

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 361 (Delegate Smith, *et al.*)
Health and Government Operations

Certificates of Birth - Issuance of New Certificates - Sex Designation (Birth
Certificate Modernization Act)

This bill repeals the requirement that a licensed health care practitioner determine that an individual’s sex designation should be changed for the purposes of issuing a new birth certificate. Instead, an individual (or their parent, guardian, or legal representative) must make their request to the Maryland Department of Health (MDH) for a change of sex designation on a birth certificate *under penalty of perjury*. When issuing a new birth certificate for an individual, the Secretary of Health may not be limited to designating the sex of the individual as “male” or “female,” and, when requested under penalty of perjury, must designate the sex of the individual as nonbinary, other, or unspecified. The Secretary must issue a new birth certificate if an individual (or their parent, guardian, or legal representative) has made a written request, *under penalty of perjury*, for a new birth certificate with a designation for the individual’s parent (“mother,” “father,” or “parent”) that differs from the parent’s designation on the original birth certificate. The bill also makes other conforming changes.

Fiscal Summary

State Effect: The bill’s requirements can be handled with existing budgeted resources. Potential minimal increase in general fund revenues, as discussed below.

Local Effect: The bill is not anticipated to materially affect local government finances or operations.

Small Business Effect: None.

Analysis

Bill Summary: The bill repeals the requirement that an individual (or their parent, guardian, or legal representative) requesting a new birth certificate with a sex designation that differs from the sex designated on their original birth certificate must provide a signed statement, under penalty of perjury, from a licensed health care practitioner that the individual has undergone a sex change or has an intersex condition.

For an individual who has made a written request to the Secretary to change the designation of a parent on their birth certificate, the Secretary must issue a new birth certificate for the individual if MDH receives satisfactory proof that the individual was born in the State, and regardless of the location, one of the following has occurred: (1) the individual or the individual's parent, guardian, or legal representative, as applicable, has made a written request, under penalty of perjury, for a new birth certificate with designation for the parent as "mother," "father," or "parent" that differs from the designation on the original birth certificate; or (2) a court of competent jurisdiction has issued an order indicating that the name of a parent listed on the individual's birth certificate has been changed. The new birth certificate issued may not be marked as amended or show that a change has been made to a sex designation or, if applicable, a name.

The designation for a parent on a new birth certificate must be the designation for which satisfactory proof has been submitted and is requested by the individual under penalty of perjury. If the name of the parent listed on a birth certificate has been changed at any time, the name of the parent on the new birth certificate must be the name that was last established and for which appropriate documentation has been submitted to MDH. Except on request, the new birth certificate may not include any prior legal name of the parent.

Current Law: The Secretary is required or authorized to make a new birth certificate for an individual born in the State under several specified circumstances. For example, a new birth certificate must be issued (1) for an individual upon satisfactory proof from a licensed health care practitioner that the individual has undergone a sex transition or has been diagnosed with an intersex condition; (2) if unwed parents marry after the birth of the individual; or (3) if a court order certifies the parentage, legitimation, or adoption of the individual.

MDH may change the name on a birth certificate once without a court order if, within 12 months after the birth of a child, MDH receives from both parents (1) a written request for the name change and (2) an affidavit sworn before a notary public stating that they are the parents of the child and are making the request of their own free will. A mother must obtain a court order to change the name of her child if the father is not listed on the birth certificate.

State/Local Fiscal Effect: While the number of individuals who may request a new birth certificate cannot be reliably estimated, it is generally assumed that MDH can accommodate such requests within existing budgeted resources. MDH advises that every new birth certificate that it issues is printed with gender neutral titles (“parent”) next to each parent’s name on the birth certificate. MDH further advises that, while the current birth certificate system does not include sex designations of nonbinary and other, such options will be included in the new system, which is expected to launch in March 2023.

To the extent that fees for the preparation of a new birth certificate mirror those currently charged for individuals who request a change in sex designation on birth certificates (\$10), general fund revenues may increase slightly. It is assumed that operations and finances of local health departments are not materially affected.

Additional Information

Prior Introductions: Similar legislation has been introduced within the last three years. See HB 370 of 2022.

Designated Cross File: None.

Information Source(s): Maryland Association of County Health Officers; Maryland Commission on Civil Rights; Judiciary (Administrative Office of the Courts); Maryland Department of Health; Department of Legislative Services

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