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March 30, 2026

The Honorable Heather Bagnall
241 Taylor House Office Building
6 Bladen Street
Annapolis, MD 21401

Testimony in Support with Amendment of Senate Bill 626, Certificates of Birth, Licenses, and Identification Cards - Sex Designation (Birth Certificate Modernization Act)

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

I write today in strong support of Senate Bill 626, the Birth Certificate Modernization Act (“BCMA”), a bill that I have been fighting for for nearly six years. While my testimony today is in my individual capacity, my work on the BCMA began in late 2020 when I served as Legal Director of FreeState Justice, continued through my tenures as Senior Policy Counsel of the National Center for Transgender Equality (now Advocates for Trans Equality) and Policy Director of Trans Maryland, and continues to this day. Indeed, given the Trump Administration’s attack on transgender people across the country, the BCMA is needed far more now than it was when I first discussed it with then-Delegate Lisa Belcastro, who served as a member of this committee’s predecessor.

The Origin and Long Fight for the BCMA

Delegate Belcastro first reached out to me in the fall of 2020 after being contacted by several constituents who had experienced a problem she had never encountered: they had attempted to update their names on their children’s birth certificates, but were told by the Division of Vital Records that this was either impossible or that if it could be done, their children would be issued amended birth certificates that crossed out the parents’ former legal names and typed the new name above, clearly outing the parents as transgender and the children as having transgender parents. Delegate

Belcastro rightly saw this as an injustice and asked me in my capacity as Legal Director of FreeState Justice what could be done to resolve the situation. After some discussions, we decided the best solution was to bring a bill during the 2021 session that would address this issue as well as several related issues relating to both birth certificates and marriage certificates. That 2021 became the basis of two bills in 2022—House Bill 369 (enacted as Chapter 540), a first-in-the-nation law that allowed individuals to update their names on marriage records, and House Bill 370, which is the predecessor to Senate Bill 626, the bill under consideration today.

The 2022 bill—and each version since, including Senate Bill 626—sought to address three major issues with Maryland’s birth certificate status quo. First, it created a standardized process for parents who had changed their names for any reason to update their information on their children’s birth certificates without them being marked as amended. Second, it removed the requirement for the sign-off from a medical provider before transgender Marylanders could change the sex designation on their birth certificates. Third, it clarified that a third sex marker, X—which had been available on Maryland driver’s licenses since 2019—was also available on Maryland birth certificates.

Debate on the House Bill 370 in the Health and Government Operations Committee largely focused not on whether it should be possible for transgender Marylanders to update the gender marker on their birth certificates—after all, this question had been resolved by the Maryland General Assembly in 2015 and was an is permitted under current law—but instead on what standard should apply when a request was made to change the sex marker of a minor. As drafted, the House Bill 370 would have permitted parents to request that their child’s sex marker on their birth certificate be updated without the sign-off of a medical provider, but required that this request be made under penalty of perjury so that parents could not make do so for illegal or fraudulent purposes.

Ultimately, it was made clear to Delegate Belcastro and to myself that HGO was not willing to pass House Bill 370 as drafted during an election year. After discussions with committee leadership, all parties agreed to an amendment that would maintain the status quo for minors, but implement the other changes in the bill. Unfortunately, a miscommunication between committee leadership and committee staff led to the amendment being drafted incorrectly, causing the committee to miss the deadline to pass it prior to 2022’s Crossover Day. Committee leadership accepted full responsibility for the situation and made clear that when Delegate Belcastro brought the bill the following year, it would be prioritized by the incoming Chair.

Unfortunately, when the 2023 legislative session came around, Delegate Belcastro was no longer in the House of Delegates due to the effects of redistricting, while I had moved from FreeState Justice to the National Center for Transgender Equality and was then focusing primarily on issues affecting the transgender community nationally. Instead, the 2023 version of the BCMA, House Bill 361, was being championed by Delegate Stephanie Smith—who was not a member of HGO—and Lee Blinder at Trans Maryland. While the two fought hard to get House Bill 361 passed, the House and Government Operations Committee ultimately lost the will to pass the bill after the extended fight to pass House Bill 283, the Trans Health Equity Act.

Recognizing that the 2023 defeat was due at least in part to House Bill 361's sponsor not being a member of HGO, there was an extended effort to find an alternative sponsor who was on the committee. These efforts proved fruitless in 2024, leading to the BCMA not being introduced for the first time since 2021.

By late 2024, Delegate Ashanti Martinez and Senator Clarence Lam agreed to sponsor the BCMA in their respective chambers in 2025 as House Bill 1368 and Senate Bill 314, respectively. The 2025 versions of the BCMA also for the first time had the full support of both the Maryland Department of Health and of Governor Wes Moore.

Alas, the state's extreme budget deficit cast a dark cloud over the entire 2025 legislative session, leading Senate President Bill Ferguson to instruct the Senate Finance Committee and other committees to table not only the BCMA, but any bills that might potentially split the Senate Democratic Caucus until after the budget was resolved. With Senate Bill 314 dead in the Senate, House leadership refused to grant House Bill 1368 to a vote in HGO—a move that is understandable given the Senate President's position and yet deeply frustrating, given how far the second Trump Administration's attacks on transgender people had already gone by March of 2025.

With the continued support of the Moore-Miller administration, the BCMA was once more introduced by Senator Lam and Delegate Martinez as Senate Bill 626 and House Bill 1589. (The House version of the bill was held until after the bill submission deadline to ensure that it would not move unless and until the Senate moved SB 626.) Contrary to his position in 2025, Senate President Bill Ferguson has been a strong advocate for the BCMA this session, ensuring that it was introduced, moved through both Senate Finance and Judicial Proceedings, and ultimately passing on the Senate floor on Crossover Day, guaranteeing the bill a hearing in the House.

Unfortunately, as part of the legislative wrangling to get the BCMA through the Senate, the bill was amended in two significant ways. I turn now to these amendments.

The Lam Amendment—Necessary, if not Ideal

The first of the two amendments, which was introduced by Senator Lam himself, amends the BCMA to maintain the requirement for a medical sign-off for sex changes on the birth certificates of minors. This amendment follows the compromise reached between Delegate Belcastro, myself, and then-HGO Vice Chair, now-Speaker Joseline Peña-Melnyk in 2022.

While I continue to believe that the language as amended puts unnecessary burdens on supportive parents of transgender children, especially at a time when access to gender-affirming healthcare for minors is under significant attack by the Trump Administration and many providers are fleeing from the market, after speaking with numerous transgender Marylanders and the parents of transgender minors, I recognize that while this compromise is not ideal, it is ultimately necessary to get this crucial legislation across the finish line, especially in the Senate.

As such, I encourage the House to maintain the language of Senator Lam's amendment to Senate Bill 626.

The McKay Amendment—Harmful and Unnecessary

The second amendment to Senate Bill 626, which was introduced by Senator McKay and accepted by Senator Lam and the broader Senate without any discussion or debate, appears on its face merely to maintain birth information history records for the purpose of genealogical research. Unfortunately, the creation of these records could be abused by ill-intentioned parties—including in the Trump Administration—to create lists of transgender Marylanders and the parents of transgender Marylanders. Given the Trump Administration's extensive subpoenas to Children's Hospital and other providers of transition-related care to minors requiring them to provide the names of patients, as well as the record of states like Texas bringing child protective services complaints against affirming parents of transgender children, it is only a matter of time before the records that would be created by the McKay amendment were used to target transgender people and their families.

While the McKay amendment does include a provision that updated birth information history is sealed by default, that seal may be broken "on order of a court of competent jurisdiction." Given the rightward swing of the federal judiciary—especially the Supreme Court of the United States—it is only a matter of time before a federal court issues an order unsealing Maryland birth information histories and requiring the information therein to be provided to the Trump Administration.

For these reasons, I and other advocates strongly believe the McKay amendment proves a significant—if unintended—threat to the lives of transgender Marylanders and their families. Indeed, were it a choice between the BCMA—a bill that I have worked on for over five years and that contains many of my own words in its text—passing with the McKay amendment or dying once again, I would rather see the bill die. The potential for harm is simply too great, especially in our current political environment.

Furthermore, there is simply no evidence that the McKay amendment would improve access to genealogical data. Under current law, the Department of Health is required to maintain a copy of the original certificate of birth, and while under seal, those original birth certificates may be access via court order or order of a designee of the Secretary of Health. The new birth information history records—which would be an additional, third, document in the Department’s files—would also be obtainable under exactly the same conditions. In other words, if someone knows or suspects that a birth certificate has been changed, they may simply go through the process to request the original birth certificate, rather than twice to first request the birth information history record and then again to request the original birth certificate.

The birth information history record ultimately does nothing to facilitate genealogical research and may in fact inhibit it. On the other hand, the mere existence of a birth information history record would make it significantly easier for ill-intentioned third parties to search for all instances in which a gender marker had been changed, as these changes would be plainly recorded in the record itself.

Ultimately, then, the McKay amendment creates an unnecessary and outright Byzantine solution to a problem that doesn’t exist, while also creating significant new threats to Maryland’s transgender community and our families. For these reasons, it is absolutely critical that the McKay amendment be stripped from Senate Bill 626 before it is passed by the House.

For these reasons, I encourage the Health Committee to adopt a Favorable Report with Amendments to Senate Bill 626.

Sincerely yours,

A handwritten signature in black ink that reads "Charlotte Persephone Hoffman". The signature is written in a cursive, flowing style.

Charlotte Persephone Hoffman



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February 23, 2026

The Honorable Biedle
Senate Finance Committee
3 East Miller Senate Office Building
Annapolis, Maryland 21401

The Honorable William C. Smith, Jr.
Senate Judicial Proceedings Committee
2 East Miller Senate Office Building
Annapolis, Maryland 21401

Testimony of Trans Maryland

IN SUPPORT OF

**Senate Bill #626: Certificates of Birth, Licenses, and Identification Cards -
Sex Designation (Birth Certificate Modernization Act)**

To the Chairs, Vice Chairs, and esteemed members of the Finance and Judicial Proceedings Committees:

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, Senate Bill 626, 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—and, indeed, anyone who has changed their name for any reason—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 Nevada, Michigan, and Illinois. Finally, the bill will clarify that individuals may change their



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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 per a statutory mandate issued X gender markers without issue since 2019.

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 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 parents who have changed their names for any reason may update their information on their children’s birth certificates. Because of this, many trans parents—alongside abuse survivors, victims of crime, and others who have changed their names—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 parents seeking to change their names on 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 revealing their former name—and potentially putting them at risk of violence or discrimination—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 parents like myself who have changed our names, it



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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 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.

The situation has only become more dire over the past thirteen months. With the second Trump Administration's attacks on access to transition-related care, we have seen providers withdraw from the market entirely rather than risk losing all Medicare or Medicaid funding. As a result, the healthcare practices that continue to provide care have found themselves picking up the slack, having to serve more and more patients with less and less funding. Asking providers to spend their precious moments filling out unnecessary paperwork in this environment—especially when the paperwork could potentially be used against them by the federal government in a frivolous investigation down the line—is a waste of Maryland's limited medical resources.

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



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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.

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



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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 seven 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 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;*
- *Affect the ability of Marylanders to obtain federal documents like a passport or Social Security card*
- *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.*



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Conclusion

Senate Bill 626 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 Senate Bill 626.

TRANS MARYLAND



Support the Birth Certificate Modernization Act (SB 626 & HB 1589)

The Birth Certificate Modernization Act (Senate Bill 626, House Bill 1589) will make it easier for parents to update their information on their children's Maryland birth certificates, as well as modernize the process for transgender Marylanders updating the gender marker on their own birth certificates.

THE PROBLEMS ADDRESSED BY THE BCMA:

- Marylanders who change their names for any reason—whether they are transgender, abuse survivors, victims of crime, etc.—have no consistent way to request an update of their own information on their children's birth certificates.
- Transgender Marylanders who want to update the gender markers on their Maryland identity documents are subjected to different rules at different agencies. The Motor Vehicle Administration and State Board of Elections have allowed self-selection of gender since 2019, while the Maryland Department of Health requires attestation by a medical or mental health provider.
- At a time when they are under attack by the federal government, medical and mental health providers are spending precious time filling out paperwork instead of treating patients.

THIS BILL WILL:

- Enable parents who have legally changed their names to prove they are related to their own children.
- Reduce the administrative burden on over-worked medical providers, as well as on members of the transgender community (especially low-income trans people) seeking to update their ID documents.
- Cut state costs to Medicaid spent on unnecessary appointments with providers to fill out paperwork.
- Adopt consistent state requirements across agencies for updating gender markers on ID.
- Bring Maryland policy in line with the 13 states that allow self-attestation of gender, as well as the 16 states, DC, and Puerto Rico that allow X gender markers on reissued birth certificates.
- Require attestation of gender on birth certificates to be made under penalty of perjury.

THIS BILL DOES NOT:

- Amend existing state law or policies regarding housing incarcerated transgender people or participation in school sports.
- Change the medical standards of care for transgender health for adults or youth.
- Impact or change existing processes for obtaining driver's licenses or state IDs.
- 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.

TRANS MARYLAND

Supporting Organizations



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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February 21, 2022

The Honorable Shane Pendergrass
House Health and Government Operations Committee
Room 241
House Office Building
Annapolis, Maryland 21401

Testimony of FreeState Justice

IN SUPPORT OF

HB0370: Certificates of Birth – Issuance of New Certificates – Sex Designation

To the Honorable Chair Shane Pendergrass, Vice Chair Joseline Pena-Melnyk, and esteemed members of the Health and Government Operations Committee:

FreeState Justice is Maryland's lesbian, gay, bisexual, transgender, and queer (LGBTQ) civil rights advocacy organization. Each year, we provide free legal services to dozens, if not hundreds, of LGBTQ+ Marylanders who could not otherwise be able to afford an attorney, as well as advocate more broadly on behalf of the LGBTQ+ community.

FreeState Justice's identity documents practice, which centers on helping transgender Marylanders obtain legal name changes and update their identity documents, is a cornerstone of our legal advocacy work. Over the past decade, FreeState Justice and our panel of pro bono attorneys has helped hundreds of trans Marylanders update their identity documents.

Having accurate and affirming identity documents is critical to navigating through our world. Being forced to present inaccurate ID that outs you as transgender can lead to awkward, tense, and ultimately unsafe situations. You never know how someone will react when they realize you or a family member are transgender, or

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FreeState Justice, Inc. (formerly FreeState Legal Project, Inc., merging with Equality Maryland) is a social justice organization that works through direct legal services, legislative and policy advocacy, and community engagement to enable Marylanders across the spectrum of lesbian, gay, bisexual, transgender, and queer identities to be free to live authentically, with safety and dignity, in all communities throughout our state.

how others around you who overhear will respond. ID that outs you as trans can also contribute to discrimination in employment, education, housing, and other areas.

We write today in support of House Bill 370, which builds on the important legislation Maryland has adopted over the past decade to allow transgender Marylanders to update their—and their children’s—identity documents. HB370 will create a standard procedure for transgender parents wanting to update their own names and gender designations on their children’s birth certificates, will clarify that the Department of Health may use a third gender marker (“X”) to designate the gender of nonbinary Marylanders, and will streamline the often burdensome process of changing the gender marker on one’s own Maryland birth certificate. Together, these changes will bring Department of Health policy in line with policies implemented by the Maryland Motor Vehicle Administration since 2019, as well as join a growing consensus of other states and the federal Department of State.

While they are used less frequently as ID documents than driver’s licenses or other state ID cards, birth are required on a routine basis and in a variety of circumstances to establish an individual’s identity or citizenship or to prove that a relationship exists between parent and child. Birth certificates are one of a limited number of documents (and are by far the most commonly available) that may be used to prove employment eligibility or to enroll a child in school. Children’s birth certificates are also routinely requested by employers, insurance companies, and government agencies when establishing benefits eligibility, e.g., for health insurance. Carrying a child’s birth certificate to establish parentage may also be necessary or advisable when travelling, especially when travelling internationally.

Without updated birth certificates, Marylanders are required to out themselves or their family members, making each of these interactions an opportunity for discrimination. Employers, landlords, school officials, and others often start acting differently once they realize the individual, their spouse, or their parent is transgender.

While Maryland enacted legislation in 2015 (now codified in Health—General section 4-211) to make it easier for transgender Marylanders to update their own birth certificates, significant barriers remain in place. First, the 2015 legislation does not specifically address the birth certificates of the children of transgender individuals, leading to confusion and inconsistent enforcement at the Division of Vital Records. Many parents are initially told that they cannot update their children’s birth certificates, while others are issued amended birth certificates that merely strike out the parent’s former name or gender designation, rather than a new birth certificate, as would be available under HB370. This bill would standardize the process, and would, in fact, bring it in line with the procedures

already used by the Division of Vital Records when issuing new birth certificates for transgender individuals themselves.

Second, while existing legislation does not limit Maryland birth certificates to only the binary “male” or “female” gender markers, and, in fact, Maryland law recognizes the existence of nonbinary individuals, the Division of Vital Records has yet to issue birth certificates with a third gender marker. Because a third gender marker—an “X”—has been available on Maryland driver’s licenses since 2019, a significant number of nonbinary Marylanders have found themselves with identity documents that are inconsistent with each other, at least some of which do not affirm their gender identity or their human dignity. Twelve states have already moved to allow for a third gender marker on birth certificates, and the federal Department of State has announced that it is currently in the process of updating internal systems and processes to allow individuals to adopt a third gender marker on their passports and consular records of birth abroad. It is time that Maryland join this growing number of jurisdictions in affirmatively allowing a third gender marker on birth certificates, as well as bring Division of Vital Records practice in line with the MVA and other state agencies, including the Board of Elections.

Finally, HB370 would also streamline the process by which transgender individuals may update the gender on their birth certificates. Under current law, transgender individuals are required to either obtain a court order recognizing their gender identity or submit documentation signed by a medical provider affirming that they have undergone transition-related care or have been diagnosed with an intersex condition. HB370 would eliminate the requirement for affirmation from a medical provider, and would instead allow transgender Marylanders to affirm their gender identity under penalty of perjury.

In our experience representing transgender clients across the state, we have found that the requirement for medical certification is often a stumbling block in updating birth certificates. It can be especially burdensome for individuals living outside of major metropolitan areas, especially in Western Maryland or on the Eastern Shore, where trans-affirming medical providers can be sparse and, where they exist, are often not included in the client’s insurance network. Many transgender Marylanders thus find themselves having to pay out of pocket to have providers fill out a simple form.

Currently, ten states and the federal Department of State allow transgender individuals to affirm the gender on their birth certificates without certification by a medical provider. Moreover, self-attestation of gender has been used by Maryland’s Motor Vehicle Administration since 2019 without incident.

Based on the experiences in Maryland and other states, there is no reason to believe that streamlining the process to change the gender marker on one's own birth certificate will result in unforeseen issues. There has been no rush elsewhere by individuals to fraudulently change their birth certificates for nefarious purposes. Even so, HB370 protects against that eventuality by requiring that the affirmation of one's gender identity be made under penalty of perjury, allowing for prosecution in this unlikely event.

Moreover, HB370 does nothing to amend Maryland's current laws protecting individuals from discrimination on the basis of gender identity, or to other laws or procedures governing the treatment of transgender individuals, such as the housing of transgender inmates by the Department of Public Services and Correctional Services. HB370 merely allows 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.

For these reasons, FreeState Justice urges a favorable report on House Bill 370.



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The Honorable Shane E. Pendergrass
House Health and Government Operations Committee
Room 241
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Testimony of FreeState Justice

IN SUPPORT OF

HB1203: Certificates of Birth and Marriage Certificates - Issuance of New Certificates - Sex Designation

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

FreeState Justice is a legal advocacy organization that seeks to improve the lives of low-income LGBTQ+ Marylanders, as well as advocate on issues affecting the broader LGBTQ+ community in Maryland. As part of this mission, FreeState Justice represents dozens, if not hundreds, of LGBTQ+ clients each year on matters relating to their sexual orientation or gender identity.

Importance of Birth Certificates and Marriage Certificates as Identity Documents

FreeState Justice's identity documents practice, which centers on helping transgender Marylanders obtain legal name changes and update their identity documents, is a cornerstone of our work. Over the past decade, FreeState Justice and our panel of pro bono attorneys has helped approximately 500 trans Marylanders update their identity documents.

Having accurate and affirming identity documents is critical to navigating through our world. Being forced to present inaccurate ID that outs you as transgender can lead to awkward, tense, and ultimately unsafe situations. You never know how someone will react when they realize you are trans, or how others around you who overhear will respond. ID that outs you as trans can also contribute to discrimination in employment, housing, and other areas.

Fortunately, the Maryland General Assembly has been among the vanguard in expanding access to identity documents for transgender individuals. In 2015, for instance, this body enacted legislation, now codified in Health—General section 4-211, that instructs the Department of

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Health to issue new (not amended) birth certificates for transgender individuals born in Maryland.

Unfortunately, that legislation and others have left a few unanticipated gaps, leaving transgender Marylanders unable to obtain several types of affirming ID, including new birth certificates for the children of transgender parents and new marriage certificates for transgender individuals who remain with their spouse post-transition. Neither of these were intentionally left out of earlier legislation—they were simply issues the sponsors and legislative committees didn't think of at the time the bills were considered.

While they are used less frequently as ID documents, children's birth certificates and marriage certificates are both required on a routine basis and in a variety of circumstances to establish that a relationship exists between the individuals. Both, for instance, are often required by employers and by government agencies when establishing benefits eligibility, e.g., for health insurance. In addition, parents are required under a number of situations to provide a copy of their child's birth certificate to establish the parent/child relationship, such as when enrolling the child for school or when traveling.

Without updated birth or marriage certificates, Marylanders are required to out themselves or their partners, making each of these interactions an opportunity for discrimination. Employers, landlords, school officials, and others often start acting differently once they realize the individual, their spouse, or their parent is transgender.

Birth Certificates for Children of Transgender Marylanders

Unfortunately, under current law, there are significant issues for transgender Marylanders seeking to update their children's birth certificates or their own marriage certificates.

At present, the Department of Health does not have a consistent policy for issuing new birth certificates to individuals with transgender parents. In many cases, individuals are issued amended—rather than new—birth certificates, which merely strike out the former name and gender designation of the parent and write the new information above. As you might imagine, these amended birth certificates do little to alleviate the concerns of transgender Marylanders about being forcibly outed.

Indeed, it was because of these concerns that in 2015 the Maryland General Assembly adopted legislation expressly requiring the Department of Health to issue *new* birth certificates. The birth certificate provisions of House Bill 1203 would merely correct a gap inadvertently left open in that original legislation. Indeed, it adopts the same legal evidentiary standard as the existing legislation, but merely expands its applicability to the birth certificates of individuals with transgender parents.

Marriage Certificates for Transgender Marylanders

There is currently no official or standardized procedure for issuing new marriage certificates after a party to the marriage has transitioned or even simply changed their name. This lack of a



procedure leads to significant confusion, not only among transgender Marylanders seeking to update their marriage certificates, but also among county clerks asked to do so.

Transgender Marylanders who have tried to update their marriage certificates are routinely told that doing so is impossible. County clerks have even been known to tell people that the only way to do it is to get divorced and then remarry, an astonishing suggestion that flies in the face of Maryland's public policies in favor of both marriage and judicial economy. Moreover, it's not clear that a couple attempting to divorce under these circumstances would have grounds to do so under state law.

In limited cases, Maryland courts have issued one-off orders to county clerks to issue a new marriage certificate. There is, however, no statute, court rule, or even appellate case governing that process, and both the general public and the county clerks are largely unaware that it's an option at all. Even if it were well-publicized, however, it's not clear why transgender Marylanders should be required to obtain two separate court orders to update their marriage certificates.

As with birth certificates, FreeState Justice strongly believes there should be a process for obtaining an updated marriage certificate that does not out one of the parties to others as transgender without their consent.

By creating a process whereby transgender individuals can update their marriage certificates and their children's birth certificates, HBI 203 would protect the privacy and safety of trans Marylanders and their families, reduce the likelihood that they will be exposed to unnecessary discrimination and violence, and create a standardized system for both the Department of Health and for the county clerks.

For these reasons, FreeState Justice respectfully urges a favorable report.

