

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1203 (Delegate Belcastro)
Health and Government Operations

**Certificates of Birth and Marriage Certificates - Issuance of New Certificates -
Sex Designation**

This bill requires the Secretary of Health to issue a new birth certificate for an individual if the Maryland Department of Health (MDH) receives satisfactory proof that the parent listed on the original birth certificate has undergone a sex change or has an intersex condition. A clerk of the court must issue a new marriage license, under similar conditions, to an individual who is party to a marriage. A new birth certificate or marriage certificate may not be marked as amended or show that a change has been made to a sex designation or, if applicable, a change of name. The bill also makes other conforming changes.

Fiscal Summary

State Effect: The bill's requirement can likely be handled with existing budgeted resources, as discussed below. 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:

Birth Certificate Requirements

The Secretary of Health must issue a new birth certificate for an individual if MDH receives proof that the individual was born in this State and, regardless of the location, one of the following has occurred:

- *Certification by a Licensed Health Care Practitioner:* A licensed health care practitioner has determined that the designation of a parent listed on the birth certificate as “mother,” “father,” or “parent” should be changed because the parent underwent treatment for sex transition or has been diagnosed with an intersex condition, and the health care practitioner has signed a statement under penalty of perjury attesting to these facts, as specified. The individual or the individual’s parent, guardian, or legal representative, as applicable, must also have made a written request 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.
- *Court Order:* A court of competent jurisdiction has issued an order indicating that the sex of a parent listed on the individual’s birth certificate has been changed.
- *Amendment of Parent’s Sex Designation:* The sex of a parent listed on the individual’s birth certificate has been changed on the parent’s own birth certificate, passport or permanent residence card, or in the Social Security Administration’s records.

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.

When issuing a new birth certificate for an individual, as authorized under current law, the Secretary of Health is not limited to designating the sex of the individual as “male” or “female,” and when requested and on receiving satisfactory proof, must designate the sex of the individual as nonbinary, other, or unspecified.

Marriage Certificate Requirements

A clerk of the circuit court must issue a new marriage certificate for an individual who is party to a marriage, if the clerk receives satisfactory proof that one of the following has occurred:

- *Certification by a licensed Health Care Practitioner:* A licensed health care practitioner has determined that the sex designation of the individual listed on the marriage certificate should be changed because the individual underwent treatment for sex transition or has been diagnosed with an intersex condition. The health care practitioner must sign a statement under penalty of perjury attesting to such facts, as specified.
- *Court Order:* A court of competent jurisdiction, regardless of location, has issued an order that the sex of the individual has been changed.
- *Amendment of Parent's Sex Designation:* The sex of the individual has been changed on the individual's certificate of birth, passport or permanent residence card, or in the Social Security Administration's records.

A new marriage certificate must state the sex designation of the individual for which satisfactory proof has been submitted, if the marriage certificate designates the sex of the parties. If the individual's name has been changed at any time, the new marriage certificate must include the name that was last established and for which appropriate documentation has been submitted to the clerk.

If a new marriage certificate is issued, the clerk must (1) substitute the new marriage certificate for any certificate on file; (2) update the marriage license book with the information on the new marriage certificate; (3) report and transmit a copy of the new marriage certificate to the Secretary of Health; and (4) place the original marriage certificate and all records that relate to the new marriage certificate under seal. The seal may be broken only on order of a court of competent jurisdiction, or if it does not violate the confidentiality of the record, on written order of a designee of the clerk.

After the issuance of a new marriage certificate, any certified copy of the marriage certificate that is issued must be a copy of the new marriage certificate, unless a court of competent jurisdiction orders the issuance of a copy of the original marriage certificate.

Current Law:

Birth Certificates

The Secretary of Health is required or authorized to make a new birth certificate under several specified circumstances. For example, a new birth certificate must be issued (1) for

an individual upon satisfactory proof (as established similar to the provisions under the bill) that the individual has undergone a sex change or has an intersex condition or (2) if unwed parents marry after the birth of the individual or a court order certifies the parentage 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.

Marriage Certificates

In Maryland, individuals may not marry without a license issued by the clerk in the county where the marriage is to be performed. An applicant for a marriage license may apply to the clerk of the circuit court in the county where the marriage ceremony is to be performed. The clerk must keep a marriage license book, which contains a complete record of each license issued, including the name of each individual who intends to be married.

At specific intervals, each clerk must send specified records to the Secretary of Health, including a copy of the record of each marriage that the clerk licenses and records and reports of any changes in a marriage record.

State/Local Fiscal Effect: While the number of individuals who may request a new birth certificate cannot be reliably estimated in advance, it is generally assumed that MDH can accommodate such requests with existing resources. However, there may be operational impacts, including a delayed ability to process such requests. MDH advises that the Secretary of Health has directed the Vital Statistics Administration to modify the birth certificate form so that gender neutral titles (“parent”) are printed next to each parent’s name on a birth certificate and not the designation of “mother” or “father” as allowed to be requested under the bill. MDH further advises that, while the current birth system does not include sex designations of “nonbinary” and “other,” such options will be included in the new system being developed, but those options will not be available until calendar 2022. 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. It is assumed that operations and finances of local health departments are not materially affected.

Although the number of individuals who may request a new marriage certificate cannot be reliably estimated in advance, it is assumed that circuit courts can use existing resources to accommodate any requests. While the bill does not specifically allow for or prohibit the

imposition of fees to obtain a new marriage license, statute sets a \$10 fee for a “replacement” marriage license that is payable to the State general fund.

Additional Information

Prior Introductions: None.

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 Human Services; Department of Legislative Services

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