

RESOLUTION 04-12-2010

DIGEST

Birth Certificate Modification: Changing Gender Without Surgical Requirement

Amends Health and Safety Code section 103425 to eliminate the surgical requirement for changing gender on a birth certificate.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

Identical to Resolutions 07-05-2008 as amended and 08-15-2009, which were approved.

Reasons:

This resolution amends Health and Safety Code section 103425 to eliminate the surgical treatment requirement for changing gender on a birth certificate. This resolution should be approved in principle because the surgical treatment requirement for a change of gender on a birth certificate is onerous, is not always necessary for a bona fide change of gender, and is not always in the best interests of the individual seeking the change.

Health and Safety Code section 103425 requires an individual to undergo “surgical treatment for the purpose of altering his or her sexual characteristics to those of the opposite sex” in order to permit a change of gender identification on a birth certificate. The growing body of quality medical and psychological research into gender identity disorder informs us that surgery is not always necessary or even appropriate for many of the people who are suffering from the disorder. Less invasive measures are frequently recommended. The diagnosis of a qualified medical professional, as defined precisely in the resolution, identifying an individual as a member of a sex other than the sex of his or her birth should be a sufficient requirement for a change of sex on any such individual’s birth certificate. The resolution limits appropriately qualified medical professionals to those who use the Harry Benjamin standards of care as promulgated by the World Professional Association for Transgender Health.

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend California Health & Safety Code section 103425 to read as follows:

- 1 § 103425
- 2 Whenever a person born in this state (1) has been diagnosed as identifying as a
- 3 member of a sex other than the sex of his or her birth by a psychologist, psychiatrist,
- 4 physician, or other licensed medical professional qualified under the Harry Benjamin
- 5 standards of care (promulgated by World Professional Association for Transgender Health)
- 6 to render such an opinion or (2) has undergone surgical treatment for the purpose of
- 7 altering his or her sexual characteristics to those of ~~the opposite sex~~ a sex other than the
- 8 sex of his or her birth, a new birth certificate may be prepared for the person reflecting the

9 change of gender and any change of name accomplished by an order of a court of this state,
10 another state, the District of Columbia, or any territory of the United States. A petition for
11 the issuance of a new birth certificate in those cases shall be filed with the superior court,
12 ~~of the county where the petitioner resides.~~

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Bay Area Lawyers for Individual Freedom

STATEMENT OF REASONS

Existing Law: The law currently imposes an onerous, impractical and discriminatory requirement that a person identifying as a member of the opposite gender undergo surgical treatment to alter his or her sexual characteristics in order to obtain a simple new birth certificate reflecting that person's legitimate gender self-identity.

This Resolution: This resolution would delete the requirement in Health & Safety Code section 103425 that a person identifying as a member of the opposite gender obtain surgery in order to obtain a gender change in that person's birth certificate.

The Problem: The law currently requires a person to undergo expensive surgical operations in order to simply obtain a letter change (e.g., "M" to "F" or "F" to "M") in that person's birth certificate to conform to that person's legitimate gender self-identity. Some people are unable to undergo surgery because they cannot afford access to these health care options, and the Health & Safety Code unfairly discriminates between those who can afford to have these operations and those who cannot when it implies that such surgical operations are a legitimate pre-requisite to obtaining conformance of one's birth certificate to one's own gender identity.

The resolution solves this problem by providing that a much less expensive finding from a licensed psychologist, psychiatrist, physician or other licensed medical professional that a petitioner legitimately identifies as a member of the opposite sex and requires a change of gender on his or her birth certificate can form the basis for a petition for issuance of a new birth certificate reflecting this change. Moreover, this resolution eliminates any need by any superior court to require any proof whatsoever that a petitioner has undergone any surgery whatsoever in order to grant a petition for issuance of a new birth certificate.

IMPACT STATEMENT

This resolution does not affect any other law, statute or rule.

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