

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

AB 421 (Ward)
Version: May 2, 2022
Hearing Date: May 31, 2022
Fiscal: No
Urgency: Yes
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SUBJECT

Change of gender and sex identifier

DIGEST

This bill updates procedures for changing gender and sex identifiers on official documents, addressing internal inconsistencies from previous legislation.

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.

Last year, AB 218 (Ward, Ch. 577, Stats. 2021) incorporated into those processes the ability to likewise change a petitioner's gender or sex identifier and name on their marriage certificate and their children's birth certificates. It subjected such updating to similar procedural requirements and included additional provisions to account for objecting spouses and children. It also extended recognition to underlying orders from foreign courts and provided eligibility to persons not born or residing in the state, as specified.

In the wake of AB 218's passage, the Judicial Council of California identified a number of issues and internal inconsistencies within the law, specifically focused on implementation issues and procedures regarding who the court must order to show cause and when.

This bill is sponsored by the author. It is supported by the Judicial Council of California. There is no known opposition. This bill contains an urgency clause.

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. It further provides for the filing of such court orders with the Secretary of State and the State Registrar, as specified. (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) Provides that if the petition for the issuance of a new marriage license and certificate or confidential marriage license and certificate is not signed by the living and capable spouse who shares the document that would be changed by granting the petition, notice shall be given to the nonsigning spouse as provided.
- 2) Provides that if a petition to recognize a change of gender of a minor does not include the signature of all living parents, then upon receipt of the petition, the court must make an order directing the parent or parents who did not sign the petition to show cause why the petition for a court order to recognize a change in the minor's gender and sex identifier to female, male, or nonbinary should not be granted by filing a written objection, which includes any reasons for the objection, within six weeks of the making of the order, and shall state that if no objection showing good cause to oppose the gender recognition is timely filed, the court shall, without hearing, enter the order that the gender and sex identifier recognition is granted.
- 3) Provides that if a petition to recognize a change of gender of a minor is filed by specified persons, including court-appointed attorneys, and all parents are deceased or cannot be located, then upon receipt of the petition, the court shall thereupon 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 to female, male, or nonbinary should not be granted by filing a written objection, which includes any reasons for the objection, within six weeks of the making of the order, and shall state that if no objection showing good cause to oppose the gender recognition is timely filed, the court shall, without hearing, enter the order that the gender and sex identifier recognition is granted.
- 4) Declares it is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect in order to address internal inconsistencies in recently enacted vital records statutes that could result in Californians and other individuals entitled to relief being denied that relief.

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 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

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 25, 2022].

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 the reality that gender identity is not contingent on whether an individual has received any medical treatment for purposes of a gender transition, 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 year, 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 recognizes 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 (Assembly 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.

Effective January 1, 2023, per AB 218, Section 103430 of the Health and Safety Code provides that if the person whose gender is to be changed requests the issuance of a new marriage license and certificate, the petition must be signed by the spouse who shares the marriage license and certificate that would be changed if the spouse is living and capable of signing the petition. This bill provides that if such petition is not signed by the living and capable spouse, notice shall be given to the nonsigning spouse as provided. The language of this provision is arguably unclear as to whether any nonsigning spouse is required to be given notice. To clarify it, the author has agreed to the following amendment:

Amendment

Amend Section 103430(b)(2) as follows:

If the person whose gender is to be changed requests in their petition the issuance of a new marriage license and certificate or confidential marriage license and certificate pursuant to subdivision (c) of Section 103425, the petition shall be signed by the spouse who shares the marriage license and certificate or confidential marriage license and certificate that would be changed by granting the petition if the spouse is living and capable of signing the petition, or, ~~if not signed by a living and capable spouse, notice shall be given to the nonsigning spouse as provided in subdivision (f).~~ if not signed by the spouse who shares the marriage license and certificate or confidential marriage license and certificate, and the spouse is living and capable, notice must be given to that nonsigning spouse as provided in subdivision (f).

Under 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.

This bill requires 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.

Currently, a petition on behalf of a minor signed by a guardian appointed by the juvenile court or the probate court, by a court-appointed dependency attorney appointed as a guardian ad litem, or by an attorney for a minor who is alleged or adjudged to be a ward of the court, must be filed in a court having jurisdiction over the minor. If either or both parents of the minor are deceased or cannot be located, the guardian or guardian ad litem shall cause, not less than 30 days before the hearing, a notice of the time and place of the hearing or a copy of the order to show cause to be served on the child's grandparents, if living and if known to the petitioner.

This bill requires the court, in those circumstances, 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 within 6 weeks, as specified.

The bill also adjusts the timeline for service of the petition and order to show cause from 30 days to four weeks.

In order to ensure that these changes are made in time for the Judicial Council to properly implement these changes to their forms for the January 1, 2023 effective date, the bill declares that it is to take effect immediately as an urgency statute.

The author states the purpose of the bill:

In 2020 the legislature passed AB 218, which aligned the process for updating transgender marriage certificates, with the existing process for updating birth certificates. During the implementation process of AB 218, Judicial Council became aware of inconsistencies in the statutory language. AB 421 corrects the statutory language to ensure that the Judicial Council can implement AB 218 provision by the original implementation date of January 1, 2023.

The Judicial Council of California writes in support:

AB 421 presents an opportunity to clarify language enacted in prior legislation that has resulted in procedural and implementation inconsistencies. Of significance to the Judicial Council, with these amendments, council staff will be better able to craft consistent and useful forms to implement the new statutes in the context of petitions seeking to change gender and sex identifiers on vital records.

SUPPORT

Judicial Council of California

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: None known

Prior Legislation:

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:

This bill was recently gutted and amended, and therefore all prior votes are irrelevant.
