



STATE OF NEW JERSEY
OFFICE OF THE ATTORNEY GENERAL



COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

June 28, 2021

Director Christopher A. Wray
FBI Headquarters
935 Pennsylvania Avenue, NW
Washington, D.C. 20535-0001

Dear Director Wray:

We, the undersigned Attorneys General, write today to urge the FBI to act swiftly to add a non-binary¹ gender designation to its Uniform Crime Reporting (UCR). We understand that the FBI has begun the process of considering whether to make changes to address the current lack of a non-binary gender designation in the UCR system. We believe that doing so would help protect non-binary individuals' interests and dignity by affirming their gender identity, and enhance the accuracy of federal and state crime data collection. We encourage you to move expeditiously to add a non-binary gender designation to the UCR system to facilitate more accurate data collection aligned with our state policies and practices and allow the States to affirm non-binary individuals' gender identities when collecting and sharing crime data. We also ask that you keep us apprised of your progress.

For context, we welcome the actions taken in the early days of the Biden-Harris Administration to affirm the rights of gender-diverse individuals, who are too often marginalized and made to feel invisible, despite facing high rates of harassment and violence. President Biden began to address discrimination based on gender identity in the first days of his Administration in the Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation.² The Executive Order recognizes that as a result of the Supreme Court's reasoning in *Bostock v. Clayton County*,³ a broad range of federal anti-discrimination laws bar discrimination on the basis of gender identity and sexual orientation. Unfortunately,

¹ Individuals whose gender is not male or female commonly use the term "non-binary" to refer to their gender identity. See Nat'l Ctr. for Transgender Equality, *Understanding Non-Binary People: How to Be Respectful and Supportive* (Oct. 5, 2018), <https://transequality.org/issues/resources/understanding-non-binary-people-how-to-be-respectful-and-supportive>.

² Executive Order 13988, 86 Fed. Reg. 7023 (Jan. 25, 2021).

³ 140 S. Ct. 1731 (2020).

such discrimination remains deeply entrenched in government operations, often through legacy processes that have not kept pace with today’s understanding of gender identity.⁴

As law enforcement officers who frequently interact with the FBI, we welcome the steps that the FBI has been taking toward adding a non-binary gender designation to the UCR system. The FBI has been providing crime statistics for use by law enforcement, criminal justice scholars, researchers, the media, and the public since 1930.⁵ To generate these statistics, the FBI relies on voluntary submission of crime data to its UCR program from law enforcement agencies across the country, including city, university and college, county, state, tribal, and federal law enforcement agencies.⁶

As you know, the FBI’s UCR system currently allows only two gender designations for individuals whose information is submitted in connection with a reported crime: male or female. As a result, law enforcement agencies will encounter errors if they attempt to submit crime incident data in which an individual’s gender has been coded as non-binary. This discourages law enforcement agencies from collecting data that accurately reflects the gender of non-binary individuals. Those that choose to do so in spite of this obstacle are saddled with the extra cost of revising their data prior to submitting it to the FBI, or underreport crime incidents due to the UCR’s rejection of data containing gender codes other than “M” and “F.”

This is more than a ministerial inconvenience, and we urge the FBI to make the “X” gender code, which indicates that a person is non-binary, available in the system as soon as possible. Refusing to recognize non-binary individuals’ gender identity in crime reporting is an affront to their dignity and can be harmful to their mental health and well-being. Non-binary individuals have described the experience of having to select a male or female gender designation as “disheartening, dysphoria inducing, and . . . dehumanizing,”⁷ and as forcing them to “collude in their own social invisibility.”⁸ Studies have shown that gender affirmation—such as permitting individuals to use their preferred gender marker on identification documents—may help reduce adverse health outcomes among transgender and non-binary individuals, including depression, anxiety, and psychiatric distress.⁹

⁴ Some transgender individuals identify as male or female, while others identify as non-binary with respect to their gender. The non-binary gender designation that we advocate for is not a proxy indicator for a victim’s transgender status. Nor does the non-binary gender designation indicate whether a hate crime or incident was motivated by anti-transgender bias or bias based on gender nonconformity, which the UCR currently tracks through its bias categories.

⁵ See Federal Bureau of Investigation, Services, <https://www.fbi.gov/services/cjis/ucr>.

⁶ See *id.*

⁷ See Sandy E. James, et al., *The Report of the 2015 U.S. Transgender Survey*, at 85 (Dec. 2016), <https://transequality.org/sites/default/files/docs/usts/USTS%20Full%20Report%20-%20FINAL%201.6.17.pdf>.

⁸ See BBC, *Christie Elan-Cane Loses Legal Challenge Over Gender-Neutral Passports*, BBC News (Mar. 10, 2020), <https://www.bbc.com/news/uk-51823318>.

⁹ See, e.g., Arjee Restar, et al., *Legal Gender Marker and Name Change Is Associated with Lower Negative Emotional Response to Gender-Based Mistreatment and Improve Mental Health Outcomes Among Trans Population*, *SSM – Population Health* 11 (2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7229467/>; Ayden Scheim, et al., *Gender-Concordant Identity Documents and Mental Health Among Transgender Adults in the USA: A Cross-Sectional Study*, *The Lancet* (2020), [https://www.thelancet.com/journals/lanpub/article/PIIS2468-2667\(20\)30032-3/fulltext](https://www.thelancet.com/journals/lanpub/article/PIIS2468-2667(20)30032-3/fulltext).

In recent years, states have begun to recognize the harms that transgender and non-binary individuals suffer when they are unable to obtain identification documents that accurately reflect their gender identity, including harassment, denial of benefits and services, and even physical assault, on top of psychological harm.¹⁰ In response, twenty-two states and the District of Columbia have added an “X” gender marker to the available gender options on driver’s licenses.¹¹ The lack of a non-binary gender designation in the UCR creates complications for law enforcement in these states, as they have no way to input an “X” gender marker into the UCR. Furthermore, adding a non-binary gender option to the UCR system will improve the accuracy of UCR data by, among other things, providing information about the criminal victimization of the non-binary population to law enforcement, policymakers, social service providers, and communities.

We welcome President Biden’s commitment to protecting the rights of all individuals, regardless of their gender identity, including when it comes to their identification in government documents, and we want to reiterate how critical it is that the FBI take action on this front. It is possible that non-binary individuals may choose not to report crimes if they know they will be mis-gendered in the process.¹² And, given that gender non-conforming individuals may be at a higher risk for violence victimization than cisgender individuals,¹³ it is especially important that we eliminate barriers to the reporting of crimes against them.

For these reasons, we ask that the FBI make our requested change to the UCR program as quickly as possible and keep us apprised of its timeline for doing so.

Respectfully,

¹⁰ See Sandy E. James, et al., *The Report of the 2015 U.S. Transgender Survey*, at 85-89 (Dec. 2016), <https://transequality.org/sites/default/files/docs/usts/USTS%20Full%20Report%20-%20FINAL%201.6.17.pdf>.

¹¹ Most of the signatories have or will likely soon have the “X” gender marker option on state-issued driver’s licenses. See Movement Advancement Project, Identity Document Laws and Policies, https://www.lgbtmap.org/equality-maps/identity_document_laws (Arkansas, California, Colorado, Connecticut, Hawai’i, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Hampshire, New Jersey, New Mexico, Oregon, Pennsylvania, Rhode Island, Utah, Vermont, Virginia, Washington, District of Columbia). In New York, the Gender Recognition Act, S.4402-B/A.5465-D, signed into law on June 24, 2021, created a non-binary “X” sex designation on driver’s licenses. Office of Governor Andrew M. Cuomo, *Governor Cuomo Signs the Gender Recognition Act* (June 24, 2021), <https://www.governor.ny.gov/news/governor-cuomo-signs-gender-recognition-act>. Although Delaware has no official law or policy mandating the availability of an “X” gender designation on driver’s licenses, the Delaware Department of Motor Vehicles allows individuals to request and receive an “X” gender designation on their driver’s licenses. In 2019, Illinois passed Pub. Act 101-0513, which will make a non-binary gender designation available on driver’s licenses once implemented.

¹² See Samantha Schmidt, *U.S. Passports Offer Only ‘M’ or ‘F’ Gender Categories. A New Bill Would Require a Gender-Neutral ‘X,’ Too*, Wash. Post (Feb. 24, 2020), <https://www.washingtonpost.com/dc-md-va/2020/02/24/passports-gender-neutral-x-marker/> (noting that some individuals who feel their IDs do not match their gender identity choose to avoid situations that require presenting identification).

¹³ See Michelle M. Johns, *Transgender Identity and Experiences of Violence Victimization, Substance Use, Suicide Risk, and Sexual Risk Behaviors Among High School Students—19 States and Large Urban School Districts, 2017*, 68 *Morbidity and Mortality Weekly Report* 67-71 (2019), <https://www.cdc.gov/mmwr/volumes/68/wr/mm6803a3.htm>.

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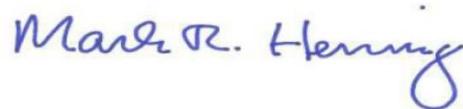
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