

FAQ: Correcting the Gender Marker on an Ohio Birth Certificate



On December 16, 2020 a federal judge struck down Ohio’s policy that prohibited transgender people born in this state from correcting the gender markers on their Ohio birth certificates. The judge’s ruling resolved the constitutional challenge to the policy brought by the ACLU of Ohio, ACLU, Lambda Legal, and Thompson Hine LLP in March 2018 on behalf of four transgender clients who were born in Ohio.

To comply with the Court’s order, the Ohio Department of Health (ODH) has established new procedures that allow transgender people to correct the gender or “sex” marker on Ohio birth certificates. This is a huge victory for the LGBTQ community!

ODH’s new process empowers transgender people born in Ohio to correct the gender marker on their birth certificate so that it truly reflects who they are. Along with our partners nationally and across the state, the ACLU of Ohio is committed to ensuring that people who need corrected birth certificates are able to obtain them in the most efficient, fairest way possible.

We are providing this informational FAQ to help the public understand ODH’s procedure as we understand it. We are not offering or providing legal advice or legal representation to any individual who reads these materials. Other partner organizations will offer legal clinics to advise individuals who wish to change the gender markers on their Ohio birth certificates. We will post information about these organizations and legal clinics as it becomes available.

Frequently asked questions:

What is the process for correcting the gender marker on an Ohio birth certificate?

The Ohio Department of Health (ODH) uses the same process for transgender individuals to change their gender markers as it uses for other corrections to Ohio birth certificates. This process is called a [court-ordered correction of a birth record](#).

- **To correct the gender marker on a birth certificate, a person must obtain an order from a probate court for a correction of their birth certificate.**
 - The required court order can be issued by a probate court in Ohio, or a court in the state where the person resides. [Ohio alone has 88 different probate courts \(one in each county\)](#), and each Ohio court – as well as courts in other states – may have specific and sometimes unique rules.
 - If an individual requires a gender-neutral gender marker, this can also be requested in the probate court; if the court so orders, ODH will designate the person’s gender by using an X.
 - A person may also request a court order approving a name change at the same time and in the same court where they seek correction of their gender marker. Additional requirements for a name change are set forth in Ohio’s laws.
- **For Ohio residents:**
 - Once the birth certificate gender marker correction is approved by a probate court, the probate court will automatically send its order to ODH, and ODH will automatically perform the correction.
- **For out-of-state residents:**
 - The process in other states will probably vary by jurisdiction. The person seeking the correction or their attorney can obtain the order from the court and submit it to ODH.
- For both Ohio and out-of-state residents, ODH will seal the old birth certificate when it receives the probate court’s order, and the prior (i.e. uncorrected) birth certificate will not be accessible to anyone except the applicant. **ODH will issue a new, corrected birth certificate, and it will not be evident that there has been any change.**

Is there a cost associated with correcting the gender marker on a birth certificate?

There is no cost to correct a birth certificate; however [there is a cost to obtain a certified paper copy of the corrected birth certificate](#). The cost is the same as for any request for duplicate copies of birth certificates. [A copy of the corrected birth certificate can be obtained three ways](#): online, through mail, or in-person at local health department offices in Ohio.

What if a person was born in Ohio, but now lives in another state?

Anyone born in Ohio and currently living in another state can use the new process to correct the gender marker on their birth certificate.

What if a person was born in another state but currently lives in Ohio?

The new process is only applicable to people who were born in Ohio. [Persons born in other states should check the law and procedures](#) for amending gender markers on birth certificates used in the state that issued their birth certificate.

Is there any specific documentation required?

Ohio law does not specify the procedures or type of evidence that probate courts must require to issue a birth certificate correction order. Therefore, this can vary by jurisdiction. The ACLU of Ohio believes that absent unusual circumstances, courts should use the least burdensome possible evidentiary standard, to make obtaining this needed correction accessible to all. See below for more detail.

How long does the birth certificate correction process take?

Due to the variations in probate court procedures noted above, we can't necessarily predict how long it will take for an individual to obtain a court order. [According to ODH](#), once the order and other information is received the changes may take 4-6 weeks to be processed.

This process is going to be new for everybody involved—trans individuals, lawyers, probate courts, and ODH itself. The ACLU of Ohio and our partner organizations are committed to supporting the trans community through obtaining their needed corrected identity documents in the most efficient, fairest way possible. **Please [watch this space](#) for dates and times of free and low cost legal advice clinics hosted by Equality Ohio, TransOhio, Octopus, Equitas Health, and Living With Change.**

To avoid a burden on transgender applicants who need corrected records, and to conform to best practices, the ACLU of Ohio strongly recommends that probate courts waive any hearing, waive any fees, and do not require evidence other than testimony, to issue the correction order.

A birth certificate is more than a piece of paper. It allows a person to be seen as they truly are. A lack of proper identification contributes to the pervasive discrimination that transgender individuals often face. According to the 2015 U.S. Transgender Survey, almost one-third of transgender individuals who showed an identity document with a name or gender marker that conflicted with their perceived gender were harassed, denied benefits or services, discriminated against, or assaulted. Transgender individuals also are disproportionately targeted for hate crimes. The newly established process will enhance the ability of transgender people born in Ohio to safely live their lives.