

New York Plans to Make Gender Personal Choice

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Separating anatomy from what it means to be a man or a woman, New York City is moving forward with a plan to let people alter the sex on their birth certificate even if they have not had sex-change surgery.

Under the rule being considered by the city's Board of Health, which is likely to be adopted soon, people born in the city would be able to change the documented sex on their birth certificates by providing affidavits from a doctor and a mental health professional laying out why their patients should be considered members of the opposite sex, and asserting that their proposed change would be permanent.

Applicants would have to have changed their name and shown that they had lived in their adopted gender for at least two years, but there would be no explicit medical requirements.

"Surgery versus nonsurgery can be arbitrary," said Dr. Thomas R. Frieden, the city's health commissioner. "Somebody with a beard may have had breast-implant surgery. It's the permanence of the transition that matters most."

If approved, the new rule would put New York at the forefront of efforts to redefine gender. A handful of states do not require surgery for such birth certificate changes, but in some of those cases patients are still not allowed to make the change without showing a physiological shift to the opposite gender.

In New York, the proposed change comes after four years of discussion among health officials, an eight-member panel of transgender experts and vital records offices nationwide. It is an outgrowth of the transgender community's push to recognize that some people may not have money to get a sex-change operation, while others may not feel the need to undergo the procedure and are simply defining themselves as members of the opposite sex. While it may be a radical notion elsewhere, New York City has often tolerated such blurring of the lines of gender identity.

And the proposal reflects how the transgender movement has become politically potent beyond its small numbers, having roots in the muscular politics of the city's gay rights movement.

Transgender advocates consider the New York proposal an overdue bulwark against discrimination that recognizes an emerging shift away from viewing gender as simply the sum of one's physical parts. But some psychiatrists and doctors are skeptical of the move, saying sexual self-definition should stop at rewriting medical history.

"They should not change the sex at birth, which is a factual record," said Dr. Arthur Zitrin, a Midtown psychiatrist who was on the panel of transgender experts convened by the city. "If they wanted to change the gender for all the compelling reasons that they've given, it should be done perhaps with an asterisk."

The change would lead to many intriguing questions: For example, would a man who becomes a woman be able to marry another man? (Probably.) Would an adoption agency be able to uncover the original sex of a proposed parent? (Not without a court order.) Would a woman who becomes a man be able to fight in combat, or play in the National Football League? (These areas have yet to be explored.)

The Board of Health, which weighs recommendations drafted by the Department of Health and Mental Hygiene, is scheduled to vote on the proposal in December, and officials say they expect it to be adopted.

At the final public hearing for the birth certificate proposal last week, a string of advocates and transsexuals suggested that common definitions of gender, especially its reliance on medical assessments, should be abandoned. They generally praised the city for revisiting its 25-year-old policy that lets people remove the sex designation from their birth certificate if they have had sexual reassignment surgery. Then they demanded more freedom to choose.

Michael Silverman, executive director of the Transgender Legal Defense and Education Fund, said transgender people should not have to rely on affidavits from a health care system that tends to be biased against them. He said that

many transgender people cannot afford sex-change surgery or therapy, and often do not consider it necessary.

Another person who testified, Mariah Lopez, 21, said she wanted a new birth certificate to prevent confusion, and to keep teachers, police officers and other authority figures from embarrassing her in public or accusing her of identity theft.

A few weeks ago, at a welfare office in Queens, Ms. Lopez said she included a note with her application for public assistance asking that she be referred to as Ms. when her turn for an interview came up. It did not work. The woman handling her case repeatedly addressed her as Mister.

“The thing is, I don’t even remember what it’s like to be a boy,” Ms. Lopez said, adding that she received a diagnosis of transgender identity disorder at age 6. She asked to be identified as a woman for this article.

The eight experts who addressed the birth certificate issue strongly recommended that the change be made, for the practical reasons Ms. Lopez identified. For public health studies, people who have changed their gender would be counted according to their sex at birth.

But some psychiatrists said that eliminating identification difficulties for some transgender people also opened the door to unwelcome advances from imposters.

“I’ve already heard of a ‘transgendered’ man who claimed at work to be ‘a woman in a man’s body but a lesbian’ and who had to be expelled from the ladies’ restroom because he was propositioning women there,” Dr. Paul McHugh, a member of the President’s Council of Bioethics and chairman of the psychiatry department at [Johns Hopkins University](#), wrote in an e-mail message on the subject. “He saw this as a great injustice in that his behavior was justified in his mind by the idea that the categories he claimed for himself were all ‘official’ and had legal rights attached to them.”

The move to ease the requirements for altering one’s gender identity comes after New York has adopted other measures aimed at blurring the lines of gender identification. For instance, a new shelter policy approved in January now allows

beds to be distributed according to appearance, applying equally to postoperative transsexuals, cross-dressers and “persons perceived to be androgynous.”

The Metropolitan Transportation Authority also agreed last month to let people define their own gender when deciding whether to use the men’s or women’s bathrooms.

Joann Prinzivalli, 52, a lawyer for the New York Transgender Rights Organization, a man who has lived as a woman since 2000, without surgery, said the changes amount to progress, a move away from American culture’s misguided fixation on genitals as the basis for one’s gender identity.

“It’s based on an arbitrary distinction that says there are two and only two sexes,” she said. “In reality the diversity of nature is such that there are more than just two, and people who seem to belong to one of the designated sexes may really belong to the other.”