



**Statement by Chris Erchull and Anthony Lombardi,  
GLBTQ Legal Advocates & Defenders (GLAD)  
with the Massachusetts LGBTQ Bar Association,  
before the Joint Committee on Transportation,  
in Support of Senate Bill no. 2282,  
An Act Relative to Gender Identity  
on Massachusetts Identification**

Honorable Chairperson Boncore, Chairperson Straus, and Members of the Committee:

Thank you for taking the time to consider my support for Senate Bill no. 2282, an Act relative to gender identity on Massachusetts identification. This bill represents a step forward in ensuring that everyone born in, residing in, or with connections to Massachusetts has access to state identification documents and other records that accurately reflect their authentic gender identity.

As attorneys with GLBTQ Legal Advocates & Defenders (GLAD), New England's leading legal rights organization dedicated to ensuring equality for LGBTQ people and people living with HIV, we urge the Committee to vote in favor of S.2282.<sup>1</sup> The Massachusetts LGBTQ Bar Association joins GLAD on this testimony and in support of S.2282. The bill is a simple solution to a problem faced by nonbinary Baystaters.

### **Who are nonbinary people?**

The term nonbinary refers to any gender identity that is neither exclusively male nor exclusively female. For most of us, our gender identity aligns with our sex assigned at birth. A person whose gender identity differs from the sex they were assigned at birth can be described as transgender. While most transgender people have a male or female gender identity, others are nonbinary. Simply put, nonbinary is an umbrella term to describe people with a gender identity outside of the male/female binary.<sup>2</sup>

Some nonbinary people describe themselves as having a gender identity that is between male and female. Others may say their gender identity is fluid. Some may say they have no gender identity at all. All nonbinary people have one thing in common: it is inaccurate to describe their gender as being male or female.<sup>3</sup> Currently, many Massachusetts

---

<sup>1</sup> GLAD supports S.2282 with an amendment to ensure that transgender individuals retain the ability to correct the name listed on their birth certificates. The text of House Bill no. 3126 appropriately addresses this problem.

<sup>2</sup> See National Center for Transgender Equality, *Understanding Non-Binary People: How to Be Respectful and Supportive* (Oct. 5, 2018), <https://transequality.org/issues/resources/understanding-non-binary-people-how-to-be-respectful-and-supportive>.

<sup>3</sup> See *id.*

documents, birth certificates in particular, do not provide a way for nonbinary people to identify themselves correctly.

## **Why is it important to include “X” markers on Massachusetts birth records?**

Dignity. For many nonbinary people, official state recognition of their gender identity is an important signal of governmental acknowledgement and respect for their authentic selves. In fact, for some nonbinary people, not having access to identification documents that reflect their gender identity can cause serious harm.

Gender transition, which is 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.<sup>4</sup> Fortunately, the General Laws provides a path for transgender people born in the Commonwealth to correct the gender marker on their birth records from M to F or from F to M.<sup>5</sup> For those who do not identify as male or female, however, there is no way to obtain a birth certificate that affirms their gender identity. This can be especially harmful for young people for whom a birth certificate is typically their primary form of legal identification.

Privacy. When a nonbinary person is compelled to share their Massachusetts birth certificate, whether it is for school enrollment, employment, or any other reason, they are essentially forced to disclose the sex assigned to them at birth. Forced disclosure of this information is an invasion of privacy, particularly in circumstances in which there is no legitimate basis for the disclosure. For young nonbinary people, especially, it is important for families to retain the right to decide if and when to disclose a child’s birth sex at school or anywhere else, as a matter of privacy and a matter of personal safety.

Consistency. As of late 2019, the Massachusetts Registry of Motor Vehicles allows nonbinary people to obtain drivers’ licenses and state identification cards with an X gender marker.<sup>6</sup> While this development has been remarkably important for many nonbinary Massachusetts residents to obtain accurate identification, there is a resulting inconsistency for those born in Massachusetts who are unable to update their birth certificates to match their drivers’ licenses.

Beyond Massachusetts, at least ten other states provide identification documents with X markers.<sup>7</sup> Many schools and non-governmental organizations also provide people with

---

<sup>4</sup> See Fenway Health, *LGBTQIA+ Glossary of Terms for Health Care Teams* (February 2020), <https://www.lgbtqihealtheducation.org/publication/lgbtqi-glossary-of-terms-for-health-care-teams/>; 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/SOC%20V7\\_English2012.pdf?\\_t=1613669341](https://www.wpath.org/media/cms/Documents/SOC%20v7/SOC%20V7_English2012.pdf?_t=1613669341)

<sup>5</sup> G.L. c. 46, § 13(e).

<sup>6</sup> Danny McDonald, *Non-binary Gender Designation is Now Available on Mass. Licenses*, The Boston Globe (Nov. 12, 2019), <https://www.bostonglobe.com/metro/2019/11/12/non-binary-gender-designation-now-available-mass-licenses/tYhisCa1QAq66PSdSfsyBK/story.html?event=event25>.

<sup>7</sup> National Center for Transgender Equality, *Summary of State Birth Certificate Gender Change Laws* (Apr. 2020),

the option to select an X marker. The resulting inconsistencies are a source of potential confusion. For example, an individual may use a Massachusetts birth certificate as evidence of eligibility to work in the United States, along with a driver's license with an X marker from another state. The employer may be confused and ask for additional documentation to reconcile the difference between the birth certificate and driver's license.

A person who changes their name through marriage or through a legal name change order has a marriage certificate or a court order, an official document that clarifies any inconsistency between a birth certificate and other identification document. It is rare that a person is in possession of any government-issued document clarifying that they have undergone gender transition. In other words, the inconsistency cannot easily be explained by an official document. It is important for nonbinary people to have access to a birth certificate that matches their driver's license, state-issued identification card, or other governmental or institutional identification document.

Accuracy. Finally, it is not reasonable or practical to require a person who is neither male nor female to be in possession of a document that inaccurately describes their gender as male or female. The Commonwealth has an interest in providing everyone born in Massachusetts access to an accurate birth certificate.

This Legislature has demonstrated leadership in ensuring equality for LGBTQ people for over thirty years. Now is the time for Massachusetts to join the growing number of states affording dignity to those born here who identify neither as male nor female. Thank you for your consideration and your support for S.2282.

June 24, 2021

Submitted by:



Chris Erchull  
Staff Attorney  
GLBTQ Legal Advocates & Defenders  
[cerchull@glad.org](mailto:cerchull@glad.org)  
617-426-1350



Anthony Lombardi  
Legal Fellow  
GLBTQ Legal Advocates & Defenders  
[alombardi@glad.org](mailto:alombardi@glad.org)  
617-426-1350

---

<https://transequality.org/sites/default/files/images/Summary%20of%20State%20Birth%20Certificate%20Laws%20Apr%2028%202020.pdf>.