**§ 4138. Birth certificate; new certificate in case of subsequent marriage of unwed parents; adoption; adjudication of parentage; change of name o**f registrant or parent; gender transition of registrant or parent. 1. A new certificate of birth shall be made whenever:

(a) proof is submitted to the commissioner that the previously unwed parents of a person have intermarried subsequent to the birth of such person; or,

(b) notification is received by, or proper proof is submitted to, the commissioner from or by the clerk of a court of competent jurisdiction or the parents, or their attorneys, or the person himself, of a judgment, order or decree relating to the parentage; or,

(c) notification is received by, or proper proof is submitted to, the commissioner from or by the clerk as aforesaid of a judgment, order or decree relating to the adoption of such person. Such judgment, order or decree shall also be sufficient authority to make a new birth certificate with conforming change in the name of such person on the birth certificate of any of such person's children under the age of eighteen years whose record of birth is on file in the state health department; or,

(d) proper proof is submitted to the commissioner by the parents, or their attorneys, or the person himself or his attorney, of a judgment, order or decree relating to a change of name granted by a court of competent jurisdiction. Such judgment, order or decree shall also be sufficient authority to make a new birth certificate with conforming change in surname for any of such person's children under the age of eighteen years whose record of birth is on file in the state health department; or,

(e) the certificate of birth of a child born out of wedlock as defined in paragraph (b) of subdivision one of section four thousand one hundred thirty-five of this article has been filed without entry of the name of the signatory other than the person who gave birth and the commissioner thereafter receives the acknowledgment of parentage pursuant to section one hundred eleven-k of the social services law or section four thousand one hundred thirty-five-b of this article executed by the person who gave birth and the other signatory which authorizes the entry of the name of such other signatory, and which may also authorize a conforming change in the surname of the child; or

(f) any person born in New York state who submits an application to change the gender on the birth certificate and an affidavit attesting under penalty of perjury that the request for a change of gender to (female, male, or X) is to conform the person's documents and records to the person's gender identity and is not made for any fraudulent purpose. A sex designation of X shall not be a required sex designation of any individual. Upon receipt of the documentation, the commissioner shall establish a new birth certificate reflecting the gender stated in the application and any change in name, if accompanied by a court order for a change of name. If such application is made on behalf of a person younger than seventeen, such affidavit shall be signed by the person's parent, legal guardian, mental health or medical provider, or social services provider.

2. (a) On every new certificate of birth made pursuant to this section, a notation that it is filed pursuant to section four thousand one hundred thirty-eight of the public health law shall be entered thereon. Notwithstanding other provisions of this article, when a child is adopted by an unmarried man or woman, the new certificate shall, if the adopting parent so requests, reflect the fact that it is a single parent adoption.

(b) Notwithstanding other provisions of this article, when a petition for adoption by two persons has been duly filed, and one of the petitioners dies before the adoption is complete, such deceased petitioner's name shall be included on the new certificate as a parent, if such adoption is completed, unless otherwise requested by the other petitioner.

(c) If the original certificate of birth contains fictitious names of either or both parents, a new certificate shall not be prepared until notification is received by, or proper proof is submitted to, the commissioner by the clerk of a court of competent jurisdiction or the parents or their attorney, or the person himself, or his attorney, of a judgment, order or decree relating to parentage.

3. (a) When a new certificate of birth is made the commissioner shall substitute such new certificate for the certificate of birth then on file, if any, and shall send the registrar of the district in which the

birth occurred a copy of the new certificate of birth. The registrar shall make a copy of the new certificate for the local record and hold the contents of the original local record confidential along with all papers and copies pertaining thereto. It shall not be released or otherwise divulged except by order of a court of competent jurisdiction or pursuant to section four thousand one hundred thirty-eight-e of this title.

(b) Thereafter, when a verified transcript or certification of birth of such person is issued by the registrar, it shall be based upon the new certificate, except when an order of a court of competent jurisdiction shall require the issuance of a verified transcript or certification based upon the original local record of birth or application is made pursuant to section four thousand one hundred thirty-eight-e of this title.

4. The commissioner may make a microfilm or other suitable copy of the original certificate of birth and all papers pertaining to the new certificate of birth. In such event, the original certificate and papers may be destroyed. All undestroyed certificates and papers and copies thereof shall be confidential and the contents thereof shall not be released or otherwise divulged except by order of a court of competent jurisdiction or pursuant to section forty-one hundred thirty-eight-c, forty-one hundred thirty-eight-d or forty-one hundred thirty-eight-e of this title.

5. Thereafter, when a certified copy or certified transcript of the certificate of birth of such a person, or a certification of birth for such person is issued, it shall be based upon the new certificate of birth, except when an order of a court of competent jurisdiction shall require the issuance of a copy of the original certificate of birth or application is made pursuant to section four thousand one hundred thirty-eight-e of this title.

6. When the commissioner shall receive proper proof or notification pursuant to paragraphs (a), (b), or (c) of subdivision one of this section relating to a person born outside this state, such proof or notification shall be forwarded to the appropriate registration

authority for the place of birth.

7. Whenever the commissioner makes a new birth certificate for any person pursuant to the provisions of subdivision one of this section, he shall forward to such person, if eighteen years of age or more, or to the parents of such person, a certified copy, a certified transcript or a certification of birth, whichever he deems appropriate under the circumstances, without making any charge therefor.

8. An adopted person eighteen years of age or older, or the birth parent or parents, may submit to the registrar a notice of change of name and/or address and such information shall be attached to the original birth certificate of the adopted person.