

California's Gender Recognition Act of 2017 (SB 179) Timeline for Implementation

After months of hard work on the part of transgender activists and organizations, SB 179, the Gender Recognition Act, was signed into law on October 15, 2017. This groundbreaking legislation makes it significantly easier for all transgender people who are living in or were born in California to obtain identity documents that reflect their genders, and makes California the second state in the country to offer a standard path to obtaining a nonbinary gender marker on state documents.

That said, the law does not go into effect all at once, and only affects certain documents. Notably, it does not affect documents issued by other states or the federal government (including Social Security cards, passports, and documents issued by US Citizenship and Immigration Services). This fact sheet offers some clarification of the timeline and nature of the changes.

Jan. 1, 2018: Changes to the process of requesting an updated birth certificate take effect

(1) No physician's declaration of any kind will be required to update the gender marker on a California birth certificate; instead, applicants will simply have to submit an affidavit attesting, under penalty of perjury, that the request for a change of gender is to conform their legal gender to their gender identity and not for any fraudulent purpose.

(2) It will also be possible to request that the gender marker on a California birth certificate be listed as "male," "female," or "nonbinary."

All application forms and Vital Records publications will be updated to reflect these changes. (SB 179 Sections 11 and 14)

Sept. 1, 2018: Changes to the process of requesting a gender change court order take effect

(1) No physician's declaration of any kind will be required to petition for a gender change court order; instead, petitioners will simply have to submit an affidavit attesting, under penalty of perjury, that the request for a change of gender is to conform their legal gender to their gender identity and not for any fraudulent purpose.

(2) Individuals will be able to request a change of legal gender to "male," "female," or "nonbinary."

All court documents and orders will be updated to reflect these changes. (SB 179 Sections 4, 5, 7, 10, and 13)

Jan. 1, 2019: Changes to the process of requesting an updated driver's license take effect

(1) It will no longer be necessary to obtain a doctor's certification in order to update the gender marker on a CA driver's license or state ID.

(2) Instead, people seeking to update the gender marker on their ID will simply be able to self-select "male," "female," or "nonbinary" on the application form. (SB 179 Sections 16, 17, and 18)

All application forms and DMV publications will be updated to reflect these changes.

California's Gender Recognition Act of 2017 (SB 179)

FAQ

Q. If I have a nonbinary gender change court order, can I get a passport that says "nonbinary"?

A. Unfortunately, at present, the only gender marker options on identity documents issued by the US federal government (Social Security cards, passports, green cards, etc.) are "male" and "female."

Q. If I have received a nonbinary gender change court order in California was born in another state, will that state change the gender on my birth certificate?

A. Most likely not, as there are unfortunately very few states that currently issue birth certificates with nonbinary markers, but it is not impossible. Note that different states have different requirements when it comes to supporting documentation for requests to change the gender marker on a birth certificate. Some require a doctor's letter rather than a court order, and even out of those states that require a court order, some may not accept court orders from other states if the language does not match the language in their laws closely enough. You may want to consult a lawyer for specific guidance.

Q. Is it illegal for the gender markers on different identity documents to be different (e.g., "nonbinary" on my CA state ID and "female" on my passport or green card)?

A. It is almost never legally necessary that all a person's documents list the same gender. Still, ensuring that as many as possible of your documents and records are aligned can prevent bureaucratic hassles.

Q. I was assigned male at birth, identify as nonbinary, and would prefer to have nonbinary documents but would also rather have documents that say "female" than "male." Is it possible to change some of my documents to say "nonbinary" and others to say "female"?

A. It is definitely possible! Most likely, the simplest way to achieve this would be to (1) apply to change the gender marker on your California driver's license, state ID, and/or birth certificate to "nonbinary," and (2) find an understanding physician who is willing to write you a letter stating that you have had "appropriate clinical treatment for transition to female" to submit with your requests to update your Social Security records, passport, and other federal documents. Note that you do not have to have received any form of medical treatment to change the gender marker on your federal documents; writing this letter is entirely at your doctor's discretion.

There is also no defined order in which you need to change the gender marker on your different identity documents, though note: (1) you must change the name in your Social Security records before changing the name on a CA driver's license or state ID, and (2) the CA DMV will only seal a name/gender change request if a person requests to change their name and gender marker with the DMV at the same time.

Q. Are there other things I should bear in mind before requesting a nonbinary gender marker?

A. As nonbinary and gender-nonconforming people know, there is still considerable prejudice against people who defy gender expectations. Some people viewing an ID with a marker other than “M” or “F” may respond with hostility, which may escalate an already sensitive interaction (say, with a police officer). Also, though we are optimistic they will gradually catch up, many state and federal agencies may not yet have the infrastructure to track nonbinary people in their systems.

If you encounter any difficulties, please contact us at <https://transgenderlawcenter.org/legalinfo>.

About Transgender Law Center (TLC)

Transgender Law Center (TLC) is the largest national trans-led organization advocating self-determination for all people. Grounded in legal expertise and committed to racial justice, TLC employs a variety of community-driven strategies to keep transgender and gender nonconforming people alive, thriving, and fighting for liberation.

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