

Trans and Intersex: “Legal Sex” Bills and ID Documents

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We have begun to see a sharp increase in far-reaching state bills that aim to define sex narrowly and/or replace “gender” with “sex,” for application to the entirety of that state’s laws. Defining a person’s sex and gender entirely on the basis of how their body aligns with traditional binary sex characteristic norms is unscientific and erases transgender and intersex people from the law, and from the many areas of public life that the law regulates.

These laws can strip people’s access to accurate identity documents, as happens under laws that permit only a person’s assigned sex at birth to appear on their driver’s license and/or ban gender marker changes - like everyone, trans and intersex people need accurate and consistent IDs to open bank accounts, start new jobs, enroll in school, and travel. However, “legal sex” laws are beginning to reach even further and potentially impact many other areas of the law and of a person’s life.

Intersex Impacts

- Some bills defining “legal sex” contain “intersex exceptions” that are ill-conceived, vague, confusing, and potentially impracticable.
 - Like other regressive measures, these bills use stigmatizing language in their so-called exceptions, such as “disorders of sex development” and more recently “developmental anomaly” or “genetic anomaly.”
 - Some have begun to include provisions that assert intersex people should be accommodated under the ADA, or more vaguely, under “federal and state law.”
 - While some intersex people are disabled—related to their variation, in addition to their variation, or due to nonconsensual surgeries endured because of their sex traits—others are not.
 - Suggesting that intersex people are inherently disabled due to their sex trait variations is stigmatizing and harmful in the fight against “normalizing” surgeries.
 - These ill-conceived “exceptions” don’t clarify what providing accommodations around “legal sex” should look like, and they place the burden on a protected person to seek accommodations in order to simply participate authentically in public life.
- Recent ID change/gender marker bans have also begun to include references to and “exceptions” for intersex people.
 - Intersex people’s situations in regard to birth certificates are variable and can be complex. While some intersex people’s original birth certificates do reflect their gender identity, some do not; others have had their birth certificate amended either in childhood or later. It is extremely rare for a person’s sex assigned at birth or birth certificate gender marker to reflect intersex status at the time of birth, and there is no consensus on the value of such practices.

- ID change/gender marker bans could make it difficult or impossible for many intersex people to obtain ID that matches their gender identity - or even their “presenting” sex, which can be different from their sex assigned at birth. And the legal ramifications can be dire - intersex people have been accused of fraudulent identification based on this kind of mismatch, and the risk increases as ID and gender marker bans become more commonplace.

Transgender Impacts

- Some laws restrict trans people, especially trans youth, from updating their name and/or gender on documents such as birth certificates, licenses, and more. Related to this point, education bills have been introduced that require educators to only refer students by the name stated in their legal documents—regardless if the student would like to be called by a different name. Some laws require educators to report to parents if their child is using a name different from what is on their legal documentation. Gender incongruent identification exposes people to a variety of negative outcomes:
 - Denial of employment
 - Denial of housing
 - Increase in obstacles when navigating insurance and accessing care
 - Increase in harassment and/or violence

Key messaging

- Identity documents should reflect accurate information about a person’s gender identity.
- Intersex people may also be disabled, but intersex traits are not inherently disabilities.
- Inaccurate identity documents frequently put transgender and intersex individuals at risk by forcibly “outing” them.

Avoid

- Implying/stating that intersex people aren’t affected.
- Implying/stating that all intersex people are non-binary or want/need an X marker, though many are and many do. Bans on X markers affect their access to accurate ID just as they affect access for endosex (non-intersex) nonbinary people.
- Stating (without a close analysis of a particular policy) that all intersex people are completely banned from obtaining an accurate/updated ID.

Critical Data:

- [State-level anti-trans bill tracker](#) (Trans Formations Project)
- [2023 Legislative Attacks with “Intersex Exceptions”](#) (NCTE)