



COMMENTS OF
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IN **OPPOSITION** TO PROPOSED CHANGES TO **K.A.R. 28-17-20**
KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT,
BUREAU OF EPIDEMIOLOGY AND PUBLIC HEALTH INFORMATICS

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Thank you for the opportunity to provide public comment on the Kansas Department of Health and Environment's proposed changes to Kansas Administrative Regulation 28-17-20, which relates to the process for making changes to birth certificates.

The American Civil Liberties Union (ACLU) of Kansas, a membership organization dedicated to preserving and strengthening the constitutional liberties afforded to every resident of Kansas, **strongly opposes the proposed changes to K.A.R. 28-17-20.**

- **The change will cause serious harm to a small and vulnerable group of Kansans who are transgender.** The policy would unduly burden transgender residents and increase the likelihood that they will face ongoing stigmatization and harassment in their daily encounters. Having a birth certificate that misrepresents one's lived gender or that conflicts with their other identity documents (e.g. driver's licenses and Social Security cards) "outs" a transgender person in any situation in which he or she needs to show the document. Being "outed" in civic, professional, medical, or other settings violates the privacy of transgender people, exposes them to the risk of discrimination based on their transgender status and gender identity, and "may have a deleterious impact on a person's social integration and personal safety."¹ Additionally, it is painful to have a key identity document that conflicts with who you are.

Inaccurate identity documents may invite discrimination against transgender individuals. Some common situations where a birth certificate is required and its failure to match a person's appearance and other identity documents can lead to discrimination include:

- Applications for employment and housing.
- Application for the first issuance of a passport.²
- Application for a mortgage from a large privately-owned mortgage bank.³
- Commencement of a new job, where employment may be contingent on the production of identity documents.

In each of these cases, individuals may be required to produce a birth certificate as well as other identity documents. If these documents fail to match each other, or the person's appearance, the consequences for the individual can be severe, discriminatory, or even dangerous.

Transgender people face pervasive discrimination in many aspects of their lives. For example, in a 2011 national survey nearly half (47%) of transgender persons surveyed

reported being fired, not hired, or denied a promotion because they are transgender.⁴ The lack of proper identification contributes to this discrimination.⁵ In any of the above situations, a transgender person, in providing their identity documents, is forced to disclose their transgender status. In doing so, they are at serious risk of discrimination in housing, public accommodations, and/or employment.

Additionally, some states, such as Kentucky, prohibit transgender people from updating the gender marker on their driver's license unless they can present an amended birth certificate.⁶ Other states, such as Iowa, require either an amended birth certificate or a court order, making it very difficult if not impossible to update the gender on their license. Transgender Kansans who move to those states may be forced to retain not only inaccurate birth certificates, but inaccurate driver's licenses as well.

- **Preventing transgender people from updating identification documents to match their gender identity is inconsistent with medical standards of care.** Obtaining identification that accurately reflects a person's gender is a key part of one's gender transition and often is part of the treatment for gender dysphoria. The World Professional Association for Transgender Health has adopted global Standards of Care for the health of transsexual, transgender, and gender nonconforming people. Among the recognized therapeutic options available to treat gender dysphoria are social changes in gender expression, including "changes in name and gender marker on identity documents."⁷ The inability to obtain accurate identity documents can impede social role transition and have negative effects on a transgender person's health and wellbeing.

The American Psychological Association, for example, has urged governments to provide "access to identity documents consistent with their gender identity and expression which do not involuntarily disclose their status as transgender for transgender people who permanently socially transition to another gender role."⁸

- **The proposed regulation is out of step with nearly every other jurisdiction in the United States.** The proposed regulations would make Kansas one of only four states that preclude transgender people from ever obtaining a birth certificate that matches the gender they live every day.

By contrast, the trend in the federal government and many other states has been to modernize the standards applicable to changing the gender on a transgender person's identity documents to bring them more into line with current medical standards. For example:

- The federal government *does not require surgery* to correct the gender marker for passports, consular reports of birth abroad, green cards, naturalization certificates, and social security records, but instead requires proof of "appropriate clinical treatment for gender transition to the new gender" or evidence that a person is intersex and the gender marker should be corrected.⁹
- Twelve states (California, Connecticut, Hawaii, Iowa, Maryland, Massachusetts, Minnesota, New York, Oregon, Rhode Island, Vermont, and Washington) and the District of Columbia no longer require surgery to correct the gender marker on a birth certificate.¹⁰

The American Medical Association and other leading medical organizations recommend that states eliminate any requirement that an individual undergo surgery in order to update his or her birth certificate and adopt statutes and policies that “acknowledge that the correct course of treatment for any given individual is a decision that rests with the patient and their physician.”¹¹

We urge the **rejection of the proposed changes to K.A.R. 28-17-20** on these grounds.

¹ World Professional Association for Transgender Health, Clarification on Medical Necessity of Treatment, Sex Reassignment, and Insurance Coverage in the U.S.A., at 2 (June 2008) (WPATH Clarification),

<http://www.wpath.org/documents/Med%20Nec%20on%202008%20Letterhead.pdf>.

² <https://travel.state.gov/content/passports/en/passports/first-time.html>

³ <http://www.americanfedmortgage.com/buying-advice/loan-documents-checklist/>

⁴ National Gay and Lesbian Task Force & National Center for Transgender Equality, *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey* 53 (2011).

⁵ National Transgender Discrimination Survey at 139 (40% of transgender people who have shown identification with a gender marker different than their gender presentation reported harassment, while 15% were denied entry or denied service, and 3% reported being assaulted).

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⁷ World Professional Association for Transgender Health, Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People at 10 (7th ver. 2011),

http://www.wpath.org/uploaded_files/140/files/Standards%20of%20Care.%20V7%20Full%20Book.pdf.

⁸ American Psychological Association, *APA Policy Statement: Transgender, Gender Identity, & Gender Expression Non-Discrimination* (August 2008), available at <http://www.apa.org/about/governance/council/policy/transgender.aspx>.

⁹ U.S. Department of State Foreign Affairs Manual, 7 FAM 1300, App. M, Gender Change; 7 FAM 1340, App. M, Amending Gender In Reports of Birth; United States Citizenship & Immigration Services, *Adjudication of Immigration Benefits for Transgender Individuals; Addition of Adjudicator's Field Manual*, Subchapter 10.22.Social Security, Program Operations Manual System, *RM 10212.200 - Changing Numident Data for Reasons other than Name Change - 09/30/2013*.

¹⁰ California Health and Safety Code § 103425-103445; Connecticut Gen. Stat. Ann. § 19a-42; Hawaii Rev. Stat. Ann. § 338-17.7; Maryland Code Ann., Health-Gen. § 4-211; Massachusetts General Laws Ch. 46, §§ 13-E; Minnesota §§ 144.218; New York State Department of Health, Gender Designation Change Policy; Or. Rev. Stat. § 33.460; Rhode Island Code R. § 31-1-29:35.0; 18 V.S.A. § 5112; Washington Department of Health Proc. CHS-B5 (2008); Code of the District of Columbia § 7-210.01

¹¹ Report of the Board of Trustees, American Medical Association, Resolution 5-A-13: *Conforming Birth Certificate Policies to Current Medical Standards for Transgender Patients* (supporting elimination of surgical requirements); Press Release, World Professional Association for Transgender Health (June 16, 2010), (same); Policy Statement, American Psychological Association., *Transgender, Gender Identity, & Gender Expression Non-discrimination* (same).