



STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. Box 3378
HONOLULU, HAWAII 96801-3378

In reply, please refer to:
File:

House Committee on Health

February 6, 2013

**Testimony of Loretta J. Fuddy, A.C.S.W., M.P.H.
Director of Health**

HB412, Relating to Certificates of Birth

1 **Department's Position: COMMENTS**

2 **Fiscal Implications:** None.

3 **Purpose and Justification:** HB412 proposes to expand the criteria for Hawaii residents wishing to alter
4 the "sex" field on their birth certificate.

5

6 The Department of Health appreciates the practical and social justice implications of this proposal and
7 offers amendments to address two critical issues, 1) the unchecked creation of sealed records, and 2)
8 inappropriate access to those sealed records. Both issues must be resolved to maintain the integrity of
9 Hawaii's vital records and align with national best practices and model law.

10

11 **Sealed Government Records**

12 Proposed subsection (b) requires that new birth certificates meeting the criteria of proposed subsection
13 (a), paragraph (4) shall not be marked as having been amended, in effect, creating a "secret" government
14 record with no audit trail. For reasons of government transparency and separation of powers, it is
15 inappropriate to place within one branch of government, let alone one individual, the power to seal

Promoting Lifelong Health and Wellness

1 records. By way of comparison, changes to birth certificates related to adoptions and paternity, arguably
2 equally sensitive and confidential issues, require a court to weigh the evidence and issue an order to
3 change the birth certificate. In extreme cases, this could hamper law enforcement or judiciary
4 investigations. The lack of checks and balances in the alteration of birth records, as provided for in the
5 bill as drafted, may also facilitate abuse or exploitation.

6
7 The department proposes a low cost and administratively simple process by which both the privacy of
8 the requestor and practices of good government are preserved. The requestor submits a form and
9 relevant information as proposed in HB412 to a Hawaii court for administrative review. Upon
10 reviewing the documentation, the judge will issue an order to the Department of Health to change the
11 sex on the birth certificate of the applicant and seal the record, or request further information from the
12 applicant. Family Court is an appropriate venue since its proceedings remain confidential and closed to
13 the public. DOH has shared information with Family Court and they remain open to considering this
14 proposed workflow. A draft copy of the form is included as part of this testimony.

15

16 Inappropriate Public Access to Sealed Records

17 Proposed Subsection (b) permits the requestor to unseal their record upon request. The consequences of
18 this are significant and disruptive, for example in adoptions when biological parents wish to remain
19 anonymous. Birth certificates contain confidential information beyond that of the individual whose facts
20 at birth are documented. Adoptions and maternity and paternity proceedings in particular must be held
21 in strictest confidence.

22

23 DOH's proposed HD1 offers a balanced approach that addresses individual needs while preserving the
24 integrity of the vital records system and concepts of good government. We look forward to cooperating
25 with stakeholders to find a mutually satisfactory solution. Thank you for the opportunity to testify.

PROPOSED HB412 HD1

A BILL FOR AN ACT

RELATING TO BIRTH CERTIFICATES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. SECTION 1. Section 338-17.7, Hawaii Revised
2 Statutes, is amended to read as follows:

3 **"§338-17.7 Establishment of new certificates of birth,**
4 **when.** (a) The department of health shall establish, in the
5 following circumstances, a new certificate of birth for a person
6 born in this State who already has a birth certificate filed
7 with the department and who is referred to below as the "birth
8 registrant":

9 (1) Upon receipt of an affidavit of paternity, a court
10 order establishing paternity, or a certificate of
11 marriage establishing the marriage of the natural
12 parents to each other, together with a request from
13 the birth registrant, or the birth registrant's parent
14 or other person having legal custody of the birth
15 registrant, that a new birth certificate be prepared
16 because previously recorded information has been
17 altered pursuant to law;

18

1 (2) Upon receipt of a certified copy of a final order,
2 judgment, or decree of a court of competent jurisdiction that
3 determined the nonexistence of a parent and child relationship
4 between a person identified as a parent on the birth certificate
5 on file and the birth registrant;

6 (3) Upon receipt of a certified copy of a final adoption
7 decree, or of an abstract of the decree, pursuant to sections
8 338-20 and 578-14;

9 (4) Upon receipt of an affidavit of a physician that the
10 physician has examined the birth registrant and has determined
11 the following:

12 (A) The birth registrant's sex designation was
13 entered incorrectly on the birth registrant's
14 birth certificate; or

15 (B) The birth registrant has had a sex change
16 operation and the sex designation on the birth
17 registrant's birth certificate is no longer
18 correct; provided that the director of health may
19 further investigate and require additional
20 information that the director deems necessary; or

21 (C) Upon receipt of a certified copy of a Hawaii
22 court order directing the department to change
23 the birth registrant's gender designation. The
24 court order shall establish that there is medical

1 evidence from the person's Hawaii-licensed
2 personal physician, or a physician licensed in
3 the United States who specializes in gender
4 identity or gender reassignment, containing
5 support for a finding that the birth registrant
6 has undergone hormonal or other treatment
7 appropriate for that individual for the purpose
8 of gender transition, and that in the physician's
9 opinion, the birth registrant's gender
10 designation should be changed accordingly; and

11 (D) If the birth registrant is requesting a name
12 change on the new certificate, an official copy
13 of the legal name change document; or

14 (5) Upon request of a law enforcement agency certifying
15 that a new birth certificate showing different
16 information would provide for the safety of the birth
17 registrant; provided that the new birth certificate
18 shall contain information requested by the law
19 enforcement agency, shall be assigned a new number and
20 filed accordingly, and shall not substitute for the
21 birth registrant's original birth certificate, which
22 shall remain in place.

23 (b) When a new certificate of birth is established under
24 this section, it shall be substituted for the original

1 certificate of birth. The new certificate shall not be marked as
2 having been amended and shall in no way reveal the original
3 information changed by the amendment. Thereafter, the original
4 certificate and the evidence supporting the preparation of the
5 new certificate shall be sealed and filed. [~~Such sealed-~~
6 ~~document~~] The sealed documents shall be opened only by an order
7 of a court of record.

8 SECTION 2. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 3. This Act shall take effect on July 1, 2050.

11

12

13

14

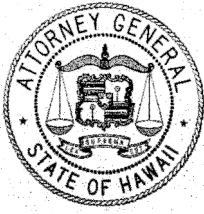
15

16

17

18

19



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SEVENTH LEGISLATURE, 2013**

ON THE FOLLOWING MEASURE:

H.B. NO. 412, RELATING TO CERTIFICATES OF BIRTH.

BEFORE THE:

HOUSE COMMITTEE ON HEALTH

DATE: Wednesday, February 6, 2013 **TIME:** 10:30 a.m.

LOCATION: State Capitol, Room 329

TESTIFIER(S): David M. Louie, Attorney General, or
Jill T. Nagamine, Deputy Attorney General

Chair Belatti and Members of the Committee:

The Department of the Attorney General has concerns about this bill in its current form.

This bill would amend section 338-17.7, Hawaii Revised Statutes (HRS), which provides methods to establish new birth certificates. Currently the law allows the Department of Health (DOH) to establish a new birth certificate to reflect changes based on establishment of paternity, adoption, name changes, or for law enforcement purposes. It also allows the DOH to change the sex on an individual's birth certificate upon receipt of a physician's affidavit that the sex designation was initially entered incorrectly on the record or that the birth registrant has had a sex change operation and the sex designation on the birth certificate is no longer correct.

Our concerns about this bill are as follows: (1) the statutory amendment it seeks would allow changes to "gender," a non-existent data item on birth certificates, (2) the proposed method of amending birth certificates lacks evidentiary reliability, and (3) the part of the amendment that would allow for unsealing sealed birth records upon request may be a violation of the right to privacy under the State Constitution.

(1) "Gender" is not a data item reflected on Hawaii's birth certificates.

This bill would broaden the allowable methods to change birth certificates; however, it seeks to change an item of data that is not currently on birth certificates, i.e. gender. Hawaii, in conformance with the guidelines of the National Center for Health Statistics, includes many items of data, such as name, date of birth, parent's names, and sex, on its birth certificates. "Gender" is not one of the listed items. This bill would amend section 338-17.7, HRS, in a way that would apparently eliminate the reference to "sex" on some birth certificates and replace it

with "gender," a category that is not recorded on Hawaii's birth records. Because Hawaii should continue to conform to the guidelines of the National Center for Health Statistics, the term "gender" should be replaced with the term "sex."

- (2) Changes to "sex" on a birth certificate without evidence of sex reassignment surgery lack reliability without court involvement.

Notwithstanding the problem of "gender" versus "sex," the Department of the Attorney General has concerns about the reliability of making changes to sex on a birth record in non-surgical cases without requiring a court order. Accuracy and integrity of vital records is important, and requiring a court order to change the sex designation on a birth certificate, particularly in those cases that do not involve sex reassignment surgery, would allow for a reliable, evidence-based way of determining if a change to a birth certificate should be made.

We share DOH's concerns that the accuracy of the data contained in vital records could be compromised without a reliable and consistent means of validating a change. The reasoning behind requiring a court order for changes less permanent than sex change operations is so that a court can use its judgment to determine the validity of the evidence supporting a change to the record. There appears to be a wide range of possible gender reassignment treatments, ranging from the least intrusive treatment of counseling with no hormone replacement therapy and no physical alterations, to the most intrusive treatment of sexual reassignment surgery resulting in permanent physical changes. While we are not experts on the procedures themselves, we believe that clinical treatment that does not include surgery does not seem to be permanent enough to merit a change in a vital record without a court order.

- (3) Violation of the Constitutional Right to Privacy.

In addition to our concerns about amending the statute to change "gender" and not "sex" and the lack of reliability of changing the sex designation without a court order in those cases without surgical intervention, we have strong concerns about allowing original sealed records to be opened without a court order.

At page 4, line 22, of the bill, there is a provision that would allow sealed records to be opened at the request of the birth registrant. Currently, section 338-17.7, HRS, provides for the DOH, upon establishing a new birth certificate, to seal original birth records and evidence

supporting a change in those records. The sealed records and evidence cannot be opened except by order of a court of record.

Because section 338-17.7, HRS, includes changes not only to those birth records that were changed based on sex redesignation, but also to those records that were changed subsequent to adoption, there might be some constitutional concerns with unsealing adoption records that were intended to be kept confidential. Without allowing some provision to remain in the law that gives natural parents who desire confidentiality that option, the bill may violate the right to informational privacy afforded by article I, section 6, of the Hawaii Constitution.

Article I, section 6, of the Hawaii Constitution provides: "The right of the people to privacy is recognized and shall not be infringed without the showing of a compelling state interest. The legislature shall take affirmative steps to implement this right." In Brende v. Hara, 113 Hawaii 424, 153 P.3d 1109 (2007), the Hawaii Supreme Court upheld a petitioner's right to privacy in her medical records that had been used for litigation purposes. In applying article I, section 6, the Supreme Court stated:

As previously noted article I, section 6 provides in part that "[t]he right of the people to privacy is recognized and shall not be infringed without the showing of a compelling state interest."

[T]he [article I, section 6] right of privacy encompasses the common law right of privacy or tort privacy. This is a recognition that the dissemination of private and personal matters, be it true, embarrassing or not, can cause mental pain and distress far greater than bodily injury. For example, the right can be used to protect an individual from invasion of [the individual's] private affairs, public disclosure of embarrassing facts, and publicity placing the individual in a false light. In short, this right of privacy includes the right of an individual to tell the world to "mind your own business."

Brende, 113 Hawaii at 430, 153 P.3d at 1115 (quoting 1978 Constitutional Convention standing committee report).

While it is not clear that the Hawaii Supreme Court would rule the same way regarding confidentiality of adoption information as it has relating to medical records, it is possible. To overcome the constitutional right to informational privacy, the State must be able to show a compelling state interest. Id., 153 P.2d at 1115. If there is no compelling state interest in

denying privacy to natural parents who seek it, then there must be a provision in the law that allows natural parents a way of maintaining confidentiality.

We respectfully request this Committee, if it decides to pass this bill, to (1) replace the use of the word "gender" with the word "sex," (2) require a court order for any changes pursuant to procedures that do not involve sex reassignment surgery, and (3) not allow the opening of all of the records that are sealed pursuant to section 338-17.7, HRS, without a court order.



Committee: Committee on Health
Hearing Date/Time: Wednesday, February 6, 2013, 10:30 a.m.
Place: Room 329
Re: Testimony of the ACLU of Hawaii in Strong Support of H.B. 412, Relating to Certificates of Birth

Dear Chair Belatti and Members of the Committee on Health:

The ACLU of Hawaii strongly supports H.B. 412 to eliminate barriers to the issuance of corrected birth certificates for transgender and intersex persons.

H.B. 412 seeks to modernize and simplify Hawaii law, which already allows individuals to correct their birth certificates, and will require only minimal administrative costs.

Current law presents numerous barriers to transgender and intersex individuals who seek to correct the sex designation on his/her birth certificates, including requiring that individuals undergo costly and potentially dangerous surgical procedures without regard for whether that person wants or has any medical need for the surgeries.

Please consider making the following amendments (all caps, in blue) to H.B. 412, to ensure that all transgender and intersex individuals are able to correct their birth certificates.

- §338-17.7(a)4(A): A written request from the birth registrant, **OR THE REGISTRANT'S PARENT, GUARDIAN, OR LEGAL REPRESENTATIVE**, signed under penalty of perjury.
- §338-17.7(a)4(B)(ii): The birth registrant has undergone surgical, hormonal, or other treatment appropriate for that individual for the purpose of gender transition, **OR HAS AN INTERSEX CONDITION**, and that in the physician's opinion the birth registrant's gender designation should be changed accordingly; and

A birth certificate is a vital document needed to obtain identification such as a driver's license or passport, to prove eligibility for employment, and to apply for many types of social services. Persons face serious obstacles in accessing these necessary identity documents without a birth certificate that accurately reflects their current sex/gender. Incorrect sex/gender identification

American Civil Liberties Union of Hawaii
P.O. Box 3410
Honolulu, Hawaii'i 96801
T: 808-522-5900
F: 808-522-5909
E: office@acluhawaii.org
www.acluhawaii.org

Hon. Rep. Belatti, Chair, HLT Committee
and Members Thereof
February 6, 2013
Page 2 of 3

may lead to bias, harassment, or discrimination, and makes it more difficult for government officials or agencies to accurately identify people.

For transgender and intersex individuals, identification documents can frequently function as a kind of scarlet letter, with the “F” or “M” designation contradicting the individual’s appearance and expressed sex/gender identity and outing him or her as a transgender or intersex individual. Transgender and intersex individuals may have trouble even cashing a check at the bank if the sex/gender displayed on their driver’s license does not reflect their appearance. Law enforcement is impeded too when individuals’ identification documents fail to reflect their appearance and lived sex/gender.

National survey data from the World Professional Association for Transgender Health indicate that transgender and intersex people who are unable to obtain sex/gender-congruent identity documents are less likely to be employed and more likely to face discrimination in employment and housing. Transgender and intersex people commonly report experiencing harassment (40%) and being asked to leave a place of business (15%) as a result of showing identification that does not match their lived sex/gender, and significant numbers have also experienced physical violence as a result. Transgender and intersex people of color experience these adverse outcomes at substantially higher rates.

Accordingly, the American Medical Association advises that “transgender persons should have access to identity documents consistent with their gender identity and expression,” and recommends that “those permanently socially transitioned to another gender role” not be made to “involuntarily disclose their status as transgender.” The American Association of Motor Vehicle Administrators has also endorsed policies that would permit transgender and intersex drivers to obtain sex/gender-congruent driver’s licenses without proof of surgery.

H.B. 412 conforms Hawaii’s laws to those set by the United States Department of State for federal birth certificates given to U.S. citizens born outside of the U.S. (known as Consular Reports of Birth Abroad) as well as for gender marker changes on U.S. passports. In addition, a growing number of states, including Hawaii, have eliminated the surgery requirement for changing the gender marker on a driver’s license.

Policies that follow these best practices are easy to understand and administer, ensure consistency in application, and most importantly, eliminate needless and harmful barriers for transgender and intersex people. Identification that reflects an individual’s lived sex/gender will

American Civil Liberties Union of Hawai'i
P.O. Box 3410
Honolulu, Hawai'i 96801
T: 808-522-5900
F: 808-522-5909
E: office@acluhawaii.org
www.acluhawaii.org

Hon. Rep. Belatti, Chair, HLT Committee
and Members Thereof
February 6, 2013
Page 3 of 3

also make it easier for law enforcement, customs, and other officials to quickly and accurately identify individuals in the course of their daily business.

Amending these laws and ordinances through the legislative and administrative hearing processes will avoid litigation like that recent brought in Alaska and Illinois by ACLU affiliates.¹

With the increasing demand for identification since September 11, 2001, it is particularly important that transgender and intersex persons have access to accurate identity documents. Without accurate identification, transgender and intersex persons have limited ability to work, vote, travel, enter buildings, or otherwise participate fully in society. Transgender and intersex people need birth certificates that accurately indicate their true sex/gender and reflect the individualized nature of health care and experience.

Thank you for this opportunity to testify.

Sincerely,

Laurie A. Temple
Staff Attorney and Legislative Program Director
ACLU of Hawaii

The American Civil Liberties Union of Hawaii ("ACLU") has been the state's guardian of liberty for 47 years, working daily in the courts, legislatures and communities to defend and preserve the individual rights and liberties equally guaranteed to all by the Constitutions and laws of the United States and Hawaii. The ACLU works to ensure that the government does not violate our constitutional rights, including, but not limited to, freedom of speech, association and assembly, freedom of the press, freedom of religion, fair and equal treatment, and privacy. The ACLU network of volunteers and staff works throughout the islands to defend these rights, often advocating on behalf of minority groups that are the target of government discrimination. If the rights of society's most vulnerable members are denied, everyone's rights are imperiled.

¹ See <http://www.aclu.org/lgbt-rights/alaska-requirements-correcting-transgender-drivers-licenses-are-unconstitutional-says> and <http://www.aclu-il.org/grey-v-arnold22/>.

American Civil Liberties Union of Hawai'i
P.O. Box 3410
Honolulu, Hawai'i 96801
T: 808-522-5900
F: 808-522-5909
E: office@acluhawaii.org
www.acluhawaii.org

EQUALITY HAWAII

Wednesday, Feb. 6, 2013 • 10 a.m. • House Conference Room 329
Testifying in Support of HB412 On Behalf of Equality Hawaii

Aloha, Chair Au Belatti, Vice Chair Morikawa & Members of the Health Committee:

On behalf of Equality Hawaii, the state's largest LGBT advocacy organization, we testify in strong support of HB412, relating to certificates of birth.

This bill represents critically important legislation to our community. It seeks to remove unfair requirements that encumber a transgender individual's ability to change the gender marker designation on his or her birth certificate. It also attempts to align policy with contemporary medical knowledge and practice.

Barriers imposed by existing legislation which this bill seeks to remedy include: the requirement to undergo a sex change operation; lack of explicit language that prohibits government officials from requiring additional documentation not specified in policy; and the absence of a clear mechanism by which individuals can update their names concurrently with or before or after they update their gender.

This bill appropriately defers to personal physicians - rather than to state officials - the competency and authority to evaluate and substantiate the qualifying conditions of gender transition. To deem surgery the singular and exclusive requirement for a corrected gender designation reveals a misunderstanding of the multi-dimensional and highly individualized process of treatment and therapy. In some instances, surgery is infeasible, ill-advised and can be life-threatening.

The proposals in this bill are not unprecedented as evidenced by policies enacted in numerous states and by the U.S. Department of State. This bill does not task the Department of Health of Health with the responsibility of defining gender, but asks that it update the gender marker ("M" or "F") on birth certificates according to clinical - not bureaucratic - assessments and expertise.

HB412 will give transgender individuals more privacy and control over their personal information. Most importantly, it will remove government-imposed barriers that perpetuate discrimination and hinder social and legal recognition ... recognition we take for granted that fosters dignity and enables us to participate as full citizens in society.

Equality Hawaii asks that you please pass HB412.

Mahalo,
Scott Larimer & Josh Frost
Co-Chairs

morikawa2 - Shaun

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 05, 2013 4:23 PM
To: HLTtestimony
Cc: hlusk@chowproject.org
Subject: *Submitted testimony for HB412 on Feb 6, 2013 10:30AM*

HB412

Submitted on: 2/5/2013

Testimony for HLT on Feb 6, 2013 10:30AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Heather Lusk	CHOW Project	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov



February 6, 2013

House Committee on Health
Rep. Della Au Belatti, Chair
Rep. Dee Morikawa, Vice Chair

Re: Testimony in STRONG SUPPORT of HB 412 relating to birth certificates, with amendments

Pride At Work Hawai'i, an affiliate of the Hawai'i State AFL-CIO which works to mobilize lesbian, gay, bisexual, and transgender (LGBT) workers and their supporters for full equality and to build mutual support between the labor movement and the LGBT community, strongly supports HB 412, which would expand the reasons to change gender on state birth certificates.

Current state law requires that a doctor certify that someone has undergone sex reassignment surgery in order to change gender on a birth certificate. However, surgery can be prohibitively expensive (and, like other transgender-related treatments, is not covered by Hawai'i health insurance plans), and many people who live as a different gender than their birth certificates show do not want or shouldn't have surgery. Having an important government document like a birth certificate showing a different gender than how a person lives can create many problems, especially as governments and employers require identification for many purposes. Without the consistent identification (whether on drivers licenses, birth certificates, or passports) that many non-transgender people take for granted, it can be embarrassing - if not impossible - to travel, open a bank account, or apply for a job. It can also create many difficulties when dealing with government agencies and law enforcement.

This bill, by adding "hormonal or other treatment appropriate for that individual for the purpose of gender transition" to surgery as the allowable requirements to get a new birth certificate with a new gender designation, is an important step toward full inclusiveness for transgender and gender-nonconforming people, as is language requiring the State to seal the original birth certificate and not allow the new document to show that it is a replacement.

We also support amendments proposed by ACLU to allow parents or guardians to initiate gender changes, and include intersex conditions as an allowable requirements for a change in gender designation.

We strongly urge you to stand up for equality, dignity and fair treatment for all by supporting this bill. Mahalo!

PRIDE AT WORK HAWAII'I advocates for full equality and inclusiveness - in our workplaces and our unions - for LGBT workers and our families, and builds solidarity between the Labor movement and the LGBT community.

PO Box 22416 Honolulu, HI 96822 (808) 543-6054 prideatworkhawaii@hawaiiantel.net www.prideatworkhawaii.org

Committee: Committee on Health

Hearing Date/Time: Wednesday, February 6, 2013, 10:30 a.m.

Place: Room 329

Re: Testimony of the Trans-Spectrum of Hawaii in Strong Support of H.B. 412, Relating to Certificates of Birth

Dear Chair Belatti and Members of the Committee on Health:

Trans-Spectrum Hawaii strongly supports H.B. 412 to eliminate barriers to the issuance of corrected birth certificates for transgender and intersex persons.

H.B. 412 seeks to modernize and simplify Hawaii law, which already allows individuals to correct their birth certificates, and will require only minimal administrative costs.

- **The current policy hurts transgender people and does not reflect current understandings of transgender and intersex healthcare.** The current policy bars many transgender and intersex people from getting the documents we need to survive and participate in society. People need birth certificates needed to prove eligibility to work when starting a new job, to get certifications in some professions, to obtain identification like driver's licenses and passports, and to apply for many types of housing programs and other social services. Having a birth certificate that shows the wrong gender can make doing any of those things difficult or impossible. When we show a certificate with a gender other than the one we live in, we are often accused of fraud, turned away, or harassed, attacked, humiliated, or discriminated against because of our gender. Even in the best of cases we face embarrassment, confusion and delays. Without a birth certificate showing the wrong gender stigmatizes us and limits our ability to fully participate in society by working, voting, traveling, or even entering many buildings.
- **The current policy is based on myths about transgender and intersex healthcare.** **Transgender and intersex healthcare is not one size fits all.** A transgender person's treatment plan, based on an individualized assessment of that person's medical needs, may or may not include vaginoplasty or phalloplasty. In fact, hormone therapy is the most common treatment for transgender people and chest reconstruction surgery is the most common surgical treatment for transgender men. An intersex person's treatment plan is similar to a transgender person as their sex at birth was ambiguous and they were assigned a sex incorrect to their true gender.
- **The current policy does not reflect changes made on our State issued identification cards and driver's licenses.** Currently, to add or correct the sex designation on a State ID card, we can visit the State ID Office on Oahu or at the Governor's Liaison Offices on Maui, Kauai, or Hawaii Island. As of October 4, 2012, the State ID Office and the Governor's Liaison Offices

have accepted a Gender Designation Form to add or correct the sex designation on State ID cards. Note that we **DON'T** need to have undergone surgery. For our driver's licenses, (*Counties of Hawaii, Honolulu, Kauai and Maui*), we can apply for a new or duplicate license at the nearest driver license station or satellite city hall. As of August 21, 2012, the counties of Hawaii, Honolulu, Kauai and Maui will accept a Gender Designation Form to add or correct the sex designation on driver's licenses granted that a medical or social authority must certify our gender on the Gender Designation Form. Note that we **DON'T** need to have undergone surgery.

WHAT DO WE WANT THE NEW POLICY TO SAY?

We want a law that lets transgender people have birth certificates that show our true genders. We want the policy to reflect the individualized nature of trans healthcare and experience, not to require specific arbitrary forms of treatment or documentation that are not right for all of us.

WHAT DOES THE PROPOSED HB 412 AND ACLU HAWAII SAY?

New amendments have been proposed by HB 412, Relating to Certificates of Birth and ACLU Hawaii for transgender and intersex birth certificates. If they are passed, transgender and intersex people born in Hawaii would be able to receive new birth certificates that do show our correct gender. Applicants would need to prove that we have completed our transition and intend to live permanently as our gender. Only applicants who are at least 18 years old, or have consent from a parent, legal guardian or legal representative, and are in a physician's opinion should live fully and truthfully as their correct gender. Below is a table comparing the documents needed under the current and proposed new policy.

Comparison Table of Document Requirements to Change Sex on HI Birth Certificates

Current policy	Proposed new policy
1. Affidavit of a physician that the physician has examined the birth registrant and has determined the following:	1. Written request from birth registrant or the registrant's parent, legal guardian or legal representative signed under penalty of unsworn falsification to authorities under section 710-1063, that the department issue a new birth certificate with a gender designation differs from the gender designation on the birth registrant's original birth
a. Sex designation was entered incorrectly on birth certificate	2. Notarized letter with details about the applicant's medical history from a physician licensed in the U.S. with experience in transgender healthcare or gender identity or gender

Current policy	Proposed new policy
<p>b. Or the physician must submit a detailed operative report of genital surgery (vaginoplasty, phalloplasty); and at the DOH's director's discretion investigate and require additional information on the birth registrant</p>	<p>reassignment; and</p> <p>a. The birth registrant's gender designation was entered incorrectly on the birth registrant's original certificate of birth; or</p> <p>(ii) The birth registrant has undergone surgical, hormonal, or other treatment appropriate for that individual for the purpose of gender transition or has an intersex condition and that, in the physician's opinion, the birth registrant's gender designation should be changed accordingly;</p> <p>(C) If the birth registrant is requesting a name change on the new certificate of birth, an official copy of the legal name change document;</p> <p>4 or</p>
	<p>3. The new certificate of birth shall not be marked as having been amended and shall in no way reveal the original language changed by the amendment.</p>
<p>2. Documents on the issuing of a new birth certificate are sealed.</p>	<p>4. The sealed documents shall be opened only by an order of a court of record or by request of the birth registrant.</p>
	<p>5. For a new certificate of birth established pursuant to subsection, the department shall not require any additional medical information or records.</p>
<p>= new certificate with correct gender</p>	<p>= new certificate with correct gender</p>

Please use the amendments provided by ACLU Hawaii. Thank you for this opportunity to testify.

Sincerely,

Kaleo Tevaitea Tanoa Ramos
 Co-Coordinator
 Trans-Spectrum Hawaii

Max Abe
 Co-Coordinator
 Trans-Spectrum Hawaii

DATE: February 5, 2013
TO: House Health Committee
Rep. Donna Au Belatti, Chair and Rep. Dee Morikawa, Vice Chair
RE: **Opposition/Comments on HB 412**
Health Comm. Hearing Wednesday, 2/6/13, 10:30 Rm. 329

BOARD DIRECTORS

James Hochberg, Esq.

**President
Director**

My name is James Hochberg, and I have been a civil rights attorney in Honolulu since 1984. Currently I am also the president of Hawaii Family Advocates, a 501©(4) independent expenditure, non-candidate committee.

Shawn Luiz, Esq.

**Vice President
Director**

I am testifying in opposition to HB412 to the extent it provides for the creation of a false and fraudulent public document. It creates a false and fraudulent public document because the new certificate shall not reveal that the change was made or what the original language was prior to the amendment. Amending public records should not create a false record. This bill does that for the first time in Hawaii.

Sandra Young, Esq.

**Secretary
Director**

Alex Meimer

**Treasurer
Director**

Furthermore, in section a(4)(A), the written request shall be signed under penalty of unsworn falsification. I have been unable to determine what that means and what the penalty might be in Hawaii for violating this provision. I searched this quote in the legal research database for Hawaii and received the attached response that LexisNexis search engine was unable to find this quote in any Hawaii statute or case opinion. This seems to have been from another state that does use that phrase. This needs to be clarified.

Mary Lou Brogan

Director

\\jhserver\Firm Files\Active Clients\ADF\Hawaii Family Advocates\2013 Legislation\02-06-2013 HFA Testimony HB41 Birth Certificate.docx

HAWAII FAMILY ADVOCATES

DATE: February 5, 2013
TO: House Health Committee
Rep. Donna Au Belatti, Chair and Rep. Dee Morikawa, Vice Chair
RE: **Opposition/Comments on HB 412**
Health Comm. Hearing Wednesday, 2/6/13, 10:30 Rm. 329

BOARD DIRECTORS

James Hochberg, Esq.

**President
Director**

My name is James Hochberg, and I have been a civil rights attorney in Honolulu since 1984. Currently I am also the president of Hawaii Family Advocates, a 501©(4) independent expenditure, non-candidate committee.

Shawn Luiz, Esq.

**Vice President
Director**

I am testifying in opposition to HB412 to the extent it provides for the creation of a false and fraudulent public document. It creates a false and fraudulent public document because the new certificate shall not reveal that the change was made or what the original language was prior to the amendment. Amending public records should not create a false record. This bill does that for the first time in Hawaii.

Sandra Young, Esq.

**Secretary
Director**

Furthermore, in section a(4)(A), the written request shall be signed under penalty of unsworn falsification. I have been unable to determine what that means and what the penalty might be in Hawaii for violating this provision. I searched this quote in the legal research database for Hawaii and received the attached response that LexisNexis search engine was unable to find this quote in any Hawaii statute or case opinion. This seems to have been from another state that does use that phrase. This needs to be clarified.

Alex Meimer

**Treasurer
Director**


Mary Lou Brogan

Director

\\jhsrver\Firm Files\Active Clients\ADFHawaii Family Advocates\2013 Legislation\02-06-2013 HFA Testimony HB41 Birth Certificate.docx

Lexis Advance™ Suite: **Research**

Client: HFA birth certificate

 My Workspace

Settings

Help

Sign Out

Feedback

Lexis Advance™

Search All | Browse Topics | Browse Sources

Recent & Favorites | Statutes and Legisla... | Hawaii | Civil Rights Law,Co...

 "signed under pe...

[Terms & Conditions](#)

Legislative | **Web**

0 for "signed under penalty of unsworn falsification" Options ▾

 LexisNexis® | [About LexisNexis](#) | [Privacy Policy](#) | [Terms & Conditions](#) | Copyright © 2013 LexisNexis.

Narrow by...



You've selected

Clear all

Hawaii

Civil Rights Law **or** Constitutional Law

Save as a favorite

No search results found in Statutes and Legislation

Search Tips

- Check for spelling errors or remove some search terms.
- If you narrowed by Jurisdictions or Practice Areas & Topics, try clearing those selections.
- Run your search again with All Content, All Jurisdictions, and All Practice Areas & Topics.
- Content may be restricted based on your subscription.
- If you searched using segments, remove the segment names and syntax from your search and run it again. Not all content types have the same segments, and you may be excluding some documents. See more information on segment searching



Testimony

As a transgender individual living in the state of Hawaii the passing of the bill HB 412 is of vital importance. Having the correct birth certificate with my intended gender and name on it is very meaningful to me and the passing of this bill would give me the ability to start the process of legally changing both my name and gender. This would impact and help many individuals like myself who do not identify with the biological sex that was written on their birth certificate the day we were born as well as the given name that does not correlate with the gender in which they identify. Thank you for realizing the importance in passing bill HB 412.

February 3, 2013

To Whom It May Concern:

Aloha my name is Brayden Alexander Kaleokūikeolahou Tevaitea Ramos, born on January 23, 1977 in Honolulu, Hawai'i. I humbly write this testimony in support of HB 412, relating to certificates of birth and I most graciously ask that you vote in support of HB 412 as well.

In 2009 I was officially able to amend my birth certificate to reflect a change of gender from "female" to "male" so that I could be recognized as the true gender in which I am, mentally, emotionally, and physically. The term gender is different that that of sex. Gender is defined as how the brain functions and sex defines the secondary characteristics in which we develop. Scientists have done extended research as to why people are intersexed or transgender. Research in order to discover why this happens is on going, however, scientist know the problem begins to happen during the 8th week of pregnancy. During this 8th week, the brain already functions as the correct gender, however an unknown glitch causes the baby's sex organs to produce differently. Throughout the child's life as he or she grows into sexual maturity, the child will realize he or she is developing different of the way they feel inside, which then leads to more serious problems that can sometimes result in a person taking his or her own life.

I hope to inform you through this testimony that changing my gender from "female" to "male" on my birth certificate allowed me to have a full and productive life as the well-defined gentleman I am today. I no longer have to live in humiliation, suffer from bullies, stereotypes, and teasing all of which maintains a high potential

of leading to hate crimes. Other benefits to having my gender changed on my birth certificate were that my secondary characteristics of having a full beard, hair on my chest and abdomen, the ability to go shirtless, chiseled features of my face, muscular built, masculine strength and endurance were well represented by the male gender marker. Furthermore, problems on legal documentation such as drivers license, social security, health insurance, college and work applications, and passports were no longer an issue. Lastly, the ability to seek better employment and educational opportunities and living an ultimately wholesome and complete life as a male has afforded me to live my life at its optimum.

TESTIMONY to the HOUSE COMMITTEE ON HEALTH

HB 412 RELATING TO CERTIFICATES OF BIRTH

Wednesday, February 6, 2013

10:30 AM -- State Capitol Conference Room 329

Submitted in **OPPOSITION** by: Mary Smart, Mililani, HI 96789

Chairwoman Della Au Belatti, Vice Chair Dee Morikawa and Members:

1. HB 412 allows a fraud to be perpetrated on the public. Replacing a valid and truthful document with one of questionable content based on loosely defined criteria is not acceptable. Government should not be complicit in facilitating a fraud. A surgical or pharmaceutical modification or psychological attitude no more changes the sex of an individual than a face lift changes a person's age. Dr. John Hoopes, was an early chairman of the Johns Hopkins Gender Identity Clinic (GIC), a pioneer in sex change surgery, and later (1970) the head of the plastic surgery division. According to an [article](#) in Style magazine by Laura Wexler, in 1969 he wrote that sex change surgery "must be undertaken regardless of the censure and taboos of present society." Four decades later he took a far different position and warned: "Prior to the surgery, these patients were at least male or female, but after the surgery the males converted to females weren't really females and the females converted to males weren't really males," he says. "You've created a new breed. You've created something you don't know what to do with." Gender is written into the DNA of every cell in the human body and no treatment can change that. Tracy Lehuanani Lagondino (aka Thomas Beatie) had sufficient physical modification to be declared a man, yet retained female reproductive organs and carried three babies. No matter how much some people want to believe it and media outlets portray it, men cannot physically become pregnant.
2. [Hawai'i already accommodates people](#) who are "uncomfortable" and reject their birth sex. With few requirements, an amendment to the original birth certificate can be made. HB412 is even more deceitful than current law. [Sex and gender](#) are often defined differently. For birth certificates to be truthful, the sex component of the birth certificate should remain in accordance with their DNA. Instead of falsifying the sex, add a separate "gender" component to birth certificates on request. Gender has been called "[fluid](#)" based on psychological more than physical characteristics.
3. People have a reasonable expectation that one's designated sex on legal documents is related to not only external anatomy but also to internal reproductive organs. Complimentary sexes and organs are required to naturally procreate a child biologically related to both individuals. Most people entering into marriage expect the person they are marrying to have the equipment of their external appearance, and that everything is in its original configuration, unless they are told otherwise. The state must not be complicit in committing a fraud against a person entering into a marital relationship.

4. There have been instances where people have unknowingly entered into marriage with someone who have had a sex change. After nineteen years of marriage a Belgian man found out his "wife" had been born a man and was devastated. The marriage was fraudulent and according to [this](#) news report, the man is undergoing psychiatric care. Nineteen years of his life were wasted living a lie because someone was allowed to deceive him. The government has a duty to protect its residents and others from fraud perpetrated on others, not facilitate it as HB 412 would do.

5. Our government has mandated "[Truth in Advertising](#)" laws, [truth in labeling](#) criteria, [truth in lending](#), and requirements to post true [menu calorie](#) content which relate to private commercial matters. There is a reasonable expectation that government will provide truth in the documentation they manage, control, and maintain, including birth certificates.

6. It is not unusual for people who have had sex changes to regret their decision, some [sources](#) say up to 20%. Many [return](#) to living as a member of their birth gender, even though they have lost sexual functionality. Walt Heyer, was a male to female (MTF) transgender who regretted his irreversible physical change. On his website [www.sexchangeregret.com](#), he posts of others who regret their sex change and are returning to their birth sexual identification. An October 29, 2012 posting announced, Britain's youngest sex swap patient to reverse her sex change treatment. Another person wrote " What really drove the point home for me was the realization that it required eight hours on an operating table to make my genitalia appear to be female. That pretty much tells me that I'm NOT female at all. If I were female, why wasn't I born with female genitalia? Sure, there are some intersexed people with ambiguous genitals, but I'm not at all intersexed. My chromosomes are the normal male XY, with absolutely no abnormalities. The reality is that I'm male, and no amount of surgery changes that fact." One other [sad note](#) from the web site," One out of every 3 transgenders, even after undergoing a surgical gender change, will die from suicide. Gender surgery is no help in preventing or reducing transgender suicide deaths. More than 40% of transgenders will attempt suicide and 30% will not survive the attempts and die." Walt Heyer's website posted " World renowned sex change surgeon, Dr. Stanley Biber, in a letter to the Superior Court of California, County of San Mateo, after performing male-to-female sex change surgery, admitting the resulting genital sex is "neuter" not "female" as he claimed on medical records."

7. Noting the high rate of suicide in the transgendered community mentioned above, Hawai'i legislators are focused on the wrong solution. Instead of changing birth certificates and aiding and abetting fraud on the public, people should be helped to be comfortable with their bodies, protected from costly and invasive surgeries and freed from life long hormone therapy so they can live long, happy, and fulfilling lives.

8. Respectfully request you **OPPOSE HB412**.

SANDRA G.Y. YOUNG

Attorney at Law
P.O. Box 2897
Aiea, Hawaii 96701
Telephone: (808) 487-8464

February 5, 2013

House Committee on Health
Hawaii State Legislature
Capitol Building
Honolulu, Hawaii 96813

Re: HB 412 on Birth Certificates – Strong Opposition

Dear Madam Chair Belatti, Vice Chair Morikawa, and Representatives Cabanilla, Jordan, Kobayashi, Carroll, Woodson, and Cheape:

I strongly oppose HB 412 (birth certificate bill). First, I object to the portion of the bill that amends the gender of a person on the birth certificate (when it occurs as a result of surgery, hormonal treatment or other treatment), without disclosing that the new birth certificate has been amended. Second, to protect against fraud and to protect people who may change their minds before completing the gender modification procedure, the process to amend a birth certificate should require sufficient evidentiary proof of the gender change or an order from the Court or the Lt. Governor *after* the entire gender-reassignment surgery and process has been completed. For obvious reasons, most states require a court order. Similarly, many states require that the change be done after the gender change process.

I practice family law. Birth certificates are often used for many legal proceedings because it provides the courts and parties with significant information about the birth of the person in question, as well as parentage information. In adoption proceedings, the name(s) of the new legal parent(s) is/are placed on the birth certificate, and in reviewing the new birth certificate, there is a note that the birth certificate has been amended.

Every person who marries another person has a right to know the gender of the person he or she is marrying. It may be for a religious reason, such as the prohibition against same sex marriage, or a desire to have a child. A party who fails to disclose significant information that goes to the heart of the marriage, including one's true gender (at birth), can obtain an annulment. Without actual proof through a birth certificate (or obtaining confidential birth medical records), it would be difficult for a petitioner for annulment to prove his or her contentions. Oral testimony is insufficient. If the parties to a marriage were actually born of the same sex, but one party went through a gender reassignment surgery, then the other spouse has a right to know that they cannot conceive a child together due to a change in gender. It is fraud not to disclose that basic information when people marry, and it is grounds for an annulment under existing law.

Truth and openness are the basic foundations of a successful marriage, and the legislature should support an interested party's right to know the truth. These kinds of bills can harm innocent people and religious/non-religious institutions: (a) an innocent spouse may not be informed of a transgendered spouse's sex change prior to the marriage; (b) religious institutions who limit certain positions to persons of one particular gender; (c) the ease with which criminals and sexual predators can use this law to harm others and evade justice; (d) it may provide an unfair advantage in gender-specific sports (tennis, track, etc.), and the list goes on.

Thank you for serving and protecting our community, and for your kind attention.

SANDRA YOUNG

Tracy Ryan
1658 Liholiho St #205
Honolulu, HI 96822

To the House Committee on Health

RE: HB412 to be heard Wednesday, February 6, at 10:30AM, in conference room 329

Dear Chair Au Belatti and committee members:

Twenty years ago I started this campaign to make gender identification issues less problematic for transgendered men and women. At that time the best we could do was convince the State to issue civil identification cards with a blank for the gender. Since then much progress has been made as other advocates have come forward.

It is important for the legislature to understand the enormous problems an individual encounters when their identification is not consistent with their social role and appearance. I remember one friend of mine who spent fifteen minutes trying to vote because her identification said she was a male named Van while she was obviously to everyone present a woman. This was done in public in front of a line of strangers.

Now we are at last dealing with birth records. Please make this change. There is no good reason not to.

SUPPORT

A handwritten signature in black ink, appearing to read 'Tracy Ryan', with a long horizontal flourish extending to the right.

Tracy Ryan

tracyar@hawaiiantel.net

(808) 534-1846