



## Frequently Asked Questions: DMV Gender Marker Update Process

### Process for Updating Your Gender Marker at the DMV

#### How can I update my license or ID card to have the non-binary gender marker?

To update your gender marker, [get a replacement license or ID card](#) from the Virginia Department of Motor Vehicles (DMV), and then select the appropriate gender marker on [the DL 1P application form](#): male, female, or non-binary. You can select whichever gender marker you would like to appear on your license, regardless of what gender marker might be listed on any other identity documents you show the DMV. The cost of a replacement license or ID is \$20.

You can [get a replacement license or ID card online](#), or via mail when it is time to renew your license or ID card. If you would like to update your photo or your signature, you need to go in person to the DMV. Additionally, if you need [to change the name on your license](#) at the same time you update your gender marker, you will need to go in person to the DMV along with a court order, marriage certificate, or divorce decree to prove your legal name change.

**If you are getting a license or ID card for the first time**, you will need to [follow the normal process of getting your ID or license](#), and you can select the gender marker (male, female, or non-binary) that you want on your license or ID card.

#### When I update my gender marker, will I need to provide additional documentation to show the DMV?

You **do not** need any special forms and you **do not** need certification from a healthcare provider in order to update your gender marker. You can simply check (or self-select) the gender marker that is authentic to you on the application form.

#### What will the process be for minors?

There is no difference in the gender marker update process between minors and adults.

Anyone can update their gender marker, regardless of age, by selecting the gender marker on [the application form](#) (male, female, non-binary) that they would like to appear on their license or ID card.

#### Can I also update my Virginia birth certificate with a non-binary gender marker option?

Right now, male and female are the only gender marker options for Virginia birth certificates.

Thanks to a new law, you no longer need to present a sex change court order or proof of gender-affirming surgery in order to update the gender marker on your Virginia birth certificate. The new law also mandates Vital Records to issue a new birth certificate, as opposed to a corrected or “amended” version (showing old information).

In order to update the gender marker on your Virginia birth certificate to male or female, you will only need [a form, completed by a healthcare provider](#). This simple 1-page form states that you have undergone clinically appropriate treatment for gender transition. What clinically appropriate treatment looks like is between you and your healthcare provider (for example: change in gender expression or gender role, counseling, hormone replacement therapy, gender-confirming surgeries, or other treatments). The new form does not ask for you or your provider to explain the type of care. For more information on the process, go to the [Virginia Office of Vital Records' website](#).

### **Who can apply for a state ID or license with a non-binary gender marker in Virginia?**

Anyone who needs a non-binary gender marker option can apply for a license or ID card.

### **How will the non-binary gender marker appear on Virginia IDs and licenses?**

The non-binary gender marker will appear as an “X” on the license or ID card. Male is listed as “M,” and female is listed as “F.”

### **What are the gender marker options for applicants for Virginia IDs or licenses?**

The gender marker options are male, female, and non-binary.

### **How will this process be affected by the COVID-19 pandemic?**

You can find up-to-date information on how the DMV is operating during the COVID-19 pandemic [by clicking here](#).

## **General Questions**

### **Who are Non-Binary People?**

35% of transgender people identify as gender non-binary, meaning they do not identify exclusively as being male or female. Non-binary people are not confused about their gender

identity or following a new fad. Non-binary identities have been recognized for millennia by cultures and societies around the world.

### **Why is a non-binary gender marker important?**

In a survey of transgender individuals, 32% reported being asked to leave, denied benefits, verbally harassed, or assaulted when they showed an ID with a name or gender that did not match. Two-thirds (67%) of transgender people had an ID that did not accurately reflect their gender identity. Accurate gender markers on identity documents will improve transgender Virginians' access to public spaces and resources, as well as reduce the risk of violence, discrimination, and harassment as they go about daily life. (Movement Advancement Project, 2020) (National Center for Transgender Equality U.S. Transgender Survey, December 2016)

### **What if my new ID no longer matches the gender marker on my other IDs and documents?**

Having mismatched identity documents is not against the law in Virginia or federally, however it may cause some confusion or raise eyebrows when interacting with officials or applying for services.

### **Are non-binary gender markers compliant with federal and international laws?**

Yes. While the REAL ID Act requires gender to be listed on identification cards and driver's licenses, it does not specify what the gender options need to be. The Department of Homeland Security has specifically stated that how to list gender is left up to the discretion of individual states. Adding a non-binary gender marker to Virginia IDs is also compliant with international aviation standards. The International Civil Aviation Association (ICAO), an agency of the United Nations, uses an internationally recognized passport format that allows for M, F, or X gender markers. For more information about travelling while transgender or non-binary, [check out this article](#). When buying plane tickets, use gender marker that's on the ID you plan to present at the airport.

### **How will the non-binary gender marker be used by local law enforcement, including jails?**

Law enforcement and corrections agencies are not required to address, search, house, or otherwise treat individuals according to the gender on their state ID. Increasingly, agencies across the country recognize that the best practice is to treat individuals according to their gender identity. In determining whether someone should be housed with women or men, or should be searched by female or male staff, the best practice is to start by asking the individual what they believe would be safest for them. For more information, see the following resources from the National Center for Transgender Equality:

- [Police Department Model Policy](#)
- [Policies to Increase Safety and Respect for Transgender Prisoners](#)

## **Will an ID with a non-binary gender marker cause issues accessing the healthcare I need?**

Major healthcare systems, such as the Department of Veterans Affairs and VCU Health allow for non-binary gender markers in their medical records. This is consistent with improved industry standards around medical records for transgender patients by health systems and insurance companies.

Additionally, the Virginia Values Act prohibits discrimination against transgender and non-binary people in healthcare settings. For more information about ensuring access to healthcare, read the NCTE's [Health Coverage Guide](#).

## **What about health insurance companies?**

Still, many health insurance companies do not yet accommodate a non-binary gender marker in their system. However, it is illegal for state-regulated health insurance plans (including Medicaid) to deny transgender and non-binary people health care because the gender associated with the prescribed treatment does not match their gender identity or sex assigned at birth. People who receive health insurance through their employer are also protected against gender identity discrimination by state and federal laws. And as another federal protection, thanks to the recent Supreme Court case on employment, it is likely like the Affordable Care Act's sex discrimination protections will be interpreted to include LGBTQ people.

## **Will an ID with a non-binary gender marker affect my ability to access housing, financial institutions, or employment?**

Discrimination based on your sex and gender identity are against the law in Virginia so it should not affect your access to services or employment, however it may cause some confusion or raise eyebrows when interacting with officials or applying for services that are not familiar with a non-binary gender marker.

## **What about sex/gender-specific programs and shelters?**

Transgender and non-binary people generally need to access services, programs, and shelters that most align with their gender identity. Under the Virginia Values Act, no place of public accommodation, including shelters or other government services, can discriminate against you due to your gender identity. Trans women must be able to access female shelters, trans men

must be able to access male shelters, and non-binary people must be able to access the shelter that is best for their individual situation.

### **How will an ID with a non-binary gender marker affect my school interactions and records?**

School staff should address you with the name and pronouns you go by, regardless of what is listed on your ID or license. School records should be confidential and disclosure of the gender marker should be on a need-to-know basis.

Virginia laws also protect trans and non-binary students from discrimination in schools and universities, including misgendering, using the wrong name, denying access to a restroom that best aligns with your gender identity, or otherwise creating an unequal educational experience.

### **There are many instances where employers and other agencies collect legal gender information from employees and clients. What can people with a non-binary gender marker option do when they are only presented with two legal gender options?**

Unfortunately federal agencies (the Social Security Administration, IRS, State Department, etc.) only allow binary choices - for now. We hope that this will change, and there has been [litigation on it by Lambda Legal](#). For now, we advise you to stick with the default or pick the option you feel most comfortable with. We are not aware of issues when a person has a non-binary gender marker on their state ID and a binary gender marker federal ID.

From an employment perspective, it's important for employers to know that an employee is nonbinary, even if federal government has a binary gender marker for you. Beyond matching the employee's information for payroll and taxes (which should match binary federal records), employers should make sure that the non-binary employee is treated with respect at the workplace and by colleagues.

Additionally, the Equal Employment Opportunity Commission has advised that employers note non-binary employees' gender in the "comments" section of the EEO-1 form. This applies whether or not the non-binary employee has a non-binary gender marker on their ID. [Click here to read more.](#)

**Sources:**

[National Center for Transgender Equality](#)

[Whitman-Walker Health Legal Services](#)

[Virginia Department of Motor Vehicles](#)

[Virginia Office of Vital Records](#)

[AFAR](#) magazine

**Collaborators**

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**About Equality Virginia**

Equality Virginia (EV) is the leading advocacy organization in Virginia seeking equality for lesbian, gay, bisexual, and transgender people. EV believes in a truly inclusive Commonwealth where all are equally valued, regardless of sexual orientation or gender identity, and a Virginia that is a safe, welcoming, and equal place for lesbian, gay, bisexual, and transgender individuals and their families to live, work, and play.

For more information, check out [www.equalityvirginia.org](http://www.equalityvirginia.org) or reach out to [info@equalityvirginia.org](mailto:info@equalityvirginia.org).

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