

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

AB 218 (Ward)
Version: May 24, 2021
Hearing Date: June 29, 2021
Fiscal: Yes
Urgency: No
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SUBJECT

Change of gender and sex identifier

DIGEST

This bill extends 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. The bill extends eligibility for certain processes to persons not born or residing within the state and recognizes orders in foreign jurisdictions for purposes of sufficient documentation.

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.

This bill incorporates into those processes the ability to likewise change a petitioner's gender or sex identifier and name on their marriage certificate and on the birth certificates of their children. It subjects such updating to similar procedural requirements and includes additional provisions to account for objecting spouses and children. It also extends recognition to underlying orders from foreign courts and provides eligibility to persons not born or residing in the state, as specified.

This bill is sponsored by Equality California. It is supported by a number of groups, including the National Association of Social Workers, California Chapter, ACLU California Action, and the American Federation of State, County and Municipal Employees. There is no known opposition. Should this bill pass out of this Committee, it will then be referred to the Senate Health Committee.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) 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. If requested, the judgment shall include an order that a new birth certificate be prepared for the person reflecting the change of gender and any change of name 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 gender and requires the court to grant the 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 process for a petitioner under 18 years of age. (Health & Saf. Code § 103430.)
- 3) 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.)
- 4) 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.)
- 5) Provides the court procedures for effectuating the above changes. (Code Civ. Proc. § 1275 et seq.)

This bill:

- 1) Authorizes a person who does not reside within the State of California to apply for a change of name to a superior court if the person resides in a jurisdiction that does not provide name changes by court order and the person is seeking to change their name on at least one of the following documents:
 - a. a birth certificate that was issued within this state to the person;
 - b. a birth certificate that was issued within this state to the legal child of the person;

- c. a marriage license and certificate or a confidential marriage license and certificate that was issued within this state to the person.
- 2) Provides that the order to show cause in the above actions shall be published in a newspaper of general circulation published in the county of the person's residence, or as otherwise provided.
- 3) Authorizes a person who does not reside within the State of California to petition the court for a change in gender or sex identifier if the person is seeking to change the designation on at least one of the following documents:
 - a. a birth certificate that was issued within this state to the person;
 - b. a birth certificate that was issued within this state to the legal child of the person;
 - c. a marriage license and certificate or a confidential marriage license and certificate that was issued within this state to the person.
- 4) Extends, as of January 1, 2023, the provision allowing for amendment of a birth certificate to reflect a court ordered name change to all persons who have a birth certificate issued by this state and allows the underlying name change to have been conducted in a foreign court.
- 5) Requires registrars to include the child's assigned sex at birth as part of information collected at birth but kept in a confidential electronic file.
- 6) Includes reference to changing one's "sex identifier" in existing provisions involving changing one's gender.
- 7) Allows a petitioner to request the judgment recognizing a change of gender or sex identifier, or name, to also include an order for an updated marriage license and certificate, including a change in the designation of the person as bride, groom, or having neither box checked, and for an updated birth certificate for the petitioner's child, including any changes in the designation of the person as mother, father, or parent.
- 8) Repeals the section of law relating to the Revision of Birth Records to Reflect Change of Gender as of January 1, 2023, and replaces it with new sections extending those processes to include persons not born and/or not residing within this state and encompasses the revision of marriage licenses and certificates and birth certificates of those persons' children.
- 9) Allows for the ordering and issuance of updated marriage certificates reflecting changes in name and gender, including a change in the designation of the person as bride, groom, or having neither box checked, within the same legal framework as provided for updated birth certificates. It applies additional rules when the

petition requesting a new marriage certificate does not include the signed stipulation of the spouse who appears on that marriage certificate.

- 10) Allows for the ordering and issuance of updated birth certificates for the children of such petitioners reflecting the relevant changes to the petitioner's name and gender, including any changes in the designation of the person as mother, father, or parent, within the same legal framework as provided for updated birth certificates. The bill requires such petition to include the signed stipulation of the petitioner's child if the child is 18 years of age or older and capable of signing such a stipulation

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 its 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.

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

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, 2021].

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 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.

2. Attempt to expand existing processes for additional documents

Last year, SB 741 (Galgiani, 2020) sought to take the next step in providing more inclusive processes for the transgender and gender nonconforming communities. 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. Currently, 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. SB 741 would have 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 laid out in the bill and in existing sections of the Code of Civil Procedure. (Health & Saf. Code § 103430; Code Civ. Proc. § 1275 et seq.)

The new marriage certificate would have reflected the gender of the petitioner, as specified in the judgment of the court, and reflected any change of name, as specified in the court order. No reference could be made in the new marriage certificate, nor its form in any way indicate, that it is not the original marriage certificate of the petitioner.

The bill applied a detailed set of rules when a petition requesting a new marriage certificate does not include the signed stipulation of the spouse who appears on that marriage certificate. The petitioner's spouse was required to be served notice and an order to show cause why the petition for a court order to amend the marriage certificate to reflect the petitioner's change in gender should not be granted.

If a new birth certificate is requested for the petitioner's child, it must reflect the gender and any change of name of the petitioner, and no reference can be made in the new birth certificate, nor shall its form in any way indicate, that it is not the original birth certificate of the petitioner's child. However, if the child is 18 years of age or older, the petition must include the signed stipulation of the petitioner's child, where the child is capable of signing such a stipulation.

SB 179 also created a streamlined petition, in lieu of separate proceedings, to change the petitioner's name, recognize a change in gender, and to order a birth certificate reflecting those changes as a single filing. This bill simply provides for the issuance of updated marriage certificates and birth certificates for the petitioner's child as part of this single petition.

In line with the existing law relating to the updated birth certificate of the petitioner, the new marriage certificate and child's birth certificate shall supplant any previously registered versions. Previous versions must remain as part of the State Registrar's records, along with the application materials for the change, but such documents are only made available upon written request of the registrant or by court order.

SB 741 was passed by the Legislature but vetoed by Governor Newsom. In his veto message, he explained his reasoning:

This bill would allow a person, as part of a judgment recognizing a change of name and gender, to also seek an order to revise a California marriage certificate of the petitioner and/or the California birth certificates of the petitioner's children. Upon court order, this bill requires the California Department of Public Health (CDPH) or the applicable County Registrar

to replace the vital record certificates with one that does not reveal that the petitioner obtained a name and gender change.

I strongly support the overall policy of changing vital records to accurately reflect gender identity. Unfortunately, this bill fails to give the State Registrar, which is within CDPH, clear authority to issue a new marriage certificate. As a result, CDPH would only be able to amend the marriage certificates under other applicable amendment statutes, resulting in the original gender, and the fact that there was a change to the listed gender, visible and open to the public. I am concerned that this would shine a spotlight on any individual who has changed their gender and I believe that this runs contrary to the intent of this legislation.

This is an important policy and I am committed to working with the Legislature and sponsors during the next legislative session to protect individual privacy.

3. SB 741 redux

This bill seeks to implement the exact changes that were proposed to be made in SB 741. According to the author:

For transgender and gender non-conforming people, not having identification consistent with their gender identity or expression can have far-reaching negative consequences. Whenever people with incongruent identification documents must produce them, they are potentially revealed as transgender. Each of these "outings" presents the possibility for disrespect, harassment and violence.

AB 218 would simply align the process for updating transgender marriage certificates and the birth certificates of their children's with the process for updating their own birth certificate. This will help to protect the privacy of transgender people and prevent discrimination when a transgender person enrolls their child in school, applies for a loan, or seeks to make medical decisions on behalf of an incapacitated spouse.

In order to respond to the issues highlighted in last year's veto message, this bill slightly amends the provisions of SB 741 and clearly delineates the duties and relevant authority of the State Registrar and the county clerks with respect to the issuance of new marriage licenses and certificates and confidential marriage licenses and certificates. To ensure both have adequate time to respond to the changes made by the bill, the operative date is delayed to January 1, 2023.

Writing in support, Equality California, the sponsor of the bill, illustrates the need for the bill:

The Legislature has taken major steps towards ensuring that transgender and nonbinary Californians have access to identity documents that accurately reflect their gender identity and safeguard their privacy, but there is more work to be done. AB 218 is the next logical and necessary step towards full equality for transgender and nonbinary Californians.

Current state law allows transgender people to petition courts to change their legal name and gender to match their gender identity. The law then allows such a person's old birth certificate to be sealed and a new one issued as an original to both protect the person's privacy and respect their identity. However, there is no such provision in the law as to the treatment of transgender people's marriage certificates and the birth certificates of their children. In the event of a name or gender change on these documents, under current law, the old certificate will be attached to the new certificate, and the incorrect legal name will still be listed next to the correct legal name.

The American Federation of State, County and Municipal Employees, AFL-CIO, writes in support:

Within our current system, legal documents represent a set of pitfalls for transgender Californians that result in the disclosure of private facts. Mismatched documents raise red flags within bureaucracy, forcing transgender individuals into conversations about their identity that should be had on their own terms. The rationale behind sealing a replaced birth certificate is to avoid subjecting the individual to unwanted inquisition or judgement from those that handle the document. By aligning the process for other legal documents with the procedures for a modified birth certificate, AB 218 will protect transgender Californians from these invasions of privacy.

SUPPORT

Equality California (sponsor)
ACLU California Action
American Federation of State, County and Municipal Employees, AFL-CIO
California Psychological Association
Los Angeles Gay & Lesbian Chamber of Commerce
NARAL Pro-Choice California
National Association of Social Workers, California Chapter
Santa Barbara Women's Political Committee

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation:

AB 1318 (Stone, 2021) as originally drafted, would have required a petition for a change of name or gender for a minor with a court-appointed guardian or a minor who is a ward of the juvenile court to be made in the court having jurisdiction over the minor. The bill would have exempted an action for a change of name of a minor under the jurisdiction of the juvenile court from the requirement that the court issue an order to show cause. This bill was recently gutted and amended to address a different issue, and is currently pending before the Senate Public Safety Committee.

AB 439 (Bauer-Kahan, 2021) specifies that gender identity includes female, male, or nonbinary for purposes of completing a death certificate. This bill is currently on the Senate Floor.

Prior Legislation:

SB 741 (Galgiani, 2020) *See* Comment 2.

SB 179 (Atkins, Ch. 853, Stats. 2017) *See* Comment 1.

AB 1951 (Gomez, Ch. 334, Stats. 2014) requires the State Registrar, beginning January 1, 2016, to modify birth certificates to recognize same-sex couples, allowing for a gender-neutral option on the certificate identifying a "parent."

AB 1121 (Atkins, Ch. 651, Stats. 2013) *See* Comment 1.

AB 2528 (Skinner, 2014) would have required the State Registrar to ensure that diacritical marks are properly recorded on various documents, and to develop procedures to include other reasonable requests relating to names on these documents, and would also have created substantially similar requirements for the Secretary of State relating to certificates of domestic partnerships and for DMV relating to identification cards. This bill was held in the Assembly Appropriations Committee.

AB 433 (Lowenthal, Ch. 718, Stats. 2011) authorizes an individual who has undergone certain medical procedures, as specified, to file a petition with a superior court to seek a judgment recognizing the change of gender, and required that the physician's accompanying affidavit must be accepted as conclusive proof of the gender change.

PRIOR VOTES:

Assembly Floor (Ayes 60, Noes 15)

Assembly Appropriations Committee (Ayes 12, Noes 4)

Assembly Judiciary Committee (Ayes 8, Noes 3)
