

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE
Revised

House Bill 862 (Delegate Moon, *et al.*)
Health and Government Operations

Finance

Vital Records - New Certificates of Birth - Sex Change or Diagnosis of an
Intersex Condition

This bill requires the Secretary of Health and Mental Hygiene to issue a new birth certificate for an individual if a licensed health care practitioner or court certifies that the individual has undergone a sex change or has an intersex condition or if, prior to October 1, 2015, the Secretary amended an original birth certificate on receipt of a court order indicating the individual's sex change. The bill establishes additional requirements for the contents of the new birth certificate.

Fiscal Summary

State Effect: The bill does not materially affect State operations or finances.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The Secretary of Health and Mental Hygiene must issue a new birth certificate for an individual if the Department of Health and Mental Hygiene (DHMH) receives proof that the individual was born in this State and that one of the following occurred:

- *Certification by a licensed health care practitioner:* A licensed health care practitioner determined that the individual's sex designation should be changed because the individual underwent treatment for sex transition or has been diagnosed

with an intersex condition and the health care practitioner signed a statement under penalty of perjury attesting to these facts. The individual or the individual's legal guardian must also have made a written request for a new birth certificate with a change in sex designation. The bill defines "licensed health care practitioner" as a licensed physician, psychologist, registered nurse (who is also certified as a nurse practitioner, nurse psychotherapist, or clinical nurse specialist), or a certified social worker-clinical. Individuals licensed to practice one of the listed professions in another state but who meet the requirements for licensure in this State also qualify.

- *Court order:* A court of competent jurisdiction issued an order indicating that the individual's sex has been changed.
- *Amendment of original birth certificate:* Prior to October 1, 2015, the Secretary, pursuant to regulations, amended an original birth certificate on receipt of a certified copy of an order of a court of competent jurisdiction indicating the sex of the individual had been changed.

The sex designation on the new birth certificate must be the sex designation for which proof has been submitted; if the name of the individual changed at any time, the name on the new birth certificate must be the name that was last established and for which appropriate documentation has been submitted to DHMH. A new birth certificate may not be marked as "amended" or show on its face that a sex designation or name change was made.

Current Law: Under the Health-General Article, the Secretary of Health and Mental Hygiene is required to make a new birth certificate under several specified circumstances, including if unwed parents marry after the birth of the individual or a court order certifies the parentage or adoption of an individual. The Secretary is also authorized to make a new birth certificate for an individual born outside of the United States under similar circumstances.

New birth certificates must be substituted for any certificates then on file and must be placed under seal; the seal may only be broken on court order, on the Secretary's written order, or under specified provisions of the Family Law Article. Subsequently issued certified copies of the birth certificate must be of the new birth certificate unless otherwise required through court order or under specified provisions of the Family Law Article.

Background: According to the Williams Institute at the University of California School of Law, an estimated 0.3% of adults (or about 700,000 individuals) in the United States identify as transgender; however, it is difficult to accurately assess current population levels for this community due to differing survey methods and definitions (which involve aspects of both gender identity and varying forms of gender expression or nonconformity).

Few population-based surveys include estimates of the percentage of adults who are transgender.

According to a 2014 *Reuters* article, New York recently amended its policy regarding sex-change designations for birth certificates: transgender people born in the state (with the exception of New York City, which maintains its own policy) no longer have to prove that they had a sex-reassignment surgery in order to change the sex on their birth certificates. Instead, a transgender person must only provide a notarized affidavit from a doctor treating that person for “gender dysphoria” (also known as “gender identity disorder”). According to the article, many transgender people (those who identify as having a different sex than the one at birth) do not need, want, or cannot afford sex-reassignment surgery. Additionally, transgender people who are unable to change the sex marked on their birth certificates may face discrimination or embarrassment. Four other states (Vermont, California, Oregon, and Iowa), as well as Washington, DC, also do not require proof of surgery before changing sex designations on birth certificates. As of 2010, the U.S. State Department also does not require proof of sex-reassignment surgery in order to alter the sex marked on passports and consular birth certificates.

Additional Information

Prior Introductions: None.

Cross File: SB 743 (Senator Lee, *et al.*) - Finance.

Information Source(s): Department of Health and Mental Hygiene, Maryland Commission on Civil Rights, Judiciary (Administrative Office of the Courts), University of California (UCLA) School of Law, *Reuters*, Department of Legislative Services

Fiscal Note History: First Reader - March 10, 2015
md/ljm Revised - House Third Reader - March 31, 2015

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