

Proposal for process to legally change gender raises questions in Utah Senate hearing

By Dennis Romboy

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SALT LAKE CITY — A bill attempting to clarify the way courts handle petitions to legally change one's gender raised more questions than answers in a legislative hearing Monday.

Sen. Todd Weiler, R-Woods Cross, said he was surprised to learn Utah's longstanding law regarding name and gender changes lacked factors for judges to consider in making the decision. Some judges routinely grant the applications, while others routinely deny them. "I'm trying to bring some uniformity to the courts," he said.

SB138 establishes a list of factors, including a person filing a petition must live in the state for at least one year, not be involved in court action or on probation or parole, and not seek the change for fraudulent reasons or to avoid creditors.

The bill comes as the Utah Supreme Court considers several cases where judges have refused to grant gender change petitions. It heard arguments last month from two Utahns who claim judges have refused to grant their petitions to legally change the gender on their birth certificate to match their gender identity.

The state department of vital statistics changed the gender on 53 birth certificates last year, Weiler said.

Equality Utah spoke against the legislation during the Senate Judiciary, Law Enforcement and Criminal Justice Committee.

The bill unintentionally discriminates against transgender people because it says a person's sex is presumed to be the same as a person's gender unless it's changed on a birth certificate, said Clifford Rosky, a University of Utah law professor and Equality Utah board member.

"I don't think there was any ill intent here, but the text itself is very troubling," he said, adding a birth certificate is an important document for transgender people.

Rosky also argued that the one-year residency requirement is unconstitutional because it precludes someone born in Utah who lives outside the state from applying for a gender change. Someone born would have to move back for a year before petitioning the court under the current law, he said.

Weiler said he's unfairly being accused of preventing people from petitioning to change their gender. He said the residency requirement has been in the law since it was passed 43 years ago and that he's not aware of any lawsuit challenging that provision.

"I feel like I'm being blamed for what the Legislature did in 1975," he said.

The Utah Eagle Forum and the ACLU of Utah also disagreed over whether a judge "shall" or "may" grant the a petition after considering all the factors. The ACLU favors the word shall because it brings clarity. The Eagle Forum said the word may allow the judge to consider other issues that could come up.

Resident Delayne England testified against the bill, saying, "No matter what you do, you can't change someone's DNA."

Men or boys might use the law to change their gender to play on women's sports teams and would be able to use women's restrooms, she said.

The committee endorsed the bill 3-1 with the caveat that Weiler revise it before it reaches the Senate floor.

The senator agreed to do that but said he doubts he can resolve all the concerns.

"It's frustrating because I'm trying to make it better," he said. "I don't think I will be able to satisfy everyone."