

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 1899 (Cervantes)
Version: April 1, 2024
Hearing Date: June 11, 2024
Fiscal: Yes
Urgency: No
ID

SUBJECT

Courts

DIGEST

This bill requires that questionnaires that courts and individual judges may use for the jury selection process be respectful and inclusive of all prospective jurors' gender identities, as specified, and makes changes to select provisions of the Civil Code to make the code's text gender neutral.

EXECUTIVE SUMMARY

Gender-neutral language is important for reducing discrimination of and bias toward women and Lesbian, Gay, Bisexual, Transgender, and Queer (LGBTQ) individuals. Gender-neutral language and the use of an individuals' proper pronouns helps LGBTQ people who identify as a gender other than male or female or the gender they were assigned at birth feel seen and included, and reduces psychological distress from misgendering. One context in which an individual's proper pronouns and gender-neutral language is important is the context of jury selection for jury trials. For jury selection, courts often ask jurors for personally-identifying information, and refer to prospective jurors in a variety of ways in conducting the process. While courts and judges are not required to utilize questionnaires for this process, they may do so. This bill requires questionnaires used for juror qualification and identification, or to assist with voir dire, if such a questionnaire is used by a court, to be gender neutral and ask for a prospective juror's preferred pronouns and the manner by which they would like to be addressed. It also requires Judicial Council to create a template questionnaire that complies with the bill's gender neutral requirements. Lastly, AB 1899 makes a variety of changes to different provisions of the Civil Code to make those provisions gender neutral. AB 1899 is sponsored by the California Legislative LGBTQ Caucus and supported by Equality California. The Committee has received no timely opposition.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the Trial Jury Selection and Management Act to regulate the process by which California courts maintain a jury selection system and select jurors. (Code of Civ. Proc. § 190 et seq.)
- 2) States that trial by jury is a cherished constitutional right, and that jury service is an obligation of citizenship. (Code of Civ. Proc. § 191.)
- 3) States that it is the policy of the state that all persons selected for jury service must be selected at random from the population of the area served by the court; that all qualified persons have an equal opportunity to be considered for jury service in the state, as specified, and that it is an obligation of all Californians to serve as jurors when summoned for that purpose. (Code of Civ. Proc. § 191.)
- 4) Provides that each county must have a jury commissioner appointed by the majority of judges of the superior court to be responsible for managing the jury system under the general supervision of the court. (Code of Civ. Proc. § 195.)
- 5) Provides that the jury commissioner shall inquire to the qualifications of persons on prospective juror lists who may be summoned for service, and that the commissioner or the court may require any person to answer, under oath, all questions regarding the person's qualifications and ability to serve as a prospective juror. (Code of Civ. Proc. § 196.)
- 6) Provides that all persons selected for jury service are to be selected at random, from a source or sources inclusive of a representative cross section of the population of the area served by the court, including, but not limited to: Department of Motor Vehicle records, voting rolls, tax filer lists, customer mailing lists, telephone directories, and utility company lists. (Code of Civ. Proc. § 197.)
- 7) Specifies that those qualified to be prospective jurors are all those except: persons who are not United States citizens; persons less than 18 years old; persons who are not domiciled in California and are not residents of the jurisdiction in which they were summoned; persons who have been convicted of malfeasance in office and have not had their civil rights restored; persons who do not have sufficient knowledge of English; persons who are serving as jurors on grand or trial juries; persons who are incarcerated; persons who have been convicted of a felony and are currently on parole, supervision, felony probation for a felony; and persons who are required to register as a sex offender pursuant to a felony conviction under Penal Code Section 290. (Code of Civ. Proc. § 203.)

- 8) Specifies that, if a jury commissioner requires that a person complete a questionnaire, the questionnaire only ask questions related to juror identification, qualification, and ability to serve as a prospective juror. Specifies that such a questionnaire shall only be used for qualifying prospective jurors and for management of the jury system, not for assisting in the voir dire process of selecting jurors for specific cases.
 - a) Specifies that a court may require prospective jurors to complete additional questionnaires as may be deemed relevant and necessary for assisting the voir dire process, or to ascertain whether a fair cross section of the population is represented.
 - b) Specifies that a trial judge may direct a prospective juror to complete additional questionnaires as proposed by counsel in a particular case to assist the voir dire process. (Code of Civ. Proc. § 205.)
- 9) Provides that, unless a juror is employed by a public entity that pays a regular salary when an employee is serving on a jury, the fee for jurors in the superior court, in civil and criminal cases, is fifteen dollars (\$15) a day for each day's attendance as a juror after the first day. (Code of Civ. Proc. § 215 (a).)
- 10) Prohibits a party in a case from challenging and removing a prospective juror on the basis of the juror's actual or perceived race, ethnicity, gender, gender identity, sexual orientation, national origin, or religious affiliation, and makes challenges presumptively invalid on one of those bases if the challenge is based on a specified set of related characteristics. (Code of Civ. Proc. § 231.7.)
- 11) Contains outdated terminology and gendered terms in the Maxims of Jurisprudence. (Civ. Code § 3509 et seq.)

This bill:

- 1) Makes various changes to the Maxims of Jurisprudence, in Civil Code Section 3509 to 3548, to make the code gender neutral.
- 2) Requires that, if a jury commissioner requires a person to complete a questionnaire related to juror identification, qualification, and ability to serve, the questionnaire must ask the prospective juror the following related to the juror's identification:
 - a) Their pronouns;
 - b) The manner in which the prospective juror would prefer the court personnel to address them, out of the following options: juror number only; last name only; or preferred first name and last name, as filled in by the juror.
- 3) Specifies that any questionnaire as allowed in (2), above, must not provide the prospective juror with an option to select from a list of gendered salutations or titles.

- 4) Specifies that the questionnaire as allowed in (2), above, is not required to inquire about the prospective juror's gender; but if it does, it must be optional and provide a blank field for the juror to provide the information they choose regarding their gender.
- 5) Specifies that all inquiries on the questionnaire about the family or personal relationships of the prospective juror, including about a spouse, domestic partner, parent, or child, be phrased in a gender-neutral manner.
- 6) Requires that the Judicial Council create a template questionnaire that complies with the bill's requirements to be published on its website for use in qualifying prospective jurors and the management of the jury system.
- 7) Specifies that, if a court utilizes a questionnaire to assist in the voir dire process that asks for any identifying information other than the prospective juror's full name, all inquiries on the questionnaire, the questionnaire must comply with the requirements of this bill.
- 8) Specifies that, if a trial judge directs prospective jurors to complete additional questionnaires as proposed by counsel to assist with voir dire, all inquiries on this additional questionnaire that ask for identifying information about the prospective juror other than their full name comply with this bill's requirements.

COMMENTS

1. Author's statement

According to the author:

A summons for jury duty is one of the main ways that most individuals in California interact with our state courts. Unfortunately, there is no existing requirement that the written juror questionnaires used by superior courts during the voir dire process use terms that are inclusive of our LGBTQ+ community, especially non-binary or transgender individuals. Indeed, there are examples of juror questionnaires used by courts that ask prospective jurors about their gender in a non-inclusive manner or use gendered salutations. This sadly serves to potentially alienate members of our LGBTQ+ community even as they fulfill one of their obligations as citizens of the United States.

Assembly Bill 1899 will help make our courts more inclusive of our LGBTQ+ community by requiring superior courts to use juror questionnaires that ask prospective jurors about their preferred pronouns in an open-ended manner. The bill also prohibits the use of gendered salutations and requires that if juror questionnaires ask about gender, they do so in an inclusive manner. These

requirements apply both to general juror questionnaires as well as any additional juror questionnaires that the court may require for a particular case at its own behest or at the request of counsel. AB 1899 will also help facilitate this goal by requiring the Judicial Council to publish a template juror questionnaire that is inclusive of our LGBTQ+ community.

2. Gender Identity and the importance of language

Gender is a social construct based on a set of societal expectations and cultural and historical norms about people based on their sex. Gender identity, which is an individual's innermost concept of self as their gender, encompasses many different identities beyond male and female.¹ For most people, their gender identity aligns with the sex they were assigned at birth and fits within the male or female categories. Such individuals are considered cis-gender. However, others' gender identities do not fit within this category. An individual may identify as non-binary, or they may identify as genderqueer, agender, gender fluid, or another term. Non-binary individuals' gender identity does not fit within the male-female traditional gender binary. Genderqueer is an umbrella term that includes those whose gender is outside of the gender binary or who have a non-normative experience of their gender.² An individual who identifies as agender may not identify as any gender.³ A gender-fluid person does not identify with a single fixed gender or has a fluid gender identity.⁴

People who identify with one of these identities that are beyond male or female may not use, or may prefer, using pronouns and salutations that are gender-neutral to refer to themselves in a way that better reflects their gender identity. While there are not concrete estimates of the numbers of individuals in California or the United States for every gender identity, United States Census Bureau data estimate that there are 2.7 million LGBT people in California, and one survey has estimated that there are 1.2 million LGBTQ people who identify as non-binary.⁵ A recent survey of pronoun use among 40,000 Lesbian, Gay, Bisexual, Transgender, and Queer (LGBTQ) youths by the

¹ Laurel Wamsley, A Guide to Gender Identity Terms, National Public Radio (Jun. 2, 2021), available at <https://www.npr.org/2021/06/02/996319297/gender-identity-pronouns-expression-guide-lgbtq#agender>.

² Human Rights Campaign, Glossary of Terms (May 31, 2023), available at <https://www.hrc.org/resources/glossary-of-terms>.

³ Wamsley, *supra* note 1.

⁴ Human Rights Campaign, *supra* note 2.

⁵ Hans Johnson, California's LGBT Population, Public Policy Institute of California (Jun. 28, 2022), available at <https://www.ppic.org/blog/californias-lgbt-population/>; Bianca D.M. Wilson & Ilan H. Meyer, Nonbinary LGBTQ Adults in the United States, UCLA School of Law Williams Institute (June 2021), available at <https://williamsinstitute.law.ucla.edu/publications/nonbinary-lgbtq-adults-us/>.

Trevor Project, a nonprofit dedicated to preventing suicide among LGBTQ youth, found that 25 percent used non-binary pronouns.⁶

Utilizing and recognizing gender-neutral language is important to recognize the diversity of gender identity, as well as to increase inclusion and societal acceptance of LGBTQ individuals. Research has found that gender-neutral language reduces gender stereotypes, and bias and discrimination against women and LGBTQ individuals.⁷ Additionally, when transgender, non-binary, or other gender diverse individuals experience misgendering, where they are referred to or called by the incorrect pronoun for their gender, they experience psychological distress and depression.⁸

3. Gender-neutral language in the law

As recognition of diverse gender identities has increased in California, the state has implemented a variety of changes to the law to acknowledge the diversity of gender identity and support those who do not identify as male or female. In 2017, the Legislature enacted SB 179 (Atkins, Ch. 853, Stats. 2017), a landmark piece of legislation to recognize “non-binary” as a third gender marker in California’s codes, allowing people in the state to obtain a new birth certificate, driver’s license or identification card reflecting their gender as non-binary without having to obtain a court order. (Atkins, Ch. 853, Stats. 2017) In addition, in 2018 the Legislature passed ACR 260 (Low, Res. Ch. 190, Stats. 2018), calling for a coordinated effort among state agencies to draft laws, policies, regulations, and other state agency guidance in a manner that is inclusive of transgender people and people who do not identify within the gender binary. Various writing style guides, including the *Chicago Manual of Style* and the *Associated Press Stylebook*, recently have adopted the use of “they” or “them” as a singular pronoun in certain cases. The Office of Legislative Counsel has issued similar drafting guidelines to direct the drafting of bill language with gender-neutral terms. Moreover, this Committee’s Rules have been drafted to use “their” in lieu of “his or her,” recognizing the diversity of gender identity and that language should reflect that diversity. To be

⁶ Research Brief: Pronouns Usage Among LGBTQ Youth (Jul. 29, 2020) <https://www.thetrevorproject.org/2020/07/29/research-brief-pronouns-usage-among-lgbtq-youth/> (as of Apr. 10, 2021).

⁷ See, Sabine Sczesny et al, Can Gender-Fair Language Reduce Gender Stereotyping and Discrimination?, *Frontiers in Psychology*, Vol. 7 (2016), available at <https://www.frontiersin.org/journals/psychology/articles/10.3389/fpsyg.2016.00025/full>; Margit Tavits & Efrén O. Pérez, Language influences mass opinion toward gender and LGBT equality, *PNAS* Vol. 116, No. 34, 16781 (Aug. 5, 2019), available at <https://www.pnas.org/doi/full/10.1073/pnas.1908156116>; DeFranza, D. et al, How language shapes prejudice against women: An examination across 45 world languages, *Journal of Personality and Social Psychology* Vol. 119 No. 1, (2020), available at <https://psycnet.apa.org/doiLanding?doi=10.1037%2Fpspa0000188>.

⁸ Sabra L. Katz-Wise, Misgendering: What it is and why it matters, Harvard Health Publishing (Jul. 23, 2021), available at <https://www.health.harvard.edu/blog/misgendering-what-it-is-and-why-it-matters-202107232553>.

clear, gender-neutral language does not diminish those who use gendered terms and pronouns to refer to themselves, nor does it prohibit them from using such pronouns themselves.

4. The jury service system

The jury system is one of the fundamental aspects of the California legal system and the rights and obligations of citizenship. It attempts to ensure that defendants are tried by a jury of their peers, and protects the rule of law. Participating on a jury is an important civic obligation that members of communities throughout California have toward their community and society. Under the jury service system, qualified adults in each county are part of the pool of potential jurors for any legal case within the county's courts that requires a jury trial to hear and decide the case. Jurors must be selected at random from a representative cross section of the population served by the court. (Code of Civ. Proc. §§ 191, 197.) If an eligible juror receives a jury summons, they must appear at the court on the date indicated in case they are called for jury duty. If they are called, they first go through voir dire, in which the judge and both sides of the dispute narrow the jury pool by dismissing or disqualifying jurors from those selected, until the case has twelve jurors, plus alternate jurors. Those remaining jurors will hear the case, and ultimately make the decision whether one party in the case is liable or guilty of the alleged crime or unlawful act.

The Trial Jury Selection and Management Act regulates the jury selection process for both criminal and civil cases in the state. (Code of Civ. Proc. § 190 et seq.) That Act specifies how the jury selection process shall be managed, how jurors are to be selected, who qualifies to be a juror, and the use of jury questionnaires by courts. Qualified prospective jurors are those who: are United States citizens; are over the age of 18; are residents of the jurisdiction in which they are summoned to serve; are not under a conservatorship; are not currently incarcerated or under parole or supervision related to a felony conviction; possess sufficient knowledge of English; and who do not have certain criminal convictions. (Code of Civ. Proc. § 203.) Each county must have a jury commissioner to manage the county's jury service system and maintain and screen lists of potential eligible jurors. (Code of Civ. Proc. §§ 195, 196, 207.) The Act does not require questionnaires be completed by potential jurors, or require the use of any particular questionnaire for the jury selection process. However, it does specify that, if the jury commissioner requires a person to complete a questionnaire related to prospective jury service, the questionnaire may only ask questions related to juror identification, qualification, and ability to serve as a prospective juror. (Code of Civ. Proc. § 205.) The Act also allows courts to require additional questionnaires of prospective jurors for assisting in the voir dire process, or to ascertain whether a fair cross section of the population is represented. (Code of Civ. Proc. § 205(c).) In addition, additional questionnaires proposed by the attorneys of a particular case for the purposes of voir dire may also be required by the judge to be completed by a prospective juror. (Code of Civ. Proc. § 205(d).)

In addition to the rules for jury selection in the Code of Civil Procedure, Judicial Council, the policymaking body for California's courts, assists courts with the jury selection and voir dire processes, including through the creation of court forms and questionnaires and the promulgation of the California Rules of Court. The Judicial Council has not required that courts use a specific questionnaire for juror identification, qualification, or eligibility, nor has it developed a model form for this purpose. Judicial Council also does not require the use of a specific questionnaire for voir dire; however, it has created model questionnaires for civil and criminal trials that it encourages judges to use for the voir dire process. (Cal. Rules of Court 3.25, 4.30, 4.200, 4.201.) Local courts also may create their own questionnaires for juror identification and eligibility.

During this selection process, the personally-identifying information of jurors is often elicited or requested through the juror questionnaires. The practice of identifying jurors by numbers has been proposed by a number of bills in the interest of protecting jurors' privacy, but such bills have not been signed into law. (AB 310 (Leah), 1999; AB 1766 (Stone), 2016.) Thus, currently, jurors may be referred to by their names, by gendered salutations, by a number assigned to them, or by another means at the discretion of each court.

5. AB 1899 proposes requirements for the jury system to ensure that jurors' gender identity, preferred pronouns and names, and other information is respected

AB 1899 proposes to ensure that various provisions of the Civil Code are gender neutral, and to ensure that the questionnaires used in the juror selection process respects jurors' gender identities. It does so to ensure that jury service and the juror selection process is inclusive, welcoming, and respectful to LGBTQ+ individuals, particularly those who are transgender or are not cis-gender. AB 1899 requires that, if a jury commissioner requires a juror questionnaire, the questionnaire asks the prospective juror their pronouns, and whether they would prefer that court personnel address them by their juror number, their last name, or their preferred first name and last name. AB 1899 prohibits such questionnaires from providing prospective jurors a list of gendered salutations or titles to select from, and specifies that such questionnaires are not required to inquire about the prospective juror's gender, but if it does, the question must be optional and provide a blank space for the juror to write the gender with which they identify. AB 1899 also specifies that any questions on this questionnaire about familial or personal relationships must be phrased in a gender-neutral way, such as by stating "spouse" instead of "husband" or "wife." To assist with implementing these requirements, AB 1899 requires the Judicial Council to create a template questionnaire for use in qualifying prospective jurors and the management of the jury system that incorporates the bill's requirements.

In addition, AB 1899 extends its gender-neutral requirements for juror questionnaires to any questionnaires that a court or trial judge requires a prospective juror complete for

assisting with the voir dire process, if those questionnaires ask for identifying information other than the juror's full name.

6. Arguments in support

According to the California Legislative LGBTQ Caucus, which is the sponsor of AB 1899:

As part of the voir dire – or jury selection – process, a superior court may require prospective jurors to complete a juror questionnaire. This questionnaire makes inquiries of the prospective juror regarding matters of identification, qualifications, ability to serve, and potential conflicts of interests.

Existing law does not require that juror questionnaires use language that is inclusive of the LGBTQ+ community, especially for Two-Spirit and gender diverse individuals to be identified properly in accordance with their gender identity and/or gender expression. According to the Williams Institute, there are approximately 200,000 Transgender, Gender Nonconforming, Nonconforming or Non-binary, or Intersex (TGNCI) individuals in California. By failing to recognize individuals with diverse gender identities and/or expressions, TGNCI people are alienated and prevented from participating in the jury selection process and fulfilling their civic duty as a United States citizen.

Assembly Bill 1899 will require that juror questionnaires used by superior courts during the jury selection process ask prospective jurors about their pronouns. If a questionnaire asks about gender, it must do so in an open-ended manner that allows the prospective juror to fill their own answer in. The bill would also prohibit juror questionnaires from using gendered salutations such as "Mr." or "Ms." These requirements apply both to general juror questionnaires as well as any additional juror questionnaires that the Court may require for a particular case at its own behest or at the request of counsel. AB 1899 would also require the Judicial Council to publish a template juror questionnaire that uses language that is inclusive of gender nonconforming and non-binary individuals.

SUPPORT

California Legislative LGBTQ Caucus (sponsor)
Equality California

OPPOSITION

None received

RELATED LEGISLATION

Pending Legislation:

SB 1097 (Laird, 2024) would make changes to various provisions throughout the Military and Veterans Affairs Code to make the provisions gender neutral, expand provisions relating to veterans' spouses to domestic partners, and would close a loophole relating to when militia members in active military service can be exempt from jury service. SB 1097 is currently held at the desk in the Assembly.

AB 1811 (2023) would allow lawful permanent residents to serve as jurors, and would require Judicial Council to develop a program to allow lawful permanent residents to participate in jury duty, as specified. AB 1811 died in the Assembly Appropriations Committee.

Prior Legislation:

AB 378 (Bauer-Kahan, Ch. 50, Stats. 2021) eliminates gendered terms from various provisions of the California Codes that relate to elected officials and the Fair Political Practices Act.

AB 1817 (Judiciary, Ch. 115, Stats. 2019) removes gendered terms throughout the Family Code.

ACR 260 (Low, Res. Ch. 190, Stats. 2018) calls for a coordinated effort among state agencies to draft laws, policies, regulations, and other state agency guidance in a manner that is inclusive of transgender people and people who do not identify with the gender binary.

PRIOR VOTES:

Assembly Floor (Ayes 60, Noes 8)
Assembly Appropriations Committee (Ayes 11, Noes 3)
Assembly Judiciary Committee (Ayes 10, Noes 2)
