

CLIENT NEWS BRIEF

California Recognizes “Nonbinary” Gender Category And Requires Certain State Agencies To Collect Sexual Orientation And Gender Identity Data

The California Legislature recently passed legislation, taking effect in 2018 and 2019, making it easier for individuals to change their gender identity on official documents, adding a new gender identity option to certain forms of identification and vital records, and requiring certain state and local agencies to change data collection practices so that gender identity is more accurately accounted for in demographic data.

Assembly Bill (AB) 677: Sexual Orientation and Gender Identity Data Collection

Current law requires specific state departments, in the course of collecting certain demographic data, to collect voluntary self-identification information pertaining to sexual orientation and gender identity. AB 677 expands the list of state entities that must comply with these data collection requirements to include, among others, the California Department of Education (CDE). CDE must comply with the requirements as early as possible, but not later than July 1, 2019.

Additionally, AB 677 prohibits public schools administering a voluntary survey from removing any question pertaining to sexual orientation and/or gender identity. This prohibition became effective January 1, 2018. Under prior law, public schools were permitted to remove any question regarding sexual orientation and/or gender identity from voluntary surveys.

Senate Bill (SB) 179: Male, Female and Nonbinary Gender Markers

SB 179, also known as the Gender Recognition Act, was signed into law by Governor Jerry Brown and went into full effect on January 1, 2019. (See 2018 CNB No. 13.) Now, for the first time in state history, California legally recognizes a third gender option for individuals who do not identify as either male or female. Specifically, California residents may choose from three equally recognized gender options – female, male, or nonbinary – on birth certificates, driver’s licenses, and other state-issued identification cards.

Additionally, the law eliminates previous barriers for individuals wanting to change their gender marker and name on these identifying documents. Under prior law, an individual was required to obtain a physician’s declaration confirming that the individual had undergone clinically appropriate treatment for the purpose of gender transition in order to obtain a new birth certificate or to petition for a court order confirming the individual’s name and gender identity. With the passage of the Gender Recognition Act, a physician’s declaration is no longer required. Instead, individuals seeking a new birth certificate or court order confirming their name and gender identity may submit an affidavit attesting, under penalty of perjury, that the request for a change of gender is to conform to their gender identity and not for any fraudulent purpose. Minors may also petition the court for an order confirming gender identity with the support of a parent or legal guardian.

The law does not affect documents issued by other states or the federal government, such as Social Security cards, passports, and documents issued by

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US Citizenship and Immigration Services.

Takeaways

School districts, community colleges, and other public agencies will need to review and potentially revise forms, documents, and policies to ensure compliance with the Gender Recognition Act.

For additional information regarding AB 677 and SB 176 or to discuss student rights and gender issues generally, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also subscribe to our [podcast](#), follow us on [Facebook](#), [Twitter](#) and [LinkedIn](#) or download our [mobile app](#).

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