

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

VICTORIA KIRK, KARISSA ROTHKOPF, and)
RILEY JOHNSON,)
)
Plaintiffs,) No. 09-CH-3226
) Hon. Peter Flynn
v.)
)
DAMON T. ARNOLD, M.D. in his official capacity)
as State Registrar of Vital Records,)
)
Defendant.)
)

**PLAINTIFFS' RESPONSE TO DEFENDANT'S SECTION 2-619
MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT**

Defendant has moved to dismiss Plaintiffs' First Amended Complaint, alleging that no controversy continues to exist. In this Response, Plaintiffs demonstrate that the public nature of the issues presented in this case, coupled with Defendant's history of changing the practices at issue, warrant judicial resolution of these claims. Plaintiffs have simultaneously filed a Motion for Leave to Amend their Complaint to cure any potential defects that might currently exist. In light of both this Response and the issues presented in Plaintiffs' pending Second Amended Complaint, Defendant's Motion to Dismiss should be denied.

After setting out the factual context for this dispute and the events leading to the filing of this case, Plaintiffs' Response sets forth several reasons why Defendant's Motion to Dismiss should be denied. First, Defendant has failed to comply with Section 2-619, which requires a supporting affidavit if the grounds for dismissal do not appear on the face the pleading attacked. Second, Plaintiffs' claims satisfy the public interest exception to mootness, which allows claims such as this one to go forward even though the dispute over individual relief has ended. Defendant's past practice of changing the practices at issue in this case demonstrate that any

assertion that Defendant has ceased these practices is insufficient to render the case moot. Despite Defendant's contention, controversy over Defendant's practices remains and the resolution of their legality will be of significant practical effect, both to Plaintiffs and the public.

BACKGROUND

The Illinois Vital Records Act sets forth the procedure for individuals who wish to change the gender marker on their birth certificate. The Act requires Defendant to establish a new birth certificate when Defendant receives an affidavit from a physician providing that he or she has performed an operation on a person, and that by reason of the operation, the sex designation on such person's birth records should be changed. *Id.* at § 535/17(1)(d). After the new birth certificate is established, the new certificate is substituted for the original birth certificate. *Id.* at § 535/17(2). The Act defines physician as "a person licensed to practice medicine in Illinois or any other State." *Id.* at § 535/1(9). The Act does not define "operation" or specify which operations are required for the sex designation on a person's birth record to be changed.

In approximately 2004, Defendant instituted the two practices at issue in this case. (Am. Compl. ¶ 5.) First, since that time, Defendant has first refused to correct the gender marker on the birth certificates of persons who have chosen to have their gender confirmation surgeries performed by doctors licensed in another country, rather than in Illinois or in another state of the United States. Second, Defendant has refused to correct the gender marker on the birth certificates of female-to-male transsexual persons who have not completed a specific type of surgery - "surgery to attempt to create/attach/form a viable penis."

Prior to Defendant's adoption of these practices, persons who received gender confirmation surgery from a physician not licensed in Illinois or another state of the United States were given new birth certificates with the gender corrected. Additionally, individuals

who had not had genital reconstruction surgery were able to correct their birth certificates. (*See, e.g.*, Ex. A, Aff. of [redacted] ¶¶ 9-11.)¹ Defendant's adoption and implementation of these practices in 2004 has harmed numerous individuals, including Plaintiffs, in a variety of ways by rendering them unable to correct their birth certificates. (*See, e.g.*, Ex. B, Aff. of [redacted] ¶¶ 10-11; Ex. C, Aff. of [redacted] ¶¶ 13-14; Ex. D., Aff. of [redacted] ¶¶ 12-13; Ex. E, Aff. of [redacted] ¶¶ 11-12; Ex. F, Aff. of [redacted] ¶¶ 12-13; Ex. G, Aff. of [redacted] ¶¶ 9-10; Ex. H, Aff. of [redacted] ¶¶ 7-8; Ex. I, Aff. of [redacted] ¶¶ 8-9; Ex. J; Aff. of [redacted] ¶¶ 8-10; Ex. K, Aff. of [redacted] ¶¶ 9-11.)

Transsexuals have the most severe form of Gender Identity Disorder, a medically recognized condition in which a person's gender identity does not match the sex he or she was assigned at birth based on the appearance of the external genitalia. (Ex. L, Aff. of Walter O. Bocking ¶ 15.) Persons who are transsexual strongly identify with the other sex; desire to have, or have had, hormone therapy and/or surgery to feminize or masculinize their body; and live full time identifying themselves in the other gender. (*Id.*) Based on an assessment by a mental health professional with expertise in the treatment of Gender Identity Disorders, transsexual individuals, with their doctors and mental health professionals, develop individualized treatment plans that typically consist of psychotherapy and sex reassignment through hormone therapy, real-life experience (living full time in the cross-gender role), and/or surgery. (*Id.* ¶ 18.)

Sex reassignment is not the same for everyone and is determined in consultation with specialists in the treatment of Gender Identity Disorder in an effort to alleviate gender dysphoria and achieve comfort with one's gender role and expression. (*Id.*) Medically necessary treatment, in terms of hormone therapy and surgery, varies from person to person. However,

¹ Where copies of affidavits are attached as exhibits, original affidavits will be submitted to the Court under separate filing.

changing one's legal name and sex/gender marker on identity documents and birth certificate is an integral part of transitioning into a new gender role and conducting the real-life experience for everyone. (*Id.*)

After Defendant's adoption of the two practices at issue in this case, Plaintiffs applied for and were denied corrected birth certificates. Plaintiffs brought this suit seeking both declaratory relief, as to the legality of Defendant's practices, and injunctive relief ordering Defendant to provide them corrected birth certificates. Since the filing of this action, Defendant has provided Plaintiffs with corrected birth certificates. Although Defendant has corrected Plaintiffs' birth certificates, Defendant has not addressed the practices that Defendant initially relied on to deny Plaintiffs, and numerous other individuals, corrected birth certificates. As such, this action presents an issue of substantial public interest that warrants this Court's review.²

² Sections of the IDPH website were recently changed to reflect a different procedure for transsexual individuals whose surgeons are not licensed in the United States. The website now states, in part: "If the surgery is performed by a NON- U.S. licensed physician, the affidavit must be accompanied by an additional affidavit, 'Affidavit by Physician Verifying Completion of Gender Reassignment'. The additional affidavit must be completed by a physician licensed to practice within the United States and confirm that the gender reassignment surgery was completed." *See* Birth Records, Gender Reassignment, Frequently Asked Questions, Vital Records, IDPH, *available at* <http://www.idph.state.il.us/vitalrecords/gender.htm> (last visited Aug. 3, 2009) (emphasis in original).

However, other sections of the website remain unchanged: "The physician that completed the surgery must be licensed within the United States." *See* Birth Records, What do I need to change my birth certificate to reflect a gender change due to surgery?, Vital Records, IDPH, *available at* http://www.idph.state.il.us/vitalrecords/correction_faq.htm#4 (last visited Aug. 3, 2009). Plaintiffs do not know whether the first or second section quoted above describes the current practice with respect to individuals whose surgeons are not licensed in the United States. Even if the first section suggests the existence of a new practice, Plaintiffs are unsure whether this practice will be maintained in the future.

ARGUMENT

I. DEFENDANT HAS NOT SUBMITTED A SUPPORTING AFFIDAVIT PROVIDING THE BASIS FOR DISMISSAL UNDER SECTION 2-619.

Defendant's Motion to Dismiss fails to provide any supporting affidavit detailing the basis for dismissal under Section 2-619. Section 2-619, regarding involuntary dismissal, states, "If the grounds do not appear on the face of the pleading attacked the motion shall be supported by affidavit." If the matter asserted to defeat a complaint is not established by the pleading attacked, a Section 2-619 motion must be supported by an affidavit or it is insufficient to provide the basis for dismissal. *See Hayes v. M&T Mortg. Corp.*, 389 Ill. App. 3d 388, 392 (1st Dist. 2009) (denying the improper motion to dismiss); *Doe v. Montessori Sch. of Lake Forest*, 287 Ill. App. 3d 289, 295-96 (2d Dist. 1997) (reversing the dismissal of a complaint citing the failure to support the motion with the requisite affidavit). Although Defendant's Motion sets forth the subsection of Section 2-619 upon which it relies, it does not provide any accompanying support outside of the statements made in its Motion. Defendant's Motion does not attack Plaintiffs' pleading nor has Defendant demonstrated how dismissal is warranted on the face of the Complaint. His Section 2-619 Motion should be denied.

II. THE CORRECTION OF PLAINTIFFS' BIRTH CERTIFICATES DOES NOT MOOT THEIR CLAIMS BECAUSE AN ISSUE OF SUBSTANTIAL PUBLIC IMPORTANCE REMAINS.

Even if Defendant had included the required affidavit to support his Motion to Dismiss, Defendant's Motion fails to address whether Defendant has abandoned or will continue to enforce the practices Plaintiffs challenge and whether Defendant contends that these practices are constitutional. This case should not be dismissed as moot because the challenged practices have harmed and will continue to harm a significant number of persons and the legality of their enforcement is a matter of substantial public importance. When an issue is of substantial public

importance, it falls within the well-recognized public interest exception to mootness. *People ex. rel. Wallace v. Labrenz*, 411 Ill. 618, 622-23 (1952); *see also Bonaguro v. County Officers Electoral Bd.*, 158 Ill. 2d 391, 395 (1994). Courts consider three factors to determine whether a case is justiciable under the exception: 1) the public nature of the question; 2) the desirability of an authoritative determination for the purpose of guiding public officers; and 3) the likelihood that the question will recur, with elements two and three often considered together. *Bonaguro*, 158 Ill. 2d at 395 (citing *In re A Minor*, 127 Ill. 2d 247, 257 (1989); *Labrenz*, 411 Ill. at 622). As set forth below, this case satisfies each of the three factors.

A. Defendant's Practices for Implementing the Vital Records Act and Correcting Birth Certificates Are of Substantial Public Importance.

Courts analyzing whether a case falls within the public interest exception first review the public nature of the question presented. *See Labrenz*, 411 Ill. at 622-23; *see also In re Robert S.*, 213 Ill. 2d 30, 44-46 (2004); *In re Andrea F.*, 208 Ill. 2d 148, 156-57 (2003). Courts have often found the public nature requirement to be satisfied when cases involve the intersection of government action and the rights of citizens. *See Labrenz*, 411 Ill. at 622-23 (reviewing government intervention for blood transfusions for juveniles despite parental objection); *see also In re Andrea F.*, 208 Ill. 2d at 156-57 (reviewing State run foster care issues); *In re Robert S.*, 213 Ill. 2d at 44-46 (reviewing involuntary medical treatment of individuals under State control). This does not, however, require that the issue being reviewed impact the rights of all citizens or even a majority of citizens.

In *Labrenz*, the seminal case regarding the public interest exception, the Illinois Supreme Court reviewed blood transfusions for juveniles whose parents refused to allow treatment. *Labrenz*, 411 Ill. at 622-23. The court concluded that although the individual controversy no longer existed, the issue was of a public nature that satisfied the public interest exception to

mootness and warranted resolution. *Id.* In *In Re Andrea F.*, the Illinois Supreme Court resolved the question of the proper procedure for courts to terminate parental rights, even though the issue before the court involved only cases decided before a particular time period. *In re Andrea F.*, 208 Ill. 2d at 156-57. Similarly, in *In re Robert S.*, the Illinois Supreme Court found that the question of the proper procedure for involuntarily medicating mental health patients was a question of a public nature that satisfied the public interest exception. *In re Robert S.*, 213 Ill. 2d at 44-46. The exception has also been applied to questions concerning state licensing decisions that directly affect only a small number of people because of the question's importance for the general public, *Smith v. Ballas*, 335 Ill. App. 418, 420 (3rd Dist. 1948) (reviewing business license decisions involving the sale of alcohol), and to issues to which "all citizens should be interested in a proper solution." *Ballew v. Edelman*, 34 Ill. App. 3d 490, 496 (1st Dist. 1975) (reviewing distribution of public aid).

The rules for ensuring that the information on one's birth certificate is correct are of vital public importance, both to the individuals affected and the public at-large. Birth certificates are important documents. Individuals may need a birth certificate to prove eligibility to work when starting a new job; to obtain other identity documents that allow them to vote, to travel, or to enter buildings; or to gain access to other government services or employment benefits. (Ex. L, Aff. of Walter O. Bockting ¶¶ 36-40.) The right to a correct birth certificate is especially important for those individuals who move to states with more restrictive laws involving the use of birth certificates and other forms of identification. For example, transsexual persons born in Illinois who now live in states such as Virginia are unable to correct the gender on their driver's licenses, because those states require an amended birth certificate before changing the gender on a transsexual person's driver's license. (Am. Compl. ¶ 42.) Even if a birth certificate with the

new gender on it is not formally required in order to correct government identification documents, such as driver's licenses, transsexual individuals report that government employees regularly deny accurate documents to persons on that basis. (Ex. E, Aff. of Oliverio Rodriguez ¶ 9; Ex. L, Aff. of Walter O. Bockting ¶¶ 36-40.)

As alleged in the Complaint, "Changing the name and gender on a person's identity documents is another important aspect of sex reassignment, since those documents are crucial to that person's ability to function successfully in the new gender." (Am. Compl. ¶ 41; *see also* Ex. L, Aff. of Walter O. Bockting ¶¶ 36-40.) Identity documents listing a gender that fails to match up to one's current gender presentation can often lead to harassment, discrimination, or groundless accusations of fraud. (Ex. L, Aff. of Walter O. Bockting ¶¶ 36-40.) Additionally, for a person who has struggled for years to live life in the correct gender, the knowledge that one's identity documents label her or him with the wrong gender can, by itself, cause serious psychological injury. (*Id.*)

In addition, the rules Plaintiffs challenge in this action burden their, and other transsexual persons', fundamental rights to make decisions regarding their medical treatment. Both of the practices at issue here involve such fundamental decisions. Courts have recognized an individual right to make certain medical decisions free from government interference without constitutionally sufficient justification. *See, e.g., Sell v. United States*, 539 U.S. 166 (2003) (liberty interest in avoiding unwanted administration of drugs); *Riggins v. Nevada*, 504 U.S. 127 (1992) (same); *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833 (1992) (liberty interest in reproductive health choices); *Cruzan v. Mo. Dep't of Health*, 497 U.S. 261 (1990) (due process right to refuse life-saving treatment); *In re Estate of Longeway*, 133 Ill.2d 33, 44 (1990) (common law right to refuse treatment based on a right of "personal inviolability"); *In re*

C.E., 161 Ill.2d 200, 213-19 (1994) (liberty interests implicated by involuntary administration of medication). Defendant's practices place a significant burden on Plaintiffs', and other individuals', ability to make important medical decisions about whether to have genital surgery and who to choose as their surgeon for gender confirmation surgery.

Defendant's practices concerning transsexual individuals' ability to obtain birth certificates with the correct gender listed on them are, therefore, matters of significant public importance that require resolution from this Court.

B. An Authoritative Decision from This Court is Important Because the Issue Is Certain to Recur Despite Defendant's Voluntary Cessation.

The questions presented by this case are certain recur and an authoritative decision from a court is desirable.³ The question of likelihood of recurrence concerns whether the issue is likely to recur in the public at-large, not to the individual litigants in the case. *In re A Minor*, 127 Ill. 2d at 258-59 (reviewing whether courts in future criminal trials could order newspapers not "to report the names of minors charged with serious crimes"); *In re Andrea F.*, 208 Ill. 2d at 156-57 (reviewing whether child custody determinations in other cases would be thrown into doubt by the appellate court's decision); *In re Robert S.*, 213 Ill. 2d at 44-46 (reviewing decisions regarding involuntary treatment that were likely to recur even after the individual litigant was no longer confined). Generally, when an issue satisfies the third prong, and there is no authoritative determination on the legal issue presented, Illinois courts find that the second prong of the test is satisfied. *See e.g.*, *In re Robert S.*, 213 Ill. 2d at 44-46; *In re Andrea F.*, 208 Ill. 2d at 156-57.

As the Illinois Supreme Court held in *Bonaguro*, when "issues . . . are long-standing and have not been addressed by courts or the legislature[,] [a]n authoritative guide for future

³ The second and third prongs of the public interest exception test - whether an authoritative decision from a court is desirable and whether the question before the court is likely to recur - will be reviewed here together.

controversies is needed.” 158 Ill. 2d at 396; *see also In re Robert S.*, 213 Ill. 2d at 44-46 (no court had addressed the questions whether a mental health facility’s use of a psychologist, rather than a psychiatrist, as an independent medical examiner in proceeding to involuntarily administer medication to a pretrial detainee and its failure to notify criminal defense attorney violated the mental health code or due process); *In re Andrea F.*, 208 Ill. 2d at 156-57 (appellate court’s admonishment requirement would affect other parental right dispositions, so the Illinois Supreme Court would review whether former law, in fact, required pre-termination admonishment).

This case satisfies both the second and third elements as no court has resolved the legality of Defendant’s practices and this issue is certain to recur. Plaintiffs are aware of a number of other transsexual individuals who Defendant has refused accurate birth certificates because they chose surgeons who were not licensed in the United States or because they have not completed genital reconstruction surgery, (*see Exs. A-K*), and Plaintiffs believe that these represent a small subset of the persons who have been denied accurate birth certificates based on the practices challenged here. Although the data does not exist that would allow Plaintiffs to suggest a more definite number, the numbers of persons affected is significant. Those numbers will continue to grow if these rules continue in force or if they are in the near future reinstated.

Finally, although Plaintiffs have now received their corrected birth certificates, Defendant has not established that he has finally terminated, and is not reasonably likely to reinstate, the use of these practices. Moreover, Defendant’s action in providing birth certificates to Plaintiffs, coupled with his prior changes in his practices, demonstrates the fluidity of these practices and reinforces the need for a determination that the underlying practices at issue violate the Vital Records Act and the Illinois Constitution. Defendant has had different practices in the past that did not mandate that Illinois-born individuals choose a U.S.-licensed surgeon or that female-to-

male transsexual persons born in Illinois complete genital surgery before they could receive an accurate birth certificate. Prior to 2004, Defendant did not require female-to-male transsexual persons to complete genital surgery before they could obtain accurate birth certificates. (*See, e.g., Ex. A, Aff. of S. Mark K. ¶¶ 9-11.*) As far as Plaintiffs know, Defendant has not ceased either practice, although the Department of Public Health website suggests that he may have altered the U.S.-licensed surgeon practice. *See* Birth Records, Gender Reassignment, Frequently Asked Questions, Vital Records, IDPH, *available at* <http://www.idph.state.il.us/vitalrecords/gender.htm> (last visited Aug. 3, 2009) (suggesting a change in the practice); *but see* Birth Records, What do I need to change my birth certificate to reflect a gender change due to surgery? Vital Records, IDPH, *available at* http://www.idph.state.il.us/vitalrecords/correction_faqs.htm#4 (last visited Aug. 3, 2009) (maintaining the prior practice).

An authoritative determination by this Court regarding the legality of Defendant's practices will benefit the larger transsexual community, as well as Defendant and the government agents charged with enforcing and implementing Defendant's practices.⁴ It would be both impractical and inefficient for each individual to file suit in order to secure a determination regarding the validity of his or her course of action and his or her eventual ability to secure a corrected birth certificate. All three Plaintiffs in this case were denied a corrected birth certificate prior to or during this lawsuit. Defendant has offered no basis for its decision to provide them at this time and has not committed to ending either practice challenged here. An

⁴ Defendant is charged with the responsibility of protecting the accuracy of Illinois vital records, (410 ILCS § 535/28) and the practices challenged in this case undermine the accuracy of the gender marker on birth certificates by relying on criteria that are not determinative of gender.

authoritative determination on the legality of Defendant's policies is of substantial importance and warrants the continued prosecution of Plaintiffs' claims for relief.⁵

CONCLUSION

For all of these reasons, this Court should deny Defendant's Section 2-619 Motion to Dismiss Plaintiffs' First Amended Complaint.

August 3, 2009

Respectfully submitted,

One of Plaintiffs' attorneys

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⁵ An additional reason why an authoritative court determination is necessary is the Illinois General Assembly's refusal to end these illegal practices through the passage of House Bill 1732. (Ex. M, Text of House Bill.) Although the House voted down the bill, the debate regarding that Bill showed that the legislature failed to give serious consideration to transsexual persons' vital need for accurate identity documents. (Ex. N, House of Representatives Debate Transcription.)

EXHIBIT L

AFFIDAVIT OF WALTER O. BOCKTING, PHD**VICTORIA KIRK, KARISSA ROTHKOPF, and RILEY JOHNSON v.
DAMON T. ARNOLD, M.D. in his official capacity as State Registrar of Vital
Records**

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Qualifications and Background

1. I am an Associate Professor with tenure in the Department of Family Medicine and Community Health, University of Minnesota Medical School. In my position of Coordinator of Transgender Health Services, I am responsible for patient care, research, and the training of health professionals in the area of transgender health. I direct a multidisciplinary team of physicians and mental health professionals in delivering state of the art transgender care. In addition, I am an integral part of multidisciplinary teams treating a range of sexual disorders and am a founding member of the University's Leo Fung Center for CAH (Congenital Adrenal Hyperplasia) and Disorders of Sex Development, Division of Pediatric Endocrinology, Department of Pediatrics.
2. I have been licensed by the State of Minnesota Board of Psychology as a Licensed Psychologist (LP2505) since 1991.
3. As a psychologist, I have over 20 years of direct clinical experience working with hundreds of transgender and transsexual patients and their families. As such, my responsibilities include the assessment and treatment, and the coordination of care with physicians who provide hormone therapy and perform surgical procedures

recommended as part of sex reassignment. Among the tasks of mental health professionals in the multidisciplinary treatment of Gender Identity Disorders described below (20), it is my responsibility to stay up to date on the latest scientific evidence base to adequately assist my patients to make informed decisions about all aspects of sex reassignment.

4. I am President of the World Professional Association for Transgender Health (formerly named the Harry Benjamin International Gender Dysphoria Association), an interdisciplinary professional organization dedicated to the advancement of scientific knowledge, training, treatment, and advocacy in the area of Gender Identity Disorders and transgender health. This association sets forth the Standards of Care for Gender Identity Disorders. In addition, I am a member of the International Academy of Sex Research, the Society for Sex Therapy and Research, and a Past President of the Society for the Scientific Study of Sexuality. Finally, I am a member of the American Psychological Association and served on its Task Force on Gender Identity, Gender Variance, and Intersex Conditions.

5. ~~I received my bachelor degree in Psychology (1985), doctorate degree in~~
Clinical Psychology (equivalent to an All But Dissertation; 1988), and PhD in Medical Psychology (1998) from the Vrije Universiteit, Amsterdam, The Netherlands. I moved to the United States in 1988 to complete a Post-Doctoral Clinical/Research Fellowship in Human Sexuality at the University of Minnesota and have been at the University of Minnesota ever since. Subsequent continuing education has included numerous conferences in psychology, gender, and human sexuality, and a sabbatical leave project

(January-August, 2006) on Gender Identity Disorders in children and adolescents at the Vrije Universiteit Medical Center, Amsterdam, The Netherlands.

6. My research interests include sex and gender, transgenderism, transsexualism, Disorders of Sex Development, sexuality and the Internet, HIV prevention, and the promotion of sexual health. I have been awarded grants for my research from the American Foundation for AIDS Research, the Minnesota Department of Health, and the National Institutes of Health. In addition, I have served as a co-investigator on grant-funded studies from the Centers for Disease Control and Prevention.

7. I have published 46 papers in my areas of research, of which 41 are in peer-reviewed journals. I have edited five books, four of those in the area of transgender health. See Exhibit 1 (curriculum vitae).

8. I teach medical students, residents, and psychologists in postdoctoral training at the University of Minnesota Medical School in transgender and sexual health. In addition, I am a frequent presenter at local, regional, national, and international scientific and continuing education conferences.

9. ~~Among other consultations in the area of gender identity and human~~
sexuality, I have assisted the Minnesota Department of Motor Vehicles in developing a policy for changes in name and gender marker on driver's licenses for transgender individuals. See Exhibit 1.

10. More detailed information about my background and experience can be found in my curriculum vitae, which is attached as Exhibit 1.

Opinions

11. I have been asked to render expert opinions on (a) What is Gender Identity Disorder?; (b) What is transsexualism and how prevalent is it?; (c) How is Gender Identity Disorder treated? What are the Standards of Care for Gender Identity Disorders?; (d) What are some of the unique issues facing female-to-male transsexual individuals?; and (e) What is the importance of changes in identity documents, including birth certificates in the treatment of Gender Identity Disorders? In forming my opinions, I have relied on my scientific education and training, my research experience, my knowledge of the scientific literature in the pertinent fields, and my extensive clinical experience in treating sexual and Gender Identity Disorders. The sources cited in this report are all from authoritative scientific publications, most of which are peer reviewed journal articles or authoritative reviews of peer-reviewed original research publications. I also have reviewed the First Amended Complaint by Victoria Kirk, Karissa Rothkopf, and Riley Johson v. Damon T. Arnold, M.D. in his official capacity as State Registrar of Vital Records, April 7, 2009.

Based on my review of the foregoing, and for reasons set forth in more detail below, my opinions are the following:

A. WHAT IS GENDER IDENTITY DISORDER?

12. Gender identity is a person's basic sense of being a man or woman (Stoller, 1964). It is distinct from sexual orientation, which refers to a person's

attractions, sexual behaviors, fantasies, and emotional attachments towards others (Coleman, 1987), whereas gender identity is about one's experience of self as a man or a woman. In most cases, gender identity is congruent with sex assigned at birth, but in case of Gender Identity Disorder it is not (Bockting, 1999).

13. Gender Identity Disorder is a medically recognized condition in which a person's gender identity does not match his or her sex assigned at birth based on the appearance of the external genitalia (Bockting, 1999). This conflict causes psychological distress and intense feelings of discomfort. This psychological distress and discomfort is referred to as gender dysphoria (Bockting, 1997). Specifically, the criteria for Gender Identity Disorder described in the Diagnostic and Statistical Manual of Mental Disorders (DSM), Fourth Edition, Text Revision (American Psychiatric Association, 2000, pp. 576-582), *See Exhibit 2*, can be summarized as follows:

- (a) A strong and persistent cross-gender identification, manifested by symptoms such as a stated desire to be the other sex, frequent passing as the other sex, desire to live or be treated as the other sex, ~~or the conviction that he or she has the typical feelings and~~ reactions of the other sex;
- (b) Persistent discomfort with his or her sex or sense of inappropriateness in the gender role of that sex, manifested by symptoms such as preoccupation with getting rid of primary and secondary sex characteristics (e.g., request for hormones, surgery, or other procedures to physically alter sexual characteristics to simulate the other sex) or belief that he or she

was born the wrong sex.;

- (c) The disturbance is not concurrent with a physical intersex condition; and
- (d) The disturbance causes clinically significant distress or impairment in social, occupational, or other important areas of functioning.

14. What causes Gender Identity Disorder remains unknown. Biological factors (hormonal, genetic, brain structure) and psychosocial factors (culture, upbringing) most likely interact, but research is still in its infancy and findings to date are inconclusive (Cohen-Kettenis & Gooren, 1999). No solid empirical support has been found for the influence of family or origin dynamics (Zucker & Bradley, 1995). Current research on the etiology of Gender Identity Disorder primarily focuses on biological factors, such as the role of prenatal and perinatal androgen exposure in sexual differentiation of the brain. A discrepancy between genital differentiation and brain sexual differentiation has been invoked as an explanation for Gender Identity Disorder (Cohen-Kettenis & Gooren, 1999), an explanation which has been supported by findings of a female brain structure in male-to-female transsexuals (Zhou, Hoffman, Gooren, & Swaab, 1995). What is known is that gender identity establishes itself early in life, as early as 2-3 years of age (Money, Hampson, & Hampson, 1957), and is not the result of conscious choice.

B. WHAT IS TRANSSEXUALISM AND HOW PREVALENT IS IT?

15. Transsexuals are individuals who have the most severe form of Gender Identity Disorder. Transsexuals strongly identify with the other sex (have a core

crossgender identity), desire or have had hormone therapy and/or surgery to feminize or masculinize their body, and live full time in the crossgender role (Feldman & Bockting, 2003).

16. Transsexuals should not be confused with individuals with other transgender identities. Transgender individuals are a diverse group of individuals who cross or transcend culturally-defined categories of gender (Bockting, 1999). They include transsexuals, but also others whose gender identity or expression does not conform to societal expectations associated with the sex they were assigned at birth. For example, crossdressers or transvestites are transgender persons who wear clothing and adopt behaviors associated with the other sex for emotional or sexual gratification, may live part-time in the crossgender role, but do not have a core crossgender identity and do not seek hormones or surgery (Feldman & Bockting, 2003).

17. Definitive data on the prevalence of transsexualism is lacking, particularly in the U.S., which has no national database of transsexual individuals. Data from other nations indicate that the prevalence of transsexualism, based on those who underwent sex reassignment, is 1:11,900 for male-to-female transsexuals and 1:30,400 for female-to-male transsexuals (Bakker, van Kesteren, Gooren, & Bezemer, 1993).

C. HOW IS GENDER IDENTITY DISORDER TREATED? WHAT ARE THE STANDARDS OF CARE FOR GENDER IDENTITY DISORDERS?

18. The treatment of Gender Identity Disorders is guided by the Standards of Care (SOC) set forth by the World Professional Association for Transgender Health (formerly named the Harry Benjamin International Gender Dysphoria Association) since

1979, now in its 6th revision (Meyer et al., 2001). *See* Exhibit 3. These guidelines are widely accepted and respected, and reflect the professional consensus about the psychological, psychiatric, hormonal, and surgical management of Gender Identity Disorders. Based on an assessment by a mental health professional with expertise in the treatment of Gender Identity Disorders, an individualized treatment plan is developed that typically consists of psychotherapy and—in case of a strong cross-gender identity typical for transsexualism—sex reassignment through hormone therapy, Real-Life Experience (living full time in the cross-gender role), and/or surgery. Surgery may include breast/chest surgery, genital reconstructive surgery, or other surgeries to feminize or masculinize a person's body or appearance. Sex reassignment treatment is not the same for everyone but instead determined in consultation with specialists in the treatment of Gender Identity Disorder in an effort to alleviate gender dysphoria and achieve comfort with one's gender role and expression. What is medically necessary in terms of hormone therapy and surgery varies from person to person. However, changing one's legal name and sex/gender marker on identity documents and birth certificate is an integral part of ~~transitioning into a new gender role and conducting the Real-Life Experience for anyone~~ undergoing sex reassignment.

19. Gender Identity Disorder is a condition in and of itself that does not imply any other mental distress. Patients may have additional mental health concerns, but these are not part of a diagnosis of Gender Identity Disorder and would have to be assessed separately, reflected in an additional diagnosis, and incorporated into the individualized treatment plan (Bockting, 1997).

20. The role of the mental health professional in the treatment of Gender Identity Disorder includes assisting the patient to make a fully informed decision with regard to a change in gender role and sex assignment. While it is the client's decision whether or not to undergo any sex reassignment procedures, the mental health professional's responsibility is to determine the patient's eligibility and readiness for such procedures. This includes ascertaining that the patient is stable psychologically and emotionally, and, if concerns arise, assisting the patient in achieving such stability prior to the initiation of hormone therapy or surgery. In practice, this means that the mental health professional is available before, during, and after reassignment to assist the patient to achieve optimal adjustment in the crossgender role and maintain good mental health. According to the SOC, a recommendation from one or two mental health professionals is required to access hormone therapy or surgery as part of sex reassignment (one for hormone therapy or breast/chest surgery, two for genital reconstructive surgery).

21. The SOC are clinical guidelines; individual professionals and organized programs may modify them because of a patient's unique anatomic, social, or psychological situation, an experienced professional's evolving method of handling a common situation, or a research protocol.

22. The Standards of Care for Gender Identity Disorders (SOC) define the following eligibility criteria for hormone therapy:

- (1) Age 18 years;
- (2) Demonstrable knowledge of what hormones medically can and cannot do and their social benefits and risks;

- (3) Either (a) a documented Real-Life Experience of at least three months prior to the administration of hormones; or (b) a period of psychotherapy of a duration specified by the mental health professional after the initial evaluation (usually a minimum of three months).

23. The SOC stipulate that breast/chest surgery as part of sex reassignment should be considered with the same reservations as beginning hormone therapy. A mastectomy for female-to-male patients is usually the first [and may be the only] surgery performed for success in gender presentation as a man. Female-to-male patients may have surgery at the same time as they begin hormone therapy. For male-to-female patients, augmentation mammoplasty may be performed if the physician prescribing hormones and the surgeon have documented that breast enlargement after undergoing hormonal treatment for 18 months is not sufficient for comfort in the social gender role.

24. The SOC define the following eligibility criteria for genital reconstructive surgery:

-
- ~~(1) Legal age of majority in the patient's nation;~~
 - (2) Usually 12 months of continuous hormonal therapy for those without a medical contraindication;
 - (3) 12 months of successful continuous full time Real-Life Experience.
 - (4) If required by the mental health professional, regular responsible participation in psychotherapy throughout the Real-Life Experience at a frequency determined jointly by the patient and the

mental health professional. Psychotherapy is not an absolute eligibility criterion for surgery;

- (5) Demonstrable knowledge of the cost, required length of hospitalizations, likely complications, and post surgical rehabilitation requirements of various surgical approaches;
- (6) Awareness of different competent surgeons.

25. The eligibility criteria defined in # 22, 23, and 24 above are minimum requirements. In addition, the SOC define readiness criteria, criteria that are tailored to the individual client based on the outcome of the mental health assessment. The readiness criteria for hormone therapy are:

- (1) The patient has had further consolidation of gender identity during the Real-Life Experience or psychotherapy (i.e., the patient has begun to bring the private experience of gender identity in congruence with the public expression of gender role and presentation, for example through spending some time in the ~~crossgender role or by informing family members and friends of~~ his or her crossgender identity).
- (2) The patient has made some progress in mastering other identified problems leading to improving or continuing stable mental health (this implies satisfactory control of problems such as sociopathy, substance abuse, psychosis, and suicidality, in case such concerns were identified during the mental health assessment or during subsequent treatment);

(3) The patient is likely to take hormones in a responsible manner.

26. The readiness criteria for genital reconstructive surgery are:

(1) Demonstrable progress in consolidating one's gender identity;

(2) Demonstrable progress in dealing with work, family, and interpersonal issues resulting in a significantly better state of mental health; this implies satisfactory control of problems such as sociopathy, substance abuse, psychosis, suicidality, for instance).

27. The SOC define the Real-Life Experience as "the act of fully adopting a new or evolving gender role or gender presentation in everyday life." The Real-Life Experience is essential to the transition to the gender role that is congruent with the patient's gender identity. It typically includes a legal change in name and gender marker on identity documents, essential to function successfully in the appropriate gender role (e.g., to apply for and start a new job, to vote, travel, and enter secure or age-restricted buildings, or to gain access to government services or employment benefits). Although mental health professionals may recommend living in the cross-gender role, the decision as to when and how to begin the Real-Life Experience remains the patient's

responsibility; some transition to living full time in the crossgender role prior to the onset of hormone therapy, others start some time after the onset of hormone therapy. Once embarked on the Real-Life Experience, very few transsexual individuals revert back to the original gender role.

28. When mental health professionals assess the quality of the Real-Life Experience, the following abilities are reviewed:

- (1) to maintain full or part-time employment;
- (2) to function as a student;
- (3) to function in community-based volunteer activity;
- (4) to undertake some combination of items 1-3;
- (5) to acquire a (legal) gender-identity-appropriate first name;
- (6) to provide documentation that persons other than the therapist know that the patient functions in the desired gender role.

29. When a patient is treated in accordance with the SOC, hormone therapy is prescribed and carefully monitored by a competent physician.

30. Surgery as part of sex reassignment consists of well-established procedures resulting in high patient satisfaction, improved psychosocial adjustment, and virtually no regrets (Green & Fleming, 1990; Pfaefflin & Junge, 1998). However, while breast/chest surgery is available across the United States, genital reconstructive surgeries are performed by only a handful of qualified surgeons. Hence, transsexual patients are typically referred to a surgeon that is part of a recognized network of competent surgeons internationally. ~~Traveling outside of the United States to have surgery by a recognized,~~ competent surgeon abroad is common and safely done. In consultation with the other specialized providers in their care team, patients choose a surgeon that best suits their individual situation and needs.

31. Gender identity can be viewed as the sex of the brain, which, once established, cannot be changed (Cohen-Kettenis & Gooren, 1999). Treatment attempts aimed at changing gender identity to become congruent with sex assigned at birth have not resulted in long-term change (Cohen-Kettenis & Kuiper, 1984; Pauly, 1965). In

contrast, treatment in accordance with the SOC aimed at changing the body and gender role to become congruent with gender identity has been shown to be highly effective (Pfaefflin & Junge, 1998).

D. WHAT ARE SOME OF THE UNIQUE ISSUES FACING FEMALE-TO-MALE TRANSEXUAL INDIVIDUALS?

32. For female-to-male transsexuals, hormone therapy and chest surgery are the most important and common medical interventions to alleviate gender dysphoria. Masculinizing hormones have a profound and irreversible effect on the body and appearance of female-to-male transsexuals, including facial hair growth, a decrease in the pitch of the voice, and potential male pattern baldness (Dahl, Feldman, Goldberg, & Jaber, 2006). In addition, chest surgery to create a male appearing chest is key to alleviate gender dysphoria for many female-to-male transsexuals and facilitates living and functioning successfully full time in the male gender role.

33. Female-to-male transsexual individuals may complete a hysterectomy and oophorectomy, but rarely undergo genital reconstructive surgery. Most alleviate, if not resolve, their gender dysphoria without having genital reconstructive surgery.

34. While male-to-female genital reconstructive surgery is well developed and hence commonly accessed and performed, female-to-male genital reconstructive surgery (e.g., phalloplasty, metiodioplasty) remains challenging surgically (Bowman & Goldberg, 2006). Very few surgeons perform such surgery. Phalloplasty consists of multiple, complex surgical procedures that are expensive, typically not covered by health insurance, highly vulnerable to complications, and even in the best case scenario, the

outcome leaves much to be desired both esthetically and functionally (e.g., the phallus does not become erect without the help of a prosthesis). In addition, a skin graft is typically needed resulting in severe scarring at the donor site, which is typically the very visible lower forearm. The other genital reconstructive technique, metoidioplasty, creates a microphallus of which the result for many female-to-male transsexuals does not conform closely enough to the typical male anatomy to be considered satisfying. Moreover, lengthening of the urethra to enable voiding in a standing position remains a challenging procedure with likely complications.

35. Given the challenges reviewed above (34), it is no surprise that very few female-to-male transsexuals undergo these procedures. One study reported that only 3% of transsexual men had had genital reconstructive surgery, 16% were planning to do, and 29% had decided definitely not to have it (Rachlin, 2002). Nevertheless, some female-to-male transsexuals do need this surgery to alleviate their gender dysphoria to a manageable level.

E. WHAT IS THE IMPORTANCE OF CHANGES IN IDENTITY

DOCUMENTS, INCLUDING BIRTH CERTIFICATES, IN THE TREATMENT OF GENDER IDENTITY DISORDER?

36. In the treatment of Gender Identity Disorder, as part of sex reassignment, a change in sex/gender marker on one's birth certificate is typically requested and granted. It is an integral part of treatment to alleviate gender dysphoria and facilitate adjustment in the appropriate gender role to ensure congruence with the transsexual person's core gender identity.

37. Research has shown that the ability to obtain a legal change in name and sex/gender marker on identity documents and birth records is one of the seven main predictors of treatment effectiveness and psychosocial adjustment following sex reassignment (Pfaefflin & Junge, 1998). In my clinical experience, in some cases, people may have difficulty changing their identity documents without producing a changed birth certificate.

38. Identity documents with a sex/gender marker that does not match a transsexual individual's gender presentation can often lead to harassment, discrimination, violence, or groundless accusations of fraud. Moreover, a sex/gender marker that does not match a transsexual person's gender identity is inherently distressing and perpetuates gender dysphoria, causing psychological pain and interpersonal discomfort, conflict, and distress.

39. Sex reassignment is first and foremost a psychosocial process. This is reflected in the importance of the Real-Life Experience as an eligibility criterion for hormone therapy and surgery in the Standards of Care set forth by the World Professional Association for Transgender Health (Meyer et al., 2001). ~~The transition to the other~~ gender role, which for transsexuals typically is full time and permanent, would therefore be the most logical criterion and, from a treatment perspective, the best time for determining the appropriate sex/gender marker on identity documents and one's birth certificate. The start of the Real-Life Experience is typically carefully prepared and anticipated, and for successful living and functioning in the gender role that matches a person's gender identity, corresponding identity documents are essential.

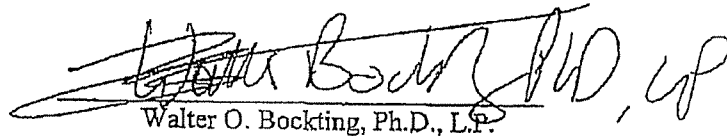
40. As indicated above (18), what is medically necessary in terms of hormone therapy and the various surgical procedures varies from person to person. Some transsexual individuals need genital reconstructive surgery to adequately alleviate their gender dysphoria; for others, this may not be necessary. Particularly for female-to-male transsexuals, chest surgery is typically most important, hormones are important to many, some have hysterectomy and oophorectomy, yet very few opt for genital reconstructive surgery because of its limitations in access and outcome. Many female-to-male transsexuals are able to alleviate their gender dysphoria to a manageable if not resolved level without genital reconstructive surgery (Rachlin, 2002). Therefore, especially for female-to-male transsexuals, it would be harmful and potentially detrimental to their health and well-being to require genital reconstructive surgery in order to obtain a change in the sex/gender marker on identity documents and birth certificate. Requiring this would mean that most female-to-male transsexuals would not be able to change documents, jeopardizing their ability to live successfully in the gender role consistent with their gender identity, and hence undermining the transition necessary to alleviate their gender dysphoria. Moreover, it would increase their vulnerability to social stigma, harassment, and abuse. Finally, it might press some female-to-male transsexuals into having procedures that may not be medically necessary for them and involve multiple hospitalizations with the likelihood of complications and a less than optimal outcome.

VERIFICATION BY CERTIFICATION

Under the penalties as provided by law pursuant to paragraph 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that statements set forth in this instrument

are true and correct, except as to matters stated to be on information and belief, and as to such matters therein the undersigned certifies as aforesaid that he or she verily believes the same to be true.

July 31, 2009


Walter O. Bockting, Ph.D., L.P.

7/31/09

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EXHIBIT M

95TH GENERAL ASSEMBLY
State of Illinois
2007 and 2008
HB1732

Introduced 2/22/2007, by Rep. Sara Feigenholtz

SYNOPSIS AS INTRODUCED:

410 ILCS 535/1 from Ch. 111 1/2, par. 73-1
410 ILCS 535/17 from Ch. 111 1/2, par. 73-17

Amends the Vital Records Act. Adds a definition of "medical treatment". Provides that the State Registrar of Vital Records shall establish a new certificate of birth when he or she receives an affidavit by a physician that a person has undergone medical treatment and that by reason of the medical treatment the sex designation on such person's birth record should be changed (now, an affidavit by a physician that he has performed an operation on a person, and that by reason of the operation the sex designation on such person's birth record should be changed). Effective immediately.

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FISCAL NOTE ACT MAY
APPLY

A BILL FOR

HB1732

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- 1 AN ACT concerning public health.
- 2 Be it enacted by the People of the State of Illinois,
- 3 represented in the General Assembly:

4 Section 5. The Vital Records Act is amended by changing
5 Sections 1 and 17 and by adding Section 28.5 as follows:

6 (410 ILCS 535/1) (from Ch. 111 1/2, par. 73-1)

7 Sec. 1. As used in this Act, unless the context otherwise
8 requires:

9 (1) "Vital records" means records of births, deaths, fetal
10 deaths, marriages, dissolution of marriages, and data related
11 thereto.

12 (2) "System of vital records" includes the registration,
13 collection, preservation, amendment, and certification of
14 vital records, and activities related thereto.

15 (3) "Filing" means the presentation of a certificate,
16 report, or other record provided for in this Act, of a birth,
17 death, fetal death, adoption, marriage, or dissolution of
18 marriage, for registration by the Office of Vital Records.

19 (4) "Registration" means the acceptance by the Office of
20 Vital Records and the incorporation in its official records of
21 certificates, reports, or other records provided for in this
22 Act, of births, deaths, fetal deaths, adoptions, marriages, or
23 dissolution of marriages.

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1 (5) "Live birth" means the complete expulsion or extraction
2 ~~from its mother of a product of human conception, irrespective~~
3 of the duration of pregnancy, which after such separation
4 breathes or shows any other evidence of life such as beating of
5 the heart, pulsation of the umbilical cord, or definite
6 movement of voluntary muscles, whether or not the umbilical
7 cord has been cut or the placenta is attached.

8 (6) "Fetal death" means death prior to the complete
9 expulsion or extraction from its mother of a product of human
10 conception, irrespective of the duration of pregnancy; the
11 death is indicated by the fact that after such separation the
12 fetus does not breathe or show any other evidence of life such
13 as beating of the heart, pulsation of the umbilical cord, or
14 definite movement of voluntary muscles.

15 (7) "Dead body" means a lifeless human body or parts of

16 such body or bones thereof from the state of which it may
 17 reasonably be concluded that death has occurred.

18 (8) "Final disposition" means the burial, cremation, or
 19 other disposition of a dead human body or fetus or parts
 20 thereof.

21 (9) "Physician" means a person licensed to practice
 22 medicine in Illinois or any other State.

23 (10) "Institution" means any establishment, public or
 24 private, which provides in-patient medical, surgical, or
 25 diagnostic care or treatment, or nursing, custodial, or
 26 domiciliary care to 2 or more unrelated individuals, or to

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1 which persons are committed by law.

2 (11) "Department" means the Department of Public Health of
 3 the State of Illinois.

4 (12) "Director" means the Director of the Illinois
 5 Department of Public Health.

6 (13) "Medical treatment" means any surgical operation or
 7 other medical procedure causing irreversible gender change.

8 (Source: P.A. 81-230.)

9 (410 ILCS 535/17) (from Ch. 111 1/2, par. 73-17)

10 Sec. 17. (1) For a person born in this State, the State
 11 ~~Registrar of Vital Records shall establish a new certificate of~~
 12 birth when he receives any of the following:

13 (a) A certificate of adoption as provided in Section 16
 14 or a certified copy of the order of adoption together with
 15 the information necessary to identify the original
 16 certificate of birth and to establish the new certificate
 17 of birth; except that a new certificate of birth shall not
 18 be established if so requested by the court ordering the
 19 adoption, the adoptive parents, or the adopted person.

20 (b) A certificate of adoption or a certified copy of
 21 the order of adoption entered in a court of competent
 22 jurisdiction of any other state or country declaring
 23 adopted a child born in the State of Illinois, together
 24 with the information necessary to identify the original

25 certificate of birth and to establish the new certificate

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1 of birth; except that a new certificate of birth shall not
2 be established if so requested by the court ordering the
3 adoption, the adoptive parents, or the adopted person.

4 (c) A request that a new certificate be established and
5 such evidence as required by regulation proving that such
6 person has been legitimized, or that the circuit court,
7 the Department of Healthcare and Family Services (formerly
8 Illinois Department of Public Aid), or a court or
9 administrative agency of any other state has established
10 the paternity of such a person by judicial or
11 administrative processes or by voluntary acknowledgment,
12 which is accompanied by the social security numbers of all
13 persons determined and presumed to be the parents.

14 (d) An affidavit by a physician that ~~he has performed~~
15 ~~an operation on~~ a person has undergone medical treatment ~~r~~
16 and that by reason of the medical treatment ~~operation~~ the
17 sex designation on such person's birth record should be
18 changed. The State Registrar of Vital Records may make any
19 investigation or require any further information he deems
20 necessary.

21 Each request for a new certificate of birth shall be
22 accompanied by a fee of \$15 and entitles the applicant to one
23 certification or certified copy of the new certificate. If the
24 request is for additional copies, it shall be accompanied by a
25 fee of \$2 for each additional certification or certified copy.

26 (2) When a new certificate of birth is established, the

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1 actual place and date of birth shall be shown; provided, in the
2 case of adoption of a person born in this State by parents who
3 were residents of this State at the time of the birth of the
4 adopted person, the place of birth may be shown as the place of
5 residence of the adoptive parents at the time of such person's

6 birth, if specifically requested by them, and any new
7 certificate of birth established prior to the effective date of
8 this amendatory Act may be corrected accordingly if so
9 requested by the adoptive parents or the adopted person when of
10 legal age. The social security numbers of the parents shall not
11 be recorded on the certificate of birth. The social security
12 numbers may only be used for purposes allowed under federal
13 law. The new certificate shall be substituted for the original
14 certificate of birth:

15 (a) Thereafter, the original certificate and the
16 evidence of adoption, paternity, legitimation, or sex
17 change shall not be subject to inspection or certification
18 except upon order of the circuit court or as provided by
19 regulation.

20 (b) Upon receipt of notice of annulment of adoption,
21 the original certificate of birth shall be restored to its
22 place in the files, and the new certificate and evidence
23 shall not be subject to inspection or certification except
24 upon order of the circuit court.

25 (3) If no certificate of birth is on file for the person
26 for whom a new certificate is to be established under this

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1 Section, a delayed record of birth shall be filed with the
2 State Registrar of Vital Records as provided in Section 14 or
3 Section 15 of this Act before a new certificate of birth is
4 established, except that when the date and place of birth and
5 parentage have been established in the adoption proceedings, a
6 delayed record shall not be required.

7 (4) When a new certificate of birth is established by the
8 State Registrar of Vital Records, all copies of the original
9 certificate of birth in the custody of any custodian of
10 permanent local records in this State shall be transmitted to
11 the State Registrar of Vital Records as directed, and shall be
12 sealed from inspection.

13 (5) Nothing in this Section shall be construed to prohibit
14 the amendment of a birth certificate in accordance with
15 subsection (6) of Section 22.

16 (Source: P.A. 89-6, eff. 3-6-95; 89-257, eff. 1-1-96; 89-626,
17 eff. 8-9-96; 90-18, eff. 7-1-97; revised 12-15-05.)

18 Section 97. Severability. The provisions of this Act are
19 severable under Section 1.31 of the Statute on Statutes.

20 Section 99. Effective date. This Act takes effect upon
21 becoming law.

EXHIBIT N

STATE OF ILLINOIS
95th GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES
TRANSCRIPTION DEBATE



36th Legislative Day

was adopted in committee. No Floor Amendments.
filed."

Speaker Turner: "Third Reading. On the Order of Supplemental
Calendar #1, we have House Bill 1231. Read the Bill, Mr.
Clerk."

Clerk Mahoney: "House Bill 1231, a Bill for an Act concerning
public employee benefits. Second Reading of this House
Bill. No Committee Amendments. No Floor Amendments. No
Motions filed."

Speaker Turner: "Third Reading. On the Order of Supplemental
Calendar #1, we have House Bill 1974. Read the Bill, Mr.
Clerk."

Clerk Mahoney: "House Bill 1974, a Bill for an Act concerning
public employee benefits. Second Reading of this House
Bill. Amendment #1 was adopted in committee. No Floor
Amendments. No Motions filed."

Speaker Turner: "Third Reading. On the Order of Second
Readings, we have Senate Bill 377. Representative Molaro.
Read the Bill, Mr. Clerk."

Clerk Mahoney: "Senate Bill 377, a Bill for an Act concerning
public employee benefits. Second Reading of this Senate
Bill. Amendment #1 was adopted in committee. No Floor
Amendments. No Motions filed."

Speaker Turner: "Third Reading. On the Order of Third
Readings, Representative Burke... On the Order of Third
Readings, we have House Bill 876, Representative Crespo.
Out of the record. On the Order of Third Readings, we have
House Bill 1732, Representative Feigenholtz. Read the
Bill, Mr. Clerk."

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Clerk Mahoney: "House Bill 1732, a Bill for an Act concerning public health. Third Reading of this House Bill."

Speaker Turner: "The Lady from Cook, Representative Feigenholtz."

Feigenholtz: "Thank you, Mr. Speaker. House Bill 1732 amends the Vital Records Act and defines 'medical treatment'. It provides that the Office of Vital Records shall establish a new certificate of birth when an affidavit from a physician is presented. I'd be glad to answer any questions."

Speaker Turner: "The Gentleman from Jasper, Representative Reis, for what reason do you rise?"

Reis: "Will the Sponsor yield, please?"

Speaker Turner: "She indicates she will."

Reis: "Representative, what's the genesis of this Bill?"

Feigenholtz: "This is a constituent matter that I'm trying to rectify with the Department of Public Health."

Reis: "Could you explain a little bit more what the Bill does?"

Feigenholtz: "This Bill has a... affects a person in my district who left the country to reassign their gender. When they came back with an affidavit from a physician that... it was not valid in this state. So, essentially, what this Bill does, is ask that person to go to a physician to get confirmation on this medical treatment that they have received, and to take to Vital Records to get a new birth certificate issued."

Reis: "What do you characterize as a medical treatment?"

Feigenholtz: "The medical treatment is a hormone treatment or surgery."

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TRANSCRIPTION DEBATE



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Reis: "So, let me get this straight. You're wanting a new statute so that a doctor can say that a person who really wants to be another person, but doesn't really want to be another person, but as long as their getting hormone shots, that they can go and change their birth certificate to change their sex?"

Feigenholtz: "They're already doing that, Sir. Essentially..."

Reis: "No, they have to actually do the surgery now. You're saying that all they have to do is go and get shots, hormones and then they can go do the same thing."

Feigenholtz: "That's correct."

Reis: "Okay. I hope everybody's listening. This is one of those votes, Ladies and Gentlemen, if you vote 'yes' for this, you are saying that you can... a person can go and get hormone shots, and change the sex on their birth certificate, even though they have not gone and done the surgery. Now, I shake my head at some Bills that come through here, but this is one that takes the cake, Representative."

Feigenholtz: "Thank you."

Reis: "I just want to make sure that everyone knows what they're voting on, when they vote on this Bill. It is there are no surgical requirements anymore, this would just allow hormone shots, and they could change their sex on their birth certificate. Thank you."

Speaker Turner: "The Gentleman from Vermilion, Representative Black, for what reason do you rise?"

Black: "Well, thank you very much, Mr. Speaker. With my track record this afternoon if I speak against it, it'll probably

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pass. If I speak for it, it'll probably fail. So I'm in a quandary, but I think my friend and colleague, Representative Reis, expressed some of the concerns that many of us have. Illinois law currently allows you to change the gender on your birth certificate if a doctor signs an affidavit and affirms that you have undergone transgender surgery. This Bill would allow for you to choose your gender on your birth certificate if you have undergone a series of hormonal shots, herbal treatments, I don't know what all is involved, maybe you went somewhere and a voodoo doctor said you are now a man where you had been a woman. But the bottom line is, and I don't mean to make light of the Sponsor's intent, ya know, at some point for all of the records that determine.. are determined by your birth certificate, which you will now have to change, your Social Security, your life insurance, it goes on, and on, and on, under the Vital Records Act. You know, now the State of Illinois, if this law, if this Bill becomes law,

adopts a very, very vague standard to change one's gender or sex on your birth certificate. Now, I realize that technology has changed a great deal since I was born a long, long time ago. But at some point, without the requisite surgery and the complete change, you're either a male or a female. And to undergo a series of injections and medical treatment so that you no longer have to shave, or whatever the case may be, or just simply changing your name and change the way you dress does not mean that you should simply be able to go to the Department of Vital Records and say, 'I don't want to be listed as a male

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anymore, I want to be listed as a female.' I mean, I've often thought that perhaps I was a female trapped in a male body. I know, it scares me, too, especially when I look in the mirror. But I'm stuck. My birth certificate, my late mother, my father, my brother, well, my brother may be on the fence, I'm not sure, but those people and my birth certificate say, I'm a male. I wish I didn't have to shave everyday. There's a lot of things I wish I could change. I wish I didn't have so much hair under my arms so I didn't sweat so much. So I wouldn't have to launder my shirts everyday, I'd get to wear my shirts once. I've liked to take some of the medication I see on the pharmaceutical ads on television. I'd like to smell better. I'd like to have softer skin. I'd like to look better. I wish my hair was longer. I wish I could do something with my hair. My birth certificate says I'm a male and that's what I am. And all of the shots and all of the questionable medical treatment in the world is not going to change that unless I choose to have very expensive surgery changing my entire system around. And who knows, that might be the most exciting thing that's happened to me in sixty-five (65) years. It would be nice to have Mike Bost take me out to dinner instead of me having taking Mike Bost out to dinner. It might be nice to have Ron Stephens take me to a movie, rather than me taking Ron Stephens to a movie where he promptly falls asleep. Would have been nice if I could have had a date to the senior prom, every girl I asked turned me down."

Speaker Turner: "Bring your remarks to a close."

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Black: "I don't even know how to on this issue. I, again, I'm making light of something that the Sponsor is doing on behalf of a constituent. And I don't mean to make light of it. And I know there are people who are transgender challenged, but the law is clear. If you have the surgery, and in fact, are changed, your birth certificate can be changed. But I don't think we need to make this any easier. You're a male or a female. You can't check a box in the middle. Now, if you want to go through the surgical process, I don't have a problem with that and current Illinois law doesn't have a problem with that. But this does go a little too far and I don't think we need to make it easy, because it's not an easy process and they're all kinds of ripple effects to changing one's gender and birth certificate. This Bill goes too far and in all due respect to the Sponsor, should not pass."

Speaker Turner: "The Gentleman from Cook, Representative Fritchey, for what reason do you rise?"

Fritchey: "Thank you, Speaker. Will the Sponsor yield?"

Speaker Turner: "Indicates she will."

Fritchey: "Speaker, first of all I have to say that I'm somewhat put off. The previous speaker has burnt an image into my brain which may never go away. That having been said, Representative Feigenholtz... You know, I know he was trying to make a point but the previous speaker did kind of make light of this. The language in your Bill really only adds two (2) lines to the existing law, correct?"

Feigenholtz: "That is correct."

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Fritchey: "Do me a favor and enlighten the Body and Members if you would please. Will you read specifically those two (2) lines?"

Feigenholtz: "On page 3 of the Bill, line 6, Section 13 says, 'medical treatment means any surgical operation or other medical procedure causing irreversible gender change.'"

Fritchey: "What was the..."

Feigenholtz: "Representative Fritchey, that is determined by a physician."

Fritchey: "If I may, the last part of that was, 'other medical procedure causing irreversible gender change.' Correct?"

Feigenholtz: "Correct. Correct."

Fritchey: "This isn't someone that can go take a multivitamin and now say I want to change my birth certificate. Correct?"

Feigenholtz: "Correct."

Fritchey: "It's not somebody that goes in and gets an allergy shot and says I want to change my birth certificate. Correct?"

Feigenholtz: "That is correct."

Fritchey: "This is somebody that undergoes a surgical operation or other medical procedure which causes irreversible gender change. Correct?"

Feigenholtz: "Correct."

Fritchey: "As a matter of fact there are some individuals that for a number of reasons are unable to have surgery. Isn't that right?"

Feigenholtz: "That is right."

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Fritchey: "Individuals that have had previous cancer or radiation to pelvic regions could likely not have surgery in this case. Correct?"

Feigenholtz: "Correct."

Fritchey: "A paraplegic could likely not have surgery in this case. Correct?"

Feigenholtz: "Correct. Somebody with coronary artery disease or asthma..."

Fritchey: "Somebody that... how about this. How about somebody that is... cannot take a general anesthetic? They couldn't have surgery. Isn't that correct?"

Feigenholtz: "Correct."

Fritchey: "So, in that case if they were to decided... determined to do this as both of the previous speakers acknowledged, the gender change and the change of your birth certificate is already allowed in the State of Illinois."

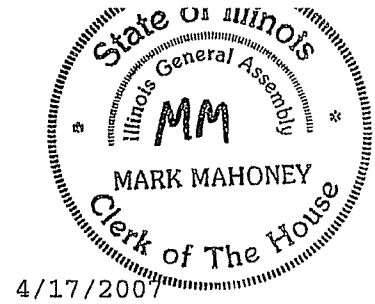
Feigenholtz: "Absolutely."

Fritchey: "That's not what is before this Body is whether we want to let people do that."

Feigenholtz: "Correct."

Fritchey: "All this does and while the... one of the previous speaker says it takes the cake, this isn't even a bite of the cake. All this does is provide that under existing law those individuals that cannot have surgery, but wish to undergo a gender change and take sufficient steps to have another medical procedure which causes an irreversible gender change, would now have these same rights and abilities afforded under Illinois law to somebody that gets that gender change via surgery. Correct?"

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Feigenholtz: "Correct."

Fritchey: "That's all this Bill does. Ladies and Gentlemen, this is not that big of deal except for the people that it affects. We are not breaking new ground here. We are not permitting a breakthrough change in Illinois law allowing a switch in gender to get a birth certificate change. The Body acknowledged that, the House has previously okayed that, the Senate's okayed that, it's been signed into law, it's the law of the land. All this says is for those individuals that cannot have surgery, if they take a procedure that causes irreversible gender change, they can have the same rights and privileges as the people that underwent the gender via medical procedure. Ladies and Gentlemen, it's all well and good to have light-hearted debate sometimes. Sometimes we're better suited to merely read the Bill. There's two (2) lines in this Bill, Ladies and Gentlemen, read them. It doesn't make that much of a change in Illinois law. It is a reasonable change. And it is the right thing to do. Thank you."

Speaker Turner: "The Gentleman from Bond, Representative Stephens, for what reason do you rise?"

Stephens: "Thank you, Mr. Speaker. My name was used in debate and I'm not sure why. I wonder if the Lady would yield for a question."

Speaker Turner: "She indicates she will."

Stephens: "Representative, help me understand vital records. Who owns a birth certificate? Who's a birth certificate issued to?"

Feigenholtz: "An individual."

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Stephens: "So, as a baby in the hospital, it's issued to you?
I thought it was issued to your parents."

Feigenholtz: "Well, I would imagine that when that person
becomes old enough to request it, that's their document,
Mr. Stephens."

Stephens: "You can call me Representative, it's okay. We know
each other very well."

Feigenholtz: "It's public record."

Stephens: "It's a public record, of course, but it's issued to
the parents. It's not issued to the child. It's issued to
the child, Mr. Speaker. If the birth certificate..."

Feigenholtz: "It's issued to the parents on behalf of the
child, Representative."

Stephens: "It is issued to the, excuse me, to the parents of
the child and they are the owners of the document. And I
wonder if they object to a child changing the sex with
which they were born, do they have recourse? Again, excuse
me, a question to the Sponsor. If my son decides he wants
to become a woman and his mother and I object and we save
that birth certificate..."

Feigenholtz: "Representative, that's not relevant to this
Bill."

Stephens: "No, it is relevant. They issued the birth
certificate... was issued to me and to my wife. And we want
to know can our son who decides for whatever reason he
wants to change his sex, can he change our birth
certificate? We say we had a son. Now it's going to say
we had a daughter. Don't we have any rights? I can't
believe we're debating this. The people I represent, think

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we've gone crazy. Why in the world are we debating what seems to be the folks of my district.. I mean, last week we gave illegal aliens driver's licenses. They were shocked and dismayed by that and now we're going to go home and say, by the way, if you were born a boy and decide you want to be a girl, you can change your birth certificate.' They think we've lost our minds. And quite frankly, this is more evidence of the same."

Speaker Turner: "The Gentleman from Champaign, Representative Rose, for what reason do you rise?"

Rose: "In opposition to the Bill."

Speaker Turner: "Okay."

Rose: "Thank you. I don't know what is going on here today, but I know that almost two (2) months ago we, this Body, passed a Bill on Ameren in the State Senate and nothing's happened. And here we are today where my constituents are out there with no refund on electric Bills and we're talking about trying to deny evolutionary DNA, basic root biology. I mean, if you to change your sex, have the operation, change your sex. But don't decide, oh, I might do something, take some shots and then decide to quit taking shots. How do you possibly, possibly bring this forward when there's so much that this Body needs to be considering other than this? I mean, apparently is the right motif of the day that first it's deers and I don't know, maybe, the DNR will issue sex change certificates to deer. But here we are today doing that and now we're doing this, in the meantime we got a lot of important things to do out there."

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Speaker Turner: "The Gentleman from Crawford, Representative Eddy, for what reason do you rise?"

Eddy: "Will the Sponsor yield for a quick question?"

Speaker Turner: "She indicates she will."

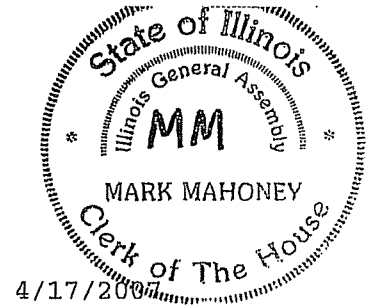
Eddy: "I'm sitting here trying to understand why someone would want or have to have this. I guess my question is, what is the purpose of an individual doing this? What legal purpose does this serve?"

Feigenholtz: "Representative, many people go out of the country or undergo this surgery out of the country. And they come back and they need an affidavit to provide to the Department of Vital Records. It's a reflection of their reassigned gender."

Eddy: "Okay. But what is it..."

Feigenholtz: "If... So if I were... if someone was to have this surgery in Illinois or in this country, that affidavit from a physician in this country would be sufficient, but Illinois does not recognize physicians from another country. Therefore, this person would have to be examined by a physician in Illinois and obtain that affidavit from that physician. That is the purpose. It's a very simple Bill. It's not complicated at all. I know that somebody's looking for the boogeyman in this Bill, but unfortunately, it's just not there. This is a Bill that's supported by the Illinois State Medical Society. Doctors seem to understand it. I have a letter from a physician in my file explaining. Representative Fritchey asked me a few questions about why some people are not able to get surgery, they have other health problems that

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contraindicate a surgical procedure and can accomplish their goal through hormone treatment. That is the purpose of this Bill."

Eddy: "Okay."

Feigenholtz: "If you want to have a larger discussion and..."

Eddy: "Well, I just want to know what this does for an individual who's able to now state by their birth certificate that they are of a different gender than they were before. What is the purpose, the larger purpose of being able to do that? What does that gain them that they can't exercise now as far as a legal right?"

Feigenholtz: "A lot of legal documents are dependent on a birth certificate, Representative."

Eddy: "I understand that, but we treat a male birth certificate to receive legal documents the same as we treat a female. Otherwise, it's a civil rights violation, because we'd be violating their rights based on gender. I guess the larger question I have as to the purpose is, what... what is the individual able to do with a birth certificate that shows them as a female as opposed to a birth certificate that shows them as a male?"

Feigenholtz: "I would imagine it might be a little difficult to get a passport."

Eddy: "If you're a female who wants to state that you're a male, it's more difficult to get a passport if you're birth certificate doesn't state that?"

Feigenholtz: "It doesn't reflect your actual reassigned gender. That is correct."

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Eddy: "So, do you know that to be a fact? Have there been problems, have there been circumstances where people aren't able to do that?"

Feigenholtz: "I'm certain of it."

Eddy: "You're certain of that... that's happened to people who attempted to get a passport. They've run into this situation because their birth certificate didn't match what they were claiming as their gender?"

Feigenholtz: "Or what their birth certificate reflected as their gender after their reassigned gender."

Eddy: "I appreciate you answering my questions. I'm still very perplexed by this..."

Feigenholtz: "And... mind you, we're already doing this. This is about physicians out of the country who perform..."

Eddy: "Then if we're absolutely already doing this, there's no need for the Bill. If we're already doing everything this Bill does, there's no reason for the Bill. It does something."

Speaker Turner: "Representative Eddy, bring your remarks to a close. No further speakers. Representative Feigenholtz to close."

Feigenholtz: "Ladies and Gentlemen, I think that there's a lot of confusion about what this Bill does. And I think that for purposes of clarification, this is a Bill that I've worked on with the Department of Public Health and the Illinois State Medical Society with their cooperation. It's unfortunate that some of my colleagues are confused or trying to confuse other Members here about something that's

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relatively simple. And I would appreciate your consideration on this Bill. Thank you."

Speaker Turner: "The question is, 'Shall the House pass House Bill 1732?' All those in favor should vote 'aye'; all those opposed vote 'no'. The voting is now open. Have all voted who wish? Have all voted who wish? Have all voted who wish? The Clerk shall take the record. On this question, there are 32 voting 'aye', 78 voting 'no'. And this Bill fails. On the Order of Third Readings, we have House Bill 736. Representative Flider. Read the Bill, Mr. Clerk."

Clerk Bolin: "House Bill 736, a Bill for an Act concerning regulation. Third Reading of this House Bill."

Speaker Turner: "Out of the record. On the Order of Third Readings, we have Representative Franks on House Bill 374. Read the Bill, Mr. Clerk."

Clerk Bolin: "House Bill 374, a Bill for an Act concerning employment. Third Reading of this House Bill."

Speaker Turner: "The Gentleman from McHenry."

Franks: "Thank you, Mr. Speaker. This Bill deals with the Family Medical Leave Act. And what it does is it expands it in such a way that it allows the in-laws to be part of the Family Medical Leave Act. And here's an example: If my parents got sick, this would allow my wife to be able to take off from work and help take care of my folks. Right now, she couldn't do that under the Family Medical Leave Act and that's what this Bill does. I'd be glad to answer any questions."