



NEW YORK  
CITY BAR

**REPORT ON LEGISLATION BY THE  
LESBIAN, GAY, BISEXUAL, TRANSGENDER & QUEER RIGHTS COMMITTEE,  
CIVIL RIGHTS COMMITTEE, AND SEX & LAW COMMITTEE**

**A.5465-D  
S.4402-B**

**M. of A. O'Donnell  
Sen. Hoylman**

AN ACT to amend the Civil Rights Law, the Vehicle and Traffic Law, and the Public Health Law, in relation to enacting the “Gender Recognition Act”; and to repeal subdivision 1 of section 502 of the Vehicle and Traffic Law relating to driver’s licenses.

**The Gender Recognition Act**

**THIS BILL IS APPROVED**

**I. INTRODUCTION**

The Lesbian, Gay, Bisexual, Transgender, and Queer (“LGBTQ”) Rights Committee, the Civil Rights Committee, and the Sex and Law Committee of the New York City Bar Association support the Gender Recognition Act (“GRA” or the “Act”). The Act would update the legal name change process in the state of New York by eliminating the requirement that applicants publish their personal information in a local newspaper and by making it easier for transgender and non-binary applicants to have their name change records sealed. The GRA would also update the process for changing gender markers on New York State birth certificates and New York State driver’s licenses and non-driver’s identification documents, and to add “X” as a gender marker option to these documents.

**II. NAME CHANGES**

When an individual presents official identification with a name that may not match their gender expression or identity, they face an increased risk of harassment and discrimination.<sup>1</sup> Transgender people often face discrimination in employment, public accommodations, and housing. Transgender people have even been detained by police for false personation because

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<sup>1</sup> Jaime M. Grant et al., *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, NAT’L GAY & LESBIAN TASK FORCE & NAT’L CTR. TRANSGENDER EQUALITY 5 (Sep. 11, 2012), [http://transequality.org/PDFs/NTDS\\_Report.pdf](http://transequality.org/PDFs/NTDS_Report.pdf). (All links cited in this report were last checked on June 28, 2021).

**About the Association**

*The mission of the New York City Bar Association, which was founded in 1870 and has 25,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.*

officers perceived a legal name as mismatched with the person's gender presentation.<sup>2</sup> In order to better support transgender residents, New York State must simplify its name change process, which is outdated, onerous, and inaccessible to many.

**a. The Existing Name Change Process**

Currently, New York State requires adults who wish to change their name to file a petition in either Civil Court or Supreme Court.<sup>3</sup> The fee to file a name change petition is \$65 in New York City Civil Court or \$210 in Supreme Court. The filing fee can only be waived if the applicant is indigent and applies to proceed as a poor person.<sup>4</sup> The petition must include the following information, among other things: (1) whether the applicant has previously been convicted of a crime or adjudicated bankrupt; (2) whether there are any judgments or liens against the applicant; (3) whether there are any actions or proceedings pending to which the applicant is a party; and (4) whether the applicant is responsible for child/spousal support obligations.<sup>5</sup> If the petition is filed in New York Civil Court, applicants are frequently required by the attendant judge to attend a hearing and bring identification and original documentation, even when represented by counsel. In Supreme Court, judges review the petition without a hearing.

The name change statute does not explicitly require notice to be given to anyone unless the petitioner is under criminal justice supervision for committing a violent felony offense, in which case the petitioner must notify both the district attorney in the county where the applicant was convicted and the court that entered the conviction.<sup>6</sup> Although the statute contains no other notice requirements, advocates and lawyers report that judges frequently impose arbitrary notice requirements on applicants.<sup>7</sup> Judicially imposed notice requirements include notice to Social Security Administration, the New York City Human Resources Administration, and USCIS.<sup>8</sup> These are particularly dangerous and intimidating for undocumented transgender people. Arbitrary notice requirements also may unnecessarily and prejudicially delay the proceeding, delaying a transgender person from having a gender-affirming name and allowing for continued harassment and discrimination.

After a judge has moved forward with a name change, the petitioner typically must publish a legal notice including their old name, aliases, their new name, their place of birth, the date of

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<sup>2</sup> See Gabriel Arkles and Bobby Hodgson, *A Trans Woman Was Charged With 'False Personation' for Giving the NYPD Her Real Name*, ACLU: SPEAK FREELY (Jan. 24, 2018), <https://www.aclu.org/blog/lgbt-rights/transgender-rights/trans-woman-was-charged-false-personation-giving-nypd-her-real>.

<sup>3</sup> N.Y. Civ. Rights Law § 60 (McKinney 2019).

<sup>4</sup> *Name Change Basics*, N.Y. St. UCS, <https://www.nycourts.gov/courthelp/Namechange/basics.shtml>.

<sup>5</sup> N.Y. Civ. Rights Law § 61 (McKinney 2019).

<sup>6</sup> N.Y. Civ. Rights Law § 62(2) (McKinney 2019).

<sup>7</sup> Interview with Andrew Ortiz, Brooklyn Legal Services (Feb. 8, 2019); Interview with Charlie Arrowood, Transcend Legal (Feb. 22, 2019); Interview with Alejandra Caraballo, LGBT Rights Project, NYLAG (Mar. 1, 2019).

<sup>8</sup> Ortiz, *supra* note 7; Arrowood, *supra* note 7; Caraballo, *supra* note 7.

birth, and their current address in a newspaper in the county in which the order is entered.<sup>9</sup> A petitioner may request a waiver of publication, but the statute only requires the court to waive publication if the totality of the circumstances shows that the applicant’s personal safety would be jeopardized.<sup>10</sup> If a waiver of publication is granted, the court must order that the entire record of the proceeding be sealed.<sup>11</sup> Even when a petitioner asserts in the petition that their safety would be jeopardized by publication, waiver is ultimately discretionary, and many judges appear to grant or withhold waiver arbitrarily. This decision can be appealed by petitioners, but the process causes undue delay, and the name change hearings are not always recorded, making appeals more difficult even when petitioners are represented by counsel.

In addition to delays and other problems associated with these procedural hurdles, the name change process in its current form—both at the hearing stage and during publication—effectively requires transgender petitioners to publicly disclose the fact of their changed gender identities. Although the required information for publication does not explicitly include gender identity, if a petitioner changes their name from a traditionally masculine name to a traditionally feminine name, or vice versa, it has the effect of outing them. This exposes transgender petitioners to a different set of risks than petitioners who are cisgender.<sup>12</sup>

#### **b. Name Changes Under the GRA**

The GRA takes an essential step toward protecting transgender people by eliminating the publication requirement for all name changes and encouraging the court to consider a petitioner’s transgender status as sufficient grounds for sealing the record.

By eliminating the archaic and unnecessary publication requirement, the GRA ensures that transgender New Yorkers and others can access legal name changes without the risks of publicizing personally identifying information, including their gender identity and home address. It further protects the safety of petitioners by encouraging courts to consider sealing court records for transgender petitioners. The name change process would be expedited by weeks, allowing a transgender person to obtain necessary gender affirming identification documents faster and reducing the possibility of harassment and discrimination. Transgender people face disproportionately high levels of violence in virtually all aspects of their lives.<sup>13</sup> Eliminating the publication requirement would also allow transgender people and non-profits that frequently assist them to save on publication costs, which vary substantially depending on where a judge orders that a petitioner publish their name change. For example, this type of legal notice costs \$95 to publish

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<sup>9</sup> N.Y. Civ. Rights Law § 63 (McKinney 2019).

<sup>10</sup> N.Y. Civ. Rights Law § 64-a (McKinney 2019). Note: the statute does not require a petitioner to show that there are individualized and specific threats to their safety, which is a recent change due to the work of advocates.

<sup>11</sup> *Id.*

<sup>12</sup> “Cisgender” is defined as: “of, relating to, or being a person whose gender identity corresponds with the sex the person had or was identified as having at birth.” *Cisgender*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/cisgender>.

<sup>13</sup> See generally HUMAN RIGHTS CAMPAIGN, A NATIONAL EPIDEMIC: FATAL ANTI-TRANSGENDER VIOLENCE IN AMERICA IN 2018 (2018) [https://assets2.hrc.org/files/assets/resources/AntiTransViolence-2018Report-Final.pdf?\\_ga=2.95270044.1252227909.1553540239-1772549041.1553540239](https://assets2.hrc.org/files/assets/resources/AntiTransViolence-2018Report-Final.pdf?_ga=2.95270044.1252227909.1553540239-1772549041.1553540239).

in the Bronx Free Press and \$667 to publish in the New York Times.<sup>14</sup> Allowing transgender petitioners to avoid publishing personally identifying information and to easily seal court records will go a long way toward protecting their safety and security both during the legal name change process and after its conclusion.

### III. GENDER MARKERS

Many transgender people are unable to obtain official identification that accurately reflects their gender identity. In a survey by the Human Rights Campaign, sixty-eight percent of transgender respondents reported that none of their identification documents had both their accurate name and accurate gender marker.<sup>15</sup> Not only can this cause emotional distress for the individual, but it is also a barrier to legal protections and government services and can lead to an increased risk of harassment and violence. In a 2011 study by the National Gay and Lesbian Task Force and the National Center for Transgender Equality, researchers found that “[f]orty percent (40%) of those who presented ID (when it was required in the ordinary course of life) that did not match their gender identity/expression reported being harassed, 3% reported being attacked or assaulted, and 15% reported being asked to leave.”<sup>16</sup> Transgender people can live more safely when they are able to easily update their gender marker on legal documents to match their gender presentation. The GRA would simplify the process, allowing more New Yorkers to have access to accurate identification.

The GRA also adds a third gender marker option, “X,” to driver’s licenses, non-driver’s licenses, and birth certificates for New Yorkers who do not identify as exclusively male or female. It does not require applicants to submit any medical documentation in order to update their gender marker, allowing people to update their gender markers via self-attestation. Thirteen states and the District of Columbia currently allow residents to update gender markers based on self-attestation,<sup>17</sup> and as of January, New York City allows self-attestation for both NYC Municipal IDs (“NYCID”) and for birth certificates.<sup>18</sup> It is essential that self-attestation, and not a letter from a medical provider, be the standard for updating gender markers because it allows transgender people to represent themselves more safely and removes unnecessary barriers.<sup>19</sup> Additionally, the GRA

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<sup>14</sup> Phone interviews with Advertising Departments of New York Times and Legal Notices Department, Bronx Free Press (Nov. 25, 2019).

<sup>15</sup> HUMAN RIGHTS CAMPAIGN, *supra* note 13, at 53.

<sup>16</sup> Grant et al., *supra* note 1, at 5.

<sup>17</sup> Those states are Arkansas, California, Connecticut, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, Oregon, Rhode Island, Vermont, and Washington. *How Trans-Friendly Is the Driver’s License Gender Change Policy in Your State?*, NAT’L CTR. TRANS EQUALITY (Jan. 2020), <https://transequality.org/sites/default/files/docs/resources/Drivers%20License%20Grades%20Jan%202020.pdf>.

<sup>18</sup> Josh Hafner, *Gender “X”: New York City Adds Gender-Neutral Option to Birth Certificates*, USA TODAY (Jan. 3, 2019), <https://www.usatoday.com/story/news/nation/2019/01/03/new-york-city-birth-certificates-now-feature-third-gender-option-x/2472189002>.

<sup>19</sup> Michaé Pulido and Arli Christian, *Who’s the Expert on My Gender? The Importance of Self-Attestation*, MEDIUM (Mar. 16, 2018), <https://medium.com/transequalitynow/whos-the-expert-on-my-gender-the-importance-of-self-attestation-d03ab60a4a37>.

provides a clear and standardized process for updating the gender of a parent on a child's birth certificate by submitting a personal affidavit with no need for medical documentation.

There is a high demand for a simplified gender marker update process. As a result of the ongoing organizing work of activists like the team at the Sylvia Rivera Law Project, New York City's process of updating birth certificates for transgender residents has been streamlined. When advocates pushed to amend New York City's law to better respect transgender lives, there was a substantial increase in updated birth certificates. As the New York City Department of Health and Mental Hygiene reported to the press, "since 2014, when the city made it easier for transgender New Yorkers to amend their birth certificates . . . over 1,000 birth certificates were amended, compared to just 20 per year in the previous four years."<sup>20</sup>

The GRA parallels a similar law in New York City that went into effect in 2019 that allows people born within the five boroughs to change their gender marker to X and to do so by self-attestation.<sup>21</sup> Currently, because there is no parallel provision in state law, state agencies such as the Department of Motor Vehicles face mismatched categories from the state and local level and are unable to issue consistent identifications. This may result in unnecessary litigation and state expenses defending the City's law. Adopting the GRA would greatly reduce administrative burdens, reduce the chance of litigation, and align the State and the City with best practices to affirm transgender lives.

New York State would not be alone in updating its gender marker options. Several other states have added X as a gender marker to official identification. In February 2019, New Jersey became the fourth state to recognize nonbinary or undesignated genders on birth certificates.<sup>22</sup> Thirteen other states also offer a third gender marker option on birth certificates.<sup>23</sup> Twenty states and the District of Columbia currently allow residents to mark M, F, or X on their driver's license.<sup>24</sup> New York City also introduced the option of an X marker on its birth certificates and on IDNYC.<sup>25</sup>

In streamlining the amendment process and including a third gender option for New York state birth certificates, driver's licenses, and non-driver's identification cards, the GRA will

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<sup>20</sup> Jen Chung, *NYC Officially Starts Offering Non-Binary Gender Option On Birth Certificates*, GOTHAMIST (Jan. 1, 2019), [http://gothamist.com/2019/01/01/nyc\\_officially\\_starts\\_offering\\_non-.php](http://gothamist.com/2019/01/01/nyc_officially_starts_offering_non-.php) (internal quotation marks omitted).

<sup>21</sup> New York City, Int. 954-A, Amending sex designation on birth records and the issuance of birth records (Oct. 9, 2018).

<sup>22</sup> N.J. P.L.2018, c.58 (July 3, 2018).

<sup>23</sup> California, Colorado, Connecticut, Illinois, Maine, Nevada, New Jersey, New Mexico, Ohio, Oregon, Rhode Island, Utah, and Washington. *Identity Document Laws and Policies*, MOVEMENT ADVANCEMENT PROJECT, [https://www.lgbtmap.org/equality-maps/identity\\_document\\_laws](https://www.lgbtmap.org/equality-maps/identity_document_laws).

<sup>24</sup> Arkansas, California, Colorado, Connecticut, Hawaii, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Hampshire, New Jersey, New Mexico, Oregon, Pennsylvania, Rhode Island, Utah, Vermont, Virginia and Washington allow residents to mark their gender as X on driver's licenses. MOVEMENT ADVANCEMENT PROJECT, *supra* note 23.

<sup>25</sup> *See On Its Fourth Birthday, Mayor de Blasio and First Lady McCray Announce IDNYC Adds Third Gender Designation*, NYC (Jan. 15, 2019), <https://www1.nyc.gov/office-of-the-mayor/news/032-19/on-its-fourth-birthday-mayor-de-blasio-first-lady-mccray-idnyc-adds-third-gender> (NYCID); Hafner, *supra* note 18 (birth certificates).

make accurate and official identification documents available to all New York State residents and ensure uniformity of law across the state.

#### **IV. CONCLUSION**

The New York City Bar Association supports the enactment of the GRA.

Lesbian, Gay, Bisexual, Transgender & Queer Rights Committee  
Danielle King and Geoffrey L. Wertime, Co-Chairs

Civil Rights Committee  
Zoey Chenitz and Kevin E. Jason, Co-Chairs

Sex & Law Committee  
Farah Diaz-Tello and Olympias Iliana Konidaris, Co-Chairs

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\* This report was first issued in April 2020 during the terms of the following chairs: Lesbian, Gay, Bisexual, Transgender & Queer Rights Committee (Noah E. Lewis and Geoffrey L. Wertime); Civil Rights Committee (Zoey Chenitz); Sex and Law Committee (Mirah E. Curzer and Melissa S. Lee).