

Which Box Do You Check? Some States Are Offering a Nonbinary Option

By [Amy Harmon](#) May 29, 2019

As nonbinary teenagers push for driver's licenses that reflect their identity, a fraught debate over the nature of gender has arrived in the nation's statehouses.



El Martinez, 17, at home in Massachusetts. Martinez wrote to state representatives requesting a gender-neutral option for identity documents. Tony Luong for The New York Times

BOSTON — Ever since El Martinez started asking to be called by the gender-neutral pronouns “they/them” in the ninth grade, they have fielded skepticism in a variety of forms and from a multitude of sources about what it means to identify as nonbinary.

There are faculty advisers on El's theater crew who balk at using "they" for one person; classmates at El's public school on the outskirts of Boston who insist El can't be "multiple people"; and commenters on El's social media feeds who dismiss nonbinary gender identities like androgyne (a combination of masculine and feminine), agender (the absence of gender) and gender-fluid (moving between genders) as lacking a basis in biology.

Even for El's supportive parents, conceiving of gender as a multidimensional sprawl has not been so easy to grasp. Nor has El's suggestion that everyone state their pronouns gained much traction.

So last summer, when the Massachusetts State Legislature became one of the first in the nation to consider a bill to add an "X" option for nonbinary genders to the "M" and "F" on the state driver's license, El, 17, was less surprised than some at the maneuver that effectively killed it.

Beyond the catchall "X," Representative James J. Lyons Jr. (he/him), a Republican, had proposed that the [bill should be amended](#) to offer drivers 29 other gender options, including "pangender," "two-spirit" and "genderqueer." Rather than open the requisite debate on each term, leaders of the Democratic-controlled House shelved the measure.

"He articulated an anxiety that many people, even folks from the left, have: that there's this slippery slope of identity, and 'Where will it stop?'" said Ev Evnen (they/them), director of the Massachusetts Transgender Political Coalition, which is championing a new version of the bill.

As the first sizable group of Americans to openly identify as neither only male nor only female has emerged in recent years, their requests for recognition have been met with reservations that often cross partisan lines. For their part, some nonbinary people suggest that concerns about authenticity and grammar sidestep thornier questions about the culture's longstanding limits on how gender is supposed to be felt and expressed.

“Nonbinary gender identity can be complicated,” said Mx. Evnen, 31, who uses a gender-neutral courtesy title. “It’s also threatening to an order a lot of people have learned how to navigate.”

And with bills to add a nonbinary marker to driver’s licenses moving through at least six legislatures this session, the expansive conception of gender that many teenagers can trace to middle-school lunch tables is being scrutinized on a new scale.

A Learning Curve

The wave of proposed gender-neutral legislation has prompted debate over whether extending legal recognition to a category of people still unknown to many Americans could undermine support for other groups vulnerable to discrimination. It has also highlighted how disorienting it can be to lose the gendered cues, like pronouns, names, appearance and mannerisms, that shape so much of social interaction.



The gender-neutral designation option on a Maine driver’s license. Maine Bureau of Motor

Vehicles, via Associated Press

Over the last few months, lawmakers have sought — not always successfully — to use the singular “they” when introducing nonbinary constituents who have appeared to testify. The elected officials have listened to tutorials on the difference between sexual orientation and gender identity (the former is who you go to bed with, the latter is who you go to bed as); to pleas for compassion from parents who have learned to refer to their children as “my kid” rather than “son” or “daughter”; and to why being called by binary pronouns feels, as Kayden Reff (they/them), 15, of Bethesda, Md., put it in testimony read by their mother, “as though ice is being poured down my back.”

“I’ve always been a liberal Democrat; it’s not like these issues are foreign to me,” said State Representative Michael Winkler (he/him), 68, of Vernon, Conn., who attended [a hearing](#) on gender-neutral identification state documents this spring. “But I’m still capable of being educated.”

Some of the antipathy toward nonbinary identities may reflect a generational divide. Over a third of Americans now in their teens and early 20s know someone who uses gender-neutral pronouns, according to a recent survey by Pew Research — more than people in their later 20s and 30s, double the number of those in their 40s, and triple the number of those in their 50s and 60s. Sixty percent of the teenagers surveyed told Pew that forms asking about a person’s gender should include options other than “man” and “woman.”

“Possibly it’s an age issue,” said Jocelyn Doan (she/her), 39, a longtime advocate for progressive causes in Hawaii who struggled with whether to support the gender-neutral license bill in her state. “I want to respect their challenges, but the use of ‘their’ for a single person is making me crazy.”

Objections to the bills have also been raised by social conservatives, like

State Senator J.B. Jennings (he/him) of Maryland, who made a distinction in public comments between transgender people who transition from male to female or vice versa, and those who identify as nonbinary.

"They're either going one way or the other, they're not stuck in the middle," he [said](#). Mr. Jennings suggested that the license would be inaccurate if it listed a gender other than male or female. His argument was echoed by the California Family Council when that state became the first to adopt gender-neutral documents as law in 2017: "It advances a falsehood that being male or female or no gender at all is a choice each person must make, not a fact to celebrate and accept," said Jonathan Keller, the group's president.

But other opponents, like the Women's Liberation Front, an advocacy group that has submitted testimony on so-called "Gender X" bills in several states, argue that bolstering the nonbinary category will harm people who face discrimination and violence precisely because they are born with female anatomy. "To deny the reality of sex means we're not able to name, address, and fix systemic sex-based oppression and exploitation," said Kara Dansky (she/her) of the group's Maryland chapter.

And a state agency in Hawaii that tracks the status of women took the opposite tack, backing [an alternative proposal for a limited-use ID bearing no gender marker](#) that was introduced in addition to a bill to add the "X."

"The state does not have a legitimate interest" in identifying residents based on their gender, the agency's [testimony](#) asserted. That bill did not advance, said its sponsor, State Senator Karl Rhoads (he/him), probably because federal law requires air travelers to carry identification that [includes a gender marker](#), and in the island state, "the only way to get anywhere is flying."

'No Right Way to Be a Girl'

Proponents of adding a gender-neutral option to state identification documents say it would remove a form of discrimination against nonbinary people by providing them with the means to carry identification that matches their identity. Many also hope it will lend legitimacy to a paradigm that stands to liberate people of all genders from deep-rooted social norms that penalize women for being assertive and men for showing emotion.

"The gender binary is a system of control that a lot of nonbinary people are invested in destroying, and this is a step toward that," said Jamie Grace Alexander (they/them or she/her), a 21-year-old college student who helped to craft testimony on the Maryland bill for the Baltimore Transgender Alliance.

Some parents of nonbinary youths who testified at hearings acknowledged that understanding their child's identity was a challenge at first. "Sweetie, there's no right way to be a girl," Sara Collina (she/her), a gender studies professor in Takoma Park, Md., recalled saying when her child first confided that they had renounced the gender they were given at birth.

But several nonbinary teenagers emphasized that they were not looking for a way to be a girl or boy that stretched conventional definitions. Their gender identity was a visceral feeling, they said, not a political choice — and one that could bring with it social ostracism.

Ed Luiggi, 17, skipped school to testify before a Maryland Senate committee earlier this year. Gabriella Demczuk for The New York Times

Kayden Reff, 15, described being misgendered as like ice "being poured down my back." Gabriella Demczuk for The New York Times

"I wouldn't wish to not be nonbinary," Ms. Collina's teenager (they/them), who did not want to be named, said. "But it is harder."

Scholars say that nonbinary genders have existed across history and

cultures. Young Americans may now be embracing them in larger numbers, they say, because the increased visibility of people who have transitioned from one binary gender to the other suggests that there are more than two positions to occupy.

"Such fluidity necessarily raises the question for all of us," wrote Barbara Risman (she/her), a sociologist at the University of Illinois at Chicago who has studied nonbinary youths, "why must our lives be organized by the legal and bureaucratic binary system that relegates everyone to one of two categories based originally on genitalia observed at birth?"

First Wave of Recognition

Perhaps also because some critical mass has been reached, nine state motor vehicles bureaus have recently added the "X" option to driver's licenses without involving the legislature.

Several other jurisdictions, including New York City, Oregon, New Jersey and [New Mexico](#), have also begun to allow people to change the gender on their birth certificate to "X." The nation's major airlines have announced that they will allow passengers to identify as an "undisclosed" or "unspecified" gender when booking tickets.

And in a decision that has been appealed by the United States government, a federal judge in Colorado ruled that the State Department's requirement that applicants choose either "M" or "F" on a passport application is not an acceptable basis on which to withhold a passport from Dana Zzyym (they/them), a military veteran who sued the department in 2014 after their request for a gender-neutral passport was denied. "This is not a matter of self-expression," the government has argued. "This is a government form."

But the current crop of gender-neutral license bills, if signed into law, would amount to the first wave of legal recognition for nonbinary

identities, legal experts said. "We didn't want this to be just an administrative change," said Jen Jenkins (they/them), a law student at the University of Hawaii who provided research for the bill passed by Hawaii's Legislature last month. "We want it to last."

In some states, the bills have been introduced at the urging of parents who know that social affirmation can reduce the elevated risk of suicide and depression for gender-nonconforming children.

"The gist was, their kids didn't feel the IDs available to them reflected who they were," said Gerri Cannon (she/her), a state representative who sponsored ID bills in New Hampshire after receiving calls from concerned parents.

Nonbinary teens themselves have also petitioned for a third gender on state identity documents.

Ed Luiggi (they/them), 17, president of an after-school club for gender nonconforming students, skipped school to testify before the Maryland Senate's Judicial Proceedings Committee in Annapolis earlier this year. "My heart was racing and I was sweating a bit," they said. It was at the same hearing that Lisa Reff (she/her), a lawyer, read the statement that her 15-year-old, Kayden, had labored to make relatable: "I wanted it to be down-to-earth but I also wanted it to sound proper," Kayden said in a text.

And the Massachusetts bill originated with a letter written by El Martinez to their state representatives: "I am planning to take driving lessons in the fall and I would be ecstatic to have a more neutral option," it read. And this time around, El has sought to assure lawmakers that the "X" would encompass all nonconforming genders. "The 'X,'" El told members of the Legislature's transportation committee in late March, "is a symbol."

In [Hawaii](#) and [Colorado](#), gender-neutral license bills have recently

reached the desks of their respective governors. [Maryland's](#) will become law, the state's Republican governor, Larry Hogan, [said last week](#), without his signature, effective Oct. 1.

Similar measures are still under consideration in [New Hampshire](#), [New York](#) and [Connecticut](#). The Massachusetts bill has passed the Senate. It is now under review in the House.

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