

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

AB 1163 (Luz Rivas)
Version: June 28, 2023
Hearing Date: July 11, 2023
Fiscal: Yes
Urgency: No
CK

SUBJECT

Lesbian, Gay, Bisexual, and Transgender Disparities Reduction Act

DIGEST

This bill expands the data collection obligations of the Lesbian, Gay, Bisexual, and Transgender Disparities Reduction Act to three additional agencies.

EXECUTIVE SUMMARY

It is the stated goal of state government, in collecting demographic data, to gather accurate information in order to understand, compare, report, and apply that data to the enhancement and improvement of public services. Given the historic exclusion and erasure of LGBT communities, data collection that provided such insights for these communities was sparse.

In response, the Lesbian, Gay, Bisexual, and Transgender Disparities Reduction Act was passed. It requires four specific state departments, the State Departments of Health Care Services, Public Health, and Social Services, and the California Department of Aging in the course of collecting demographic data directly or by contract as to the ancestry or ethnic origin of Californians, to collect voluntary self-identification information pertaining to sexual orientation and gender identity. The collection and dissemination of such information was subject to clear safeguards and use limitations.

This bill expands the Act to now include the Business, Consumer Services, and Housing Agency, the California Health and Human Services Agency, and the Department of Housing and Community Development in its obligations regarding data collection. The bill is supported by a wide variety of groups, including the California Alliance of Child and Family Services. There is no known opposition. The bill passed out of the Senate Governmental Organization Committee on a vote of 10 to 0.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Requires a state agency, board, or commission that directly or by contract collects demographic data as to the ancestry or ethnic origin of Californians shall use separate collection categories and tabulations for the following:
 - a) Each major Asian group, including, but not limited to, Chinese, Japanese, Filipino, Korean, Vietnamese, Asian Indian, Laotian, and Cambodian.
 - b) Each major Pacific Islander group, including, but not limited to, Hawaiian, Guamanian, and Samoan. (Gov. Code § 8310.5(a).)
- 2) Provides that the above data shall be included in every demographic report on ancestry or ethnic origins of Californians by the state agency, board, or commission and shall be made available to the public in accordance with state and federal law, except for personal identifying information, which shall be deemed confidential. (Gov. Code § 8310.5(b).)
- 3) Establishes the Lesbian, Gay, Bisexual, and Transgender Disparities Reduction Act, which requires specified state entities, in the course of collecting demographic data directly or by contract as to the ancestry or ethnic origin of Californians, shall also collect voluntary self-identification information pertaining to sexual orientation and gender identity. The law provides various methods by which this requirement can be carried out. (Gov. Code § 8310.8.)
- 4) Applies the above obligation to the following entities:
 - a) The State Department of Health Care Services.
 - b) The State Department of Public Health.
 - c) The State Department of Social Services.
 - d) The California Department of Aging.
 - e) The State Department of Education and the Superintendent of Public Instruction, except this section shall not apply to the California Longitudinal Pupil Achievement Data System (CALPADS).
 - f) The Commission on Teacher Credentialing.
 - g) The Civil Rights Department.
 - h) The Labor and Workforce Development Agency.
 - i) The Department of Industrial Relations.
 - j) The Employment Training Panel.
 - k) The Employment Development Department, except this section shall not apply to the unemployment insurance program within the department. (Gov. Code § 8310.8(a).)
- 5) Requires these state entities to report to the Legislature the data collected and the method used. They shall make the data available to the public in accordance with

state and federal law, except for personal identifying information, which shall be deemed confidential and shall not be disclosed.

- 6) Prohibits these state entities from reporting demographic data that would permit identification of individuals or would result in statistical unreliability. Demographic reports on data collected pursuant to this section, to prevent identification of individuals, may aggregate categories at a state, county, city, census tract, or ZIP Code level to facilitate comparisons and identify disparities.
- 7) Limits the purposes for which these state entities can use this information, including demographic analysis, coordination of care, quality improvement of its services, conducting approved research, fulfilling reporting requirements, and guiding policy or funding decisions. All information about sexual orientation and gender identity collected shall be used only for purposes specified.

This bill imposes the requirements of the Act on the Business, Consumer Services, and Housing Agency, the California Health and Human Services Agency, and the Department of Housing and Community Development, which entities shall comply as early as possible, but no later than July 1, 2025.

COMMENTS

1. A brief history of LGBT discrimination and exclusion

There is already clear evidence that the history of societal and institutional exclusion and discrimination against LGBTQ communities has resulted in disparities in health and other outcomes for those communities. Over the past decade, the specific 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. 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 discrimination because they were transgender. The transgender, gender-nonconforming, and intersex (TGI) community is experiencing alarming rates of marginalization and disenfranchisement.

A key tool in addressing these issues is more thoughtful and systematic data collection. As the Center for American Progress puts it:

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 June 27, 2023.

Data collection is an indispensable tool to understand and address challenges facing LGBTQI+ and other sexual and gender-diverse communities. Although strides have been made in recent years, a persistent lack of routine data collection on sexual orientation, gender identity, and variations in sex characteristics (SOGISC) is still a substantial roadblock for policymakers, researchers, service providers, and advocates seeking to improve the health and well-being of LGBTQI+ people. More comprehensive and accurate point-in-time and longitudinal demographic data on SOGISC are crucial to:

- Advance research agendas
- Evaluate population trends
- Identify community-based needs
- Provide high-quality services
- Track and address discrimination
- Equitably distribute funding and other resources
- Shape evidence-based policy solutions to promote equity and reduce disparities faced by LGBTQI+ populations

As the size and diversity of LGBTQI+ populations in the United States continue to expand, particularly among youth and young adults, the importance of collecting data on these communities only continues to grow. Failing to collect these data can create harms by hindering the ability of researchers, policymakers, service providers, and advocates to understand the experiences of LGBTQI+ communities, identify disparities, generate policies that promote equity, and evaluate the effectiveness of those policies.²

Despite the critical role this data collection plays, the number of federally funded surveys that include questions to identify LGBTQI+ respondents is limited. Here in California, many agencies that provide vital services do not offer an option for the TGI community to identify themselves on public-use forms. The author argues that the lack of proper gender identifications in public forms prevents many members of the TGI community from seeking vital services from government agencies.

2. Responding to the lack of adequate data collection

To begin to address these issues, AB 959 (Chiu, Ch. 565, Stats. 2015) enacted the Lesbian, Gay, Bisexual, and Transgender Disparities Reduction Act. The Act required specified state departments to collect voluntary self-identification information pertaining to

² *Collecting Data About LGBTQI+ and Other Sexual and Gender-Diverse Communities* (May 24, 2022) Center for American Progress, <https://www.americanprogress.org/article/collecting-data-about-lgbtqi-and-other-sexual-and-gender-diverse-communities/>.

sexual orientation and gender identity in the course of collecting other demographic data directly or by contract. The Act provides some possible methods for carrying out this data collection.

The departments are required to report the data collected and the method used to collect that data to the Legislature. They are further required to make the data available to the public in accordance with state and federal law. To ensure the privacy of the individuals involved, the Act specifically prohibits personal identifying information from being disclosed. The departments are further prohibited from reporting any demographic data that would permit identification of individuals or would result in statistical unreliability. The Act provides that demographic reports on data collected may aggregate categories to prevent identification of individuals. This can be done at a state, county, city, census tract, or zip code level to facilitate comparisons and identify disparities.

To provide an additional layer of privacy protection, the state departments are only authorized to use information voluntarily provided about sexual orientation and gender identity for specified purposes, namely demographic analysis, coordination of care, quality improvement of its services, conducting approved research, fulfilling reporting requirements, and guiding policy or funding decisions.

Currently the Act applies to the following departments:

- The State Department of Health Care Services.
- The State Department of Public Health.
- The State Department of Social Services.
- The California Department of Aging.
- The State Department of Education and the Superintendent of Public Instruction, except this section shall not apply to the California Longitudinal Pupil Achievement Data System (CALPADS).
- The Commission on Teacher Credentialing.
- The Civil Rights Department.
- The Labor and Workforce Development Agency.
- The Department of Industrial Relations.
- The Employment Training Panel.
- The Employment Development Department, as provided.

This bill seeks to expand the benefits of the Act and this data collection by including the following agencies:

- The Business, Consumer Services, and Housing Agency.
- The California Health and Human Services Agency.
- The Department of Housing and Community Development.

This expansion furthers the goal of the Legislature to enhance the State's ability to fully understand the scope and severity of the issues and the dangers facing these vulnerable populations.

According to the author: "AB 1163 takes a vital step in empowering transgender, gender-nonconforming, and intersex (TGI) community by expanding the LGBT Disparities Act. With this bill, we will better understand disparities in underserved communities, like the TGI community when they are seeking housing and health services."

3. Stakeholder positions

The National Association of Social Workers – California Chapter writes in support:

Data on the experiences and needs of transgender, gender nonconforming, and intersex (TGI) individuals, especially intersex people, is scarce. However, existing numbers suggest that TGI individuals make up a significant portion of California's population. According to GLAAD's 2017 survey, societal acceptance has led more people to self-identify as non-binary genders, with 8% of individuals aged 18-34, 3% of those aged 36-51, 1.5% of those aged 52-71, and 1% of those aged 72 and older identifying as agender, bigender, genderqueer, or gender fluid. It is estimated that intersex individuals comprise around 2% of the global population.

TGI people experience alarming rates of marginalization and disenfranchisement. The lack of accurate data collection limits the state's ability to fully understand the scope and severity of the issues and the dangers facing this vulnerable population, which has created barriers to addressing the needs of this population. The needs of TGI communities in California are urgent and unmet. In the interest of privacy and safety, the bill prohibits the public disclosure of personal identifying information that would allow the identification of an individual who provided voluntary self-identification information pertaining to sexual orientation and gender identity.

Writing in support, the California Alliance of Child and Family Services asserts:

California is facing a long-standing and quickly escalating youth mental health crisis. Children and youth from historically underserved and marginalized communities are in an especially vulnerable position. For California to accurately collect data to ascertain the needs of their most marginalized populations, these populations need to be able to accurately identify themselves on public-use forms. The current data on the

experiences and needs of the TGI community are remarkably rare, yet our country's overall LGBT population continues to grow.

According to Gallup's 2022 American's Self-Identification as LGBT Survey, the percentage of U.S. adults who self-identify as lesbian, gay, bisexual, transgender or something other than heterosexual has increased to a new high of 7.1%, which is double the percentage from 2012. Roughly 21% of Generation Z Americans who have reached adulthood -- those born between 1997 and 2003 -- identify as LGBT. That is nearly double the proportion of millennials who do so, while the gap widens even further when compared with older generations. As this gap continues to widen, certain state entities like the California Health and Human Services Agency must respond proactively to meet the needs of a growing population in its state.

AB 1163 will help validate and amplify TGI youth voices, giving rise to the state's ability to fully comprehend the scope and severity of the issues they face.

SUPPORT

California Academy of Family Physicians
California Alliance of Child and Family Services
Didi Hirsch Mental Health Services
Disability Rights California
Lieutenant Governor Eleni Kounalakis
National Association of Social Workers, California Chapter

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation:

AB 223 (Ward, 2023) provides for specified records to be kept confidential by the courts where minors petition for a change of gender and sex identifier, as specified. AB 223 is currently on the Senate Floor.

AB 760 (Wilson, 2023) facilitates students, staff, and faculty to declare an affirmed name and/or gender identification to be used in records where their legal names are not required in the California State University and University of California college systems. AB 760 is currently on the Senate Floor.

Prior Legislation:

AB 2677 (Chiu, Ch. 744, Stats. 2017) expands the list of state entities to which the Act applies.

AB 532 (McCarty, Ch. 433, Stats. 2015) required any state agency, board, or commission that collects demographic data to provide forms that offer respondents the option of identifying as multiracial and selecting one or more ethnic or racial designations.

AB 959 (Chiu, Ch. 565, Stats. 2015) *See* Comment 2.

AB 1088 (Eng, Ch. 689, Stats. 2011) required certain state agencies to collect and tabulate data for additional major Asian groups, as listed, in order to better reflect the diversity of Asian American, Hawaiian, and Pacific Islander communities in California.

PRIOR VOTES:

Senate Governmental Organization Committee (Ayes 10, Noes 0)

Assembly Floor (Ayes 64, Noes 0)

Assembly Appropriations Committee (Ayes 11, Noes 2)

Assembly Accountability and Administrative Review Committee (Ayes 4, Noes 0)
