

February 17, 2023

The Honorable Joseline A. Pena-Melnyk
House Health and Government Operations Committee
Room 241
House Office Building
Annapolis, Maryland 21401

Testimony of the National Center for Transgender Equality Action Fund

In SUPPORT of

HB0361: Certificates of Birth - Issuance of New Certificates - Sex Designation

(Birth Certificate Modernization Act)

To the Honorable Chair Pena-Melnick, Vice Chair Kelly, and esteemed members of the Health and Government Operations Committee:

The National Center for Transgender Equality Action Fund (“NCTE Action Fund”) is a 501(c)(4) non-profit political advocacy organization affiliated with the National Center for Transgender Equality (“NCTE”). Founded in 2003, the NCTE works to improve the lives of the nearly two million transgender people in the United States and their families through sound public policy, public education, and groundbreaking research. NCTE has worked with countless health and human service providers as well as local, state, and federal agencies on policies to ensure equal access to vital health and human services. The NCTE Action Fund, launched in 2017, builds power for transgender people, our families, and our allies – to make our collective voice heard – so that together, we can change the landscape in this country to fully support transgender equality.

The NCTE Action Fund writes today in support of House Bill 361, which would modernize the state’s procedure for issuing new birth certificates to transgender Marylanders and their families in three important ways. First, it would make it easier for transgender Marylanders who have gone through the name change process to update their own information on their children’s birth certificates. Second, it would allow transgender Marylanders to self-attest their gender on their own birth certificates, eliminating the often burdensome process of first obtaining documentation from a medical provider. Finally, HB361 eliminates current confusion by confirming that the Department of Health must provide a third gender option for nonbinary Marylanders and others whose gender is not fully captured by the existing male/female binary options.

HB361 has its origins in a 2020 conversation between former Delegate Lisa Belcastro and one of her constituents, in which the constituent reached out for help to amend their child’s birth certificate after the Department of Health told them that they would not issue a new birth certificate with the correct information for the child’s transgender parent.

After looking into the issue, it became clear that the Department of Health did not have a formal policy on how to handle requests to amend the birth certificates of the children of transgender parents, and they were often treated ad hoc by the individual who was assigned to review them. In some cases, a new birth certificate would be issued for the child listing the transgender parent’s correct name and gender. Other times, the Department of Health would send an amended birth certificate that struck out the parent’s former information and typed the new information above or to the side. In many cases, however, the Department simply stated they did not have the authority to issue a new or amended birth certificate.

Understandably, former Delegate Belcastro was frustrated by this situation, and reached out to my former employer, FreeState Justice, for assistance in crafting a remedy. Over the next two years, Delegate Belcastro and I worked closely to draft bills to ensure no one had to go through the same trouble her constituent did. In the process, we also identified a number of related issues, some of which are covered in this bill and some of which were passed last year in HB369, which provided for the first time a process by which Marylanders can amend the name that appears on their marriage certificate.

While a child's birth certificate may not appear at first glance to be a critical identity document for transgender parents, it is actually one of the most critically important documents we have – we are just asked for less frequently than for our driver's licenses. Children's birth certificates are used to establish a parental relationship with one's child, and are routinely used when signing a child up for school, applying for health insurance coverage or other benefits, and even when simply traveling.

Without an accurate birth certificate, transgender parents are effectively required to carry a stack of paperwork to connect themselves to their own child. This is not only burdensome, but it also is especially prone to put transgender Marylanders and their children in unsafe situations, as the parent has to out themselves as transgender in front of individuals whose reaction they cannot predict. Even if they and their children are not immediately put at risk, there is a significant concern that knowledge about the child's transgender parent will be used inappropriately to discriminate against them later. By making it easier for transgender parents to obtain new birth certificates for their children, Maryland would make it easier and safer for transgender families to exist in public without fear of harassment.

While this provision of HB361 would not directly impact me, as my child was born in New York rather than Maryland, I can attest from personal experience how important it is to have identify documents that match my child's. Fortunately, New York has made the process of updating my information on their birth certificate easy, meaning I don't have to worry about this particular issue myself. But, this is a genuine concern for many Maryland families, and ask you to please bring Maryland practice in line with that in New York and other states.

The second major provision in HB361 concerns the ability of transgender Marylanders to amend their own birth certificates. Under a law enacted in 2015, people born in Maryland may request from the Department of Health a new birth certificate with a different gender marker upon submission of either a court order or a form signed by a medical provider under penalty of perjury. Because of the administrative barriers of obtaining a court order recognizing one's gender identity, most transgender Marylanders have instead opted to submit a form signed by a medical provider. But while this process is usually less burdensome, it remains a significant barrier for many individuals.

Crucially, the 2015 law presumes all transgender Marylanders have an ongoing relationship with a medical provider, something which is sadly inaccurate. In too many cases, transgender Marylanders struggle to obtain care, especially if they live outside of the I-95 corridor. Many western Marylanders find themselves driving to West Virginia or even all the way to Baltimore or Washington, DC, to obtain transition-related care. Given that reality, it can be difficult to maintain an ongoing doctor-patient relationship, especially if your doctor happens to move somewhere else (something that has personally happened to me twice, though I fortunately do not struggle with the same geographic distance as many of my fellow Marylanders).

Without an established medical provider, transgender Marylanders often have to create a new doctor-patient relationship in order to obtain the required paperwork. This can be time-consuming, as well as quite costly, whether because of the direct cost of care, because of the need to take off work, or even just the costs of travel across the state.

The 2015 law also presumes incorrectly that all transgender Marylanders need a medical provider to oversee their transition on an ongoing basis. Transition does not look the same for everyone, and for many people it

does not require medical care at all. Others might seek medical assistance with their transition for a time, but later no longer need the services of a physician, psychologist, or other medical professional. For these transgender Marylanders, the 2015 law effectively requires them to seek medical care they otherwise wouldn't need.

To be clear, the process of obtaining these medical affidavits is burdensome not only on transgender Marylanders, but also on the medical providers who care for them. Every hour they spend filling out forms verifying the obviousness of their patients' gender is an hour they cannot spend providing care. Eliminating the need for these affidavits will free up Maryland's overburdened medical providers to do what they do best: care for patients.

Crucially, though, HB361 does not allow Marylanders to change the gender on their birth certificates on a whim or for fraudulent purposes. In place of a medical affidavit, HB361 instead requires transgender Marylanders to affirm their own gender identity under penalty of perjury, something that is not required under the current law. Anyone who changed the gender on their birth certificate for fraudulent or illegal purposes could thus be charged with not only the underlying crime, but also with felony perjury, something that was not true in the past.

Finally, HB361 also clarifies that transgender Marylanders using the Section 4-211 process to obtain a new birth certificate may request a gender marker other than male or female to designate that their gender is nonbinary, other, or unspecified. This amendment brings Department of Health practice in line with what the Motor Vehicle Administration and other state agencies have been doing without issue since 2019. While we believe the existing language of Section 4-211, which refers to "a sex designation that differs from the sex designated on the original certificate of birth" rather than "the opposite sex," the Department of Health has been slow to implement a third gender option on birth certificates, despite repeated assurances to the contrary. HB361 would clarify the situation for both transgender Marylanders and for the Department of Health itself.

Birth certificates are crucial identity documents. Transgender Marylanders are asked for them on a whole host of occasions, including whenever we start a new job, when we enroll our children in school, when we apply for government benefits, and when we travel with our kids. It is crucial that our birth certificates – and our children's birth certificates – recognize who we are, both as a way of recognizing our fundamental human dignity and as a bulwark against harassment and discrimination. By modernizing Maryland's birth certificate amendment procedure, HB361 would help transgender families in Maryland to stand a little prouder and a little less scared.

I thank you for your time and urge a favorable report on House Bill 361.

Sincerely,

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