



P.O. Box 32159  
Newark, NJ 07102

Tel: 973-642-2086  
Fax: 973-642-6523

info@aclu-nj.org  
www.aclu-nj.org

Frank Corrado  
*President*  
Udi Ofer  
*Executive Director*  
Edward Barocas  
*Legal Director*

## TESTIMONY IN SUPPORT OF SENATE BILL NO. 1195

### JEANNE LOCICERO, DEPUTY LEGAL DIRECTOR AMERICAN CIVIL LIBERTIES UNION OF NEW JERSEY

#### SENATE HEALTH, HUMAN SERVICES, AND SENIOR CITIZENS COMMITTEE

*December 8, 2014*

Thank you Chairman Vitale, Vice-Chair Madden and the other members of the Committee for the opportunity to submit written testimony. My name is Jeanne LoCicero. I am the Deputy Legal Director for the American Civil Liberties Union of New Jersey (ACLU-NJ). The ACLU-NJ is a non-profit, nonpartisan organization founded in 1960 to promote and defend the rights and freedoms in the New Jersey and federal Constitutions. The ACLU has tens of thousands of supporters statewide and hundreds of thousands of members across the country. We are New Jersey's leading organization dedicated to advancing and defending civil liberties and civil rights.

The ACLU-NJ is proud to testify before this committee today in support of Senate Bill No. 1195 because, if enacted, this bill will further demonstrate New Jersey's commitment to ensuring fairness for our transgender community.

There is still confusion, ignorance, and prejudice regarding gender. For example, if a transgender person who was born in New Jersey but lives outside of the state is not able to obtain matching identity documents and credentials from New Jersey, they could be subject to employment discrimination. While New Jersey, 17 other states and the District of Columbia provide protection from employment discrimination on the basis of gender expression,<sup>1</sup> there is currently no federal law that explicitly prohibits employment discrimination against transgender people. Without these legal protections (and often even with them), transgender people face the substantial risks of discrimination in employment, including being fired, being denied a promotion and experiencing harassment on the job. A 2011 national study of experiences of transgender individuals found that almost half (47%) of those surveyed had experienced an adverse job outcome because of being transgender.<sup>2</sup> Over one-quarter of respondents (26%) reported that they had lost a job due to being transgender or gender non-conforming, while 44% did not get a job because they were transgender.<sup>3</sup> Almost all individuals (90%) reported

---

<sup>1</sup> American Civil Liberties Union, *Non-Discrimination Laws: State by State Information*, available at <https://www.aclu.org/maps/non-discrimination-laws-state-state-information-map>.

<sup>2</sup> Jamie M. Grant, et al., *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey* 53 (2011), available at [http://www.thetaskforce.org/downloads/reports/reports/ntds\\_full.pdf](http://www.thetaskforce.org/downloads/reports/reports/ntds_full.pdf).

<sup>3</sup> *Id* at 53-54.

experiencing harassment or mistreatment while on the job.<sup>4</sup>

Outdated policies relating to amended birth certificates are increasingly being scrapped by government offices and agencies across the country: in fact, the injustice faced by transgender people without accurate credentials and identity documents was recently acknowledged by the U.S. Army. Last month, Deputy Assistant Army Secretary Francine C. Blackmon granted separate requests by two transgender New Jersey veterans to amend the name on their respective discharge certificates, known as the DD Form 214. The ACLU of New Jersey represented these veterans, arguing to the Army's review board that it should change its policy of refusing to amend these forms and that these veterans faced injustices because the form was not accurate. The DD Form 214 is a critical document used to determine eligibility for veteran benefits and legal protections tied to military service, containing a record of the veteran's military service, including training, awards and medals. Veterans need this document to engage in a wide range of activities in public life, including securing a homeowner's loan, taking the bar exam for a law license, or applying for a job with an employer who provides veterans with a preference in hiring.

The policy of the Army's review board had been explicit: its website stated that requests for name and gender changes would not be made for DD-214s because they were considered "historical documents." Just two weeks ago, to our delight and surprise, we received the letter explaining that even though the Army's review board had voted to deny the requests, the Deputy Assistant Secretary would order the DD-214s to be amended. She noted the "unique circumstances of transgender individuals" who are forced to use a document that "bears a former name associated with a different gender [that] may prevent or delay receipt of benefits."

Birth certificates are at least just as critical a document as a DD-214, and New Jersey should similarly ensure that transgender people are not burdened with inaccurate identity documents. S1195 will eliminate an unjust barrier for transgender people seeking legal recognition of their gender. New Jersey's existing statute, N.J.S.A.26:8-40.12 may have been a step forward when it was passed nearly 30 years ago, but today, it is outdated, out of line with the current medical consensus that surgery is not appropriate or necessary for every transgender person, and results in an unreasonable burden on members of the transgender community.

The existing statutory scheme causes problems for individuals who wish to change their gender designation on their birth certificates because it has been read to require a court-ordered name change and sex reassignment surgery before a birth certificate can be amended. These are extreme requirements, and they prevent many transgender individuals from obtaining consistent legal documentation. This can have a serious impact on issues related to employment, education and social recognition of their gender.

The ACLU-NJ has been contacted by transgender people seeking advice on how to change their birth certificates after unsuccessful discussions with the Department of Vital Statistics. They have wondered why – after being able to change other credentials – New Jersey would not accept a certification from their doctor about the care they have received. I have had to suggest they obtain a passport and try to use that instead of their birth certificate. In 2010, the U.S.

---

<sup>4</sup> *Id* at 56.

Department of State, charged with protecting U.S. security by ensuring United States passports are accurate, revised its policy to recognize that gender transitions did not require surgery, moving ahead of New Jersey's outdated policy. In addition to the State Department, the Social Security Administration and the states of Oregon, Washington, Vermont and California, as well as the District of Columbia, have adopted standards comparable to the requirements in S1195 to ensure that transgender individuals can obtain accurate identification without proof of surgery. This approach makes clear that the state should not be substituting its judgment over that of licensed health care professionals.

The ACLU-NJ takes pride in our state constitution for its broad protection for individual rights and in our state's history of expanding anti-discrimination protections. Because of our work, we know that transgender individuals continue to face severe and blatant discrimination. We also know that for transgender individuals having identification that does not match their gender can result in discrimination and harassment.

The Senate again has the opportunity to eliminate a needless obstacle to amending birth certificates. Modernizing the statute will prevent discrimination and harassment and will continue New Jersey's public policy in favor of dignity and individual rights.

We urge your strong support for S1195.

Thank you.