

# WHAT COUNTS AS LEGAL SEX/GENDER AND WHO DECIDES?

## Policy analysis of US legal gender marker changes on identification documents

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### BACKGROUND

- Genetic determinism – the use of genetics to explain behavioral and health outcomes – functions as a limiting factor to transgender and nonbinary people’s healthcare
- Frequently used as justification for eugenic practices (sterilization, experimental medical treatments)

#### A Glimpse of Eugenics History and Queer People

- Family studies in the 1900s labeled transgender people as “feeble-minded”
- Trans people were involuntarily committed after crime of cross-dressing and consequent insanity verdicts
- Therapists at the American Institute of Family Relations measured/enforced strict gender norms using the Terman-Mills Male-Female Test
- Proposed “treatments” for “transgenderism” included experimental hormonal treatments, electric shock therapy, sterilization, and castration
- State laws regulating legal gender marker changes multiplying at fast pace, mostly limiting access through extrapolating biological definitions of sex to define gender

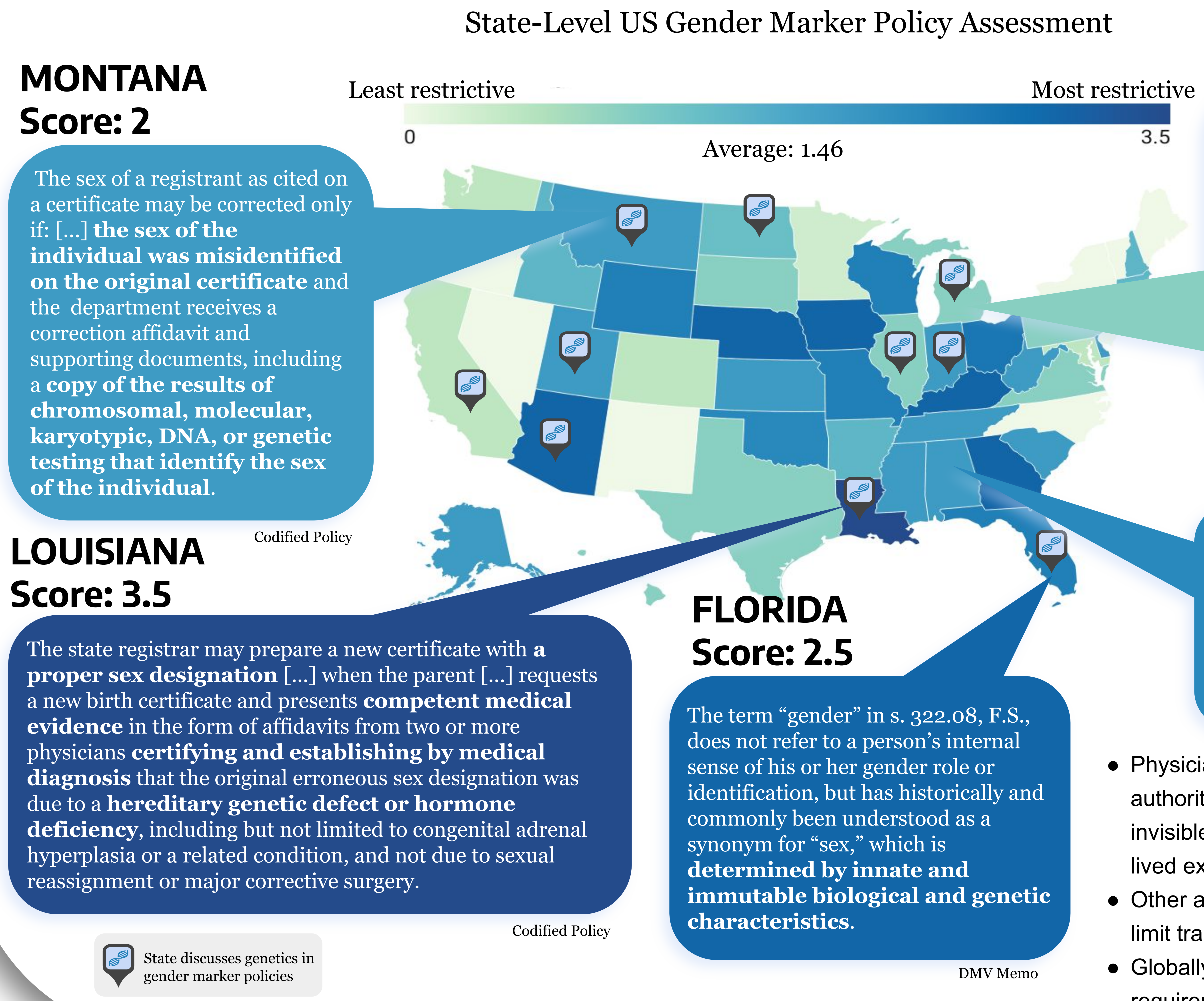
### OBJECTIVE

Investigate how the language used in state-level legal gender marker change policies calls on the master discourses of eugenics, medicalization, and genetic determinism to limit trans individuals’ reproductive freedom.

### METHODOLOGY

- Analysis of policies collated by the Movement Advancement Project (MAP) and the National Center for Transgender Equality, state government websites, and/or Westlaw.
- Data collection occurred between January and February of 2023. The dataset was reviewed and updated in March of 2024.
- State policies were rated on 4 measures, with total scores ranging from 0 - 3.5 (least to most restrictive)
  - whether the policy references “genetics” or “chromosomes”
  - if the state requires provider verification surgical procedure or other “appropriate treatment”
  - if the state requires a surgical procedure
  - if there is an “X” gender option

## Definitions of sex reduce transgender people to their biology and a medicalized model of transgender identity limits individuals’ capacity to have children.



### DISCUSSION

The translation of genetics into public policy poses **an inherent risk to transgender people** by creating additional pathways for oppression and a narrow lens of the trans experience.

- Physicians and the state are both designated as the ultimate authority in defining someone’s gender, rendering trans individuals invisible and without autonomy to determine their identity based on lived experience
- Other anti-trans legislation utilizes biological definitions of sex to limit trans people’s access to healthcare and public spaces
- Globally, policy that require sterilization for legal gender marker requirement are being dismissed

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