

**INTER-DEPARTMENTAL WORKING GROUP ON GENDER RECOGNITION (“IWG”)****SUMMARY TABLE OF GENDER RECOGNITION SCHEMES  
IN OTHER COUNTRIES AND TERRITORIES**

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Country/ Territory	Summary of gender recognition scheme and related process
<b>ASIA PACIFIC</b>	
<b>1.</b>	<p data-bbox="264 507 427 603"><b>Australia – Capital Territory</b></p> <p data-bbox="488 507 719 531"><i>Relevant legislation</i></p> <p data-bbox="488 571 2063 667">The <i>Births, Deaths, and Marriages Registration Amendment Act 1997 (current version effective since 29 August 2016)</i> provides (under s 24(1)) that an adult over 18 years old may apply to the Registrar of Births, Deaths and Marriages for alteration of the record of the person’s sex in the registration of the person’s birth if:</p> <ul style="list-style-type: none"> <li data-bbox="488 707 1249 730">(1) the person’s birth is registered in the Capital Territory; and</li> <li data-bbox="488 738 1675 834">(2) the person believes their sex to be the sex nominated in the application (the altered sex), and— <ul style="list-style-type: none"> <li data-bbox="600 778 1608 802">(i) has received appropriate clinical treatment for alteration of the person’s sex; or</li> <li data-bbox="600 810 936 834">(ii) is an intersex person.</li> </ul> </li> </ul> <p data-bbox="488 874 2063 970">A statutory declaration by a doctor or psychologist for paragraph (2) above and documents confirming paragraph (1) above are required (s 25(1)). The previous requirement for sex reassignment surgery was removed before a person can alter the person’s sex in the registration of the person’s birth.</p> <p data-bbox="488 1010 2063 1074">For a child under 18 years old, his/her parents or a person with parental responsibility may make similar application for the child under s 24(2) (with similar evidence required for an adult’s application – s 25(2)) if:</p> <ul style="list-style-type: none"> <li data-bbox="488 1114 1249 1137">(1) the child’s birth is registered in the Capital Territory; and</li> <li data-bbox="488 1145 2063 1209">(2) the said parents or person with parental responsibility believe on reasonable grounds that alteration of the record is in the best interest of the child (a signed statement required); and</li> <li data-bbox="488 1217 1585 1313">(3) the child— <ul style="list-style-type: none"> <li data-bbox="600 1249 1585 1273">(i) has received appropriate clinical treatment for alteration of the child’s sex; or</li> <li data-bbox="600 1281 936 1305">(ii) is an intersex person.</li> </ul> </li> </ul>

		<p>What amounts to “appropriate clinical treatment” is determined by the registered medical practitioner,<sup>1</sup> but it was noted that using the wording “appropriate clinical treatment” was for the purpose of avoiding a specific diagnosis or medical treatment, discouraging clinicians from providing any further medical information.<sup>2</sup></p> <p>Upon successful application, a new birth certificate showing the altered sex will be issued (s 27(1)). The Act does not specify that an applicant must be unmarried.<sup>3</sup></p> <p><i>Gender “X” recorded on passport</i></p> <p>In Australia it has been possible since at least 2003 for intersex people to have the sex details recorded on their passport as X if they could present a birth certificate that noted their sex as indeterminate.<sup>4</sup> In 2011, the Australian passports policy was simplified and extended so that any trans or intersex person is able to record their gender as male (M), female ( F) or indeterminate / unspecified / intersex (X). The only requirement is a supporting letter from a medical practitioner confirming that the person is either intersex or has had or is receiving appropriate clinical treatment for gender transition.<sup>5</sup> In <i>Norrie v NSW Registrar of Births, Deaths and Marriages</i><sup>6</sup>, the New South Wales court held that individuals must have the right to refuse to have their gender registered as either male or female,<sup>7</sup> and this approach<sup>8</sup> was extended to all Australian government departments and agencies, with the publication of the Australian Government Guidelines on the Recognition of Sex and Gender on 1 July 2013, and Australian Government departments</p>
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1 See Laura Grenfell and Anne Hewitt, *Gender Regulation: Restrictive, Facilitative or Transformative Laws?* (2012) 34/4 Sydney Law Review 761 to 783, at 772.

2 See The Open Society Foundations, *License To Be Yourself: Laws and Advocacy for Legal Gender Recognition of Trans People*, May 2014, at 17.

3 However, it is pertinent to note that same-sex marriage is not legally recognised in the Capital Territory of Australia by virtue of the definition of marriage contained within the federal Marriage Act (1961), as amended in 2004. The Marriage Equality (Same Sex) Act 2013, which had been passed by the Australian Capital Territory Legislative Assembly on 19 September 2013, was nullified by the High Court of Australia on 12 December 2013 for reason that the law was inconsistent with the federal Marriage Act and the Constitution permitted only the federal parliament to make laws with respect to marriage in Australia. Nevertheless, civil unions can take place pursuant to the Civil Unions Act 2012, and same-sex unions are legally recognised under the Domestic Relationships Act 1994.

4 Australian Human Rights Commission (2009) Sex Files: The legal recognition of sex in documents and government records, section 8.2(a).

5 See Australian Passport Office, *Sex and Gender Diverse Passport Applicants, Revised Policy*, available at: <https://passports.gov.au/Web/SexGenderApplicants.aspx>. [2013] NSWCA 145.

7 See news report of The Guardian News, *Third gender must be recognised by NSW after Norrie wins legal battle*, 2 April 2004.

8 For analysis of the Norrie decision and critique thereon, see Rachael Wallbank, *The Legal Status of People Who Experience Difference In Sexual Formation And Gender Expression In Australia*, in Jens M. Scherpe, *The Legal Status of Transsexual and Transgender Persons*, December 2015, at 511-521.



		<p>and agencies have to align their existing and future legislation, regulations or policy requirements with these guidelines by 1 July 2016.<sup>9</sup> These guidelines could be revoked by any incoming government should they decide to do so.<sup>10</sup></p> <p><i>Relevant guidelines</i></p> <p>Under the Australian Government Guidelines on the Recognition of Sex and Gender (published in July 2013 by Commonwealth Attorney-General's Department), all Australian Government departments and agencies shall, before 1 July 2016, implement the following standards for an application for amending the sex and/or gender information on one's personal record in the Government<sup>11</sup>:</p> <p>(1) Either one of the following evidence suffices (paragraph 21):</p> <p>(a) A statement from a Register Medical Practitioner or a Registered Psychologist;</p> <p>(b) valid Australian Government travel document, such as a Valid Passport, which specifies their preferred gender, or</p> <p>(c) an amended State or Territory birth certificate, which specifies their preferred gender, or a State or Territory Gender Recognition Certificate or recognised details certificate.</p> <p>(2) Sex reassignment surgery and/or hormone therapy are not pre-requisites (paragraph 22);</p> <p>(3) Any physical procedures are not pre-requisite, as transpired from the definition of "Transgender/trans (page 10).</p>
<b>2.</b>	<b>Australia – Northern Territory</b>	<p><i>Relevant legislation and administrative measures</i></p> <p>The <i>Births, Deaths and Marriages Registration Act (current version in force since 1 January 2015)</i> provides that an adult over 18 who has undergone sex reassignment surgery and unmarried<sup>12</sup> may apply to the Registrar of Births, Deaths and Marriages for the registration of a change of sex (s 28B). The applicant must provide evidence verifying they have undergone sex reassignment surgery (s28C).</p>

9 See Australian Government Guidelines on the Recognition of Sex and Gender, available at: <http://www.ag.gov.au/Publications/Pages/AustralianGovernmentGuidelinesontheRecognitionofSexandGender.aspx>.

10 See Chaplin, Belinda, Cox, Leonie, & Campbell, Christina (2014), "An overview of Australian intrans\*igence : a systemic Pandora's Box", in 23rd Biennial Symposium World Professional Association for Transgender Health, 14-18 February 2014, Bangkok, Thailand (Unpublished).

11 For analysis and critique on the Guidelines, see Jens M. Scherpe, *The Legal Status of Transsexual and Transgender Persons*, December 2015, at 493-497.

12 It is pertinent to note that same-sex marriage is not legally recognised in Australia by virtue of the definition of marriage contained within the federal Marriage Act (1961), as amended in 2004.

		<p>The <i>Births, Deaths and Marriages Registration Regulations (current version in force since 26 March 2014)</i> provide that the evidence required is either a recognition certificate from elsewhere or two statutory declarations by medical practitioners declaring the individual has undergone sex reassignment surgery (Reg 4A). If the sex change is recognised, particulars of the change of sex in the Register will be updated (s 28D) and a new birth certificate which does not mention the change of sex will be issued (s 28E). The parents or legal guardian of a child may apply on behalf of a child (ss 28B and 28C).</p>
3.	<b>Australia – New South Wales</b>	<p><i>Relevant legislation</i></p> <p>The <i>Births, Deaths and Marriages Registration Act 1995 (current version in force since 4 May 2016)</i> allows for the alteration of birth registers and the issuing of new birth certificates to record a change of sex. An adult (over 18) who has undergone sex affirmation procedure (which means, inter alia, a surgical procedure involving the alteration of a person’s reproductive organs) and who is not married<sup>13</sup> may apply to the Registrar of Births, Deaths and Marriages for the registration of a change of sex (ss 32B and 32DA). The parents or legal guardian of a child may apply on behalf of a child (ss 32B and 32DA). Evidence required is two statutory declarations by doctors or medical practitioners registered under the law of any other State declaring the individual has undergone sex affirmation procedure (ss 32C and 32DB). People whose birth is not registered in New South Wales may apply if they are an Australian citizen or a permanent resident of Australia and live and have lived in New South Wales for at least 12 months (s 32DA). The result of the procedure, if a person’s birth is not registered in New South Wales, is a “recognised details certificate” certifying the particulars of the change of sex contained in an entry in the Register (s 32DD).</p>
4.	<b>Australia – Queensland</b>	<p><i>Relevant legislation</i></p> <p>The <i>Births, Deaths and Marriages Registration Act 2003 (current version in force since 22 March 2016)</i> provides that a person who has undergone sexual reassignment surgery or obtained a recognition certificate may apply to the Registrar of Births, Deaths and Marriages for a change to the birth register (ss 22 to 24). The person must be unmarried<sup>14</sup> and provide a statutory declaration by two doctors verifying the sexual reassignment surgery or provide the reassignment certificate. ‘Sexual reassignment surgery’ is</p>

13 It is pertinent to note that same-sex marriage is not legally recognised in Australia by virtue of the definition of marriage contained within the federal Marriage Act (1961), as amended in 2004, although same-sex couples are treated equally with married couples following the passage of the Miscellaneous Acts Amendment (Same Sex Relationships) Bill 2008, and they are protected from discrimination on the basis of their marital or domestic status in various aspects under the NSW Anti-Discrimination Act.

14 It is pertinent to note that same-sex marriage is not legally recognised in Australia by virtue of the definition of marriage contained within the federal Marriage Act (1961), as amended in 2004, although civil partnership is legally recognised under the Relationships Act 2011.

		<p>defined by Sch 2 of the same Act to mean ‘a surgical procedure involving the alteration of a person’s reproductive organs’.</p> <p>The parents or legal guardian of a child may apply on behalf of a child (s 23). The statute also provides for recognition of a change of sex of a person who has had reassignment recognised in a register maintained under a corresponding law (s 24(1)). Once the reassignment of sex is noted under that Act, the person is a person of the sex as reassigned (s 24(4)).</p>
5.	Australia – South Australia	<p><i>Relevant legislation</i></p> <p>The <i>Births, Deaths and Marriages Registration Act 1996 (current version in force since 23 May 2017)</i> allows a person of or above the age of 18 years whose birth is registered in South Australia to apply to the Registrar of Births, Deaths and Marriages for registration of a change of his/her sex or gender identity (s29I(1)). The applicant can be married (s29I(3)).</p> <p>A child under the age of 18 years may make the application by himself/herself or through a parent or guardian (s29J(1)). The Court’s approval is required, and factors that the Court must take into account for an application include:</p> <ul style="list-style-type: none"> <li>(a) whether the child understands the meaning and implications of the making of an application to the Registrar; and</li> <li>(b) whether the child has the capacity to consent to the application and, if so, the child's position in relation to the making of the application; and</li> <li>(c) whether the child has undertaken a sufficient amount of appropriate clinical treatment in relation to the child's sex or gender identity; and</li> <li>(d) whether a designated certificate relating to the recognition of sex or gender identity or a prescribed notification issued by another registering authority for the purposes of change of sex or gender identity has been provided.</li> </ul> <p>The materials required to support an application following the liberalisation are (s29K):</p> <ul style="list-style-type: none"> <li>(a) a statement by a medical practitioner or psychologist certifying that the person has undertaken a sufficient amount of appropriate clinical treatment in relation to the person's sex or gender identity (including in the case of a person whose sex or gender identity has now become determinate); or</li> <li>(b) in the case of an applicant in relation to whom a designated certificate (a certificate relating to the recognition of sex or gender identity issued under the law of another jurisdiction and recognised by the Registrar for the purposes of change of sex or gender identity) or a prescribed notification (a notification issued by another registering authority and recognised by the Registrar for the purposes of change of sex or gender identity) has been issued— <ul style="list-style-type: none"> <li>(i) a copy of the designated certificate or prescribed notification (as the case may be); and</li> </ul> </li> </ul>

		<p>(ii) a statement—</p> <p>(A) of a kind described in paragraph (a); or</p> <p>(B) by a medical practitioner or psychologist certifying that the person has undertaken a sufficient amount of appropriate clinical treatment in the jurisdiction that issued the designated certificate or prescribed notification.</p> <p>“Clinical treatment” has been defined to include clinical treatment that need not involve invasive medical treatment (and may include or be constituted by counselling) (s29H(1)). Clinical treatment constituted by counselling only cannot be regarded as a “sufficient amount of appropriate clinical treatment” unless the period of the counselling is equal to or greater than the prescribed period (s29H(3)).</p> <p>If upon an application the Registrar is satisfied that the applicant has undertaken a sufficient amount of appropriate clinical treatment in relation to their sex or gender identity, the Registrar may make an entry about the change of the person's sex or gender identity in the Register, including the particulars required by regulation (s29L).</p> <p>A person born outside Australia can make an application for identity acknowledgment certificate if he/she has been resident in South Australia for at least 12 consecutive months immediately before the date of the application (s29O). Other requirements are identical to those for the application for registration of an entry about the change of sex or gender identity as stated above (s29O, s29P, s29Q). A successful applicant will be of the sex or gender identity specified in the identity acknowledgment certificate (s29R).</p> <p>A person who has changed their sex or gender identity or has been issued an identity acknowledgment certificate under this Part of the Act will be taken to have satisfied a requirement under another Act or law that the person provide details of their sex if the person provides details of their sex or gender identity as changed (s29U).</p>
6.	<b>Australia – Tasmania</b>	<p><i>Relevant legislation</i></p> <p>The <i>Births, Deaths and Marriages Registration Act 1999</i> (current version in force since 1 July 2010) provides that an unmarried<sup>15</sup> adult over 18 years old who is born in Tasmania who has undergone sex reassignment surgery may apply to the Registrar of Births, Deaths and Marriages to register a change of the person's sex (s 28A(1)). Applications must be accompanied by statutory declarations from two medical practitioners verifying that the person has undergone sex reassignment surgery (s 28B(a)). The</p>

<sup>15</sup> It is pertinent to note that same-sex marriage is not legally recognised in Australia by virtue of the definition of marriage contained within the federal Marriage Act (1961), as amended in 2004, although the Relationships Act 2008 allows same-sex couples to register their relationships as a domestic partnership.

		<p>Registrar may request further and better particulars before agreeing to do so (s 28B(b)).</p> <p>The parents of a child whose birth is registered in Tasmania may apply to the Registrar for registration of a change of the child's sex (s 28A(2)).</p> <p>The result is an entry on the birth register and an applicant can be issued a new birth certificate that must show the person was previously registered as of the other sex (s 28D(1)). If requested the applicant may be issued an extract from the Register which does not include the notation of the change of sex (s 28D(2)).</p>
7.	<b>Australia – Victoria</b>	<p><i>Relevant legislation</i></p> <p>The <i>Births, Deaths and Marriages Registration (Amendment) Act 1996 (current version in force since 1 March 2017)</i> provides that an unmarried<sup>16</sup> person who is 18 years or older and whose birth is registered in Victoria and who has undergone sex affirmation surgery (which means a surgical procedure involving the alteration of a person's reproductive organs carried out for the purpose of assisting the person to be considered to be a member of the opposite sex – s 4(1)) may apply to the Registrar for the record of his/her birth registration to be altered (s 30A(1)). An application must include Statutory Declarations that the applicant has undergone such surgery, by (s 30B(1)) –</p> <ul style="list-style-type: none"> <li>- two Doctors; or</li> <li>- two medical practitioners registered under the law of the place where the sex affirmation surgery was performed – who performed the surgery or provided other medical treatment to the applicant in connection with the applicant's transsexualism.</li> </ul> <p>If the sex reassignment surgery was performed outside Australia, the application may succeed by providing, to the Registrar's satisfaction and subject to other requirements stated in s 30B(2), statutory declarations by 2 persons each of whom is either a medical practitioner registered under the law of the place where the surgery was performed, or a doctor, or medical practitioner registered under the law of an Australian State or Territory (s 30B(2)).</p> <p>An applicant may also rely on an interstate recognition certificate issued under the legislation of Western Australia or South Australia</p>

16 It is pertinent to note that same-sex marriage is not legally recognised in Australia by virtue of the definition of marriage contained within the federal Marriage Act (1961), as amended in 2004, although civil partnership is legally recognised under the Relationships Act 2011, although same-sex relationships are recognised under the Relationships Act 2003.

		or other prescribed countries' legislation. The result of a successful application is the alteration of the birth register and a new birth certificate that must not mention the change of sex (ss 30C and 30D). A person who was not born in Victoria can apply if he/she is 18 yrs or over and Victoria is their principal place of residence and has been for the last 12 months and he/she has undergone sex affirmation surgery (s 30E). The result of a successful application by such an individual is a document that acknowledges the person's name and sex.
8.	<b>Australia – Western Australia</b>	<p><i>Relevant legislation and administrative measures</i></p> <p>The <i>Gender Reassignment Act 2000</i> (current version in force since 6 December 2013) provides for a Gender Reassignment Board with the power to issue recognition certificates. Members of the Board must include a president (a judge or a legal practitioner), a medical practitioner, a person who has undergone a reassignment procedure and a person with experience in equal opportunity matters (ss 6 &amp; 7). Applications are made to the Board for such a certificate following reassignment procedure (s 14). The applicant must be unmarried (s 15(3)).<sup>17</sup> 'Reassignment procedure' means a medical or surgical procedure (or a combination of both) to alter genitals and other sexual characteristics of a person identified by birth certificate as male or female so that the person will be identified as a person of the opposite sex (s 3).<sup>18</sup> "Gender characteristics" means the physical characteristics by virtue of which a person is identified as male or female (s 3). The Board must be satisfied that the person believes his/her true gender is the gender to which he/she has been reassigned, has adopted the lifestyle and has the gender characteristics of the gender to which he/she has been reassigned and has received proper counselling in relation to his/her gender identity (s 15(1)).</p> <p>In order to qualify the gender reassignment procedure must have taken place in Western Australia or the person's birth must be registered in Western Australia or the person must be resident and has been resident for not less than 12 months in Western Australia (s 15(1)). If the applicant is a child the Board must also be satisfied that the gender change is in the child's best interests (s 15(2)(b)).</p> <p>Regulation 4(1)(b) of the Gender Reassignment Regulations 2001 (current version in force since 12 December 2008) provides that supporting evidence required for an application under the Gender Reassignment Act included, among others:</p>

17 It is pertinent to note that same-sex marriage is not legally recognised in Australia by virtue of the definition of marriage contained within the federal Marriage Act (1961), as amended in 2004. Western Australia is one of two jurisdictions in Australia (the other being the Northern Territory) not to offer relationship registries and official domestic partnership schemes to same-sex couples. Instead, state law provides same-sex couples with de facto unions, which have been recognised under Western Australian family law since 2002.

18 The same definition can also be found in the Sexual Reassignment Act 1988 in South Australia.

		<p>(i) a statement signed by a medical practitioner that the applicant, or the child the application relates to, has undergone the reassignment procedure;</p> <p>(ii) any documents relating to where the reassignment procedure was carried out;</p> <p>(iii) the original, or a certified copy of the birth certificate of the applicant, or the child the application relates to;</p> <p>(iv) the original, or certified copies, of any documents showing proof of residency and length of residency of the applicant, or the child the application relates to;</p> <p>(v) if the applicant so wishes, any relevant information regarding the adoption of the lifestyle of a person of the gender to which the applicant, or the child the application relates to, has been reassigned; and</p> <p>(vi) a statement from any person who has provided counselling in relation to the gender identity of the applicant, or the child the application relates to, signed by that person.</p> <p>The result of a successful application is a gender recognition certificate and a new birth certificate. The recognition certificate is legally conclusive of the person's sex (Gender Reassignment Act 2000, s 16(1)). The Principal Registrar of Births, Deaths and Marriages must keep a register of reassignments of sex and make such other entries and alterations on any register or index kept by the Registrar as may be necessary in view of the reassignment (s 17(1)). The new birth certificate issued by the Registrar must, unless otherwise requested by the person or permitted by the regulations, show the person's sex in accordance with the register as altered, and must not include a statement that the person has changed sex (s 18).</p> <p><i>Relevant court decisions</i></p> <p>In the case <i>AB v Western Australia</i><sup>19</sup>, the High Court considered the application of the Gender Reassignment Act 2000 (WA) to two transsexual men who had undergone double mastectomies and hormone treatment. The High Court unanimously found that the Gender Reassignment Act did not require these men to undergo further surgery to remove their uterus and ovaries (hysterectomy) or construct a penis (phalloplasty) in order to obtain a gender recognition certificate recognising them as men. This decision confirms that the Gender Reassignment Board must consider how others perceive, from a social perspective, an individual in everyday interactions rather than simply the state of his or her genitalia and reproductive organs. The High Court interpreted the WA Act as requiring an emphasis on external physical characteristics rather than internal sexual organs. The Court specifically articulated that while some medical or surgical intervention was required, it did not consider the WA Act to 'require that the person undertake every procedure to remove every vestige of the gender which the person denies, including all sexual organs'.<sup>20</sup></p>
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19 (2011) 244 CLR 390.

20 *AB v Western Australia* (2011) 244 CLR 390 (2011), at 405.

		<p>This decision will enable a female-to-male transsexual person with a connection to Western Australia to apply for a recognition certificate without first undergoing a phalloplasty or alteration or removal of all reproductive organs or sterilisation.<sup>21</sup> This ruling effectively means that hormone therapy is sufficient to change a gender marker in Western Australia.<sup>22</sup></p> <p>As a consequence of the decision in <i>Norrie v NSW Registrar of Births, Deaths and Marriages</i><sup>23</sup> (see the relevant notes in Capital Territory above), in July 2013 the Australian Government Guidelines on the Recognition of Sex and Gender was published which standardise the evidence required for a person to establish or change their sex or gender in personal records held by Australian Government departments and agencies. The Australian Government departments and agencies have three years to implement the new standards.</p>
<b>9.</b>	<b>India</b>	<p><i>Relevant legislation</i></p> <p>In India, there is yet any legislation dealing with recognition of transgender people or the rights of transgender community.<sup>24</sup> What exist currently are judicial decisions with the effect of recognising the gender of transgender people.<sup>25</sup></p>

21 The High Court did not comment on the ongoing ability of AB and AH to bear children except to note that as long as the applicants continued hormone treatment they would remain infertile. See *AB v Western Australia* (2011) 244 CLR 390 at 400. This is interesting considering the strong focus on fertility in the case’s procedural history. The applicants’ continuing fertility constituted Western Australia’s first ground of appeal before the Court of Appeal.

22 See Chaplin, Belinda, Cox, Leonie, & Campbell, Christina (2014), “An overview of Australian intrans\*igence : a systemic Pandora’s Box”, in 23rd Biennial Symposium World Professional Association for Transgender Health, 14-18 February 2014, Bangkok, Thailand (Unpublished).  
23 [2013] NSWCA 145

24 So far none of the state governments in India except Tamil Nadu has made provision for changing transgender people’s birth name and sex in official gazette and official identity documents either after realising their gender identity or undergoing sex transition surgeries. Notably, Tamil Nadu state government through its Transgender Welfare Board (TGWB) constituted a district level screening committee in each district to certify ‘aravanis’ (MtF transgender persons) after screening and provide an identity card. See Submissions to UNDP by Venkatesan Chakrapani & Arvind Narrain2, “Legal Recognition of Gender Identity of Transgender People in India: Current Situation and Potential Options” (UNDP India 2012), at 10.

25 On 2 August 2016, the Transgender Persons (Protection of Rights) Bill 2016 was introduced to Parliament by the Central Government of India as another of its responses to the 2014 Supreme Court decision. This Bill, which is pending for deliberation in the Parliament, provides that “a person recognised as transgender shall have a right to self-perceived gender identity” (Clause 4(2)). “Transgender person” is defined to be “(A) neither wholly female nor wholly male; or (B) a combination of female or male; or (C) neither female nor male; and whose sense of gender does not match with the gender assigned to that person at the time of birth, and includes trans-men and trans-women, persons with intersex variations and gender-queers.” (Clause 2(h)). It is, however, unclear if this means a self-declaration model of gender recognition as that adopted in countries like Denmark and Argentina, or whether such express reference simply acknowledges the notion that a person should have the right to choose to live in his/her preferred gender.



		<p><i>Relevant court decisions</i></p> <p>In the case of <i>National Legal Services Authority v.s. Union of India and Others</i> (judgment handed down on 15 April 2014)<sup>26</sup>, India’s Supreme Court recognised transgender people (usually called “<i>Hijras</i>” in India) who identify themselves as neither male nor female as a third gender for the purpose of safeguarding their rights under Part III of India’s Constitution and the laws made by the Parliament and the State Legislature.<sup>27</sup> This decision followed the India’s Election Commission’s decision in 2009 to allow trans genders to choose their gender as “other” in electoral rolls.<sup>28</sup></p> <p>Further, the Court preferred to follow the psyche of the person in determining sex and gender and prefer the “Psychological Test” instead of “Biological Test”.<sup>29</sup> No one shall be forced to undergo medical procedures, including sex reassignment surgery, sterilisation or hormonal therapy, as a requirement for legal recognition of their gender identity.<sup>30</sup></p> <p>With the recognition people of the third gender could enjoy the rights equally with other people such as the right to vote, the right to own property, the right to marry, the right to claim a formal identity through a passport and a ration card, a driver’s license, the right to education, employment, health so on.<sup>31</sup> It was also highlighted that transgender people were entitled to legal protection of laws in all spheres of State activity, including employment, healthcare, education as well as equal civil and citizenship rights, as enjoyed by any other citizens.<sup>32</sup></p> <p>The Indian government has constituted an inter-ministerial committee to pursue implementation of the recommendations of an Expert Committee, seeking “third gender” status for transgender people.<sup>33</sup></p> <p>However, the said Supreme Court decision did not seem to harmonise with its decision in another case handed down in December</p>
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26 Writ Petition (Civil) No. 400 of 2012, Supreme Court of India, 15 April 2014.

27 Same as above, at paragraph 129.

28 Since then and up to April 2014, 28,314 transgender people have been registered across India with the poll panel. See news report of IANS, *Supreme Court’s Third Gender Status to Transgender is a landmark*, 15 April 2014.

29 *National Legal Services Authority v.s. Union of India and Others*, Writ Petition (Civil) No. 400 of 2012, Supreme Court of India, 15 April 2014, at paragraphs 34 and 77.

30 Same as above, at paragraph 129.

31 Same as above, at paragraphs 113 and 129.

32 Same as above, at paragraphs 54, 113 and 114.

33 See news report of IBN Live, *Committee for grant of third gender status to transgenders formed*, 12 August 2014.

		2013, in which it upheld a colonial era law titled section 377 of the Indian Penal Code in criminalising any “carnal intercourse against the order of nature”, effectively outlawing homosexuality and the sexual rights of the transgender community (reversing a landmark 2009 Delhi High Court order which had decriminalised homosexual acts). <sup>34</sup> Transgender people are now put in a strange situation: on the one hand, they are now legally recognised and protected under the Constitution, but on the other hand they may be breaking the law if they have consensual gay sex, making the issue of both gender identity and sexual orientation a complicated one in India. <sup>35</sup>
<b>10.</b>	<b>Japan</b>	<p><i>Relevant legislation</i></p> <p>In Japan, legal recognition is given to a person who has a persistent conviction that he/she belongs to the opposite sex, and has a will to make him/herself physically and socially conform to the opposite sex. The <i>law 111</i> of July 2003, which took effect on 16 July 2004, called the ‘<i>Act on special cases in handling gender for people with gender identity disorder</i>’, was revised in June 2008. Under the revised law, the applicant is required to meet all the following conditions:</p> <ol style="list-style-type: none"> <li>(1) be over 20 years of age;</li> <li>(2) be unmarried<sup>36</sup>;</li> <li>(3) have no living child aged 19 years or younger – this revision took effect on 18 December 2008;</li> <li>(4) have no gonads or have permanently lost gonadal function;</li> <li>(5) have a part of the body which assumes the external genital features of the opposite sex;</li> </ol> <p>In accordance with law 111, a person can change gender in law by entering this on their “Koseki” (a person’s family registration held in town offices; this is the conclusive document in law in Japan). The applicant must submit a medical diagnosis from more than two doctors as evidence to a family court. The contents to be included in the diagnosis are laid down by the Ministry of Health, Labour and Welfare Ordinance, and must include the medical history of gender identity disorder, and the progress and results of treatment. The doctors must have the necessary knowledge and experience to make an appropriate judgment, and should reach a consensus as to the diagnosis based on medical knowledge. If the court judges that the applicant’s gender should be changed, a secretary of the court entrusts the heads of the local government office where the applicant registered his/her permanent residence to state the gender in the applicants’ family registration.</p>

34 *Suresh Kumar Koushal and Another v. Naz Foundation and Others* (Civil Appeal No. 10972 of 2013), Supreme Court of India, 12 December 2013.

35 See Kunal Kanodia, *The Third Gender: Be Yourself, But Don’t Have Sex*, Columbia Undergraduate Law Review, 31 July 2014.

36 It is pertinent to note that same-sex marriage is not legalised in Japan, as articles 731-737 of the Japanese Civil Code restricts marriage to opposite-sex unions.

11.	Mainland China	<p><i>Relevant administrative measures</i></p> <p>According to the regulations governing the technology of sex reassignment surgery (pilot scheme) issued by the Ministry of Health on 13 November 2009<sup>37</sup>, an individual applying to undergo sex reassignment surgery (which entails removal of original sex organs, reconstruction of external sex organs and secondary sexual characteristics of the new gender)<sup>38</sup> is required to meet all of the following conditions:</p> <ol style="list-style-type: none"> <li>(1) Diagnosis of gender identity disorder by psychiatrist;</li> <li>(2) Be unmarried<sup>39</sup> and over 21 years old;</li> <li>(3) Has the intention of changing his/her gender for at least 5 years;</li> <li>(4) Has received psychiatric/ psychological counselling before sex reassignment surgery for over 1 year.</li> </ol> <p>After the change of gender by way of sex reassignment surgery, the person can apply to change the Household Registration (<i>Hukou</i>) and identity card pursuant to provisions contained in the official document entitled “關於公民手術變性後變更戶口登記性別項目有關問題的批复” published by the Ministry of Public Security on 23 October 2008.<sup>40</sup> As the People’s Republic of China does not have a birth registration system independent from the Hukou system, changing the Hukou and the identity card complete most of a person’s basic identity documents. Evidence required include a certificate of sex produced by third-class hospitals in the PRC duly notarised or verified by juridical vilification bureaus. The application will be proceeded by the local Municipal Public security authority.</p> <p>It was revealed that in the Henan province, citizens who have undergone sex reassignment surgery in other countries may also be entitled to make the application to change the Hukou provided that the change of sex is verified by hospitals designated by the Provisional Hygiene Administrative Department which should then be approved by the local Municipal Public security authority.<sup>41</sup></p>
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37 The regulations are, in Chinese, called “變性手術管理規範” (transliterated as “*Sex Change Operations and Technology Management Standards*”), Health Office of Medical Affairs No. [2009]185.

38 The official version, in Chinese, states “切除其原有的性器官並重建新性別的體表性器官和第二性徵”.

39 It is pertinent to note that same-sex marriage is not legally recognised in China by virtue of the Marriage Law of the People’s Republic of China which defines marriage as the union between one man and one woman, and no other form of civil union is recognised as well.

40 Transliterated as “Official Reply on the Relevant Questions of Post-Operative Transsexual Citizens Changing the Sex Entry in Household Registration”, 公治 [2008]478 號.

41 See the news report of enorth.com.cn, 變性人咋登記？河南公安和衛生部門有規定, 19 November 2002 (in Chinese).

		<p>The marriage should not be invalidated by reason that one party to the marriage has changed sex/gender, according to the official document entitled “關於婚姻當事人一方變性後如何解除婚姻關係問題的答復” published by the Ministry of Civil Affairs on 6 August 2002<sup>42</sup>. Further, in 2004 a transgender woman was allowed to marry a man after she got a new identity card, and this was the first case in China that recognised transgender people’s right to marry.<sup>43</sup></p> <p>There were voices that the procedures for the said application for change of the Household Registration (<i>Hukou</i>) are difficult, and in addition, gender change is not allowed on many official documents, such as university degrees and other education certificates.<sup>44</sup> Some people found that legal registration of LGBT civil society organisations remains extremely difficult, especially at the Provincial level.<sup>45</sup></p> <p>It is further revealed that in the Shanxi Province, Article 101 of the Shanxi Provincial Permanent Residence Registration Regulations (which came into force on 1 January 2014) provides that minors may also apply for a gender change in the registry provided that the application should be accompanied by the Hukou document and Residence Identity Card of the minor’s guardian.<sup>46</sup></p>
12.	New Zealand	<p><i>Relevant legislation</i></p> <p>Under <i>Part 5 (sections 27A to 33) and section 64 of the Births, Deaths, Marriages and Relationship Registration Act 1995</i>, a Family Court may declare that the applicant’s birth certificate<sup>47</sup> should state the applicant is of the sex nominated in the application. The</p>

42 Transliterated as “Reply on matters regarding how the marriage is to be dissolved after one party changed sex”, 民辦函[2002] 127 號.

43 See the article in Chinese of Chu Wei Dong (朱偉東) (2004), *由變性人結婚所想到的* ((in Chinese).

44 See UNDP, USAID (2014), *Being LGBT in Asia: China Country Report*, published in Bangkok, at 24.

45 Same as above, at 9.

46 See 《山西省常住戶口登記管理規定》, available at: <http://gongwen.cnrencai.com/guiding/73878.html>.

47 In New Zealand the process and requirements of changing legal sex classification on official documents vary depending on the documents. Birth certificate is perceived as being ‘all the proof required that they are New Zealanders’ (see Human Rights Commission, *To Be Who I Am: Report of the Inquiry into Discrimination Experienced by Transgender People*, Wellington 2008, paragraph 6.3). It is the most significant form of identity as it cannot be revoked or altered by the State, although it is no longer required when people make an application for a passport, register a birth or apply for a marriage licence.

Changes of the gender marker on a passport can be done upon application to the Department of Internal Affairs and the sole criterion is someone’s self-defined gender identity by way of a statutory declaration (indicating the sex/gender identity one wish to be displayed in the passport (M, F or X) and how long he or she has maintained the current sex/ gender identity. Applicants under 18 years of age will be required to provide a statutory declaration from a parent or legal guardian which supports the change in sex / gender identity in their passport, and a statutory declaration from a registered counsellor / medical professional which supports

		<p>applicant must be 18 years of age or older (s 28), or a person who is younger than 18 years but who is or has been in a marriage, in a civil union or in a de facto relationship (s 27A), and a person whose birth is registered or registrable in New Zealand or who is, albeit born overseas<sup>48</sup>, a New Zealand citizen or permanent resident (s 27A). That declaration can be used to change official documents in New Zealand or in countries that recognise New Zealand’s legal gender recognition process.</p> <p>The Court shall issue the declaration if, and only if, it is satisfied the applicant has assumed and intends to maintain, or has always had and intends to maintain, the gender identity of a person of the nominated sex, and wishes the nominated sex to appear on birth certificates issued in respect of the applicant (s 28(3)(b)). The Court must also be satisfied, on the basis of expert medical evidence, that the applicant (s 28(3)(c)(i)):</p> <ol style="list-style-type: none"> <li>(1) has assumed the gender identity of a person of the nominated sex; and</li> <li>(2) has undergone such medical treatment as is usually regarded by medical experts as desirable to enable persons of the genetic and physical conformation of the applicant at birth to acquire a physical conformation that accords with the gender identity of a person of the nominated sex and</li> <li>(3) will, as a result of the medical treatment, maintain a gender identity of a person of the nominated sex.</li> </ol> <p>Alternatively, the Court must be satisfied that the applicant’s sexual assignment or reassignment has been recorded or recognised in accordance with the laws of a state for the time being recognised by the Minister by notice in the Gazette (s 28(3)(c)(ii)). The Register General of Births, Deaths and Marriages shall take the administrative step to update the birth information upon a successful court application (simply leaves it to the Court to determine the application on the evidence of the applicant alone, and the Registrar-General plays no active role).</p> <p>It is possible for a child to apply under different criteria (e.g. requiring that it is the child’s best interest to be brought up as a person of the nominated sex, the guardian intending to bring the child up as a person of the nominated sex, the child has already undergone of, if the court grants the declaration will undergo, medical treatment reasonably necessary to enable the child to assume and maintain the</p>
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this change.

Regarding change of gender details on the driver licence register, a person must provide confirmation of the gender he or she wishes to have recorded by presentation of an original ‘evidence of identity’ document (including a birth certificate, passport or certificate of citizenship) that states that gender. If the gender on the document does not match his or her preferred gender, then he or she must provide an original statutory declaration stating his or her preferred gender. Applicants under the age of 18 are required to provide statutory declarations from their parent or guardian which supports the change in gender identity on the drivers licence and a statutory declaration from a registered counsellor/medical profession which supports the change.

48 Section 15 of the Births, Deaths, Marriages, and Relationships Registration Amendment Act 2008, which took effect on 24 January 2009..

		<p>gender identity of a person of the nominated sex, the child’s physical conformation and gonadal and genital development are such that it is more likely that the child will be able (after undergoing any of the medical treatment not yet undergone) to assume the gender identity of a person of the nominated sex ).</p> <p>If the Court grants the declaration, the Registrar-General of Births, Deaths and Marriages, on deposit of the declaration, shall include in the information relating to the birth recorded information that the person is a person of the nominated sex (s 30(1)). The Registrar General simply leaves the adjudication of applications to the Court whereas it plays no active role. A birth certificate shall contain the nominated sex and new name (if any) as if they had always been on the birth certificate since the birth of the person (s 64). The sex of every person (unaffected by the gender recognition provisions) shall continue to be determined by reference to the general law of New Zealand (s 33).</p> <p>The requirement that the applicant should be unmarried (previously s 30(2)) was repealed on 19 August 2013 by s 9 of the Marriage (Definition of Marriage) Amendment Act 2013 (2013 No. 20) which defines marriage as “the union of two people, regardless of their sex, sexual orientation, or gender identity.” (articles 4 and 5) This Act also includes an exemption clause for religious bodies in solemnising marriages for any couples (article 6).</p> <p><i>Relevant court decisions</i></p> <p>On 9 June 2008, the Family Court at Auckland held in the case <i>Michael v Registrar-General of Births, Deaths and Marriages</i><sup>49</sup>, that it is not necessary in all cases for an applicant to have undergone full gender reassignment surgery in order to obtain a declaration under the said 1995 Act. What is required is “<i>some degree of permanent physical change as a result of the treatment (including psychological treatment) received</i>” (paragraph 50). The level of medical treatment (meaning both surgical interventions and non-surgical measures such as counselling and other psychological treatment as well as hormonal and pharmacological therapies) a person needs to have had is determined on a case by case basis by reference to the evidence in the particular case, including that of the medical experts.<sup>50</sup></p>
13.	Singapore	<p><i>Relevant legislation and administrative measures</i></p> <p>There is no clear legislation on legal gender change. Under the <i>National Registration Regulations</i> Singapore’s citizens who have</p>

49 (2008) 27 FRNZ 58.

50 See New Zealand Department of Internal Affairs, *General information regarding Declarations of Family Court as to sex to be shown on birth certificates*.

		<p>changed any of their particulars, including gender, should report to the Immigration and Checkpoints Authority (ICA) for a replacement National Registration Identity Card (NRIC), which is the main piece of legal identity documentation in Singapore. Gender reassignment surgery is required to change the gender status on the NRIC.<sup>51</sup> However, “sex reassignment procedure” is not defined in the statutes and thus it is not clear what extent of surgery is required in order for a person to be recognised as having undergone such procedure for the purposes of the law. The ICA requires a medical certificate issued by the surgeon who carried out the operation. The applicant will also generally change his/her name and to do so, a deed poll is required.</p> <p>A person’s birth certificate cannot be changed unless it can be shown that it contained an error of fact or substance,<sup>52</sup> rendering a trans person’s gender cannot be changed on Singaporean birth certificates even after SRP. However, following a gender change to the NRIC a person is treated according to their acquired gender for many purposes including military service, criminal punishment and marriage. Under the Women’s Charter Amendment Act of 1996 marriages are valid between a person who has undergone a sex reassignment procedure and any person of the opposite sex on the basis that the stated sex of a person at the time of marriage is prima facie that stated on his/her NRIC.</p> <p>Transsexual persons who have undergone sex reassignment procedure are also legally recognised in their reassigned sex for the purposes of sexual offences in the Penal Code (Cap 224).</p>
14.	<b>South Korea</b>	<p><i>Relevant regulation and court decisions</i></p> <p>In 2007 the Supreme Court made a ‘<i>Family Registration Regulation</i>’ on the application for Permission of Sex Change of Transsexuals which was then amended in January 2010. Legal gender change is subject to a court ruling. The individual makes an application to the local court in the district in which they live. The Supreme Court then considers the case, makes a ruling and the applicant’s sex is changed in the government database. The applicant must fulfil the following criteria:<sup>53</sup></p> <ol style="list-style-type: none"> <li>(1) be over 20 years old, have never married before<sup>54</sup>, and have no children;</li> <li>(2) acknowledge sufferings from youth;</li> </ol>

51 See Lenore T. Lyons, University of Wollongong (2004), *Sexing the nation: normative heterosexuality and the ‘good’ Singaporean citizen* in A. Branach-Kallas & K. Wieckowska (eds) (2004), *The Nation of the Other: Constructions of Nation in Contemporary Cultural and Literary Discourses*, Uniwersytet Mikolaja Kopernika (Nicolas Copernicus University), Torun, Poland, 79-96, at 90 and 91.

52 Registration of Births and Deaths Act (Cap 267), section 24.

53 See Kat Callahan’s article, *S. Korean Surgeon ‘Going to Hell’ for Sex Reassignment Surgeries*, 19 April 2014.

54 It is pertinent to note that same-sex marriage is not legally recognised in South Korea.

		<p>(3) have received long-term psychiatric treatment and provide proof of physical surgery;</p> <p>(4) be irreversibly sterilised;</p> <p>(5) not be undergoing the legal recognition process with criminal intent.</p> <p>The applicant must provide the following documentation:</p> <p>(a) certificates from more than two psychiatrists;</p> <p>(b) a doctor's certificate to prove the applicant's sex reassignment surgery;</p> <p>(c) a doctors certificate to prove that the applicant is sterile;</p> <p>(d) consent from the applicant's parents;</p> <p>(e) a letter from the applicant explaining their hardship and suffering;</p> <p>(f) a letter from the applicant's friends explaining the applicant's hardship and suffering from the inconsistency of their physical and psychological sex.</p> <p>Once the applicant's entry in the government database is changed, all government documents are issued on the basis of this information. Applicants can also apply to change their name.</p> <p>On 15 March 2013, the Seoul Western District Court ruled that transgender individuals can change their legal gender status without undergoing genital surgery.<sup>55</sup> The Court ruled in favour of accepting requests from five female-to-male transgender individuals to have their family register listing altered to be classified as male. None of the five has undergone operations to surgically alter their sex organs. The five transgender individuals filed their request in December 2012, arguing that the demand for surgery to conform to the changed gender status constituted the main barrier to approvals and violated the spirit of the legal gender modification system, which is to guarantee the Constitutional rights of transgender people.</p>
<b>15.</b>	<b>Taiwan</b>	<p><i>Relevant administrative measures</i></p> <p>Under the administrative order (documented No. 0970066240) issued by the Ministry of the Interior in 2008, an individual applying for an amendment to the gender marker on one's Household Registration Certificates and National Identification Cards<sup>56</sup> needs to</p>

<sup>55</sup> See news report of The Hankyoreh, *Landmark legal ruling for South Korean transgenders*, 16 March 2013.

<sup>56</sup> In Taiwan, these two documents are foundational documents for proof of identity as they are often requested for official purposes, such as voting and opening bank accounts, and can be considered as the main identity documents in Taiwan. For more information about the household registration and administrative practice



		<p>submit certification by two psychiatrists with diagnosis of “gender identity disorder” (DSM-IV TR) or “gender dysphoria” (DSM-V) and must remove all relevant sexual organs (removal of breasts, uterus and ovaries for female-to-male individuals, and removal of penis and testicles for male-to-female individuals) to qualify for a new gender.<sup>57</sup> The authority in charge of the procedures for registration of legal gender recognition is the Household Registration Bureau.</p> <p>There has been gradual developments which tend to relax the above administrative practices. On 25 December 2014, the Ministry of the Interior announced that a new policy would be in place to reverse the 2008 executive rules so as to allow transgender people to have their affirmed gender legally recognised without requiring them to undergo surgery and extensive mental evaluation.<sup>58</sup> In January 2015, the Ministry of Interior proposed a Bill for gender recognition which would require applicants to submit certification of two psychiatrists for approval by a specific committee, the applicant being at least 20 years old, childless and unmarried<sup>59</sup>, and declaring that he or she would not change gender for the rest of his or her life.<sup>60</sup></p> <p><i>Other related matters</i></p> <p>On 7 August 2013, the Ministry of the Interior reversed its earlier (July 2013) decision, upholding the marriage between two male-to-female transgender persons one of whom, at the time of the marriage, has yet changed the sex to female.<sup>61</sup></p>
16.	Vietnam	<p><i>Relevant legislation</i></p> <p>On 1 January 2017, the Amended Civil Code (passed on 24 November 2015) came into effect,<sup>62</sup> under which gender reassignment surgery is legalised in Vietnam, and people who have undergone gender reassignment surgery can apply for their preferred sex to be</p>

relating to the application for legal gender recognition, see Jens M. Scherpe, *The Legal Status of Transsexual and Transgender Persons*, December 2015, at 433-434.

57 See the Press Release of Taiwan’s Ministry of the Interior (in Chinese), *性別變更是否須摘除性器官 內政部採開放態度*, 11 December 2014, and Cec Busby, *Gender Recognition For Taiwan’s Trans People*, Gay News Network, 26 December 2014. For a detailed discussion of the legal framework, see Jens M. Scherpe, *The Legal Status of Transsexual and Transgender Persons*, December 2015, at 426-430.

58 See news report of Advocate, *Taiwan Removes Surgical Barriers to Trans Citizens’ Legal Recognition*, 27 December 2014.

59 It is pertinent to note that same-sex marriage is not legally recognised in Taiwan by virtue of the Taiwan Civil Code.

60 See news report of Coolloud (in Chinese), *人權「狼來了」！別變更認定未來恐更嚴格*, 15 January 2015; see also United Daily News, *免摘性器官，性別變更擬訂專法*, 18 January 2015.

61 See news report of Taiwan Apple Daily (in Chinese), *逆轉！跨性別婚姻有效 變性伴侶熱吻*, 7 August 2013.

62 See news report of South China Morning Post, *New law protects transgender rights*, 26 November 2015, and news report of VietNamNet, *True to themselves*, 26 February 2017

		registered. A successful applicant will be issued with new identification papers showing his/her preferred gender.
<b>EUROPE</b>		
<b>17.</b>	<b>Austria – EU</b>	<p><i>Relevant administrative measures</i></p> <p>There is no specific legislation in Austria on changing sex/gender, or on gender recognition. As an administrative practice, sections 16 and 19 of the <i>Austrian Civil Status Law (Personenstandsgesetz – PstG)</i> provide, inter alia, that a person’s sex is recorded in the birth register and the birth registrar is required to change the birth register once the data becomes incorrect<sup>63</sup>.</p> <p><i>Relevant court decisions</i></p> <p>The criteria for deciding requests for gender change are in accordance with Administrative Court decisions:</p> <ol style="list-style-type: none"> <li>1. In 2009, the Austrian Administrative High Court held that mandatory sex reassignment surgery as a condition of recognising a gender change in the birth register was unlawful for reason that severe surgical intervention was not necessary to achieve a distinct approximation to the appearance of the other gender, and “the (psychic) component of the feeling of belonging to the other sex” is sufficient if this feeling “is in all likelihood irreversible and is expressed visibly in a distinct approximation to the external appearance of the other sex.”<sup>64</sup></li> <li>2. In 2006 the Austrian Constitutional Court ruled the <i>Transsexuellen-Erlass</i> [Transsexual Order] that prohibited a trans woman from legally transitioning while she remained married to her wife lacked any basis in Austrian law.<sup>65</sup> However, in spite of this</li> </ol>

63 Official version in German available at: [http://www.parlament.gv.at/PAKT/VHG/XXIV/ME/ME\\_00402/imfname\\_263571.pdf](http://www.parlament.gv.at/PAKT/VHG/XXIV/ME/ME_00402/imfname_263571.pdf).

64 Austrian Administrative Court Cases (VwGH) 2008/17/0054 (decided on 27 January 2009) and Austrian Constitutional Court (VfGH) Case B 1973/08- 13 (decided on 3 December 2009). Also See summary of these cases in Richard Köhler, Alecs Recher and Julia Ehrt (December 2013), *Legal Gender Recognition In Europe: Toolkit Transgender Europe*, at 42.

65 *Verfassungsgerichtshof* [Constitutional Court], V 4/06-7, 8 June 2006. In this case, the complainant was a trans woman who (prior to her transition) had married another woman and had two children with her. Due to the divorce obligation under the Ministry of Interior decree, following her gender reassignment, the trans woman was presented with two unacceptable choices, i.e. (i) continuing her family life while having her identification documents constantly out her, or (ii) change her documents and certificates at the cost of losing her legal ties to her family. The Court ruled that the decree was unlawful as it could not find any law expressly prohibiting a change of birth certificate on the basis that a person is married.

		<p>judgement, the Ministry of Interior did not adapt Austria’s civil-status ordinance, and hence the marriage-certificate-forms continued to refer to the married same-sex partners as a “man” and a “woman”. In January 2010, the Ministry of Interior amended the marriage-certificate-forms in that the reference to the sex of the spouses was removed.<sup>66</sup> It bears noting that same-sex marriage is currently yet legalised in Austria where same-sex couples may file for “registered partnership” without having access to the same government marital benefits as heterosexual couples do.<sup>67</sup> In November 2011, the City of Vienna decided to overcome this situation by issuing its own marriage certificates for trans people that alter the gendered positions prescribed by the Minister of Interior. The new certificates are entirely gender neutral and list trans people in the place that is adequate for their gender and the other same-sex partner is displaced instead. This solution is much preferred as it carries the legitimate aim of protecting the privacy of trans people.<sup>68</sup></p> <p>According to the Position Paper of Austrian Transgender Group issued by TranX on 28 June 2009<sup>69</sup>, an applicant for civil status change in Austria should:</p> <ol style="list-style-type: none"> <li>1. declare that the registered sex and his/her gender perception do not match; and</li> <li>2. provide documents showing psychological or psychotherapeutic diagnosis of the gender identity change;</li> </ol> <p>Whereas the following criteria are not necessary:</p> <ol style="list-style-type: none"> <li>1. Infertility</li> <li>2. Surgery of any kind</li> <li>3. Hormone treatments</li> <li>4. Any somatic treatments</li> <li>5. Measures for the approximation of the external appearance</li> </ol> <p>legal recognition in Austria is accessible to underage trans persons.<sup>70</sup></p>
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66 See Silvan Agius, Richard Köhler, Sophie Aujean and Julia Ehrt (2012), *Human Rights and Gender Identity: Best Practice Catalogue*, at 32.

67 See news report of Gay Marriage Watch, *Austria: Same Sex Adoption Legalized, But Not Marriage Equality*, 5 August 2013.

68 See Silvan Agius, Richard Köhler, Sophie Aujean and Julia Ehrt (2012), *Human Rights and Gender Identity: Best Practice Catalogue*, at 33.

69 German version of the Position Paper available at: <http://www.transx.at/Dokumente/Positionspapier%20Fly13.pdf>.

70 See Richard Köhler, Alocs Recher and Julia Ehrt (December 2013), *Legal Gender Recognition In Europe: Toolkit Transgender Europe*, at 23.

		Upon request the applicant can obtain an amended birth certificate (usually requested only after the first name has been changed). Upon request the applicant can also apply for a new marriage certificate, however with one restriction; only the first name can be changed – the fields for sex (male/female) are headers and can therefore not be changed. In addition, the applicant can apply for new personal documents (i.e. new passport) through the responsible authorities. <sup>71</sup>
<b>18.</b>	<b>Belgium – EU</b>	<p><i>Relevant legislation and administrative measures</i></p> <p>In May 2017, the Belgian Parliament approved a reform bill that allows gender change based generally on self-determination with no surgical or medical requirement.<sup>72</sup> Sterilisation and a mental health diagnosis are no longer requirements for legal gender recognition. The new procedure starts with a declaration to the Registrar of Civil Status stating that the applicant has for a long time been convinced that the gender on his/her birth certificate does not match his/her inner experienced gender identity, and that he/she wants that to be changed. The Registrar will then inform the Public Prosecutor within 3 days of the declaration. If the latter gives a negative opinion, the applicant concerned may appeal to a court. If no opinion is given by the Public Prosecutor, it is deemed to be a positive one. After a lapse of 3 months at the minimum and up to 6 months at the maximum which is meant to be a cooling-off period, the applicant will have to return to the Registrar to give a statement stating that he/she indeed wants to change his/her gender and is aware of the administrative and legal implications. When the Registrar is satisfied, he/she will amend the birth certificate accordingly.<sup>73</sup></p> <p>Under the new law, a child aged 12 or younger can only effect a name change in accordance with his/her gender but otherwise has no access to full gender recognition. Those of age between 16 and 18 can apply for full legal gender recognition with parental authorization and the approval of a psychiatrist.<sup>74</sup></p>
<b>19.</b>	<b>Bulgaria</b>	<p><i>Relevant legal/administrative measures</i></p> <p>Legal gender change in Bulgaria is subject to a court procedure whereupon the court requires medical papers showing that an</p>

71 See UK's Ministry of Justice's Table of Gender Recognition Systems in Approved Countries and Territories Under the Gender Recognition Act 2004 dated June 2011, available at: <https://formfinder.hmctsformfinder.justice.gov.uk/t491-eng.pdf>.

72 See the related news report at: <https://www.koengeens.be/news/2017/05/09/zelfbeschikking-centraal-in-nieuwe-transgenderwet> (in Belgian, dated 24 May 2017), and Reuters, *Belgium's ban of forced sterilization for gender change 'not enough', say campaigners*, 25 May 2017.

73 Same as above.

74 Same as above.

		<p>operation has been made or hormone tests proving the change of sexual characteristics (more information can be taken from the court decisions on a case-by-case basis, but there is no unified court practice yet).<sup>75</sup> There is no requirement that the transsexual person be unmarried before being accepted for gender change. However, if he/she is married, the court applies the rules for divorce. Once a person's gender change is legally recognised they can marry in the acquired gender.<sup>76</sup> This derives from the prohibition of discrimination in the Bulgarian Constitution. When the court rules in favour of a gender change, it also rules in its decision whether the birth certificate should be amended or a new one should be issued, depending on the facts of the case.</p> <p>However, the above rules and procedure could not be verified yet. According to ILGA-Europe Annual Review 2011 on Bulgaria<sup>77</sup>, there exists legal/administrative procedures for change of name and legal gender whereby one is possible to change identity card and passport (but not birth certificate) to match the gender identity. No compulsory medical/surgical intervention required and no sterilisation (or proof of infertility) required. Medical diagnosis or psychological opinion is compulsory<sup>78</sup>. It is further noted in another research paper<sup>79</sup> that:</p> <ol style="list-style-type: none"> <li>1. There is no legal definition of the concept of transsexuality in any Bulgarian law.</li> <li>2. Bulgarian legislation lacks any regulations or procedures concerning the establishment of the status of a person who wishes to undergo sex reassignment surgery or hormonal treatment to that effect. The sole document containing mention of this term is a regulation issued by the Ministry of Defence identifying transsexuality as a sexual disorder making individuals unfit for military service.</li> <li>3. Gender and name alteration should be recognised by the court in two different procedures which are not specifically provided for in the legislation.</li> <li>4. Under the current legislation, gender reassignment and name change will have a number of consequences, e.g. transsexual individuals will be expected to have employment contracts re-endorsed and obtain a new driving licence and passport.</li> <li>5. It is possible to change documents without surgery, but the process may take years.</li> <li>6. Gender reassignment will lead to the pre-existing marriage being dissolved.</li> </ol>
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75 See UK's Ministry of Justice's Table of Gender Recognition Systems in Approved Countries and Territories Under the Gender Recognition Act 2004 dated June 2011, available at: <https://formfinder.hmctsformfinder.justice.gov.uk/t491-eng.pdf>.

76 It is pertinent to note that same-sex marriage is constitutionally banned in Bulgaria as the Constitution defines marriage as a union between a man and a woman.

77 ILGA-Europe, *Annual Review of the Human Rights Situation of Lesbian, Gay, Bisexual, Trans and Intersex People in Europe 2011*, available at: [http://www.ilga-europe.org/sites/default/files/Attachments/annual\\_rewiev\\_inside.pdf](http://www.ilga-europe.org/sites/default/files/Attachments/annual_rewiev_inside.pdf).

78 See Transgender Europe, *Trans Rights Europe Map, 2017*, available at: <http://tgeu.org/trans-rights-map-2017/>.

79 Cristina Castagnoli of Policy Department C – Citizen's Rights and Constitutional Affairs (June 2011), *Transgender Persons' Rights In The EU Member States*, at 7, 15 and 16.

20.	<b>Croatia</b>	<p><i>Relevant legislation</i></p> <p>Articles 9A and 36 of the State Registries Law (amended in June 2013<sup>80</sup>) provides that a citizen can have the birth certificate amended with the preferred gender based on “change of sex or life in a different gender identity”.<sup>81</sup> Medical evidence from treating physicians or other health facilities is needed for the purposes of legal gender recognition. The Ministry of Health is charged with developing guidelines on the legal gender recognition procedure that should also specify what medical evidence is needed. In January 2014, such guidelines had not been developed yet and according to Article 37, previous guidelines adopted in 2008 remain in force.<sup>82</sup></p> <p>In order to qualify for gender reassignment surgery the individual has to go through a number of psychological evaluations and hormone therapy, which are only available in private hospitals. Sex change surgeries are not performed in Croatia but in Slovenia and Belgrade<sup>83</sup>. No compulsory surgical intervention is required for gender recognition in Croatia<sup>84</sup>.</p> <p>Any change such as a change of sex must be noted on an individual’s birth certificate as additionally recorded information (a birth certificate is the most relevant document for all Croatian citizens and the information recorded in it is highly significant. It is proof for gaining citizenship and many rights and benefits that the Croatian state provides, and is needed when applying for an ID, a passport, employment etc<sup>85</sup>).</p> <p>Once the change of sex has been recorded, the individual can marry a person of the opposite sex, if they are single. If a person is married, their marriage is found to be a same-sex marriage following surgery and as such is found illegal and has to be annulled.<sup>86</sup></p>
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80 In June 2013, Croatia adopted the Law on Amendments on the Law on State Registers (No.71 -05-03/1-13-2).

81 ILGA-Europe, *Annual Review of the Human Rights Situation of Lesbian, Gay, Bisexual, Trans and Intersex People in Europe 2014*, available at: [https://www.ecoi.net/file\\_upload/1226\\_1406706221\\_ilga1.pdf](https://www.ecoi.net/file_upload/1226_1406706221_ilga1.pdf).

82 See Amnesty International (2014), *The State Decides Who I Am: Lack of Recognition For Transgender People*, at 7, footnote 2.

83 See the UK’s Ministry of Justice’s Table of Gender Recognition Systems in Approved Countries and Territories Under the Gender Recognition Act 2004 dated June 2011, available at: <https://formfinder.hmctsformfinder.justice.gov.uk/t491-eng.pdf>.

84 See Transgender Europe, *Trans Rights Europe Map, 2017*, available at: <http://tgeu.org/trans-rights-map-2017/>.

85 See the UK’s Ministry of Justice’s Table of Gender Recognition Systems in Approved Countries and Territories Under the Gender Recognition Act 2004 dated June 2011, available at: <https://formfinder.hmctsformfinder.justice.gov.uk/t491-eng.pdf>.

86 It is pertinent to note that same-sex marriage is not legally recognised in Croatia by virtue of Croatia’s Constitution which defines marriage solely as a union between a man and a woman.

		The application is available for minors. <sup>87</sup>
<b>21.</b>	<b>(Republic of) Cyprus - EU</b>	<p><i>Relevant administrative measures</i></p> <p>There is lack of gender recognition procedure in Cyprus.<sup>88</sup> Changes to the Civil Records are left to the discretion of the Permanent Secretary of the Ministry of Interior under Administrative Code governed by the Civil Registry Law of 2002 (N. 141(I)/2002).<sup>89</sup></p> <p>A person who undergoes an operation for the change of sex must submit a medical certificate about this operation, together with a sworn affidavit regarding the change of name to the district administrative authorities, in order to effect a legal change of sex. The District Administration will forward the medical certificate to the Ministry of Health for approval and once this is approved a new passport, identity card and electoral identity booklet are issued to the applicant. The original birth record is not changed.<sup>90</sup></p> <p>It was noted that medical diagnosis or psychological opinion is compulsory, and compulsory medical/surgical intervention and sterilisation are required.<sup>91</sup></p> <p>The current law of Cyprus only recognises marriage as a union between one man and one woman. There is no official recognition of either same-sex marriages, civil unions or domestic partnerships. Therefore it is mandatory for a marriage to be dissolved before a party to the marriage can get gender recognition.<sup>92</sup></p> <p>The application is not available for minors.<sup>93</sup></p>

87 See Transgender Europe, *Trans Rights Europe Map, 2017*, available at: <http://tgeu.org/trans-rights-map-2017/>.

88 See news report of TGEU, *Cyprus – Registration denied to Greek trans woman*, 6 March 2014. As recent as November 2016, there were calls for the introduction of proper gender recognition law into the country. See related news report available at: <http://cyprus-mail.com/2016/10/21/simpler-gender-change-law-early-next-year/>.

89 Unofficial English translation by UNHCR Refworld available at: [http://eudo-citizenship.eu/NationalDB/docs/CYP%20Civil%20Registry%20Law%20No%20141\\_I\\_2002\\_ENGLISH.pdf](http://eudo-citizenship.eu/NationalDB/docs/CYP%20Civil%20Registry%20Law%20No%20141_I_2002_ENGLISH.pdf).

90 See the UK's Ministry of Justice's Table of Gender Recognition Systems in Approved Countries and Territories Under the Gender Recognition Act 2004 dated June 2011, available at: <https://formfinder.hmctsformfinder.justice.gov.uk/t491-eng.pdf>.

91 See Transgender Europe, *Trans Rights Europe Map, 2017*, available at: <http://tgeu.org/trans-rights-map-2017/>.

92 Same as above.

93 Same as above.

22.	<b>Czech Republic</b>	<p><i>Relevant legislation</i></p> <p>Section 29 of the Civil Code no. 89/2012 Coll (which came into force on 1 January 2014) codified the practices that lead to gender recognition which includes mandatory sex change surgery which blocks the conversion of reproductive function and sexual organs (s 29(1)). Some commentators took the view that this law was surprising as Czech Republic had been known for being fairly liberal with regard to LGBT issues.<sup>94</sup> The said Code provides that changing gender does not affect the personal status of a person or to his personal and financial status. Marriage or registered partnership shall cease to exist.<sup>95</sup> The obligations and rights of men and women whose marriages have disappeared, a common child and their property rights and obligations in the period after the dissolution of marriage shall apply mutatis mutandis to the rights and obligations of divorced parents of a child and their property rights and obligations at the time of the divorce, court decide, even without the proposal, how each of the parents of the future common child care (s29(2)).<sup>96</sup></p> <p>It was noted that medical diagnosis or psychological opinion is compulsory, and compulsory medical/surgical intervention and sterilisation are required.<sup>97</sup></p> <p>The application is not available for minors under the age of 18.<sup>98</sup></p> <p><i>Relevant administrative measures</i></p> <p>Legal change of gender may be obtained through the local registry office in Czech Republic.<sup>99</sup> This process includes obtaining a new birth certificate or a personal identification number (called a Birth Number) and has been possible since the 1970s. Gender reassignment surgery is necessary to obtain this change. Gender reassignment surgery must be approved by a medical advisory board (under the <i>Health Care Act No 20/1966 Coll.</i>) including a lawyer, two medical specialists and two physicians not participating</p>
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94 See news report of The Guardian, *Europe's terrible trans rights record: will Denmark's new law spark change?*, 1 September 2014.

95 It is pertinent to note that same-sex marriage is not legally recognised in Czech Republic.

96 For a more detailed analysis of the legal requirements and procedure for changing legal sex/gender in Czech Republic, see Jens M. Scherpe, *The Legal Status of Transsexual and Transgender Persons*, December 2015, at 135-145.

97 See Transgender Europe, *Trans Rights Europe Map, 2017*, available at: <http://tgeu.org/trans-rights-map-2017/>.

98 Sec 21(3), Act No. 373/2011 Coll

99 See UK's Ministry of Justice's Table of Gender Recognition Systems in Approved Countries and Territories Under the Gender Recognition Act 2004 dated June 2011, available at: <https://formfinder.hmctsformfinder.justice.gov.uk/t491-eng.pdf>.



		in the surgery. The change of birth number is regulated through the <i>Regulation of Citizens Law (29/2000 Coll)</i> . The birth number identifies a person by means of nine or ten numbers where the gender is encoded in the digits. The third digit in the Birth Number denotes gender. It is ‘5’ for female and ‘0’ for male. A transgender person is allowed to marry and bring up children.
23.	<b>Denmark – EU</b>	<p><i>Relevant legislation</i></p> <p>On 11 June 2014, the Danish parliament passed a new gender identity law (called <i>Lovforslag L 182 and L 189</i>) which removed a number of obstacles for legal gender recognition and established that, as of 1 September 2014, the legal gender of a person is distinguished from biological gender, and, in many areas of law, congruence between legal gender and biological gender is no longer a requirement. New procedure for obtaining preferred gender came into force on 1 September 2014, according to which any person who is over the age of 18 can apply to update his/her gender marker on the personal documents including passports, birth certificates and social security numbers.<sup>100</sup> The applicant will be the sole decision maker without any conditions imposed by the state. The Danish parliament also removed requirements as to medical intervention, compulsory surgical intervention and compulsory sterilisation. An application for legal change of gender is made by submitting a written application to the Ministry of Economy and Domestic Affairs and stating in the application that the wish is based on an experience of belonging to the other gender. After a period of no less than 6 months following the application, the applicant simply needs to reconfirm his or her application and thereafter the applicant’s legal gender indicated in the Central Person Registry would be changed.<sup>101</sup></p> <p>The new CPR number is recorded in the CPR registry, and the original CPR number is retained in the registry too, referring to the new CPR number. All information in the CPR registry from the original number will be transferred to the new number, which will from then on be the basis for all new registrations.<sup>102</sup> The records are accessible only to public authorities or private persons who have been granted this right by law, by administrative order according to law, or have been authorised by the Ministry of Economy and Domestic Affairs.<sup>103</sup> With the new CPR number, the applicant will automatically receive a new National Health Card (<i>sundhedskort</i>).</p>

100 It was announced by the Danish Parliament in May 2016 that with effect from 1 January 2017, “being transgender” will no longer be classified as a mental disorder in the country. See related news report at:

<http://www.independent.co.uk/news/world/europe/denmark-will-be-the-first-country-to-no-longer-define-being-transgender-as-a-mental-illness-a7029151.html>.

101 *Lov om ændring af lov om Det Centrale Personregister, lov nr. 752 af 15.06.2014* (Amendments Act to the CPR Act) § 1 no. 1.

102 The Minister of Economy and Domestic Affairs, remarks to the proposed Act. *Lovforslag L 182, Folketinget 2013-14, Fremsat 30.04.2014, Bemærkninger til lovforslaget*, section 3.1.

103 CPR Act § 34, 1.

		<p>Denmark is known to be the first country in Europe where a requirement for gender identity disorder' diagnosis or any psychological assessment/opinion is not necessary for a person to legally obtain their preferred gender.<sup>104</sup> Nevertheless, some activists are not happy with the six months lag time for an application, complaining that it prevents people from changing their documents quickly, like when applying for a job, travelling internationally or enrolling in school. But lawmakers say the waiting period is meant to keep people from making hasty decisions they might later regret.<sup>105</sup></p> <p>The marital status of an applicant is not a relevant consideration as the Marriage Act in Denmark allows persons of same legal gender to marry on an equal footing as persons of opposite gender.<sup>106</sup></p>
24.	<b>Estonia – EU</b>	<p><i>Relevant legislation</i></p> <p>The “<i>General Requirements on Medical Procedures for the Change of Gender</i>” issued by the Minister for Social Affairs (<i>Soovahetuse arstlike toimingute uhtsed nouded, of 07.05.1999, no 32</i>)<sup>107</sup> sets out the conditions for changing a person’s legal gender and allowing medical treatment for gender reassignment. It requires:</p> <ol style="list-style-type: none"> <li>(1) An application to the Ministry for Social Affairs;</li> <li>(2) The decision is made by a medical expert committee appointed by the Minister of Social Affairs;</li> <li>(3) Certification of transsexual identity during at least two years prior to the application;</li> <li>(4) A psychiatrist’s decision that excludes the possibility that the wish to undergo gender/sex change is caused by psychiatric disorder;</li> <li>(5) Compatibility of chromosomatic and gonad gender/sex certified by genetic research; forced sterilisation is not required;<sup>108</sup></li> <li>(6) At least two years of treatment must pass from the beginning of medical treatment. At least one year must pass from the positive response from the Minister for Social Affairs to have the right to surgically change gender. If the Person decides otherwise during that year they are not obliged to go ahead with the change of gender.</li> </ol>

104 See news report of Online Post, *Sterilisation no longer required for a sex change*, 11 June 2014.

105 See Jean Ann Esselink, *Denmark’s New Gender Recognition Law Allows Danes To Self-Determine Gender Identity*, 5 September 2014.

106 *Ägteskabsloven, Lovbekendtgørelse nr. 1052 af 12.11.2012*, §1.

107 See Cristina Castagnoli of Policy Department C – Citizen’s Rights and Constitutional Affairs (June 2011), *Transgender Persons’ Rights In The EU Member States*, at 18. Also see the UK’s Ministry of Justice’s Table of Gender Recognition Systems in Approved Countries and Territories Under the Gender Recognition Act 2004 dated June 2011, available at: <https://formfinder.hmctsformfinder.justice.gov.uk/t491-eng.pdf>.

108 See Richard Köhler, Alec Recher and Julia Ehrt (December 2013), *Legal Gender Recognition In Europe: Toolkit Transgender Europe*, at 21.

		The application is not available for minors. <sup>109</sup> No forced divorce is required. <sup>110</sup> The medical expert committee’s decision is the basis for a decree by the Minister of Social Affairs which authorises medical treatment to change a person’s gender. This will be the basis for subsequent legal changes. Under section 52 of the Population Register Act ( <i>Rahvastikuregistri seadus</i> ) the individual can obtain a new personal identification code ‘upon amendment of the data on the sex of a person on the basis of an application of the person and a certificate of a medical institution holding a corresponding licence’. The applicant will then also be able to obtain a new birth certificate.
25.	<b>Finland – EU</b>	<p><i>Relevant legislation</i></p> <p>The Act on the Recognition of the Sex of Transsexual Individuals (<i>laki transseksuaalin sukupuolen vahvistamisesta</i>, (563/2002)<sup>111</sup>, which entered into force on 1 January 2003, provides that the authorities shall recognise a person as belonging to the opposite sex to that recorded on the population register, provided he/she:</p> <p>(1) Provides a medical report from both the heads of the specialist teams in Helsinki University Central Hospital and the Tampere University Central Hospital<sup>112</sup> testifying that he/she permanently experiences being a member of the opposite sex and that he/she lives in that gender roles (a cumbersome process taking between 6 to 12 months and hormone treatment is necessary as part of a “real life test”<sup>113</sup>) and that he/she has been sterilised or is otherwise incapable of having children;<sup>114</sup></p> <p>(2) He/she is an adult (over 18 years of age);</p>

109 See Transgender Europe, *Trans Rights Europe Map, 2017*, available at: <http://tgeu.org/trans-rights-map-2017/>.

110 See Richard Köhler, Alecs Recher and Julia Ehrt (December 2013), *Legal Gender Recognition In Europe: Toolkit Transgender Europe*, at 22.

111 Unofficial English translation available at: <http://www.finlex.fi/en/laki/kaannokset/2002/en20020563.pdf>.

112 See Amnesty International (2014), *The State Decides Who I Am: Lack of Recognition For Transgender People*, at 41.

113 Section 1.1 of the 2002 Act and paragraph 6 of the Ministry of Social Affairs and Health Decree 1053/2002. In summer 2013, the Helsinki Trans Unit created a diagram of the entire process from referral through legal gender recognition. The process is explained to all transgender people referred to the Unit on their first appointment. It includes: (i) the diagnostic period (minimum of six months); (ii) “real life test” (minimum 12 months) in which the transgender person lives according to the preferred gender identity, a requirement of the Trans Act and its implementation Decree, and includes hormone treatment, possibly mastectomy, voice therapy, epilation, and possibly other treatments; (iii) evaluation of the “real life test”; (iv) second opinion from the other Trans Unit; legal gender recognition and genital surgery. See Amnesty International (2014), *The State Decides Who I Am: Lack of Recognition For Transgender People*, at 41.

114 The sterilisation requirement is in practice achieved via hormone treatment, although the teams in Helsinki and Tampere Hospitals follow different practices. See Amnesty International (2014), *The State Decides Who I Am: Lack of Recognition For Transgender People*, at 44.

		<p>(3) He/she is not married or in a registered partnership; unless the spouse or partner gives their consent in which case a marriage become a registered partnership or a registered partnership becomes a marriage;<sup>115</sup> and</p> <p>(4) He/she is a Finnish citizen or is resident in Finland.</p> <p>Further details on the requirements for accessing legal gender recognition are spelled out in a Decree 1053/2002 issued by the Ministry of Social Affairs and Health in 2002.<sup>116</sup> In particular, the Decree specifies that the medical statement required by the Trans Act for the purpose of legal gender recognition should verify that all the medical criteria are fulfilled. The Decree also provides a framework regulating access to transgender health care and psychiatric assessment.</p> <p>The competent authority is the local register office (<i>Maistraatti</i>). Under section 5 a person whose new legal gender has been recognised is to be treated as a person of that sex for all purposes under the law. The evidentiary result of a change of gender is an update to the Population Information System<sup>117</sup>. This means that a person will be given a new personal identification code which is crucial for e.g. application for pensions and other benefits, for the payment of wages, salaries and fees, for bank transactions, for getting diplomas or library cards<sup>118</sup>. Any person can, on payment of a fee, obtain from the local register office a certificate showing name, personal identification number, address and marital status. In Finland, birth certificates are hardly ever used.</p> <p>Transgender individuals in Finland can only change their name after receiving a psychiatrist diagnosis under the Names Act<sup>119</sup>, but practices greatly vary across the registration offices. The diagnosis may not be required in a few cases where applicants wish to change their name to one that is considered to be gender neutral.</p>
<b>26.</b>	<b>France –</b>	<i>Relevant legislation</i>

115 As an illustration, on 16 July 2014 the European Court of Human Rights, in the case of *Hämäläinen v. Finland* (Application no. 37359/09), affirmed the Finnish government’s decision to force a man, who underwent gender reassignment surgery, to annul his marriage if he wants to update his national and travel IDs. It is noteworthy that same-sex marriage has been legalised in Finland since 1 March 2017, and this might make the marital status requirement for gender recognition become no longer in force.

116 Ministry of Social Affairs and Health Decree 1053/2002 on the organization of the examination and treatment aimed at changing gender, as well as on the medical statement for confirmation of the gender of a transsexual.

117 It is an electronic database maintained by the Population Registration Centre. See the Population Information Act (507/1993) (in Finnish).

118 Therefore, the long process of obtaining legal recognition caused negative experiences by transgender individuals resulting from the divergence between their gender identity and the legal gender, such as discrimination and hate crimes against them. See Amnesty International, 2014, *The State Decides Who I Am: Lack of Recognition For Transgender People*, at 45 and 46.

119 Formally, the Names Act only prohibits giving a child a name that does not correspond to the legal gender. Names Act 9.8.1985/694, Section 32b.

	<p><b>EU</b></p>	<p>The French Civil Code, as amended by the <i>Act to Modernise the Justice of the 21<sup>st</sup> Century (La loi sur la justice au XXI<sup>eme</sup> siècle)</i> which came into effect on 1 January 2017<sup>120</sup>, provides that a person who has reached the full age of 16 years or emancipated minors (i.e. a minor who is married (the marriage age is 18 in France) or who has reached the full age of 16 years and pronounced as emancipated by the judge of guardianships)<sup>121</sup> can apply to the High Court (<i>Tribunal de Grande Instance</i>) for a change of his/her sex/gender in the civil status by demonstrating by an adequate combination of facts that the reference to sex/gender in his/her civil status does not match the one he/she is known (Articles 61-5 and 61-6). The key facts that may reveal such mismatch, the proof of which can be by any means, include (1) that the applicant has publicly claimed to belong to the preferred gender; (2) that the applicant is known in his/her preferred gender amongst her family, friends, or professionals; (3) that the applicant has obtained a change of name to match the preferred gender (Article 61-5). It is provided that not having undergone medical treatment, sterilisation or surgery should not be the basis of refusing an application (Article 61-6).</p> <p>If the above conditions are met, and if the court is satisfied that the application is made freely and in an informed manner, the court can order the modification of gender-related reference in the civil status (Article 61-6). A mention of the decision to change the sex shall be made at the margin of the successful applicant's birth certificate at the request of the public prosecutor within 15 days from the date the decision becomes final (Article 61-7).</p> <p>The modification of the sex entry in the civil status documents has no effect on the contractual obligations towards third parties nor the filiations established before the said modification (Article 61-8). This implies that a divorce requirement is not necessary for the application, which is in line with the Court of Appeal decision in the Rennes Case No. 11/08743, 1453, 12/00535 (decided on 16 October 2012).</p> <p><i>Relevant court decisions</i></p> <p>On 6 April 2017, the European Court of Human Rights ruled in <i>Affaire A.P., Garçon and Nicot v France</i> (Applications nos. 79885/12, 52471/13 and 52596/13) that the sterilisation requirement in legal gender recognition under French law (before the legal reform in January 2017 as illustrated above) violates the right to respect for private life guaranteed under Article 8 of the European Convention on Human Rights.<sup>122</sup></p>
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120 Available at: <https://www.legifrance.gouv.fr/eli/loi/2016/11/18/2016-1547/jo/texte>.

121 Articles 476 and 477 of the French Civil Code.

122 The judgment is available in French in <http://hudoc.echr.coe.int/eng/?i=001-172556>.

27.	Germany – EU	<p><i>Relevant legislation</i></p> <p>The relevant legislation is the <i>Transsexuellengesetz</i>, the Transsexuals Act of 10 September 1980 that entered into force on 1 January 1981. According to sections 1(1) and 8 of the Transsexuals Act, a court can decide that a person should belong to the opposite sex where the applicant:</p> <ol style="list-style-type: none"> <li>(1) has obtained psychiatric diagnosis based on ICD-10;<sup>123</sup></li> <li>(2) has lived for three years in the opposite gender;<sup>124</sup></li> <li>(3) is of age;</li> <li>(4) feels, due to being transsexual, that they belong not to their sex as assigned at birth, but rather to the opposite sex.</li> </ol> <p>The legislation is open to (sections 1.1.1 and 8.1.1 of the Transsexuals Act):</p> <ol style="list-style-type: none"> <li>(1) German nationals;</li> <li>(2) stateless persons who have their main residence in Germany;</li> <li>(3) persons with a right of asylum or refugees domicile in Germany; and</li> <li>(4) foreigners with an indefinite right of residence in Germany, or foreigners with a renewable residence permit who live lawfully in Germany on a permanent basis, whose home state has no equivalent law.</li> </ol> <p>A note is made in the margin of the birth record and the civil status record is noted with details of the court’s decision. If a new birth certificate is issued following legal recognition, this will show only the acquired gender.<sup>125</sup> Full legal recognition is achieved for all purposes including marriage. Employers must retrospectively change name and gender details on employment certificates in order to protect a trans person’s privacy.<sup>126</sup></p>
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123 See Amnesty International (2014), *The State Decides Who I Am: Lack of Recognition For Transgender People*, at 84.

124 However, the law refers only to the “compulsion” to live according to his/her perceived gender for a minimum period of three years. Therefore, in practice the 1980 law is interpreted as requiring “real life experience” for gender recognition.

125 According to amendments of the Personal Status Law (*Personenstandgesetz/PSStG*), entered into force on 1 November 2013, the information on sex can be omitted in the birth registry if a new-born child cannot be unambiguously assigned as either male or female. This development sparked much debate, with intersex organisations raising the possibility that this provision may violate the privacy of intersex people and expose them to further discrimination. See Amnesty International (2014), *The State Decides Who I Am: Lack of Recognition For Transgender People*, at 29.

126 AG Hamm, Urteil vom 17.12.1998 - 4 Sa 1337/98. Also see The Open Society Foundations, *License To Be Yourself: Laws and Advocacy for Legal Gender*

		<p><i>Relevant court decisions</i></p> <p>There were court decisions which extended eligibility of its gender recognition law to all German permanent residents including those who are stateless, refugees or have been granted asylum.<sup>127</sup></p> <p>The minimum age restriction was removed from the Transsexuals Act as a result of a 1982 Federal Constitutional Court decision (<i>Bundesverfassungsgericht</i> - 16.3.82).<sup>128</sup> This means a trans person under the age of 18 can apply to the court for legal gender recognition. Such applications are treated on the same basis as other legal cases by a minor.<sup>129</sup> This means that from the age of 12, a trans person would have the right to be heard in their case.</p> <p>In 2008 the German Constitutional Court invalidated section 8(1)(2) of the federal Transsexuals Act which required someone applying for legal gender recognition to be unmarried or divorced. The judges found this created a conflict between a person's right to marry and their privacy, which included their self-determined gender identity.<sup>130</sup> An amendment to the law was passed on 17 July 2009, removing a previous requirement to be unmarried from the legislation.<sup>131</sup> The result is that married couples may remain in their existing marriage.<sup>132</sup></p>
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*Recognition of Trans People*, ISBN: 9781940983103, May 2014, at 25.

127 See The Open Society Foundations, *License To Be Yourself: Laws and Advocacy for Legal Gender Recognition of Trans People*, ISBN: 9781940983103, May 2014, at 22.

128 This is the popular name of the German law. Its official name is “Law concerning the change of given names and gender recognition in special cases” (*Gesetz über die Änderung der Vornamen und die Feststellung der Geschlechtszugehörigkeit in besonderen Fällen*).

129 For more information about the abolishment of the minimum age requirement, see Jens M. Scherpe, *The Legal Status of Transsexual and Transgender Persons*, December 2015, at 212.

130 1 BvL 10/05, Federal Constitutional Court of Germany (27 May 2008).

131 On 17 July 2009, following-up on the Constitutional Court's judgment, the Federal Ministry of Justice declared in the Federal Gazette (*Bundesgesetzblatt*) that the section of the TSG establishing the non-marriage clause (§8.1.2) was deemed as not applicable until a new law could be entered into force. *Bundesgesetzblatt Jahrgang 2009, Teil 1, Nr. 43, on 22 July 2009, p1978, Gesetz zur Aenderung des Transsexuellengesetzes (Transsexuellengesetz-Änderungsgesetz – TAG-ÄndG) 17 July 2009.*

132 For more information about the abolishment of the marital status requirement, see Jens M. Scherpe, *The Legal Status of Transsexual and Transgender Persons*, December 2015, at 212-214.

		<p>A Federal Constitutional Court decision of 11 January 2011 ruled inapplicable further requirements contained in the legislation to have a) undergone surgical intervention and b) be sterile.<sup>133</sup></p> <p>In a decision of the Bundesverfassungsgericht handed down on 18 July 2006 (Ref. No. 1 BvL 1/04 and 12/04), it was held that the said categories of persons entitled to make application under the Transsexuals Act were too limited in violation of the equal treatment requirement (Article 3.1 of the Basic Law) in conjunction with the fundamental right to protection of the personality (Article 2.1 in conjunction with Article 1.1 of the Basic Law) insofar as it excludes foreign transsexuals who are present in Germany lawfully and not merely temporarily from the entitlement to apply for a change of their first name and to determine their gender under § 8.1.1 of the Transsexuals Act, to the extent that their home state does not contain provisions comparable to the German Transsexuals Act and the applicant concerned has legal status under German immigration law.<sup>134</sup> (The last requirement means that the foreign national must either have an unlimited right of residence in Germany or a renewable residence title, and he or she must reside permanently and lawfully in German.)<sup>135</sup></p> <p>The Constitutional Court has left in place some requirements for the legal recognition of preferred gender. These requirements are laid down in section 8(1) No.1, section 1(1) No.1 &amp; 2 of the Transsexual Act. The applicant must show (1) that he or she feels as though not belonging to his or her current legal gender but rather to the opposite legal gender, (2) that he or she has felt a compulsion to live according to his or her perceived gender for at least three years, and (3) that there is a high probability that the applicant's sense of belonging to the opposite gender will not change in future.<sup>136</sup></p>
28.	Greece – EU	<p><i>Relevant administrative measures</i></p> <p>There is no legislation on gender change in Greece but transsexual people can change their name and identity papers following surgical intervention. According to jurisprudence, this operation is required due to therapeutic needs (psychological, hermaphroditism or predisposition towards the other sex). The court orders the modification of the birth certificate, which involves</p>

133 Bundesverfassungsgericht [Federal Constitutional Court], BVerfG, 1 BvR 3295/07, 28.01.2011. For more information about the abolishment of the infertility and surgical measures requirements, see Jens M. Scherpe, *The Legal Status of Transsexual and Transgender Persons*, December 2015, at 214-215

134 Bundesverfassungsgericht 18.7.2006 (1 BvL 1/04 – 1 BvL 12/04), FamRZ 2006, 1818. See also Jens M. Scherpe, *The Nordic Countries in the Vanguard of European Family Law*, Stockholm Institute for Scandinavian Law 1957-2010, section 3.2.1, at 282.

135 See section 1(1), No. 3 lit. d Transsexuals Act.

136 See Jens M. Scherpe, *The Legal Status of Transsexual and Transgender Persons*, December 2015, at 215.



		<p>modification of all the administrative documents. There are no legal provisions relating to marriage. The application is not available for minors.<sup>137</sup></p> <p><i>Relevant court decisions</i></p> <p>In June 2016, the County Court of Athens ruled that surgical intervention as a precondition for an application for gender change is in violation of Article 8 of the ECHR. Following this decision, a legal change in name and gender is no longer dependent on an applicant having undergone surgeries.<sup>138</sup></p>
<b>29.</b>	<b>Hungary</b>	<p><i>Relevant administrative measures</i></p> <p>In Hungary, there are legal/administrative procedures for change of an individual's name and legal gender on official documents to match the person's gender identity. The gender recognition process does not require diagnosis of gender identity disorder or medical/psychological opinion. There is also no requirement of compulsory medical/surgical intervention and sterilization (or proof of infertility).<sup>139</sup></p> <p>A trans person has to provide medical evidence from a psychiatrist, a psychologist, and a gynaecologist or urologist confirming their gender identity. The Ministry of Health will then process an expert opinion, which will be sent to the birth registry. After this, the person involved can have his/her gender and name changed in the birth registry. Once the registry has been changed, it will appear as though the person always had this gender, and it will be almost impossible to track the change of the gender in the registry. As the provision of other documents is based on the birth registry, transgender persons can apply for a passport or driver's licence without problems once their gender has been adjusted.<sup>140</sup></p> <p>The Civil Code, entering into force in 2009, provides that a marriage or registered partnership automatically terminates if one of the partners changes sex.</p>

137 See Transgender Europe, *Trans Rights Europe Map, 2017*, available at: <http://tgeu.org/trans-rights-map-2017/>.

138 See the news report of ekathimerini.com, *Surgery not required for legal sex change, court rules*, 30 June 2016, available at: <http://www.ekathimerini.com/210040/article/ekathimerini/news/surgery-not-required-for-legal-sex-change-court-rules>.

139 See UK's Ministry of Justice's Table of Gender Recognition Systems in Approved Countries and Territories Under the Gender Recognition Act 2004 dated June 2011, available at: <https://formfinder.hmctsformfinder.justice.gov.uk/t491-eng.pdf>.

140 Cristina Castagnoli of Policy Department C – Citizen's Rights and Constitutional Affairs (June 2011), *Transgender Persons' Rights In The EU Member States*, at 23.

30.	Iceland	<p><i>Relevant legislation</i></p> <p>An Act on legal status of individuals with ‘Gender Identity Disorder’ (GID), which entered into force on 27 June 2012<sup>141</sup>, provides that (under Article 4 thereof) an individual applicant will first be referred to a team of specialists on GID at the National University Hospital of Iceland – Landspítali (the hospital will be required to provide this service at all times). The team will include psychiatrists, psychologists and endocrinologists and its role will be to diagnose and treat individuals with GID. After a treatment of minimum 18 months is concluded (whereof 12 months in the opposite gender role) and after having met all preconditions, the individual can seek the confirmation of belonging to the opposite sex to a minister appointed Expert Panel on GID (two doctors and one lawyer who serve four years). The Panel’s role is to confirm that the individual belongs to the opposite sex and, if it applies, whether the individual is fit for reassignment surgery (Articles 5 and 6). Sex Reassignment Surgery is not required for official name change and gender recognition.</p> <p>After having received such a recognition the individual will be guaranteed all the same legal rights as people of this gender enjoy (Article 7). The Panel will notify The National Registry and the individual will then be permitted to change his/her name according to his/her new gender (Article 8). If the Panel determines that a diagnosis of GID is appropriate, the National registry is informed and the applicant chooses a new name to reflect their new gender and is issued a new social security number and ID.</p> <p>An individual who is registered in The National Registry but undergoes a sexual reassignment surgery (SRS) while living abroad can request that the National Registry change their name in their database (Article 9). The National Registry will assess the application, including whether the name change and/or correction of sex have been authorised by competent authorities or courts.</p> <p>Article 10 guarantees a status quo in the legal relationship between a child and a parent who has been confirmed as legally belonging to the opposite sex.</p> <p>Article 11 addresses cases of those individuals who decide to return to their previous sex. These individuals may seek help from Landspítali’s team of doctors, which will review the application and potentially revoke the gender change.</p>
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141 The law was adopted in June 2012 by the Icelandic Parliament. The bill for the new law was drafted by a special five-member Commission on the legal status of trans people, which was appointed by the Minister of Welfare in March 2011. Trans-Ísland, the National Organisation of Trans People, and The Icelandic Human Rights Centre each appointed a representative to the commission. The law is in accordance with the government coalition platform from 2009, where the Social Democratic Alliance and their junior coalition partner, The Left-Green Movement, committed themselves to improving the legal status of trans people in the country – a move previously recommended by the Parliament’s Ombudsman.

31.	Ireland	<p><i>Relevant legislation</i></p> <p>The Gender Recognition Act 2015<sup>142</sup>, the passage of which made Ireland the third country in Europe and the fourth country in the globe to enshrine in law a right to gender recognition based on self-declaration, has the following key features:</p> <ol style="list-style-type: none"> <li>(1) Minimum age for application is set at 18 (section 9(2)). Applicants of 16 and 17 years old are required to obtain a court order before the application, and the court, in determining whether or not an application is granted, requires the child's parents, surviving parent or guardian consent or consents to the making of the application, medical certificate certifying that the child has attained a sufficient degree of maturity to make the decision to apply for gender recognition (section 12).</li> <li>(2) The applicant should either have his or her birth registered in Ireland or become an Irish citizen by having his or her birth registered in the foreign births entry book or foreign births register or is ordinarily resident in Ireland (section 9).</li> <li>(3) The previous restriction that the applicant should not be married or a civil partner (section 9(2)(b)) was abolished on 16 November 2015 by s24(b) of the <i>Marriage Act 2015</i>.</li> <li>(4) An application should be made by way of a statutory declaration declaring the applicant has a settled and solemn intention of living in the preferred gender for the rest of his or her life, he or she understands the consequences of the application and makes the application of his or her free will (section 10(f)). Other supporting information includes the applicant's identity, contact details, proof of birth etc (section 10).</li> <li>(5) Upon approval of the application a gender recognition certificate will be issued (section 8(3)).</li> <li>(6) An appeal can be made to the court within 90 days of the date of the refusal to issue a gender recognition certificate</li> </ol>
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142 The bill was proposed by the Department for Social Protection following a High Court ruling in 2007 that Ireland was in breach of the European Convention on Human Rights in not having a process to legally recognise the acquired gender of transsexual persons (a declaration of incompatibility with the European Convention of Human Rights was made by the High Court on the basis of Section 5 of the European Convention on Human Rights Act 2003: see *Foy v An-t-Ard Chlaraitheoir and Others* [2007], IEHC 470, various recommendations and bills for legal gender recognition have been proposed by different parties including but not limited to the Gender Recognition Advisory Group (established by the Minister for Social Protection in May 2010), Aengus Ó Snodaigh (Sinn Féin spokesperson for Social Protection), Senator Katherine Zappone and the Department for Social Protection. Each bill provides that everyone has a right to legal recognition of their self-identified gender and to be issued with official documentation. The bill proposed by the Department for Social Protection was then revised in mid-2014. The revised version was published by the Minister for Social protection, Joan Burton T.D. on 17 June 2014, and then passed on 15 July 2015 by the Irish Senate.

		(section 17).  (7) Persons who already have had their acquired gender recognised in another jurisdiction may apply with evidence that requirements to be fulfilled under the law of the jurisdiction where the gender recognition was granted are at least equivalent to the requirements to be fulfilled under the Act regarding self-declaration (section 11(2)(b)).  (8) The acquired gender so recognised will not affect the status as the parents of a child (section 19) or the disposal or devolution of property under a will or other instrument made before the date of the Act (to be enacted) (section 20), and does not prevent the gender-specific sexual offence being committed or attempted (section 23).
<b>32.</b>	<b>Italy – EU</b>	<i>Relevant legislation and court decisions</i>  The <i>Legge</i> of 164/1982 entitled ‘Rules concerning rectification of sexual attributes’ ( <i>Nor otarizeateria di rettificazione di attribuzione di sesso</i> ), which was amended in 2011 by Article 31 of the Reform Act no. 150 of 2011, provides for the correction of a person’s sex on the Civil Registry records upon production of a final judicial decision which assigns that person a different sex ‘ <i>as a result of the change of the sexual characteristics</i> ’. <sup>143</sup> Article 31 of the Reform Act no. 150 of 2011 provides that a court may authorise surgical intervention ‘ <i>where it is necessary to adapt the sexual characteristics to be achieved by surgical treatment</i> ’. The court may ask for a medical opinion regarding the psycho-physical condition of the person and decide if gender reassignment surgery is necessary, and will not permit medical interventions which can physically or psychologically affect the applicant. <sup>144</sup> The law does not clarify the nature or extent of the reassignment required for recognition. <sup>145</sup> Male to female reassignment is usually authorised only when the person has had complex surgery including orchidectomy, penectomy and vaginoplasty. It appears that only in one case a judge ordered a gender reassignment without any surgery. <sup>146</sup> The female to male change is usually only authorised when the

143 Law of 14 April 1982, no. 164, Provisions concerning the rectification of sex attribution (Norme in material di rettificazione di attribuzione di sesso), Article 3, in Italian. It is also called The Sex Reassignment Act 1982.

144 Court of La Spezia, 25.07.1987 (1987) Arch. Civ. (Archivio civile), p. 1233; Court of Vicenza, 02.08.2000 (2001) Dir. Fam. Pers. (Diritto della famiglia e della persone), p. 220; Court of Milan, 05.10.2000 (2001) Fam. Dir. (Famiglia e diritto), p. 324; Court of Brescia, 15.10.2004 (2005) Corr. Mer. (Corriere del merito), p. 505.

145 It is also not certain whether applicants must observe a period of reflection before obtaining gender identity recognition or what role medical intervention plays in the process. See Jens M. Scherpe, *The Legal Status of Transsexual and Transgender Persons*, December 2015, at 251.

146 In February 2013, the Bologna Court of Appeals rejected the request of a trans person to have their gender changed in identity documents without undergoing sterilisation (*case no.35/2012*). However, in May the Rovereto Court ruled (*case no. 1027/2012*) that a trans person did not have to undergo mandatory sterilisation in order for their gender to be recognised, stating that mandatory sterilisation would breach the ‘inviolable rights’ guaranteed under the Italian Constitution. See

		<p>person has had surgery including mastectomy and hysterectomy. In addition, an applicant need not apply for medical treatment if he or she has already submitted to such interventions abroad.<sup>147</sup></p> <p>Having undergone court-authorized medical treatment, the applicant can then submit another application for the Court to authorize amendments to the Civil Registry.<sup>148</sup> The competent court handling the applications is the presiding court in whichever region the applicant is habitually resident. The President of that court designates the examining magistrate and sets both the date for the hearing and the deadline by which the applicant must notify his or her spouse and children. In practice, the applicant must provide the court with sufficient documentation to show that he or she satisfies the psychological and physical prerequisites for legal recognition of his or her preferred gender.<sup>149</sup></p> <p>Remarkably, on 20 July 2015, the Italian Supreme Court ruled that sex change operation, medical intervention and sterilisation were not necessary prerequisites for the recognition of a person's preferred gender, and that '<i>medical treatment</i>' in the 1982 Act must be interpreted accordingly.<sup>150</sup></p> <p>Italy's Basic Law provides that the legal recognition of gender is open to persons over 18 years of age where those persons have sufficient mental and intellectual capacity to act.<sup>151</sup> Court decisions have shown that legal representatives for minors may be authorised by the Tutelary Judge to consent on the minor's behalf to the entire legal process.<sup>152</sup></p> <p>The legislation is silent on the question of nationality, but the decided cases illustrate that the legal recognition of gender identity has only been available to those who are formally listed on the national population registry. In a landmark 2000 judgment, foreign citizens were finally permitted to apply for gender recognition in Italy if they could show that they were legal residents.<sup>153</sup></p>
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ILGA-Europe (May 2014), *Annual Review of the Human Rights Situation of Lesbian, Gay, Bisexual, Trans and Intersex People in Europe 2014*, at 96. For more discussion on the medical intervention requirements under the Italian law on gender recognition, see Jens M. Scherpe, *The Legal Status of Transsexual and Transgender Persons*, December 2015, at 252-254.

147 Court of Pisa, 15.01.2008 (2008) Dir. Fam. Pers. (Diritto della famiglia e della persone), p. 1288.

148 In practice, many individuals skipped the initial application for court-ordered medical treatment due to the cost implications.

149 See Jens M. Scherpe, *The Legal Status of Transsexual and Transgender Persons*, December 2015, at 255.

150 Decision no. 15138 of 20 July 2015. See also news report of TGEU, *Italian Supreme Court rules against sterilisation requirement*, 21 July 2015. See also news report (in Italian) of BOLOGNA, *Trans, la Cassazione: non occorre operarsi per cambiare sesso all'anagrafe*, 20 July 2015.

151 CAGGIA, *Atti di disposizione del corpo, persona, famiglia e successioni* (Cuffaro ed.), IPSOA, Milan 2006, p. 171.

152 For example, Court of Rome, 14.04.2011, 2011 Fam. Dir. (Famiglia e Diritto), p. 183.

153 Court of Milan, 17.08.2000 (2000) Fam. Dir. (Famiglia e diritto), p. 6.

		<p>Under Article 5 of the legislation all personal records and documents (including Italian passports and national security numbers) are altered to show only the new gender and legal name, and certificates of civil status are issued accordingly. The applicant may seek to rectify his or her birth certificate and first name as well.<sup>154</sup> Under Article 4 of the legislation, following recognition the applicant is considered as having his or her newly recognised gender for all purposes to the extent required.</p> <p>Under Article 4 of the legislation the change of gender causes the dissolution of a marriage.<sup>155</sup> However, in April 2015, the Italian Court of Cassation held that, pending the introduction of registered partnerships or civil unions with ‘<i>substantially equivalent</i>’ value to marriage, transgender persons should not be required to divorce before the law recognises their preferred gender.<sup>156</sup></p> <p>A new law was passed in May 2016 to recognise same-sex civil unions.<sup>157</sup> Presumably, this would allow transgender persons to change their gender without undergoing a divorce.</p>
33.	Latvia	<p><i>Relevant legislation</i></p> <p>The Law on the Change of a Name, Surname and Ethnicity Entry, adopted by the Parliament on 8 April 2009, provides that the change of name and surname is permitted for Latvian citizen or non-citizen or stateless person whose status was granted by Latvia who has reached the age of 15 and had sex change.<sup>158</sup></p> <p>On 18 August 2009, the Cabinet of Ministers approved amendments to the laws on Sexual and Reproductive Health which has now been supplemented by a separate Chapter VII “On Gender Reassignment”, designating a competent authority to approve gender reassignment following a medical expert opinion.<sup>159</sup> Thereafter, amendments were also proposed to the Civil Status Document Law allowing for the rectification of the recorded sex in the birth registry, but these proposals had not been adopted.</p>

154 See Jens M. Scherpe, *The Legal Status of Transsexual and Transgender Persons*, December 2015, at 255.

155 For a detailed discussion about the court challenges against the forced dissolution of marriages, see Jens M. Scherpe, *The Legal Status of Transsexual and Transgender Persons*, December 2015, at 27-2585.

156 Cassazione Civile, sez. I, sentenza 21/04/2015 n° 8097.

157 See the news report of The New York Times, *Italy Approves Same-Sex Civil Unions*, 11 May 2016, available at: [https://www.nytimes.com/2016/05/12/world/europe/italy-gay-same-sex-unions.html?\\_r=0](https://www.nytimes.com/2016/05/12/world/europe/italy-gay-same-sex-unions.html?_r=0).

158 Latvia/Law on the Change of Name, Surname and Ethnicity Entry (8 April 2009), Section 2 paragraph 6.

159 Latvia/Seksuālās un reproduktīvās veselības likums [Sexual and Reproductive Health Law] (31.01.2002).

		The application is not available for minors. <sup>160</sup>
34.	<b>Liechtenstein</b>	<p><i>Relevant legislation</i></p> <p>For the recognition of gender change in Liechtenstein, the Principality of Liechtenstein requires a document testifying the new gender or a medical attestation confirming that gender reassignment surgery has taken place, and that there is no possibility of reproduction in the original/primary gender.<sup>161</sup> A gender change may not be reversed. If the application is granted by the Principality of Liechtenstein, the new gender will be subsequently confirmed by the court, and the new name and gender is recorded in the official registers. The above rules and procedure could not be verified yet.</p>
35.	<b>Luxembourg - EU</b>	<p><i>Relevant court decisions</i></p> <p>There is no legislation on gender recognition in Luxembourg and the criteria for gender recognition have been established by case law.<sup>162</sup> The general principle is that an individual's civil status is immutable and cannot be altered simply because a person wishes to do so, and thus any change must be exceptional. The court follows three main criteria. These are that there is a discrepancy, discovered at an earlier age, between the psychological experience of the person and their biological sex at birth, that the individual has the intimate conviction that he or she is the victim of nature and that there is a situation of necessity. The court's decision is based on medical certificates but the evidence can change according to the facts of the case. A gender change approved by the court is transcribed into the official records of civil status. After the transcription of the court's decision into the records of civil status, the birth certificate is rectified by the civil status officer to indicate the new sex of the person. The birth certificate is conclusive in law of a person's sex in Luxembourg. Identity or travel documents (<i>carte d'identite/</i> passeport) are based on the birth certificate, i.e. these documents can only denote the new sex following rectification of the birth certificate.</p> <p>No forced divorce is required.<sup>163</sup> The application is not available for minors.<sup>164</sup></p>

160 See Transgender Europe, *Trans Rights Europe Map, 2017*, available at: <http://tgeu.org/trans-rights-map-2017/>.

161 See UK's Ministry of Justice's Table of Gender Recognition Systems in Approved Countries and Territories Under the Gender Recognition Act 2004 dated June 2011, available at: <https://formfinder.hmctsformfinder.justice.gov.uk/t491-eng.pdf>.

162 Same as above.

163 See Richard Köhler, Aleks Recher and Julia Ehrt, *Legal Gender Recognition In Europe: Toolkit Transgender Europe*, December 2013, at 22.

164 See Transgender Europe, *Trans Rights Europe Map, 2017*, available at: <http://tgeu.org/trans-rights-map-2017/>.

36.	Malta - EU	<p><i>Relevant legislation</i></p> <p>The Gender Identity, Gender Expression and Sex Characteristics Act (2015) (“GIGESC”) has been passed on 1 April 2015, under which transgender people no longer need to have surgery, sterilisation and a diagnosis of mental illness to legally change gender.<sup>165</sup></p> <p>Under the GIGESC, all persons being citizens of Malta can apply for recognition of their gender identity (art 3(1)). The applicants shall not be required to provide proof of a surgical procedure for total or partial genital reassignment, hormonal therapies or any other psychiatric, psychological or medical treatment to make use of the right to gender identity (art 3(4)). The request for change of recorded gender is made by means of a note of enrolment to the Director of Public Registry, together with a declaratory public deed declaring, inter alia, that the applicant’s gender identity does not correspond to the assigned sex in the act of birth (arts 4 &amp; 5). The Director shall within fifteen days from the filing of the note of enrolment by the Notary at the public registry, enter a note in the act of birth of the applicant, who may also demand a full certificate of the act of birth showing the particulars resulting from the annotations so issued to him/her without the details of the annotations being specified, as well as demand the acts of civil status and other identifications documents be amended (arts 4 &amp; 10). The date of entry of the note by the Director shall be considered, for all purposes of the law, as the effective date from when the person is considered to belong to the gender indicated in the note. The applicants’ rights and obligations arising out of parenthood, marriage<sup>166</sup>, succession, personal or real right will not be affected (art 3(2)). Malta will recognise a final decision about a person’s gender identity determined by a competent foreign court or responsible authority, and also recognise a gender marker other than male or female, or the absence thereof, recognised by a foreign country (art 9).</p> <p>On 5 December 2016, the <i>Gender Identity, Gender Expression and Sexual Characteristics (Amendment) Act</i><sup>167</sup> was enacted. One amendment introduced by this into the GIGESC is that persons who are aged 16 years or older from now on would neither need parental approval nor the need to go through the court in order to apply for gender change (which were previously required under art 7 GIGESC).</p>
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165 See news report of GSN, *Malta now has one of the best trans and intersex laws in the world*, 2 April 2015. Before the legislation, the Maltese regime for obtaining a modification to a birth certificate requires applicants to have undergone gender reassignment, based on two judgements of the Constitutional Court. The original birth register/certificate will be amended but is not accessible to the public. The applicant must be unmarried. In 2008 the civil court held that the amendment in the margin of a birth certificate was made on the grounds of protecting privacy and not to show a legal change of gender, therefore preventing marriage as a person of the acquired gender. The application is not available for minors.

166 It is pertinent to note that Malta allows civil unions following the enactment of the Civil Unions Bill which was signed into law on 16 April 2014. This law grants civil unions the same rights, responsibilities and obligations as marriage.

167 Available for download at: <http://www.parlament.mt/billdetails?bid=596&l=1&legcat=13>.



37.	<b>Moldova</b>	<p><i>Relevant court decisions</i></p> <p>It was reported that in May 2012, the Appeal Court of Chisinau ruled that transgender people are allowed to change their legal documents in accordance with their preferred gender on the basis of the diagnosis of “transsexualism (the nuclear form” issued after a thorough psychiatric examination without the requirement of any surgical intervention. The judgment obliged the State Registry Office to change names and gender marker in the identification documents of two plaintiffs. However, a month later, the judgment was abrogated in the Court of Appeals. The reason being that neither of the plaintiffs had attached copies of their birth certificates to the file, even though this had not been required. The case was transferred to the Court of the First Instance for reconsideration. The case was positively resolved once again. This time, the Court of Appeals ruled abrogation of the First Instance’s judgment.<sup>168</sup></p> <p>In November 2012, the Supreme Court of Justice of the Republic of Moldova issued a non-binding recommendation to lower courts to permit transgender individuals to change their gender on civil documents.<sup>169</sup> The recommendation explicitly states that where the Registry Office refuses a person the opportunity to modify or amend the act of civil status documents following their sex reassignment, it can be contested in court. The refusal has been issued by a public authority and, therefore, can be contested using administrative and not special procedures because the fact of the sex change has already been established through medical assessment.</p>
38.	<b>Netherlands - EU</b>	<p><i>Relevant legislation</i></p> <p>The Dutch law on transgender rights, which came into force on 1 July 2014<sup>170</sup>, enables transgender people to change the gender designation on their official identity papers (including birth certificate, passport and other official documents) in a simplified way by producing a medical expert statement affirming the applicant's permanent conviction to belong to another gender.<sup>171</sup> It eliminates</p>

168 See *ILGA-Europe Annual Review 2013 – Moldova*, available at: <http://www.refworld.org/pdfid/5195f12016.pdf>.

169 It is called the Recommendation 16 “*on the Procedure of examination of requests regarding amendment of civil status documents following sex reassignment*” which states that “*homosexual and transgender people must be protected through the Article 8 from the European Convention on Human Rights and Fundamental Freedoms, i.e. the right to respect for private and family life. The right to change one’s sex and name is a component of the right for private life.*” The Recommendation of the Supreme Court of Justice is expected to have a positive impact on the overall situation of transgender people in the Republic of Moldova as it will facilitate access to legal gender recognition.

170 *Staatsblad van het Koninkrijk der Nederlanden 2014*, 1. See press release of the Dutch government, *New law for transgenders becomes effective as of 1 July*, 26 June 2014. See also Jansen, *Rechispositie transgenders* (2012) *Tijdschrift voor Families – en Jeugdrecht* (FJR) 62 ff.

171 Art 28, paragraph 1, Dutch Civil Code.

		<p>requirements for an applicant to take hormones and undergo surgery, including irreversible sterilization.<sup>172</sup> The application has to be accompanied by a report of an expert designated among the gender teams from the university hospitals in Amsterdam, Groningen and Leiden, issued at the latest six months before the date of the application.<sup>173</sup> The report has to mention that the applicant has declared before the expert that he or she holds the conviction that he or she is of a gender other than the one indicated on his or her birth certificate, and has to show that he or she understands his or her transgender status and that the application is deliberate.<sup>174</sup></p> <p>The minimum age to request a change is 16.<sup>175</sup> A minor acts without the consent, or assistance, of his or her parents or legal representatives.<sup>176</sup> Court ruling is no longer required and applications can be made at the Civil Registry of the town where the applicant's birth was registered.<sup>177</sup> The new law is to be evaluated within three years. This creates the opportunity for continued advocacy around parts of the law that do not meet international best practice.<sup>178</sup></p> <p>A person who is not of Dutch nationality may file a request for the legal recognition of his or her preferred gender if he or she has a valid residence permit and has been domiciled in the Netherlands for at least one year.<sup>179</sup> For such an applicant Dutch law, not the applicant's national law, applies.</p> <p>For a successful application, the civil-status registrar will amend the birth certificate to reflect the new gender being recognised.<sup>180</sup> He may, if so requested, also order a change of the forenames of the applicant.<sup>181</sup></p>
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172 The previous law was section 1.4.13 of the Dutch Civil Code which required an applicant for change of his or her gender marker on the birth certificate to, inter alia, be, “if he is marked on the birth certificate as a male, is definitely incapable of procreating children or, if he is marked on the birth certificate as female, is definitely incapable of giving birth to children”, and have been “adjusted physically to the desired gender insofar this is possible and acceptable from a medical and psychological point of view”.

173 See Jansen, *Rechtspositie transgenders* (2012) *Tijdschrift voor Families – en Jeugdrecht (FJR)*, at 65.

174 Art 28a, paragraph 2, Dutch Civil Code.

175 Art 28, paragraph 1, Dutch Civil Code.

176 Art 28, paragraph 4, Dutch Civil Code.

177 See news report of Transgender Network Nederland (30 June 2014, in Dutch), *Feestelijke bijeenkomst luidt op 1 juli nieuwe transgenderwet in*.

178 Specifically, activists are seeking to follow the example of Argentina and remove the minimum age (set at 16) and the requirement to have a statement from a medical expert supporting a trans person's wish to have their gender marker changed.

179 Art 28, paragraph 3, Dutch Civil Code.

180 Art 28b, paragraph 1, Dutch Civil Code.

181 Art 28b, paragraph 2, Dutch Civil Code.

		A previous requirement to be unmarried was abolished by article 1(D) of the same-sex marriage legislation of 2000. Where a spouse obtains the legal recognition of his or her preferred gender, the couple's marriage is transformed from a marriage between persons of different sex into a marriage between persons of the same sex. <sup>182</sup>
<b>39.</b>	<b>Norway</b>	<p><i>Relevant legislation</i></p> <p>Norway is known as the fourth country in Europe that passed a law allowing the change of legal gender based on self-determination after passing the <i>Law Amending the Legal Status</i>, which took effect on 1 July 2016.<sup>183</sup> Under this legislation, persons aged 16 and over who are considered residing in Norway under the National Registry Law can apply for a change of gender. Children aged between 6 and 16 can also apply with parental permission. Children under 6 may only amend their legal gender if they have a congenital somatic sex development uncertainty as confirmed by a healthcare professional.</p> <p>An application is made to the Tax Office (the National Registry Authority). The applicant is required to submit a self-declaration that he/she regards himself/herself as belonging to a gender than opposite to that registered with the National Registry. There are no requirements of medical diagnosis, surgery or compulsory sterilisation.</p> <p>A successful applicant will have his/her new legal gender registered in the National Registry, and have a new national identity number. It is also provided that the legal gender should be assumed in the application of other laws and regulations. The birth gender should still be assumed if it is necessary for establishing parenthood and custody under the Children Act. A person who amends their legal gender retains the rights and obligations of fatherhood, motherhood or co-maternity.</p> <p>There is no limit on the number of times one can change legal gender, but a person who changes back to the original gender will not be able to use his/her original national identity number.</p>
<b>40.</b>	<b>Poland – EU</b>	<p><i>Relevant legislation</i></p> <p>A Polish national may apply to the civil court for changing his/her sex designation pursuant to Article 189 of the Polish Civil Code.<sup>184</sup></p>

182 Wuyts, *De gevolgen van de juridische geslachtsaanpassing op familierechtelijk vlak*, in Senaevé and Uytterhoeven, *De rechtspositie van de transseksueel*, Antwerp, 2008, at 217.

183 Unofficial English version of the legislation available at: <http://tgeu.org/wp-content/uploads/2016/07/Prop74LEng.pdf>.

184 Adopted on 17 November 1964. See Trans-Fuzja, *Gender Recognition in Poland-A Report on Court and Administrative Procedures*, available at:

		<p>The applicant is required to provide evidence of medical diagnosis confirming that he/she is a transsexual or intersex (having a proven sense of affiliation with the new sex) and having undergone hormonal therapy resulting in predominant and irreversible features. A mastectomy was in some court cases held to be a prerequisite for female-to-male transgender person to have his preferred gender recognised. In most cases the court would appoint an expert to confirm that both conditions stated above are met.</p> <p>If the civil court allows the application, the applicant can apply to a borough-equivalent local authority (Starosta) for a change of name on grounds of having gender change. The Starosta would then forward its decision to the Birth Certificate Register, which would append the information about the gender change to the birth certificate without changing its contents.</p> <p>A citizen is entitled to undergo sex reassignment surgeries only after the court's ruling allowing change of sex. There is no obligation to undergo sex reassignment surgery. He/she may apply for a new ID on grounds of significant changes of personal data and thereby gets a new Personal Identification Number. He/she is entitled to apply for a new passport in his/her new name. He/she has a right to get married with the same legal provisions as for all other citizens.</p> <p><i>Recent court decision</i></p> <p>In June 2016, a court in Warsaw ruled that a Polish citizen who had changed her gender lawfully in Germany should have her new gender recognised in Poland. It is however unclear if this has any nationwide impact suggesting Poland as a whole recognises foreign gender recognition.<sup>185</sup></p>
41.	Portugal	<p><i>Relevant legislation</i></p> <p>The <i>Gender Identity Law (Law No. 7/2011 of 15 March 2010)</i><sup>186</sup>, which was approved on 26 November 2010, creates a procedure for</p>

[http://transfuzja.org/download/publikacje/gender\\_recognition\\_in\\_poland.pdf](http://transfuzja.org/download/publikacje/gender_recognition_in_poland.pdf). Allowing such an application is based on a general rule in the Civil Law which states that: “a plaintiff can demand the court to determine existence or non-existence of a legal relation or right, when a plaintiff has a legal interest in it. According to the Supreme Court ruling (1989) sense of affiliation with a certain sex can be acknowledged as a personal interest, which is protected by the Civil Law.” There has been attempts to introduce a gender recognition legislation in Poland, and in August 2015 the Polish Senate adopted the Gender Accordance Act (*ustawę o uzgodnieniu płci*), but this Act was vetoed by the Polish President in October 2015. It would be returned to the Polish Parliament, and if enacted again by a 3/5<sup>th</sup> majority, then the President must sign it into law. See the related news report at:

<http://ilga-europe.org/resources/news/latest-news/disappointment-poland-gender-recognition-act-vetoed>.

185 See news report of Trans-Fuzja, *Groundbreaking Court Decision in Poland on Gender Recognition Abroad*, 21 June 2016, available at:

[http://transfuzja.org/en/artykuly/press\\_releases/groundbreaking\\_court\\_decision\\_in\\_poland\\_on\\_gender\\_recognition\\_abroad.htm](http://transfuzja.org/en/artykuly/press_releases/groundbreaking_court_decision_in_poland_on_gender_recognition_abroad.htm).

186 *Lei n.º 7/2011 de 15 de Março Cria o procedimento de mudança de sexo e de nome próprio no registo civil e procede à décima sétima alteração ao Código do*

		<p>change of sex and name in the civil registry. The people of Portuguese nationality of legal age who are diagnosed with gender identity disorder may request for change of sex in the civil registry. The request may be made at any Civil Registry Office and must be accompanied by the following documents:</p> <p>a. Application for change of sex, indicating the number of civil identification and proper name by which the applicant wants to be identified and can, therefore, be required to undertake a new birth certificate;</p> <p>b. Report prepared by a multidisciplinary team of clinical sexology clinic at the health facility public or private, domestic or foreign that proves the diagnosis of gender identity disorder, also designated by transsexuality. The report should be signed by at least one doctor and one psychologist.</p> <p>Within 8 days after receiving a request, the registrar must accept the request, ask for further information, or reject the request. Where additional information is provided, a second decision must also be made within 8 days.<sup>187</sup></p> <p>No forced divorce is required.<sup>188</sup> The application is not available for minors.<sup>189</sup></p>
42.	<b>Romania</b>	<p><i>Relevant legislation and administrative measures</i></p> <p>According to <i>Article 44 of Law 119/1996 (current version took effect on 8 September 2006)</i><sup>190</sup>, the information of a person's new sex can be entered in the civil status documents upon request, once the individual has obtained a final decision from a court. This is an administrative procedure carried out by the civil status bureau within the mayor's office. The regulations implementing the law do</p>

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*Registo Civil.*

187 See The Open Society Foundations, *License To Be Yourself: Laws and Advocacy for Legal Gender Recognition of Trans People*, ISBN: 9781940983103, May 2014, at 23.

188 See Richard Köhler, Alecs Recher and Julia Ehrt (December 2013), *Legal Gender Recognition In Europe: Toolkit Transgender Europe*, at 22.

189 See Transgender Europe, *Trans Rights Europe Map, 2017*, available at: <http://tgeu.org/trans-rights-map-2017/>. It is noted that on 24 May, 2016, a bill that sought to introduce a legal change regime based solely on self-determination was laid before the Portuguese Parliament. Under this regime, persons aged under 16 would also be able to apply for a gender change where accompanied by parental consent. See related news report at: <http://www.jn.pt/nacional/interior/be-quer-permitir-mudanca-de-sexo-aos-16-anos-5192568.html> (in Portuguese).

190 *Romania/ Legea 119/1996 cu privire la actele de stare civila* [Law regarding civil status documents] (11.11.1996) with the last modifications from 08.09.2006.

		<p>not contain any express reference to this situation and do not clarify the procedures. It is known that no forced divorce is required.<sup>191</sup></p> <p>According to Article 2.2.1 of the law on the procedures for identification documents no. 41/2003 (last modifications on 6 July 2004)<sup>192</sup>, any transgender person can apply through an administrative procedure for changing his/her surname and identification documents after the approval of sex change has been given in a final decision by a court. Additionally, the person must provide a forensic medical certificate stating his/her sex. The law does not specify whether such a certificate may be issued by the general practitioner, the doctor who performed the surgery or whether it must be issued by the National Institute of Legal Medicine (NILM). In practice, the authorities require a certificate issued by the NILM.<sup>193</sup></p> <p>The conditions under which the right to access to a court might be exercised are not clarified in sufficient detail, adding to the uncertainties of the procedures.<sup>194</sup></p> <p>The application is not available for minors.<sup>195</sup></p>
43.	<b>Russian Federation</b>	<p><i>Relevant legislation</i></p> <p>Article 70 of the <i>Federal Law No 143 FZ on Civil Status Acts</i> (1997) provides that “<i>Amendments or changes to the statement of the act of civil status are made by the civil registry, where... a document of the established form about the change of sex issued by a</i></p>

191 See Richard Köhler, Alecs Recher and Julia Ehrh (December 2013), *Legal Gender Recognition In Europe: Toolkit Transgender Europe*, at 22. It is also pertinent to note that same-sex marriage is banned in Romania pursuant to the Civil Code amended in 2009 which defines marriage to be unions between a man and a woman.

192 *Romania/ Ordonanta Guvenului 41/2003 privind dobandirea si schimbarea pe cale administrativa a numelor persoanelor fizice* (02.02.2003) with the last modifications from 06.07. 2004

193 However, it was revealed that the NILM does not have special expertise in handling such cases as it regularly handles cases to assess the legal capacity of the person or the degree of physical injuries. See information (02.10.2008). See Romanita Elena Lordache, *Legal study on Homophobia and Discrimination on Grounds of Sexual Orientation – Romania*, February 2008, at Annex 1.

194 The laws do not specify which court is competent to judge the case for changes in identification data, on what legal basis, whether it is a contradictory procedure or a non-contradictory procedure, in the event of it being a contradictory procedure what institution the case should be filed against, if the case is a sensitive case and can be heard in camera, what the judicial tax that needs to be paid is, what the means of evidence necessary in order to get a positive judgment are, where the first instance’s judgment is appealed etc. See Romanita Elena Lordache, *Legal study on Homophobia and Discrimination on Grounds of Sexual Orientation – Romania*, February 2008, at Annex 1.

195 See Transgender Europe, *Trans Rights Europe Map, 2017*, available at: <http://tgeu.org/trans-rights-map-2017/>.

		<p><i>medical organisation is submitted.</i>” The Ministry of Health was charged to develop and approve a form of such a medical certificate in 1998, but no such document has been approved so far. In the absence of an approved form of the medical certificate, in the majority of cases transgender individuals would apply to change their legal gender marker through court proceedings. In other cases the applications are made to the Civil Status Registration bodies.</p> <p>The Civil Status Registration bodies and the courts would make their own judgements about the medical conditions for authorising legal gender recognition. It is noted that in most cases two documents are required: confirmation that sex reassignment surgery has taken place, and a psychiatric diagnosis of “transsexualism” under ICD-10. The latter requires examinations by a psychotherapist, psychiatrist, sexologist, endocrinologist and medical psychologist.<sup>196</sup></p> <p>According to a document entitled the “Standard of primary medical care in the case of sexual identity disorders”, there is a list of hormonal drugs to be used in gender reassignment treatment.<sup>197</sup></p> <p>Upon successful application, the applicant can get the gender marker on his/her civil status record and birth certificate changed to reflect the legally recognised gender.</p>
44.	Serbia	<p><i>Relevant court decisions</i></p> <p>The Constitutional Court of the Republic of Serbia in the decision n–. UŽ - 3238/2011(8 March 2012) found that that the plaintiff, who was registered as female at birth, has undergone a sex reassignment procedure and is living as a man, but is legally still treated as a woman. The Court ruled that the authorities referred to in Article 6, act 2 and 4 in the Law on Registers are competent to decide on the application for admission and accepted the appeal of the person who was refused the change in the birth certificate registry after having undergone a sex reassignment procedure.</p> <p>The Court ruled that the municipal government, upon reaching a conclusion about the actual non-jurisdiction, failed to decide on the request of the plaintiff to change his sex markers and thus violated his constitutional right to dignity and freedom of personality development and the right to respect for private life guaranteed by the European Convention for the protection of Human Rights and</p>

196 See Yana Sitnikova, *Psychiatric abuse of transgender people in Russia – Yana Sitnikova* - 13 March 2015, available at: <https://www.opendemocracy.net/od-russia/yana-sitnikova/psychiatric-abuse-of-transgender-people-in-russia>.

197 Same as above.

		fundamental freedoms. It was held that the relevant municipal government must reach a decision within 30 days of receiving the request of the plaintiff to change the sex marker on his birth certificate. <sup>198</sup>
45.	<b>Slovakia – EU</b>	<p><i>Relevant administrative measures</i></p> <p>In order for a person whose birth is registered in Slovakia to obtain a formal record of gender change in the Register Book where the birth of the person is recorded, a written statement is required from the Sexology Clinic where the gender change is taking place. The statement must contain information on a definite change of gender from one to the other. According to the Slovak Law No. 277/1994 on Health care provision (amended), Article 38 – Conditions of psychiatric treatment, Section 4: “The procedure of medical treatment of transsexuals is defined by a regulation that will be issued by the Ministry of Health”. While Slovakia is missing such a regulation, according to the Slovak Sexology Association, the gender change ‘approved’ by the Sexology Clinic is in reality a combination of reassignment surgery and a hormone therapy, following an assessment by a doctor- an expert in sexual psychology (which usually takes years). As the gender change surgeries are not done in Slovakia, Slovak patients usually undergo this treatment in Prague. The Czech clinic then issues a document that serves as a document required by the Slovak authorities (Register Office).</p> <p>Based on this document and a letter of application from the person undergoing the change, the appropriate Register Office makes a formal record into the Register Book where the birth of the person is recorded. The new entry must record the gender change, birth number and if the applicant requests it, also a change of the name and the surname.</p> <p>There are legislative provisions relating to administrative issues such as change of name and identification number. Legislation concerning medical aspects such as hormonal treatment or sex reassignment, however, is almost nonexistent. Transgender individuals often travel to the Czech Republic for such procedures.</p> <p>The new birth number of the individual is provided by the Registry of Citizens (birth number registration unit) to the Register Office. Name and surname change is regulated by Law No.300/1993 on Name and Surname (some of its provisions have been amended by Law No.564/2008, valid from 1 February 2009, article 7, section 1, letter c) and article 7, section 2, letter f). Changes to the Register Book (Birth Record Book in this case) are made under the articles 26 and 37 of the law No.154/1994 on Register Offices (amended)</p>

198 Towards the end of September 2012, a draft version of the Amendments to the Law on Non-Litigation Processes was presented with a view to making the “change” of sex possible only with the permission of the court, which introduces a prohibition of the hormonal therapy and surgery unless permitted by the court. On the other hand, the Ministry of Justice and Public Administration issued a draft version of the Amendments to the Law on Non-Litigation Processes, which provides for the licensing for legal change of sex and gender identity. These draft laws requires the courts to decide on the changed status of legal documents for persons who have changed sex. See Labris – lesbian human rights organization, *Annual report on the position of the LGBTIQ population in Serbia for 2012*, Belgrade 2013.



		<p>in connection with a Regulation No.302/1994 to the Law on Register Offices (amended) of the Interior Ministry.</p> <p>Following all the above mentioned changes in the Register Book, the relevant authority (the Register Office) issues the citizen a new Birth Certificate with a new identity that is a prerequisite to obtaining a new ID card from the relevant Police Department. Although the ID is generally most frequently used, a Birth Certificate is often required for administrative purposes to complement the ID and, in some cases; the Travel Passport can be used instead of the ID.</p> <p>The application is not available for minors.<sup>199</sup></p>
46.	<b>Slovenia – EU</b>	<p><i>Relevant legislation</i></p> <p><i>Article 4 of the Register of Civil Status Act</i> states that a change of sex shall be recorded in the Register on Civil Status. Gender reassignment surgery is required. Once a person has had gender reassignment surgery they must get a doctor’s certificate confirming the change of gender. The person then applies to the Ministry of Interior with the certificate to have the change of gender entered in the Register of Civil Status. The individual will then be issued a new birth certificate. The Ministry of Interior will change the gender in the register for any Slovenian citizens who have changed their gender in Slovenia or abroad. However, this right is not extended to foreign residents.</p> <p>However, there are no laws explicitly addressing the status and position of transgender persons. Neither is the change of name following a possible gender reassignment specifically regulated. It is up to individual doctors to decide whether to refer transsexual clients to specialists who then decide on the appropriate sex reassignment process. The treatment is free of charge.<sup>200</sup></p>
47.	<b>Spain - EU</b>	<p><i>Relevant legislation</i></p> <p>An act on the Rectification of the mention of Gender in Registries (<i>Ley 3/2007 Rectificacion registral de la sexo de las personas</i>), which took effect on 15 March 2007, provides that any person of Spanish nationality, over the age of 18 years, may request the rectification of the gender entry on the Civil Register.<sup>201</sup> Other requirements for a successful application are:</p>

199 See Transgender Europe, *Trans Rights Europe Map, 2017*, available at: <http://tgeu.org/trans-rights-map-2017/>.

200 See Ms Cristina Castagnoli, *Transgender Persons’ Rights In The EU Member States*, at 26.

201 For discussion about the reference to ‘rectification’, see Jens M. Scherpe, *The Legal Status of Transsexual and Transgender Persons*, December 2015, at 265-266. See also Article 1 of Act 3/2007.

		<p>1. Spanish citizen</p> <p>This means that foreigners are excluded. However, the requirement of citizenship does not need to be coupled with legal residency in the Spanish territory. If a Spanish citizen lives abroad, the Act permits that individual to engage with the recognition process and confers competency on the local Spanish consulate.<sup>202</sup></p> <p>2. Sufficient capacity</p> <p>Article 1 of Act 3/2007 requires that an applicant must enjoy ‘sufficient capacity’ to apply for rectification of the Civil Registry. The applicant must be able to understand the meaning and consequences of obtaining gender recognition.</p> <p>3. A diagnosis of gender dysphoria</p> <p>This must be proven by a report submitted by a doctor or clinical psychologist who is a member of a Spanish professional association and whose qualifications have been recognised or accredited in Spain. The report must refer to the “<i>existence of a dissonance between the morphological sex or the physiological sex or gender identity felt by the applicant, as well as the stability and persistence of this dissonance</i>” (Article 4.1.a, No. 1). The report must also refer to the absence of personality disorder that could decisively influence the existence of the dissonance (Article 4.1.a, No. 2).</p> <p>4. Medical treatment for at least two years to adapt his/her physical characteristics to those corresponding to the claimed sex (Article 4.1.b)</p> <p>This must be proven by a report by the practicing doctor under whose direction the treatment was carried out or, in its absence, a report by a forensic surgeon.<sup>203</sup></p> <p>The legislation specifically provides that gender reassignment surgery is not necessary (Article 4(2)). Medical treatment as described above is also not necessary if the health or age of the person makes it impossible. The legislation provides that a person</p>
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202 See Jens M. Scherpe, *The Legal Status of Transsexual and Transgender Persons*, December 2015, at 268.

203 For discussion of the critique on the need to alter one’s physical characteristics, see Jens M. Scherpe, *The Legal Status of Transsexual and Transgender Persons*, December 2015, at 271.

		<p>who can prove, by means of a report by a registered physician or a Civil Register Physician's certificate, that she/he underwent sex reassignment surgery before the legislation came into force will be exempt from fulfilling the requirements above.</p> <p>Following the legalisation of same-sex marriages in July 2005 (<i>Ley 13/2005 por a que se modifica el Godigo Civ otarizeateria de derecho a contraer matrimonio</i>) people can remain married or get married in their acquired gender to someone of the same or different sex. Article 1 of the legislation amending article 44 of the Civil Code provides "marriage will have the same requirements and effects when both parties are the same or different sex".</p> <p>If an application for legal gender recognition is successful, the competent public authority will issue a resolution which orders the rectification of the applicant's name (if appropriate) and gender markers in the Civil Registry. Article 6.2 provides that the applicant assumes a legal duty to request the issuance of a new national identity card with the amended data whilst the original national identification number will not be changed. The fact that legal recognition has been obtained remains confidential to the public (Article 83.1.d Civil Registry Act 2011). Act 3/2007 further provides for the possibility that the original registry folio might be cancelled at the request of the applicant and a new folio containing the rectified data be opened (Article 1.2). The decision to permit rectification of the gender marker in the Civil Registry produces constitutive effects from the date of registration (Article 5.1). The rectification allows the person to exercise all rights pertaining to his or her new condition (Article 5.2).</p>
48.	Sweden-EU	<p><i>Relevant legislation and court decisions</i></p> <p>The Gender Classification Act, as reformed in 2012 (KtL)<sup>204</sup>, provides, under section 1, that a person can, after an application of his or her own, get recognised that he or she has another gender than the one indicated in the civil registration, provided that he or she:</p> <ol style="list-style-type: none"> <li>(1) has perceived over a long period of time that he or she belongs to the other gender,</li> <li>(2) has presented in accordance with the other gender,</li> <li>(3) is expected to live in accordance with the other gender in the future, and</li> <li>(4) is at least 18 years old.</li> </ol> <p>Applications are reviewed by the National Board of Health and Welfare (<i>Socialstyrelsen</i>) (KtL s5). An application for gender recognition can be approved only if the applicant is a registered resident in Sweden. A verdict or a decision about a person's</p>

204 FSFS 1972:119: *Lag om fastställande om könstillhörighet I visa fall* (KtL). For an overview of the legal framework underlying and the reform of the Gender Classification Act, see Jens M. Scherpe, *The Legal Status of Transsexual and Transgender Persons*, December 2015, at 282-290.

		<p>changed gender, which has been determined by a foreign court or authority and has gained legal force, applies in Sweden, if the person was a citizen in the foreign country or had residency there when the verdict or the decision was determined. In connection with the application for gender recognition, permission may be given for genital surgical procedures in order to make them more like the genitalia of the other gender.</p> <p>In 2012 the Swedish Administrative Court of Appeals ruled that a forced sterilisation requirement intrudes on someone's physical integrity and cannot be seen as voluntary.<sup>205</sup> From 1 July 2013, sterilisation requirements were removed from Sweden's legal gender recognition laws.<sup>206</sup></p> <p>In June 2012, the Swedish government decided to remove the criteria that a person who wants to change legal gender has to be unmarried and a Swedish citizen by 1 January 2013. The unmarried criterion had already ceased to be effective since 2010, due to a court decision.<sup>207</sup></p> <p>In April 2014, the national Board formally announced that applicants do not need to consult medical personnel for the application, provided that they can document their eligibility for the requested change.<sup>208</sup> However, neither the statute nor its preparatory works provide any details as to how an applicant can individually document a longstanding feeling of gender belonging or having lived in the gender role.<sup>209</sup></p> <p>Once an application has been granted, a new the identification number used by all citizens and most long-term residents in Sweden, will be issued.<sup>210</sup> The Tax Agency has authority to issue a new ID card for use in Sweden.<sup>211</sup></p>
<b>49.</b>	<b>Switzerland</b>	<p><i>Relevant legislation</i></p> <p>Pursuant to Article 42 of the Civil Code, change of legal gender is in the competence of the courts of first instance. The exact</p>

205 Mål nr 1968-12, Kammarrätten i Stockholm, Avdelning 03, at 4.

206 See ILGA Europe, *Annual Review 2013 on Sweden*.

207 Same as above.

208 National Board of Health And Welfare, *Nationellt kunskapsstöd för vård och behandling av personer med könsdysfori*, 2014, p 21.

209 See Jens M. Scherpe, *The Legal Status of Transsexual and Transgender Persons*, December 2015, at 293-296.

210 See Prop. 2011/12:142, p 22 (describing the process)..

211 Förordning (2009:284) *om identitetskort för folkbokförda i Sverige..*

		<p>conditions are set by the court and differ highly. According to the highest national court's jurisdiction, the minimal age is 25 years.<sup>212</sup></p> <p>Gender recognition occurs by decision of the local court of a person's place of residence. Existing marriages must be ended. The applicant must have undergone irreversible surgery and must be sterile. Subsequently, a change of name "due to important reasons" will be recorded in the register of civil status, as well as the family and birth register.</p> <p><i>Relevant court decisions</i></p> <p>Pursuant to the European Court of Human Rights' decision in <i>Schlumpf v Switzerland</i> (application no. 29002/06, 8 January 2009), it was held that the refusal by the applicant's health insurers to pay the costs of her sex-change operation on the ground that she had not complied with a 2-year waiting period before gender reassignment surgery (as required by the case-law as a condition for payment of the costs of such operations) constituted a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights.<sup>213</sup> On 14 September 2010, the Swiss Federal Supreme Court decided to accept the decision by the European Court of Human Rights in <i>Schlumpf v Switzerland</i>.</p> <p>In February 2011, the High Court of the Canton of Zurich ruled that trans people can change their legal gender without proving that they had undergone gender reassignment surgery. It is the first court in the country to rule that surgery is not a requirement of legal gender recognition. Infertility is still required, but it can be the result of hormonal treatment and the Court allowed for it to be reversible. The Court held that requiring surgical intervention would be a violation of the fundamental right to personal integrity.<sup>214</sup></p> <p>In February 2012, the Federal Civil Registry Office published a legal opinion on the requirements for the legal recognition of trans people's gender. The Office considered that the existing requirement of gender reassignment or sterilisation surgeries is a violation of the human rights protected by the European Convention on Human Rights and the Swiss Constitution and should therefore be abolished, and quoted the Council of Europe's recommendations in evidence. The Office also considered that the dissolution of pre-existing marriages or civil partnerships must not be a pre-condition.<sup>215</sup></p> <p>In July 2012, the regional tribunal of Bern-Mittelland recognised the gender change of a trans applicant without requiring evidence of</p>
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212 See ILGA Europe, *Transgender rights in Switzerland*, 16 September 2010.

213 See the Factsheet on "Gender identity issues" published by the European Court of Human Rights in July 2014.

214 See *ILGA Europe Annual Review 2013 - Switzerland*.

215 Same as above.

		infertility. This is the first time that such a decision has been taken without infertility or hormonal treatment requirements. Some other tribunals immediately followed this example. In Switzerland, legal gender change recognition is a competence of the courts while requests for change of legal name are decided by the administration of the Cantons. <sup>216</sup>
50.	Turkey	<p><i>Relevant legislation and court decisions</i></p> <p>Transsexuals are afforded legal recognition in Turkey under Article 40 of the Turkish Civil Code enacted in 2002 stipulates the pre- and post-operative legal procedure connected with a change in the gender marker in the civil status register.<sup>217</sup> Article 40 provides that:</p> <p><i>‘A person who wants to change his/her sex has to apply to the court personally and ask for permission for a sex reassignment. For this permission to be given, the applicant must have reached the age of 18 and must be unmarried<sup>218</sup>. Besides he/she must prove with an official health board report issued by an education and research hospital that he/she is of transsexual nature, that the sex reassignment is compulsory for his/her mental health and that he/she is permanently deprived of the capacity of reproduction.</i></p> <p><i>If it is confirmed by an official health board report, that a sex reassignment operation was effected based on the permission given and in accordance with the purpose and medical methods, the court will decide for the necessary changes to be made in the civil status register.’</i></p> <p>The first paragraph above concerns pre-operation court decision.<sup>219</sup> The Turkish Ministry of health designates the education and research hospitals, where a health board will prepare the requisite report for sex reassignment operation. The report issued by the official health board must testify first that the applicant is transgender, but the criteria are established by medical experts as the law</p>

216 Same as above.

217 See G.G. Bolich, *Transgender History & Geography: Crossdressing in Context*, Vol. 3, Psyche’s Press (2007), at 239 and 240. In detail Y.M. Atamer, *The Legal Status of Transsexuals in Turkey* (2005) 8 *International Journal of Transgenderism*, 65-71; Y.M. Atamer ‘Laenderbericht Türkei’ in J. Basedow and J.M. Scherpe (eds.), *Transsexualitaet, Staatsangehörigkeit und internationals Privatrecht – Entwicklungen in Europa, Amerika und Australien*, Mohr Siebeck, Tübingen 2004, pp 74-79.

218 It is pertinent to note that Turkey does not recognise same-sex marriages, civil unions or domestic partnership benefits.

219 For more discussion concerning the pre-operation court decision, see Jens M. Scherpe, *The Legal Status of Transsexual and Transgender Persons*, December 2015, at 318-323.

		<p>does not state how long a person must have identified with a gender other than his or her birth gender and how exactly this identification issue has to be come manifest.<sup>220</sup> An individual who would like to obtain recognition of preferred gender is observed by psychiatrists for a period lasting up to two years.<sup>221</sup> Thereafter, the individual is prepared for the real life text, whereby he or she mostly begins hormone treatments. If, at the end of the observation period, the psychiatrist decides that the real identity of the person is the opposite legal gender, the case will be presented to the Board for the final decision that sex reassignment surgery is necessary for the mental health of the applicant.</p> <p>The applicant is also required to be infertile even before he or she can access sex reassignment surgery, which prevents transgender individuals who already have children from submitting to sex reassignment surgery and obtaining legal recognition.<sup>222</sup> In the case of <i>Y.Y. v Turkey</i> (App. No. 14793/08), the applicant (a transgender man) challenges the refusal of the domestic courts to authorise her to undergo gender reassignment surgery on the ground that she did not meet the statutory condition that required her to have been diagnosed as permanently infertile.<sup>223</sup> On 10 March 2015, the European Court of Human Rights decided that by barring Y.Y. from access to gender reassignment surgery for several years, Turkey violated his right to respect for private life. It also stated that making infertility a mandatory requirement for such medical treatment is not necessary in a democratic society and in breach of the European Convention on Human Rights.<sup>224</sup></p> <p>The second paragraph under Article 40 concerns post-operation court decisions. The applicant should have the surgery performed according to the court order obtained in the first phrase above, and has to apply to court again to obtain a decision allowing him or her to gain recognised gender in the civil status register.</p> <p>The amendment of the civil status register is not absolutely kept confidential. Article 44(g) of the Civil Registration Services Act states that <i>‘the registered person or their spouses, parents, guardians, lineal ancestors and descendants, or those who submit a power</i></p>
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220 See Jens M. Scherpe, *The Legal Status of Transsexual and Transgender Persons*, December 2015, at 319.

221 A. Zengin, *Sex for Law, Sex for Psychiatry: Pre-Sex Reassignment Surgical psychotherapy in Turkey* (2014) 56 *Anthropologica* 55-68, 59 ff..

222 This requirement has been criticised to be highly problematic: see Jens M. Scherpe, *The Legal Status of Transsexual and Transgender Persons*, December 2015, at 320-321.

223 See the Factsheet on “Gender identity issues” published by the European Court of Human Rights in July 2014.

224 See the related press release issued by the Registrar of the European Court of Human Rights, *Refusal to authorise transsexual to have access to gender reassignment surgery breached right to respect for private life*, ECHR075 (2015), 10 March 2015. In another application before the European Court of Human Rights, *D.C. v Turkey* (App. No. 10684/13), the applicant, a male-to-female transsexual whose gender reassignment has not yet been carried out, is currently serving a prison sentence. He complains of the refusal of the authorities of the Ministry of Justice to bear the cost of his gender reassignment despite medical evidence which clearly shows that he urgently needs treatment. The decision of this case is pending.

		<p><i>of attorney provided by the registered person,</i>’ are entitled to obtain a copy of the civil status register.</p> <p>After the changes in the birth register have been effected, the relevant authorities will also amend a birth certificate, passport and other personal documents on application by the individual.</p>
<b>51.</b>	<b>Ukraine</b>	<p><i>Relevant legislation</i></p> <p><i>Article 51 of the Bases of Ukrainian Legislation on Health Protection</i><sup>225</sup> provides for the process of gender change, and the provision of medical, psychological, legal and social help to individuals who require gender change, pursuant to which an individual over 25 years of age can have gender reassignment surgery completed in the authorised health care institution in compliance with medical-biological and socio-psychological conclusions provided by the Ministry of Health of Ukraine.<sup>226</sup></p> <p><i>Relevant administrative measures</i></p> <p>According to Order No. 1041 on “the establishment of biomedical and psychosocial indications of change (correction) of sexuality and approval of forms of primary records and instructions for filling” issued the Ministry of Health of Ukraine, which entered into force on 30 December 2016,<sup>227</sup> the previous Order No. 60 on “Improving medical support for people who need a change (correction) of their sex” was abolished (paragraph 5 of the Order). The previous requirements of (a) gender reassignment surgery, (b) compulsory confinement in a psychiatric institution for 30 to 45 days, (c) not having children under 18, and (d) being divorced have been eliminated.</p> <p>Under Order No. 1041, an application for legal change of gender must be supported with medical-biological, social and psychological evidence for change of sex (paragraph 3 of the Order), showing that the applicant has:</p> <ol style="list-style-type: none"> <li>(1) Biomedical indications for change (correction) of sexuality, which means “transsexualism” by ICD-10; and</li> <li>(2) Socio-psychological indications for change (correction) of sexuality, which means discomfort or distress caused by a mismatch</li> </ol>

225 Adopted by the Ukrainian Parliament’s Decree of November 19th, 1992, No. 2802 – XII.

226 Medical-biological and socio-psychological conclusions for gender change and the procedure of examination of individuals who require gender change (correction) are regulated by the Decree of the Ministry of Health of Ukraine of 15 March 1996, No. 57, registered in the Ministry of Justice of Ukraine on 10 June 1996 as No. 279/1304, which contains a list of health care institutions that have the authority to conduct gender reassignment surgery and approves the composition of the permanent commission for gender change questions under the Ministry of Health of Ukraine.

227 See news report of Transgender Europe, *Ukraine abolishes arbitrary and cruel trans health protocol*, 25 January 2017. .



		<p>between sexual identity and sex of the individual laid him at birth (and its associated gender role and / or primary and secondary sexual characteristics).</p> <p>The medical certificate of change (correction) of sexuality must be in an form approved by the Ministry of Health of Ukraine, filled by general practitioner in primary health care centres where the applicant underwent medical intervention to change sexuality. The certificate has to indicate the amount of medical intervention for changing the applicant’s sexuality (endocrinological therapy, surgical intervention and its volume, etc.) and information about which sexual identity was conducted change.</p> <p>If the registry office accepts the application supported by the requisite medical certificate, the applicant’s legal documents establishing his/her sex can be legally changed. Two conclusive legal documents which establish individual’s sex in Ukraine are passport and birth certificate.</p>
52.	<b>United Kingdom</b>	<p><i>Relevant legislation</i></p> <p><i>The Gender Recognition Act 2004</i> came into effect on 4 April 2005. Detailed discussion of this legislation is provided in Chapter 3 of the Consultation Paper. In brief, the Act provides transsexual persons with legal recognition in their acquired gender. Legal recognition will be achieved when a Gender Recognition Certificate is issued by a Panel of qualified members from the legal and medical fields. The legislation does not require the person to have undergone sex reassignment surgery to qualify. An application for a Gender Recognition Certificate requires applicants to demonstrate that they have (i) diagnosis of gender dysphoria; (ii) lived fully for the last two years in their acquired gender; and (iii) intention to live permanently in their acquired gender. The issue of a full Gender Recognition Certificate provides the successful applicant with legal recognition in his or her acquired gender for all purposes (s 9(1))</p> <p>To be granted a full Gender Recognition Certificate, an individual must not be married at the time of their application. If the person involved is in a legally-recognised marriage they will be issued an Interim Gender Recognition Certificate, which can then be used as grounds for annulment of the marriage, but otherwise has no status. After annulment, a full Certificate will be issued. However, this requirement of marital status has been effectively removed by virtue of section 12 and Parts 1 and 2 of Schedule 5 of the Marriage (Same Sex Couples) Act 2013 (UK) and section 31 and Schedule 2 of the Marriage and Civil Partnership (Scotland) Act 2014, which allow same-sex couples to convert their civil partnerships into marriage and vice versa.</p> <p>There are two types of application for gender recognition under the GRA: a “standard application” for those living in the other gender (s 1(1)(a)); or an “overseas application” for those who have changed gender under the law of a country or territory outside the UK (s</p>

		<p>1(1)(b)). The overseas application requires applicants to demonstrate that they have been legally recognised in their acquired gender in a country or territory that is listed in the Gender Recognition (Approved Countries and Territories) Order 2011 (sections 1(1)(b) and 2). To-date, there are 41 countries listed (not counting the territories within a country).</p> <p><i>Relevant administrative measures</i></p> <p>In the United Kingdom it is possible to amend passport details without a diagnosis, by providing a report from a medical practitioner “stating that you have a need to live your life in a different gender.”<sup>228</sup></p> <p>On 18 November 2014, the House of Lords passed regulations (applied only in England and Wales) effective from 10 December 2014, for converting civil partnerships to marriage, including the option of a conversion ceremony in a church, synagogue, meeting house and other venues and also allowing a previously married transgender person (if one or both spouses change(s) legal gender) to remain married. Despite this milestone for equal marriage, equal marriage is still not envisaged in Northern Ireland.<sup>229</sup></p>
<b>NORTH AMERICA</b>		
53.	<b>Canada – Alberta</b>	<p><i>Relevant court decisions</i></p> <p>On 22 April 2014, Mr Justice B.R. Burrows of the Court of Queen’s Bench of Alberta in the case of <i>C.F. v. Alberta (Vital Statistics), 2014 ABQB 237</i> ruled that section 30 of the <i>Vital Statistics Act, Chapter V-4.1 (5 May 2014)</i> which governs the application for change of sex by transgender people and requires proof of surgery before a transgender person’s birth certificate can be changed to reflect his or her sex, had infringed the right to equal protection and benefit of the law pursuant to <i>Canadian Charter of Rights and Freedoms</i> s 15(1) and thus is inconsistent with the provisions of the Constitution of Canada and is, to that extent, of no force or effect. Following this decision and the complaint with the Alberta Human Rights Commission made by Wren Kauffman, a 12-year-old transgender boy complaint, in mid-April 2014 the Canadian province of Alberta ruled that requiring gender reassignment surgery before amending the sex listed on a birth certificate violates the rights of transgender citizens.<sup>230</sup></p>

228 HM Passport Office (2013), *Applying for a passport: additional information for transgender and transsexual customers*.

229 See the news report of Pink News, *House of Lords approves civil partnership conversion regulations in time for Christmas*, 18 November 2014.

230 See news report of The Globe And Mail, *Alberta gives new birth certificate to 12-year-old boy who was born a girl*, 15 June 2014.

		<p><i>Relevant legislation</i></p> <p>Following the said court decisions, on 5 May 2014 the Alberta government passed the Statutes Amendment Act (SA 2014) c8<sup>231</sup> to revise section 30 of the Vital Statistics Act, which now provides that (the highlighted part below reflects the amendment made) when a person’s anatomical sex structure has been changed to the opposite sex from that which appears on the person’s birth registration document, the Registrar of Vital Statistics, on receipt of:</p> <ol style="list-style-type: none"> <li>(1) an affidavit from each of 2 physicians, each affidavit stating that the anatomical sex of the person has been changed, and</li> <li>(2) evidence as to the identity of the person as prescribed in the regulations (see the Vital Statistics Information Regulation below),</li> </ol> <p>and “<u>in a circumstance provided for in the regulations and subject to any conditions in the regulations</u>”, shall amend the sex on the person’s record of birth and may, with the consent of the other party to the marriage, amend the sex on the record of a subsisting marriage<sup>232</sup>, if any, of the person that is registered in Alberta. Every birth or marriage certificate issued after amending the sex on the record must be issued as if the registration had been made with the sex as changed.</p> <p><i>Relevant administrative measures</i></p> <p>The Vital Statistics Information Regulation (current version in force since 25 October 2016)<sup>233</sup> sets out further rules and procedures governing the amendment of sex on a record of birth: Regulations 16.1 – 16.5. In particular, Regulation 16.1 provides that applications for such amendment can be made by both adults aged 18 or above and minors. Regulation 16.2, on the other hand, provides for the requirements an affidavit supporting the application must contain. The application must also be accompanied by a statement the following information (Regulation 16.3):-</p> <ol style="list-style-type: none"> <li>a) the name and date of birth of the person whose record of birth is to be amended, and</li> <li>b) the medical professional’s confirmation that <ol style="list-style-type: none"> <li>(i) the medical professional meets the requirement as stipulated in the same regulation,</li> <li>(ii) the medical professional has treated, evaluated or consulted with the applicant, and</li> </ol> </li> </ol>
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231 The Formerly Bill 12 was introduced 5 May 2014 and received Royal Assent on May 14, 2014.

232 It is pertinent to note that Same-sex marriage became legal on 20 July 2005 upon the granting of Royal Assent to the federal Civil Marriage Act. See the article of B.A. Robinson of Ontario Consultants on Religious Tolerance, *Debates about SSM in Alberta*, 21 January 2005.

233 Available at: [http://www.qp.alberta.ca/documents/Regs/2012\\_003.pdf](http://www.qp.alberta.ca/documents/Regs/2012_003.pdf).

		<p>(iii) in the professional opinion of the medical professional, the person whose record of birth is to be amended identifies with and is maintaining the gender identity that corresponds with the requested amendment to the sex on the record of birth.</p> <p>For a successful application, the Registrar will amend the sex on the record of birth accordingly (Regulation 16.4(1)). It is noted that this Regulation shall expire on 31 October 2019 with the option that it may be repassed in its present or an amended form following a review to ensure its ongoing relevancy and necessity (Regulation 34).</p>
<b>54.</b>	<b>Canada – British Columbia</b>	<p><i>Relevant legislation</i></p> <p>Section 27 of the <i>Vital Statistics Act [RSBC 1996] Chapter 479</i> (amended by Bill 17 – Miscellaneous Statutes Amendment Act (-014) - the amendment replaced requirements that a person desiring an amendment to the sex designation on the person's birth registration must be unmarried<sup>234</sup> and have proof of trans-sexual surgery with the requirement, unless waived or modified by the minister, that the person must provide documentary evidence and, in the case of a minor, the consent of all guardians<sup>235</sup>) provides that a person who has birth registered in British Columbia may apply to the Registrar General of the Vital Statistics Agency for an amendment to the sex designation on the person's birth registration by providing all of the following in the form required by the registrar general:</p> <ol style="list-style-type: none"> <li>(1) an application setting out the desired amendment;</li> <li>(2) a declaration, made by the applicant, stating that the applicant has assumed, identifies with and intends to maintain the gender identity that corresponds with the desired sex designation;</li> <li>(3) a statement from one of the following persons that confirms that the sex designation on the applicant's birth registration does not correspond with the applicant's gender identity: <ol style="list-style-type: none"> <li>(a) a practising registrant of the College of Physicians and Surgeons of British Columbia;</li> <li>(b) a practising registrant of the College of Psychologists of British Columbia;</li> <li>(c) in the case of an applicant who resides outside British Columbia, a person who is practising and who is authorised, in</li> </ol> </li> </ol>

234 It is pertinent to note that same-sex marriage is legal since 8 July 2003. See news report of Advocate, *British Columbia joins Ontario in allowing gay marriage*, 10 July 2003.

235 See explanatory note to the Miscellaneous Statutes Amendment Act.

		<p>another province or territory, to practise a health profession equivalent to that practised by a person referred to in subparagraph (a) or (b) above;</p> <p>(4) in the case of a minor, the consent of all parents having guardianship and all other guardians of the minor.</p> <p>The minister may waive or modify the above requirement upon application if it is satisfied that the waiver or modification would be in the applicant's best interest (s 27(3)). Upon successful application, a birth certificate will be issued as if the person's original birth registration had been made containing the sex designation as amended (s 27(5)).</p>
55.	Canada – Manitoba	<p><i>Relevant legislation</i></p> <p>Section 25 of the <i>Vital Statistics Act</i> (current version in force since 10 November 2016) provides, <i>inter alia</i>, that:</p> <p>(1) A person whose birth is registered in Manitoba must provide the Director of Vital Statistics with a statutory declaration relating to the change as well as material from a health care professional (such as medical practitioner, nurse practitioner, psychologist, psychological associate) stating, <i>inter alia</i>, that the sex designation on the applicant's birth registration (if born in Canada) or on documents evidencing the applicant's Canadian citizenship (if born outside Canada) is, in the health care professional's opinion, inconsistent with the sex designation with which the applicant identifies. In the statutory declaration, the applicant must attest, <i>inter alia</i>, that he or she is currently living full-time in a manner consistent with the requested sex designation and intends to continue doing so. Evidence of identity is also required. The Director of Vital Statistics may accept alternative material in support of the change. The person's birth registration may be amended and a new birth certificate issued.</p> <p>(2) A minor can make the application and a further statement from the health care professional that the minor has the capacity to make health care decisions.</p> <p>(3) For applicants domiciling or habitually residing outside Manitoba, the Director of Vital Statistics may change the sex designation of his or her birth registration upon receipt of documentation from the jurisdiction outside Manitoba effecting a change of sex designation, or acknowledging that a change of sex designation has occurred, in that jurisdiction, provided, <i>inter alia</i>, that the documentation is issued by an entity having functions relating to changes of sex designation, and the legal requirements of the jurisdiction for such changes are comparable to the requirements under the said Act. The application should also be treated or evaluated by a medical practitioner in a jurisdiction in Canada who shall indicate that his or her sex designation should be changed as a result of transsexual, gender reassignment or similar surgery undergone by the applicant.</p>

		<p>(4) A person who is a Canadian citizen and has been resident in Manitoba for at least one year may apply for a change of sex designation certificate. The application materials are similar to those required for a change of sex designation on a birth registration.</p> <p>(5) With the consent of the other party to the marriage, a person's marriage registration may also be amended to change the person's sex designation and a new marriage certificate issued without mentioning of the change of sex designation (Note: same-sex marriage became legal on 16 September 2004 after the Manitoba Court of Queen's Bench declared in the case of <i>Vogel v. Canada</i> that the then existing definition of marriage was unconstitutional<sup>236</sup>).</p>
<b>56.</b>	<b>Canada – New Brunswick</b>	<p><i>Relevant legislation</i></p> <p>Section 34 of the <i>Vital Statistics Act 1979, SNB 1979, c V-3 (current version in force since 1 October 2015)</i> provides that where a person has undergone trans-sexual surgery, that person may make an application to the Registrar General to cause a notation to be made on the birth registration of that person so that the registration of sex is consistent with the perceived results of the surgery.<sup>237</sup> The Registrar General shall cause to be made a notation of the changes where the application is made in the form prescribed by the Registrar General and is accompanied by:</p>

236 See the article of B.A. Robinson of Ontario Consultants on Religious Tolerance (21 September 2004), *Same-sex marriage in Manitoba, Canada*.

237 It is noted that on 5 May 2017, the *Act Respecting the Change of Name Act and the Vital Statistics Act (Bill 37)* received Royal Assent. The changes introduced are to come into force on a day to be proclaimed. When the said Act takes effect, the current section 34 will be repealed, and a person seeking gender change will no longer be required to first undergo trans-sexual surgery. Under the new law, a person who is 16 years of age or older, and who was born in New Brunswick or has been ordinarily resident in the Province for at least three months immediately before the date of the application may make an application for gender change. The applicant generally needs only to supply:-

- (a) a written statement made by himself/herself that the requested sex designation is consistent with the gender with which the applicant identifies and the he/she is currently living in a manner consistent with the requested sex designation and intends to continue to do so;
- (b) a written statement from a health professional prescribed by regulation who has treated, evaluated or consulted with the applicant that confirms that the sex designation of the applicant is inconsistent with the gender with which the applicant identifies and, as a result, the sex designation of the applicant should be changed, and
- (c) any other document or other evidence that is prescribed or that is required by the Registrar General.

		<p>(1) a certificate signed by a medical practitioner legally qualified to practice medicine in the jurisdiction in which the trans-sexual surgery was performed upon the applicant,</p> <p>(a) explaining the surgical procedures carried out, and</p> <p>(b) certifying that</p> <p>(A) he performed trans-sexual surgery on the applicant, and</p> <p>(B) as a result of the trans-sexual surgery, the designation of sex of the applicant should be changed on the registration of birth of the applicant;</p> <p>(2) a certificate of a medical practitioner who did not perform the trans-sexual surgery but who is legally qualified to practice medicine in a jurisdiction in Canada, stating that,</p> <p>(a) he has examined the applicant,</p> <p>(b) the results of the examination substantiate that trans-sexual surgery was performed upon the applicant, and</p> <p>(c) as a result of the trans-sexual surgery, the description of the sex of the applicant should be changed on the registration of birth of the applicant;</p> <p>(3) evidence satisfactory to the Registrar General as to the identity of the applicant; and</p> <p>(4) a statutory declaration by the applicant in a form provided by the Registrar General.</p> <p>Every birth certificate issued after the making of a notation under this section shall be issued as if the registration had been made with the sex designation and names as changed.</p>
57.	Canada – Newfoundland and Labrador	<p><i>Relevant legislation</i></p> <p><i>Article 26 of the Vital Statistics Act 2009 (current version in force since 13 April 2016) provides that a person who has reached the age of 16 years and whose birth is registered in the province may apply, by himself/herself or through his/her parent (s. 26.1), to the Registrar General to change the gender marker on his/her birth registration. The application shall include:-</i></p> <p>(a) a statutory declaration made by the applicant stating that the applicant has assumed, identifies with and intends to maintain the gender identity that corresponds with the requested sex designation;</p> <p>(b) a statement from one of the following persons who has treated, evaluated or consulted with the applicant that confirms that the sex designation requested by the applicant is consistent with the sex designation with which the applicant identifies:</p>

		<ul style="list-style-type: none"> <li>(i) a medical practitioner,</li> <li>(ii) a registered nurse,</li> <li>(iii) a nurse practitioner,</li> <li>(iv) a psychologist registered under the Psychologists Act (2005),</li> <li>(v) a social worker registered under the Social Workers Act, or</li> <li>(vi) where the applicant resides outside the province, a person who is authorized in another province to practise and is practising a profession equivalent to that practised by a person referred to in subparagraphs (b)(i) to (v);</li> </ul> <p>(c) in case the application is made by a parent of a child, a written consent of the other parent registered on the child's birth registration and the child's consent if he/she is 12 years of age or older, or if he/she is younger, an additional medical statement confirming that the sex designation requested is consistent with the sex designation with which the child identifies; and</p> <p>(d) other documentary evidence the registrar general may require.</p> <p>It is noted that the previous requirement for an individual to undergo sex reassignment surgery prior to changing the gender marker on the individual's birth registration or marriage registration has been abolished.<sup>238</sup></p> <p>Upon a successful application, the Registrar General may record the change of sex designation on the person's birth registration. A birth certificate issued after recording such a change shall be issued as if the original registration had been made with the sex designation as changed.</p> <p>A successful applicant may also apply to the Registrar General to record the change of sex designation on that person's marriage registration and the Registrar General may, where the consent of the person's spouse has been obtained, record the change of sex designation on the marriage registration.<sup>239</sup></p>
<b>58.</b>	<b>Canada - Nova Scotia</b>	<p><i>Relevant legislation</i></p> <p>Section 25 of the <i>Vital Statistics Act (current version in force since 22 September 2015)</i> provides that a person whose birth is</p>

238 See news report of CBC News, *Reassignment surgery not necessary to change gender markers on N.L. ID*, 13 April 2016.

239 It is noted that same-sex marriage became legal as a result of a decision by the Supreme Court of Newfoundland and Labrador (Trial Division) on 21 December 2004. See Service NL of Newfoundland Labrador, *Requirements to Get Married in Newfoundland and Labrador*, available at: [http://www.servicenl.gov.nl.ca/birth/getting\\_married/](http://www.servicenl.gov.nl.ca/birth/getting_married/).



		<p>registered in the province may apply to the Registrar to change the sex shown on the person's birth registration by providing:-</p> <ul style="list-style-type: none"> <li>(a) an application in the form approved by the Registrar;</li> <li>(b) a written statement by the applicant that the applicant has assumed, identifies with and intends to maintain the gender identity that corresponds with the change requested; and</li> <li>(c) a written statement from a person who is a member of a prescribed profession and practises the profession (i) in the province, or (ii) where the applicant is habitually resident outside the province, in or outside the province, that, in the person's opinion, the sex shown on the applicant's birth registration does not correspond with the applicant's gender identity.</li> </ul> <p>A person under the age of 16 whose birth is registered in the province may also make such an application, but he/she needs to provide further supporting information, in particular:-</p> <ul style="list-style-type: none"> <li>(a) the person of the prescribed profession providing the written statement must have treated or evaluated the applicant, and that in the person's opinion, <ul style="list-style-type: none"> <li>(i) the sex shown on the applicant's birth registration does not correspond with the applicant's gender identity, and</li> <li>(ii) the applicant has the capacity to make an informed decision about whether to make an application; and</li> </ul> </li> <li>(b) the written consent of every person who has care and custody of the applicant.</li> </ul> <p>Apart from these documentary proofs, the Registrar must also be satisfied that an application, child or adult, is made in good faith. Upon a successful application, the Registrar shall cause a notation of the change of the person's sex to be made on the birth registration (s25(3)).</p> <p>Where a person's birth is registered under the laws of another jurisdiction and the sex shown on the person's birth registration is changed under those laws, the Registrar, on production of proof of the change of sex and evidence satisfactory to the Registrar as to the identity of the person, shall cause a notation of the change to be made on any registration in the Registrar's office pertaining to the person (s25(5)).</p> <p>It is noted that the previous requirement of sex-reassignment surgery has been abolished.<sup>240</sup></p>
<b>59.</b>	<b>Canada -</b>	<i>Relevant court decisions</i>

240 See Explanatory Note to Bill No. 82 – Change of Name Act (amended) and Vital Statistics Act (amended), available at: [http://nslegislature.ca/index.php/proceedings/bills/change\\_of\\_name\\_act\\_amended\\_-\\_bill\\_82](http://nslegislature.ca/index.php/proceedings/bills/change_of_name_act_amended_-_bill_82).

	<p><b>Ontario</b></p>	<p>On 11 April 2012, the Human Rights Tribunal of Ontario ruled in <i>XY v. Ontario (Government and Consumer Services)</i> 2012 HRTO 726 that genital surgery is not required to recognise a change of sex designation.<sup>241</sup> The Tribunal ordered that the Ontario government shall cease requiring transgender persons born in Ontario to have “transsexual surgery” in order to obtain a change of sex designation on their birth registration.</p> <p><i>Relevant legislation</i></p> <p>Before the Tribunal’s ruling, the requirements for change of sex designation on birth registration were set out in section 36 of the <i>Vital Statistics Act (current version in force since 2012)</i> which included changing of the anatomical sex structure of a person to a sex other than that which appears on the registration of birth by way of transsexual surgery.</p> <p>In accordance with the Tribunal’s order, the criteria for changing sex designation on a birth registration and birth certificate have been revised and there is no longer a requirement for “transsexual surgery”.<sup>242</sup> The applicant for change of sex designation must be at least 18 years of age with his/her birth registered in Ontario. An application made shall now include:</p> <ul style="list-style-type: none"> <li>(i) an application form for change of sex designation on a birth registration;</li> <li>(ii) a statutory declaration by a person for a change of sex designation on a birth registration stating that the person is living full-time in the gender identity that accords with the requested change and intend to maintain that gender identity;</li> <li>(iii) a letter signed by a practising physician or psychologist (including a psychological associate) authorized to practise in Canada stating that he/she: <ul style="list-style-type: none"> <li>- is a practising member in good standing of the appropriate regulatory body and licence member;</li> <li>- has treated or evaluated the applicant who is requesting the change in sex designation;</li> <li>- confirms that the applicant’s gender identity does not accord with the sex designation on the applicant’s birth registration; and</li> <li>- is of the opinion that the change of sex designation on the birth registration is appropriate.</li> </ul> </li> </ul>
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241 See the judgment available at: <http://www.canlii.org/en/on/onhrt/doc/2012/2012hrto726/2012hrto726.html>.

242 See Ontario government’s guidance on changing sex designation of birth registration and birth certificate, available at: <http://www.ontario.ca/government/changing-your-sex-designation-your-birth-registration-and-birth-certificate>.

		<p>(iv) all previously issued birth certificates and certified copies of the applicant's birth registration; and</p> <p>(v) an application form for a birth certificate.</p> <p>If item (iii) above is not available, alternative evidence may be acceptable, including:</p> <p>(i) a document or certificate issued by a jurisdiction in which the applicant was domiciled or ordinarily resident that, in the opinion of the Registrar General, confirms that the applicant's gender identity does not accord with the sex designation on the applicant's birth registration and it is appropriate that the sex designation be changed; or</p> <p>(ii) if an applicant is not domiciled or ordinarily resident in Canada, such medical evidence that, in the opinion of the Registrar General, confirms that the applicant's gender identity does not accord with the sex designation on the applicant's birth registration and it is appropriate that the sex designation be changed; or</p> <p>(iii) a certificate signed by a practising physician authorised to practise in Canada, that complies with the current requirement of section 36 of the Vital Statistics Act.</p> <p>Pursuant to section 36(6) of the Vital Statistics Act, every birth certificate issued after the making of a notation of change of sex designation shall be issued as if the original registration had been made showing the designation of sex as changed.</p>
60.	Canada – Prince Edward Island	<p><i>Relevant legislation</i></p> <p>According to section 12 of the <i>Vital Statistics Act (current version in force since 1 January 2016)</i>, an applicant may apply to the Director of Vital Statistics to record a change of sex on the person's birth registration by submitting:-</p> <p>(a) a written declaration of the person stating that the person has assumed, identifies with, and intends to maintain, the gender identity that corresponds with the requested amendment;</p> <p>(b) a written statement from a medical practitioner who is authorized to practise medicine in the jurisdiction in which he or she practises medicine, confirming that the sex recorded on the person's registration of birth does not correspond with the person's gender identity;</p> <p>(c) evidence satisfactory to the Director of the person's identity.</p>

		<p>It is noted that the previous requirement of sex-reassignment surgery has been abolished.<sup>243</sup></p> <p>Upon successful application, the Director will record the change of sex on the register. Every birth certificate issued after recording the change shall be issued as if the original registration had been made with the sex as changed.</p>
61.	<b>Canada - Quebec</b>	<p><i>Relevant legislation</i></p> <p>The <i>Civil Code (current version in force since 10 June 2016)</i>, articles 71 – 74, provides for the right to legally change sex by amendment to the birth record. It is provided that such change would not be dependent on the requirement to have undergone any medical treatment or surgical operation.</p> <p>An applicant must be a Canadian citizen, and must have been domiciled in Quebec for at least one year. There is no age limit for the application, and a child under one year of age, born and domiciled in Quebec, is considered to have been domiciled in Quebec for at least one year. An application for a minor child under 14 years of age must be made by the minor’s tutor. Where the minor child is 14 years of age or over, the application may be made either by the minor alone, or by the minor’s tutor with the minor’s consent.</p> <p>When a change of the designation of sex that appears on the act of birth of a person born in Quebec but domiciled outside Quebec proves impossible in the State where the person is domiciled, the Registrar of Civil Status may, at the request of the person, change the designation and, if necessary, change the person’s given names in the act drawn up in Quebec (article 3084.1 of the <i>Civil Code</i>).</p> <p>The application is made to the Registrar of Civil Status. A change of designation of sex has, with the necessary modifications, the same effects as a change of name. Any decision of the Registrar of Civil Status relating to a change of name or designation of sex may be reviewed by the court, on the application of an interested person.</p>
62.	<b>Canada – Saskatchewan</b>	<p><i>Relevant legislation</i></p> <p>According to section 31 of the <i>Vital Statistics Act (current version in force since 30 June 2016)</i>, an individual who is at least 18 years of age and whose birth is registered in Saskatchewan may apply to the Registrar of Vital Statistics to have the designation of sex on the individual’s statement (which is defined to include, relevantly, a statement of live birth and statement of marriage) amended by providing, <i>inter alia</i>:-</p>

243 See news report of CBC News, *P.E.I. transgender community applauds ID changes*, 18 April 2016.

		<ul style="list-style-type: none"> <li>(a) an application in a form approved by the registrar;</li> <li>(b) a statutory declaration made by the applicant, in a form approved by the registrar, stating that the applicant has assumed, identifies with and intends to maintain the gender identity that corresponds with the requested amendment to the designation of sex on the applicant's statement; and</li> <li>(c) a letter from a health care professional practising in Saskatchewan or in another province or territory of Canada: <ul style="list-style-type: none"> <li>(i) stating that: <ul style="list-style-type: none"> <li>A. the health care professional has treated or evaluated the applicant;</li> <li>B. in the health care professional's opinion, the applicant has assumed, identifies with and is maintaining the gender identity that corresponds with the requested amendment to the designation of sex on the applicant's statement; and</li> <li>C. in the health care professional's opinion, the change of sex designation on the applicant's statement is appropriate; and</li> </ul> </li> <li>(ii) containing any other information required by the registrar.</li> </ul> </li> </ul> <p>It is noted that proof of surgery, which was formerly required for changing gender marker, is no longer required.<sup>244</sup></p> <p>If an applicant resides outside of Canada, the registrar may accept a letter containing the information required by clause (c) above from a health care professional practising in a jurisdiction outside of Canada.</p> <p>After the sex of an individual's registration of live birth has been amended, any certificate of birth (which is a certified extract of the statement of live birth) subsequently issued must contain the amended or corrected sex. The Registrar may also require any person to whom a certificate of birth was issued with respect to the individual before the sex was amended or corrected to return the certificate to the Registrar.</p>
63.	Canada - Yukon Territory	<p><i>Relevant legislation</i></p> <p>According to section 12 of the <i>Vital Statistics Act (current version in force since 31 August 2016)</i>, an application can be made to the Registrar of Vital Statistics for a notation of change of sex to be made on the registry where a person has had his/her anatomical sex structure changed to a sex other than that which appears on his/her birth certificate. The Registrar requires separate affidavits of two medical practitioners stating that the anatomical sex of the applicant has changed and evidence satisfactory to the Registrar as to the applicant's identity.</p>

244 See news report of CBC News, *Transgender people in Saskatchewan celebrate government ID change*, 25 February 2016.

		<p>If the sex of the applicant was registered in Yukon, the Registrar will cause a notation of the change to be made on the original birth registration. If the sex of the applicant was registered in another Province outside Yukon, he/she shall transmit a copy of the proof of the change of sex to the appropriate Registrar in charge of the registration of births and marriages<sup>245</sup> in the jurisdiction in which the applicant was registered.</p> <p>Every birth (or marriage) certificate issued after the making of a notation shall be issued as if the original registration had been made with the sex as changed.</p>
<b>64.</b>	<b>Mexico – Federal District</b>	<p><i>Relevant legislation</i></p> <p>It was revealed in a news report that that on 29 August 2008, the Federal District’s Assembly passed a new municipal ordinance (exact name unknown) allowing a civil court to adjust birth certificates and other legal paperwork of an applicant who can prove his or her identity change through the testimony of psychologists or sexologists whereas surgery or hormone therapy is no longer required, and the applicant should also prove that he or she is a member of the transgender community.<sup>246</sup></p> <p>It was further reported that on 13 November 2014, Mexico City lawmakers approved 42-0 with 6 abstentions, a Bill proposed by Mayor Miguel Angel Mancera, that would legally allow transgender people to change their gender without the previously required court order.<sup>247</sup> Also, there is no medical requirement for the application for change of gender in Mexico City now<sup>248</sup>, enabling applicants to “stop by the Registry with photo ID and make the change in minutes, with a minimal cost that anyone would incur in seeking a copy of their birth certificate”.<sup>249</sup></p>
<b>65.</b>	<b>United States – Alabama</b>	<p><i>Relevant legislation</i></p> <p>According to <i>the Code of Alabama, 1975, Title 22, Chapter 9A under the Alabama Vital Statistics Laws - § 22-9A-19(d)</i>, Alabama’s</p>

245 It is pertinent to note that same-sex marriage has been legalised in Yukon Territory since 17 July 2004, following the Supreme Court’s ruling in *Dunbar & Edge v. Yukon (Government of) & Canada (A.G.)* 2004 YKSC 54.

246 See The Mex Files, *Changing with times*, 20 August 2008 and ILGA (undated), *Mexico: Mexico City extends official rights to transgender individuals*.

247 See Gayapolis, *Mexico City Lawmakers Approve Transgender Rights Bill*, 14 November 2014.

248 See Human Rights Campaign, *Victory for Transgender Community in Mexico City*, 14 November 2014. See also The Guadalajara Reporter, *Breakthrough for transgenders*, 8 December 2014.

249 See MGR – The Mexico Gulf Reporter, *Gender change in Mexico's Federal District gets easier*, 13 November 2014.

		State Registrar will amend birth certificates noting change of name and/or sex, but will not issue a new birth certificate to replace the original. Amended birth certificates will note that the sex has been changed. A certified copy of an order of a court of competent jurisdiction indicating that sex reassignment surgery has occurred and the name of the individual has been changed is required for amendment to the birth certificate. There is no legislation providing for sealing of the old birth certificate, but disclosure or inspection of the vital records are prohibited save for limited circumstances (§ 22-9A-21).
66.	<b>United States – Alaska</b>	<p><i>Relevant legislation</i></p> <p>Under <i>Alaska Statutes. § 18.50.320</i>, Alaska’s bureau and the custodian of permanent local records will generally amend birth certificates it issues under a general power to make corrections and amend birth certificates (§320(1)). A court order is required to amend a name or sex on a birth certificate (§320(1)). Amended birth certificates will note that the sex has been changed; in particular it should be marked “amended”, include the date of the amendment and provide a summary of the evidence.</p> <p><i>Relevant court decisions</i></p> <p>However, the above statute is silent on the requirement for the sex change. Alaska has no statutory scheme addressing this issue and there is no appellate opinion in Alaska that discussed whether such relief may be granted. The superior courts maintain broad jurisdiction in equity and do thereby possess the inherent authority to consider such petitions.<sup>250</sup> The holdings in <i>Sampson v. State</i><sup>251</sup> and <i>Breese v. Smith</i><sup>252</sup> suggested that the constitutional protections of liberty and privacy grant Alaskan citizens the right to match their legal gender designation to their lived gender without the imposition of any overly burdensome such as genital sex reassignment surgery.<sup>253</sup> However, it remains to be seen whether such a practice or ruling is followed or overturned in future.</p>
67.	<b>United States – Arizona</b>	<p><i>Relevant legislation</i></p> <p>Under <i>Ariz. Rev. Stat. § 36-337</i>, the state registrar of Arizona may amend the sex designated on the birth certificate if an individual can provide a written statement by a physician that verifies the sex reassignment surgery or shows a chromosomal count that establishes the sex of the person as different than in the registered birth certificate (§ 337(A)(3)(b)), or if the registrar receives a court order</p>

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250 See Leslie Dubois-Need & Amber Kingery (2009), *Transgendered In Alaska: Navigating The Changing Legal Landscape For Change of Gender Petitions*, at 254.  
251 31 P.3d 88, 94 (Alaska 2001).  
252 501 P.2d 159 (Alaska 1972).  
253 See Leslie Dubois-Need & Amber Kingery (2009), *Transgendered In Alaska: Navigating The Changing Legal Landscape For Change of Gender Petitions*, at 265.

		<p>ordering an amendment. A child’s parent or legal guardian can make the application (§ 337(A)(3)(a)). The State Registrar shall seal the previously registered birth certificate and the evidentiary documents provided to amend the registered birth certificate (§ 337(G)).</p> <p><i>Relevant court decisions</i></p> <p>On 14 August 2014, the Arizona Court of Appeals ruled that the “Pregnant Man” Thomas Beatie could get his Hawaiian marriage dissolved in an Arizona court which means that, in Arizona, transgender persons who have legally changed their birth certificates to reflect their new gender are afforded the same rights to get drivers’ licenses and marriage licenses as any other individuals.<sup>254</sup></p>
68.	<b>United States – Arkansas</b>	<p><i>Relevant legislation and administrative measures</i></p> <p>Under <i>Ark. Code Ann. § 20-18-307(d)</i>, Arkansas’s State Board of Health will amend birth certificates it issues. It will amend the name and sex designated on the birth certificate if an individual can provide a certified copy of an order of a court of competent jurisdiction indicating that the sex of the individual has been changed by surgical procedure and that the individual’s name has been changed. The request for the court order must include medical documentation (letter from SRS surgeon)<sup>255</sup>.</p> <p>The requirement of “surgical procedure” emanates from the 1977 Model State Vital Statistics Act (MSVSA) requirement, but it is not defined in the model statute nor interpreted in any published case law.<sup>256</sup></p>
69.	<b>United States – California</b>	<p><i>Relevant legislation and administrative measures</i></p> <p>Under <i>Cal. Health and Safety Code §103425(through 2013 Leg Sess) &amp; §103430 (through 2013 Leg Sess)</i>, whenever a person has undergone clinically appropriate treatment for the purpose of gender transition, the person may file a petition with the superior court in any county seeking a judgment recognising the change of gender. If requested, the judgment shall include an order that a new birth certificate be prepared for the person reflecting the change of gender and any change of name accomplished by an order of a court of this state, another state, the District of Columbia, or any territory of the United States. The petition shall be accompanied by</p>

254 See news report of Azcentral, *Arizona Appeals Court: 'Pregnant Man' can get a divorce*, 14 August 2014.

255 See U. S. States and Canadian Provinces: Instructions For Changing Name And Sex On Birth Certificate, available at: <http://www.drbecky.com/birthcert.html>.

256 See Lisa Mottet, *Modernizing State Vital Statistics Statutes and Policies to Ensure Accurate Gender Markers on Birth Certificates: A Good Government Approach to Recognizing the Lives of Transgender People*, 19 Michigan Journal of Gender & Law 373-470 (2013), at 400.



		<p>an affidavit of a physician attesting that the person has undergone clinically appropriate treatment for the purpose of gender transition, based on contemporary medical standards, and a certified copy of the court order changing the applicant’s name, if applicable. The physician’s affidavit shall be accepted as conclusive proof of gender change if it contains substantially the following language:</p> <p>“I, (physician’s full name), (physician’s medical license or certificate number), am a licensed physician in (jurisdiction). I attest that (name of petitioner) has undergone clinically appropriate treatment for the purpose of gender transition to (male or female). I declare that the foregoing is true and correct to the best of my knowledge.”</p> <p>If the judgment includes an order for a new birth certificate and if the petitioner was born in this state, a certified copy of the decree of the court ordering the new birth certificate, shall, within 30 days from the date of the decree, be filed with the State Registrar. Upon receipt thereof together with the fee prescribed by Section 103725, the State Registrar shall establish a new birth certificate for the applicant.</p> <p>The requirement of “clinically appropriate treatment” was seen to be an explicit repudiation of the surgical or hormonal requirement.<sup>257</sup></p> <p>The new birth certificate shall indicate the sex of the registrant as specified in the judgment of the court and shall reflect any change of name specified in the application if accompanied by a court order, as prescribed by Section 103425. No reference shall be made in the new birth certificate, nor shall its form in any way indicate, that it is not the original birth certificate of the registrant.</p>
70.	<b>United States – Colorado</b>	<p><i>Relevant legislation</i></p> <p>Under <i>Colo. Rev. Stat. 25-2-115(4)</i>, the State Registrar will provide a new birth certificate if an individual born in Colorado can provide a certified copy of an order of a court of competent jurisdiction indicating that the sex of the individual has been changed by surgical procedure and that the individual’s name has also been changed.</p> <p>The requirement of “surgical procedure” emanates from the 1977 Model State Vital Statistics Act (MSVSA) requirement, but it is not defined in the model statute nor interpreted in any published case law.<sup>258</sup></p>

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257 See Lisa Mottet, *Modernizing State Vital Statistics Statutes and Policies to Ensure Accurate Gender Markers on Birth Certificates: A Good Government Approach to Recognizing the Lives of Transgender People*, 19 Michigan Journal of Gender & Law 373-470 (2013), at 400.

258 Same as above.

71.	<b>United States – Connecticut</b>	<p><i>Relevant legislation and administrative measures</i></p> <p>The <i>Conn. Gen. Stat. § 19a-42 (2015)</i><sup>259</sup> provides that the Commissioner of Public Health shall issue a new birth certificate to reflect a person's gender change on the receipt of the following documents:</p> <ol style="list-style-type: none"> <li>(1) a written request from the applicant for a replacement birth certificate to reflect that the applicant's gender differs from the sex designated on the original birth certificate;</li> <li>(2) a notarized affidavit by a licensed physician or a physician holding a current license in good standing in another state, an advanced practice registered and licensed nurse or a nurse holding a current license in good standing in another state, or a licensed psychologist or a psychologist holding a current license in good standing in another state, stating that the applicant has undergone surgical, hormonal or other treatment clinically appropriate for the applicant for the purpose of gender transition; and</li> <li>(3) if an applicant is also requesting a change of name listed on the original birth certificate, proof of a legal name change.</li> </ol> <p>In the case of a person who is a resident of this state and was born in another state or in a foreign jurisdiction, the probate courts in this state shall have jurisdiction to issue a decree of a change of sex. Such person may apply to the probate court of the district in which such person resides for a decree that such person's gender is different from the sex designated on such person's original birth certificate and that such birth certificate be amended to reflect the change in gender. The application to the probate court shall be accompanied by the same set of documents referred to above. The decree issued by the probate court shall be transmitted to the registration authority of such person's place of birth.</p>
72.	<b>United States – Delaware</b>	<p><i>Relevant legislation and administrative measures</i></p> <p>According to <i>Del. Code Ann. Tit. 16 § 3131(a)</i> and <i>Delaware Administrative Code: 4200 Health Promotion and Disease Prevention: 4205 Vital Statistics: §10.9.4</i>, the State Registrar will issue a new birth certificate correcting the gender designation and name if an individual, born in Delaware, provides a certified copy of an order of a court of competent jurisdiction indicating the sex of the individual has been changed by surgical procedure and whether the individual's name has been changed. On the newly issued birth</p>

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259 Amended on 1 October 2015 by the *Public Act No. 15-132, An Act Concerning Birth Certificate Amendments*.

		<p>certificate, there will be no indication of the changes that have been made to the original certificate.</p> <p>The requirement of “surgical procedure” emanates from the 1977 Model State Vital Statistics Act (MSVSA) requirement, but it is not defined in the model statute nor interpreted in any published case law.<sup>260</sup></p>
73.	<b>United States – District of Columbia (Washington DC)</b>	<p><i>Relevant legislation and administrative measures</i></p> <p>According to <i>D.C. Code Ann. § 7-210.01</i>, as amended by Sec. 11a (New certificates of birth for change of gender designation) under <i>JaParker Deoni Jones Birth Certificate Equality Amendment Act of 2013</i>, D.C. Law 20-37 (effective 5 November 2013), the Registrar appointed by the Director of the Department of Health<sup>261</sup> will establish a new certificate of birth that reflects the new gender designation and, if applicable, the new name of an individual born in the District upon provision of:</p> <ol style="list-style-type: none"> <li>(1) A statement signed by a licensed healthcare provider who has treated or evaluated the applicant stating that he/she has undergone surgical, hormonal or other treatment appropriate for the purpose of gender transition based on contemporary medical standards (or stating that he/she has an intersex condition and the gender designation should be changed); and</li> <li>(2) Original or certified copy of an order of a court of competent jurisdiction granting a change of name.</li> </ol> <p>The State Registrar shall establish, upon request, a new certificate of birth reflecting the new gender designation, new name, or name as previously amended, in these additional circumstances:</p> <ol style="list-style-type: none"> <li>(1) When an individual holds an amended certificate of birth issued before the effective date of the <i>JaParker Deoni Jones Birth Certificate Equality Amendment Act of 2013</i>, passed on 10 July 2013 that reflects a previous name change and seeks a change of gender designation;</li> <li>(2) When an individual, who is requesting change of name, holds a certificate of birth previously issued that reflects a change in gender; or</li> <li>(3) When an individual holds an amended certificate of birth issued before 10 July 2013 that reflects a previous change in gender</li> </ol>

260 Same as above.

261 D.C. Code Ann. § 7-203.

		<p>designation.</p> <p>The application is also opened for minors provided that the application is made by the parent, guardian or legal representative of that minor.</p>
74.	<b>United States – Florida</b>	<p><i>Relevant legislation and administrative measures</i></p> <p>According to <i>Fla. Stat. Ch 29, § 382.003(7)</i>, <i>Fla. Stat. Ch 29, § 382.016</i>, and <i>Florida Administrative Rule 64V-1.003</i>, the Florida Bureau of Vital Statistics will amend the sex designation on birth records following gender reassignment surgery. Sex can be amended if the sex as recorded is clearly in conflict with the given names as recorded. The individual is asked to submit a photocopy of their identification and a completed application along with the documentary evidence they have to support the amendment. The applicant must submit medical records indicating that the patient has completed sexual reassignment in accordance with appropriate medical procedures. The physician performing the surgery must include in his or her statement the new sex of the patient and sign before a notarising official certifying the above. The physician must include his/ her medical license number. The Bureau of Vital Statistics requires the original record/ document sent to their office for review. All requests are then forwarded to the department’s general counsel for review to see if it meets the criteria for the amendment. The state of Florida will accept court ordered legal name changes from a court of competent jurisdiction; they no longer have to be domesticated in a Florida court. Children can make a similar application.</p>
75.	<b>United States – Georgia</b>	<p><i>Relevant legislation and administrative measures</i></p> <p>According to <i>Ga. Code Ann. § 31-10-23(e)</i>, the State Registrar will amend birth certificates that it issues upon provision of a certified copy of a court order indicating the sex of an individual born in Georgia has been changed by surgical procedure and that the individual’s name has been changed.</p> <p>The requirement of “surgical procedure” emanates from the 1977 Model State Vital Statistics Act (MSVSA) requirement, but it is not defined in the model statute nor interpreted in any published case law.<sup>262</sup></p>
76.	<b>United States –</b>	<i>Relevant legislation</i>

262 See Lisa Mottet, *Modernizing State Vital Statistics Statutes and Policies to Ensure Accurate Gender Markers on Birth Certificates: A Good Government Approach to Recognizing the Lives of Transgender People*, 19 Michigan Journal of Gender & Law 373-470 (2013), at 400.

	<p><b>Hawaii</b></p>	<p>According to <i>Haw, Rev. Stat. 338-17.7(a)(4)</i> (2015), the department of health shall establish a new certificate of birth for a person born in Hawaii who already has a birth certificate filed with the department upon receipt of an affidavit of a US licensed physician confirming that:-</p> <ol style="list-style-type: none"> <li>(1) The physician has a bona fide physician-patient relationship with the applicant;</li> <li>(2) The physician has treated and evaluated the applicant and has reviewed and evaluated his/her medical history;</li> <li>(3) The applicant has had appropriate clinical treatment for gender transition to the new gender and has completed the transition to the new gender; and</li> <li>(4) The new gender does not align with the sex designation on the applicant's birth certificate;</li> </ol> <p>The new certificate of birth established shall substitute the original certificate of birth. The new certificate shall not be marked as amended and shall in no way reveal the original language changed by any amendment. The original certificate and the evidence supporting the preparation of the new certificate shall be sealed and filed. The sealed documents shall be opened only by an order of a court of record or by request of the birth registrant.</p> <p>The new certificate shall reflect, or shall be reissued to reflect, any legal name change made before, simultaneously, or after the change in sex designation provided that appropriate documentation of the name change is submitted.</p> <p>It is further provided under subsection (d) of the above rule that the department shall not require any additional medical information or records other than those referred to above. The previous requirement of gender confirmation surgery has been abolished.<sup>263</sup></p>
<p><b>77.</b></p>	<p><b>United States – Illinois</b></p>	<p><i>Relevant legislation and administrative measures</i></p> <p>According to <i>410 III. Comp. Stat. 535/17(1)(d)</i> and State of Illinois Gender Reassignment Application Instructions, the State Registrar of Vital Records will provide a new birth certificate for individuals born in Illinois that can provide an affidavit by a physician stating that he or she has performed an operation on the individual and that by reason of the operation the sex designation on the person's</p>

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263 See news report of Pink News, *Hawaii passes bill removing surgical requirement for gender recognition*, 6 May 2015.

		<p>birth record should be changed. The State Registrar of Vital Records may make any investigation or require any further information he or she deems necessary.</p> <p>The State of Illinois Gender Reassignment Application Instructions, which is the Division of Vital Records' current policy, expressly provided that genital reconstructive surgery is not required to obtain a change in the sex designation on an Illinois birth certificate, but requires "completion of the entire gender reassignment" before the birth certificate will be changed. The abandonment of the requirement of genital reconstruction surgery followed the court agreement approved by the Cook County Judge Michael Hyman in late 2012.<sup>264</sup></p> <p>Under the said policy, a person having undergone gender reassignment operation outside the United States can also make the application with submission of an Affidavit by the physician duly licensed to practice medicine in Illinois or any other state in the United States verifying completion of the operation. Further, change of legal name is not necessary for the sake of the application. The said policy also provided that upon successful application and issuance of a new birth certificate, the original birth certificate and all documents submitted are placed in a sealed and impounded file which cannot be opened except upon court order.</p>
78.	<b>United States – Indiana</b>	<p><i>Relevant legislation and administrative measures</i></p> <p>Under <i>Ind. Code § 16-37-2-10</i>, the Indiana State Department of Health may make additions to or corrections in a certificate of birth on receipt of adequate documentary evidence. Such documentary evidence includes but not limited to a copy of the decree of court, certified under the seal of the court by the clerk of the court, confirming the name change pursuant to paragraph 34-28-2 of the Indiana Code (this evidence must be brought to any court in the United States to obtain a court order that states this person is now female or is now male). A new birth certificate will be issued upon successful application.</p> <p>There is no statute, case, administrative code, or other government document that addresses the issue of amending a birth certificate to reflect sex reassignment. The practice of making such amendments rest solely upon the decision of the court order.<sup>265</sup></p>
79.	<b>United States – Iowa</b>	<p><i>Relevant legislation and administrative measures</i></p> <p>Under <i>Iowa Code IV § 144.23 &amp; § 144.24</i>, the State Registrar may issue a new birth certificate for individuals born in Iowa upon</p>

264 See news report of Windy City Media Group, *Judge finalizes new trans birth certificate rule*, 24 October 2012.

265 See Diane Steen, *US States & Canadian Provinces: Changing Name and Gender on Birth Certificate*, June 2002.

		<p>receipt of a notarised affidavit by a licensed physician and a surgeon or osteopathic physician and surgeon stating that by reason of the surgery or other treatment the sex designation of the person has been changed (§ 144.23). The State Registrar may make further investigations or require further information. Surgery is not mandatory for a new birth certificate, and the affidavit may instead describe other appropriate clinical treatment.</p> <p>Upon successful application, the new certificate will substitute for the original one which will not be subject to inspection except under court order or other limited circumstances (§ 144.24).</p>
80.	<b>United States – Kansas</b>	<p><i>Relevant legislation</i></p> <p>Under <i>Kan. Admin. Regs. 28-17-20(b)(1)(A)(i)</i> (2016), the state department of health will amend birth certificates it issued if the birth registrant can provide an affidavit, or a parent’s affidavit if the registrant is under the age of 18, that the sex was incorrectly recorded, and with medical records substantiating the registrant’s sex at the time of birth.</p>
81.	<b>United States – Kentucky</b>	<p><i>Relevant legislation</i></p> <p>Under <i>Ky. Rev. Stat. Ann. § 213.121 (5)</i>, the State Registrar will amend a birth certificate it has issued if the birth registrant can provide a sworn statement by a licensed physician indicating that the gender of the individual born in the Commonwealth has been changed by surgical procedure and a certified copy of an order of a court of competent jurisdiction changing that individual’s name. sex reassignment surgery is required and a notarized letter from the SRS surgeon is needed for the application.<sup>266</sup></p> <p>The requirement of “surgical procedure” emanates from the 1977 Model State Vital Statistics Act (MSVSA) requirement, but it is not defined in the model statute nor interpreted in any published case law.<sup>267</sup></p>
82.	<b>United States – Louisiana</b>	<p><i>Relevant legislation</i></p> <p>Under <i>La. Rev. Stat. Ann. 40:62</i>, the state registrar of vital records may issue a new birth certificate upon provision by individuals born in Louisiana of a court order obtained on the basis of proof that he or she was properly diagnosed as a transsexual or</p>

266 See Dr Becky Allison, *U. S. States and Canadian Provinces: Instructions For Changing Name And Sex On Birth Certificate*.

267 See Lisa Mottet, *Modernizing State Vital Statistics Statutes and Policies to Ensure Accurate Gender Markers on Birth Certificates: A Good Government Approach to Recognizing the Lives of Transgender People*, 19 Michigan Journal of Gender & Law 373-470 (2013), at 400.

		<p>pseudo-hermaphrodite, that sex reassignment or corrective surgery was properly performed upon him or her, and that as a result of such surgery and subsequent medical treatment the anatomical structure of the sex of the individual has been changed to a sex other than that which is stated on his or her original birth certificate. The petitioner may in the same suit seek to have the name of the petitioner changed, and the court may render judgment in accordance with law upon this additional petition at the same time.</p> <p>Louisiana does not accept name and gender change orders from any other jurisdiction, so even if a person has obtained these orders in another state, Louisiana still has the discretion to refuse to change a birth certificate.<sup>268</sup></p> <p>Further, an application for change of gender marker on the driver’s license/identification card also requires a medical statement signed by a physician stating that the applicant has undergone a successful gender change/reassignment and a court order to this effect.<sup>269</sup></p>
83.	<b>United States – Maine</b>	<p><i>Relevant legislation</i></p> <p>Under <i>the Code Me. R. § 10-146 Chpt. 2 para 11(A) &amp; Me. Rev. Stat. Ann. tit 22, § 2705</i>, the State Registrar will issue a new birth certificate to individuals that were born in Maine whose sex has been changed by surgical procedure and whose name has been changed by judicial decree from a court of competent jurisdiction may present a certified copy of the notification form (VS-14), a notarised affidavit by the physician who performed the surgical procedure to the Office of Vital Statistics and a form VS-7 requesting that his or her birth certificate be amended accordingly.</p> <p>The requirement of “surgical procedure” emanates from the 1977 Model State Vital Statistics Act (MSVSA) requirement, but it is not defined in the model statute nor interpreted in any published case law.<sup>270</sup></p> <p>Upon issuance of the new birth certificate, the original certificate shall be held confidential and only the registrant or his or her other legal representative shall have access to the original record, except by court order.</p>
84.	<b>United States –</b>	<i>Relevant legislation</i>

268 See Dr Becky Allison, *U. S. States and Canadian Provinces: Instructions For Changing Name And Sex On Birth Certificate*.

269 See Louisiana Department of Public Safety Office of Motor Vehicles, *Policy & Procedure: Gender Change/Reassignment* (revised on 12 March 2009).

270 See Lisa Mottet, *Modernizing State Vital Statistics Statutes and Policies to Ensure Accurate Gender Markers on Birth Certificates: A Good Government Approach to Recognizing the Lives of Transgender People*, 19 Michigan Journal of Gender & Law 373-470 (2013), at 400.



	<b>Maryland</b>	<p>Under <i>Md. Code Ann., Health-General § 4-211(b) (2015)</i><sup>271</sup>, an individual born in Maryland may apply to the Secretary of Health and Mental Hygiene to amend the sex designation on the birth certificates. The Secretary of Health and Mental Hygiene shall issue a new birth certificate if there is satisfactory proof that:-</p> <ol style="list-style-type: none"> <li>(1) The individual was born in Maryland, and</li> <li>(2) Regardless of the location, one of the following has occurred: <ol style="list-style-type: none"> <li>(i) 1. A licensed health care practitioner who has treated or evaluated the individual has determined that the individual's sex designation should be changed because the individual has undergone treatment appropriate for the purpose of sex transition or has been diagnosed with an intersex condition;</li> <li>2. The individual, or if the individual is a minor or disabled person under guardianship, the individual's parent, guardian, or legal representative, has made a written request for a new certificate of birth with a sex designation that differs from the sex designated on the original certificate of birth; and</li> <li>3. The licensed health care practitioner has signed a statement, under penalty of perjury, that: <ol style="list-style-type: none"> <li>A. The individual has undergone surgical, hormonal, or other treatment appropriate for the individual, based on generally accepted medical standards; or</li> <li>B. The individual has an intersex condition and, in the professional opinion of the licensed health care practitioner, based on generally accepted medical standards, the individual's sex designation should be changed accordingly;</li> </ol> </li> </ol> </li> <li>(ii) A court of competent jurisdiction has issued an order indicating that the sex of an individual born in this State has been changed; or</li> <li>(iii) Before October 1, 2015, the Secretary, as provided under regulations adopted by the Department, amended an original certificate of birth on receipt of a certified copy of an order of a court of competent jurisdiction indicating the sex of the individual had been changed.</li> </ol>
85.	<b>United States – Massachusetts</b>	<p><i>Relevant legislation</i></p> <p>Under <i>Mass. Gen Laws ch. 46. § 13(e) (2015)</i>, the town clerk may amend birth certificates for individuals born in Massachusetts who can provide a physician's notarised statement that he or she has completed sex reassignment surgery and is not of the recorded sex as well as a certified copy of a legal change of name.</p>

271 Amended on 1 October 2015 by the *Act on Vital Records – New Certificates of Birth – Sex Change or Diagnosis of an Intersex Condition*.

86.	<b>United States – Michigan</b>	<p><i>Relevant legislation</i></p> <p>Under <i>Mich. Comp. Law S. § 333.2831(c)</i> (2006), the state registrar may issue a new birth certificate for an individual that was born in Michigan and can provide an affidavit of a physician certifying that sex reassignment surgery was performed. The applicant must be at least 18 years old or legally emancipated but a child’s parent or legal guardian or legally licensed representative could also make the application.</p> <p>One must change the birth certificate before he or she is allowed to change the driver’s license. People who were born in other states may not be able to change their Michigan license unless their birth certificate lists the ‘new’/correct gender.<sup>272</sup></p>
87.	<b>United States – Minnesota</b>	<p><i>Relevant legislation</i></p> <p>Under <i>Minn. Stat. § 144.218(4)</i> (2006), the State Registrar requires a court order in order to amend the sex designation on birth certificates. The court order must specify whether the original certificate is to be amended or a new certificate is to be issued. This is based on general powers rather than specific measures for gender change. It is revealed that many people have been able to demonstrate to the judges' satisfaction that the sex information on their initial birth record is "incomplete, inaccurate, or false", by documenting through a letter from their doctor that they have experienced permanent, irreversible physical changes as part of their transition. Nevertheless, not all judges interpret the statute the same way.<sup>273</sup></p> <p><i>Relevant administrative measures</i></p> <p>There is an alternative way to amend the birth record by the Minnesota Department of Health, which is an administrative process, upon provision of an “ACT letter” from a doctor attesting to “appropriate clinical treatment” for gender dysphoria under the standards of the World professional Association for Transgender Health (WPATH) and stating that he/she has either treated the applicant in relation to the applicant’s change in gender OR has reviewed and evaluated the medical history of the applicant in relation to the applicant’s change in gender, AND that he/she has a doctor/patient relationship with the applicant. For these purposes, MDs or DOs (from any number of specialties as well as from general practitioners) qualify as licensed physicians. Statements from persons who</p>

272 See Dr Becky Allison, *U. S. States and Canadian Provinces: Instructions For Changing Name And Sex On Birth Certificate*, available at: <http://www.drbecky.com/birthcert.html>.

273 See Outfront Minnesota, *Amending Minnesota birth certificates*, available at: <https://www.outfront.org/library/certificates>.

		<p>are not licensed physicians, such as psychologists, physician assistants, nurse practitioners, social workers, health practitioners, or chiropractors, are generally not accepted.<sup>274</sup></p> <p>Requests to change information on minors' birth records may be made by a parent or guardian.<sup>275</sup></p>
88.	<b>United States – Mississippi</b>	<p><i>Relevant legislation</i></p> <p>Under <i>Miss. Code Ann. § 41-57-21</i> (2013) and <i>15-V Mississippi Code: Rules Governing the Registration and Certification of Vital Events para 106.06 Rule 40 (15-4 Miss. Code R. §1:106)</i> (2006), the state registrar of vital records may add a marginal notation of gender change to birth certificates it has issued if the individual can provide a certificate court order and a medical statement that attests to the gender reassignment. To obtain the court order for gender change, documentation is required from the doctor who performed the sex reassignment surgery, as well as a court order from any US state authorising name change. The standard as to what surgery suffices is to be determined by the judge as the statutory and regulatory languages are not clear.<sup>276</sup></p>
89.	<b>United States – Missouri</b>	<p><i>Relevant legislation</i></p> <p>Under <i>Mo. Rev. Stat. § 193.215(9)</i> (2006), the Department of Health and Human Services may amend birth certificates of individuals born in Missouri if they can provide a certified copy of an order of a court of competent jurisdiction indicating the sex of the individual has been changed by surgical procedure and that such individual's name has been changed. The requirement of "surgical procedure" emanates from the 1977 Model State Vital Statistics Act (MSVSA) requirement, but it is not defined in the model statute.<sup>277</sup></p> <p><i>Relevant court decisions</i></p> <p>The Circuit Court of Adair County of Missouri in <i>Re Jamie Miranda Glistenburg</i> 13AR-CV00240, 20 May 2013 held that the explicit requirement of surgical procedures or medications that may be deemed unsuitable, dangerous, or unnecessary to the applicant by</p>

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274 Same as above.

275 Same as above.

276 See Lisa Mottet, *Modernizing State Vital Statistics Statutes and Policies to Ensure Accurate Gender Markers on Birth Certificates: A Good Government Approach to Recognizing the Lives of Transgender People*, 19 Michigan Journal of Gender & Law 373-470 (2013), at 401.

277 Same as above, at 400.

		medical assertion shall be given relief for changing the gender marker on the birth record and birth certificate notwithstanding Mo. Ann. Stat. § 193.215(9). The ruling was interpreted as not requiring sex reassignment surgery for an application for gender marker change. <sup>278</sup>
90.	<b>United States – Montana</b>	<p><i>Relevant legislation and administrative measures</i></p> <p>Under <i>Mont. Code Ann. § 50-15-204</i> (2005) and <i>Admin. R. Mont. 37.8.311(5)</i> (2005), the Department of Public Health and Human Services may amend birth certificates for individuals who are born in Montana and who can provide a certified copy of an order from a court with appropriate jurisdiction indicating that the sex of the individual has been changed by surgical procedure. The requirement of “surgical procedure” emanates from the 1977 Model State Vital Statistics Act (MSVSA) requirement, but it is not defined in the model statute nor interpreted in any published case law.<sup>279</sup></p> <p>If the court so orders, a new certificate can be issued without evidence that there was any amendments made. The order must contain sufficient information for the department to locate the record. If the registrant's name is also to be changed, the court order must indicate the full name of the registrant as it appears on the birth certificate and the full name to which it is to be altered. Any certified copy issued after the amendment must indicate it was altered. In short, the court order must specify whether the original certificate is to be amended or a new certificate issued.</p>
91.	<b>United States – Nebraska</b>	<p><i>Relevant legislation</i></p> <p>Under <i>Neb. Rev. Stat. § 71-604.01</i> (2005), the Department of Health and Human Services may issue a new birth certificate for individuals born in Nebraska who can provide a notarised affidavit from the physician that performed the sex reassignment surgery on the individual and a certified copy of an order of a court of competent jurisdiction changing the name of the person. The new certificate will be prepared in substantially the same form as used for other live births and inspection of the original certificate will only be allowed upon provision of a court order.</p>
92.	<b>United States – Nevada</b>	<i>Relevant legislation and administrative measures</i>

278 See Transas City, *Missouri Transition Information*, available at: <http://transascity.org/missouri-transition-information/>.

279 See Lisa Mottet, *Modernizing State Vital Statistics Statutes and Policies to Ensure Accurate Gender Markers on Birth Certificates: A Good Government Approach to Recognizing the Lives of Transgender People*, 19 Michigan Journal of Gender & Law 373-470 (2013), at 400.

		<p>Under <i>Nev. Admin. Code 440.130</i> (2006), the state registrar may issue a new birth certificate for an individual having a sexual transformation. A court order of a competent jurisdiction is required. The court order must specify those facts to be changed on the new certificate. All other items must remain as on the original certificate.</p> <p>There was commentary that the statutory or official regulations relating to gender corrections in Nevada are ambiguous with regard to whether surgery is required and thus the standard as to what surgery suffices is to be determined by the judge.<sup>280</sup></p>
93.	United States – New Hampshire	<p><i>Relevant legislation</i></p> <p>Under <i>NH Rev Stat § 5-C:87(V)</i> (2013), the clerk of the city or town may issue new birth certificates for individuals that were born in New Hampshire and can provide a certified copy of a court order advising that such individual has had a sex change.</p> <p>The standard as to what surgery suffices is to be determined by the judge as the statutory and regulatory languages are too vague.<sup>281</sup></p>
94.	United States – New Jersey	<p><i>Relevant legislation</i></p> <p>Under <i>N.J. Stat. Ann. 26:8-40.12</i> (2006), the State Registrar shall issue an amended certificate of birth to a person born in New Jersey who undergoes sex reassignment surgery and requests an amended certificate of birth which shows the sex and name of the person as it has been changed. Evidence required include:</p> <ol style="list-style-type: none"> <li>(1) a certified copy of an order from a court of competent jurisdiction which indicates the name of the person has been changed and</li> <li>(2) a medical certificate from the person's licensed physician which indicates the sex of the person has been changed by surgical procedure. The requirement of “surgical procedure” emanates from the 1977 Model State Vital Statistics Act (MSVSA) requirement, but it is not defined in the model statute nor interpreted in any published case law.<sup>282</sup></li> </ol> <p>The amended certificate of birth shall be of the same general type as the original certificate of birth. When an amended certificate of birth is issued, the State Registrar shall notify the appropriate local registrar of vital statistics who shall enter the amended certificate</p>

280 Same as above, at 401.

281 Same as above, at 401.

282 Same as above, at 400.

		in his local record and place his copy of the original certificate under seal. The State Register shall place the original certificate of birth and all papers pertaining to the amended certificate of birth under seal. The seal shall not be broken except by order of a court of competent jurisdiction. Thereafter, whenever a certified copy of the certificate of birth is prepared, it shall be made from the amended certificate of birth except when an order of a court of competent jurisdiction requires that a certified copy be made of the original certificate of birth.
95.	<b>United States – New Mexico</b>	<p><i>Relevant legislation</i></p> <p>Under <i>N.M. Stat. Ann. § 24-14-25(D)</i> (2006), the State Registrar shall amend birth certificates for individuals who were born in New Mexico if they can provide a statement signed under penalty of perjury by the person in charge of an institution or from the attending physician indicating that the sex of the individual has been changed by surgical procedure and a certified copy of an order changing the name of the person.</p> <p>The requirement of “surgical procedure” emanates from the 1977 Model State Vital Statistics Act (MSVSA) requirement, but it is not defined in the model statute nor interpreted in any published case law.<sup>283</sup></p>
96.	<b>United States – New York State (outside of New York City)</b>	<p><i>Relevant legislation and administrative measures</i></p> <p>The New York State Department of Health is authorised to correct birth certificate information in accordance with <i>NYS PHL 4176</i> (2015). To correct the sex item on the birth certificate, the Department of Health, Bureau of Vital Records requires the following documents<sup>284</sup>:</p> <ol style="list-style-type: none"> <li>(1) a completed Application for Correction of Certificate of Birth (DOH-297) signed by the applicant, indicating: <ol style="list-style-type: none"> <li>(a) the applicant’s name, date of birth, parents’ names on existing birth certificate, and place of birth, and</li> <li>(b) the change being requested, including the corrected gender designation and, if applicable, name change.</li> </ol> </li> <li>(2) A certified copy of the applicant’s current birth certificate or a notarised affidavit from the applicant confirming that they are</li> </ol>

283 Same as above, at 400.

284 See the guidelines published by the New York State Department of Health, undated, available at: <http://www.empirejustice.org/assets/pdf/policy-advocacy/doh-bc.pdf>. The guidelines took effect on 5 June 2014, lifting the requirement for proof of surgery. See news report of Washington Post, *New Mexico Supreme Court legalizes gay marriage*, 19 December 2013 and another news report of Empire State Pride Agenda, *Breaking: New York Removes Surgical Requirement For Gender Marker Changes On Birth Certificates*, 5 June 2014.

		<p>18 years of age or older. In each case they need to submit a Notarised Affidavit of Gender Error attesting that the applicant has been living in their correct gender immediately preceding the application.</p> <p>And either (3) or (4):</p> <p>(3) A notarised affidavit from a physician (MD or DO) or nurse practitioner or physician assistant, confirming that surgical procedures have been performed on the applicant to complete sex reassignment.</p> <p>(4) A notarised affidavit on professional letterhead from a physician (MD or DO) or nurse practitioner or physician assistant, licensed in the United States that have treated, or reviewed and evaluated, the gender-related medical history of the applicant. The notarised affidavit must include a statement noting that the provider is making his/her findings upon independent and unbiased review and evaluation and is not related to the applicant. The letter must include:</p> <ul style="list-style-type: none"> <li>(a) the physician (MD or DO) or nurse practitioner or physician assistant’s license number; and</li> <li>(b) language stating that the applicant has undergone appropriate clinical treatment for a person diagnosed with Gender Dysphoria as defined in the most current edition of the Diagnostic and Statistical Manual of Mental Disorders OR language stating that the applicant has undergone appropriate clinical treatment for a person diagnosed with Transsexualism as defined in the most current edition of International Statistical Classification of Diseases and Related Health Problems; or as these diagnoses may be referred to in future editions.</li> </ul> <p>As soon as all documentation is provided, it is submitted for legal and medical review. Processing takes approximately three months. To change the name on a birth certificate a certified copy of a court order is required by NYS PHL 4138. Upon the approval of a request to change the gender designation and, if applicable, the applicant's name, the Department will issue a new birth certificate reflecting the requested change(s). The new certificate will not indicate that there was a change in the original sex item designation or name, as the case may be.</p> <p>When a birth certificate is amended to reflect a change in the gender designation, and, if applicable, name, the original birth certificate and all other documents relating to the change in the gender designation, will be retained in a sealed file. When a new certificate of birth is made, the Commissioner will substitute such new certificate for the certificate of birth then on file, if any, and will send the registrar of the district in which the birth occurred a copy of the new certificate of birth. The registrar will make a copy of the new certificate for the local record and hold the contents of the original local record confidential. The original state record and the local record will not be released or otherwise divulged except by order of a court of competent jurisdiction.</p>
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97.	United States – New York City	<p><i>Relevant legislation and administrative measures</i></p> <p>Gender recognition in the New York City is governed by <i>24 RCNY Hlth. Code § 207.05(a)(5) &amp; (b) (2015)</i> and Guidelines of the New York City Department of Health and Mental Hygiene, which authorise the New York City Department of Health and Mental Hygiene to issue a new birth certificate to an applicant who can provide:-</p> <ul style="list-style-type: none"> <li>(A) an affirmation from a physician (MD or DO) licensed to practice medicine in the United States and who is in good standing, to affirm that in keeping with contemporary expert standards regarding gender identity, the applicant’s requested correction of sex designation of male or female more accurately reflects the applicant’s sex or gender identity; or</li> <li>(B) an affidavit from a doctoral level psychologist (PhD or PsyD) in clinical or counseling psychology, master social worker, clinical social worker, physician assistant, nurse practitioner, marriage and family therapist, mental health counselor, or midwife, licensed to practice in the United States and who is in good standing to attest that in keeping with contemporary expert standards regarding gender identity, the applicant’s requested correction of sex designation of male or female more accurately reflects the applicant’s sex or gender identity.</li> </ul> <p>If the request for a new birth certificate includes a name change, the person must also submit proof that his or her name has been changed pursuant to a court order.</p> <p>When a new birth certificate is filed pursuant to <i>24 RCNY Hlth. Code § 207.05</i>, the original birth certificate, the application for a new birth certificate and supporting documents shall be placed under physical or electronic seal, and such seal shall not be broken except by order of a court of competent jurisdiction. Thereafter, when a certified copy is requested of the certificate of birth of the person for whom a new certificate has been filed pursuant to the provisions of this section, a copy of the new certificate of birth shall be issued, except when an order of a court of competent jurisdiction requires the issuance of a copy of the original certificate of birth.</p> <p>New York City allows transgender people to self-designate their gender on identification card without the need to provide any documentation. On 10 July 2014, New York City Mayor Bill de Blasio signed into law a bill to create a municipal identification card for residents who face obstacles obtaining government-issued identification.<sup>285</sup></p>
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285 See news report of Pink News, *US: New law allows NYC transgender citizens access to gender-affirming ID*, 10 July 2014.



98.	<b>United States – North Carolina</b>	<p><i>Relevant legislation</i></p> <p>Under <i>N.C. Gen. Stat. § 130A-118(b)(4) &amp; (e)</i> (2005), the State Registrar will issue new birth certificates for individuals that can provide a notarised statement from the physician who performed the sex reassignment surgery or from a physician licensed to practice medicine who has examined the individual and can certify that the person has undergone sex reassignment surgery.</p> <p>The State Registrar shall place under seal the original certificate of birth, the copy forwarded by the register of deeds and all papers relating to the original certificate of birth. The seal shall not be broken except by an order of a court of competent jurisdiction. Thereafter, when a certified copy of the certificate of birth of the person is issued, it shall be a copy of the new certificate of birth, except when an order of a court of competent jurisdiction shall require the issuance of a copy of the original certificate of birth.</p>
99.	<b>United States – North Dakota</b>	<p><i>Relevant legislation and administrative measures</i></p> <p>Under <i>N.D. Cent. Code § 23-02.1-25</i> (2005) and <i>N.D. Admin. Code § 33-04-12-02</i> (2006), the State Department of Health will amend the birth certificate of an individual born in North Dakota who has undergone a sex conversion operation if he or she can provide an affidavit by a physician stating that the physician has performed an operation on the person, and that by reason of the operation, the sex designation of such person’s birth record should be changed and an order of a court of competent jurisdiction decreeing a legal change in name. Amended birth certificates will be marked “amended”.</p>
100.	<b>United States – Oklahoma</b>	<p><i>Relevant legislation and administrative measures</i></p> <p>Under <i>Okla. Stat. Tit. 63, § 1-321</i> (2006) and <i>Okla. Admin. Code 310:105-3-3</i> (2006), the Vital Records Service in the Oklahoma State Department of Health will change the gender marker on birth certificates for individuals who can provide documentation of sex reassignment surgery. In most cases a notarised letter from the surgeon who performed the sex-reassignment surgery will be sufficient evidence, although the Vital Records Service is entitled to make its own determination and may require more information. If the request is not accepted, then as is provided in the regulation, the individual can go before an administrative law judge to request that the birth certificate be changed.<sup>286</sup></p>
101.	<b>United States –</b>	<p><i>Relevant legislation and administrative measures</i></p>

286 See Lambda Legal, *Changing Birth Certificate Sex Designations: State-By-State Guidelines*, available at: <http://www.lambdalegal.org/publications/changing-birth-certificate-sex-designations-state-by-state-guidelines>.

	<b>Oregon</b>	Under <i>Or. Rev. Stat. § 432.235(4)</i> (2011) and <i>Or. Admin. R. 333-011-0275(1)(e)</i> (2014), the State Registrar of the Center for Health Statistics will amend birth certificates of individuals born in Oregon if they can provide a certified copy of an order of a court of competent jurisdiction indicating that an individual born in this state has completed sexual reassignment and that the sex on the record of live birth shall be changed. In order to obtain such a court order, Oregon requires a letter from a health care provider stating that you have undergone appropriate clinical treatment and completed sexual reassignment. <sup>287</sup> Surgery requirement for gender change on birth certificate was repealed on 13 June 2013.
<b>102.</b>	<b>United States – Pennsylvania</b>	<p><i>Relevant administrative measures</i></p> <p>There is no mention of legal sex change in Pennsylvania legislation. Under the policy of the Division of Vital Records<sup>288</sup>, an individual born in Pennsylvania and over the age of 18 may apply to amend his or her birth certificate by submitting:</p> <ol style="list-style-type: none"> <li>(1) the birth certificate with the requested changes on the reverse side;</li> <li>(2) an application for certified copy of birth record;</li> <li>(3) a copy of the applicant’s government-issued photo ID that verifies legal name and mailing address, or 2 other forms of ID; and</li> <li>(4) a physician’s statement saying that the applicant has had appropriate clinical treatment for gender transition.</li> </ol> <p>For gender change on driver’s license/ID card, a completed Form entitled “<i>Request for Gender Change on Driver’s License/Identification Card</i>” has to be submitted to the Department of Transportation. The Form includes a gender designation statement to be completed by the applicant and a section to be completed by a medical or social service provider licensed in the United States (including a licensed physician, therapist/counselor or social worker) stating that, in his/her professional opinion, what the applicant’s gender identity is and that it can reasonably be expected to continue as such for the foreseeable future.<sup>289</sup></p>
<b>103.</b>	<b>United States –</b>	<i>Relevant legislation and administrative measures</i>

287 According to Or. Rev. Stat. § 33.460, “sexual reassignment” was defined as surgical, hormonal, or other treatment appropriate for the individual for the purpose of gender transition. However, Oregon passed HB 2093 on 13 June 2013 (which then became effective on 1 January 2014) updating its laws to remove the surgery requirement for birth certificate amendments: see Oregon Health Authority, *House Bill 2093 Implementation*, available at: <http://www.aclu-or.org/sites/default/files/hb2093.en.pdf>.

288 With effect from 8 August 2016. See The National Center for Transgender Equality, *ID Documents Center – Pennsylvania*, 8 February 2017, available at: <http://www.transequality.org/documents/state/pennsylvania>.

289 The Form is available at: <http://www.dot.state.pa.us/Public/DVSPubsForms/BDL/BDL%20Form/DL-32.pdf>.

	<b>Rhode Island</b>	Under <i>R.I. Gen. Laws § 23-3-21</i> (2015) (regarding amendment of name on birth certificate) and the Vital Records Regulations of the Office of Vital Records (11 November 2014), an individual born in Rhode Island can apply for amendments to birth certificates based on a medical provider's certification that the individual has undergone surgical and/or hormone treatment “or other treatment appropriate for the individual”. <sup>290</sup> The previous requirement of sex reassignment surgery has been abandoned.
<b>104.</b>	<b>United States – South Carolina</b>	<p><i>Relevant legislation and administrative measures</i></p> <p>Under <i>S.C. Code Ann. § 44-63-150</i> (2005) and <i>S.C. Code Ann. Regs. 61-19</i> (2006), correction of mistakes in birth certificates may be made by the State Registrar upon written application and upon receipt of supporting evidence when required by regulation. A court order and a letter from a SRS surgeon are required. Application for change of birth certificate may be made by the applicant, his/her parent, guardian, or legal representative. The birth certificate is marked “amended” with a special form attached indicating the item changed.</p> <p>There was commentary that the statutory or official regulations relating to gender corrections in Nevada are ambiguous with regard to whether surgery is required and the judge may be the one determining the standard as to what surgery suffices.<sup>291</sup></p>
<b>105.</b>	<b>United States – South Dakota</b>	<p><i>Relevant legislation and administrative measures</i></p> <p>Under <i>S.D. Codified Laws § 34-25-51</i> (2013) and <i>S.D. Admin. R. 44:09:05:02</i> (2006) (<i>on amendment of name on birth certificate</i>), the State Registrar has a policy of, upon court order, allowing amendments to sex designations on birth certificates for individuals born in South Dakota. In practice the court determines the standard as to what surgery suffices as the statutory or official regulations relating to gender corrections in South Dakota are ambiguous.<sup>292</sup> Although the Registrar will follow any specific instructions in a court order, their general policy is to issue a new certificate with no indication of amendment.<sup>293</sup></p>
<b>106.</b>	<b>United States –</b>	<i>Relevant legislation and administrative measures</i>

290 See news report of Providence Journal, *Process to be eased for transgender people in R.I. to revise gender designation on birth certificates*, 25 October 2014.

291 See Lisa Mottet, *Modernizing State Vital Statistics Statutes and Policies to Ensure Accurate Gender Markers on Birth Certificates: A Good Government Approach to Recognizing the Lives of Transgender People*, 19 Michigan Journal of Gender & Law 373-470 (2013), at 401.

292 Same as above, at 401.

293 See Lambda Legal, *Changing Birth Certificate Sex Designations: State-By-State Guidelines*, available at: <http://www.lambdalegal.org/publications/changing-birth-certificate-sex-designations-state-by-state-guidelines>.

	<b>Utah</b>	<p>Under <i>Utah Code Ann. § 26-2-11</i> (2004), when a person born in Utah has a name change or sex change approved by an order of a Utah district court or a court of competent jurisdiction of another state or a province of Canada, a certified copy of the order may be filed with the state registrar with an application form provided by the registrar. It does not specifically require that any irreversible procedure or surgery be undertaken.<sup>294</sup> In practice the court determines the standard as to what surgery suffices as the statutory or official regulations relating to gender corrections in Utah are ambiguous.<sup>295</sup></p> <p>Upon receipt of the application, a certified copy of the order, and payment of the required fee, the state registrar shall review the application, and if complete, register it and note the fact of the amendment on the otherwise unaltered original certificate. The amendment shall be registered with and become a part of the original certificate and a certified copy shall be issued to the applicant without additional cost.</p>
107.	<b>United States – Vermont</b>	<p><i>Relevant legislation</i></p> <p>Under <i>Vt. Stat. Ann. tit. 18 § 5075 &amp; § 5112</i> (2011), the state registrar shall, upon receiving from the probate division of the superior court a court order that an individual's sexual reassignment has been completed, issue a new birth certificate to show that the sex of the individual born in Vermont has been changed. An affidavit by a licensed physician who has treated or evaluated the individual stating that the individual has undergone surgical, hormonal, or other treatment appropriate for that individual for the purpose of gender transition shall constitute sufficient evidence for the court to issue an order that sexual reassignment has been completed (using the term “completed” may unduly exclude people who have fully transitioned but hope or plan for additional medical treatment later in life and those who receive hormonal treatment indefinitely<sup>296</sup>). The affidavit shall include the medical license number and signature of the physician.</p> <p>A new certificate issued shall be substituted for the original birth certificate in official records. The new certificate shall not show that a change in name or sex, or both, has been made. The original birth certificate, the probate court order, and any other records relating to the issuance of the new birth certificate shall be confidential and shall not be subject to public inspection; however an individual may have access to his or her own record from the state registrar to confirm that, pursuant to court order, it has issued a</p>

294 See Leslie Dubois-Need & Amber Kingery, *Transgendered in Alaska: Navigating the Changing Legal Landscape for Change in Gender Petitions*, 26 *Alaska Law Review* 239-270 (2009), at 248.

295 See Lisa Mottet, *Modernizing State Vital Statistics Statutes and Policies to Ensure Accurate Gender Markers on Birth Certificates: A Good Government Approach to Recognizing the Lives of Transgender People*, 19 *Michigan Journal of Gender & Law* 373-470 (2013), at 401.

296 Same as above, at 403.

		new birth certificate to the individual that reflects a change in name or sex, or both.
<b>108.</b>	<b>United States – Virginia</b>	<p><i>Relevant legislation and administrative measures</i></p> <p>By virtue of <i>Va. Code § 32.1-269</i> (2006) and <i>12 Va. Admin. Code § 5-550-320</i> (2008), Virginia will amend the birth certificate of individuals born in Virginia who can provide a certified copy of an order of a court of competent jurisdiction indicating that the sex of the individual has been changed by medical procedure and a certified copy of a court order changing the person’s name.</p> <p>Under the above Regulation, the State Registrar may issue a new birth certificate for individuals born in Virginia whose sex has been changed by surgical gender reassignment procedure. The applicant must provide acceptable evidence (preoperative diagnosis, postoperative diagnosis and description of the surgical procedure contained in a notarised affidavit from the physician performing the surgery as well as a certified copy of the court order changing the name and designating the sex of the individual).</p>
<b>109.</b>	<b>United States – Washington</b>	<p><i>Relevant administrative measures</i></p> <p>Washington's statutes and administrative code are silent about amending vital records. The Department of Health of the DC Department has a policy (which has been in place since 1 July 2008) to change the gender designation on a birth certificate upon an application to the State Registrar at the Department of Health together with:</p> <ol style="list-style-type: none"> <li>(1) a “Birth Certificate Gender Designation Application Form”<sup>297</sup> completed by the applicant identifying the record by name, date of birth, and place of birth and giving appropriate new information such as name and gender;</li> <li>(2) A signed original statement from the applicant’s licensed healthcare provider stating that the applicant has undergone surgical, hormonal or other treatment appropriate for the individual for the purpose of gender transition based on contemporary medical standards or that the applicant has an intersex condition and that in the healthcare provider’s professional opinion, the applicant’s gender designation should be changed<sup>298</sup>; and</li> </ol>

297 For more information, see the website of the Washington Department of Health at: <http://doh.dc.gov/service/birth-certificates>.

298 See the prescribed Statement of Licensed Healthcare Provider Certifying the Applicant’s Gender Change, available at: <http://doh.dc.gov/sites/default/files/dc/sites/doh/publication/attachments/Statement%20of%20Licensed%20Healthcare%20Provider%20Certifying%20the%20Applicant%27s%20Gender%20Change.pdf>.

		<p>(3) An original or certified copy of a court order granting name change,<sup>299</sup> if requesting a name change.</p> <p>If the Department denies the request to change gender designation, its decision can be appealed to a court under RCW 34.05.542(3).</p> <p>The gender designation on a driver’s license or an ID card can be changed by applying to the Washington State Department of Licensing.<sup>300</sup> The applicant and his/her licensed medical physician must complete a “Change of Gender Designation Request” form. The application must be accompanied by an original or certified copy of a court-ordered name change.<sup>301</sup> The physician must certify in the form that the applicant has undergone the appropriate gender transition clinical treatment.</p> <p>There is no statutory requirement (for both changing gender markers to birth certificate and other official documents) as to the marital status of the applicant. According to the American Civil Liberties Union of Washington, if one spouse in a marriage undergoes sex reassignment surgery, the marriage would likely remain valid. However, legal problems can arise from a spouse’s transition. For example, employers have been known to refuse health benefits to a spouse who is now of the same sex as the employee. Likewise, when one spouse dies, the surviving spouse may have problems collecting inheritance or tax benefits restricted to married couples. To date, there is very little law on these issues.<sup>302</sup> However, same-sex marriage has been recognised in all 50 US State since 26 June 2015, when the US Supreme Court ruled in <i>Obergefell v. Hodges</i> No. 14-556, 576 U.S. (2015) that the US Constitution guarantees the fundamental right for same-sex couples to marry in all 50 US states, requiring every State to license a marriage between two people of the same sex and to recognise a marriage between two people of the same sex when their marriage was lawfully licensed and performed out-of-State. This court decision may form a basis for the marriage to remain valid even after a spouse has changed gender.</p>
<b>110.</b>	<b>United States – West Virginia</b>	<p><i>Relevant legislation and administrative measures</i></p> <p>Under <i>W. Va. Code § 16-5-25</i> (2006) and <i>W. Va. Code St. R. § 64-32-12</i> (2006), the State Registrar of Vital Statistics will change the sex designation on an individual’s birth certificate upon receipt of a certified court order ordering a change of name and a letter from the surgeon who performed gender reassignment surgery attesting that the gender has been permanently altered. The Registrar</p>

299 See the requirements set out in the Birth Certificate Gender Designation Application Form, available at: <http://doh.dc.gov/sites/default/files/dc/sites/doh/publication/attachments/Birth%20Certificate%20Gender%20Designation%20Application%20Form.pdf>.

300 See the website of the Washington State Department of Licensing at: <http://www.dol.wa.gov/driverslicense/genderchange.html>.

301 See American Civil Liberties Union of Washington, *The Rights of Transgender People in Washington State*, January 2014, at 9.

302 Same as above, at 12.

		<p>strikes through the existing name and gender and types the new name and gender above.</p> <p>One parent, the guardian or legal representative of a minor can make the application to amend the minor’s birth certificate (<i>W. Va. Code St. R. § 64-32-12.3a</i>).</p>
<b>111.</b>	<b>United States – Wisconsin</b>	<p><i>Relevant legislation</i></p> <p>Under <i>Wis. Stat. § 69.15</i> (2006), the state registrar may change information on a birth certificate registered in this state which was correct at the time the birth certificate was filed under a court or administrative order issued in this state, in another state or in Canada or under the valid order of a court of any federally recognised Indian tribe, band or nation if:</p> <ol style="list-style-type: none"> <li>(1) The order provides for an adoption, name change or name change with sex change or establishes paternity; and</li> <li>(2) A clerk of court or, for a paternity action, a clerk of court or county child support agency, sends the state registrar a certified report of an order of a court in this state on a form supplied by the state registrar or, in the case of any other order, the state registrar receives a certified copy of the order and the proper fee.</li> </ol> <p>Any person with a direct and tangible interest in a birth certificate registered in the state may petition a court to change the name and sex of the registrant on the certificate due to a surgical sex change procedure. If the state registrar receives an order which provides for such a change the state registrar shall change the name and sex on the original certificate, except that if the court orders the state registrar to prepare a new certificate the state registrar shall prepare a new certificate.</p>
<b>112.</b>	<b>United States – Wyoming</b>	<p><i>Relevant administrative measures</i></p> <p>Under <i>WY Rules and Regulations HLTH VR Ch. 10 s 3 &amp; s 4(e)(iii)</i> (2008), the State Registrar will amend the sex designation on an individual’s birth certificate upon receipt of court order when the sex of an individual has been changed.</p> <p>There is no statutory language related to gender corrections, and the official regulations are ambiguous with regard to whether surgery is required, and thus in practice the court determines the standard as to what surgery suffices.<sup>303</sup></p>

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303 See Lisa Mottet, *Modernizing State Vital Statistics Statutes and Policies to Ensure Accurate Gender Markers on Birth Certificates: A Good Government Approach to Recognizing the Lives of Transgender People*, 19 Michigan Journal of Gender & Law 373-470 (2013), at 401.

		<p>If the court order specifies that a new certificate be prepared, the original certificate and relevant correspondence shall be retained on file in Vital Records Services. If the court order does not specify that a new certificate be prepared, an abstract of the court order will be attached to the existing certificate. The abstract will state the date of the order, the order number, the name and location of the court, the data appearing on the original certificate that is to be changed and the new data. The abstract will become part of the certificate.</p>
<p><b>SOUTH AMERICA</b></p>		
<p><b>113.</b></p>	<p><b>Argentina</b></p>	<p><i>Relevant legislation</i></p> <p><i>The Gender Identity Law</i> (approved on 8 May 2012 and came into force in July 2012) affirms every Argentinean’s right to change their name and gender upon a simple application and safeguard the right of self-determination of every trans individual and defines it as a responsibility of the state to change name and gender in a quick and transparent way.</p> <p>Article 2 of the Gender Identity Law defines the term “gender identity” as “<i>the internal and individual way in which gender is perceived by persons that can correspond or not to the gender assigned at birth, including the personal experience of the body.</i>” This definition forms the basis for Article 3, which defines who is permitted to change their legal gender: every person can request to have the recorded sex amended and their first name(s) changed “whenever they do not agree with the self-perceived gender identity.” Except for an age restriction (18 years old), there are no further restrictions regarding access to change of name and sex entry, not even citizenship or permanent residency. Nevertheless, children under the age of 18 can change their gender under the same procedures as for adults (Article 5) if the request is submitted by the minor’s legal representative with the minor’s explicit agreement (and taking into account the evolving capacities and best interests of the minor as expressed in the Convention on the Rights of the Child and in Law 26061 for the Comprehensive Protection of the Rights of Girls, Boys and Adolescents). The minor must also be assisted by a children’s lawyer as prescribed by Article 27 of Law 26061.</p> <p>Other requirements for changing one’s name and sex entry include submission of a request to the National Bureau of Vital Statistics and provision of the new first name. No gatekeeping requirements such as forced sterility, compulsory medical intervention, divorce or a diagnosis of gender dysphoria, transsexuality are needed, and no external evaluation process exists.</p> <p>There is no marriage requirement. One of the reasons that divorce is not mandatory is that Argentina has recognised same-sex</p>



		<p>couples' right to marry since the passage of the Equal Marriage Act on 2 July 2010.<sup>304</sup></p> <p>No residency or citizenship requirement was stipulated under the Gender Identity Law. However, the general rule is that only citizens can apply for legal gender recognition in Argentina.<sup>305</sup> Nevertheless, under a number of administrative guidelines,<sup>306</sup> a non-citizen who are applying for, or have already been granted permanent resident status in Argentina can apply for legal gender recognition in Argentina. If the applicant concerned had obtained legal gender recognition in their country of citizenship, he or she may provide appropriate evidence of that extra-territorial recognition (e.g. national identity card or birth certificate) for the application to amend the gender marker on his or her residence card, National Identity Card for Foreign Residents and any other documentation issued by the Argentine state. If the applicant has not obtained legal gender recognition in his or her country of origin, he or she must produce to the National Migration Office evidence of his or her permanent resident status in Argentina, the National Identity Card for Foreign Residents, and notification from the Consular Office of the country of citizenship which affirms that the laws of that country do not permit the individual to obtain legal gender recognition.</p> <p>Once the required information has been provided, the public officer will proceed “<i>without any additional legal or administrative procedure required</i>” to notify the amendment of the sex and change of first name to the Civil Register corresponding to the jurisdiction where the birth certificate was filed (Article 6), and will notify the change to the other government bureaus as necessary (Article 10).</p> <p>The gender recognition under the GIL is for full legal purposes by virtue of Articles 1(a) and 1(c), which guarantee the rights of all persons to the recognition of their gender identity and to be treated according to their gender identity. Article 7 also provides that, from the point of first legal recognition, an individual's preferred gender and name are enforceable as against third parties.</p>
<b>114.</b>	<b>Bolivia</b>	<p><i>Relevant legislation</i></p> <p><i>The Law of Gender Identity (Law No. 807)(2016)</i><sup>307</sup> provides that an individual aged over 18 may apply to legally change his/her</p>

304 See the news report of San Diego Union-Tribune, *Argentina's gay marriage law signed by president*, 21 July 2010. Also see Salum, AN (2012), *Argentina has passed the most progressive gender identity legislation in existence*, International Gay and Lesbian Human Rights Commission Blog, 13 May 2012.

305 See Decree 1007/2012.

306 These include Decree 1007/2012 issued by the Argentinian National Executive and Joint Resolution 1/2012 and 2/2012 passed by the National Bureau of Vital Statistics and the National Migration Office.

307 It was promulgated on 21 May 2016 and came into effect on 1 August 2016. See news report of Telesur, *Bolivia promulga Ley de Identidad de Género*, 21 May 2016 (in Spanish).

		<p>name, gender and image data in official documents. Sex reassignment surgery, sterilisation or medical intervention is not necessary for the application. A psychological report will have to be submitted by the applicant confirming that the application for change is voluntary and that he/she is aware of its implications. The application should be made before the Civil Registry Service.</p> <p>Upon successful application, the applicant will be issued a birth certificate with changed sex/name. The use of personal documents prior to the change will then be prohibited, except in cases of judgments or judicial or administrative proceedings.</p>
<b>115.</b>	<b>Colombia</b>	<p><i>Relevant administrative measures</i></p> <p>On 5 June 2015, the Colombian government has announced through its Ministry of Justice that they issued a decree to all the country's notary offices ordering them to streamline, by way of a simplified notarial process, petitions from transgender individuals seeking to change their name and gender on their government ID.<sup>308</sup> An applicant is only required to give a simple deed in which a notary attests to the expression of his/her will to change the gender. The decree applies not only to those who have changed their sex through surgery, but anyone wishing to change the gender stated in their ID documents. In another word, recognition of one's changed gender identity no longer requires transgender individuals to undergo extensive psychological assessments, a 'gender dysphoria' diagnosis, or proof of gender reassignment surgery.</p>
<b>116.</b>	<b>Ecuador</b>	<p><i>Relevant legislation</i></p> <p>Article 11(2) of the Constitution of Ecuador (adopted in 2008) guarantees recognition of gender identity as a basis of non-discrimination.<sup>309</sup></p> <p>Under the <i>Organic Law of the National Identity and Civil Data Management Service</i> (2016),<sup>310</sup> the General Directorate of the Civil Registry is responsible for recording gender and name changes of people (Art 10(4)). A resident who has reached the age of majority (18 years old) may apply to the Registry for a change in gender to either male or female on his/her identity card (Art 94). The applicant has to furnish proof that he/she has lived in the preferred gender for 2 years before the making of the application. When the application is successful, the applicant will be issued with a new identity card. The identity card is to be treated as</p>

308 See news report of El Espectador, *Cambio de género en la cédula será ágil y simple: Minjusticia*, 6 June 2015 (in Spanish).

309 It provides that that all persons are equal and shall enjoy the same rights, and that no one shall be discriminated against on various bases including gender identity.

310 Available at: [http://www.asambleanacional.gob.ec/es/system/files/ro\\_ley\\_organica\\_de\\_gestion\\_de\\_la\\_identidad\\_y\\_datos\\_civiles\\_ro\\_684\\_2do\\_supl\\_04-02-2015.pdf](http://www.asambleanacional.gob.ec/es/system/files/ro_ley_organica_de_gestion_de_la_identidad_y_datos_civiles_ro_684_2do_supl_04-02-2015.pdf) (in Spanish).

		having the same effect as a person's birth certificate, with the exception of judicial or other proceedings that necessarily require certification or an authorized copy of the item of birth (Art 95).
<b>117.</b>	<b>Uruguay</b>	<p><i>Relevant legislation</i></p> <p>The law 18.620, passed in October 2009, provides, <i>inter alia</i>, that:</p> <ol style="list-style-type: none"> <li>1. Every person has the right to the free development of his or her personality in accordance with his or her gender identity, independent of his or her sex, be it biological, genetic, anatomical, morphological, hormonal, by assignment, any other consideration (Art 1).</li> <li>2. The application should provide, <i>inter alia</i> (Art 3): <ol style="list-style-type: none"> <li>(a) the name and/or sex in the birth certificate are dissonant with his or her own gender identity; and</li> <li>(b) the stability and persistence of the dissonance between the gender assigned to the applicant at birth and his or her acquired gender has lasted for at least two years (this requirement is not in need for those who have conducted sexual reassignment surgery).</li> </ol> </li> <li>3. The application should be made to the Family Courts, together with a technical report issued by the multi-disciplinary team specialised in gender identity and diversity within the Civil Registry (similar to the UK Gender Recognition Panel set up by the government to evaluate applications for sex change<sup>311</sup>), which would take into account the testimonies of people who may know the daily lifestyle of the applicant and of the professionals who have treated the applicant for social, mental or physical matters. Upon successful application, changes of gender will be made to the identification documents as well as documents that record the rights and obligations thereof (Art 4).</li> <li>4. The change of gender will have constitutive effect from the date on which such change becomes effective on the birth certificate, and it allows the individual to exercise all the rights attached to the acquired gender (Art 5).</li> <li>5. The existing marriage will not be affected by the gender change (Art 7).<sup>312</sup></li> </ol>

311 See Tobin, HJ, *Uruguay passes landmark gender identity law*, TransEquality Blog, 14 October 2009.

312 It is pertinent to note that same-sex marriage is legalised in Uruguay since 5 August 2013 following the enactment of the Equal Marriage Law (Law No. 19.075). See news report of Pink News, *Uruguay: Equal marriage law comes into effect*, 5 August 2013.

OTHER JURISDICTIONS		
<b>118.</b>	<b>South Africa</b>	<p><i>Relevant legislation</i></p> <p>Sections 19 and 27A and Form DHA-526 of the <i>Birth and Death Registration Act 1992</i>, read with the provisions of the <i>Alteration of Sex Description and Sex Status Act 2003 (Act No. 49 of 2003)</i><sup>313</sup>, provides that any person whose sexual characteristics have been altered by surgical or medical treatment or by evolution through natural development resulting in their gender reassignment (which means a process which is undertaken for the purpose of reassigning a person's sex by changing physiological or other sexual characteristics, and includes any part of such a process) or any person who is intersex may apply to the Director-General of the National Department of Home Affairs for the alteration of the sex description on his or her birth register (s 2(a) of 2003 Act).</p> <p>For applicants other than intersex persons, two medical reports are required: (a) one by the medical practitioner who applied the procedures or medical treatment or by a medical practitioner experienced in such procedures or treatment, and (b) a report by a second medical practitioner who has independently examined the applicant to establish his or her sexual characteristics (ss 2(2)(b) and 2(2)(c) of 2003 Act).</p> <p>For intersex persons, evidence required are a report by a medical practitioner corroborating that the applicant is intersex, and a report by a qualified psychologist or social worker corroborating that the applicant is living and has lived stably and satisfactorily, for an unbroken period of at least two years in the gender role corresponding to the sex description under which he or she seeks to be register, is required (s 2(2)(d) of 2003 Act).</p> <p>If the application is granted the sex description on the birth register is altered and an amended birth certificate is issued (s 27A of 1992 Act, inserted by virtue of s 4 of 2003 Act). A person whose sex description has been altered is deemed for all purposes to be a person of the sex description as altered, as from the date of the recording of such alteration (s 3(2) of 2003 Act).</p> <p>The Parliament of The Republic of South Africa indicated on 13 November 2012<sup>314</sup> that an explicit medical diagnosis of trans-sexualism is necessary for the application. It also said that the 2003 Act requires sex-change operation which involves long</p>

313 This Act came into force by way of Gazette No. 26148, Notice No. 331 dated 15 March 2004.

314 See the Parliament of The Republic of South Africa, *The Alteration of Sex Description and Sex Status Act and Gender Dynamix*, 13 November 2012.

		<p>term hormone treatment but not necessarily the transformation of genitalia. However, it was revealed that in practice the Department of Home Affairs (where the appeals for sex description application have to be handed in) still required completed genital surgery and demanded letters from the surgeon who carried it out.<sup>315</sup></p> <p>The application is open to children under the age of 18 years as long as the parent or legal guardian has completed and signed the application form DHA-526.</p> <p>Although section 3(3) of the 2003 Act states that previous rights and obligations “are not adversely affected by the alteration of sex details”, in practice the Home Office requires previously married applicants to divorce.<sup>316 317</sup> Whether or not this remains to be the case is unclear as same-sex marriage has been legalised since the Civil Union Act came into force on 30 November 2006.<sup>318</sup></p>
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315 See Tamar Klein, 2009, *Intersex and transgender activism in South Africa*, Liminalis, 2009, at 3.

316 Gender Dynamix, *Alteration of Sex Description and Sex Status Act No. 49 of 2003*, 28 July 2011.

317 There are no regulations made under the gender recognition law, which has frustrated attempts to provide guidance about how the 2003 law should be implemented in practice. Any such guidance would require an amendment through the South African parliament. However activists are reluctant to open up the law itself for review, in case its progressive elements are repealed. See The Open Society Foundations, *License To Be Yourself: Laws and Advocacy for Legal Gender Recognition of Trans People*, ISBN: 9781940983103, May 2014, at 25.

318 Available at: [http://www.gov.za/sites/www.gov.za/files/a17-06\\_1.pdf](http://www.gov.za/sites/www.gov.za/files/a17-06_1.pdf).

**IMPORTANT NOTICES:**

- (1) This Annex summarises the main features of the gender recognition schemes in other countries and territories and represents the findings of the IWG up to May 2017. A comparative table of these schemes can be found at Annex A.
- (2) This Annex includes references to materials contributed by other parties and hyperlinks to other websites for the convenience of users. The IWG expressly states that it has not approved nor endorsed the materials contributed by others referred to in this Annex or the information contained in or in connection with the websites stated in this Annex.
- (3) The information provided in this Annex is for reference purposes only. Whilst the IWG endeavours to ensure the accuracy of the information hereof, no express or implied warranty is given by the IWG as to the accuracy of the information.