



**Statement by Chris Erchull,
Staff Attorney, GLBTQ Legal Advocates & Defenders (GLAD),
before the House Committee on Health, Human Services and Elderly Affairs
in Support of House Bill 1577,
An Act Relative to Initiating Amendments and Corrections to Birth Records**

Honorable Chairperson Weber and Members of the Committee:

I am grateful for the opportunity to testify in support of House Bill 1577, entitled An Act Relative to Initiating Amendments and Corrections to Birth Records.¹ This legislation would allow individuals born in New Hampshire to obtain birth records that correctly reflect their gender identity without the anachronistic requirement of first obtaining a court order, including those individuals who identify as neither exclusively male nor exclusively female. It is a logical extension of past updates already made to allow transgender people to obtain accurate gender markers on their drivers' licenses, and it will make everyone more secure.

As an attorney with GLBTQ Legal Advocates & Defenders (GLAD), New England's leading legal rights organization dedicated to ensuring legal equality for LGBTQ people and people living with HIV, I can attest to the importance of treating all people in New Hampshire with dignity and respect in all aspects of civic life. For many Granite Staters, the opportunity to obtain a birth certificate accurately reflecting their gender is a critical move in the direction toward full equality.

In January of 2015, the Division of Motor Vehicles amended its regulations to implement a process by which people can change the gender designation on their drivers' licenses or nondrivers' identification cards.² This update to the regulations, which brought New Hampshire in line with the current medical understanding of gender transition and with common trends in identification documents, allowed transgender individuals a way to obtain correct identification after transitioning without the need for a court order. In January of 2020, the DMV began to offer people who identify as neither male nor female to option to obtain a driver's license or state ID card with "X" as the gender marker,³ an option currently available to residents in twelve other states⁴ and two cities.⁵

As a result of these recent updates, many New Hampshire residents are, for the first time, in possession of a driver's license that accurately reflects their authentic gender identity. At the

¹ This Committee supported a similar bill in the 2019 session, House Bill 446, after which the House and Senate voted to pass the bill. The Governor vetoed the bill in July of 2019.

² See Saf-C 1011.03 (as amended by #10775), http://www.gencourt.state.nh.us/rules/state_agencies/saf-c1000.html.

³ See RSA § 260:21(III) ("The identification card shall bear the . . . gender indicated as 'M' for 'male,' 'F' for 'female,' or 'X' for 'other' . . ."), effective January 1, 2020; see also RSA §§ 260:21a(II) & 21b(II) (same); RSA § 263:5(II)(b) ("The application for a driver's license shall include . . . [a] physical description of the applicant, including gender indicated by checking either 'M' for 'male,' 'F' for 'female,' or 'X' for 'other,' height, weight, eye and hair color").

⁴ Arkansas, California, Colorado, Connecticut, Maine, Maryland, Massachusetts, Minnesota, Nevada, Oregon, Vermont, and Washington.

⁵ New York City and Washington, D.C.

same time, because the policy around birth records has not been updated, many of those same residents are forced to have inconsistent documents. This inconsistency is not only impractical (for administrative reasons, for law enforcement, etc.), it is also potentially harmful.

Gender transition, the standard treatment for the medical condition known as gender dysphoria, often involves updating legal identification documents to reflect a patient's correct gender identity.⁶ Any decisions about whether and when it is appropriate to obtain a corrected birth record should be between the individual and the individual's health care providers; a court order unnecessarily burdens both the individual and the court system. Under the current outdated legislation, a judge must decide whether an individual has undergone a "sex change,"⁷ a standard that has been interpreted inconsistently by courts, underscoring that there is no public benefit to judicial, as opposed to medical, determinations of sex or gender identity.

Individuals in an increasing number of states are able to obtain corrected birth records indicating a gender that is neither male nor female.⁸ As the National Center for Transgender Equality explains: "People whose gender is not male or female^[9] use many different terms to describe themselves, with non-binary being one of the most common. Other terms include genderqueer, agender, bi-gender, and more."¹⁰ Non-binary individuals who suffer from gender dysphoria experience a deep persistent and insistent incongruence with the sex assigned to them at birth.

Consistent with today's medical care standards, a growing number of states are updating identification documents to provide their residents with accurate gender markers beyond M or F. Non-binary gender markers are now increasingly being used in commercial settings, too; for example, "U.S. airlines value a culture of diversity and inclusion, both in the workplace

⁶ See *Glossary of Gender and Transgender Terms*, Fenway Health (Jan. 2010), https://fenwayhealth.org/documents/the-fenway-institute/handouts/Handout_7-C_Glossary_of_Gender_and_Transgender_Terms_fi.pdf; see also World Professional Association for Transgender Health, *Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People 10* (2012) ("options . . . to help alleviate gender dysphoria" include "[c]hanges in name and gender marker on identity documents"), available at https://www.wpath.org/media/cms/Documents/SOC%20v7/Standards%20of%20Care_V7%20Full%20Book_English.pdf.

⁷ RSA 5-C:87(V).

⁸ One year ago, only four states allowed people to have an "X" gender marker on their birth certificates. That number has more than doubled in the past year. See *Summary of State Birth Certificate Gender Change Laws*, National Center for Transgender Equality (last updated January, 2020), <https://transequality.org/sites/default/files/docs/resources/Summary%20of%20State%20Birth%20Certificate%20Laws%20Jan%202020.pdf>.

⁹ Separately, those born with intersex characteristics may not have a sex assigned at birth that is male or female. Although most people who are intersex (those "born with physical or biological sex characteristics . . . that do not fit the traditional definitions of male or female") have male or female gender identities, others will choose to identify as neither. See World Health Organization, *FAQ on Health and Sexual Diversity* (2016), available at <http://origin.who.int/gender-equity-rights/news/20170227-health-and-sexual-diversity-faq.pdf>. An estimated 0.05% to 1.7% of people are born intersex. See United Nations Free & Equal, *Fact Sheet Intersex*, available at <https://www.unfe.org/wp-content/uploads/2017/05/UNFE-Intersex.pdf>.

¹⁰ See *Understanding Non-Binary People: How to Be Respectful and Supportive*, National Center for Transgender Equality (Oct. 5, 2018), <https://transequality.org/issues/resources/understanding-non-binary-people-how-to-be-respectful-and-supportive>.

and for our passengers, and we work hard each day to accommodate the needs of all travelers, while delivering a safe, secure and enjoyable flight experience.”¹¹

The U.S. Department of Health and Human Services also recognizes that some individuals have a gender identity that is neither exclusively male nor exclusively female, defining “sex” under the Affordable Care Act to include “gender identity,” which refers to “an individual’s internal sense of gender, which may be male, female, neither, or a combination of male and female, and which may be different from an individual’s sex assigned at birth.”¹²

By streamlining the process for correcting birth records and introducing a gender marker representing gender identities that are neither male nor female, this bill operates to allow Granite Staters a standardized and consistent manner by which to obtain correct identification documents.

I urge you to support HB 1577 to fulfill the promise of HB 1319 in 2018 and HB 669 in 2019, which opened the door for transgender and gender non-binary residents to be acknowledged and valued as citizens of New Hampshire. Thank you for your consideration, and I hope you will further the promise of fairness and freedom for all Granite Staters by supporting House Bill 1577.

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¹¹ See Amanda Jackson, *Airlines will add new gender options for non-binary passengers*, CNN (Feb. 18, 2019), <https://www.cnn.com/travel/article/gender-options-airline-passengers-trnd/index.html>.

¹² See 45 C.F.R. §§ 92.4, 92.206.