

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

AB 223 (Ward)
Version: June 5, 2023
Hearing Date: June 13, 2023
Fiscal: No
Urgency: No
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SUBJECT

Change of gender and sex identifier

DIGEST

This bill provides for specified records to be kept confidential by the courts where minors petition for a change of gender and sex identifier, as specified.

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.

A number of bills last session further honed these processes and fine tuned the applicable provisions, in part in response to issues identified by the Judicial Council of California. Special procedural rules apply when the petitioner is a minor. In response to concerns about the privacy and wellbeing of these minor petitioners, this bill requires petitions and associated papers to be kept confidential by the courts when a minor petitions for a change of gender and sex identifier or a name change and recognition of the petitioner's gender and sex identifier. 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 is sponsored by TransFamily Support Services and TransYouth Liberation. It is supported by the California Federation of Teachers and the National Association of Social Workers, California Chapter. There is opposition from a number of faith groups and other organizations, including the California Family Council and the Silicon Valley Association of Republican Women.

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

This bill:

1. Requires the petition and any papers associated with the proceeding to change an individual's gender or sex identifier or change their name and to recognize the change in gender and sex identifier to be kept confidential by the courts where the petitioner is under 18 years of age.
2. Requires the court to 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, and any attorneys representing these individuals.

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.

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. 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 the 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

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 [as of June 1, 2023].

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 requirement that individuals submit medical documentation in order to change the individual's 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

Last session, several bills 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, Chapter 401, Statutes of 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.

Last year, 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.

This bill again amends these processes for minors. Concerns have arisen regarding the privacy of minor petitioners seeking a change in gender or sex identifier. TransFamily Support Services and TransYouth Liberation, the sponsors of the bill, explain:

Transgender youth have been outed by ill intended individuals conducting searches on the internet, revealing public records of gender marker and name changes. This leads to social humiliation, bullying and

outing that has long lasting mental consequences to an individual who is already experiencing the impacts of marginalization and the internal distress that they may be experiencing from gender dysphoria. The very real consequences of neglecting to protect these youth may mean higher rates of anxiety, depression, and hospitalizations due to mental health concerns, and can escalate to heightened risks of self harm and suicide attempts.

This bill addresses these concerns by requiring 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; and
- any attorneys representing these individuals.

The author states the purpose of the bill:

Being "outed" is a traumatic event for anyone -- but especially traumatic for someone under the age of 18 years old, The Transgender Youth Privacy Act gives transgender youth the confidence to navigate their gender identity without fear of retaliation from someone who discovers that information in the public record.

AB 223 protects the privacy and mental health of our transgender and non-binary youth by making common sense changes to the process for minors seeking a gender or sex identifier change to make the petition and resulting paperwork confidential. This will allow the individual to retain control over when and where they share their private information.

Given that the bill places a limitation on the public's right of access to public records, the bill states the following justification:

It is in the best interest for the public to keep these records confidential to ensure the privacy and safety of transgender and nonbinary youth. Transgender and nonbinary youth are 2 to 2.5 times as likely to experience depressive symptoms, seriously consider suicide, and attempt suicide compared to their cisgender LGBTQ peers. Being outed is a traumatic event for any individual, especially for individuals under 18 years of age.

Allowing our children to choose when and how they decide to share their personal details is vital in protecting their mental and physical health.

4. Additional support and opposition

The California Teachers Association writes in support:

CTA believes in equal rights for all and supports eliminating sex, perceived sex, gender, gender identity and/or gender expression discrimination in educational programs, activities, and facilities. According to the Trevor Project, transgender and non-binary youth face elevated risk for depression, thoughts of suicide, and suicide compared to youth who are cisgender and straight, including cisgender members of the LGBTQ+ community. These higher levels of mental health related issues are attributable in part to the psychological effects of gender non-affirmation, be that by their family and peers, or on government issued vital records that do not conform to their gender identity.

Sealing these petitions will allow the child to develop their gender identity without the pressure of having it become a public matter. Our students deserve to be seen as their authentic self, to live a life that is consistent with their gender identity and expression, and to have that gender identity recognized and affirmed in their home, school, and community.

Our Duty writes in opposition:

The real intent of AB223 is clarified in its last sentence: "Allowing our children to choose when and how they decide to share their personal details is vital in protecting their mental and physical health." (Emphasis added.) The Supermajority in our Legislature is on a relentless crusade to break up the family unit by granting unprecedented power to children and the adults who cater to their whims. In 2022, the Legislature passed Health & Safety Code 103430, which requires the assent of only one parent in order to permanently change the birth sex and name of their child on official records. While an opposing parent can certainly file a motion to show cause to prevent the changes, that parent never prevails.

SUPPORT

TransFamily Support Services (co-sponsor)

TransYouth Liberation (co-sponsor)

ACLU California Action

American Association of University Women - California

California Federation of Teachers AFL-CIO

California Teachers Association
Disability Rights California
Equality California
National Association of Social Workers, California Chapter
Oakland Privacy

OPPOSITION

Bridge Network
California Family Council
California's Legislative Voice
Our Duty
Silicon Valley Association of Republican Women

RELATED LEGISLATION

Pending Legislation:

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 in this Committee.

AB 1720 (Bauer-Kahan, 2023) makes numerous provisions within the Education Code gender neutral, and makes additional non-substantive changes. AB 1720 is currently in this Committee.

Prior Legislation:

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.

PRIOR VOTES:

Assembly Floor (Ayes 63, Noes 0)
Assembly Judiciary Committee (Ayes 10, Noes 1)
