

2021 – 2022 Legislative Memorandum

**Subject: The Gender Recognition Act
A.5465-C (O'Donnell) / S.4402-A (Hoylman)**

Position: SUPPORT

To rent an apartment, access public benefits, open a bank account, enroll one's child in school, or drive a car, New Yorkers need identity documents. Transgender, gender non-conforming, and non-binary New Yorkers deserve access to identity documents that reflect who they are and enable them to participate fully in society. Inaccurate identity documents can lead to harassment and abuse, particularly from police.¹

The process to change the name or gender marker on a New York identity document is antiquated, cumbersome, and for many, shaming. State law requires applicants to publish their current names, previous or "dead" names, their addresses, their birth dates, and their places of birth in a designated newspaper.² This requirement violates one's privacy and dignity and can put people in danger of discrimination, ridicule, or even violence. Making matters worse, the only gender markers available for some identity documents are "male" and "female," erasing non-binary people entirely.

The Gender Recognition Act, A.5465-C/S.4402-A, would ensure that X gender markers are available on all New York identity documents and create a privacy-protective, streamlined, and non-stigmatizing process for people to change the names and gender markers on their identity documents. The NYCLU strongly supports this legislation and urges its immediate passage.

New Yorkers who need to change the name or gender marker on a New York identity document must run a gauntlet. In addition to the publication requirement, current state law permits judges to require name change applicants to notify or seek consent from a range of parties, including adult petitioners' spouses³ and, in the case of

¹ *E.g. Trans Advocate Sues NYPD for Charging Her with 'False Personation,'* NYCLU, Jan. 22, 2019, <https://www.nyclu.org/en/press-releases/trans-advocate-sues-nypd-charging-her-false-personation>.

² N.Y. Civ. Rights Law § 63 (McKinney).

³ *See* Joint Memo of Support for the Gender Recognition Act from Transgender Legal Defense & Education Fund et. al to the New York State Legislature (2021), https://www.nyclu.org/sites/default/files/field_documents/20210403-jointmemosupport_genderrecognitionact.pdf.

petitioners born outside of the United States, federal immigration agencies⁴ – a requirement that could chill new Americans from seeking identity documents that accurately reflect who they are. When a person seeks to change their gender marker, they must provide medical attestation of their gender, an unnecessarily expensive and burdensome proposition.⁵

For those who are able to run this gauntlet and change their name or gender marker, there is often no mechanism to require third parties, such as schools an individual has graduated from, to honor the name or gender marker change.⁶ Shockingly, the Division of Vital Records has counseled married couples that, if they wish for their names or gender markers to be accurately reflected on an existing marriage certificate, they must divorce and remarry.⁷

And, as described above, even if they are willing to run this gauntlet, non-binary New Yorkers simply cannot get accurate identification, because New York does not offer an X gender marker on drivers' licenses or state IDs. The Department of Health recently announced an administrative change that would allow X gender markers on New York-issued birth certificates.⁸ Although New Yorkers who take advantage of this option, as well New Yorkers who were born in New York City, which has had an X gender marker for birth certificates since 2018,⁹ or in any of the other 12 states that offer X gender markers for birth certificates,¹⁰ are able to obtain accurate birth certificates, these documents may make it perjury for their holders to affirm that they are either male or female in order to obtain a New York state drivers' license or ID.

The Gender Recognition Act, A.5465-C/S.4402-A, would solve each of these problems by:

- creating an X gender marker for New York identity documents,
- permitting individuals to change the name or gender marker on a New York identity document based on self-attestation,
- eliminating the publication requirement,

⁴ *Id.*

⁵ *Id.* (citing 2015 U.S. Transgender Survey: New York State Report (October 2017) <https://www.transequality.org/sites/default/files/USTS%20NY%20State%20Report%20%281017%29.pdf>) (“Transgender people frequently do not have access to appropriate medical care. Nearly one-third (32%) of transgender individuals in New York who saw a health care provider in the previous year reported having a negative experience related to being transgender, including verbal harassment, refusal of treatment, or even physical or sexual assault. Many did not see a doctor when they needed to because they feared mistreatment for being transgender, and more than a quarter of transgender respondents in New York (28%) could not see a doctor because of cost.”).

⁶ *Id.*

⁷ *Id.*

⁸ Email from Matthew McMorrow, Director of LGBTQ Affairs, Office of Gov. Andrew M. Cuomo, to Matthew McMorrow (Sept. 30, 2020, 4:09 pm EST) (on file with the author).

⁹ NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE BOARD OF HEALTH, NOTICE OF ADOPTION OF AMENDMENT TO ARTICLE 207 OF THE NEW YORK CITY HEALTH CODE (2018).

¹⁰ *Equality Maps: Identity Document Laws and Policies*, MOVEMENT ADVANCEMENT PROJECT, http://www.lgbtmap.org/equality-maps/identity_document_laws (last visited May 18, 2021).

- requiring courts to justify by written opinion notice and consent requirements for name changes that exceed statutory requirements,¹¹ and
- requiring third parties, like schools and marriage registrars, to honor name and gender marker changes.

The Gender Recognition Act's provisions are hardly novel. Twenty-six jurisdictions offer X gender markers on birth certificates, state IDs, or both,¹² and twenty-two jurisdictions have no publication requirement for name changes.¹³

As too many states around the country mount legislative attacks on transgender, gender nonconforming, and non-binary youth,¹⁴ New York has an opportunity to serve as beacon. The NYCLU urges the legislature to pass the Gender Recognition Act, A.5465-C/S.4402-A, immediately. Ensuring that all New Yorkers can access accurate identification is not only affirming, it is lifesaving.

¹¹ There are two statutory notice requirements: parental notice for a minors' name changes and notice to the district attorney and court for individuals convicted of particular felonies. N.Y. Civ. Rights Law § 62 (McKinney).

¹² *Equality Maps: Identity Document Laws and Policies*, MOVEMENT ADVANCEMENT PROJECT, http://www.lgbtmap.org/equality-maps/identity_document_laws (last visited May 18, 2021).

¹³ *ID Documents Center*, NAT'L CTR FOR TRANSGENDER EQUALITY, May 2020, <https://transequality.org/documents>.

¹⁴ *See generally Special Report: Chase Stangio on the Legislative Attack on Trans Youth*, ACLU, April 15, 2021, <https://www.aclu.org/news/lgbtq-rights/special-report-chase-strangio-on-the-legislative-assault-on-trans-youth/>.