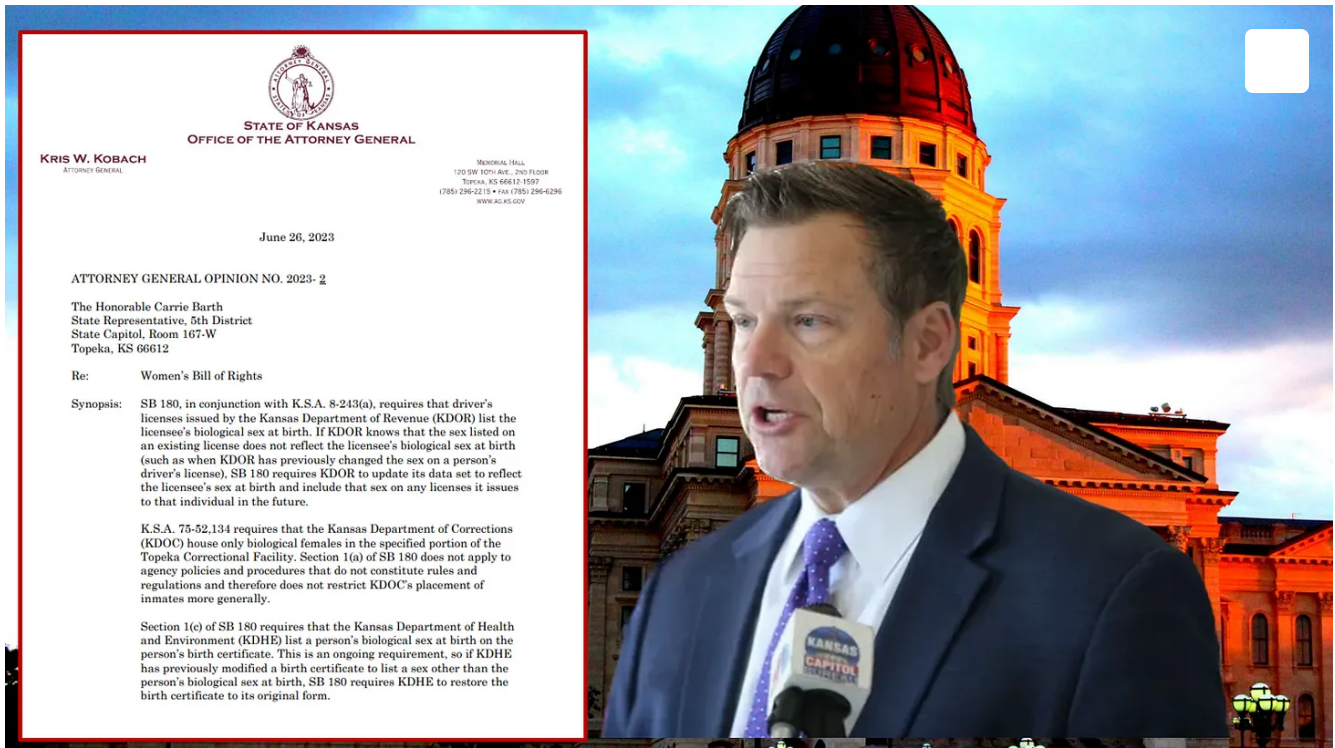
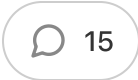
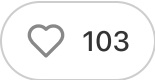


Kansas, Other States Threaten To Undo Legal Gender Changes; What To Do

Kansas, Montana, North Dakota, and Tennessee all have passed laws "defining sex" to exclude trans people. Now Kansas intends to revert all gender changes back legally. Here's what you can do.



ERIN REED
JUN 27, 2023



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In a shocking announcement, Attorney General Kris Kobach of Kansas released an official opinion on Monday that will threaten transgender people's legal documents in the state. If Kobach's opinion is enforced, transgender individuals who had moved ahead and legally corrected their birth certificates and driver's licenses now may have their corrections reversed. The wrong gender marker may be placed on all legal documents provided by the state.

Kansas Senate Bill 180, passed in April, defines sex as "biologically determined at birth." Kobach interpreted this to mean that state agencies must now *revert* the gender markers on driver's licenses and birth certificates for transgender people in the state, even if they were changed legally in the past. This is an unprecedented move; transgender people who have changed their legal documents have often seen those changes as safe from legal interference once the process has been completed.

Kansas is not the only state that could begin taking such steps. North Dakota, Tennessee, and Montana have also passed similar bills this year. There is concern that these states may follow Kansas' lead in enforcement, leaving transgender people uncertain about how to proceed and protect their legal gender changes.

You can see the relevant portion of Kobach's opinion on drivers licenses and birth certificates here:

Consequently, we conclude that section 1(a) of SB 180, in conjunction with K.S.A. 8-243(a), requires KDOR to list the licensee's "biological sex, either male or female, at birth" on driver's licenses that it issues.

This raises questions about existing driver's licenses that list a gender identity different than the person's biological sex at birth. Under section (1)(c) of SB 180, "any state agency . . . that collects vital statistics . . . for the purpose of gathering accurate public health, crime, economic or other data shall identify each individual who is part of the collected data set as either male or female at birth." We believe that KDOR is subject to this provision. Although "vital statistics" is not defined in SB 180, the term is frequently used to refer to data about births,⁴ and at minimum KDOR collects licensees' birth dates.⁵ Thus, references to sex or gender in the "data set" maintained by KDOR must reflect a licensee's biological sex at birth.⁶ A driver's license is not simply a physical card issued to a licensed driver; it is reflection of a data set that is continually maintained and updated to ensure its accuracy.⁷ Updated addresses and photographs exemplify the nature of the driver's license as a data set that is maintained through time. Accordingly, if KDOR knows that the sex listed in its data set does not reflect the licensee's biological sex at birth (such as when KDOR has previously changed the sex on a person's driver's license), SB 180 requires KDOR to update its data set to reflect the licensee's sex at birth and include that sex on any licenses it issues to that individual in the future.⁸

Attorney General Kris Kobach's opinion that drivers licenses must be rolled back.

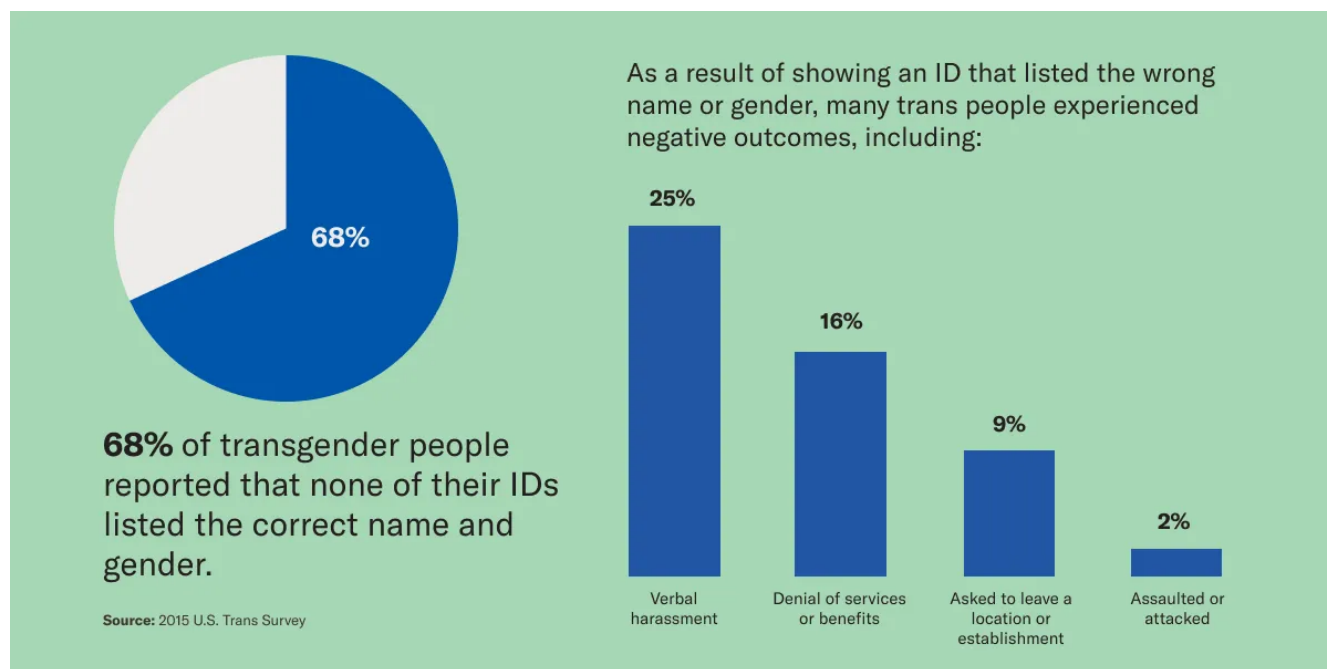
As with driver's licenses, this raises questions about birth certificates that have previously been modified by KDHE to list a gender identity different than the person's biological sex at birth. Section (1)(c) of SB 180 indicates an ongoing requirement—the "data set" maintained by the agency "shall identify each individual" who is part of that data set as male or female at birth. Accordingly, if KDHE has previously modified a birth certificate to list a sex different than the individual's sex at birth, SB 180 requires KDHE to change the birth certificate back to reflect the individual's sex at birth.

Attorney General Kris Kobach's opinion that birth certificates must be rolled back.

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The consequences of rolling back transgender people’s legal markers would be disastrous and fraught with difficulty. The state would have to compile a list of people who have changed their gender marker and determine the reason that each change was made, otherwise it would risk overturning gender markers for intersex people as well—a risk they may decide to take. It would potentially make it so that transgender people stopped by police will come under extra scrutiny for not having a matching gender marker or gender presentation. Likewise, it could affect the way transgender people are treated in situations where they do not wish to disclose their gender identity, such as presenting it in restaurants, bars, or at entertainment venues.

Furthermore, transgender people who are made to have incorrect gender markers are much more likely to experience harassment and abuse. For transgender people whose ID’s listed the wrong gender, a **third of them** reported harassment or abuse happening directly from the mismatch. This ranged from verbal harassment to denial of services and even assault. Correct gender markers **reduce suicide risk by up to 50%** for transgender people - it is an essential part of transition for many.



[ACLU Report on US Transgender Survey](#)

Although Kansas is the first state where there is potential action to reverse changes to gender markers, it is not alone. In Montana, **HB 458** gained notoriety when transgender Rep. Zoey Zephyr stood up in protest after being silenced and denied the opportunity

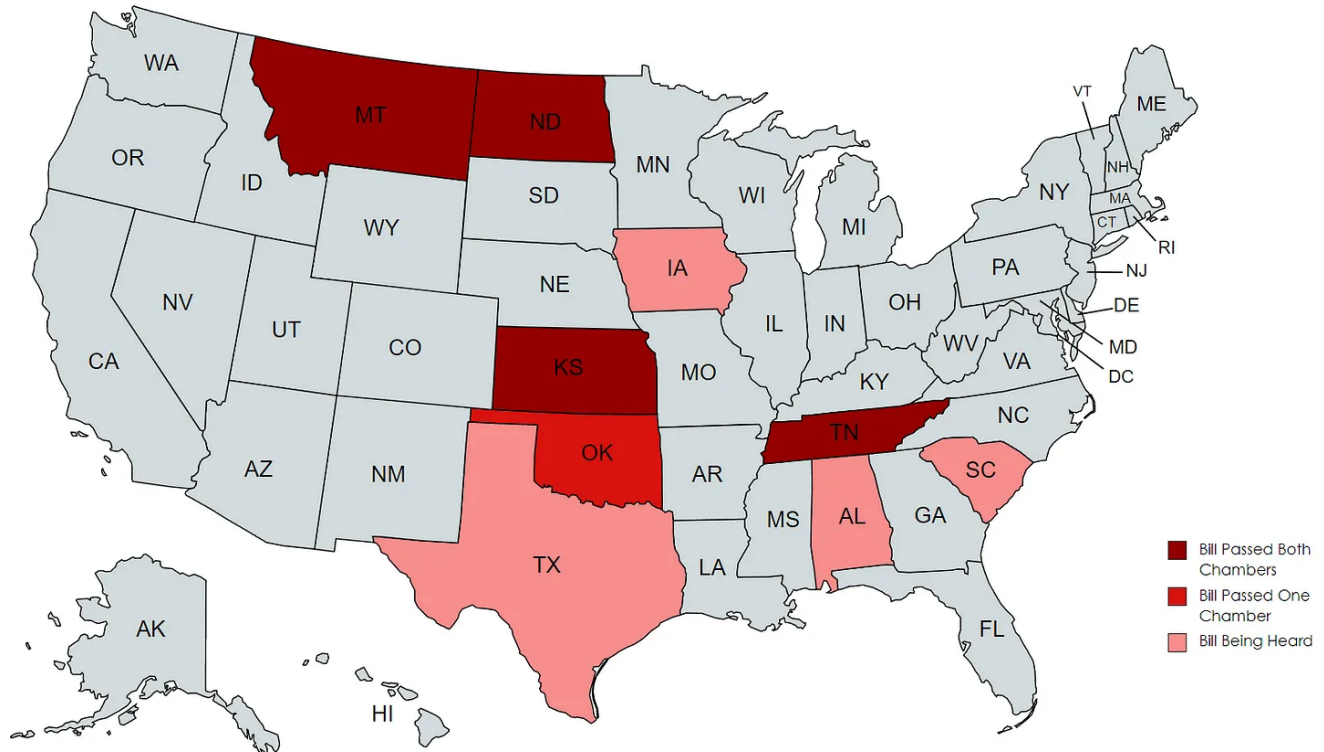
to speak on the bill. This legislation defines sex as binary and eliminates protections for transgender people in 41 sections of code. Similarly, Tennessee and North Dakota have passed comparable laws. This has prompted organizations, including [The Name Change Project](#), to hold expedited legal clinics to assist transgender individuals in changing their IDs ahead of the Tennessee law taking effect on July 1.

Many transgender people may be concerned over what to do next if they live in these states. Reading Kris Kobach's opinion, it is possible to see some ways that the damage can be mitigated in the immediate term. According to [The Associated Press](#), Kobach emphasized that transgender individuals would not have to relinquish documents they already possess, but the documents would not be legally correct. This also applies to birth certificates. Instead, any new copies of birth certificates or driver's licenses issued in the future would reflect their original gender markers. Consequently, there is an avenue for transgender individuals to safeguard themselves in the short term in these states:

- If you live in states that have passed or could pass these laws and have not had your markers changed, it may be prudent to **get gender marker changes done now**. Contact your local LGBTQ+ organization to learn how - if you are in Tennessee, the [Name Change Project](#) may be your best bet until July 1st, 2023.
- If your gender marker is already changed, **get several copies of your birth certificate**. Kobach points out that you would not be required to surrender old copies, and so you can likely continue to use these for the rest of your life as birth certificates do not typically expire.
- If your drivers license is coming up for renewal, **renew your drivers license before the law's deadline**. This will give you the maximum amount of time you can have a correct marker on your drivers license.
- If you are affected by these laws, **contact your local LGBTQ+ organizations or legal organizations**. These organizations will be looking for plaintiffs.

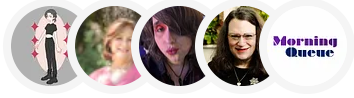
While these laws only passed in three states this year, several other states considered passing similar legislation. It is anticipated that more states will pass laws like this next year. This map shows the legislative progress on "define sex" laws this year - all states in

any shade of red on this map are highly at risk of passing a similar law next legislative cycle:



Legislation that targets transgender adults legal documents is something that many Republican supermajority states have tried before. The calculated maneuver of redefining sex to systematically exclude transgender individuals is an attempt to sidestep legal challenges. These laws represent a clear attempt to move beyond targeting transgender youth and the beginning of the campaign to eradicate transgender adults from all legal protections. Taking steps now may delay the impact until favorable court victories can occur.

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15 Comments



Write a comment...



Cole 11 hr ago  Liked by Erin Reed

Super worried this will likely spread to South Dakota. I've procrastinated with my document adjustments, but this transphobic bane spread is gonna get me off my ass to have it done.

 LIKE (10)  REPLY ...



Célia Vytrac 11 hr ago

I need to renew my driver's license before July. Chances of getting a court order before then are slim.

 LIKE (7)  REPLY ...

1 reply

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