(CT:CON-653; 03-31-2016)

a. If an applicant advises that the gender on her/his birth document mistakenly lists the wrong gender due to typographical error, and there is sufficient time before the listed departure date, refer the applicant to the appropriate issuing vital records office to have the error corrected (IRL 875-33).

b. If the departure date is imminent, you may issue a limited one year validity passport, listing the applicant's requested gender, using endorsement code 46 (see 7 FAM 1300 Appendix B.) A corrected certified copy of the amended birth document will be required before issuance of a full validity passport in the requested gender.

7 FAM 1380 APPENDIX M QUESTIONS

(CT:CON-653; 03-31-2016)

a. Passport agencies and centers must contact AskPPTAdjudication@state.gov for specific guidance.

b. U.S. embassies and consulates must contact Ask-OCS-L@state.gov for specific guidance.

7 FAM 1390 APPENDIX M UNASSIGNED

7 FAM 1300 APPENDIX M EXHIBIT 1 MODEL LETTER FOR LICENSED PHYSICIAN CERTIFYING TO THE APPLICANT'S GENDER CHANGE/TRANSITION

(CT:CON-653; 03-31-2016)

Licensed Physician's Letterhead
(Physician's Address and Telephone Number)

I, (physician's full name), (physician's medical license or certificate number), (issuing U.S. State/Foreign Country of medical license/certificate), am the physician of (name of patient), with whom I have a doctor/patient relationship and whom I have treated (or with whom I have a doctor/patient relationship and whose medical history I have reviewed and evaluated).

(Name of patient) has had appropriate clinical treatment for gender change to the new gender (specify new gender male or female).

Or

(Name of patient) is in the process of gender transition to the new gender (specify new gender male or female). (**NOTE TO PHYSICIAN ONLY:** Use this sentence **only** when the patient has just begun or is in the early stages of his or her gender transition.)

I declare under penalty of perjury under the laws of the United States that the forgoing is true and correct.

Signature of Physician

Typed Name of Physician

Date

United States Department of State

Washington, D.C. 20520

UNCLASSIFIED
MEMORANDUM

March 1, 2016

TO: CA/PPT – Regional Directors, Directors, Assistant Directors

THROUGH: CA/PPT/I – Florence G. Fultz

FROM: CA/PPT/S – Barry J. Conway

SUBJECT: Court-Ordered Gender Change Not Acceptable

The Department's policy in 7 FAM 1300 Appendix M on adjudicating gender change cases provides specific guidance on exactly what must be submitted to document a gender change.

However, some states allow an individual to change her/his gender by order of the court. If an applicant submits a court-ordered gender change, you must require evidence that the applicant has changed her/his gender in accordance with 7 FAM 1300 Appendix M.

7 FAM 1300 Appendix M will be updated to clarify that such court orders are not acceptable.

The passport agency/center management team **must** meet to ensure that this policy is clearly understood and, subsequently, that the policy is discussed with the passport specialists at the next semi-monthly adjudication training to ensure the same. Any questions should be routed to CA/PPT/S/A at AskPPTAdjudication@state.gov as soon as they are identified.

United States Department of State

Washington, D.C. 20520

May 1, 2017

Exhibit 38 – Male/Female Designation of Sex in U.S. Vital Records, such as Birth Certificates, Driver's Licenses, and Identification Cards

In verifying a passport applicant's identity, the Department matches the applicant's stated biographical information, including sex, against numerous other documents and information sources – including birth records, driver's licenses, court orders and law enforcement records – and a number of governmental and private data bases. The Department uses information derived from passport applications, databases, previous passports, government-issued identification, and other identifying evidence to adjudicate the identity and citizenship claims of an applicant. *See* 22 C.F.R. § 51.23. The rigorous process of adjudicating a passport applicant's identity and citizenship is necessary to prevent identity theft and passport fraud, and to ensure the accuracy, integrity, and reliability of U.S. passports.

As the prevalence of birth certificates, driver's licenses, and government-issued identification cards increased during in the twentieth century, these credentials evolved from documents possessed by a small percentage of the nation's population, to documents that are now available to nearly all passport applicants, and which serve as primary proof of identity and/or evidence of citizenship. To the extent that such credentials include a holder's sex, it is reflected as either male or female. To date, no applicant for a U.S. passport has submitted as evidence of their identity and citizenship an original (*i.e.*, un-amended) birth certificate, driver's license, or non-driver identity card reflecting a sex other than male or female. Moreover, the Department is unaware of any vital record or motor vehicle authority in any domestic jurisdiction that has a policy providing for issuance of an original birth certificate, a driver's license, or a non-driver identity card designating the sex of a person as "intersex," "non-binary," or any designation other than male or female.[1] Applicants generally submit birth certificates and government issued identification cards, such as driver's licenses, to establish their identity and citizenship. The Department expects state and local governments to issue reliable documents, which the Department can use to adjudicate the citizenship and identity of passport applicants and to prevent identity theft and passport fraud. The Department cannot unilaterally adopt a new, third sex designation for use in U.S. passports that does not correspond to reliable, government-issued documentation, without compromising its established system for ensuring the integrity of U.S. passports as proof of identity and citizenship.

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[1] A small number of jurisdictions are considering changes to their longstanding binary policy. In Oregon, the Department of Transportation, Driver and Motor Vehicle Services Division, filed a Notice of Proposed Rulemaking on March 15, 2017, to update that state's DMV systems to permit an "X" to be used in the sex field of driver's licenses and identification cards to indicate that sex is not specified or has been changed to "non-binary" by a court order. *See* Notice of Proposed Rulemaking Hearing, Mar. 15, 2017 (Exh. 39). In California, a bill has been introduced in the California Senate to eliminate the need for appropriate clinical treatment in order to change the sex listed on an amended birth certificate, driver's license, or identification card, and to offer an option to list sex as "nonbinary" or "X" on such documents upon submission of an affidavit attesting that the requested change is to "conform the person's legal gender to the person's gender identity …." *See* SB-179, introduced Jan. 24, 2017, as amended in the State Senate Apr. 17, 2017 (Exh. 40).

Birth Certificates

In addition to the 50 states, birth certificates are issued by the District of Columbia, New York City, American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, and the United States Virgin Islands. According to a September 2000 report by the Office of Inspector General of the U.S. Department of Health and Human Services, within these domestic jurisdictions a total of 6,422 different entities issue birth certificates, including states, counties, cities, townships, and other governmental entities. The Department is not aware of any domestic jurisdiction that issues, as a policy, original, un-amended birth certificates designating a person's sex with a designation other than male or female. *See, e.g.*, Birth Certificate Application, New York City Department of Health, Office of Vital Records, Form VR 67 (Rev. Oct. 2014) (Exh. 41).[2]

The Department is aware that some individuals have obtained *amended* birth certificates listing their sex as something other than male or female. To date, two passport applicants have presented amended birth certificates in which the designation of their sex has been amended to read "unknown." The policy of the Department is to accept only un-amended birth certificates as evidence of the sex of the applicant. *See* 7 FAM 1320 Appendix M a NOTE (Exh. 36). Applicants who present an amended birth certificate in support of an application for a U.S. passport reflecting a *change of sex* must also submit medical certification that they have had appropriate treatment for transition to the requested sex, male or female. *See* 7 FAM 1322 Appendix M (Exh. 36). The reason for this policy is that the requirements for amending a birth certificate to reflect a change of sex vary significantly by jurisdiction. *See* "Modernizing State Vital Statistics Statutes and Policies to Ensure Accurate Gender Markers on Birth Certificates: A Good Government Approach to Recognizing the Lives of Transgender People," 19 Mich. J. Gender & L. 373 (2013) (Exh. 42).[3] In light of the wide variation in the evidence required to obtain such government-issued documents, the Department is unable to determine from an amended identity document alone whether the applicant can meet its standard for documenting a change of sex, and so cannot rely on such documents as evidence of a new sex.

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[2] Some jurisdictions allow birth attendants to indicate initially that a child's sex is "unspecified," "unknown," or "undetermined" in cases where it cannot be immediately ascertained, with the expectation that the sex will be updated once a determination is made. Also, many vital records authorities expressly distinguish between birth certificate that is corrected due to "gender error," in which a hospital or local registrar enters incorrect information on a birth certificate, and a birth certificate that is amended due to "gender reassignment," pursuant to applicable state law.

[3] A number of states have statutes that follow the requirement for a "surgical procedure" as set out in Section 21(d) of the Model State Vital Statistics Act (1992 Rev.) or impose a requirement for surgery using other language. Other states have explicitly repudiated surgical or hormonal requirements, authorizing a change based on "other treatment." Some states require a court order indicating that an individual's sex has been changed; others do not. Some states authorize amendment of a birth certificate based upon a medical certification that would not satisfy the Department's requirements under 7 FAM 1322 Appendix M. *See* "Modernizing State Vital Statistics Statutes and Policies to Ensure Accurate Gender Markers on Birth Certificates: A Good Government Approach to Recognizing the Lives of Transgender People," 19 Mich. J. Gender & L. 373 (2013) (Exh. 42), at 400-401 and 452-470 ("Appendix: Laws and Policies Regarding Gender Corrections for the 57 Jurisdictions that Administer Birth Certificates").

Driver's Licenses and Non-Driver ID Cards

The REAL ID Act of 2005, Pub. L. 109-13, 119 Stat. 302, establishes specific federal requirements for state-issued driver's licenses and identity cards to be accepted for certain federal purposes, including boarding a domestic flight. A REAL ID-compliant form of identification is required to include the gender (sex) of the holder. No state currently issues driver's licenses or identification cards in a sex other than male or female. *See* Resource Guide on Gender Designation on Driver's Licenses and Identification Cards, American Association of Motor Vehicle Administrators (AAMVA) (Sept. 2016) (Exh. 43).[4]

Social Security

Applicants are required by law to provide their Social Security number, if they have one, when applying for a U.S. passport or for renewal of a U.S. passport, and the Department verifies this information as part of the adjudication of the applicant's identity. The Social Security Administration requires every applicant for a Social Security number to designate his/her sex as either male or female in his/her application. *See* Form SS-5, Application for a Social Security Card, U.S. Social Security Administration (Aug. 2011) (Exh. 44). In order to change the sex entered in his/her social security record ("numident"), an individual must submit a medical certification that complies with applicable Social Security Administration requirements, which are identical to the Department's requirements for issuance of a passport reflecting a change of sex. *See* "RM 10212.200 - Changing Numident Data for Reasons other than Name Change," U.S. Social Security Administration Program Operations Manual System (POMS) (June 2013) (Exh. 45). Unlike a U.S. passport, a Social Security card issued by the Social Security Administration does not depict the sex of the holder as recorded in his/her numident.

[4] *But see* footnote 1, *supra*.

Secretary of State

NOTICE OF PROPOSED RULEMAKING HEARING*

A Statement of Need and Fiscal Impact accompanies this form

FILED
3-15-17 9:02 AM
ARCHIVES DIVISION
SECRETARY OF STATE

Department of Transportation, Driver and Motor Vehicle Services Division — 735
Agency and Division — Administrative Rules Chapter Number

Lauri Kunze — (503) 986-3171
Rules Coordinator — Telephone

Department of Transportation, Driver and Motor Vehicle Services Division, 355 Capitol St. NE, MS 51, Salem, OR 97301
Address

RULE CAPTION

Physical Description, Including Sex, on Driver License, Driver Permit or Identification Card

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

Hearing Date	Time	Location	Hearings Officer
5-2-17	6:00 p.m.	Eugene Public Library, Tykeson Rm, 100 W 10th Ave. , Eugene OR	Liz Woods
5-10-17	6:00 p.m.	Multnomah Bldg, Rm 315, 501 SE Hawthorne Blvd, Portland OR	Liz Woods

RULEMAKING ACTION

Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

ADOPT:
735-062-0013

AMEND:

REPEAL:

RENUMBER: Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

AMEND AND RENUMBER: Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

Statutory Authority:
ORS 184.616, 184,619, 802.010 and 807.110

Other Authority:
None

Statutes Implemented:
ORS 802.200, 807.050, 807.110, 807.150, 807.160, 807.280 and 807.400

RULE SUMMARY

ORS 807.110 states that a driver license will contain a brief description of the person for purposes of identification. In accordance with national standards, Oregon's description has contained an indicator of the person's sex, "M" for male or "F" for female. Within the past year, an Oregon circuit court issued an order stating that a particular individual's sex is non-binary. By policy, DMV has accepted court orders as proof of sex-change to change the sex designation of a person on a driver license, driver permit, identification card and DMV record. However, DMV was unable to issue a card or capture in records an indicator that would signify non-binary as the computer system has no indicator for a third sex designation.

Therefore, DMV started this rule-making in conjunction with updating systems so that an "X" in the field for sex will indicate that the sex is not specified. DMV proposes to adopt OAR 735-062-0013 to explain what information is captured as a descriptor in DMV records, which of those descriptors appear on the front of the card, how that information is provided to DMV, and the process to change such information.

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

05-12-2017 4:00 p.m. — Last Day *(m/d/yyyy)* and Time
Lauri Kunze — Rules Coordinator Name
lauri.g.kunze@odot.state.or.us — Email Address

for public comment

*The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation.

Secretary of State

STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing accompanies this form

FILED
3-15-17 9:02 AM
ARCHIVES DIVISION
SECRETARY OF STATE

Department of Transportation, Driver and Motor Vehicle Services Division — 735
Agency and Division — Administrative Rules Chapter Number

Physical Description, Including Sex, on Driver License, Driver Permit or Identification Card

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)
In the Matter of:
the Adoption of 735-062-0013

Statutory Authority:
ORS 184.616, 184,619, 802.010 and 807.110

Other Authority:
None

Statutes Implemented:
ORS 802.200, 807.050, 807.110, 807.150, 807.160, 807.280 and 807.400

Need for the Rule(s):
ORS 807.110 states that a driver license will contain a brief description of the person for purposes of identification. In accordance with national standards, Oregon's description has contained an indicator of the person's sex, "M" for male or "F" for female. Within the past year, an Oregon circuit court issued an order stating that a particular individual's sex is non-binary. By policy, DMV has accepted court orders as proof of sex-change to change the sex designation of a person on a driver license, driver permit, identification card and DMV record. However, DMV was unable to issue a card or capture in records an indicator that would signify non-binary as the computer system has no indicator for a third sex designation.

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Documents Relied Upon, and where they are available:
2016 AAMVA DL/ID Card Design Standard; available by contacting DMV Driver Programs Section, 1905 Lana Ave. NE, Salem, Oregon 97314

Fiscal and Economic Impact:
See statements below

Statement of Cost of Compliance:
1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):
DMV will incur approximately $39,000 in costs to update computer systems, update application forms and other costs associated with the implementation of this rule. DMV does recognize that a change to the information contained on DMV records and on the face of a driver license, driver permit or identification card also impacts other agencies. DMV asked for input from a variety of state and local government agencies along with members of the public, and this is the input we received.

Oregon Judicial Department -- At this time, OJD was unable to quantify the feasibility, cost and time impact to change its vendor-provided programming to its existing Odyssey system. Information is shared between law enforcement and courts, and if date input by law enforcement does not map to an identified data element in the court system, the electronic transmission of data will not work. Currently, the system would reject a third data element in the field of information on sex. Therefore, there would need to be manual work arounds by law enforcement and court personnel if an individual with "X" on their driver license is subject to a traffic stop, until all systems were updated to work together in accepting an "X" in the sex data field. The system used by Oregon courts will be modified by the vendor to contain a third sex designation when it receives the software release, and will require funding for the vendor to modify the data integration to accommodate this additional data element. At this point, OJD anticipates being able to update the software with the new release -- assuming it is available timely -- between mid to late 2018.

Oregon State Police - $100,000 minimum and one year to 18 months to update their systems

Department of Corrections - $300,000 and 10 months to update their system
Fish and Wildlife - $1000 and can meet July 1 deadline
Oregon Lottery - none
Secretary of State - none
AAMVA and other licensing jurisdictions - none
Salem-Keizer Coalition for Equality - none

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small business and types of businesses and industries with small businesses subject to the rule:

None

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

None

c. Equipment, supplies, labor and increased administration required for compliance:

None

How were small businesses involved in the development of this rule?

DMV sent information regarding this change to an extensive list of businesses that may use the information contained on a driver license, drive permit or identification. Only the Oregon Bankers Association responded saying that it was unclear about possible impact but likely would be minimal if any impact.

Administrative Rule Advisory Committee consulted?: Yes

If not, why?:

DMV formed a rule advisory group consisting of state agencies, advocate groups and private citizens.

05-12-2017 4:00 p.m.	Lauri Kunze	lauri.g.kunze@odot.state.or.us
Last Day (m/d/yyyy) and Time for public comment	Printed Name	Email Address

AMENDED IN SENATE APRIL 17, 2017

AMENDED IN SENATE MARCH 27, 2017

SENATE BILL **No. 179**

Introduced by Senators Atkins and Wiener
(Principal coauthors: Senators ~~De León,~~ *De León,* Galgiani, Lara, Mitchell, Monning, and Skinner)
(Principal coauthors: Assembly Members *Bocanegra,* Chiu, Eggman, Cristina Garcia, Gloria, Low, Mark Stone, and Ting)

January 24, 2017

An act to amend Sections 1277 and 1278 ~~of~~ *of, and to add Section 1277.5 to,* the Code of Civil Procedure, to amend Sections 103425, 103426, 103430, ~~103435,~~ and 103440 of, and to amend the heading of Article 7 (commencing with Section 103425) of Chapter 11 of Part 1 of Division 102 of, the Health and Safety Code, and to amend Sections 12811 and 13005 of the Vehicle Code, relating to gender identity.

LEGISLATIVE COUNSEL'S DIGEST

SB 179, as amended, Atkins. Gender identity: female, male, or nonbinary.

(1) Existing law authorizes a person who was born in this state and who has undergone clinically appropriate treatment for the purpose of gender transition to obtain a new birth certificate from the State Registrar.

This bill would *enact the Gender Recognition Act,* delete the requirement that an applicant have undergone any ~~treatment~~ *treatment,* and instead would authorize a person to submit to the State Registrar an application to change gender on the birth certificate and an affidavit attesting, under penalty of perjury, that the request for a change of gender is to conform the person's legal gender to the person's gender

identity and not for any fraudulent purpose. By requiring the affidavit to be attested to under penalty of perjury, the bill would create a crime, and thus impose a state-mandated local program. This bill would authorize the change of gender on the new birth certificate to be female, male, or nonbinary.

(2) Existing law authorizes a person who has undergone clinically appropriate treatment for the purpose of gender transition to seek a judgment from the superior court recognizing the change of gender, conforming the person's name to the person's gender identity, or for both, and provides specific procedures to seek these judgments.

This bill would delete the requirement that a person have undergone any treatment to seek a court judgment to recognize a change of gender and instead would authorize the petitioner to attest, under penalty of perjury, that the request is to conform the person's legal gender to the person's gender identity and not for any fraudulent purpose. By requiring the affidavit to be attested to under penalty of perjury, the bill would create a crime, and thus impose a state-mandated local program. The bill would authorize a change of gender in the court order to female, male, or nonbinary. ~~The bill would require the court to grant a judgment recognizing the change of gender within 28 days of the filing of the petition, unless an objection is filed.~~ *The bill would provide specific procedures to obtain a court order for a change of name to conform to the petitioner's gender identity, a court order to recognize a change in the petitioner's gender, or both.* The bill would ~~also specifically~~ authorize a *separate* procedure for a person under 18 years of age to petition for a change of gender.

(3) Existing law requires the Department of Motor Vehicles to issue a driver's license to an applicant when the department determines that the applicant is lawfully entitled to a license, and requires the license to contain, among other things, a brief description and engraved picture or photograph of the licensee for the purpose of identification. Existing law authorizes the department to issue identification cards and requires an identification card to adequately describe the applicant.

This bill would require the applicant for a driver's license or identification card to choose a gender category of female, male, or nonbinary to be included as part of the applicant's description. The bill would also require the department to adopt regulations for an expedient amendment of a gender category on a driver's license and identification card.