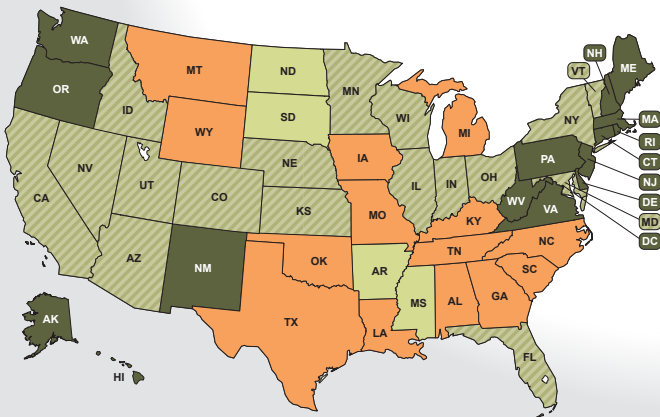


# LGBT POLICY SPOTLIGHT: IDENTITY DOCUMENTS LAWS AND POLICIES

## Driver's License Policies



**21%**  
of the LGBT population

State accepts documentation from a broad range of licensed professionals in order to change gender marker. Does not require sex reassignment surgery (15 states + D.C.)

**49%**  
of the LGBT population

State requires documentation by a limited range of licensed professionals and/or requires burdensome proof of medical treatment in order to change gender marker. Does not require sex reassignment surgery (17 states)

**2%**  
of the LGBT population

State has unclear, unknown or unwritten policy regarding gender marker changes (4 states)

**28%**  
of the LGBT population

State requires proof of sex reassignment surgery, court order, and/or amended birth certificate in order to change gender marker (14 states)

**33%**  
of the LGBT population

State issues new birth certificate and does not require sex reassignment surgery nor court order in order to change gender marker (9 states + D.C.)

**25%**  
of the LGBT population

State has unclear requirements or an unknown or unwritten policy regarding gender marker changes (16 states)

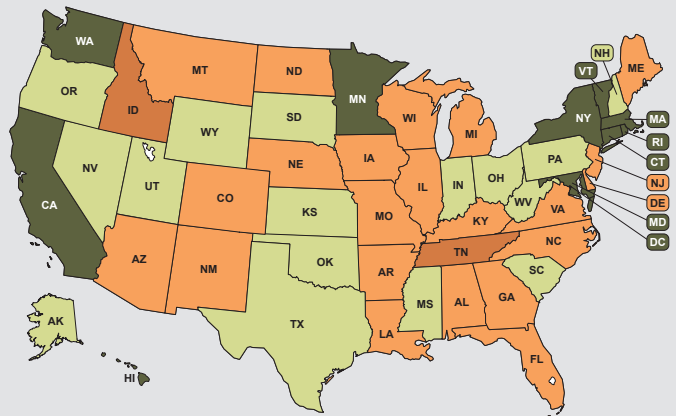
**41%**  
of the LGBT population

State requires proof of sex reassignment surgery in order to change gender marker (23 states)

**2%**  
of the LGBT population

State does not allow for amending the gender marker on the birth certificate (2 states)

## Birth Certificate Laws



**MAP**

movement advancement project ▶

## OVERVIEW

Identity documents laws and policies govern the processes by which transgender and gender non-conforming people are able to correct the gender markers on their documents to match the gender the person lives every day, rather than the gender assigned to them at birth.

From passports to driver's licenses, possessing identification that accurately reflects an individual's name and gender is essential for societal participation. Whether an individual wants to apply for employment, open a bank account, or board an airplane, they must present documents or records to verify their identity. Research finds that gender incongruent identification exposes people to a range of negative outcomes, from denial of employment to violence. However, for many transgender and gender non-conforming individuals, obtaining accurate and consistent identity documents is very challenging.

Many governmental bodies have imposed intrusive requirements and prohibitive costs which have made it impossible for many transgender and gender non-conforming people to change the gender marker on their identity documents to correctly reflect their lived gender. For example, changing a gender marker may require proof of sex reassignment surgery (SRS)<sup>1</sup> or burdensome legal documentation, such as a court order.

Surgical requirements are especially problematic because, "[t]he costs of transition-related surgeries, which are rarely covered by health insurance, are beyond the reach of most transgender people, particularly because the community experiences such high rates of employment discrimination and poverty. In addition, some people who want such surgery cannot have it for medical reasons. Furthermore, some do not want surgery because they do not feel it is necessary for them personally."<sup>2</sup> In short, surgical requirements can legally mandate surgery that is either unobtainable or undesired.

Additionally, the costs of overly burdensome legal requirements, as well as filing and processing fees associated with updating identity documents, can accumulate to hundreds or thousands of dollars. Low-income transgender and gender non-conforming people who are unable to bear these costs must then also struggle with the economic and social consequences of not having accurate documents.

<sup>1</sup> Sex reassignment surgery (SRS), also known as gender confirmation surgery or gender reassignment surgery, refers to surgical procedures that change one's body to better reflect a person's gender identity.

<sup>2</sup> Jaime M. Grant, Lisa A. Mottet, Justin Tanis, Jack Harrison, Jody L. Herman, and Mara Keisling, *Injustice At Every Turn: A Report of the National Transgender Discrimination Survey*, National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011.

## NATIONAL LANDSCAPE

**Federally-Administered Social Security Records and Passports.** In recent years, the federal government has made tremendous progress in easing the requirements for transgender people who want to change the gender marker on federal IDs. In 2010, the Department of State removed the surgical requirement from its policy on updated gender markers on passports, and the Department of Homeland Security modernized its immigration document gender marker policies in 2012. Then, in 2013 the Social Security Administration (SSA) updated their policy on gender marker changes to SSA records to remove the surgical requirement. Now, an individual can get a gender marker updated on their U.S. passport and/or SSA records with a letter from a physician stating they have had clinical treatment for gender transition. For more information, see National Center for Transgender Equality's page, [Know Your Rights: Passports](#).

**State-Issued Driver's Licenses and Birth Certificates.** Unlike Social Security records and passports, the ability to change a gender marker on a driver's license, non-driver state identification card, or birth certificate are governed at the state level, resulting in vastly different laws and policies depending on where a person lives. While some states have made significant improvements to their identity document laws and policies, many states retain outdated policies with almost-impossible requirements.

**Driver's Licenses.** Under federal law, driver's licenses and state IDs are required to include a gender marker (for more information, please see the section below on the REAL ID Act). Today, a growing number of states allow individuals to update the gender marker on their driver's license without proof of sex reassignment surgery. West Virginia and New Hampshire are the most recent states to modernize their policies, for a total of 32 states and the District of Columbia that do not have a surgical requirement. In these states, an individual wanting to change their gender marker must provide a supporting letter or other documentation from a licensed medical professional. However, acceptable documentation varies and some states' requirements are still largely onerous.

While 15 states and the District of Columbia have updated their policies to remove surgical requirements and allow for a variety of licensed professionals to sign off on the gender marker change, 14 states maintain strict guidelines that limit which clinical professionals are credentialed to provide the documentation for a

## The REAL ID Act and Identity Documents



The REAL ID Act (Pub.L. 109–13, 119 Stat. 302), enacted May 11, 2005, modified U.S. federal law to create a uniform set of standards for driver’s licenses and state ID cards in all 50 states. Although the bill was originally conceived to “improve the reliability and accuracy of state-issued identification documents... [in order to] inhibit terrorists’ ability to evade detection by using fraudulent identification,” the reality of its implementation has unintentional, far-reaching consequences for transgender and gender non-conforming individuals.

Under the REAL ID Act, state IDs must include a gender marker in order to be federally compliant. The REAL ID Act also poses many challenges to privacy, including burdensome documentation requirements for a driver’s license applicant, as well as unsurpassed mandates for data collection, retention, and information sharing by State Departments of Motor Vehicles (DMV). In order to obtain a corrected driver’s license, an applicant must present extensive documentation to verify their identity and the DMV is required to record a digital image of the documentation to be shared with a national database.

This presents issues for those myriad transgender and gender non-conforming individuals who have not been able to update all of their records. Even for those who successfully change their driver’s license, a record of the changes and copies of any non-updated documentation could likely be available through a national database.

U.S. Department of Homeland Security, “Secure Driver’s Licenses,” last modified November 9, 2015, <http://www.dhs.gov/secure-drivers-licenses>.

National Center for Transgender Equality and Transgender Law Center, “The Real ID Act: Bad Law for Our Community,” accessed November 10, 2015, <http://www.realnighmare.org/images/File/NCTE%20realid.pdf>.

gender marker change. An additional three maintain unclear and burdensome clinical requirements. In Maryland, for example, required documentation includes letters from both medical *and* mental health professionals in order to amend a gender marker. And in Utah, applicants must present another updated ID, such as a passport or birth certificate. These additional requirements are not only unnecessary, they also increase the financial cost and necessitate the navigation of often complex legal and medical channels, making it harder, slower, and sometimes even impossible to amend a driver’s license.

There remain 18 states that have yet to update their driver’s license policies in whole or in part. Four of these states have unclear or unpublished policies that leave interpretation of requirements to agency employees. The remaining 14 states explicitly include a surgical requirement, necessitate a court order, and/or require an amended birth certificate in order to change a gender marker.

**Birth Certificates.** Updating a gender marker on a birth certificate can be very challenging. As shown on the map on the front cover, only nine states and the District of Columbia allow individuals to change their gender marker

without proof of sex reassignment surgery or a court order, and an additional 16 states are unclear on their surgical and clinical requirements. States with unclear policies may require a court order or may have unwritten or intentionally vague medical standards. This leaves decision-making to the individual judge’s discretion. The remaining 23 states require proof of sex reassignment surgery to update the gender marker on a birth certificate. Two more states, Idaho and Tennessee, do not allow for changes to be made to a birth certificate at all.

In 2015, Massachusetts, Maryland, Hawaii, and Connecticut passed laws to remove the surgical requirement from their birth certificate amendment procedures, while similar bills in Colorado and New Jersey were not as successful. Colorado’s Birth Certificate Modernization bill (HB15-1265) did not pass out of the legislature, and New Jersey’s bill (S1195) was voted into law by state lawmakers only to be vetoed by Governor Chris Christie. This marked the second time Governor Christie vetoed this legislation.

For more detail on individual state requirements for amending driver’s licenses and birth certificates, see the National Center for Transgender Equality’s [Identity Documents Center](#).

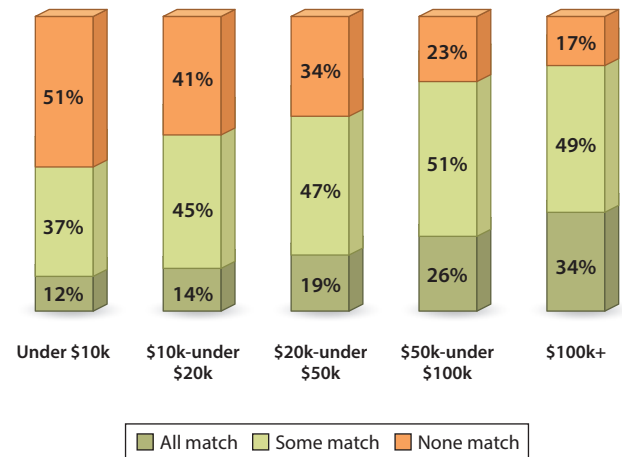
## CURRENT POLICIES MEAN MOST TRANSGENDER PEOPLE LACK UPDATED IDENTITY DOCUMENTS

The barriers described earlier create serious problems for transgender and gender non-conforming people who try to update their identity documents. According to data from the National Transgender Survey, only one-fifth (21%) of transgender individuals were able to update all of their IDs and records to reflect the gender they live every day, and nearly one-third (33%) had updated *none* of their IDs/records. For driver's licenses and birth certificates specifically, only 59% reported updating the gender on their driver's license, and less than one quarter (24%) reported updating the gender on their birth certificate.<sup>3</sup>

Given the prohibitive costs associated with processing fees and documentation, it is perhaps unsurprising that success in updating identity documents varies dramatically with income level. As shown in *Figure 1*, respondents with higher household incomes were more likely to have been able to change all or at least some identity documents, whereas those with incomes less than \$10,000 were far more likely to be living without any matching documents.

Further, transgender people of color are disproportionately less likely to have updated their

Figure 1: Identity Documents  
By Income

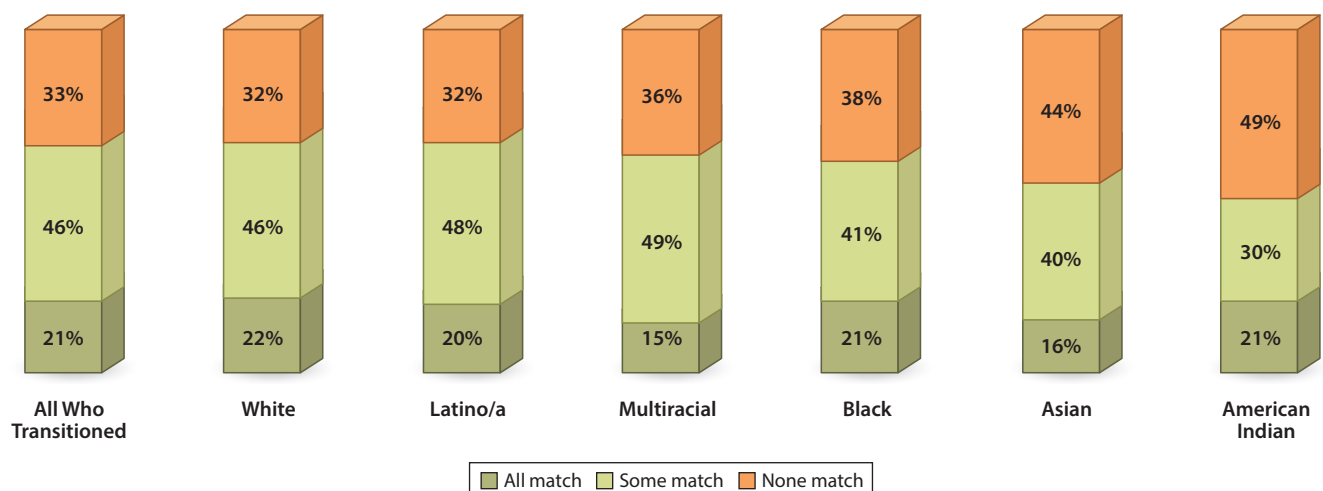


Source: Jaime M. Grant, Lisa A. Mottet, Justin Tanis, Jack Harrison, Jody L. Herman, and Mara Keisling, *Injustice At Every Turn: A Report of the National Transgender Discrimination Survey*, National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011.

<sup>3</sup> The original survey was fielded from September 2008 through March 2009. Positive changes to identity document laws and policies since the survey was administered has possibly resulted in increased numbers of those who have successfully updated their identity documents.

identity documents. For example, as shown in *Figure 2*, transgender people of color (with the exception of Latino/as) were more likely to be living with no matching identity documents.

Figure 2: Identity Documents  
By Race/Ethnicity



Source: Jaime M. Grant, Lisa A. Mottet, Justin Tanis, Jack Harrison, Jody L. Herman, and Mara Keisling, *Injustice At Every Turn: A Report of the National Transgender Discrimination Survey*, National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011.

## Name Change Laws

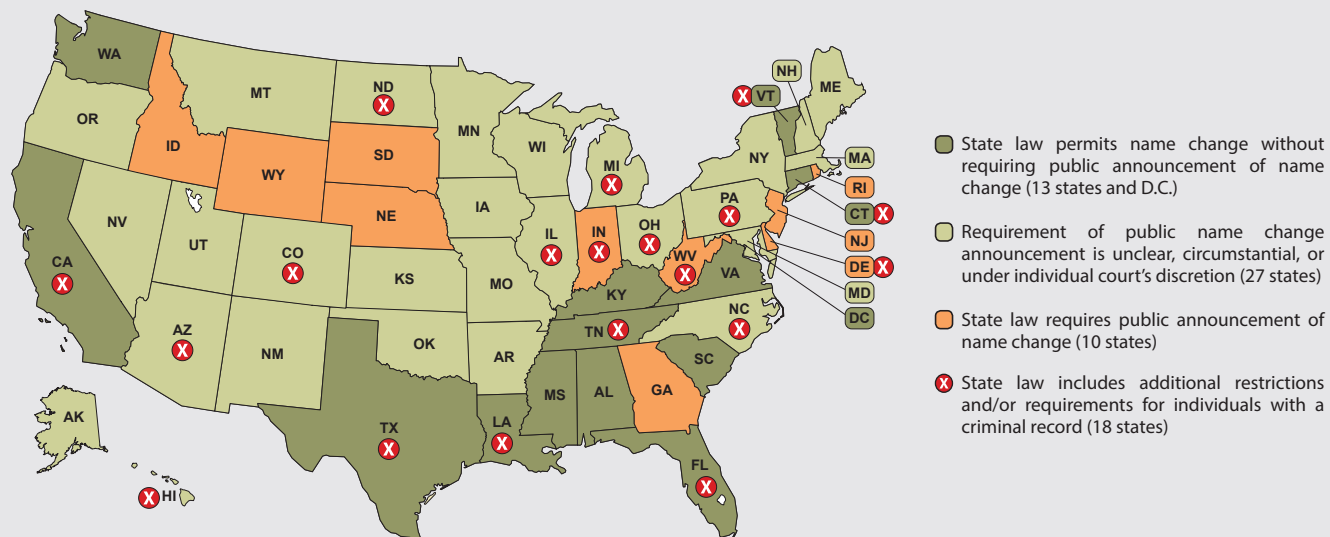
Many transgender people choose to change their legal name to match the name and gender they live every day. Similar to gender marker change policies, Name Change Laws control the process by which an individual can change their legal name on identity documents.

When an incongruent gender marker on an identity document reveals that a person is transgender, it can expose the person to harassment and violence. Because of this, advocates and courts have argued that transgender people's right to change their name is rooted in privacy principles, which protect that person's safety in a similar way to how a name change might protect a survivor of stalking or intimate partner violence.

While state laws generally allow individuals to change their name for any non-criminal purpose, many states maintain outdated and burdensome requirements that create substantial barriers to achieving a legal name change. One of the most common and most problematic requirements throughout state laws is a requirement that a person publicize his or her name change. For example, states may require a person to publish notice of their name-change application at the local courthouse or in a local newspaper. Doing so poses significant privacy and safety concerns for transgender individuals who may face discrimination and violence if it becomes public that they are transgender.

Another significant barrier exists in the many states that have additional rules and regulations when the person requesting a name change has a criminal record. Given an increased risk of interaction with law enforcement,<sup>4</sup> transgender individuals are more likely to have a criminal record than the general public. Regulations vary by state; for example, some states require those with criminal records to make extended public announcements and/or place additional limitations on accepted reasons for a name change. Other states have overbroad restrictions that permanently prohibit anyone with a felony conviction from changing their name. Thus, a transgender young man who was kicked out of his home by unaccepting parents might end up being arrested on a drug charge with a consequence being that he would now be banned from changing his name—which would in turn present added barriers to finding employment and housing.

Figure 3: Name Change Laws



<sup>4</sup> Jaime M. Grant, Lisa A. Mottet, Justin Tanis, Jack Harrison, Jody L. Herman, and Mara Keisling, *Injustice At Every Turn: A Report of the National Transgender Discrimination Survey*, National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011.



## HARMS OF INCONGRUENT IDENTITY DOCUMENTS

Whenever transgender and gender non-conforming people present identity documents that do not match the gender they live every day, they can face discrimination, harassment, or violence. Considering that one-third of the transgender community is living without any identification that matches their lived gender, and that those numbers increase for low-income transgender people and transgender people of color, the potential for hostile treatment is a far-reaching and greatly restricts access to employment, housing, and public accommodations.

Currently, only 40% of the LGBT population lives in states that explicitly prohibit discrimination based on gender identity and expression in employment and housing.<sup>4</sup> Showing an ID is a typical step toward employment and renting or buying a home or apartment, making it easier for prospective employers or landlords to discover an applicant's transgender status. In addition, low-income transgender people who lack updated identity documents might be reluctant to seek public assistance such as job training or housing assistance because of the fear of discrimination. Unemployment then makes it even more difficult to pay for accurate identity documents.<sup>5</sup>

The National Transgender Discrimination Survey shows a clear relationship between the lack of accurate driver's licenses and reported rates of hiring discrimination. Of those who had an updated driver's license, 52% reported experiencing discrimination in hiring compared to 64% of those who lacked an

updated driver's license. Similarly, among those who successfully updated their driver's license, 20% reported being denied a home or apartment, compared to 32% of those who lacked an updated driver's license.

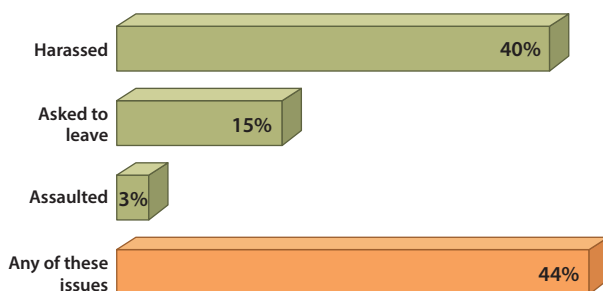
Only 36% of the LGBT population lives in states that prohibit discrimination in public accommodations based on gender identity and expression.<sup>6</sup> When asked to present identification in a public setting, such as a restaurant or at airport security, transgender and gender non-conforming people with incongruent identity documents are particularly vulnerable to harassment, abuse, and assault. The National Transgender Discrimination Survey found that 40% of transgender respondents who presented gender incongruent identification reported harassment, 15% reported being asked to leave an establishment, and 3% reported being assaulted or attacked (see *Figure 4*). Overall, nearly half of those with incongruent identity documents (44%) encountered one of these problems (harassment, assault, or being asked to leave).

<sup>4</sup> Does not include emerging federal employment protections provided by rulings issued by the Equal Employment Opportunity Commission nor local level employment and housing nondiscrimination laws. To see a map of local employment nondiscrimination ordinances, see our [Equality Map: Local Nondiscrimination Ordinances](#). To see the states with comprehensive nondiscrimination laws, see our [Equality Map: State Nondiscrimination Laws](#).

<sup>5</sup> Read more about the economic consequences of incongruent documents in [Unfair Price: the Financial Penalty for being Transgender](#), here.

<sup>6</sup> Does not include local level public accommodations nondiscrimination laws. To see the states with comprehensive nondiscrimination laws, see our [Equality Map: State Nondiscrimination Laws](#).

**Figure 4: Rates of Harassment and Violence When Presenting Incongruent Identification**



Source: Jaime M. Grant, Lisa A. Mottet, Justin Tanis, Jack Harrison, Jody L. Herman, and Mara Keisling, *Injustice At Every Turn: A Report of the National Transgender Discrimination Survey*, National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011.

## Harassed by Staff and Refused a Driver's License

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Trudy Kitzmiller



Kristen Skinner

Two women in West Virginia were denied new driver's licenses because the staff at the Division of Motor Vehicles told them they had to remove their makeup. Trudy Kitzmiller was called "it" by the staff and told that she had to take off her makeup, jewelry, and wig before she could receive a new license. "As a transgender woman, I have overcome a lot of obstacles to become my true self," Trudy explained. "The DMV staff not only denied me the right to appear in my license photo as myself, they dehumanized me. I left the DMV depressed and I still have my old driver's license with an incorrect name and a photo that doesn't even look like me." Kristen Skinner had a similar experience at another DMV in the state.

The Transgender Legal Defense & Education Fund worked with the women to take a civil action against the state and demand retribution for the offense. As a result, the DMV has replaced its discriminatory photo policy with standards that respect the individual's gender expression. The new policy prohibits DMV staff from asking license applicants to "remove or modify makeup, clothing [or] hairstyle" for their photos. It opens the door for Trudy, Kristen, and all other transgender West Virginians to update their driver's licenses to reflect their true selves, free from discrimination.

Adapted from Tony Merevick, "West Virginia DMV Refused to Photograph Two Transgender Women Until They Removed Makeup," *Buzzfeed*, July 7, 2014.

## RECOMMENDATIONS

- All states should ensure that the gender markers on driver's licenses/state identification cards and birth certificates can be updated with a letter from a medical professional confirming the gender identity of the individual. Court orders and/or proof of sex reassignment surgery should not be a requirement.
- All states should remove publication requirement from legal name change processes.
- Agencies should train staff who administer identity document and record changes to ensure that transgender people are treated respectfully and documents and records are updated appropriately.
- Congress should amend the REAL ID Act to eliminate the requirement that state IDs must have a gender marker in order to be federally compliant.

Special thanks to the National Center for Transgender Equality for their collaboration on this report.



## ABOUT THIS SPOTLIGHT

This report is part of an ongoing series that will provide in-depth analyses of laws and policies tracked at the Movement Advancement Project's "Equality Maps," found at [www.lgbtmap.org/equality-maps](http://www.lgbtmap.org/equality-maps). The information in this report is current as of the date of publication; but the [online maps](http://www.lgbtmap.org/equality-maps) are updated daily.



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