



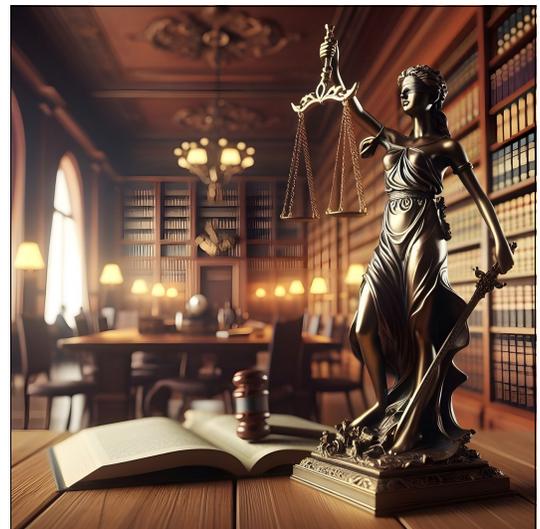
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How Does Ohio Law Treat Transgender Individuals?

by Rob Chaloupka

2024 was an especially active year, both at the Ohio Statehouse and in the courts, when it came to matters directly impacting the LGBTQ+ community in general, and transgender individuals in particular. While some of these developments impacted individual people on a very personal level, others have broad implications for employers, educators and families.

The year began with the Ohio General Assembly overriding Governor Mike DeWine's veto of House Bill 68, a combination of the "Saving Adolescents From Experimentation" Act (prohibiting the prescription and use of puberty-blocking drugs and hormone treatments "for the purpose of gender transition" for anyone under 18 years of age) and the "Save Women's Sports" Act (forbidding individuals assigned male at birth from participating in girls' and women's interscholastic sports at all grade levels, from elementary school through college). The health care portions of the new law were immediately challenged in state court, with the Franklin County Court of



Common Pleas initially issuing a temporary restraining order that kept the law from going into effect. However, after a 5-day trial, the Court rejected the plaintiffs' claims that the law violated the Ohio Constitution (see *Moe v. Yost*, Franklin C.P. No. 24CVH03-2481 (Aug. 6, 2024)). While the plaintiffs have appealed to the Tenth District Court of Appeals, which heard arguments in September, the law took effect as of August 6, 2024. The Supreme Court of the United States heard arguments last fall in a case involving a similar law enacted in Tennessee, with a decision likely by June.

Two other laws impacting transgender individuals were enacted later in the year. Senate Bill 104 was amended in November to add provisions requiring that Ohio schools and universities ensure that individuals use only the restroom that aligns with their gender assigned at birth. The new law also bans students from sharing overnight

accommodations with people of the opposite sex from their assigned sex at birth at K-12 schools. Gov. DeWine signed the bill on November 27, 2024, and it will become effective in late February 2025.

House Bill 6, also known as the "Parents' Bill of Rights," passed in December and signed by Gov. DeWine on January 9, 2025, imposes a number of new duties on schools, including a requirement that teachers and school staff notify a student's parent of "any change in the student's services, including counseling services, or monitoring related to the student's mental, emotional or physical health or well-being." The definition of such a change specifically includes "[a]ny request by a student to identify as a gender that does not align with the student's biological sex." That law will go into effect in early April 2025, pending any potential legal challenges.

Another issue of major importance to many transgender individuals is that of updating identity documents with a new name and gender marker, where appropriate. Legal name changes have long been subject to approval from county probate courts – while the essential state law is the same, the filing requirements, fees, etc. are set by the 88 individual county probate courts. There is no difference in the name-change process for a transgender person than for anyone else looking to legally change their name.

However, updating one's gender marker is a more complicated – and controversial – matter. Pursuant to a policy change in 2016, the Ohio Department of Health did not allow transgender individuals to change the gender marker on their birth record until a 2020 ruling from the U.S. District Court for the Northern District of Ohio (*Ray v. McCloud*, 507 F. Supp. 3d 925 (N.D. Ohio 2020)). In that case, the Court held that, if Ohio allowed gender marker corrections for other reasons, it could not discriminate solely against transgender individuals. In order to make such a correction, the Ohio Department of Health, which oversees birth records, requires an order from the probate court of the county where the person currently resides, where they were born, or where their mother resided while pregnant.

However, there is substantial uncertainty among the probate courts as to whether they have the authority to issue such orders. In recent years, the Second and Eleventh District Courts of Appeals (which together encompass eleven counties – Darke, Miami, Montgomery, Champaign, Clark, Greene, Lake, Geauga, Portage, Ashtabula, and Trumbull) have ruled that probate courts lack statutory authority to order the correction of a gender marker on a birth record (see *In re B.C.A.*, 2022-Ohio-2931, 223 N.E.3d 820 (11th Dist.); *In re Corr. of Birth Rec. of Adelaide*, 2022-Ohio-2053, 191 N.E.3d 530 (2d Dist.)). Both cases were appealed to the Ohio Supreme Court, which declined to decide both on the grounds that there was no adverse party challenging the previous rulings. As of January 2025, the law on this topic is very much in flux, and only about one-quarter of Ohio's 88 county probate courts are accepting applications for gender marker corrections.

Issues involving transgender individuals are likely to remain controversial in coming years, and the law will likely continue to evolve in 2025. Individuals, employers, and especially educational institutions need to remain vigilant to these changes in the law and continue to review and update their applicable policies to ensure they remain in compliance with the latest developments at the federal, state, and local levels.