

**WOMEN'S LIBERATION FRONT
HANDS ACROSS THE AISLE COALITION
SAFE SPACES FOR WOMEN
JUST WANT PRIVACY CAMPAIGN**

December 5, 2017

Via email to: GenderChangeRuleMaking@doh.wa.gov
John Wiesman, DrPH, MPH
Secretary of Health
Washington State Department of Health
PO Box 47814
Olympia, Washington 98504-7814

Re: Comments on Proposed Rule, WAC 246-490-075, Changing sex designation on a birth certificate, WSR 17-22-105 (Oct. 31, 2017)

Dear Dr. Wiesman:

We are a diverse group of people including liberals, conservatives, mothers, fathers, feminists, women of faith, lesbian and bisexual women's rights activists, midwives, veterans, and concerned neighbors. In addition to the individual signatories below, Women's Liberation Front, Hands Across the Aisle Coalition, and the Just Want Privacy Campaign submit these comments on behalf of all their members, including members who reside in Washington.

The Department is proposing to allow people born in Washington to change their vital birth information for any reason or no reason at all, a move that would render the state's vital statistics inaccurate and unreliable, and raise a raft of complicated questions the Department does not appear to have considered. We urge you to scrap this proposed rulemaking as it is unnecessary, outside of the Department's statutory authority, and harmful to women and girls.

1. The Department Lacks Statutory Authority to Promulgate the Proposed Rule

The first and most fundamental problem with this proposed rule is that the Department simply lacks authority to promulgate it. Despite receiving notice of that fundamental problem in our comments on the pre-proposal notice, the Department has failed to identify any Washington's statutes that authorize this proposed move. Therefore, in addition to the other substantive problems discussed below, the Department should and must drop this proposal.

The draft rule has two main features. For adults, it would allow any person for any reason to request and obtain a change to their birth certificate's sex designation simply by requesting the change based on "self-attestation," submitted on the proper form, signed and

notarized.¹ For children, it would allow any adult for any reason to request and obtain a change to their minor child's birth certificate sex designation by submitting a "a signed statement by the minor's licensed health care provider attesting that... [t]he provider has determined the request to change sex designation on the birth certificate is consistent with the minor's identity."² Given that an individual's "identity" is internally-felt and subjective, and therefore not a medically-verifiable fact, these minimalistic prerequisites are essentially meaningless.

The proposed rulemaking cites RCW 43.70.150 as the statutory basis for the draft rule, but nothing in the statement explains how the proposed rule is consistent with or authorized by that statute. Instead the Department in the pre-proposal stage offered a single-sentence justification: "Because some people identify as neither male nor female, this rule making will consider changing sex designation to include male, female, and non-binary options when requesting a change to the sex designation on one's birth certification." In comparing the proposed rule to RCW 43.70.150, it becomes clear that the proposed rule directly contradicts the Department's longstanding statutory mandate to record and maintain accurate vital birth statistics:

Registration of vital statistics. The secretary of health shall have charge of the state system of registration of births, deaths, fetal deaths, marriages, and decrees of divorce, annulment and separate maintenance, and shall prepare the necessary rules, forms, and blanks for obtaining records, and insure the faithful registration thereof. (emphasis added).

As discussed further below, a person's sex is innate and immutable, and it is one of the most important vital statistics about them. In contrast, a person's subjective "identity" is not mentioned in RCW 43.70.150, nor is it a "vital statistic," and therefore it has no relevance to the Department's statutory mandate to "insure faithful registration thereof." Indeed, the process of recording of vital birth information would be made meaningless if individuals were allowed to replace their sex at birth with a subjective identity that differs from their sex. The Department therefore lacks the authority to adopt the draft rule under RCW 43.70.150, and in fact the draft rule would directly violate the Department's duty under that provision.

2. The Proposed Rule Change Conflates Sex, "Gender," and "Identity."

Sex is a vital statistic; "gender" and "identity" are not. Washington has many legitimate interests in recording and maintaining accurate information about its residents' sex, for purposes of identification, tracking crimes, determining eligibility for sex-specific programs or benefits, determining admission to sex-specific spaces, and determining the appropriate emergency medical and police services, for just a few examples. In contrast, there is no legitimate governmental interest in recording a person's subjective "identity" or giving that identity legal significance *in lieu of* sex.

¹ <https://www.doh.wa.gov/LicensesPermitsandCertificates/BirthDeathMarriageandDivorce/RuleMaking> ("[i]mportant components of the rule include allowing self-attestation for adults....")

² In any event, it is not clear that there exists any existing Washington statute or regulation that establishes what type of clinicians do and do not have within their "scope of practice" the "attestation of a sex designation change."

Sex and “gender” are distinct concepts. Sex refers to the two reproductive classes found in the human species: a woman is an adult human female, *i.e.*, an individual with XX chromosomes and predominantly female anatomy; a man is an adult human male *i.e.*, an individual with XY chromosomes and predominantly male anatomy.³ As sex is recorded at birth by qualified medical professionals, and it is an exceedingly accurate categorization: an infant’s sex is easily identifiable based on external genitalia and other factors in 99.982% (all but .018%) of all cases; the miniscule fraction of individuals who have “intersex” characteristics, now called disorders of sex development, remain either male or female, or are difficult to characterize but do not constitute a third reproductive class.⁴

In stark contrast to sex, “gender” and “gender identity” refer to nothing more than the degree to which one embraces or rejects stereotypical roles, personality or behavioral traits, and clothing fashions that are socially imposed on men and women—superficial stereotypes that are in constant flux according to changing social forces and trends. These sorts of things have nothing to do with the biological state of one’s sex. While some individuals may claim to feel or possess an “identity” that differs from their sex, such feelings have no bearing whatsoever on the person’s vital birth characteristics.

The text of the draft rule conflates sex and “gender” and has additional problems due to the absence of clear objective definitions for key terms. The title of the proposed revision is “Changing sex designation on a birth certificate,” but the “sex designations” made available under the draft rule include “male, female, or nonbinary.” To be sure, male and female are universally-accepted names for the two sexual reproductive classes of human being—yet the implicit premise of the draft rule is that male and female mean something quite different, something like “gender identity,” which is not innate, not externally verifiable, can be based solely on internal subjective feelings, and can change over time.

The definition of “non-binary” further illustrates this conflation: it begins by saying that “non-binary” means “a gender that is not exclusively male or female, including, but not limited to, intersex...” But male and female are sex designations, not gender designations. “Intersex” is an outdated term for disorders of sex development, but “intersex” is not itself a sexual reproductive class comparable to male and female. The proposed definition of “non-

³ Nat’l Institutes for Health, *Genetics Home Reference: X chromosome* (Jan. 2012), <https://ghr.nlm.nih.gov/chromosome/X.pdf> (noting that “[e]ach person normally has one pair of sex chromosomes in each cell. Females have two X chromosomes, while males have one X and one Y chromosome”); Joel, Daphna, *Genetic-gonadal-genitals sex (3G-sex) and the misconception of brain and gender, or, why 3G-males and 3G-females have intersex brain and intersex gender*, *Biology of Sex Differences*, DOI: 10.1186/2042-6410-3-27 (Dec. 2012) (“Whether a scientist or a layperson, when people think about sex differences in the brain and in behavior, cognition, personality and other gender characteristics, their model is that of genetic-gonadal-genitals sex. . . . 3G-sex is a categorization system in which ~99% of human subjects are identified as either ‘male’ or ‘female’, and identification with either category entails having all the characteristics of that category (*i.e.*, ‘female’ = XX, ovaries, uterus, fallopian tubes, vagina, labia minora and majora, clitoris, and ‘male’ = XY, testes, prostate, seminal vesicles, scrotum, penis)”).

⁴ Sax, Leonard. “How Common Is Intersex? A Response to Anne Fausto-Sterling.” *The Journal of Sex Research*, V. 39, no. 3 (2002): 174-78. <http://www.jstor.org/stable/3813612>; Dawkins, R. *The Ancestor’s Tale, A Pilgrimage to the Dawn of Evolution*, 135 (Mariner Books ed. 2005) (stating that, “[i]ndeed, the gene determining maleness (called SRY [sex determining region y]) has never been in a female body”); Nat’l Institutes for Health, *Genetics Home Reference: SRY gene* (March 2015) <https://ghr.nlm.nih.gov/gene/SRY.pdf> (noting that “[a] fetus with an X chromosome that carries the SRY gene will develop male characteristics despite not having a Y chromosome”).

binary” goes on to give examples that range from vague to preposterous, including the terms “agender, amalgagender, androgynous, bigender, demigender, female-to-male, genderfluid, genderqueer, male-to-female, neutrois, pangender, third sex, transgender, and Two Spirit.” Some of these terms, like “Two Spirit,” have been misappropriated from their historic and cultural context. Some, like “amalgagender” and “neutrois” seem to have been invented by teens and young adults posting on social media.

In short, the text of the proposed rule is hopelessly convoluted and therefore directly at odds with the Department’s statutory mandate to “insure faithful registration” of vital birth statistics about sex.

3. Accurate recording of sex matters, particularly to women and girls.

We are particularly concerned that the draft rule will result in a situation where any man can claim access to women’s single-sex spaces, programs, and facilities. We are also especially concerned that the draft rule would skew or even make unusable crime statistics that are crucial in the fight to stop violence against women and girls, or would help individual violent men to evade law enforcement efforts at apprehending them. These concerns are well-supported by the facts. As demonstrated consistently by the FBI’s Uniform Crime Reporting system and similar state programs, women face a dramatically disproportionate statistical risk of violence, rape, assault, or voyeurism, and in the vast majority of cases women suffer these harms at the hands of men. For crimes reported by law enforcement to the FBI in 2015, men committed over 88% of all murders, 97% of rapes, 77% of aggravated assaults, and 92% of sex offenses other than rape or prostitution.⁵

Further, available evidence indicates that males’ disproportionate engagement in violent criminal behavior does not change significantly based on their subjective gender feelings: one long-term study of post-operative transsexuals confirmed that males continued to engage in a significantly higher rate of violent crime compared to females, but not compared to males, particularly in the absence of focused and intensive investment in specialized counseling and social services⁶—which are *not* mandated as a condition for changing one’s sex designation under the draft rule.

Unscrupulous violent offenders would have every incentive to use the Department’s proposed mechanism to obscure their identity. Even setting that risk to the side, there is still the likelihood that allowing the sex designations on birth certificates to become a free-for-all would skew basic crime statistics traditionally recorded and analyzed according to sex. At least one organization for transgender-identified individuals in Washington state adopts the estimate that the state is “home to approximately 10,500 transgender youth

⁵ Dept. of Justice Fed’l Bureau of Investigation, 2015 Crime in the United States, Table 33, *Ten-Year Arrest Trends by Sex, 2006–2015*. <https://ucr.fbi.gov/crime-in-the-u.s/2015/crime-in-the-u.s.-2015/tables/table-33>

⁶ Cecilia Dhejne, *et al.*, *Long-Term Follow-Up of Transsexual Persons Undergoing Sex Reassignment Surgery: Cohort Study in Sweden* (February 22, 2011), <http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0016885> (finding that males who claim some sort of female or woman identity had a significantly increased risk for violent crime compared to females, but not compared to males).

aged 13-19 and 15,900 adults aged 20 and older.”⁷ Further, there is no telling how many requests for sex designation change may be filed if the draft rule is adopted, and nothing in the rule limits an individual to one change per lifetime. The concept of the rule is fatally flawed and it should be abandoned before more precious public resources are wasted.

There are far too many questions the Department does not appear to have asked, much less considered thoroughly, before proposing this rule. For example, what sorts of rights will be affected by a birth certificate sex change? Will violent male convicts be allowed to change their sex designation and thereby gain the right to demand a place in a women’s prison? What sort of “treatment” is required before parents are allowed to make a life-altering decision to change the legal sex of their children? What effect will this change have on the state’s ability to accurately record parentage, and how will this affect the children of parents who change their sex designation after the children’s birth certificates were issued, creating a discrepancy in the state’s records? Adopting the draft rule without thorough consideration of these questions would be irresponsible and arbitrary.

4. The Department Should Direct its Efforts Toward Studying the Sudden Uptick in Interest in “Gender Identity”

While recording subjective identity is not within the Department’s remit, studying and bringing to light serious public health threats is a core duty. Given the Department’s interest in exploring public policy issues with “gender identity,” we encourage you to direct your resources toward studying the medical and social causes and risks associated with the recent explosion in “gender identity” among young people, particularly women and girls:

- Clinicians are diagnosing and “treating” young children for gender dysphoria without any basis in long-term medical research.⁸
- A 2015 survey, conducted by Dutch clinicians who pioneered pediatric medical transition, found that many gender clinicians believe there is no “explanatory model” for gender dysphoria, no agreement on the nature of gender dysphoria, and a lack of study about the role of puberty development and comorbidity, and no consensus on the competence of children to make decisions about their treatment.⁹ Survey respondents cited the possibility that “increasing media

⁷ <http://transformwashington.com/faq/how-many-transgender-people-live-in-washington-state/> (citing Hasenbush, et al., UCLA School of Law, Williams Institute, "The Fiscal Impact of Washington State Initiative Measure 1515" (May 2016))

⁸ See, e.g. Boghani, PBS Frontline, “When Transgender Kids Transition, Medical Risks are Both Known and Unknowns,” <http://www.pbs.org/wgbh/frontline/article/when-transgender-kids-transition-medical-risks-are-both-known-and-unknown/>; Biography of Ximena Lopez, M.D., Children’s Health (director of GENECIS gender clinic, stating: “There is a strong need for research in this field to improve the outcomes of our patients... For example, it is still unclear which very young patients with gender dysphoria will persist as transgender individuals through adulthood. There is no objective diagnostic test available that can predict this.”) <https://www.childrens.com/doctor-profile/ximena-lopez>; Talbot, Margaret, New Yorker, "About a Boy; Transgender surgery at sixteen" (March 18, 2013) (quoting Eli Coleman, Univ. of Minnesota Med. School, stating: “We still don’t know the subtle or potential long-term effects on brain function or bone development. Many people recognize it’s not a benign treatment”). <https://www.newyorker.com/magazine/2013/03/18/about-a-boy-2>.

⁹ Vrouenraets, Lieke & Miranda Fredriks, A & Hannema, Sabine & Cohen-Kettenis, Peggy & de Vries, Martine. (2015). Early Medical Treatment of Children and Adolescents With Gender Dysphoria: An Empirical Ethical

attention affects the way gender-variant behavior is perceived by the child or adolescent with [gender dysphoria] and by the society he or she lives in.”

- In the UK a recent report revealed that pediatric transition referrals have soared for girls, many of them below the age of 10.¹⁰ This deserves further study, given the estimate cited above that Washington state is “home to approximately 10,500 transgender youth aged 13-19.”
- Medical treatments for gender dysphoria and other transition-related practices are well known to harm women and girls. Lupron, a drug used to suspend pubertal development, is associated with serious lifetime problems.¹¹ Chest binding is also known to have serious health effects.¹²

All of these are worthy subjects of the Department’s time and research resources. Rather than rushing to embrace what largely amounts to a poorly-understood social trend, and we urge you to redirect your attention toward better understanding the causes and risks of “gender identity” claims, gender dysphoria, and associated clinical and social responses.

Sincerely,

/s/ Natasha Chart
Acting Board Chair
Women’s Liberation Front

Jennifer Chavez
Board Secretary
Women’s Liberation Front

Miriam Ben-Shalom
Co-Founder
Hands Across the Aisle Coalition

Kaeley Triller Haver
Just Want Privacy Campaign

Study. *Journal of Adolescent Health*. 57. . 10.1016/j.jadohealth.2015.04.004. Available at: https://www.researchgate.net/publication/279313190_Early_Medical_Treatment_of_Children_and_Adolescents_With_Gender_Dysphoria_An_Empirical_Ethical_Study.

¹⁰ Taylor, Diane, Guardian, "Children seeking gender identity advice sees 100% increase, says NHS," (Nov. 5, 2015), <https://www.theguardian.com/society/2015/nov/05/children-seeking-gender-identity-advice-sees-100-increase-nhs>.

¹¹ Jewitt, Christina, California HealthLine, “Women Fear Drug They Used To Halt Puberty Led To Health Problems,” <http://californiahealthline.org/news/women-fear-drug-they-used-to-halt-puberty-led-to-health-problems/>

¹² Health Consequences of Chest Binding, McLean Clinic, <http://www.ftmtopsurgery.ca/blog/ftm-faq/health-consequences-chest-binding/>.

Autumn Starre Bennett
Safe Spaces For Women

Janine Simon
Just Want Privacy Campaign
Washington

Kay Scott
Just Want Privacy Campaign
Washington

Rhonda Shepard
Just Want Privacy Campaign
Washington

Terri Peschek-Pfeiffer
Just Want Privacy Campaign
Washington

Emily Zinos
Project Coordinator
Ask Me First MN

Sahila ChangeBringer
Seattle, WA

Beth Sand Daranciang
Seattle, WA

Zoë Lafantaisie
Canada