

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

AB 760 (Wilson)
Version: June 12, 2023
Hearing Date: June 20, 2023
Fiscal: Yes
Urgency: No
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SUBJECT

Public postsecondary education: records: affirmed name and gender identification

DIGEST

This bill requires the Trustees of the California State University to implement a system for allowing students, staff, and faculty to declare an affirmed name and gender to be used in their records and other documents, as provided. It requests the same of the Regents of the University of California.

EXECUTIVE SUMMARY

An affirmed name is the name a person uses that represents (affirms in a positive way) who they are and how they wish to be referred to and identified. Whereas, legal name is the name that is reflected in legal documents, such as birth certificates, social security card, passport, driver's license and other such documents controlled by local, state, or federal agencies. Not everyone who has an affirmed name can change their legal name to their affirmed name. While California currently provides processes for Californians to change their legal name to match their affirmed name, there are limitations. The importance of ensuring institutions do not erect barriers to allowing persons to use their affirmed names cannot be understated, and has very real effects on people's mental health and physical safety and wellbeing.

This bill expands an existing law that requires California community colleges to implement a system that enables current students, staff, and faculty to declare an affirmed name, gender, or both name and gender identification to be used in their records where legal names are not required by law. The bill applies these obligations to the California State University system and requests the University of California system to also comply. This bill is author sponsored. It is supported by the National Association of Social Workers, California Chapter. There is no known opposition. This bill passed out of the Senate Education Committee on a 5 to 0 vote.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Requires a public postsecondary educational institution, including a campus of the University of California, the California State University, or the California Community Colleges, to update a former student's records to include an updated legal name or gender if the institution receives government-issued documentation from a former student demonstrating that the former student's legal name or gender has been changed. (Educ. Code § 66271.4(b).)
- 2) Requires, commencing with the 2023–24 graduating class, these institutions to provide an option for a graduating student to request that the diploma to be conferred by the institution list the student's chosen name, regardless of whether there is documentation of a legal name or gender change. (Educ. Code § 66271.4(e).)
- 3) Requires the governing board of each community college district to implement a system by which current students, staff, and faculty can declare an affirmed name, gender, or both to be used in records where legal names are not required by law. (Educ. Code § 66271.41(a) (Section 66271.41).)
- 4) Requires a community college campus to update, upon the request of an individual, any records for current students, staff, and faculty to include the affirmed name, gender, or both name and gender identification. This includes, but is not limited to, school-issued email addresses, campus identification cards, class rosters, diplomas, and transcripts. (§ 66271.41(b).)
- 5) Requires, commencing with the 2023–24 academic year, community college campus systems to be fully capable of allowing current students, staff, or faculty to declare an affirmed name, gender, or both name and gender identification. (§ 66271.41(c).)
- 6) Prohibits a community college campus from charging a higher fee for correcting, updating, or reissuing a document or record based on the declaration of an affirmed name or gender identification than the fee it charges for correcting, updating, or reissuing that document or record generally. (§ 66271.41(d).)

This bill places the same obligations imposed by Section 66271.41 on the Trustees of the California State University and requests the Regents of the University of California to also comply. It changes the statute to apply to only unofficial transcripts, rather than any transcripts.

COMMENTS

1. Respecting the integrity and identity of students

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 discrimination because they were transgender.

The importance of affirming a person's new name cannot be understated:

A new name can represent a more affirming life for some transgender or gender nonconforming (someone who doesn't follow gender stereotypes) people. It's a fresh start and it gives them a way to finally live in their truth. But when people refuse to acknowledge a person's new name or continue to use their old name, it can be quite invalidating or traumatic.²

Although the term is not universally accepted, this failure or refusal to acknowledge a person's new name is sometimes referred to as "deadnaming":

A transgender person may decide to no longer use their birth or legal name. Instead, they'll choose a name that better aligns with their identity. When someone uses their old name after being asked not to, that is what we call 'deadnaming.' The person who they once were is dead, but the new person is alive, so their current name should be used."³

The quantitative data emphasizes the importance of using people's affirmed names:

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 5, 2023.

² *Why Deadnaming Is Harmful* (November 18, 2021) Cleveland Clinic, <https://health.clevelandclinic.org/deadnaming/>.

³ *Ibid.*

In one of the largest and most diverse studies of transgender youths to date, researchers led by a team at The University of Texas at Austin have found that when transgender youths are allowed to use their chosen name in places such as work, school and at home, their risk of depression and suicide drops.

“Many kids who are transgender have chosen a name that is different than the one that they were given at birth,” said author Stephen T. Russell, professor and chair of human development and family science. “We showed that the more contexts or settings where they were able to use their preferred name, the stronger their mental health was.” . . .

Because many names are common to one gender, allowing transgender youths to use a chosen name is one simple step that institutions such as schools, hospitals, financial institutions, workplaces and community organizations can use to help young people affirm their gender identity, Russell said.

“It’s practical to support young people in using the name that they choose,” Russell said. “It’s respectful and developmentally appropriate.”⁴

2. Legislative efforts to address these issues

In recent years, the Legislature has addressed the hurdles faced by the transgender and non-binary communities. To address the barriers faced by these individuals who are 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. 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.

Last session, 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. However, such processes are not accessible to all:

⁴ *Using Chosen Names Reduces Odds of Depression and Suicide in Transgender Youths* (March 30, 2018) UT News, <https://news.utexas.edu/2018/03/30/name-use-matters-for-transgender-youths-mental-health/>.

Some transgender people are able to obtain a legal name change from a court. However, many transgender people cannot afford a legal name change or are not yet old enough to legally change their name. They should be afforded the same respect for their chosen name as anyone else who uses a name other than their birth name.⁵

California law establishes a procedure by which kindergarten through grade 12 students can obtain corrected documents from their school, when the request is accompanied by specified government-issued documentation.⁶ AB 245 (Chiu, Ch. 555, Stats. 2021) expanded these processes for some students. It required campuses of the University of California, the California State University, and California Community Colleges to provide an option for a former student to request that their records be updated, and reissued, to reflect a legal name or gender change, when in receipt of specified legal documentation. Commencing with the 2023–24 graduating class, these institutions are also required to provide an option for a graduating student to request that the diploma to be conferred by the institution list the student’s chosen name, regardless of whether there is documentation of a legal name or gender change.

3. Taking the next step

Last year, AB 2315 (Arambula, Ch. 932, Stats. 2022) extended this area of the law by requiring community colleges in California to implement a system that enables current students, staff, and faculty to declare an affirmed name, gender, or both name and gender identification to be used in their records where legal names are not required by law. Commencing with the 2023–24 academic year, these campuses are required to be fully capable of allowing a student, staff, or faculty to declare an affirmed name, gender, or both name and gender identification.

Additionally, these campuses must update, upon request, records for current students, staff, and faculty to include the affirmed name, gender, or both name and gender identification. The records that must be updated include:

- school-issued email addresses;
- campus identification cards;
- diplomas, certificates of completion, and similar records;
- class rosters; and
- transcripts.

This bill extends these obligations to the Trustees of the California State University and requests the Regents of the University of California to do the same.

⁵ GLAAD Media Reference Guide, GLAAD, <https://www.glaad.org/reference/transgender>.

⁶ Ed. Code, § 49062.5.

According to the author:

As a mother of a transgender child, I am deeply committed to ensuring the safety, inclusivity, and mental health of all transgender people. A chosen and affirmed name helps transgender or non-binary individuals feel comfortable by being referred to by a name that is more representative of their gender identity. The use of a student's name assigned at birth rather than their chosen or affirmed name is termed 'deadnaming.' Specifically for transgender and non-binary individuals, being deadnamed by incorrect student records can lead to unwanted outing, bullying, discrimination, violence, and loss of employment opportunities in the future. AB 760 would require the California State University and University of California systems to implement a process by which current students, staff, and faculty can declare an affirmed name, gender, or both name and gender identification to be used in records where legal names are not required by law.

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

This bill [reflects] a basic right for nonbinary people. Being able to use a preferred name, gender or both in college records is essential for the well-being and mental health of these individuals. In addition, this change is a public safety issue because it could help prevent harassment and it is also a way to protect someone being "outed" or discriminated against because of their status as a nonbinary and/or transgender individual.

College is a place where many young people may first embrace their gender identity. It is crucial that they will be given the right to update their official records.

SUPPORT

ACLU California Action

AFSCME

California Faculty Association

California Legislative Women's Caucus

California Teachers Association

National Association of Social Workers, California Chapter

Office of Lieutenant Governor Eleni Kounalakis

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: AB 1720 (Bauer-Kahan, 2023) removes gendered terms from various provisions of the California Education Code, particularly as it relates to the State Department of Education. AB 1720 is currently in this Committee.

Prior Legislation:

AB 421 (Ward, Ch. 40, Stats. 2022) updated procedures for changing gender and sex identifiers on official documents and addressed internal inconsistencies from previous legislation.

AB 2315 (Arambula, Ch. 932, Stats. 2022) *See* Comment 3.

AB 218 (Ward, Ch. 577, Stats. 2021) *See* Comment 2.

AB 245 (Chiu, Ch. 555, Stats. 2021) *See* Comment 2.

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

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

PRIOR VOTES:

Senate Education Committee (Ayes 5, Noes 0)
Assembly Floor (Ayes 58, Noes 0)
Assembly Appropriations Committee (Ayes 13, Noes 1)
Assembly Higher Education Committee (Ayes 10, Noes 0)
