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The Honorable Joseline A. Pena-Melnyk
House Health and Government Operations Committee
241 Taylor House Office Building
6 Bladen Street
Annapolis, MD 21401

Testimony of Trans Maryland

IN SUPPORT OF

House Bill #1368: Certificates of Birth, Licenses, and Identification Cards -
Sex Designation (Birth Certificate Modernization Act)

To the Chair, Vice Chair, and esteemed members of the Health and Government Operations Committee:

Trans Maryland is a multi-racial, multi-gender, trans-led community power building organization dedicated to Maryland's trans community. Trans Maryland runs the state's largest name and gender marker change program, offering peer-to-peer guidance and financial assistance to Marylanders seeking a name and gender marker change. As part of this work, we have helped hundreds of transgender Marylanders update their identity documents, and we have witnessed firsthand the barriers that existing law creates to trans Marylanders trying to obtain ID documents that affirm their identity and human dignity.

Fortunately, House Bill 1368, the Birth Certificate Modernization Act, will significantly reduce these barriers in three key ways. First, it will create a standardized process by which transgender parents can update their own information on their children's birth certificates, which will make it easier for parents to establish their relationship with their children without outing themselves as trans or their children as having transgender parents. Second, the bill will remove the requirement for transgender people to have the sign off of a medical provider before they can change the gender marker on their own birth certificate—a change that has already been adopted by 14 other states, including Idaho, Nevada, Michigan, and Illinois. Finally, the bill will clarify that individuals may change their Maryland birth certificate to use an X gender marker (defined in the bill as “unspecified or another” gender), bringing Department of Health practice in line with the Maryland Motor Vehicle Administration, which has issued X gender markers per a statutory mandate since 2019.



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Making it Easier for Parents to Amend Their Information on Children's Birth Certificates

For parents across Maryland, there is no document more important for establishing your relationship with your child than that child's birth certificate. Whether you are registering your child up for school, applying for health insurance or public benefits, or simply making sure you have all your documents in order before traveling, your child's birth certificate is your best evidence to prove that you are, in fact, their parent. This is doubly true for parents whose relationship with their own child is often questioned, whether they be adoptive parents, parents in multiracial couples, LGBTQIA+ parents, or a mix of all three.

Unfortunately, there is currently no law, regulation, or standardized departmental process by which transgender parents may update their information on their children's birth certificates. Because of this, many trans parents must provide a stack of documentation to prove that they are in fact the parent listed on the birth certificate, outing themselves in the process, as well as potentially setting their child up for discrimination because they have a trans parent.

Because there is no law or guidance on this issue, many trans parents seeking to update their children's birth certificates are told by staff at the Division of Vital Records that it is impossible to do so or that they must first obtain a court order. Other times, the Division of Vital Records will issue an amended birth certificate that strikes out the parent's former name in a way that is often still readable. While some few are lucky and are given a new (not amended) birth certificate for their child that properly updates the parent's information without outing them as trans, the process is largely a roll of the dice, with some parents having to come back multiple times or even file a costly (and time-consuming) petition with the court.

The Birth Certificate Modernization Act streamlines this whole process, allowing parents to change their information by submission of a simple form and a copy of their court-ordered name change. This will not only simplify matters for trans parents like myself, it will also increase productivity within the Division of Vital Records, as staff will now have a clear process to point to when such requests are made. No longer will each staffer be required to reinvent the wheel.

Removal of Requirement for Medical Sign-Off for Gender Changes

Under existing Maryland law, adopted a decade ago in 2015, transgender people born in Maryland may change the gender marker on their Maryland birth certificate by submitting either a court order recognizing their gender identity or a form signed by a medical provider affirming that



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they have undergone treatment related to their gender identity. The Birth Certificate Modernization Act will streamline this process by eliminating the need for transgender people to acquire medical sign-off, reducing costs for both the individual and the state, decreasing burdens on our already overworked healthcare system, and bringing Maryland law in line with that of 14 other states that already permit self-attestation of gender identity on birth certificates.

Requiring trans people to provide a sign-off from a medical provider is a disproportionate burden on low-income and under-insured trans Marylanders. Many of Trans Maryland's program participants do not have primary care providers, face challenges in finding affirming providers who will take them on as a client because they live in rural areas or underserved suburbs, or simply do not have the time off work or the economic resources for the multiple office visits that are often required.

Even those who do have a regular affirming provider find that getting gender designation letters can be an administrative nightmare, with medical providers frequently filling the forms out incorrectly, failing to provide the forms in a timely manner, or requiring the patient to liaise with multiple different offices to get the form. Our program participants have experienced wait times of over 5 months for an appointment with their medical provider, only to have the provider fail to complete the form accurately for several more months after that initial appointment. This lack of access negatively impacts that transgender individual's ability to ensure their ID documents match, and prevents the individual's ability to seek employment without disclosing their transgender status.

In my own personal case, my provider—a Federally Qualified Health Center specializing in care for the LGBTQIA+ community—required me to make the request not with my doctor, but with the clinic's legal office, where I conducted an intake with a paralegal (in which I repeated information already known by the provider). The paperwork was then sent to my doctor, who signed off on it, then sent it back to the office's legal department. Finally, it was eventually sent back to me. I estimate that this entire process took multiple staff hours of time just to sign a simple form. Had I not been an expert on these issues who worked in transgender law and policy, there is a strong chance I would have been discouraged by the entire process and stopped before I ever got my paperwork finalized. The Birth Certificate Modernization Act will eliminate this burden and risk for other trans Marylanders, so they will not have to go through the same Byzantine process I had to go through.



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But while the Birth Certificate Modernization Act will allow trans individuals to self-attest to our gender identity on Maryland Birth Certificates, it will not open the floodgates to fraud or ill-intent. While the bill removes the requirement for medical sign-off, it *adds* a provision requiring the affirmation of gender identity to be made under penalty of perjury. As such, any effort to change one's gender marker for a fraudulent or criminal purpose could be punished not only for the underlying crime (e.g., fraud), but also for perjury. As such, we strongly believe the Birth Certificate Modernization Act strikes the balance between easing administrative burdens on transgender people, while ensuring accuracy of information.

Finally, because the state ultimately pays at least part of the cost of many of these appointments with health care providers—whether through Medicaid, ACA marketplace plans, or individuals on the state employee health plan—eliminating these unnecessary medical visits will ultimately help to combat Maryland's current deficit, one appointment at a time.

Availability of Third Gender Marker (X) on Maryland Birth Certificates

In 2019, the Maryland General Assembly passed legislation instructing the Motor Vehicle Administration to permit individuals to select the third gender marker of X, defined in statute as “unspecified or other,” in lieu of the traditional M or F designations. Unfortunately, because the 2019 legislation did not directly address the question of Maryland birth certificates, it has led to uncertainty as to whether the Department of Health may also allow people born in Maryland to change their gender marker on their birth certificate to an X. The Birth Certificate Modernization Act ends this uncertainty by expressly stating the Department of Health may use X markers on birth certificates and by making a tiny amendment to the 2019 MVA legislation (changing “other” to “another”) to better match legislation and policies in other jurisdictions.

Currently, 16 states (including Utah) and the District of Columbia permit the selection of a third gender marker (typically an X) on birth certificates, meaning Maryland would be far from unique on this front. The X gender marker is already permitted on Maryland driver's licenses and state ID cards—the Birth Certificate Modernization Act merely brings the Department of Health policy in line with law the General Assembly passed by an overwhelming margin six years ago.

What the Birth Certificate Modernization Act Will Not Do

It is crucial to remember that the Birth Certificate Modernization Act is at its core a bill to modernize the process by which the Department of Health issues birth certificates with updated



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information for transgender individuals and their children. Despite likely fearmongering from opponents, the bill does not substantively change Maryland law or policy in other arenas.

In particular, the Birth Certificate Modernization Act *will not*:

- *Change the medical standards of care for transgender adults or youth;*
- *Affect how housing decisions are made for incarcerated transgender people;*
- *Alter existing processes for obtaining driver's licenses or state IDs;*
- *Amend Maryland's nondiscrimination or hate crimes laws, which already treat gender identity as a protect class;*
- *Change how gender is designated on birth certificates at the time of birth; or*
- *Allow individuals to change the gender designation on their Maryland birth certificate for fraudulent or criminal purposes.*

Conclusion

House Bill 1368 is a straightforward procedural bill designed to make it easier for transgender individuals to update their own and their children's birth certificates to more accurately reflect who they are, so that they and their families are not unnecessarily subjected to discrimination when required to present the birth certificate as an identity document. It implements changes Maryland has already had in place for six years for driver's licenses and state ID cards—changes that have not in that time caused the sky to fall and have not opened a Pandora's box of unanticipated problems. Instead, it has merely improved the ability of transgender Marylanders to obtain affirming ID documents and minimize risk of discrimination. As we have established, this is all the Birth Certificate Modernization Act will do as well.

For these reasons, Trans Maryland urges a favorable report on House Bill 1368.

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Birth Certificate Modernization Act HB 1368 FAQ

- Inconsistent application of policies at Maryland Department of Health Vital Statistics Administration leads to inability for Marylanders to access accurate birth certificates for themselves or their children.
- Bring gender marker policies at Maryland Department of Health Vital Statistics Administration in line with those issued by other state agencies (E.g. the Maryland Motor Vehicle Administration re: driver's licenses/state IDs/permits, and by the Maryland Clerks of Court re: Marriage Certificates).
- 16 states + DC allow residents to mark an X on their birth certificates.

THIS BILL WILL:

- Enable transgender parents to prove they are related to their own children after they have been granted an order of legal name change through the Maryland Courts.
- Clarify that an X marker is permitted on Maryland certificates of birth.
- Ensure existing birth certificates previously issued by Maryland Department of Vital Statistics remain valid.
- Ease the administrative burden of accessing accurate documents for the transgender community, particularly low income transgender people.
- Require attestation of gender on birth certificates to be made under penalty of perjury.

THIS BILL DOES NOT:

- Change the existing state policies in regards to housing incarcerated transgender people or participation in school sports.
- Change the medical standards of care for transgender health for adults or youth.
- Impact existing processes for obtaining state ID.
- Alter or amend Maryland's nondiscrimination laws, hate crimes law, etc., which already treat gender identity as a protected class.
- Change how gender is designated on birth certificates at the time of birth.
- Allow individuals to change the gender designation on their birth certificate for fraudulent or criminal purposes.

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14 States **ALLOW** self-selection of gender on Birth Certificates:

Idaho	New Mexico	Maine	Rhode Island
Nevada	Washington State	Massachusetts	New Jersey
Illinois	Vermont	New York	
Michigan	Oregon	California	

16 States plus the District of Columbia **ALLOW X** gender markers on Birth Certificates

Utah	Nevada	Massachusetts	Oregon
New Mexico	Vermont	Washington State	New Jersey
Michigan	Rhode Island	Colorado	New York
Maine	Connecticut	Illinois	California

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Supporting Organizations

