

REPORT OF THE BOARD OF TRUSTEES

B of T Report 15-JUN-21

Subject: Removing the Sex Designation from the Public Portion of the Birth Certificate
(Resolution 5-I-19)

Presented by: Russ Kridel, MD, Chair

Referred to: Reference Committee D

1 Resolution 5-I-19, introduced by the Medical Student Section and referred by the House of
2 Delegates asked that:

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4 Our American Medical Association advocate for the removal of sex as a legal designation on
5 the public portion of the birth certificate and that it be visible for medical and statistical use
6 only.

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BACKGROUND

In the United States (U.S.), state laws require birth certificates to be completed for all births. Federal law mandates collection and publication of births and other vital statistics data, which occurs through cooperation between the Centers for Disease Control and Prevention's (CDC) National Center for Health Statistics (NCHS) and the states.¹ The National Vital Statistics System (NVSS) is the basis for the Nation's official statistics on births, deaths, marriages, and divorces.²

U.S. Standard Certificates of Live Birth

The U.S. Standard Certificates of Live Birth form is the primary means by which uniformity of data collection and processing is achieved, though each jurisdiction may adapt the standards to local needs.³ The standard form is two pages in length and consists of 58 questions.⁴ The questions include information on the child, and its mother or father. The child's sex is a question on the standard form. Typically, the form is completed by the parent(s) of the child, then certified by a medical professional, and submitted to the state, county, or municipality, which issues the final birth certificate back to the parent(s).

Data collected by state and territorial vital record entities are shared with the federal government under the Vital Statistics Cooperative Program (VSCP), which provides funding to jurisdictions to provide the standardized data to NCHS. These data are some of the most fundamental sources of health information, as they help in monitoring prevalence of disease, life expectancy, teenage pregnancy, and infant mortality, and in evaluating the effectiveness of public health interventions.⁵

Birth Certificates

The birth certificate is an official government-issued record of a person's birth, printed on security paper and including an official raised, embossed, impressed or multicolored seal.⁶ The birth certificate is different from the Standard Certificate of Live Birth form as there is much less detail contained on the birth certificate. Generally, a birth certificate document will show a person's

1 name, birthdate, place of birth, sex, parents' names, parents' age, and parents' place of birth.
2 However, the information included on the birth certificate varies by state. Birth certificates are not
3 public documents since they contain personal information. However, individuals are required to
4 use their birth certificates for several reasons, including to obtain passports or driver's licenses, as
5 well as registering for school, adoptions, employment, marriage or to access personal records.⁷

6 7 *Sex Designation and Vital Records*

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9 Sex designation refers to the biological difference between males and females, which is what is
10 recorded on the birth certificate. While there is no clear standard for defining sex designation, it is
11 typically determined at birth by a child's physician or parents based on external genitalia. In cases
12 where the anatomy is ambiguous or there are differences of sex development, diagnostic tests may
13 be conducted and the parents and the medical team work together to assign sex at birth.

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15 Gender is a social construct that describes the way persons self-identify or express themselves. A
16 person's gender identity may not always be exclusively male or female and may not always
17 correspond with their sex assigned at birth. Birth certificates have changed over time. In 1977, the
18 Model State Vital Statistics Act for the first time addressed amending an individual's sex
19 designation:

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21 Upon receipt of a certified copy of an order of (a court of competent jurisdiction) indicating the
22 sex of an individual born in this State has been changed by surgical procedure and that such
23 individuals name has been changed, the certificate of birth of such individual shall be amended
24 as prescribed in Regulation 10.8 (e) to reflect such changes.⁸

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26 Today, the majority of states (48) and the District of Columbia allow people to amend their sex
27 designation on their birth certificate to reflect their individual identities, though this process varies
28 by state.⁹ Two states, Tennessee and Ohio, do not allow amendments of the sex marker on a birth
29 certificate.¹⁰ Thirty-one states and DC have an administrative process and 17 states require a court
30 order.¹¹ Levels of medical evidence required to make these amendments also vary by jurisdiction,
31 ranging from not requiring the signature of a medical provider to requiring proof of surgery.¹² Ten
32 states currently allow for a gender-neutral designation on the birth certificate, typically an "X."¹³

33 34 EXISTING AMA POLICY

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36 AMA Policy H-65.967, "Conforming Sex and Gender Designation on Government IDs and Other
37 Documents," states that "the AMA supports every individual's right to determine their gender
38 identity and sex designation on government documents and other forms of government
39 identification." The AMA supports policies that allow for a sex designation or change of
40 designation on all government IDs to reflect an individual's gender identity, as reported by the
41 individual and without need for verification by a medical professional. The AMA also supports
42 policies that include an undesignated or nonbinary gender option for government records and forms
43 of government-issued identification, in addition to male and female. Furthermore, the AMA
44 supports efforts to ensure that the sex designation on an individual's government-issued documents
45 and identification does not hinder access to medically appropriate care or other social services in
46 accordance with that individual's needs. Existing AMA policy does not address the removal of sex
47 as a legal designation on the public portion of the birth certificate.

1 DISCUSSION

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3 Vital events reporting is mandatory and is completed for nearly all births because birth certificates
4 constitute proof of birth and citizenship. Birth certificates are used by the Social Security
5 Administration to generate Social Security numbers, by the U.S. Department of State as evidence
6 for passports, and by state departments of motor vehicles to issue driver's licenses.¹⁴ They are
7 essential to participate in essential activities such as school and employment. Historically, birth
8 certificates have also been used to discriminate, promote racial hierarchies, and prohibit
9 miscegenation.¹⁵ For that reason, the race of an individual's parents is no longer listed on the public
10 portion of birth certificates. However, sex designation is still included on the public portion of the
11 birth certificate, despite the potential for discrimination.

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13 *Considerations for Transgender, Intersex, and Nonbinary Communities*

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15 Designating sex on birth certificates as male or female suggests that sex is simple and binary.¹⁶
16 However, about 1 in 5,000 people have intersex variations; 6 in 1,000 people identify as
17 transgender; and others are nonbinary (meaning they do not identify exclusively as a man or a
18 woman) or gender nonconforming (meaning their behavior or appearance does not conform to
19 prevailing cultural and social expectations about what is appropriate to their gender).¹⁷ For these
20 individuals, having a gender identity that does not match the sex designation on their birth
21 certificate can result in confusion, possible discrimination, harassment and violence whenever their
22 birth certificate is requested. Furthermore, public display of sex designation on the birth certificate
23 requires disclosure of an individual's private, sensitive personal information.

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25 Birth certificates are also viewed as important documents to prove one's identity. For the
26 transgender community, the ability to change one's sex designation on birth certificates remains an
27 important issue and is one for which there has been a significant legislative and judicial advocacy
28 to change laws across the country.¹⁸ If sex designation is removed from the public portion of the
29 birth certificate, there are concerns that transgender individuals may not have government
30 documentation confirming their gender identity. However, in most states, a person can change the
31 gender marker on their driver's license, though the process varies by jurisdiction.¹⁹ A passport can
32 also serve this purpose. U.S. State Department policy provides that individual can obtain a passport
33 reflecting their current gender by submitting certification from a physician confirming that they
34 have had appropriate clinical treatment for gender transition, though no specific medical treatment
35 is required.²⁰

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37 Ten states currently allow for a gender-neutral or "X" designation on birth certificates, which
38 stands for "undisclosed" or "other." Some individuals may not want a gender-neutral designation
39 on their or their child's birth certificate due to concerns about stigma. However, for others, the
40 display of a more accurate gender marker provides validation. Gender-neutral birth certificates also
41 allow people of any gender increased privacy around gender on their identification.²¹ While some
42 states have moved toward nonbinary or gender-neutral birth certificates, these options are not
43 widely available across all government documents. Nineteen states and the District of Columbia
44 currently allow a gender-neutral designation on driver's licenses.²² The U.S. Department of State
45 does not currently offer an option for a gender-neutral designation on U.S. passports.²³

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47 *National Association for Public Health Statistics and Information Systems*

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49 The AMA contacted the National Association for Public Health Statistics and Information Systems
50 (NAPHSIS), the nonprofit organization representing the state vital records and public health
51 statistics offices in the United States, to confirm its position on removal of sex from the public

1 portion of the birth certificate. NAPHSIS indicated that it does not have an official position on this
2 issue as an association but acknowledged that vitals were never intended to collect information on
3 gender identity, only sex at birth.

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5 *AMA LGBTQ Advisory Committee Opinion*

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7 It is the recommendation of the AMA’s LGBTQ Advisory Committee that our AMA should
8 advocate for removal of sex as a legal designation on the public portion of birth certificates.
9 Assigning sex using a binary variable and placing it on the public portion of the birth certificate
10 perpetuates a view that it is immutable and fails to recognize the medical spectrum of gender
11 identity. Participation by the medical profession and the government in assigning sex is often used
12 as evidence supporting this binary view. Imposing such a categorization system risks stifling self-
13 expression and self-identification and contributes to marginalization and minoritization. The
14 Advisory Committee recognizes that moving sex designations below the line of demarcation will
15 not address all aspects of the inequities transgender and intersex people face, but such an effort
16 would represent a valuable first step, with the authoritative voice of our AMA leading the way.

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18 **CONCLUSION**

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20 Vital statistics data is a fundamental source of health information. In the U.S., the Standard
21 Certificates of Live Birth form is the primary means by which uniformity of data collection and
22 processing is achieved. Birth certificates, on the other hand, are issued by the government to
23 individuals as proof of birth. Sex designation, as collected through the standard form and included
24 on the birth certificate, refers to the biological difference between males and females. Today, the
25 majority of states (48) and the District of Columbia allow people to amend their sex designation on
26 their birth certificate to reflect their individual gender identities, but only 10 states allow for a
27 gender-neutral designation, typically “X,” on the birth certificate. Existing AMA policy recognizes
28 that every individual has the right to determine their gender identity and sex designation on
29 government documents. To protect individual privacy and to prevent discrimination, U.S.
30 jurisdictions should remove sex designation on the birth certificate. While validation of gender has
31 been raised as a concern with this approach, other government documents could serve this purpose
32 in many jurisdictions. Furthermore, removal of sex designation from the birth certificate would
33 have little to no impact on vital statistics data collected for medical, public health, and statistical
34 purposes.

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36 **RECOMMENDATION**

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38 The Board of Trustees recommends that the following be adopted in lieu of Resolution 5-I-19 and
39 the remainder of this report be filed.

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41 Our American Medical Association will advocate for the removal of sex as a legal designation on
42 the public portion of the birth certificate, recognizing that information on an individual’s sex
43 designation at birth will still be submitted through the U.S. Standard Certificate of Live Birth for
44 medical, public health, and statistical use only. (Directive to Take Action).

Fiscal Note: Minimal – less than \$500

REFERENCES

- 1 Centers for Disease Control and Prevention, National Center for Health Statistics. Available at, <https://www.cdc.gov/nchs/nvss/births.htm>. Accessed July 29, 2020.
- 2 National Center for Health Statistics. National Vital Statistics System. Available at <https://www.cdc.gov/nchs/nvss/index.htm>.
- 3 Brumberg, H., Dozor, D. & Golombek, S. History of the birth certificate: from inception to the future of electronic data. *J Perinatol* 2012; 32, 407–411.
- 4 U.S. Standard Certificate of Live Birth. Available at <https://www.cdc.gov/nchs/data/dvs/birth11-03final-ACC.pdf>. Accessed July 29, 2020.
- 5 NAPHSIS. Vital Statistics: Vital for Research. Available at <https://www.naphsis.org/post/2017/03/15/vital-statistics-vital-for-research>.
- 6 VitalCheck. What is a Birth Certificate? May 2011. Available at <https://www.vitalchek.com/Information/BirthCertificate/What-Is-A-Birth-Certificate.pdf>. Accessed July 30, 2020.
- 7 *Id.*
- 8 National Center for Health Statistics. Revision of the Model State Vital Statistics Act and Model State Vital Statistics Regulations. Available at <https://www.cdc.gov/nchs/data/misc/mvsact77acc.pdf>. Accessed July 31, 2020.
- 9 National Center for Transgender Equity, Summary of State Birth Certificate Gender Change Laws. Updated April 2020. Available at <https://transequality.org/sites/default/files/images/Summary%20of%20State%20Birth%20Certificate%20Laws%20Apr%2028%202020.pdf>. Accessed July 31, 2020
- 10 *Id.*
- 11 *Id.*
- 12 *Id.*
- 13 *Id.*
- 14 National Research Council (US) Committee on National Statistics. Vital Statistics: Summary of a Workshop. Washington (DC): National Academies Press (US); 2009. A, The U.S. Vital Statistics System: The Role of State and Local Health Departments. Available from: <https://www.ncbi.nlm.nih.gov/books/NBK219870/>.
- 15 Epps G. How Birth Certificates Are Being Weaponized Against Trans People: A century ago, these documents were used to reinforce segregation. Today, they’re being used to impose binary identities on transgender people. *The Atlantic*. June 8, 2018. Available at <https://www.theatlantic.com/ideas/archive/2018/06/how-birth-certificates-are-being-weaponized-once-again/562361/>.
- 16 Shteyler VM, Clarke JA, Adashi EY. Failed Assignments - Rethinking Sex Designations on Birth Certificates. *N Engl J Med*. 2020 Dec 17;383(25):2399-2401. doi: 10.1056/NEJMp2025974. Epub 2020 Dec 12. PMID: 33314873.
- 17 *Id.*
- 18 Lambda Legal. Identity Documents. Transgender Rights Toolkit: A Legal Guide For Trans People and Their Advocates. Available at https://www.lambdalegal.org/publications/trt_transgender_id. Accessed
- 19 Movement Advancement Project. Identity Document Laws and Policies. Available at https://www.lgbtmap.org/equality-maps/identity_document_laws. Accessed March 1, 2021.
- 20 U.S. Department of State, Change of Sex Marker. Available at <https://travel.state.gov/content/travel/en/passports/need-passport/change-of-sex-marker.html>. Accessed July 31, 2020.
- 21 National Center for Transgender Equality. FAQ: Gender-Neutral IDs. Available at <https://transequality.org/issues/resources/faq-gender-neutral-ids>. Accessed March 1, 2021.
- 22 Movement Advancement Project. Identity Document Laws and Policies. Available at https://www.lgbtmap.org/equality-maps/identity_document_laws. Accessed March 1, 2021.
- 23 U.S. Department of State, Change of Sex Marker. Available at <https://travel.state.gov/content/travel/en/passports/need-passport/change-of-sex-marker.html>. Accessed July 31, 2020.