depends on Instructions	Unclear	"(5) The sex of a registrant as cited on a certificate may be amended only if the department receives a certified copy of an order from a court with appropriate jurisdiction indicating that the sex of an individual born in Montana has been changed by surgical procedure. The order must contain sufficient information for the department to locate the record. If the registrant's name is also to be changed, the court order must indicate the full name of the registrant as it appears on the original birth certificate and the full name to which it is to be altered. If the order from the court directs the issuance of a new certificate that does not show amendments, the new certificate will not indicate on its face that it was altered. If the sex of an individual was listed incorrectly on the original certificate, refer to AFM 37.8.108." Mont. Admin R. 37.8.311.

Jurisdiction / Citation	Statute, Regulation or Publicly Available Policy Relating to Gender Corrections? ²⁶	Similar to MSYSA? ²⁶	Legal Standard	Process	New or Amended	Method of Gender Amendment	Method of Name Amendment	Scaled? ²⁶	Relevant Excerpt or Note
Nebraska Neb. Rev. Stat. §§ 71-604.01, 71-602	Gender Correction in Statute	No	"a notarized affidavit from the physician that performed sex reassignment surgery"	Administrative	New	Kept Private	Kept Private	Yes	"Upon receipt of a notarized affidavit from the physician that performed sex reassignment surgery on an individual born in this state and a certified copy of an order of a court of competent jurisdiction changing the name of such person, the department shall prepare a new certificate of birth in the new name and sex of such person in substantially the same form as that used for other live births. The evidence from which the new certificate is prepared and the original certificate of birth shall be available for inspection only upon the order of a court of competent jurisdiction." Neb. Rev. Stat. § 71-604.01.
Nevada New Admin. Code § 440.130	Gender Correction in Regulation only	No	"having a sexual transformation"	Court	New	Depends on Instructions in Court Order	Depends on Instructions	Unclear	"1. The State Registrar may prepare a new certificate of birth for a person having a sexual transformation only upon order of a court of competent jurisdiction. 2. The court order must specify those facts to be changed on the new certificate. All other items must remain as on the original certificate."
New Hampshire N.H. Rev. Stat. Ann. §§ 5-C:87, 5-C:88, 5-C:9	Gender Correction in Statute	No	"such individual . . . has had a sex change"	Court	New (in effect)	Kept Private	Unclear	Likely, in effect	"II. The clerk of the town or city shall: replace the original record with the amended birth record; retain the originally assigned file number; retain the original record attached to the amended record; prepare an amended birth record using the form appropriate for the year of birth; and forward the amended birth record to the division. III. The clerk of the town or city shall use the amended record for all future inquiries to the record." N.H. Rev. Stat. Ann. § 5-C:88.

Jurisdiction / Citation	Statute, Regulation or Publicly Available Policy Relating to Gender Corrections? ²⁶	Similar to MSVSA? ²⁶	Legal Standard	Process	New or Amended	Method of Gender Amendment	Method of Name Amendment	Sealed? ²⁶	Relevant Excerpt or Note
New Jersey N.J. Stat. Ann. §§ 26:8-40.12, 26:8-40.23	Gender Correction in Statute	Exact in Standard, Different in Procedure, Similar in Privacy	"a medical certificate from the person's licensed physician which indicates the sex of the person has been changed by surgical procedure"	Administrative	New (in effect)	Kept Private	Kept Private	Yes	"The State registrar shall issue an amended certificate of birth to a person born in this State who undergoes sex reassignment surgery and requests an amended certificate of birth which shows the sex and name of the person as it has been changed. The State registrar shall place the original certificate of birth and all papers pertaining to the amended certificate of birth under seal. The seal shall not be broken except by order of a court of competent jurisdiction. Hereafter, whenever a certified copy of the certificate of birth is prepared, it shall be made from the amended certificate of birth, except when an order of a court of competent jurisdiction requires that a certified copy be made of the original certificate of birth." N.J. Stat. Ann. §§ 26:8-40.12.
New Mexico N.M. Stat. Ann. §§ 24-14-25, 24-14-27	Gender Correction in Statute	Exact for Standard Differs for Process, Absent Regulations on Privacy	"a statement signed under penalty of perjury by the person in charge of an institution or from the attending physician indicating that the sex of an individual born in this state has been changed by surgical procedure"	Administrative	Amended	Unclear	Unclear	No	"A certificate or report that is amended under this section shall be marked 'amended', except as otherwise provided in Subsection C of this section. The date of the amendment and a summary description of the evidence submitted in support of the amendment shall be endorsed on or made a part of the record. The department shall prescribe by regulation the conditions under which additions or minor corrections may be made to certificates or records within one year after the date of the event without the certificate or record being marked 'amended'." N.M. Stat. Ann. § 24-14-25.

Jurisdiction / Citation	Statute, Regulation or Publicly Available Policy Relating to Gender Corrections? ²⁸	Similar to MSVSA? ²⁸	Legal Standard	Process	New or Amended	Method of Gender Amendment	Method of Name Amendment	Sealed? ²⁸	Relevant Excerpt or Note
New York N.Y. Pub. Health Law § 4138	Gender Correction in Written Policy	No	"sex reassignment surgery"	Administrative	Unclear	Unclear	Kept Private	Unclear	"The New York State Department of Health, Vital Records Division has a policy providing for the change of sex designation on birth certificates upon the receipt of a completed application; a letter from the surgeon specifying date, place, and type of sex reassignment surgery performed; an operative report from the sex reassignment surgery; and some additional medical documentation." Lambda, <i>Sources of Authority</i> .
New York City 24 RCNY Hlth. Code § 207.05(a)(5)	Gender Correction in Regulations only	No	"proof satisfactory to the Department has been submitted that such person has undergone convulsive surgery"	Administrative	New	Kept Private	Kept Private	Yes	
North Carolina N.C. Gen. Stat. §§ 101-2, 130A-118, 130A-93	Gender Correction in Statute	No	"a notarized statement from the physician who performed the sex reassignment surgery or from a physician licensed to practice medicine who has examined the individual and can certify that the person has undergone sex reassignment surgery"	Administrative	New	Kept Private	Unclear	Yes	

Jurisdiction / Citation	Statute, Regulation or Publicly Available Policy Relating to Gender Corrections ²⁸	Similar to MSYSA? ²⁸	Legal Standard	Process	New or Amended	Method of Gender Amendment	Method of Name Amendment	Sealed? ²⁸	Relevant Excerpt or Note
Oregon Or. Rev. Stat. §§ 432.235, 432.121	Gender Correction in Statute	Exact for Standard and Process, Absent Regulations on Privacy	*Sex... has been changed by surgical procedure*	Court	Amended or New, in Discretion of Agency	Unclear	Unclear	Unclear	
Pennsylvania 35 Pa. Cons. Stat. §§ 450.603, 450.801, 450.804	No Specific Gender Correction Provision and No Publicly Available Policy	No	In practice, surgery if going to the agency directly, and for a court order, the judge determines	Either	Unclear	Unclear	Unclear	Unclear	*Although not specifically mentioned in the statute, the Division of Vital Records will issue a revised birth certificate upon court order or submission of a letter from the treating physician stating that reassignment surgery has been performed." Lambda, Sources of Authority.
Puerto Rico P.R. Laws. Ann. tit. 3 § 177	No	n/a	n/a	n/a	n/a	n/a	n/a	n/a	Puerto Rico does not permit gender corrections. See <i>Ex Parte Alexis Delgado</i> , 2005 TSPR 095, in which the Puerto Rico Supreme Court denied a corrected gender marker.
Rhode Island R.I. Gen. Laws §§ 23-3-21, 23-3-23	No Specific Gender Correction Provision and No Publicly Available Policy	No	In practice, surgery	Administrative	Unclear	Unclear	Will be marked Amended, but old name will not appear	Unclear	*For changes to the sex designation on birth certificates, the Office of Vital Records has a policy requiring a notarized statement from the hospital or clinic where surgery was performed, signed by the physician in charge of the surgery. The amended certificate will state only that the name has been amended; it will not show the former name." Lambda, Sources of Authority.
South Carolina S.C. Code Ann. §§ 44-63-150, 44-63-80	No Specific Gender Correction Provision and No Publicly Available Policy	No	Unclear	Unclear	Amended by Attaching a Special Form	Not Private	Not Private	No	"South Carolina will issue an amendment as an attachment to the original birth certificate." Lambda, Sources of Authority.

Jurisdiction / Citation	Statute, Regulation or Publicly Available Policy Relating to Gender Corrections? ^{2a}	Similar to MSVSA? ^{2b}	Legal Standard	Process	New or Amended	Method of Gender Amendment	Method of Name Amendment	Sealed? ^{2c}	Relevant Excerpt or Note
South Dakota S.D. Codified Laws §§ 34-25-51, 34-25-16.5, 34-25-52, 34-25-52.6	No Specific Gender Correction Provision and No Publicly Available Policy	No	None (In practice, Judge determines)	In Practice, Court	In practice, generally new	In practice, generally kept private	In practice, generally kept private	Yes	"South Dakota's Registrar will follow any instructions in a court order. The general practice of the registrar is to issue a new certificate with no indication of amendment." Lambda, <i>Sources of Authority</i> .
Tennessee Tenn. Code Ann. § 68-9-203(d)	Gender Correction Prohibited in Statute	n/a	n/a	n/a	n/a	n/a	n/a	n/a	"The sex of an individual shall not be changed on the original certificate of birth as a result of sex change surgery."
Texas Texas Health & Safety Code Ann. §§ 192.010, 192.011	No Specific Gender Correction Provision and No Publicly Available Policy	No	Unclear	Unclear	Unclear	Unclear	Unclear	Unclear	"Anecdotal reports now indicate that some officials refuse to correct the sex designation on transgender people's birth certificates, although judges may order such a change." Lambda, <i>Sources of Authority</i> .
U.S. Virgin Islands V.I. Code Ann. tit. 19 § 806	No Specific Gender Correction Provision and No Publicly Available Policy	No	Judge Determines	Court	Unclear	Unclear	Unclear	Unclear	Telephone interview with US Virgin Islands Department of Health in Christiansted, VI. (Dec. 21, 2011).
Utah Utah Code Ann. § 26-2-11, 26-2-22	Gender Correction in Statute	No	"has a . . . sex change approved by an order of a Utah district court or a court of competent jurisdiction"	Court	Amended	Unclear	Unclear	No	"the state registrar shall review the application, and if complete, register it and note the fact of the amendment on the otherwise unaltered original certificate" Utah Code Ann. § 26-2-11.

Jurisdiction / Citation	Stature, Regulation or Publicly Available Policy Relating to Gender Corrections? ²⁸	Similar to MSVSA? ²⁸	Legal Standard	Process	New or Amended	Method of Gender Amendment	Method of Name Amendment	Scaled? ²⁸	Relevant Excerpt or Note
Vermont Vt. Stat. Ann. tit. 18 § 5112	Gender Correction in Statute	No	"the individual has undergone surgical, hormonal, or other treatment appropriate for that individual for the purpose of gender transition"	Court	New	Kept Private	Kept Private	Yes	

Jurisdiction / Citation	Statute, Regulation or Publicly Available Policy Relating to Gender Corrections? ²⁸	Similar to MSVSA? ²⁹	Legal Standard	Process	New or Amended	Method of Gender Amendment	Method of Name Amendment	Sealed? ³⁰	Relevant Excerpt or Note
Virginia Va. Code Ann. §§ 32.1-269, 32.1-271; 12 Va. Admin. Code § 5-550-320	Gender Correction in Statute and Regulations	No	Statute: "sex . . . has been changed by medical procedure." Regulations: "upon presentation of acceptable evidence (preoperative diagnosis, postoperative diagnosis and description of procedure) and a notarized affidavit from the physician performing the surgery, a new certificate of birth may be prepared by the State Registrar for a person born in this Commonwealth whose sex has been changed by surgical gender reassignment procedure" as well as "A certified copy of the court order changing the name of the registrant as well as designating the sex of the registrant"	Court with additional reqs. from the Registrar	Amended according to Statute, although Regulation indicates that a New certificate will be issued	Unclear	Unclear	Unclear	

Jurisdiction / Citation	Statute, Regulation or Publicly Available Policy Relating to Gender Corrections ²⁸	Similar to MS/SA? ²⁹	Legal Standard	Process	New or Amended	Method of Gender Amendment	Method of Name Amendment	Sealed? ³⁰	Relevant Excerpt or Note
Washington State Dept of Health, Center for Health Statistics Procedure CHS-B5, pursuant to Wash. Rev. Code § 43.70.150	Gender Correction in Written Policy	No	Policy: "a letter, on letterhead, from the requestor's medical or osteopathic physician stating that the requestor has had the appropriate clinical treatment"	Administrative	Unclear	Unclear	Unclear	Medical letter is sealed, unsure regarding original certificate	This procedure was developed by the Washington Secretary of Health pursuant to Wash. Rev. Code § 43.70.150.
West Virginia W. Va. Code §§ 16-5-25, 16-5-27	No Specific Gender Correction Provision and No Publicly Available Policy	No	In practice, surgery is required if going directly to the agency, and the judge determines in the case of a court order	Either	Amended	Unclear	Unclear	Unclear	"The practice of the State Registrar is to issue an amended birth certificate upon submission of either a court order or a notarized statement from the treating physician that reassignment surgery has been completed." Lambda, Sources of Authority.
Wisconsin Wis. Stat. Ann. §§ 69.15, 69.20, 69.21	Gender Correction in Statute	No	"a surgical sex- change procedure"	Court	Depends on Instructions in Court Order	Depends on Court Order	Depends on Court Order	Yes, if new certificate issued	
Wyoming Wyo. Stat. Ann. §§ 35-1-424, 35-1-426, 10 Wyo. Code R. § 4(e)(iii)	Gender Correction in Regulation only	No	"when the sex of an individual has been changed"	Court	Amended (Unless Court Order Specifies Otherwise)	Not Private (Unless Court Order Specifies Otherwise)	Not Private (Unless Court Order Specifies Otherwise)	No	"Unless other specified by court order, the amended certificate will show all changes that have been made." Lambda, Sources of Authority.