

## **RESOLUTION 07-05-2008**

### **DIGEST**

#### Gender Identity: Change of Gender on Birth Certificate

Amends Health & Safety Code section 103425 to eliminate surgical treatment as a requirement for change of gender and name on a birth certificate.

### **RESOLUTIONS COMMITTEE RECOMMENDATION**

#### **DISAPPROVE**

#### History:

No similar resolutions found.

#### Reasons:

This resolution amends Health & Safety Code section 103425 to eliminate surgical treatment as a requirement for change of gender and name on a birth certificate. This resolution should be disapproved because this change would lessen society's ability to ensure privacy and security of its citizens.

Health & Safety Code section 103425 currently ensures privacy and security in public places by requiring applicants to prove complete transformation to the opposite sex by means of verified surgical procedures. Applicants must secure a declaration from a physician documenting the surgical treatments used to accomplish the gender change. These safeguards are necessary to ensure the privacy and safety of citizens in hospitals, public restrooms, schools, and correctional facilities, and to strengthen the nation's ability to verify identity. Additional safeguards are needed to guard against abuse of the process as it affects numerous activities and regulated behavior, including amateur and professional sports.

Transgender advocates estimate the cost of reassignment surgery and related services to be as much as \$50,000. Though this cost may exclude many citizens, ensuring privacy and safety in public facilities is an important public policy and outweighs the cost associated with requiring surgical treatment for this change. Eliminating the surgery requirement could additionally exacerbate the nation's current struggle to streamline identification methods and complicate homeland security systems.

The use of the phrase "licensed medical professional" is vague and could result, for example, in a respiratory care therapist acting as the licensed medical professional verifying the change. Expanding the list of professionals who can attest to the legitimacy of the gender change would complicate the verification process, and would require amendments to generally accepted standards of care and treatment methods.

Although the problems sought to be addressed here are appreciated, the lack of safeguards and the lack of definition of the triggering event which would constitute a gender change, require disapproval.

### **TEXT OF RESOLUTION**

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend California Health & Safety Code Section 103425 to read as follows:

1    § 103425  
2       Whenever a person born in this state has been found by a psychologist, psychiatrist,  
3 physician, or other licensed medical professional to legitimately identify as a member of  
4 the opposite sex and therefore to require a change of gender on his or her birth certificate,  
5 ~~undergone surgical treatment for the purpose of altering his or her sexual characteristics to~~  
6 ~~those of the opposite sex,~~ a new birth certificate may be prepared for the person reflecting  
7 the change of gender and any change of name accomplished by an order of a court of this  
8 state, another state, the District of Columbia, or any territory of the United States. A  
9 petition for the issuance of a new birth certificate in those cases shall be filed with the  
10 superior court of the county where the petitioner resides, and such superior court shall not  
11 require any proof whatsoever that such person has undergone any surgical treatment  
12 whatsoever to alter his or sexual characteristics to those of the opposite sex in order to  
13 grant such petition for the issuance of the new birth certificate.

(Proposed new language underlined; language to be deleted stricken.)

**PROPONENT:** Bay Area Lawyers for Individual Freedom

#### **STATEMENT OF REASONS**

Existing Law: The law currently imposes an onerous, impractical and discriminatory requirement that a person identifying as a member of the opposite gender undergo surgical treatment to alter his or her sexual characteristics in order to obtain a simple new birth certificate reflecting that person's legitimate gender self-identity.

The Resolution: This resolution would delete the requirement in Health & Safety Code Section 103425 that a person identifying as a member of the opposite gender obtain surgery in order to obtain a gender change in that person's birth certificate.

The Problem: The law currently requires a person to undergo expensive surgical operations in order to simply obtain a letter change (e.g., "M" to "F" or "F" to "M") in that person's birth certificate to conform to that person's legitimate gender self-identity. Some people are unable to undergo surgery because they cannot afford access to these health care options, and the Health & Safety Code unfairly discriminates between those who can afford to have these operations and those who cannot when it implies that such surgical operations are a legitimate pre-requisite to obtaining conformance of one's birth certificate to one's own gender identity.

The resolution solves this problem by providing that a much less expensive finding from a licensed psychologist, psychiatrist, physician or other licensed medical professional that a petitioner legitimately identifies as a member of the opposite sex and requires a change of gender on his or her birth certificate can form the basis for a petition for issuance of a new birth certificate reflecting this change. Moreover, this resolution eliminates any need by any superior

court to require any proof whatsoever that a petitioner has undergone any surgery whatsoever in order to grant a petition for issuance of a new birth certificate.

**IMPACT STATEMENT:**

This resolution does not affect any other statute or rule.

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**RESPONSIBLE FLOOR DELEGATE:**

**COUNTERARGUMENT**

**ORANGE COUNTY BAR ASSOCIATION**

The law allows those persons who have had a sex change operation to have the sex on their birth certificates changed. This resolution seeks to allow those persons who have not had a sex change operation to change the sex designation on their birth certificates if a “licensed medical professional” finds that they “legitimately identify as a member of the opposite sex”. This resolution does not require that the medical professional have any specific training in the area of transgender issues. A nurse or dentist could qualify as the “licensed medical professional”. Allowing those persons who have all of the physical attributes to claim to be a member of the opposite sex will cause chaos in certain sectors. Once a birth certificate is changed, that person would clearly have the right to the use of public restrooms and locker rooms designated for persons of the sex on their birth certificates. Athletics often divides competitions based upon the participants’ sex. Generally, this compensates for the fact that men and women have different athletic abilities. It would be wrong to allow a person who has all the physical attributes of a man to compete in athletic events in women’s events. Our penal system also divides our population according to sex. If a person is physically “male” but that person’s birth certificate has been changed to state “female”, into which prison population should the law assign such a person? Where a birth certificate is changed after a surgical procedure, there is some sense of finality. If the standard is only that a medical professional found that the person “identified as a member of the opposite sex”, however, such a finding could be repeatedly be changed. A birth certificate should reflect the physical attributes of the person whether achieved naturally or via surgery.