

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2025-2026 Regular Session

SB 59 (Wiener)
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Fiscal: Yes
Urgency: Yes
CK

SUBJECT

Change of gender and sex identifier

DIGEST

This bill extends the confidentiality provisions that already apply to specified petitions by minors, including for a change of gender and sex identifier, to adults and makes those confidentiality provisions retroactive. The bill prohibits such records to be posted publicly. This bill authorizes an action to enforce any violations.

EXECUTIVE SUMMARY

In 2017, SB 179 (Atkins, Ch. 853, Stats. 2017) restructured the processes for individuals to change their names and genders to conform with their gender identity and to have these changes reflected on their birth certificates. In addition, a streamlined process was established for changing one's name and gender and having an updated birth certificate issued as part of a single petition. Specific guidelines and required procedures were laid out for petitioners. Special procedural rules apply when the petitioner is a minor. In response to concerns about the privacy and wellbeing of these minor petitioners, AB 223 (Ward, Ch. 221, Stats. 2023) required specified petitions and associated papers to be kept confidential by the courts when a minor petitions. The court is required to limit access to the records to only the minor and specified representatives of the minor, including the minor's parents or guardians and any legal representatives.

This bill takes the next step to protect the privacy of petitioners, by extending these provisions to adult petitioners and retroactively requiring all petitions to be made confidential. The bill also prohibits posting such records publicly and authorizes a cause of action for violations of the bill's terms.

This bill is sponsored by Equality California and Secure Justice. It is supported by a variety of groups, including Oakland Privacy and the County of Santa Clara. It is opposed by several groups, including the California Catholic Conference.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Provides that a person may file a petition with a superior court seeking a judgment recognizing the change of gender to female, male, or nonbinary. If requested, the judgment shall include an order that a new birth certificate be prepared reflecting the change of gender and any name change accomplished by an order of a court of this state, another state, the District of Columbia, or any territory of the United States. (Health & Saf. Code § 103425.)
- 2) Provides the process for a petitioner seeking a court order to recognize a change in the petitioner's gender and sex identifier as female, male, or nonbinary and to direct the issuance of new administrative documents to reflect those changes. Such petitions must be accompanied by an affidavit from the petitioner and a certified copy of the court order changing the petitioner's name, if applicable. The petitioner's affidavit shall be accepted as conclusive proof of gender change if it contains substantially the following language: "I, (petitioner's full name), hereby attest under penalty of perjury that the request for a change in gender to (female, male, or nonbinary) is to conform my legal gender to my gender identity and is not for any fraudulent purpose." (Health & Saf. Code § 103430.)
- 3) Requires the court to grant the above petition without a hearing if no written objection is timely filed. The relevant court order can include an order for a new birth certificate reflecting the petitioner's change in gender and name, where applicable. The law provides additional processes for a petitioner under 18 years of age. (Health & Saf. Code § 103430.)
- 4) Authorizes a single petition to be filed to change the petitioner's name and recognize the change to the petitioner's gender, and, if requested, to order the issuance of a new birth certificate. (Health & Saf. Code §§ 103435, 103445, 103725.)
- 5) Provides that if the petitioner in the above proceedings is under 18 years of age, the petition and any papers associated with the proceeding shall be kept confidential by the court. The court shall limit access to the court records in the proceeding, including the register of actions, to the minor, any adult who signed the petition, the minor's parents or guardians or guardians ad litem, any individual who is subject to an order to show cause related to the petition, and any attorneys representing these individuals. (Health & Saf. Code § 103437.)
- 6) Provides that whenever a person born in this state has their name changed by order of a court of this state, another state, the District of Columbia, or any territory of the United States, an application including an affidavit of this fact

may be filed with the office of the State Registrar upon a form provided for that purpose. (Health & Saf. Code § 103400.)

- 7) Provides the court procedures for effectuating the above changes. (Code Civ. Proc. § 1275 et seq.)

This bill:

- 1) Extends the confidentiality provisions of Section 103437 to all petitioners, regardless of age.
- 2) Requires the court, upon granting judgment, to limit access to the court records in the proceeding, including the register of actions, to the petitioner, an adult who signed the petition, and an attorney representing those individuals.
- 3) Requires the court, upon the request of the petitioner and a finding that a petitioner has met specified criteria, to, without a public hearing, seal an entire petition and all court records and papers associated with the proceedings.
- 4) Declares that these provisions are retroactive and apply to all petitions and papers associated with the specified proceedings, regardless of the date of filing, including those that were filed prior to the effective date of this law. The Judicial Council shall ensure that all courts have implemented a method to ensure the court maintains this confidentiality.
- 5) Provides that if a person or entity discovers that a court record in the proceeding, including the register of actions, is not being kept confidential by the court, a person or entity may apply ex parte and without a fee to the court for an order to make those records confidential.
- 6) Prohibits a confidential record from being posted publicly, on the internet or otherwise, by a person other than the petitioner.
- 7) Provides that a violation hereof constitutes an injury. Commencing six months after the operative date of this act, a person or entity may institute proceedings for injunctive relief, declaratory relief, or a writ of mandate in a court of competent jurisdiction to enforce this section. A court shall award reasonable attorney's fees and costs to a plaintiff who prevails on a cause of action against a private party pursuant to this subdivision.
- 8) Provides, that in addition to any other sanctions, penalties, or remedies provided by law, commencing six months after the operative date of this law, a petitioner who has been harmed by a disclosure or continuing disclosure of confidential information in violation of this section, including, but not limited to,

unauthorized access or sharing of confidential or sealed records, may bring a civil action in a court of competent jurisdiction against a private person or entity that caused the harm. Such an action may be brought by a petitioner or on behalf of a petitioner by the petitioner's parent, guardian, or guardian ad litem, if the petitioner is a minor.

- 9) Provides that if a private person or entity is found liable in such actions, the private person or entity shall be liable to the petitioner for all of the following:
 - a) Actual damages, but not less than liquidated damages in the amount of \$5,000.
 - b) Punitive damages upon proof of willful or reckless disregard of the law.
 - c) Reasonable attorney's fees and costs.
- 10) Includes an urgency clause.

COMMENTS

1. Civil rights and government documents

Over the past decade, the struggles of the transgender and gender nonconforming communities have become part of the American zeitgeist, particularly as various media have explored the institutional challenges facing these communities. In order to live safe, full, and authentic lives, it is essential that transgender and gender nonconforming people have access to identity documents that accurately reflect their true name, gender identity, and gender expression. The ability to change one's documentation or status can have a significant impact on all other aspects of a person's life including employment, marriage, and inheritance rights. A National Transgender Discrimination Survey found that 90 percent of transgender people experienced mistreatment or discrimination at work or took actions to avoid such discrimination.¹ Nearly 47 percent of those surveyed lost their jobs, were denied a promotion, or were denied a job as a direct result of being transgender. Especially given the assault on the rights of the transgender community in other state and at the federal level, legal protections under California law are critical to protecting the privacy and safety of these communities.

Difficulty is created by the fact that each state (and, for foreign-born United States residents and citizens, each country) and the federal government have their own rules and restrictions on changing names and gender marker information. In a major step backward, President Trump issued an executive order shortly after taking office regarding federal recognition of only two sexes, leading the State Department to

¹ Jaime M. Grant et al., *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey* (2011) National Center for Transgender Equality and National Gay and Lesbian Task Force, https://transequality.org/sites/default/files/docs/resources/NTDS_Report.pdf. All internet citations are current as of April 16, 2025.

eliminate the X gender as an option and suspending its previous policy of allowing transgender, intersex and nonbinary people to update the sex field of their passports.²

Even within California, the various agencies that issue identity documents have different requirements for changing name and gender markers, as well as a separate process for doing so.

2. California's efforts to address these issues

In recent years, the Legislature has addressed these hurdles faced by the transgender community. To address the barriers faced by transgender individuals going through the court process for name changes, AB 1121 (Atkins, Ch. 651, Stats. 2013) was introduced and enacted into law. It *required* courts to grant petitions for a change of name sought to conform an individual's name to the individual's gender identity without a hearing if no timely objection is made. The legislation also exempted such requests from the publication requirement.

AB 1121 also created an administrative process by which California-born individuals can submit an affidavit of a physician attesting that the person has undergone clinically appropriate treatment for the purpose of a gender transition, along with a fee, directly to the State Registrar and thereby change the person's gender on the person's birth certificate. This eliminated the need for the court to review a gender change petition, simplifying the process for transgender individuals to update the gender marker on their birth certificates and allowing persons born in California, but now residing out of state, to update their birth certificate to match their gender remotely. This administrative process to change one's gender on a birth certificate is far more cost-effective and accessible for transgender individuals.

In 2017, SB 179 (Atkins, Ch. 853, Stats. 2017) streamlined these processes even further and updated the required documentation to reflect an evolved understanding of gender identity. The bill created a standalone statute governing legal name changes sought to conform one's legal gender to the person's gender identity. The new section requires the court to make an order reciting the filing of the person's petition. It provided that if no objection is received to the proposed name change within six weeks of the order, the court must grant the name change. There is no requirement for publication. A hearing is not to be set unless a timely objection shows good reason against the change of name.

In addition, realizing that an individual's gender identity is not contingent on whether the individual has received any associated medical treatment, SB 179 removed the

² Jaclyn Diaz, *Trump's passport policy leaves trans, intersex Americans in the lurch* (February 21, 2025) NPR, <https://www.npr.org/2025/02/21/nx-s1-5300880/trump-passport-policy-trans-gender-intersex-nonbinary>.

requirement that individuals submit medical documentation in order to change their gender on a birth certificate or to obtain a court-ordered gender change.

A person instead must provide an affidavit in which the person attests under penalty of perjury that the request for a change in gender is to conform the person's legal gender to the person's gender identity. For a court-ordered gender change, the court is required to accept the individual's affidavit as conclusive proof of gender change.

3. Expansion of existing processes for additional documents

A series of bills have further honed the processes. AB 218 (Ward, Ch. 577, Stats. 2021) took the next step in providing more inclusive processes for the transgender and gender nonconforming communities. That bill extended the existing framework for petitioners changing their names and/or genders on their own birth certificates to further update their marriage licenses and certificates and the birth certificates of their children. It also extended eligibility for certain processes to persons not born or residing within the state and recognized orders in foreign jurisdictions for purposes of sufficient documentation. Section 103425 of the Health and Safety Code provides that a person may file a petition with the superior court in any county seeking a judgment recognizing the change of gender to female, male, or nonbinary. A petitioner can request that a new birth certificate be ordered in the judgment, reflecting the change in gender and a change in name, as specified. AB 218 allowed for the judgment to additionally include an order for a new marriage certificate reflecting the change of gender and a similar change of name. Furthermore, an order for a new birth certificate for the petitioner's child could also be included in such a judgment. These avenues to updated documentation were subject to specific procedures. (Health & Saf. Code § 103430; Code Civ. Proc. § 1275 et seq.) The new marriage certificate can reflect the gender of the petitioner, as specified in the judgment of the court, and reflect any change of name, as specified in the court order.

AB 218 applied a detailed set of rules for petitions requesting new documentation specifying who must sign such petitions and who must be served with notice and an order to show cause. Subsequent to that law being passed, in conjunction with AB 1578 (Committee on Judiciary, Ch. 401, Stats. 2021), the Judicial Council highlighted a number of internal inconsistencies that created problems with rulemaking around the proper forms to effectuate the intent of these laws. The Judicial Council requested the changes made by this bill.

Under previously existing law, if the person whose gender is to be changed is under 18 years of age, the petition is required to be signed by at least one of the minor's parents or a guardian or attorney of the minor, or if both parents are deceased and there is no guardian of the minor, by a near relative or friend of the minor. If the petition does not include a signature from one of those persons, the court is required to make an order

directing the person or persons whose required signatures are not on the petition to show cause why the petition should not be granted by filing a written objection.

AB 421 (Ward, Ch. 40, Stats. 2022) required the court, if the petition is not signed by all living parents, to make that order and to direct the parent or parents who did not sign the petition to show cause why the petition should not be granted by filing a written objection. AB 421 also required the court, where all parents are deceased or cannot be located, to make an order directing the living grandparents to show cause why the petition for a court order to recognize a change in the minor's gender and sex identifier should not be granted, as specified.

Concerns regarding the privacy of minor petitioners seeking a change in gender or sex identifier motivated AB 223 (Ward, Ch. 221, Stats. 2023), which amended these processes for minors by establishing Section 103437. That section requires petitions and associated papers submitted by minors to be kept confidential by the courts. This applies where the minor is seeking a change of gender and sex identifier pursuant to Section 103430 or seeking a change to the petitioner's name and to also recognize the change of the petitioner's gender and sex identifier pursuant to Section 103435. The court is required to limit access to the court records in the proceeding, including the register of actions, to the following people:

- the minor;
- any adult who signed the petition;
- the minor's parents or guardians or guardians ad litem;
- any individual who is subject to an order to show cause related to the petition; and
- any attorneys representing these individuals.

The justification for AB 223, protecting the privacy and safety of transgender and non-binary minors, applies to adults as well. They are vulnerable to discrimination and harassment if records pertaining to their name and gender marker change are made public. Therefore, this bill extends the protections of Section 103437 to all petitioners, regardless of age. Upon granting the judgment, the court shall limit access to the court records in the proceeding to the petitioner, an adult who signed the petition, and an attorney representing those individuals.

Furthermore, upon the request of the petitioner and a finding that a petitioner has met the criteria set forth in subdivision (d) of California Rule of Court 2.550, or a successor rule or provision addressing the same subject matter, the court shall, without a public hearing, seal an entire petition, and all court records and papers associated with the proceedings. That rule authorizes the court to order that a record be filed under seal only if it expressly finds facts that establish:

- There exists an overriding interest that overcomes the right of public access to the record;
- The overriding interest supports sealing the record;

- A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed;
- The proposed sealing is narrowly tailored; and
- No less restrictive means exist to achieve the overriding interest.

A recent California Court of Appeal assessed the interests at stake and the propriety of sealing such records:

We conclude whether a transgender person's gender identity conforms with their assigned sex at birth is intimate personal information entitled to protection under the right to privacy. A transgender person thus has a privacy interest in concealing their transgender identity.

Recognition of this interest does not relieve appellant of her burden to show her records must be sealed under rule 2.550(d) because California law does not require confidentiality in transgender adults' name change or gender marker correction records.³

To ensure that the protections of Section 103437 are afforded to those who have already successfully utilized the petitioning process, the bill makes these changes retroactive to all such petitions. The bill requires Judicial Council to ensure that all courts have implemented a method to ensure the court maintains the confidentiality of all petitions and papers associated with these proceedings, regardless of the date of filing, including those that were filed prior to the effective date of this law. If a person or entity discovers that a court record in the proceeding, including the register of actions, is not being kept confidential by the court, a person or entity may apply ex parte and without a fee to the court for an order to make those records confidential.

Judicial Council has raised workability concerns with the automatic retroactive effect of the bill. They assert that the relevant records systems in many courts are not capable of such an undertaking and instead urge a prospective approach or at the very least requiring individuals to petition to have old records made confidential.

The bill also makes clear that publicly posting such confidential records is prohibited for anyone other than the petitioner.

4. Enforcement

The bill also introduces an enforcement mechanism, authorizing a civil action, after a six-month grace period, to enforce violations, which are deemed to constitute an injury. Any person or entity can institute an action for injunctive relief, declaratory relief, or a

³ *In re M.T.*, 106 Cal. App. 5th 322, 341.

writ of mandate. A court shall award reasonable attorney's fees and costs to a prevailing plaintiff against a private party.

As the bill also places limitations on sharing these records, including third parties not associated with the case, a petitioner who has been harmed by a disclosure or continuing disclosure of confidential information in violation hereof, including, but not limited to, unauthorized access or sharing of confidential or sealed records, may bring a civil action against a private person or entity that caused the harm. Defendants found in violation are liable for actual damages or \$5,000 in statutory damages, whichever is greater, along with reasonable attorney's fees and costs. Upon a showing of willful or reckless disregard of the law, punitive damages may also be awarded.

The fact that the bill can be read to apply liability to third parties that may have obtained and posted these records lawfully before they are deemed confidential by the court and without knowledge the records have been made confidential or sealed raises due process and First Amendment concerns.

Writing in opposition, Californians for Good Governance argue the bill will ultimately fail when challenged on these grounds:

First Amendment: Free Speech and Press

The First Amendment protects the right to disseminate information, with restrictions subject to strict scrutiny, requiring a compelling interest and narrowly tailored means. SB 59's prohibition on non-petitioners posting confidential records publicly, including online, and its penalties – minimum \$5,000 damages, punitive damages, and attorney's fees – threaten protected speech. The law could chill journalists, researchers, or advocates from discussing court data, even in non-harmful contexts like policy analysis. Its retroactive application to previously public records risks punishing lawful past speech, contravening the United States Supreme Court's holding in *Smith v. Daily Mail Publishing Co.* As less restrictive alternatives, such as redacting sensitive information, exist, the law is unlikely to be upheld in court.

...

Fourteenth Amendment: Due Process (Vagueness)

The Due Process Clause requires laws to provide clear notice of prohibited conduct to prevent arbitrary enforcement.⁵ SB 59's terms, such as "confidential information" and "posting publicly, on the internet or otherwise," are ambiguous, leaving uncertainty about what actions incur liability – e.g., referencing a petition's existence versus sharing specific documents. This vagueness, combined with severe penalties, could deter lawful speech and invite arbitrary application. Courts may strike down such provisions for failing to provide fair notice.

To mitigate these issues, the author has agreed to amendments that require a third party to have actual knowledge that the records are confidential or sealed before imposing such liability. To ensure the overall statute is not vulnerable to challenge, amendments will also add a severability clause.

5. Stakeholder positions

According to the author:

The Trump Administration and Republican Congressional leadership have made clear that targeting and erasing trans people is among their highest policy priorities, and California must have our trans community members' backs. Making this personal identifying information public after someone transitions — including a person's dead name, as well as the basic fact that they're trans or non-binary — pointlessly exposes trans and non-binary Californians to harassment and potential violence. Unfortunately, right-wing groups and individuals have used publicly available personal information to harass trans people in California and across the nation. The incoming Trump administration will only embolden abusive right-wing extremists, and it is up to states like California to defend LGBTQ and other targeted communities amid a rising swell of hate.

Equality California, a sponsor of the bill, writes:

SB 59 will protect the privacy and safety of transgender and nonbinary Californians by extending, and making retroactive, the protections of AB 223 to persons over the age of 18. These critical changes will allow all transgender and nonbinary people in California, regardless of age, to retain control over when and where they share their personally identifying information. The bill will also prohibit these records from being posted publicly by anyone other than the petitioner.

The Sacramento LGBT Community Center writes in support:

Given the rise in anti-transgender hate and violence, coupled with the openly hostile stance of the Trump administration, safeguarding the privacy and safety of transgender and nonbinary individuals is crucial in California. Forced outings can elevate the risk of discrimination and physical harm for transgender people. Although California is generally regarded as a sanctuary state for transgender individuals, there was a 10.2% increase in anti-transgender bias-motivated hate crimes between 2022 and 2023.

With the Trump administration's continued promotion of anti-trans rhetoric and executive orders, it is highly likely that these troubling trends will persist unless robust protections, such as these, are implemented.

This bill expands upon existing legislation that safeguards minors who have legally changed their name, extending the same protections to adults aged 18 and over. In 2023, California passed AB 233, the Transgender Youth Privacy Act, which mandates that courts keep petitions for gender or sex identifier changes, as well as name changes, filed by minors confidential to ensure their privacy. Adults aged 18 and over are equally entitled to the same right to privacy.

SB 59 comes at a critical time in history to help ensure the safety of our transgender and nonbinary citizens. For these reasons, among others, our organization strongly supports SB 59

The California Catholic Conference writes in opposition:

[W]e have serious concerns about erasing the history of a person's existence in the world prior to their name change. The official record of one's legal existence, including their name and biological sex, carries significance for their health, their family and heredity as well as for public health, public safety, and accurate records of vital statistics.

Removing the public record of a person's prior identity creates potential for fraud and abuse of this new system. In particular, sealing the record of a person's birth name and birth sex could prevent law enforcement or background checks from recognizing the same individual under other aliases.

Writing in support, Secure Justice, a sponsor of the bill, makes clear why the bill is needed:

According to UCLA School of Law's The Williams Institute, in 2021, transgender people were over 4 times more likely to experience violent victimization, including rape, assault, and aggravated or simple assault, than their cisgender peers. Additionally, according to the 2022 U.S.

Transgender Survey, thirty percent of transgender respondents reported that they were verbally harassed in the past year because of their gender identity.

Transgender and non-binary people are particularly vulnerable to discrimination and harassment if records pertaining to their name and gender marker change are made public. In California, the petition and

paperwork are generally a matter of public information discoverable with a simple internet search. In many cases, it can take a significant amount of time before an individual realizes their petition is public information. This sometimes only becomes known when a third party, such as a coworker, discovers this information and “outs” them to their peers.

SUPPORT

Equality California (sponsor)
Secure Justice (sponsor)
ACLU California Action
Alianza Translatinx
Asian Americans Advancing Justice-southern California
California Academy of Child and Adolescent Psychiatry
California Coalition for Youth
California Latinas for Reproductive Justice
CalPride
CalPride Sierras
CFT- a Union of Educators & Classified Professionals, AFT, AFL-CIO
County of Santa Clara
Courage California
Essential Access Health
LGBTQ+ Inclusivity, Visibility, and Empowerment
Oakland Privacy
Oasis Legal Services
Parivar Bay Area
Peace and Freedom Party, California
PFLAG Fresno
PFLAG Los Angeles
PFLAG Oakland-East Bay
Public Counsel
Rainbow Families Action Bay Area
Sacramento LGBT Community Center
San Francisco Aids Foundation
San Francisco Women's Political Committee
Santa Clara County Office of Education
The LGBT Asylum Project
The San Diego LGBT Community Center
Transgender Law Center

OPPOSITION

California Catholic Conference
Californians for Good Governance

Our Duty
Real Impact.
Women are Real

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

AB 223 (Ward, Ch. 221, Stats. 2023) *See* Comment 3.

AB 760 (Wilson, Ch. 222, Stats. 2023) required the California State University, and requested the University of California, to implement a process whereby current students, staff, and faculty may request the updating of any records for that person to include the person's affirmed name, gender, or both name and gender identification.

AB 421 (Ward, Ch. 40, Stats. 2022) *See* Comment 3.

AB 1578 (Assembly Committee on Judiciary, Ch. 401, Stats. 2021) *See* Comment 3.

AB 218 (Ward, Ch. 577, Stats. 2021) *See* Comment 3.

SB 179 (Atkins, Ch. 853, Stats. 2017) *See* Comment 2.

AB 1121 (Atkins, Ch. 651, Stats. 2013) *See* Comment 2.
