

CONCURRENCE IN SENATE AMENDMENTS

AB 439 (Bauer-Kahan)

As Amended June 15, 2021

Majority vote

SUMMARY

Adds "nonbinary" as a gender identity option on death certificates.

Senate Amendments

Are technical and add coauthors.

COMMENTS

- 1) *The Respect After Death Act*. AB 1577 (Atkins), Chapter 631, Statutes of 2014, the Respect After Death Act, was inspired by the passing of Christopher Lee, a San Francisco artist and transgender advocate who was mis-gendered after his death in 2012. Lee was assigned female at birth but long identified and expressed himself as a transgender man.

AB 1577 required the person completing a death certificate to record the decedent's sex to reflect the decedent's gender identity as reported by the person or source best qualified to supply this information, unless presented with a legal document that documents the decedent's gender transition. This bill simply add nonbinary as a gender identity option on death certificates.

- 2) *Death certificate data*. DPH uses the data collected through death certificates for public health research and planning. According to the bill analysis of AB 1577, the bill did not change the way the State Registrar records the death certificate or reports public health data, as the certificate cannot be altered after registration by the local registrar (i.e., information that is listed on the death record is required to be reported). The coding of causes of death for California vital records is provided by the National Centers for Health Statistics (NCHS). In coding causes of death, NCHS adheres to the World Health Organization Nomenclature Regulations specified in the most recent revision of the International Statistical Classification of Diseases and Related Health Problems. If the gender entry is correct but not consistent with the underlying cause of death, the death is coded to "Other ill-defined and unspecified causes of mortality." Sometimes on a case-by-case basis, inconsistencies in the underlying cause of death and gender are coded as "unspecified" underlying causes of death, e.g., "unspecified cancer," or they may be coded to the secondary cause of death if it is consistent with the gender, e.g., a primary cause of death for a male with ovarian cancer that has metastasized to the kidneys may be coded as kidney cancer. Although this bill adds "nonbinary" as a gender identity option on death certificates, if the person who filled out the cause of death did not have this information, then the gender option will not reflect the true identity of the decedent.
- 3) *Nonbinary*. When it comes to gender, nonbinary is word used to give voice to a diverse range of gender identities. Nonbinary people have a gender identity that does not fit into the male/female spectrum. They are often included under the umbrella term of transgender, a community that refers to people whose gender identity does not correspond with their sex assigned at birth. While transgender and nonbinary people are often discussed as a group, there are many distinct genders within this group. Nor are nonbinary people a monolithic

group. Like transgender, nonbinary is also used as a general term, but there are many ways to identify outside the binary. There are those whose gender identity isn't fixed, such as gender-fluid people, and those who experience a variety of masculine, feminine, or androgynous identities, such as pangender people, or those who do not identify with any gender, such as agender people.

- 4) *Importance of gender affirmation.* In 2020 The Trevor Project published a peer-reviewed article titled "Understanding the Mental Health of Transgender and Nonbinary Youth" in the *Journal of Adolescent Health*. The major findings include:
- a) When accounting for age, family income, and youth race/ethnicity, transgender and nonbinary youth were two to two and half times as likely to experience depressive symptoms, seriously consider suicide, and attempt suicide compared to their cisgender lesbian, gay, bisexual, queer, and questioning peers;
 - b) Transgender and nonbinary youth reported higher rates of perceived discrimination because of their sexual orientation or gender identity and reported having been physically threatened or harmed at nearly twice the rate of cisgender lesbian, gay, bisexual, queer, and questioning youth;
 - c) Transgender males reported higher rates of depressive mood (86%), having seriously considered suicide (62%), and attempted suicide (35%) in the past 12 months compared with youth of all other gender identities; and,
 - d) Transgender males, transgender females, and nonbinary youth assigned female at birth were all significantly more likely than cisgender lesbian, gay, bisexual, queer, and questioning peers to report seriously considering suicide.

The authors note that these findings point to the need to directly address the unique challenges of transgender and nonbinary youth in prevention and intervention programs and to advance policies that reduce discrimination and victimization based on sexual orientation or gender identity.

A Brazilian study published in 2020 in *LGBT Health* found that having accessed multiple steps of gender affirmation (social, legal, and medical/surgical) was associated with fewer symptoms of depression and less anxiety. Furthermore, engaging in gender affirmation processes helped youth to develop a sense of pride and positivity about their gender identity and a feeling of being socially accepted. The study concluded that enabling transgender and gender nonbinary youth to access gender affirmation processes more easily should be considered as a strategy to reduce depression and anxiety symptoms, as well as to improve gender positivity.

According to the Author

According to the author, though the state has made strides in adding inclusive options for official documentation for those who identify as nonbinary existing law leaves out the crucial area of death certificates. The author states that adding nonbinary as a gender option ensures nonbinary individual's right to equal treatment under the law, and is a needed step towards true inclusivity throughout our legal codes.

Arguments in Support

Equality California (EQ) is the sponsor of this bill and states that when a nonbinary person is ascribed the incorrect gender, whether on official documents or in the media, it is disrespectful to the memory of the deceased person and can be deeply painful and stigmatizing to grieving friends, family, and fellow community members. EQ concludes that California has made important progress towards ensuring that transgender and nonbinary people are able to update their identity documents while living, and that progress should extend to documentation of their death.

The American Civil Liberties Union of California (ACLU) supports this bill and states that people who do not identify as male or female face erasure at every turn. Historically, US society has not recognized the many ways people experience gender. This denial of their existence causes serious pain and marginalization for nonbinary communities. For example, nonbinary youth who reported their pronouns were not respected by those in their lives were twice as likely to attempt suicide as those whose preferred pronouns were used. With suicide rates among nonbinary youth quadruple those of their peers, affirming language on death certificates is all the more essential to ensure their identities are not erased in death. Though administrative practice may soon include nonbinary options, ACLU states that it is important to codify inclusive language to establish uniformity and recognition of nonbinary Californians across the legal system. The ACLU concludes that incorrectly assigning them a gender is disrespectful, and official recognition comforts grieving loved ones and honors the identity of those in the nonbinary community.

Arguments in Opposition

There is no known opposition

FISCAL COMMENTS

This bill is keyed nonfiscal by the Legislative Counsel.

VOTES:**ASM HEALTH: 13-1-1**

YES: Wood, Mayes, Aguiar-Curry, Bonta, Burke, Carrillo, Maienschein, McCarty, Nazarian, Luz Rivas, Rodriguez, Santiago, Waldron

NO: Bigelow

ABS, ABST OR NV: Flora

ASSEMBLY FLOOR: 65-2-12

YES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Berman, Bloom, Boerner Horvath, Bonta, Burke, Calderon, Carrillo, Cervantes, Chau, Chiu, Cooley, Cooper, Cunningham, Daly, Davies, Frazier, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Gipson, Lorena Gonzalez, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Lackey, Lee, Levine, Low, Maienschein, Mathis, McCarty, Medina, Mullin, Muratsuchi, Nazarian, O'Donnell, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Stone, Ting, Valladares, Villapudua, Voepel, Waldron, Ward, Akilah Weber, Wicks, Wood, Rendon

NO: Bigelow, Gallagher

ABS, ABST OR NV: Chen, Choi, Megan Dahle, Flora, Fong, Gray, Kiley, Mayes, Nguyen, Patterson, Seyarto, Smith

SENATE FLOOR: 32-6-2

YES: Allen, Archuleta, Atkins, Becker, Bradford, Caballero, Cortese, Dodd, Durazo, Eggman, Glazer, Gonzalez, Hertzberg, Hueso, Hurtado, Kamlager, Laird, Leyva, Limón, McGuire, Min, Newman, Ochoa Bogh, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener

NO: Bates, Dahle, Grove, Melendez, Nielsen, Wilk

ABS, ABST OR NV: Borgeas, Jones

UPDATED

VERSION: June 15, 2021

CONSULTANT: Lara Flynn / HEALTH / (916) 319-2097

FN: 0000894

THIRD READING

Bill No: AB 439
Author: Bauer-Kahan (D), et al.
Amended: 6/15/21 in Senate
Vote: 21

SENATE HEALTH COMMITTEE: 9-1, 6/10/21
AYES: Pan, Eggman, Gonzalez, Hurtado, Leyva, Limón, Roth, Rubio, Wiener
NOES: Grove
NO VOTE RECORDED: Melendez

ASSEMBLY FLOOR: 65-2, 4/19/21 - See last page for vote

SUBJECT: Certificates of death: gender identity

SOURCE: Equality California

DIGEST: This bill specifies that gender identity includes female, male, or nonbinary for purposes of completing a death certificate.

Senate Floor Amendments of 6/15/21 add a coauthor.

ANALYSIS:

Existing law:

- 1) Establishes the Department of Public Health (CDPH) and sets forth its powers and duties, including, but not limited to, the duties as State Registrar relating to vital records and health statistics. [HSC §102100, et seq.]
- 2) Requires deaths to be registered with the local registrar of births and deaths in the district in which the death was officially pronounced or the body was found, within eight calendar days after death and prior to any disposition of the human remains. Requires a funeral director, or person acting in lieu, to prepare the certificate and register it with the local registrar. Requires the funeral director to obtain the required information other than medical and health section data from

the person or source best qualified to supply this information (referred to as an informant). [HSC §102775, 102780, 102790]

- 3) Requires a person completing a death certificate to record the decedent's sex to reflect the decedent's gender identity. Requires the decedent's gender identity to be reported by the informant, unless the person completing the certificate is presented with a birth certificate, a driver's license, a social security record, a court order approving a name or gender change, a passport, an advanced health care directive, or proof of clinical treatment for gender transition, in which case the person completing the certificate is required to record the decedent's sex as that which corresponds to the decedent's gender identity as indicated in that document. If none of these documents are presented and the person with the right, or a majority of persons who have equal rights, to control the disposition of the remains is in disagreement with the gender identity reported by the informant, the gender identity of the decedent recorded on the death certificate is required to be as reported by that person or majority of persons. [HSC §102875(a)(1)(B)]

This bill specifies that gender identity includes female, male, or nonbinary for purposes of completing a death certificate.

Comments

- 1) *Author's statement.* According to the author, California has made great strides in adding inclusive options for official documentation for those who identify as nonbinary through SB 179 (Atkins, Chapter 853, Statutes of 2017), however, existing law leaves out the crucial area of death certificates. Adding nonbinary as a gender option ensures nonbinary individual's right to equal treatment under the law, and is a needed step towards true inclusivity throughout our legal codes and accurate language that honors nonbinary Californians in death as well as in life.
- 2) *The State Registrar.* CDPH's Vital Records Registration Branch (VRRB) is charged with maintaining a uniform, comprehensive, and continuous index for all birth, death, fetal death, and marriage vital events which occur in California, of which there are over one million each year. Certified copies of vital records are available from CDPH, 58 county recorders, and 61 local health jurisdictions. CDPH maintains, and can provide, birth and death records from 1905 to the present. For marriage records, CDPH maintains and can provide those from 1946 to the present, with some years excluded. CDPH uses the data collected through death certificates for public health research and planning.

3) *Local registrars and county recorders.* Local health officers serve as the local registrars for their respective health jurisdictions, and perform all the related duties. According to the County Recorders' Association of California, the local registrar is required to send each original birth or death certificate to the State Registrar, either directly or through the county recorder's office. Local registrars either send the original birth or death certificate to the county recorder, who makes a special county record and forwards the original to the State Registrar, or the local registrar sends the county recorder a copy of the certificate at the same time they forward the original to State Registrar. The local registrar keeps birth and death records for current year events and one year prior, but records for all years are maintained by the county recorder.

Related/Prior Legislation

AB 218 (Ward, 2021) provides processes for petitioners changing their names and/or genders to update their marriage certificates and the birth certificates of their children within the framework under existing law for petitioners to update their own birth certificates.

AB 741 (Galgiani, 2019) was substantially similar to AB 218. *AB 741 was vetoed by Governor Newsom, who stated:*

“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”.

SB 179 (Atkins, Chapter 853, Statutes of 2017) provided for a third gender option on the state driver's license, identification card, and birth certificate; restructured the process for individuals to change their name to conform with their gender identity; and created a new procedure for an individual to secure a court-ordered change of gender.

AB 1951 (Gomez, Chapter 334, Statutes of 2014) required 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 1577 (Atkins, Chapter 631, Statutes of 2014) required a person completing a death certificate to record the decedent's sex reflecting the decedent's gender identity as reported by the person or source best qualified to supply this information, unless presented with specified legal documents identifying the decedent's gender.

AB 1121 (Atkins, Chapter 651, Statutes of 2013) created an optional administrative procedure for a transgender individual born in California to amend gender and name on the individual's birth certificate without first obtaining a court order.

AB 433 (Lowenthal, Chapter 718, Statutes of 2011) authorized 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.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT: (Verified 6/14/21)

Equality California (source)

American Civil Liberties Union of California

American College of Obstetricians and Gynecologists District IX

APLA Health

Desert Aids Project

El/La Para Translatinas

Gender Spectrum

Los Angeles LGBT Center

National Center for Lesbian Rights

PFLAG Los Angeles

Sacramento LGBT Community Center

Santa Barbara Women's Political Committee

OPPOSITION: (Verified 6/14/21)

None received

ARGUMENTS IN SUPPORT: Equality California, the sponsor of this bill, states that when a nonbinary person is ascribed the incorrect gender, whether on official documents or in the media, it is disrespectful to the memory of the deceased person and can be deeply painful and stigmatizing to grieving friends, family, and fellow community members. Equality California contends that California has made important progress towards ensuring that transgender and nonbinary people are able to update their identity documents while living, and that progress should extend to documentation of their death.

The American Civil Liberties Union of California (ACLU) states that people who do not identify as male or female face erasure at every turn. Historically, US society has not recognized the many ways people experience gender. This denial of their existence causes serious pain and marginalization for nonbinary communities. For example, nonbinary youth who reported their pronouns were not respected by those in their lives were twice as likely to attempt suicide as those whose preferred pronouns were used. With suicide rates among nonbinary youth quadruple those of their peers, affirming language on death certificates is all the more essential to ensure their identities are not erased in death. Though administrative practice may soon include nonbinary options, ACLU states that it is important to codify inclusive language to establish uniformity and recognition of nonbinary Californians across the legal system. The ACLU concludes that incorrectly assigning them a gender is disrespectful, and official recognition comforts grieving loved ones and honors the identity of those in the nonbinary community.

ASSEMBLY FLOOR: 65-2, 4/19/21

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Berman, Bloom, Boerner Horvath, Bonta, Burke, Calderon, Carrillo, Cervantes, Chau, Chiu, Cooley, Cooper, Cunningham, Daly, Davies, Frazier, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Gipson, Lorena Gonzalez, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Lackey, Lee, Levine, Low, Maienschein, Mathis, McCarty, Medina, Mullin, Muratsuchi, Nazarian, O'Donnell, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Stone, Ting, Valladares, Villapudua, Voepel, Waldron, Ward, Akilah Weber, Wicks, Wood, Rendon

NOES: Bigelow, Gallagher

NO VOTE RECORDED: Chen, Choi, Megan Dahle, Flora, Fong, Gray, Kiley,
Mayes, Nguyen, Patterson, Seyarto, Smith

Prepared by: Melanie Moreno / HEALTH / (916) 651-4111
6/16/21 14:52:05

****** END ******